

Translation from Finnish

Legally binding only in Finnish and Swedish

Ministry of Economic Affairs and Employment, Finland

1397/2016

Act on Public Procurement and Concession Contracts

The following is enacted by decision of Parliament:

PART I

GENERAL PROVISIONS

Chapter 1

Purpose, principles and definitions

Section 1

Purpose of the Act

- (1) State and municipal authorities and other contracting entities referred to in section 5 shall arrange competitive tendering of their procurements and concession contracts as provided in this Act.
- (2) This Act shall implement:
 - 1) Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC, hereinafter referred to as the *Procurement Directive*;
 - 2) Council Directive 89/665/EEC on the coordination of the laws,

regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts;

- 3) Directive 2007/66/EC of the European Parliament and of the Council amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts; and
- 4) Directive 2014/23/EU of the European Parliament and of the Council on the award of concession contracts, hereinafter referred to as the *Concession Contracts Directive*.

Section 2

Aims of the Act

- (1) This Act seeks to enhance efficiency in the use of public funds, promote high quality, innovative and sustainable procurement, and safeguard equal opportunities for enterprises and other corporations in providing goods, services and public works contracts in competitive tendering for public procurement.
- (2) Contracting entities shall endeavour to arrange their procurement operations so that procurements can be implemented with optimal economy, quality and orderliness, taking advantage of existing competitive conditions and allowing for environmental and social aspects. To reduce the administrative functions involved in procurement, contracting entities may use framework agreements and make joint procurements or benefit from other opportunities for co-operation in competitive tendering for public procurement.
- (3) Procurements shall be realised as expedient modules. Efforts shall be made to arrange procurements so that small and medium-sized enterprises and other corporations have equal access with other tenderers to participation in competitive tendering. Efforts shall be made to give consideration to adequate transparency and non-

discrimination in procurements falling below the national threshold values referred to in this Act, having regard to the size and scope of the procurement.

Section 3

Principles governing public procurement

- (1) The contracting entity shall treat participants and other suppliers involved in a procurement procedure in an equitable and non-discriminatory manner, and shall act transparently, having regard to the requirements of proportionality.
- (2) A candidate or tenderer in competitive tendering that is a unit belonging to a contracting entity organisation, a corporation or establishment owned by a contracting entity, or another contracting entity shall be treated in the same way as other candidates and tenderers.

Section 4

Definitions

- (1) In this Act and in provisions issued pursuant thereto, the term:
 - 1) *procurement agreement* shall denote a written agreement concluded between one or more contracting entities and one or more suppliers with a view to implementing a public works contract, procuring goods or performing a service in return for financial consideration;
 - 2) *public works contracting agreement* shall denote a procurement agreement seeking the implementation, or both the design and implementation, of construction work or a public works contract associated with the operations referred to in Schedule B; public works contracting agreement shall also denote the implementation in any manner whatsoever of a public works contract meeting the requirements imposed by a contracting

entity exercising a decisive influence on the type or design of the public works contract; the public works contract may be a financial or technical module comprising building or civil engineering works;

- 3) *supply contract* shall denote a procurement agreement seeking to purchase, lease, rent or hire-purchase products, with or without the option to buy; a procurement agreement seeking assembly or installation work in addition to the supply of products shall also be deemed a supply contract;
- 4) *service contract* shall denote a procurement agreement not pertaining to a public works contract, seeking the provision of services;
- 5) *concession contract* shall denote the agreement referred to in paragraphs 6 and 7;
- 6) *works concession* shall denote a written agreement concluded for financial consideration, whereby one or more contracting entities assigns the performance of a public works contract and the associated operational risk to one or more suppliers, and in which the consideration for the assignment consists either solely in the right to exploit the work or in that right together with payment;
- 7) *service concession* shall denote a written agreement concluded for financial consideration, whereby one or more contracting entities assigns the provision and administration of services not pertaining to a public works contract and the associated operational risk to one or more suppliers, and in which the consideration for the assignment consists either solely in the right to exploit the service or in that right together with payment;
- 8) *supplier* shall denote a natural or legal person, a public party or a consortium of the foregoing parties that offers goods or

services, or construction work or a public works contract on the market;

- 9) *candidate* shall denote a supplier who has declared a wish to participate in a restricted procedure referred to in section 33, a negotiated procedure referred to in section 34, a competitive negotiated procedure referred to in section 36, an innovation partnership procedure referred to in section 38, or a direct procurement referred to in section 40 §;
- 10) *tenderer* shall denote a supplier who has submitted a tender;
- 11) *Procurement document* shall denote any document that a contracting entity has prepared or to which it refers in order to describe or specify various parts of a procurement or procedure;
- 12) *central purchasing body* shall denote a contracting entity referred to in section 5, which offers central purchasing functions and potential ancillary purchasing activities to contracting entities that it owns either directly or indirectly or to contracting entities whose right to use the functions of the central purchasing body is separately provided; it shall be a condition that the central purchasing body operates to discharge the foregoing functions and that it was expressly established to discharge these functions or that discharging these functions has been prescribed or ordered as the operating field of the central purchasing body;
- 13) *centralised purchasing activity* shall denote the following functions of permanent character:
 - a) procuring goods or services intended for contracting entities;
 - b) awarding contracts or concluding the framework agreements referred to in section 42 for public works contracts, goods or services intended for contracting entities, or establishing the dynamic purchasing systems referred to in

section 49;

- 14) *ancillary purchasing activity* shall denote the following activities supporting procurement functions:
 - a) offering technical infrastructure intended for concluding procurement agreements and the framework agreements referred to in section 42 § to contracting entities;
 - b) advising on the conduct or design of procurement procedures;
 - c) implementing procurement procedures on behalf and for the account of a contracting entity;
- 15) *common procurement vocabulary (CPV)* shall denote the reference nomenclature referred to in Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and in Commission Regulation (EC) No 213/2008 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV;
- 16) *written* or *in writing* shall denote any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;
- 17) *electronic means* shall denote a form of communication using electronic equipment for processing (including digital compression) and storing data transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- 18) *life cycle* shall denote all consecutive or interlinked stages throughout the existence of the product or the public works

contract or the provision of the service, from raw material acquisition or accumulation of resources to their re-use, recycling, exploitation or final processing;

- 19) *design contest* shall denote a procedure enabling the contracting entity to acquire a plan or design selected by a contest jury with or without the award of prizes;
- 20) *innovation* shall denote the implementation in business practices, workplace organisation or external relations of a new or significantly improved product, service or process, or a new marketing or organisational method;
- 21) *label* shall denote any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements imposed by the contracting entity;
- 22) *label requirements* shall denote the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned;
- 23) *technical specification* shall denote a technical specification of the characteristics of a product, service or materials that are the subject of a procurement, which forms a requirement for its use;
- 24) *standard* shall denote a technical specification approved for repeated or ongoing use by an accredited standardising body, that has been published as a standard and whose observation is not mandatory; a standard shall be:
 - a) international when it has been approved by an international standardisation organisation and is publicly available;
 - b) European when it has been approved by a European standardisation organisation and is publicly available; or
 - c) national when it has been approved by a national

standardisation organisation and is publicly available;

- 25) *European technical assessment* shall denote the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document as defined in subparagraph 12 of Article 2 of Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC;
- 26) *common technical specification* shall denote an ICT technical specification that has been confirmed in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council;
- 27) *technical reference* shall denote any technical specification prepared in accordance with procedures allowing for market requirements of a European standardisation body, other than a European standard;
- 28) *conformity assessment institution* shall denote a body that performs calibration, testing, certification, inspections and other assessments of conformity, and that has been accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93;
- 29) *public communications network* shall denote a communications

network used to provide communications services to a set of users that is not subject to any prior restriction, as defined in subparagraph 43 of section 3 of the Information Society Code (917/2014);

- 30) *electronic communications service* shall denote a service in the sense of subparagraph 37 of section 3 of the Information Society Code, consisting either completely or primarily of transmitting messages in a communications network, and of transfer and transmission service in mass communications networks;
- 31) *audiovisual media service* shall denote an audiovisual content service in the sense of subparagraph 2 of section 3 of the Information Society Code;
- 32) *programme and programme material* shall denote an audiovisual programme and radio programme in the sense of subparagraph 1 of section 3 of the Information Society Code.

Section 5

Contracting entities

- (1) The contracting entities referred to in this Act shall be:
 - 1) authorities of central and local government and joint municipal authorities;
 - 2) the Evangelical-Lutheran and Orthodox churches of Finland and their parishes and other authorities;
 - 3) State commercial institutions;
 - 4) institutions of public law character;
 - 5) any party conducting a procurement when it has secured the support in doing so of a contracting entity referred to in paragraphs 1–4 amounting to more than half of the value of the

procurement.

- (2) The institution of public law character referred to in paragraph 4 above shall denote a legal person expressly established to satisfy public interest needs that are not of an industrial or commercial nature and:
 - 1) that are mainly financed by a contracting entity referred to in paragraphs 1–4;
 - 2) that are managed under the regulatory control of a contracting entity referred to in paragraphs 1–4; or
 - 3) of whose administrative, managerial or regulatory organs a contracting entity referred to in paragraphs 1–4 appoints more than half of the members.

Chapter 2

Scope and limitations

6 §

General scope of the Act

- (1) This Act shall govern procurements and concession contracts performed by the contracting entities referred to in section 5 as hereinafter provided.
- (2) The application of this Act to activities of the Evangelical-Lutheran Church of Finland shall be governed by the Church Act (1054/1993), and its application to investments and other measures subsidised under the Agricultural Subsidies Act (1476/2007) shall be governed by the said latter Act.

Section 7

Law governing hybrid agreements

- (1) A procurement concerning two or more procurement types referred to in points 2–4 of section 4 and in Schedule E shall be governed by provisions specified in accordance with the main subject of the procurement agreement. The main subject of a procurement that partly concerns the services referred to in Schedule E and partly concerns other services, or that partly concerns services and partly concerns goods, shall be determined according to the highest estimated value of services or goods.
- (2) An agreement concerning procurements falling within the scope of this Act and procurements falling outside the scope of this Act shall be governed by this Act if the main subject of the agreement consists of procurements falling within the scope of this Act and if the parts of the agreement cannot be objectively distinguished. If the parts of an agreement referred to in this subsection are divided into separate agreements for parts falling within and parts remaining outside the scope of this Act, then this Act shall govern the procurement agreement that falls within its scope. If the parts of an agreement can be objectively distinguished but the agreement is not divided into separate parts, then this Act shall govern the agreement irrespective of the principal subject of the agreement.
- (3) An agreement comprising procurement agreements and concession contracts shall be governed by the provisions that govern the principal subject of the agreement. It shall be a condition that the parts of the agreement cannot be objectively distinguished. If the parts of an agreement can be objectively distinguished but the agreement is not divided into separate parts, then the agreement shall be governed by provisions other than the provisions of Chapter 13 of this Act.

Section 8

General limitations of scope

- (1) This Act shall not govern procurements:
 - 1) that are subject to mandatory procedural provisions governing

the contracting entity that deviate from this Act and are concluded:

a) pursuant to an international treaty concluded between Finland and one or more countries outside of the European Economic Area or parts thereof and in accordance with the treaties establishing the European Union, which concerns public works contracts, goods or services intended for implementing or exploiting a joint undertaking of the signatory States; the contracting entities and other authorities shall inform the Ministry of Economic Affairs and Employment of the international treaties on request;

b) by an international organisation; or

c) pursuant to an international treaty on deployment of forces concerning enterprises operating in some Member State of the European Union or in a country outside of the European Economic Area;

- 2) that the contracting entity concludes or arranges in accordance with procedural provisions issued by an international organisation or international financial institution and that are wholly financed by the said organisation or institution;
- 3) whose principal purpose is to enable the contracting entity to make public communications networks available or to maintain them, or to provide the public with one or more electronic communication services.

- (2) Notwithstanding the provisions of subparagraph (a) of paragraph 1 of subsection 1, the Act shall govern Foreign Service procurements based on development co-operation treaties as hereinafter provided.

Section 9

Limitations of scope concerning service procurements

(1) This Act shall not govern:

- 1) purchases or leasing of land, existing buildings or other immovable property under any form of financing, or procurement of associated rights;
- 2) purchasing, development, production or co-production procurements of programme material intended for audiovisual media services or radio services made by providers of audiovisual media services or radio services;
- 3) procurements concerning radio or television transmission times or the delivery of programmes when these are made with providers of audiovisual media services or radio services;
- 4) procurements concerning arbitration and conciliation services;
- 5) procurements concerning attorney services and directly associated legal advisory services provided by attorneys and trial counsel referred to in the Licenced Legal Counsel Act (715/2011);
- 6) procurements concerning document authentication or verification services performed by public notaries;
- 7) procurements concerning legal services performed by trustees, and other legal services whose performer is appointed by a court of law or designated by law to discharge special functions under the supervision of a court of law;
- 8) procurements of other legal services associated with the exercise of public power;
- 9) procurements concerning central bank services or financial services pertaining to the issue, purchase, sale or transfer of securities or other financing instruments, and other business operations whereby a contracting entity procures finance or capital;

- 10) employment contracts;
 - 11) procurements concerning the civil defence, rescue services and hazard prevention, emergency care and emergency response operations referred to in Schedule A that are provided by non-profit organisations or consortia thereof;
 - 12) procurements concerning the political campaigning services referred to in Schedule A when a political party concludes a service contract in the course of an election campaign;
 - 13) procurements concerning the research and development services referred to in Schedule A, except where the benefits derived from them accrue solely to the contracting entity for use in its operations and the contracting entity pays in full for the service performed;
 - 14) procurements of assigned amount units, emission reduction units and certified emission reductions permitted under the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Finnish Treaty Series 13/2005);
 - 15) procurements of air transport services falling within the scope of Council Regulation (EEC) No 2408/92 on access for Community air carriers to intra-Community air routes.
- (2) The application of this Act to the service procurements referred to in the Public Transport Act (869/2009) shall be governed by subsection 2 of section 36 of the said Act.

Section 10

Procurements of water and energy supplies, transport and postal services

This Act shall not apply to procurements and concession contracts performed for the activities referred to in the Act on Procurements and Concession Contracts of Entities Operating in the Water and Energy

Supply, Transport and Postal Services Sector (1398/2016).

Section 11

Special limitations of scope concerning concession contracts

- (1) This Act shall not apply to concession contracts concerning air transport services that are based on the issuing of the operating licence referred to in Chapter 6 of the Aviation Act (864/2014).
- (2) This Act shall not apply to concession contracts concerning lottery services concluded by a contracting entity with a supplier on the basis of a monopoly. The granting of such a monopoly shall be announced in the Official Journal of the European Union.
- (3) This Act shall not apply to concession contracts concluded for the water piping, processing and supply for household use that are referred to in the Water Services Act (119/2001).
- (4) This Act shall not apply to concession contracts for one or both of the following when associated with the activity referred to in subsection 3:
 - 1) removal or processing of sewer or runoff water;
 - 2) hydraulic engineering projects, irrigation or drainage; it shall be a condition that the proportion of water procured for household use in the projects or in irrigation or drainage systems exceeds 20 per cent of the total quantity of water produced.

Section 12

Defence and security procurements

- (1) This Act shall not apply to the procurements referred to in section 5 of the Public Defence and Security Procurements Act (1531/2011), hereinafter referred to as the *Defence and Security Procurement Act*, or to procurements that are excluded from the scope of the said Act

pursuant to subsection 2 of section 6, subsection 1 of section 7, or sections 8 or 13 thereof.

- (2) This Act shall not apply to procurements that are confidential or whose performance requires special statutory security measures. The Act shall also not apply to any procurement in which application of this Act would oblige the contracting entity to disclose information whose publication conflicts with key national security interests. It shall be a condition that the protection of key national security interests cannot be ensured by measures that prejudice the non-discriminatory and transparent treatment of tenderers and candidates less than not applying the Act.

Section 13

Law governing hybrid agreements involving defence or security aspects

An agreement containing procurements falling within the scope of this Act and within the scope of the Defence and Security Procurement Act shall be governed by the Defence and Security Procurement Act if the parts of the procurement agreement cannot be objectively distinguished.

Section 14

Application of concession contract provisions to defence and security sector licencing agreements

- (1) Notwithstanding the provisions of subsection 1 of section 12, the provisions of this Act governing concession contracts shall govern security and defence procurements pertaining to the public works contracts and services referred to in section 5 of the Defence and Security Procurement Act that are implemented as concession contracts.
- (2) This Act shall nevertheless not apply to a concession contract referred to in subsection 1 if it is subject to the scope restrictions prescribed in

section 7 of the Defence and Security Procurement Act or in this Act.

Section 15

Procurements from an in-house entity of a contracting entity

- (1) This Act shall not apply to a procurement made by a contracting entity from its in-house entity. The term *in-house entity* shall denote an entity that is formally separate and independent for policymaking purposes from the contracting entity. A further condition is that the contracting entity, either alone or together with other contracting entities, exercises a controlling interest in the in-house entity in the same way as in its own establishments, and that the in-house entity performs no more than five per cent and a share of not more than EUR 500,000 of its business operations with parties other than the contracting entities that exercise a controlling interest over it. An in-house entity may have no capital other than the capital of contracting entities.
- (2) The average total turnover for the three years preceding conclusion of the agreement or some other corresponding quantity based on operations shall serve as the basis for determining the percentage referred to in subsection 1.
- (3) The percentage share referred to in subsection 1 shall be 10 and the limit of EUR 500,000 shall not apply when there is no market-based operation corresponding to the business operations of the in-house entity under the controlling interest of a contracting entity. No market-based operation shall be deemed to exist if a contracting entity has released the transparency declaration referred to in subsection 3 of section 58 concerning planned sales of the in-house entity subject to its controlling interest to contracting entities other than those exercising the controlling interest, and the contracting entity has received no responses concerning market-based operations corresponding to the business operations of the in-house entity within

the time limit specified in the declaration. The time period for responding shall be not less than 14 days as of the date of releasing the transparency declaration. When the conditions are satisfied the percentage share referred to in this subsection shall govern the entity subject to the transparency declaration for a period of three years from the end of the time limit for responses stipulated in the said declaration.

- (4) The percentage limit on turnover referred to in the foregoing subsection 1 shall not apply when the value of business operations conducted with contracting entities other than those exercising a controlling interest in the in-house entity averages less than EUR 100,000 per year over the three years preceding conclusion of the agreement.
- (5) Contracting entities shall be deemed to exercise a joint controlling interest in an in-house entity if the executive organs of the in-house entity consist of representatives of all of the contracting entities and the contracting entities may jointly exercise decisive policymaking power with respect to the strategic objectives and important decisions of the in-house entity. A further condition shall be that the in-house entity operates in the interests of the contracting entities that exercise the controlling interest.
- (6) This Act shall not apply in circumstances where an in-house entity that is a contracting entity makes a procurement from a contracting entity that exercises a controlling interest in the in-house entity or from another in-house entity that is subject to the controlling interest of the same contracting entity.

Section 16

Procurements from another contracting entity

- (1) This Act shall not apply to any procurement between contracting entities whereby the contracting entities collaborate to implement public services in the public interest for which they are responsible in

order to achieve common objectives. It shall be a further condition that no more than five per cent and a share not exceeding EUR 500,000 of the services falling within the scope of the collaboration are provided for third parties. The percentage share shall be determined in accordance with the provisions of subsection 2 of section 15.

- (2) The percentage share referred to in subsection 1 above shall be 10 and the limit of EUR 500,000 shall not apply when there are no market-based operations in the services covered by the collaboration. No market-based operations shall be deemed to exist if the contracting entities participating in the collaboration have released the transparency declaration referred to in subsection 3 of section 58 concerning the planned service provision for third parties under the collaboration, and the contracting entities have received no responses concerning market-based service provision operations under the collaboration within the time limit specified in the declaration. The time period for responding shall be not less than 14 days as of the date of releasing the transparency declaration. When the conditions are satisfied the percentage share referred to in this subsection shall govern the services covered by the collaboration that is subject to the transparency declaration for a period of three years from the end of the time limit for responses stipulated in the said declaration.
- (3) The percentage limit on service provision referred to in the foregoing subsection 1 shall not apply when the value of services provided for third parties under the collaboration averages less than EUR 100,000 per year over the three years preceding conclusion of the agreement.

Section 17

Monopoly-based service procurements

This Act shall not apply to service procurements made from another contracting entity based on a service provision monopoly issued thereto in accordance with the Treaty on European Union by Act of Parliament,

Decree or administrative regulation.

Section 18

Procurements implemented in non-EEA countries

This Act shall not apply to a procurement implemented in a country outside of the European Economic Area with no national interest or interest transcending the border of Member States of the European Union or the European Economic Area. It shall be a condition that the European Union has not concluded any multilateral or bilateral treaty with the said country outside of the European Economic Area on equitable and actual access to the public procurement market.

Section 19

Procurements covered by the WTO Agreement on Government Procurement (GPA)

Tenderers and tenders from other States Parties in procurements falling within the scope of the World Trade Organisation Agreement on Government Procurement (GPA, Finnish Treaty Series 5/1995) shall be governed by the same terms and conditions as tenderers and tenders from Finland and other European Union Member States.

Chapter 3

Joint procurements and reservation of procurements

Section 20

Procurements from a central purchasing body

- (1) A contracting entity may procure goods and services from a central purchasing body or make procurements of goods, services and public

works contracts using a procurement agreement concluded by a central purchasing body, the framework agreement referred to in section 42, or the dynamic purchasing system referred to in section 49.

- (2) A contracting entity shall be deemed to have discharged its obligations under this Act on procuring goods or services from a central purchasing body or making procurements of goods, services or public works contracts using a procurement agreement concluded by a central purchasing body, the framework agreement referred to in section 42, or the dynamic purchasing system referred to in section 49.
- (3) The contracting entity shall be liable for the stages that it implements independently when using a procurement agreement concluded by a central purchasing body, a framework agreement, or a dynamic purchasing system.
- (4) This Act shall not apply to a service agreement on the provision of centralised purchasing activities or ancillary purchasing activities concluded between a contracting entity and a central purchasing body.

Section 21

Other joint procurements

- (1) Contracting entities may agree to implement an individual procurement jointly. The contracting entities participating in the procurement shall be jointly liable for compliance with this Act if the procurement is wholly implemented in the names and on behalf of all of the contracting entities participating in the procurement. This joint liability shall also apply in circumstances where one of the participating contracting entities implements a procurement procedure on its own behalf and on behalf of participating contracting entities.
- (2) If a procurement procedure is not implemented in the names and on behalf of all of the participating contracting entities, then the

participating contracting entities shall be jointly liable for compliance with this Act to the extent that they have jointly implemented the stages of the procurement. A participating contracting entity shall be solely liable for compliance with this Act in respect of the stages that it implements in its own name and on its own behalf.

Section 22

Procurements from a joint contracting entity of another European Union Member State and joint procurements of Member State contracting entities

- (1) A contracting entity may use the centralised purchasing activities of a central purchasing body located in another European Union Member State. This Act shall not apply in such cases. This Act shall also not apply to a procurement made using a dynamic purchasing system established by a central purchasing body located in another European Union Member State, to a procurement based on a framework agreement, to a supplier selection, or to internal competitive tendering of a framework agreement. Use of a central purchasing body in another Member State shall nevertheless not be permitted in order to avoid complying with national legislation.
- (2) This Act shall apply when a contracting entity from another European Union Member State makes a procurement from a central purchasing body located in Finland. This Act shall also apply to a procurement made by a central purchasing body located in another European Union Member State using a dynamic purchasing system established by a central purchasing body located in Finland, to a procurement based on a framework agreement, to a supplier selection, and to internal competitive tendering of a framework agreement.
- (3) Unless the necessary details have been agreed in an international treaty between the Member States concerned, the contracting entities shall conclude an agreement on any procurement procedure whose implementation will involve one or more contracting entities from

another European Union Member State in addition to a contracting entity located in Finland. The agreement shall specify the duties of the contracting parties and the national legislation that governs various functions or the procurement procedure as a whole, together with the procurement procedure administration, division of procurement and conclusion of the procurement agreement, and other structural aspects of the procurement procedure. The division of duties and the national legislation governing the duties shall be stated in the call for tenders. A participating contracting entity shall be deemed to have discharged its obligations under this Act when it procures goods or services from a contracting entity that is liable for the procurement procedure.

- (4) A contracting entity may only participate in establishing a joint contracting entity of European Union Member States if procurement procedures of the joint entity are governed by the legislation of the place where the joint entity conducts its operations.

Section 23

Competitive tendering of public works contracts receiving State aid

A decision on State aid may require a contracting entity to refrain from implementing in-house a public works contract in receipt of State aid without arranging competitive tendering based on this Act.

Section 24

Reserved procurement agreements

- (1) A contracting entity may reserve participation in competitive tendering to take place in the context of work programmes or restrict participation in competitive tendering to sheltered workshops or corresponding suppliers whose main aim is the social and occupational integration of disabled or disadvantaged persons. It shall be a condition of participating in competitive tendering that not less than 30 per cent of the employees of the sheltered workshop, supplier

or work programme are disabled or disadvantaged persons.

- (2) The contract notice shall state that the contract is reserved for implementation by the sheltered workshops or suppliers referred to in subsection 1 or in the context of work programmes.

Chapter 4

Threshold values and calculation of estimated procurement value

Section 25

National threshold values

- (1) The national threshold values excluding value-added tax shall be:
 - 1) EUR 60,000 in procurements of goods, services and design contests, unless otherwise provided at points 3–4;
 - 2) EUR 150,000 in public works contracts;
 - 3) EUR 400,000 in the social and health care services procurements referred to in points 1–4 of Schedule E;
 - 4) EUR 300,000 in the other specific services procurements referred to in points 5–15 of Schedule E;
 - 5) EUR 500,000 in concession contracts.
- (2) This Act shall not apply to procurement agreements or concession contracts of estimated value falling below the national threshold values.

Section 26

European Union threshold values

- (1) The European Union threshold values based on the Procurement

Directive and the Concession Contracts Directive excluding value-added tax shall be:

- 1) EUR 134,000 for public supply, service and design contest contracts awarded by central government authorities; with respect to public supply contracts awarded by contracting entities operating in the field of defence, the said threshold value shall only apply to contracts concerning products referred to in Annex III to the Procurement Directive;
 - 2) EUR 207,000 for public supply, service and design contest contracts of contracting entities other than those referred to in point 1; the said threshold shall also apply to public supply contracts concerning products not referred to in Annex III to the Procurement Directive awarded by central government authorities that operate in the field of defence;
 - 3) EUR 5,186,000 in public works contracts.
- (2) Procurements of size not less than the European Union threshold values shall be governed by the provisions of Chapters 1–10 and 14–16 concerning procurement agreements. Procurements of size not less than the European Union threshold value shall apply a procedure referred to in Chapter 5.
- (3) The European Commission will revise the threshold values by adopting delegated acts at two-yearly intervals in accordance with the procedure prescribed in Article 6 of the Procurement Directive, and will announce the revised threshold values in the Official Journal of the European Union, whereupon the latest values so revised by the European Commission shall replace the values specified in subsection 1.

Section 27

Calculation of estimated procurement value

- (1) The largest total compensation payable excluding value-added tax

shall serve as the basis for calculating the estimated value of a procurement. The valuation shall be based on the value at the time of announcement or at some other procurement procedure starting time. The calculation of value shall also consider possible alternative ways of implementing the procurement, the option and extension terms included in the procurement agreement, and the fees or charges payable to candidates or tenderers. The portion of the procurement financed by the employment authorities shall be taken into account when calculating the estimated value of the joint procurement referred to in point 3 of subsection 1 of section 25.

- (2) The value of the contract and the estimated total value of any goods necessary for implementing it that the contracting entity surrenders for use by the contractor, if these are essential for implementing the contract, shall be taken into account when calculating the estimated value of a public works contract.
- (3) If a procurement is implemented at the same time in the form of separate lots, then the estimated value of all of the lots shall be taken into account when calculating the total value of the procurement agreement. If the total combined value of the lots is not less than the national threshold value or the European Union threshold value, then the procurement of each lot shall comply with the provisions governing procurements exceeding the said threshold value.
- (4) This Act shall not apply to lots belonging to procurements of goods and services with a estimated value of less than EUR 80,000, or to lots belonging to public works contracts with a estimated value of less than EUR 1 million if the total combined value of such lots does not exceed 20 per cent of the total value all of the lots. The procurement shall nevertheless be governed by this Act if the estimated value of a lot is not less than the national threshold value.
- (5) If a contracting entity comprises separate operational units, then the total estimated value of all procurements of the individual operational units shall be taken into account on calculating the value of the

procurement when they form a single module. If a separate operational unit is independently responsible for its procurement or certain categories thereof, then the values may be estimated at the level of the unit in question.

Section 28

Calculating the estimated value of a concession contract

- (1) The turnover of the concessionaire excluding value-added tax that is generated over the duration of the contract, as estimated by the contracting entity, shall serve as the basis for calculating the estimated value of a concession contract. The turnover shall be taken into account only insofar as it takes the form of consideration for the agreed public works contract or service, or for goods pertaining thereto. The estimate shall be based on the time of announcing the concession contract or some other procurement procedure starting time. If the value of the concession contract at the time of the award is more than 20 per cent higher than its estimated value, then the threshold value overshoot shall be estimated on the basis of the value at the time of the award.
- (2) The estimated value of the concession contract shall be calculated using an objective method specified in the contract notice, in the call for tenders, or in some other procurement documents. The following in particular shall be taken into account when calculating the estimated value:
 - 1) the value of any form of option and any extension of the duration of the concession;
 - 2) revenue from the payment of fees and fines by the users of the works or services other than those collected on behalf of the contracting entity;
 - 3) payments or other measures generating financial benefit remitted to the concessionaire by the contracting entity or other

- public authority, including compensation for performance of a public service obligation and public investment subsidies;
- 4) grants or other measures generating financial benefit conferred on the concessionaire by third parties;
 - 5) revenue from sales of any assets that are part of the concession;
 - 6) goods and services supplied by the contracting entity to the concessionaire, provided that they are necessary for performing the works or providing the services;
 - 7) any fees or payments that may be remitted to candidates or tenderers.
- (3) If a proposed public works contract or service results in the award of concessions in the form of separate lots, then the total estimated value of all such lots shall be taken into account when calculating the estimated value. If the total combined value of the lots is not less than the threshold value prescribed in subsection 1 of section 25, then this Act shall apply to each lot.

Section 29

Calculation of estimated value of certain service procurements

The following shall be used as the basis for calculating the estimated value of a procurement:

- 1) insurance premiums and other compensations payable in an insurance service;
- 2) charges, fees, interest and other compensations payable in banking services and other financing services;
- 3) charges, fees and other compensations payable in a design service procurement;

- 4) the estimated value of a service procurement excluding value-added tax but including any participation fees and charges in a design contest arranged as part of a procedure leading to a service procurement;
- 5) the full sum in fees and charges, and the estimated value of the service procurement excluding value-added tax that is subsequently concluded in accordance with point 8 of subsection 2 of section 40 in a design contest in which the participants receive rewards or a payment for design work, if the contracting entity announces in a design contest notice that it will conclude a service procurement agreement.

Section 30

Calculation of estimated value for an agreement period

- (1) The following shall be used as the basis for calculating the estimated value of the contract if a supply contract concerns leasing, rental or procurement by instalments:
 - 1) the total estimated value for the term of the contract in the case of fixed-term contracts of duration not exceeding 12 months, or the total value including the estimated residual value if the duration of the fixed-term contract is greater than 12 months; or
 - 2) the estimated monthly value of a contract in force until further notice or for an unspecified duration multiplied by 48.
- (2) The estimated value of public supply or service contracts that are regular in nature or intended for periodic renewal shall be calculated on the following basis:
 - 1) the combined value of corresponding procurements made consecutively over the last 12 months or the last completed budget period, having regard to changes in quantity or value occurring over the following 12 months; or

- 2) the estimated combined value of procurements made over the 12 months following the first delivery, or over the following budget period in the case of a contract in force for more than 12 months.
- (3) The following shall be used as the basis for calculating the estimated value of service procurement contracts in which no total price is specified:
 - 1) the total estimated value for the entire duration of fixed-term procurement agreements that are in force for no longer than 48 months;
 - 2) the monthly value multiplied by 48 in the case of procurement agreements that are in force until further notice or for longer than 48 months.
- (4) The estimated total value of all procurement agreements planned for the total duration of a framework agreement or dynamic purchasing system shall be used when calculating the estimated value of a procurement in framework agreements and dynamic purchasing systems.
- (5) In the case of innovation partnerships, the value to be taken into consideration shall be the maximum estimated value of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.

Section 31

Prohibition of artificial division or combination of procurements

A procurement may not be broken into lots, nor may its value be reduced by exceptional means in order to evade the application of this Act. Neither may a procurement of goods or services be attached to a public works

contract, nor may procurements be otherwise artificially combined in order to evade the application of this Act.

PART II

PROVISIONS GOVERNING PROCUREMENTS OF GOODS AND SERVICES, PUBLIC WORKS CONTRACTS AND DESIGN CONTESTS EXCEEDING THE EUROPEAN UNION THRESHOLD VALUE

Chapter 5

Procurement procedures

32 §

Open procedure

In an open procedure the contracting entity publishes a contract notice and places a call for tenders for the receivable, on which basis all prospective suppliers may submit their tenders. After the contract notice has been published and the call for tenders has been placed, the contracting entity may send the call for tenders to the suppliers that it considers suitable.

Section 33

Restricted procedure

- (1) In a restricted procedure the contracting entity publishes a notice of a contract in which all prospective suppliers may request to participate. Only the candidates selected by the contracting entity may submit a

tender.

- (2) The contracting entity in a restricted procedure may impose an advance limit on the number of candidates from which a tender will be requested. The contract notice shall specify the minimum number, and if necessary the maximum number of candidates that will be invited to tender. Candidates admissible as tenderers shall be selected in accordance with the minimum suitability requirements and evaluation criteria specified in the contract notice. The contracting entity may not include any candidates in the procedure who have not submitted a request to participate or who fail to satisfy the requirements set by the contracting entity.
- (3) A sufficient number of candidates to ensure genuine competition, having regard to the scale and nature of the procurement, must be invited to join the procedure. No fewer than five candidates must be invited to join a restricted procedure unless there are fewer suitable candidates. If there are fewer than five suitable candidates, then the contracting entity may continue the procedure by inviting all candidates satisfying the suitability requirements to submit tenders.

Section 34

Negotiated procedure

- (1) In a negotiated procedure the contracting entity publishes a notice of a contract in which all prospective suppliers may request permission to participate. The contracting entity will negotiate the terms and conditions of the procurement agreement with the suppliers that it selects.
- (2) The contracting entity may choose a negotiated procedure in a procurement:
 - 1) in which the needs of the contracting entity cannot be met without adapting existing solutions;
 - 2) that includes design or innovative solutions;

- 3) for which the contract cannot be awarded without prior negotiations, because of specific circumstances related to its nature, complexity or legal and financial form, or because of the risks pertaining thereto; or
 - 4) in which the description of the procurement cannot be drafted with sufficient precision with reference to a standard, European Technical Assessment, common technical specification or technical reference.
- (3) The contracting entity may also select a negotiated procedure if an open or restricted procedure resulted only tenders that failed to match the call for tenders, or if the tenders could not be accepted. No new contract notice need be published if the negotiated procedure includes all of the tenderers that satisfy the minimum requirements in accordance with sections 79–92 and that complied with the tendering procedure formalities when submitting a tender in the previous procedure.
- (4) The contracting entity in a negotiated procedure may impose an advance limit on the number of candidates invited to negotiate. The contract notice shall specify the minimum number, and if necessary the maximum number of candidates that will be invited to negotiate. Candidates admissible as tenderers shall be selected in accordance with the minimum suitability requirements and evaluation criteria specified in the contract notice. The contracting entity may not include any candidates in the procedure who have not submitted a request to participate or who fail to satisfy the requirements set by the contracting entity.
- (5) A sufficient number of candidates to ensure genuine competition, having regard to the scale and nature of the procurement, must be invited to negotiate. No fewer than three candidates must be invited to join a negotiated procedure unless there are fewer suitable candidates. If there are fewer than three suitable candidates, then the contracting entity may continue the procedure by inviting all candidates satisfying

the suitability requirements to submit preliminary tenders.

Section 35

Course of negotiated procedure

- (1) When using a negotiated procedure the contracting entity shall, in the contract notice, call for tenders or invitation to negotiate, present a description of its needs and of the characteristics required of the goods, services or public works contract to be procured, and shall specify the criteria for determining the most economically advantageous tender referred to in section 93. The contracting entity shall also indicate which elements of the description define the minimum requirements to be met by all tenders. The information provided shall be sufficiently precise to enable suppliers to evaluate the nature and scope of the procurement, and to decide whether to submit a request to participate.
- (2) The contracting entity shall request preliminary tenders from the candidates selected for negotiation, which shall serve as the basis for negotiating. The contracting entity may compare and select a preliminary tender without negotiation if such an option has been announced in advance in the contract notice or the call for tenders. During the procedure the contracting entity may ask the tenderers for new tenders adapted on the basis of the negotiations. The contracting entity shall negotiate with the tenderers to improve the tenders based on the preliminary tenders that they have lodged and possibly on tenders subsequently issued. The contracting entity may also modify the call for tenders or invitation to negotiate as the negotiations proceed. The minimum requirements specified in the contract notice, in a call for tenders placed at the time of publishing the notice, or in an invitation to negotiate, and the criteria for determining the most economically advantageous tender referred to in section 93 shall not be negotiable.
- (3) Negotiations may occur in stages, so that the number of tenders

included in the negotiations is limited during the negotiations by applying the criteria for determining the most economically advantageous tender and possible comparison criteria specified in the contract notice, the call for tenders or the invitation to negotiate. It shall be a condition that the staged character of the negotiations has been announced in the contract notice, the call for tenders or the invitation to negotiate.

- (4) The contracting entity shall treat the tenderers equitably in the negotiations. A contracting entity may not provide information in a manner that jeopardises the equitable treatment of participants in competitive tendering. The contracting entity shall notify all tenderers involved in the negotiations in writing of all changes in the content of the contract notice, call for tenders or invitation to negotiate. The tenderers shall be given sufficient time to modify and re-submit amended tenders, as appropriate. A contracting entity shall not disclose to other tenderers confidential information communicated by a candidate or a tenderer participating in the negotiations without its consent, which shall specify the information to which the said consent relates.
- (5) The contracting entity shall conclude the negotiations by notifying the remaining tenderers. The contracting entity shall send the final call for tenders to the tenderers and set a deadline for submitting final tenders. The contracting entity shall check that the final tenders comply with the final call for tenders and shall select a tender in accordance with section 93. The final tenders shall not be negotiable.

Section 36

Competitive negotiated procedure

- (1) In a competitive negotiated procedure the contracting entity publishes a notice of a contract in which all prospective suppliers may request permission to participate. The contracting entity negotiates with the candidates admitted to the procedure in order to review and determine

the best way of satisfying its requirements.

- (2) The contracting entity may select a competitive negotiated procedure when the conditions prescribed in subsection 2 of section 34 have been satisfied. The best price-quality ratio referred to in section 93 shall be applied as the criterion for determining the most economically advantageous tender.
- (3) The contracting entity may impose an advance limit on the number of candidates invited to negotiate in a competitive negotiated procedure. The contract notice shall specify the minimum number, and if necessary the maximum number of candidates that will be invited to negotiate. Candidates admissible as tenderers shall be selected in accordance with the minimum suitability requirements and evaluation criteria specified in the contract notice. The contracting entity may not include any candidates in the procedure who have not submitted a request to participate or who fail to satisfy the requirements set by the contracting entity.
- (4) A sufficient number of candidates to ensure genuine competition, having regard to the scale and nature of the procurement, must be invited to negotiate. No fewer than three candidates must be invited to join a competitive negotiated procedure unless there are fewer suitable candidates. If there are fewer than three suitable candidates, then the contracting entity may continue the procedure by inviting all candidates satisfying the suitability requirements to commence the negotiations.

Section 37

Course of competitive negotiated procedure

- (1) A contracting entity shall specify its needs and requirements for a procurement in the contract notice. The contracting entity may also prepare a project description specifying the aims and content of the procurement. The contracting entity shall establish a provisional timetable in the contract notice or project description, and shall set the

price-quality ratio comparison criteria.

- (2) The contracting entity shall commence negotiations with the selected candidates with a view to reviewing and determining the best way of satisfying its requirements. The contracting entity may negotiate on all aspects of the procurement with the selected candidates. The contracting entity may pay monetary or other fees or award prizes to participants in a competitive negotiated procedure.
- (3) Negotiations may occur in stages, so that the number of solutions included in the negotiations is limited during the negotiations by applying the price-quality ratio comparison criteria specified in the contract notice or the project description. It shall be a condition that the staged character of the negotiations has been announced in the contract notice or the project description.
- (4) The contracting entity shall treat the tenderers equitably in the negotiations. A contracting entity may not provide information in a manner that jeopardises the equitable treatment of participants in competitive tendering. A contracting entity shall not disclose to other tenderers confidential information communicated by any candidate or tenderer participating in the negotiations without its consent, which shall specify the information to which the said consent relates.
- (5) The contracting entity shall continue the negotiations until it has selected the solutions that are capable of satisfying the needs that it has specified. The tenderers shall be notified of the end of the negotiations. The contracting entity shall ask the tenderers for their final tenders based on the solutions presented and specified in the negotiations. The tender shall comply with the requirements specified in the final call for tenders and shall include all of the requested and necessary elements for performing the procurement. Tenders may be specified and clarified at the request of the contracting entity if this does not result in any alteration of integral elements of tenders or of the procurement, threaten to discriminate against tenderers, or distort competition.

- (6) The contracting entity shall evaluate a tender in accordance with the comparison criteria specified in the contract notice or the project description. Following the comparison of tenders, negotiations may be conducted with the best tenderer at the request of the contracting entity to finalise financial commitments associated with the tender or other terms and conditions therein if this does not result in any alteration of integral elements of the tender or of the procurement, threaten to discriminate against suppliers, or distort competition.

Section 38

Innovation partnership

- (1) The aim of an innovation partnership is to develop an innovative product, service or public works contract and to procure the resulting goods, services or public works contracts. In an innovation partnership the contracting entity publishes a notice of a contract in which all prospective suppliers may request permission to participate.
- (2) A contracting entity may select an innovation partnership if the needs of the contracting entity cannot be satisfied by procuring goods, services or public works contracts that are already on the market.
- (3) The contracting entity in an innovation partnership may impose an advance limit on the number of candidates invited to negotiate. The contract notice shall specify the minimum number, and if necessary the maximum number of candidates that will be invited to negotiate. Candidates admissible as tenderers shall be selected in accordance with the minimum suitability requirements and evaluation criteria specified in the contract notice. The candidate selection process shall evaluate the candidates' capacity in research and development, and in developing and implementing innovative solutions. The contracting entity may not include any candidates in the procedure who have not submitted a request to participate or who fail to satisfy the requirements set by the contracting entity.
- (4) A sufficient number of candidates to ensure genuine competition,

having regard to the scale and nature of the procurement, must be invited to negotiate. No fewer than three candidates must be invited to join an innovation partnership unless there are fewer suitable candidates. If there are fewer than three suitable candidates, then the contracting entity may continue the procedure by inviting all candidates satisfying the suitability requirements to submit preliminary tenders.

Section 39

Course of innovation partnership

- (1) The contracting entity shall specify in the contract notice the need for innovative goods, service or public works contract that cannot be satisfied by procuring goods, services or public works contracts that are already on the market. The contract notice shall also identify the minimum requirements for the procurement that all tenderers must satisfy. The requirements shall be presented with a precision that is sufficient to enable suppliers to evaluate the nature and scope of the procurement, and to decide whether to submit a request to participate.
- (2) The contracting entity shall commence negotiations with the selected tenderers with a view to developing the innovative product, service or public works contract and procuring the resulting goods, services or public works contracts. The course of the negotiations shall be governed by the provisions of section 35 concerning the course of a negotiated procedure. The contracting entity may not select a partner on the basis of a preliminary tender. The contracting entity shall notify all tenderers participating in the negotiations in writing of all changes in the procurement documents, and shall allow sufficient time for tenderers to modify their tenders accordingly. The best price-quality ratio referred to in section 93 shall be applied as the criterion for determining the most economically advantageous tender.
- (3) The contracting entity may decide to set up the innovation partnership with either one or more tenderers engaged in separate research and

development activities. An innovation partnership shall be divided into consecutive stages corresponding to the various stages of the research and innovation process. The contracting entity shall set intermediate targets to be attained by the partner or partners, and shall provide for payment of compensation. The contracting entity may terminate the innovation partnership after each stage, based on the aims of the partnership. If an innovation partnership has been established with several suppliers, then the contracting entity may reduce the number of partners by terminating individual procurement agreements related to a partnership. It shall be a condition that the staged character of the process and the terms and conditions of its use have been indicated in the procurement documents.

- (4) The contracting entity shall not be required to arrange new competitive tendering when procuring the outcomes of the development work if the procurement is made from partners included in the procedure and if the outcomes of the development work and the associated procurement correspond to the performance level agreed by the contracting entity and the participants in the procedure, and to the agreed maximum costs.
- (5) The contracting entity shall indicate the arrangements for intellectual property rights in the contract notice, call for tenders or invitation to negotiate. If a contracting entity has selected several partners in a procedure, then the contracting entity may not disclose solutions to other partners that a single partner has proposed, or other confidential information received during the procedure, without the specific consent of the partner concerned.
- (6) The structure of an innovation partnership and the duration and value of various stages shall correspond to the innovativity of the proposed solution and to the package of research and innovation measures for developing innovative solutions of a type not yet on the market. The estimated value of goods, services and public works contracts shall not be unreasonably large in relation to the investment required for their development.

Section 40

Direct procurement

- (1) In a direct procurement the contracting entity negotiates the terms and conditions of a procurement agreement with its selected suppliers without prior publication of a contract notice.
- (2) A contracting entity may opt for direct procurement if:
 - 1) no requests to participate or tenders, or suitable requests to participate or tenders have been received in response to an open or restricted procedure; it shall be a further condition that no essential change has occurred in the terms and conditions of the original call for tenders;
 - 2) only a certain supplier can implement the procurement for a technical reason, or for a reason related to protecting an exclusive right; it shall be a further condition that there are no reasonable alternatives or substitute solutions, and that the absence of competition is not due to an artificial narrowing of the terms and conditions of the procurement;
 - 3) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
 - 4) it is absolutely essential to conclude the agreement and the prescribed time limits cannot be observed due to extreme urgency arising from unforeseen circumstances beyond the control of the contracting entity;
 - 5) the goods to be procured are manufactured only for research, testing, product development or scientific purposes, and the procurement does not concern mass production to ensure the financial viability of goods manufacturing or to cover the costs of research and development;
 - 6) the procurement concerns goods that are quoted and purchased

on the commodity market;

- 7) the goods are procured under particularly advantageous conditions from a supplier that is winding up its business, from an administrator or from a liquidator in the course of insolvency proceedings, an arrangement with creditors, or corresponding proceedings;
 - 8) the case concerns a service procurement made on the basis of a design contest and awarded to the winner or to one of the winners of that contest in accordance with its rules; all of the winners shall be invited to participate in the negotiations in such cases.
- (3) A tender shall not be deemed compatible with point 1 of subsection 2 if it is unnecessary for the procurement agreement and evidently fails to satisfy the needs and requirements of the contracting entity as specified in the contract notice or the call for tenders without integral modifications. A request to participate shall not be deemed compatible if the supplier must or may be excluded from competitive tendering pursuant to sections 80 and 81, or if it fails to satisfy the suitability requirements imposed by the contracting entity under section 83.

Section 41

Direct procurement in additional orders

- (1) A contracting entity may make a direct procurement when a procurement of goods to be made from an original supplier is an additional order that has been placed in order to partially replace or expand a previous delivery or installation. It shall be a condition that a change of supplier would result in procuring goods with different technical characteristics, causing incompatibility or disproportionately great technical difficulties in operation and maintenance. The duration of such agreements and renewable agreements may only exceed three years in exceptional circumstances.

- (2) In addition to the provisions of subsection 1, a contracting entity may make a direct procurement in cases concerning a new public works contracting agreement or service procurement to be made with the original supplier that corresponds to the previously concluded public works contract or service procurement. It shall be a condition that the contract notice concerning the original procurement indicated a possible subsequent direct procurement, and that the estimated value of the additional service or new public works contract was taken into consideration when calculating the total value of the original contract. A direct procurement may be made within no more than three years of concluding the original agreement.

Section 42

Framework agreement

- (1) A framework agreement shall denote an agreement between one or more contracting entities and one or more the suppliers, the purpose of which is to establish the prices and planned quantities, and the other terms and conditions of contracts to be awarded during a given period.
- (2) The contracting entity shall select suppliers for a framework agreement in accordance with a procurement procedure under this Act, complying with the provisions governing the conditions for using procurement procedures and the procedural obligations of competitive tendering.
- (3) The contracting entity shall select one or more suppliers for the framework agreement. The number of suppliers shall be announced in advance in the contract notice, the invitation to negotiate or the call for tenders. The notified number of suppliers shall be selected for a framework agreement with several suppliers unless there are fewer suppliers satisfying the suitability requirements or acceptable tenders.
- (4) Procurement agreements based on the framework agreement shall be concluded between the suppliers selected for the framework

agreement and the contracting entities that have been clearly specified in the procurement documents of competitive tendering for the framework agreement.

- (5) A framework agreement may remain in force for no longer than four years. A framework agreement may be of longer duration under exceptional circumstances where the procurement justifiably so requires. No integral modifications may be made to the terms and conditions of a framework agreement while it remains in force.

Section 43

Procurements based on a framework agreement

- (1) If a contracting entity has concluded a framework agreement with a single supplier, then procurements based on the said framework agreement shall be awarded in accordance with the terms and conditions established in the framework agreement. The contracting entity may ask the supplier to clarify or supplement its tender in writing where necessary.
- (2) If a contracting entity has concluded a framework agreement with several suppliers and all of the terms and conditions of the framework agreement and the impartial terms and conditions determining the choice of suppliers for procurements based on the said agreement have been established in the call for tenders, then procurements based on the framework agreement shall be made without competitive tendering by selecting a supplier in accordance with the terms and conditions of the framework agreement and with the criteria set out in the call for tenders for the framework agreement.
- (3) If a contracting entity has concluded a framework agreement with several suppliers and all of the terms and conditions of the framework agreement have not been established, then procurements based on the framework agreement shall be made by competitive tendering between the suppliers selected for the framework agreement in accordance with the criteria for determining the most economically

advantageous tender that were set out when establishing the framework agreement, which criteria may be specified, and with other terms and conditions that were indicated in the call for tenders for the framework agreement.

- (4) When arranging competitive tendering of procurements based on a framework agreement, the contracting entity shall submit a written request for a tender from suppliers selected for the framework agreement. The contracting entity shall specify the tendering period, which shall be sufficient having regard to the complexity of the procurement and the time required for submitting tenders. Tenders shall be submitted in writing, and their content shall be kept confidential until the end of the tendering period. The contracting entity shall select the best tender in accordance with the criteria for determining the most economically advantageous tender set out in the call for tenders.
- (5) If a contracting entity has concluded a framework agreement with several suppliers, then some procurements based on the framework agreement may be made in accordance with subsection 2 without competitive tendering by selecting a supplier in accordance with the terms and conditions of the framework agreement and with the impartial terms and conditions determining the choice of suppliers for procurements based on the said agreement, and some procurements based on the framework agreement may be made by competitive tendering of procurements based on the framework agreement in accordance with subsections 3 and 4. The call for tenders for the framework agreement shall set out the criteria for settling the manner of making internal procurements within the framework agreement.

Section 44

Electronic auction

- (1) The term *electronic auction* shall denote a repetitive procedure involving an electronic device for the presentation of new prices,

revised downwards, or new values concerning elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using an automatic evaluation method.

- (2) An electronic auction may be used as part of competitive tendering at the final stage:
 - 1) in an open procedure;
 - 2) in a restricted procedure;
 - 3) in a negotiated procedure;
 - 4) when arranging competitive tendering of suppliers selected for a framework agreement again pursuant to section 43; and
 - 5) in connection with competitive tendering of a procurement within the dynamic purchasing system referred to in section 52.
- (3) It shall be a condition of using an electronic auction that the content of the contract notice or the call for tenders can be established with sufficient precision. Public works contracts and service procurements containing intangible transactions that cannot be set in order using automatic evaluation methods cannot be the subject of an electronic auction. The procurement in an electronic auction may not be modified from the form in which it was announced in the contract notice and specified in the documents of the call for tenders.
- (4) An electronic auction shall concern:
 - 1) a price, if the lowest price is the criterion for determining the most economically advantageous tender referred to in subsection 1 of section 93.
 - 2) a price, new values for factors contained in a tender, or both, if the procurement agreement is concluded in accordance with subsection 1 of section 93 on the basis of the best price-quality ratio or the lowest cost.

Section 45

Electronic auction documents

- (1) Use of an electronic auction shall be announced in the national contract notice or in an EU contract notice. The notification procedure shall be governed by the provisions of sections 58 and 101. The call for tenders and other procurement documents shall be governed in other respects by the provisions of sections 67 and 68.
- (2) Before an electronic auction may be initiated, the contracting entity shall perform a preliminary overall evaluation of tenders in accordance with the criteria for determining the most economically advantageous tender and the weighting established for these criteria.

Section 46

Invitation to an electronic auction

- (1) Following the preliminary overall evaluation of tenders, the contracting entity shall use electronic means to simultaneously ask all tenderers who have submitted an admissible tender to present new prices or new values for the comparison criteria electronically.
- (2) An invitation to an electronic auction shall include:
 - 1) all necessary details of the electronic auction system, and of the technical requirements for the electronic communications in use;
 - 2) the starting date and time of the electronic auction;
 - 3) the number of electronic auction stages and the timetable for each stage, as required;
 - 4) the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices or new values submitted; if the best price-quality ratio serves as the criterion for determining the most economically

advantageous tender, then the formula shall include the relative weighting of all of the selected comparison criteria; possible price ranges shall be presented as a pre-specified value;

- 5) a separately specified formula for each variant if variants are accepted;
- 6) the criteria for terminating the electronic auction and possibly the period after lodging the last tender during which new tenders are still expected.

- (3) The results of the preliminary overall evaluation shall also be attached to the invitation to the auction. The overall evaluation shall include a content analysis of the tender and also an evaluation of tenderer suitability in an open procedure. Details of the tenderer's ranking in relation to other tenderers may also be attached to the invitation sent to an individual tenderer without revealing the names of the tenderers.

Section 47

Minimum time limit for commencing an electronic auction and providing information to participants

An electronic auction may commence no sooner than two ordinary weekdays after sending the invitations. The contracting entity shall immediately furnish all approved tenderers with at least the information that will enable them to check their own relative rankings at any time throughout each stage of an electronic auction. The contracting entity may also provide other information concerning other prices or values submitted if this has been announced in the procurement documents. The contracting entity may at any time announce the number of participants participating in an auction stage. The contracting entity may not reveal the names of the tenderers during an electronic auction.

Section 48

Termination of an electronic auction

An electronic auction may be terminated:

- 1) at the specified date and time established in the invitation;
- 2) when new tenders satisfying the requirements are no longer submitted; it shall be a condition that the time referred to in point 6 of subsection 2 of section 46 was specified in the invitation referred to in the said section; or
- 3) when the various stages of the auction have all been completed.

Section 49

Dynamic purchasing system

- (1) The term *dynamic purchasing system* shall denote a fully electronic procurement procedure for ordinary procurements that are generally available on the market. The procurement procedure shall be open for its duration to all suppliers satisfying the terms and conditions of suitability. The contracting entity may divide a dynamic purchasing system into categories of goods, services or public works contracts that are objectively defined on the basis of various procurement characteristics.
- (2) The contracting entity shall exclusively use electronic communications when establishing and using a dynamic purchasing system, and shall comply with the restricted procedure provisions referred to in section 33 at all stages of the dynamic purchasing system until the procurement decision is made. The contracting entity may not charge suppliers for participating in the system.

Section 50

Establishment of a dynamic purchasing system and procurement documents

- (1) A contracting entity shall establish a dynamic purchasing system by publishing a restricted procedure contract notice concerning the

system, which shall specify the division of the system into categories in the manner referred to in subsection 1 of section 49 and the duration of the procurement system. Any change in the duration of the system without terminating its validity shall be announced in a new contract notice. If the validity of the system has ended, then the change shall be announced in the contract award notice. If an electronic auction is used at the final stage of competitive tendering in a dynamic purchasing system, then this shall be announced in the contract notice.

- (2) The contract notice or the call for tenders shall at least announce the nature and estimated quantity of the planned procurements subject to the system, all necessary information concerning the dynamic purchasing system, and the electronic equipment used and the technical connection arrangements and specifications;

Section 51

Application for dynamic purchasing system and approval

- (1) All interested suppliers may request permission to participate in an established procurement system throughout the duration of the procedure. The contracting entity shall approve all candidates for a dynamic purchasing system that satisfy the assigned suitability requirements. A contracting entity that has divided the system into goods, services or public works contract categories in accordance with subsection 1 of section 49 shall specify the suitability requirements governing candidates in each category. The number of admissible candidates for the system may not be limited.
- (2) The contracting entity shall take the decision to admit a candidate to the system within 10 working days of receiving a request to participate in a dynamic purchasing system. The contracting entity may prolong this deadline to 15 working days if the admission assessment must examine supplementary documentation, when the satisfaction of suitability requirements must otherwise be checked, or

for some other legitimate reason. The contracting entity may also prolong the assessment period if the call for tenders will not be published within the procurement system before taking the decisions on admission to the system. In such cases the contracting entity shall announce the duration of the prolonged assessment period in the procurement documents. The contracting entity shall inform the candidate at the earliest opportunity of whether it has been admitted to the dynamic purchasing system.

Section 52

Course of dynamic purchasing system

- (1) Every single purchase in a dynamic purchasing system must be put out to tender. The contracting entity must ask the candidates admitted to the system to submit their tenders for separate procurements made in the dynamic purchasing system. If the dynamic purchasing system has been divided into categories for goods, services or public works contracts, then the contracting entity shall request tenders from candidates admitted to the category concerned.
- (2) At any time during the period of validity of the dynamic purchasing system the contracting entity may require admitted participants to submit a renewed and updated common European procurement document referred to in section 87 or the accounts of exclusion and suitability referred to in section 88 within five days of the date of presenting the request.
- (3) The selection of tenders shall be governed by the provisions of sections 93–96. The criteria for determining the most economically advantageous tender for a procurement made in a dynamic purchasing system may be specified in greater detail in the call for tenders concerning the procurement.

Section 53

Electronic catalogues

- (1) The contracting entity may require tenders to be presented in the format of an electronic catalogue or to include an electronic catalogue. It shall be a condition that information pertaining to the procurement procedure is exchanged in electronic form. Tenders presented in the form of an electronic catalogue may be accompanied by other documents, completing the tender.
- (2) The use of electronic catalogues shall be indicated in the contract notice. The contracting entity shall also indicate in the contract notice or the call for tenders the form of the catalogue, the electronic hardware to be used, and details of the technical arrangements and specifications for exchanging information. The electronic catalogues shall satisfy the requirements imposed by the contracting entity in the contract notice or the call for tenders and the formal requirements for tenderers and electronic catalogues. Electronic catalogues shall be prepared and submitted to the contracting entity in accordance with the electronic information exchange requirements imposed in section 62.
- (3) If tenders in a framework agreement made with more than one supplier have been made in the form of electronic catalogues, then the contracting entity may decide that competitive tendering of a procurement based on the framework agreement will take place on the basis of updated catalogues. In such cases the contracting entity shall:
 - 1) ask the tenderers to update their electronic catalogues, which have been adapted to the requirements of a procurement based on the framework agreement; or
 - 2) collate, from electronic catalogues already submitted, the information required for forming a tender that complies with the requirements of a procurement based on the framework agreement; The contracting entity shall announce this procedure in the call for tenders.
- (4) In the cases referred to at point 2 of subsection 3 above the contracting entity shall, before collating the information, notify the

tenderers of the procedure and of the date and time when they intend to collate the information required for forming a tender based on the framework agreement from the electronic catalogues, and shall give the tenderers an opportunity to prohibit the collation of information. The contracting entity shall allow an adequate period between the notification and the collation of information. Before making the procurement decision on a procurement based on a framework agreement, the contracting entity shall present the information that it has collated to the tenderer, and shall give it an opportunity to correct the collated information or to confirm that there are no material errors in the tender thus constituted.

- (5) When using a dynamic purchasing system, a contracting entity may require all tenders to be submitted in the form of an electronic catalogue. It may then make procurements within the dynamic purchasing system as provided in subsections 3 and 4. It shall be a condition that an electronic catalogue satisfying the requirements of content and form imposed in the procurement documents is appended to a request to participate in the dynamic purchasing system. Tenderers shall be given an opportunity to supplement this catalogue in procurements made within the dynamic purchasing system, as provided in subsections 3 and 4.

Section 54

Design contest

- (1) The number of participants in a design contest may be limited by applying criteria that have been announced in advance. The number of design contest participants invited shall nevertheless always be sufficient to ensure genuine competition. Participation in a design contest may not be restricted on territorial grounds, or on the grounds that the participants must be either natural or legal persons.
- (2) A service procurement agreement may be concluded with the winner or winners of the design contest in accordance with point 8 of

subsection 2 of section 40. The notice concerning the design contest must include information on concluding a service procurement agreement of this kind.

- (3) A design contest shall be governed by the provisions of Chapters 1, 2, 7 and 14–16. A design contest shall also be governed by the provisions of section 62 concerning communications, by the provisions of section 77 concerning subcontracting, by the provisions of sections 80–82 concerning exclusion, by the provisions of sections 91 and 92 concerning the legal form of candidates and tenderers, and tendering as a group, and in applicable respects by the provisions of section 83 concerning suitability requirements for tenderers, and the provisions of section 93 concerning the selection of tenders.

Section 55

Design contest jury and its decision-making

- (1) A design contest shall have a jury whose members must be natural persons who are independent of the contest participants. Where a particular professional qualification is required of the contest participants, at least one third of the jury members shall have the same or an equivalent qualification.
- (2) The jury shall be autonomous in its decisions or opinions. Proposals of the participants shall be evaluated anonymously, and solely on the criteria set out in the notice concerning the design contest. Anonymity must be observed until the jury has issued its final opinion or decision.
- (3) Participants may be invited, where necessary, to answer questions that the jury has recorded in the minutes in order to clarify any aspect of the designs. A detailed record must be prepared of communications between the jury and the participants. The jury shall also prepare a record of its design evaluations signed by all of the members, which shall include the ranking order and merits of the designs, the comments of the jury, and any points requiring clarification.

Chapter 6

Time limits

Section 56

Minimum time limits and calculation of time limits

- (1) Consideration must be given when setting the time limits for a procurement procedure to the nature and complexity of the procurement and to the time required for preparing and submitting tenders. Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the procurement documents, the time limits for the receipt of tenders shall be set so that all suppliers may be aware of all the information needed to produce tenders. The tendering period in such cases shall be longer than the minimum time limits prescribed in subsections 2–4.
- (2) In a restricted procedure, a negotiated procedure, a competitive negotiated procedure, an innovation partnership, and the stage of establishing a dynamic purchasing system at least 30 days shall be allowed for submitting a request to participate, reckoned from the date of sending the contract notice for publication. The tendering period in an open procedure shall be not less than 35 days, reckoned from the date of sending the contract notice for publication. The tendering period shall be not less than 30 days in a restricted procedure and not less than 10 days in a dynamic purchasing system, reckoned from the date when the tenderers were invited to submit tenders. The time limit for preliminary tenders in a negotiated procedure and in an innovation partnership shall be not less than 30 days, reckoned from the date when the tenderers were invited to submit tenders.
- (3) The time limits for submitting tenders in the open and restricted procedure, negotiated procedure and innovation partnership referred to in subsection 2 above may be reduced by five days if the

contracting entity approves the submission of tenders in electronic form, as prescribed in subsection 1 of section 62.

- (4) Contracting entities other than central government authorities may set a time limit for receiving tenders in a restricted procedure by means of an agreement between the contracting entity and the candidates selected for the procedure. It shall be a condition that the designated time limit is the same for all tenderers. If no agreement is reached on the time limit for receiving tenders, then the time limit shall be not less than 10 days, reckoned from the date on which the invitation to submit tenders was sent to the candidates in accordance with section 70.
- (5) The contracting entity shall extend the time limit for submitting tenders to a duration enabling all of the suppliers to receive all of the information required for preparing a tender if:
 - 1) the contracting entity fails to furnish a supplier with the further details that it has requested no later than six days, or no later than four days in the accelerated procedure referred to in section 57, before the end of the time limit set for receiving tenders;
 - 2) where significant changes are made to the call for tenders or other procurement documents.
- (6) The length of the extension shall be proportionate to the importance of the information or change. The contracting entity does not need to extend the time limit if the additional information referred to in point 1 of subsection 5 has not been requested in good time, or if the additional information has no bearing on the preparation of a tender.

Section 57

Accelerated procedure

- (1) The time limits prescribed above in subsection 2 of section 56 for the open and restricted procedure and for the negotiated procedure may be shortened if compliance with the time limits in these procedures is not

possible in practice, owing to an urgency that is duly substantiated by the contracting entity. The tendering period shall nevertheless be not less than 15 days in an open procedure. At least 15 days must be allowed for submitting a request to participate in a restricted procedure and a negotiated procedure. The tendering period must be at least 10 days in a restricted procedure and a negotiated procedure.

- (2) The tendering period may be shortened to not less than 15 days in an open procedure and to not less than 10 days in a restricted procedure and a negotiated procedure if the contracting entity has submitted a prior information notice for publication in the manner prescribed in section 61.

Chapter 7

Duty to announce procurements and notification procedure

Section 58

Announcement of procurement

- (1) A contracting entity shall submit the following notices for publication:
 - 1) a contract notice concerning procurements exceeding the European Union threshold values;
 - 2) a social and health and other specific services contract notice concerning procurements of services referred to in Schedule E;
 - 3) a concession contract notice concerning a concession contract procurement procedure;
 - 4) a social and health and other specific services advance concession contract declaration concerning a concession contract procurement procedure for services referred to in Schedule E;

- 5) a design contest notice concerning a design contest;
 - 6) a contract award notice concerning the procurements and concession contracts referred to in points 1–4;
 - 7) a design contest results notice concerning the design contest referred to in point 5;
 - 8) an amendment notice concerning changes in the notices referred to in points 1–5;
 - 9) a notice of changes in a procurement agreement and a concession contract concerning the changes referred to in points 2 and 3 of subsection 2 of section 136.
- (2) A contracting entity may submit a prior information notice and a direct procurement notice for publication concerning the procurement and concession contract referred to in points 1–4 of subsection 1.
 - (3) A contracting entity may submit a general transparency notice for publication indicating that a unit under its controlling interest intends to engage in business operations with contracting entities other than those exercising a controlling interest therein, or indicating the intention to offer services falling within the scope of the co-operation between contracting entities referred to in section 16 to contracting entities other than those involved in the co-operation. The notice shall at least include details identifying the contracting entity or the units and in-house entities, a description of the nature of the services falling within the scope of the business operations or co-operation of the in-house entities, the estimated proportion of business operations directed at contracting entities other than those exercising the controlling interest, details of the minimum time limit for submitting responses concerning corresponding market-based operations, and the address to which these responses must be sent.
 - (4) The contract notice in an open procedure shall serve as a request to submit a tender in the manner specified in the notice and in other procurement documents. The contract notice in a restricted procedure,

a negotiated procedure, a competitive negotiated procedure and an innovation partnership shall serve as a request to submit a request to participate in the manner specified in the notice and in other procurement documents.

- (5) The procurement agreement contract award notices referred to in subsection 1 shall be sent for publication within 30 days of concluding the procurement agreement, concluding a procurement agreement based on a dynamic purchasing system, or taking a decision concerning a framework agreement. The notices of design contest results referred to in subsection 1 shall be submitted for publication within 30 days of the end of the design contest. Concession award notices shall be submitted for publication within 48 days of concluding the concession contract. The duty to release a contract award notice shall not apply to individual procurement agreements concluded on the basis of a framework agreement. The contracting entity shall also submit a contract award notice concerning suspension of a procurement. The notice shall state the grounds for suspending the procurement. The duty to release a contract award notice shall also apply to procurements for which only a prior information notice and no contract notice has been published.

Section 59

Duty to use EU-standard forms and the common reference nomenclature (CPV)

- (1) The notices referred to in section 58 shall be made using the standard forms established in Commission Implementing Regulation (EU) 2015/1986 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011, hereinafter referred to as the *Standard Forms Regulation*. The notices shall contain the information set out in Annex V to the Procurement Directive.
- (2) Procurement specifications shall use the common procurement

vocabulary (CPV) referred to in point 15 of section 4.

Section 60

Publication of contract notices

- (1) The following notices referred to in section 58 shall be electronically submitted for publication on the website at www.hankintailmoitukset.fi using the standard forms referred to in subsection 1 of section 59:
 - 1) an EU contract notice;
 - 2) a social and health and other specific services contract notice;
 - 3) a concession notice;
 - 4) an advance concession contract declaration concerning social and health and other specific services relating to a concession contract for services referred to in Schedule E;
 - 5) a notice concerning changes in an agreement;
 - 6) an amendment notice;
 - 7) a contract award notice concerning points 1–4.
- (2) The following notices referred to in section 58 may be electronically submitted for publication on the website at www.hankintailmoitukset.fi using the standard forms referred to in subsection 1 of section 59:
 - 1) a prior information notice;
 - 2) a direct procurement notice;
 - 3) a general transparency notice concerning the practice of business operations referred to in subsection 3 of section 58 by an in-house entity or by contracting entities participating in co-operation.

- (3) Other EU notices established under the Standard Forms Regulation shall be completed directly on the website maintained by the official publications office of the European Union at simap.europa.eu/enotices/ using standard forms approved by the European Commission. A copy of the notices must be submitted to a party designated by the Ministry of Economic Affairs and Employment for statistical purposes.
- (4) A contracting entity shall provide proof on request of the date on which notices were sent for publication. The notices referred to in this section and submitted for online publication at www.hankintailmoitukset.fi shall be forwarded to the official publications office of the European Union.
- (5) A contracting entity may also publish a contract notice or the details that it contains through some other appropriate communication channel such as a newspaper or professional journal or on its own website. The notices referred to in subsections 1 and 2 and the details that they contain may not be published elsewhere before they have been first published in the Official Journal of the European Union and thereafter online at www.hankintailmoitukset.fi. The notices referred to in subsection 3 and the details that they contain may not be published elsewhere before they have been first published in the Official Journal of the European Union. The Ministry of Economic Affairs and Employment shall maintain an electronic system from which a contracting entity will be advised of the publication of a notice and of the time of publication at www.hankintailmoitukset.fi.
- (6) Notices published elsewhere may contain no information other than the information contained in the notices published online at www.hankintailmoitukset.fi.

Section 61

Prior information notice

- (1) A contracting entity may publish a prior information notice

concerning one or more procurements to be implemented over the following months whose estimated value is not less than the European Union threshold value.

- (2) The prior information notice shall be sent for publication between 35 days and 12 months before the date of sending the contract notice. A prior information notice may nevertheless be sent for publication more than 12 months before sending the contract notice in procurement agreements concerning the service procurements referred to in Schedule E. The prior information notice must provide the information required in the standard form referred to in section 59 that is known to the contracting entity at the time of drafting the said notice.

Chapter 8

Exchange of information

Section 62

Electronic exchange of information in a procurement procedure

- (1) Tenders and requests to participate and other exchanges of information pertaining to a procurement procedure shall be submitted in electronic form. The tools and devices to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the ICT products in general use and shall not restrict the access of suppliers to the procurement procedure. A contracting entity shall announce any requirements concerning information exchange in the contract notice or the call for tenders.
- (2) Notwithstanding the provisions of subsection 1, information exchange pertaining to a procurement procedure may be sent by post or by some other suitable mode of delivery, or as a combination of these and

electronic means, where:

- 1) due to the specialised nature of the procurement, the use of electronic means of communication requires specific tools, devices or file formats that are not generally available or supported by generally available applications;
 - 2) the application used for making tenders uses file formats that cannot be processed by any other open or publicly available application or that the tenderer cannot make available to the contracting entity for downloading or remote access for reasons of application licensing;
 - 3) the use of electronic means of communication requires specialised hardware that is not available to the contracting entity;
 - 4) the contract notice or call for tenders requires the submission of physical or scale models that cannot be transmitted electronically;
 - 5) use of non-electronic forms of communication is necessary due to a security breach in electronic communication forms;
 - 6) use of non-electronic forms of communication is necessary in order to protect the particularly sensitive nature of information to be processed in the procurement procedure, nor can protection be adequately ensured by using electronic tools and hardware that are generally available to suppliers, or that may be made available to them in the manner prescribed in section 63.
- (3) A contracting entity that conducts procurement procedure information exchange otherwise than using the electronic means of communication referred to in subsection 1 shall specify the reasons for doing so in the procurement decision referred to in section 123 or in the separate account of the procurement procedure referred to in section 124.

- (4) Notwithstanding the provisions of subsection 1, the contracting entity may conduct procurement procedure information exchange orally on the condition that the content of the oral communication is adequately documented. Calls for tenders and other procurement documents, requests to participate and tenders may nevertheless not be conducted in oral form, nor may this be required. In particular, oral communications with tenderers that could have a substantial impact on the content and assessment of the tenders shall be documented to a sufficient extent and by appropriate means.

Section 63

Electronic exchange of information in special cases

Notwithstanding the provisions of subsection 1 of section 62, a contracting entity may conduct information exchanges pertaining to a procurement procedure using electronic tools and hardware that are not generally available, provided that the contracting entity gives candidates and tenderers an opportunity to participate in the procurement procedure through these tools in the following ways:

- 1) the contracting entity makes the communication tools and hardware available to all free of charge directly and entirely in electronic form on the day of publishing the contract notice; The notice shall specify the online address from which these tools and hardware may be obtained;
- 2) The contracting entity ensures that candidates or tenderers who lack access to the said tools and hardware for reasons beyond their own control, or who cannot obtain them within the relevant time frame for reasons beyond their own control, are able to participate in the procurement procedure by using provisional identification tools that have been made available free of charge on a public data network; or
- 3) the contracting entity provides an alternative channel for electronic submission of tenders.

Section 64

Data security

- (1) Preservation of the integrity of data and the confidentiality of tenders and requests to participate shall be ensured when exchanging and storing information on a procurement procedure. The contracting entity shall ensure that the contents of tenders or requests to participate are not disclosed before the time limit for submitting them has expired.
- (2) The contracting entity shall specify the security level required for electronic communications at various stages of the procurement procedure. The security level shall be proportionate to the risks at each stage.
- (3) The tools and hardware used for electronic reception of requests to participate, tenders and designs submitted in a procurement procedure and in a design contest shall satisfy the following requirements:
 - 1) information on specifications required for the electronic submission of tenders and requests to participate, including encryption and time-stamping, shall be available to tenderers and candidates;
 - 2) the exact date and time of receiving tenders, requests to participate and submitted designs can be specified precisely;
 - 3) electronically submitted information cannot be accessed before the time limit allowed for submitting it has expired;
 - 4) only a person designated by the contracting entity may establish or change the dates for opening information received;
 - 5) only a person designated by the contracting entity may access all or part of the information submitted at the various stages of the procurement procedure or design contest;
 - 6) only a person designated by the contracting entity may allow

access to information that was submitted only after the prescribed date;

- 7) information received and opened in accordance with the requirements shall only be accessible to the persons designated to examine it.
- 8) any infringement of the terms and conditions prescribed in points 3–7 shall be clearly detectable.

Chapter 9

Preparation of procurement, call for tenders and description of procurement

65 §

Market consultation

- (1) Before launching a procurement procedure, the contracting entity may conduct market consultations to prepare the procurement, and inform suppliers of their plans and requirements for the forthcoming procurement.
- (2) The contracting entity may use independent specialists, other public authorities or suppliers in a market consultation. While the advice of these parties may serve as an aide to planning and implementing the procurement procedure, the use of advice may nevertheless not result in a distortion of competition, nor to conduct contrary to the principles of non-discrimination and transparency referred to in section 3.

Section 66

Prior involvement of a candidate or tenderer

If a candidate, a tenderer or an enterprise related to a tenderer has participated in preparing a procurement, then the contracting entity shall

ensure that this does not distort competition.

Section 67

Call for tenders

- (1) A call for tenders, an invitation to negotiate and their annexes shall be drafted with sufficient clarity to ensure that they can serve as the basis for submitting comparable tenders.
- (2) The contract notice shall apply in the event of any material discrepancy between the call for tenders and the contract notice.

Section 68

Content of a call for tenders

A call for tenders, a contract notice, an invitation addressed to candidates or the annexes thereto shall include:

- 1) a specification of the procurement or a project description, and the other quality requirements pertaining to the procurement;
- 2) a reference to the published contract notice;
- 3) the deadline for submitting tenders;
- 4) the address to which tenders shall be sent;
- 5) the language or languages in which tenders must be drafted;
- 6) the other requirements concerning the presentation and format of tendering documents;
- 7) in the case of a competitive negotiated procedure, the date of commencing negotiations and the language or languages to be used therein;
- 8) the requirements concerning the economic and financial circumstances, technical suitability, professional competence and other characteristics of candidates or tenderers, and a

request to supplement the common European procurement document and list of documents that the candidate or tenderer and the successful tenderer in competitive tendering must submit for the evaluation of suitability;

- 9) the criteria for determining the most economically advantageous tender and their relative weighting, reasonable range or, in exceptional circumstances, the order of importance of comparison criteria;
- 10) the validity period of tenders;
- 11) the key terms and conditions;
- 12) other details of essential significance for the procurement procedure and submission of tenders.

Section 69

Making the call for tenders and other procurement documents available to candidates and tenderers

- (1) The contracting entity shall make the call for tenders, the invitation to negotiate and their annexes, and the other procurement documents directly and wholly available in electronic form to everyone free of charge and without restrictions. The procurement documents shall be made available as of the date of publishing the contract notice. The notice shall give the Internet address where the call for tenders and other procurement documents are available in electronic form.
- (2) If unrestricted and full direct access free of charge by electronic means cannot be provided to any of the documents referred to in subsection 1 for one of the reasons set out in points 1–5 of subsection 2 of section 62, then the contracting entity may indicate in the contract notice that the documents concerned will be supplied in non-electronic form. The time limit for submitting tenders shall be prolonged by five days in such circumstances, except in the cases of

duly substantiated urgency referred to in section 57.

- (3) If unrestricted and full direct access free of charge by electronic means cannot be provided to some documents referred to in subsection 1 in order to safeguard the confidentiality of information, then the contracting entity shall impose requirements in the contract notice protecting the confidential nature of the information, and shall specify how the documents may be examined. The time limit for submitting tenders shall be prolonged by five days in such circumstances, except in the cases of duly substantiated urgency referred to in section 57.
- (4) The contracting entity shall supply further details pertaining to the documents referred to in subsection 1 no later than six days, or no later than four days in the accelerated procedure referred to in section 57, before the end of the time limit set for receiving tenders if the additional information was requested in good time.

Section 70

Invitations addressed to candidates

In a restricted procedure, a negotiated procedure, a competitive negotiated procedure and an innovation partnership the contracting entity shall send simultaneous written invitations to the selected candidates to submit their tenders or participate in the negotiations. The invitation shall give the Internet address where the call for tenders and other procurement documents have been made available in electronic form. The call for tenders and other procurement document shall be attached to the invitation if the documents have not been made available in electronic form.

Section 71

Description of the procurement

- (1) The specifications describing a procurement and any associated technical specifications contained therein shall be set out in the

contract notice, in the call for tenders, in the invitation to negotiate, or in the annexes thereto, and shall determine the characteristics required in a public works contract, services or goods. The specifications shall give tenderers equitable opportunities to participate in competitive tendering, and may not unjustifiably restrict competition in public procurements. A procurement that is intended for use by natural persons shall, except in appropriately justified cases, be specified in a manner that gives consideration to unimpeded access for disabled users and to a design that satisfies the requirements of all users. The procurement shall be specified with reference to the mandatory accessibility requirements prescribed elsewhere in national legislation or in European Union statutes.

- (2) The specifications describing a procurement shall be drafted:
 - 1) in terms of performance or functional requirements that are sufficiently precise to allow tenderers to determine the subject-matter of the procurement and to enable contracting entities to conclude the procurement agreement;
 - 2) by reference to specifications describing the procurement and to national standards transposing European standards, European Technical Assessments, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or – when any of these do not exist – to national standards, national technical approvals, or national technical specifications relating to the design, calculation and implementation of public works contracts and use of goods. Each reference shall be accompanied by the words "or equivalent";
 - 3) on the basis of the requirements referred to in point 1, and by reference to the specifications referred to in point 2 as a presumption of conformity with the said requirements; or
 - 4) by reference to the specifications referred to in point 2 for certain characteristics, and to the requirements referred to in

point 1 for other characteristics.

- (3) The specifications describing the procurement may not refer to goods of any specific make or origin, nor may they refer to trademarks, patents, product types, origin, or a particular method that is characteristic of the goods, services or production of a certain provider, in a way that such reference would favour or discriminate against certain providers or goods. Such a reference shall only be exceptionally permitted if no sufficiently precise and clearly intelligible description of the subject-matter of the procurement agreement is possible otherwise. The reference shall be accompanied by the words "or equivalent" in such cases.

Section 72

Use of labels in the description of a procurement

- (1) In the description of a procurement, in the criteria for determining the most economically advantageous tender set out in the call for tenders, or in the terms and conditions for implementing the agreement, a contracting entity may require certain labels as proof that the procurement satisfies the required environmental, social or other characteristics. A certain label may only be required if all of the following terms and conditions are satisfied:
 - 1) the label requirements only concern criteria that are linked to the subject-matter of the procurement agreement and are appropriate for specifying the characteristics of the public works contracts, goods or services that constitute the said subject-matter;
 - 2) the label requirements are based on objectively verifiable and non-discriminatory criteria;
 - 3) the labels are established in an open and transparent procedure in which public authorities, consumers, social partners, manufacturers, distributors, non-governmental organisations

- and other relevant stakeholders may participate;
- 4) the labels are accessible to all interested parties;
 - 5) the label requirements are set by a third party over which the supplier seeking the label cannot exercise a decisive influence.
- (2) If the contracting entity does not require the procurement to satisfy all of the requirements imposed for the label, or if the label includes requirements that are unrelated to the procurement, then it shall specify the requirements related to the procurement and imposed for the label to which it refers. A contracting entity requiring a specific label shall accept all labels confirming that the subject-matter of the procurement satisfies corresponding requirements.
- (3) The contracting entity shall accept other appropriate means of proof if a tenderer, for reasons beyond its control, has been demonstrably unable to secure the special label notified by the contracting entity or a corresponding label within the prescribed time limit. Technical documentation of the manufacturer shall constitute such means of proof, provided that the tenderer concerned proves that the public works contracts, goods or services that it has supplied satisfy the requirements imposed for the particular label or the particular requirements notified by the contracting entity.

Section 73

Test reports, certificates and other technical reports

- (1) A contracting entity may require tenderers to present a test report or certificate issued by a conformity assessment institution as proof that a tender satisfies the requirements or criteria imposed in the description of the procurement, and that it complies with the criteria for determining the most economically advantageous tender or with the terms and conditions of implementation of the agreement set out in the call for tenders. If a contracting entity requires the presentation of a certificate issued by a particular assessment institution, then it

shall also accept certificates issued by other corresponding assessment institutions.

- (2) A contracting entity shall approve a manufacturer's appropriate evidence other than that referred to in subsection 1 if the test report or certificate referred to in the said subsection was not available to the tenderer concerned and the tenderer was unable to obtain it within the prescribed time limit. It shall nevertheless be a condition that the said inability was due to circumstances beyond the control of the tenderer concerned. The tenderer shall also prove that the public works contracts, goods or services that it has supplied satisfy the requirements or criteria set out in the description of the procurement, the criteria for determining the most economically advantageous tender specified in the call for tenders, or the terms and conditions for performing the contract.
- (3) A contracting entity that has specified a procurement in the manner referred to in point 1 of subsection 2 of section 71 shall not reject a tender for goods, services or public works contracts that comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard, or a technical reference system established by a European standardisation body. It shall be a condition that the specifications address the performance or functional requirements that the contracting entity has imposed. The tenderer shall show in its tender that the goods, service or contract complying with the standard satisfies the requirements imposed by the contracting entity.
- (4) A contracting entity that has specified a procurement in the manner referred to in point 2 of subsection 2 of section 71 shall not reject a tender for failing to comply with the call for tenders if the tenderer shows in some appropriate manner in its tender that the goods, service or contract satisfies the requirements set out in the description of the procurement in a way that corresponds to the referenced specifications, standards, assessments, approvals or reference systems.

Section 74

Demonstrating compliance of a tender and a request to participate

- (1) A tenderer shall demonstrate in its tender that its tendered goods, services or public works contract comply with the requirements set out in the call for tenders and other procurement documents. The contracting entity shall exclude from competitive tendering any tenders that fail to correspond to the call for tenders or to the terms and conditions of the tendering procedure.
- (2) If the information or documents in a tender or request to participate are incomplete or incorrect, or some documents or information are missing, then the contracting entity may ask the tenderer or candidate to supply, add, clarify or supplement the information or documents within the time limit imposed by the contracting entity. It shall be a condition that the procedure complies with the principles prescribed in section 3.

Section 75

Division of procurement agreement into lots

- (1) A contracting entity may conclude a procurement agreement in the form of separate lots and may determine the size and subject-matter of such lots. A contracting entity that does not divide a procurement agreement into lots shall specify the reasons for not doing so in the procurement documents, in the procurement decision, or in a separate account of the procurement procedure.
- (2) A contracting entity shall indicate in the contract notice whether tenders may be submitted for one, for several, or for all of the lots. If tenders may be submitted for several or for all of the lots, then the contracting entity may limit the number of lots for which a tender from the same tenderer may be selected. In such cases the contracting entity shall indicate in the contract notice the maximum number of

lots for which a tender from the same tenderer may be selected. The contracting entity shall indicate in the contract notice or call for tenders the rules that it will apply when deciding the lot for which a tenderer's tender will be selected if the tenderer's tender is selected for more lots than the maximum number indicated in the contract notice.

- (3) The contracting entity may combine multiple lots or all of the lots in the same procurement agreement. The contracting entity shall indicate in the contract notice which lots or groups of lots it may combine.

Section 76

Variant and parallel tenders

- (1) A contracting entity may approve variant tenders if permission for presenting such tenders has been announced in the contract notice. The permissibility of tendering a sole variant shall also be announced. The contracting entity may also require tenderers to submit variants. Variants shall be linked to the subject-matter of the procurement agreement. The contracting entity shall ensure that the criteria referred to in section 93 may be applied to variant tenders and other tenders.
- (2) A variant tender shall satisfy the minimum requirements of the procurement and the requirements for submitting variants, as set out in the call for tenders and other procurement documents. If the contracting entity has announced that it will approve the submission of variant tenders, then a variant may not be rejected on the sole ground that it would lead to a service contract instead of a goods contract, or to a goods contract instead of a service contract.
- (3) The contracting entity may prohibit tenderers from submitting several parallel tenders if prior notice of this prohibition was included in the call for tenders.

Section 77

Subcontracting

- (1) In the contract documents, a contracting entity may require tenderers to indicate in their tenders any part of the contract that they intend to subcontract to third parties, and the proposed subcontractors. Such notices shall not limit the primary tenderer's liability for implementing the procurement.
- (2) In the case of public works contracts and service procurements to be performed at facilities under the direct regulatory control of the contracting entity, the contracting entity shall require the selected tenderer, by no later than when performance of the procurement agreement commences, to notify the names, contact details and legal representatives of any subcontractors that are involved in the public works contract or service procurement if these are known at the time in question. The selected tenderer shall also notify changes in such subcontractors and in the foregoing details while the procurement agreement remains in force.
- (3) The contracting entity may extend the duty of notification referred to in subsection 2:
 - 1) to procurement agreements other than those referred to in subsection 2; and
 - 2) further along the subcontracting chain.
- (4) In public works contract and service procurements and in assembly and installation work pertaining to a good procurement, the contracting entity may require a tenderer or a member of a group to perform certain critical functions in-house.

Section 78

Exclusion of subcontractors

A contracting entity may check in accordance with sections 87–89 whether there are grounds for excluding subcontractors pursuant to section 80 or

section 81. The contracting entity shall require the tenderer to replace a subcontractor that is subject to some mandatory exclusion criterion. If a subcontractor is subject to a discretionary exclusion criterion, then the contracting entity may require replacement of the subcontractor with another subcontractor.

Chapter 10

Selection of candidates and tenderers and selection of tender

Section 79

Checking of tenders and tenderers

- (1) The contracting entity shall check that the following conditions are satisfied before selecting tenders:
 - 1) the tender complies with the requirements, conditions and criteria set out in the contract notice and in the procurement documents;
 - 2) the tender has been submitted by a tenderer that is not excluded from the procedure pursuant to section 80 or section 81, and that satisfies the suitability requirements referred to in section 83 that were imposed by the contracting entity.
- (2) The contracting entity in an open procedure may check the conformity of tenders and compare them before conducting the review referred to in in point 2 of subsection 1. No procurement agreement may be concluded, however, with a tenderer that would have been excluded from the procedure pursuant to section 80, or that fails to satisfy the suitability requirements imposed by the contracting entity.
- (3) The contracting entity may decide not to conclude a procurement agreement with the tenderer submitting the most economically

advantageous tender referred to in section 93 if it finds that the tender fails to comply with the environmental, social and labour law obligations referred to in in point 5 of subsection 1 of section 81.

Section 80

Mandatory exclusion criteria

- (1) The contracting entity shall issue a decision excluding a candidate or tenderer from competitive tendering if the contracting entity is aware that the candidate or tenderer, a member of its administration or management, or a person exercising representative, managerial or regulatory authority therein, has a criminal record indicating a legally final conviction for any of the following offences:
 - 1) bribery, as referred to in section 13, aggravated bribery, as referred to in section 14, bribery of a Member of Parliament, as referred to in section 14 a, or aggravated bribery of a Member of Parliament, as referred to in section 14 b of Chapter 16 of the Criminal Code of Finland (39/1889);
 - 2) participating in the activity of an organized criminal group, as referred to in section 1 a of Chapter 17 of the Criminal Code of Finland;
 - 3) trafficking in human beings, as referred to in section 3, or aggravated trafficking in human beings, as referred to in section 3 a of Chapter 25 of the Criminal Code of Finland;
 - 4) tax fraud, as referred to in section 1, aggravated tax fraud, as referred to in section 2, employment pension insurance premium fraud, as referred to in section 4 a, aggravated employment pension insurance premium fraud, as referred to in section 4 b, subsidy fraud, as referred to in section 5, aggravated subsidy fraud, as referred to in section 6, or subsidy misuse, as referred to in section 7 of Chapter 29 of the Criminal Code of Finland;
 - 5) giving of bribes in business, as referred to in section 7,

aggravated giving of bribes in business, as referred to in section 7 a, acceptance of a bribe in business, as referred to in section 8, or aggravated acceptance of a bribe in business, as referred to in section 8 a of Chapter 30 of the Criminal Code of Finland;

6) money laundering, as referred to in section 6, aggravated money laundering, as referred to in section 7, conspiracy for the commission of aggravated money laundering, as referred to in section 8, or negligent money laundering, as referred to in section 9 of Chapter 32 of the Criminal Code of Finland;

7) offence made with terrorist intent, as referred to in section 1, preparation of an offence to be committed with terrorist intent, as referred to in section 2, directing of a terrorist group, as referred to in section 3, promotion of the activity of a terrorist group, as referred to in section 4, provision of training for the commission of a terrorist offence, as referred to in section 4 a, recruitment for the commission of a terrorist offence, as referred to in section 4 c, or financing of terrorism, as referred to in section 5 of Chapter 34 a of the Criminal Code of Finland.

(2) The contracting entity shall issue a decision excluding a candidate or tenderer from competitive tendering if the contracting entity is aware that a member of the candidate's or tenderer's administration or management, or a person exercising representative, managerial or regulatory authority therein, has a criminal record indicating a legally final conviction for a work safety offence, as referred to in section 1, a working hours offence, as referred to in section 2, work discrimination, as referred to in section 3, extortionate work discrimination, as referred to in section 3 a, violation of the right to organise, as referred to in section 5, or unauthorised use of foreign labour, as referred to in section 6 a of Chapter 47 of the Criminal Code of Finland.

(3) The contracting entity shall also exclude a candidate or tenderer from competitive tendering on the basis of a final conviction for an offence

in another state that corresponds to an offence referred to in subsections 1 or 2.

- (4) The contracting entity shall also exclude from competitive tendering a candidate or tenderer that has been found by a legally final decision or judgement to have defaulted on a duty to pay the taxes or social security contributions of Finland or of its country of establishment. This provision shall nevertheless not apply if the candidate or tenderer has paid the taxes or social security contributions, or agreed to a binding arrangement for their payment.
- (5) A candidate or tenderer shall not be excluded from competitive tendering if more than five years have elapsed since the issuing of a legally final judgement concerning the offence referred to in subsections 1–3, or the default referred to in subsection 4.

Section 81

Discretionary exclusion criteria

- (1) The contracting entity may decide to exclude from competitive tendering a candidate or tenderer:
 - 1) that is bankrupt or subject to liquidation, that has suspended trading, or whose liabilities have been restructured in a confirmed composition, restructuring programme or other corresponding statutory procedure;
 - 2) that is subject to pending bankruptcy, winding up or other proceedings referred to in point 1;
 - 3) that the contracting entity can prove has been guilty of grave professional misconduct calling its reliability into question;
 - 4) that the contracting entity can prove, otherwise than by legally final decision or judgement, to have defaulted on a duty to pay the taxes or social security contributions of Finland or of its country of establishment;

- 5) that has infringed the environmental, social and labour law obligations Finnish or European Union legislation, collective agreements, or the international treaties listed in Annex C, where the contracting entity can prove the infringement;
- 6) that has concluded agreements with other suppliers seeking to distort competition, and the contracting entity can prove that this has occurred;
- 7) whose conflict of interest in the procurement procedure cannot be effectively eliminated by other measures;
- 8) whose participating in preparing the procurement procedure has distorted competition, and the distortion cannot be eliminated by other, less intrusive measures; before the exclusion the candidate or tenderer shall be given an opportunity to show that its participation in preparing the procurement has not resulted in compromising an impartial and non-discriminatory procurement procedure;
- 9) whose performances in previous procurement agreements or concession contracts have involved significant or repeated shortcomings in implementing some key requirement; it shall be a further condition that the shortcomings led to premature termination, rescission, damages or other corresponding sanctions with respect to the previous agreement in question;
- 10) that has been guilty of material misrepresentation in furnishing the contracting entity with the information referred to in this Chapter, or has failed to supply the required information;
- 11) that has sought to unduly influence the decision-making process of the contracting entity, to obtain confidential information that may confer an undue advantage upon it in the procurement procedure, or to wilfully provide misleading information that may have a material influence on decisions concerning the selection of a tenderer or tender.

- (2) The provisions of points 3, 5 and 6 of subsection 1 concerning a candidate and tenderer shall also apply when the party guilty of an error or offence or of defaulting on an obligation is a member of the candidate's or tenderer's administration or management, or a person exercising representative, managerial or regulatory authority therein. Discretion concerning an exclusion may also consider such aspects as the gravity of the error, offence or default, the connection to the procurement, the time that has elapsed, and any other consequences incurred.
- (3) The provision in point 4 of subsection 1 shall not apply if the candidate or tenderer has paid the taxes or social security contributions, or agreed to a binding arrangement for their payment.
- (4) A candidate or tenderer may not be excluded from competitive tendering if more than three years have elapsed since the event referred to in in subsection 1.

Section 82

Corrective measures of a candidate and a tenderer

- (1) A candidate or tenderer may submit evidence of its reliability notwithstanding its encumbrance by a ground for exclusion referred to in section 80 or section 81. If the contracting entity finds the evidence and reliability to be sufficient, then it may not exclude the said candidate or tenderer from competitive tendering.
- (2) As the evidence referred to in in subsection 1, a candidate or tenderer may submit an account showing that it has paid or undertaken to pay compensation for all damage caused by the criminal offence, error or default, comprehensively clarified the facts and circumstances by actively collaborating with the investigating authorities, and taken concrete technical, organisational and staffing measures to prevent further criminal offences, errors or default.
- (3) The corrective measures taken by the candidate or tenderer shall be

evaluated taking into account the gravity and attendant circumstances of the criminal offence, error or default.

Section 83

Requirements governing the suitability of candidates and tenderers

The contracting entity may impose the requirements referred to in sections 84–86 concerning the registration of candidates or tenderers, their economic and financial standing, and their technical and professional competence. The requirements shall be indicated in the contract notice. The requirements shall be related to the procurement and shall be proportionate to its nature, purpose and scope. The requirements shall enable due verification that the candidate or tenderer is authorised to engage in professional activities and that it has adequate economic and financial resources and the technical and professional capacity to perform the procurement agreement concerned. Candidates or tenderers that fail to satisfy the minimum requirements imposed by the contracting entity shall be excluded from competitive tendering.

Section 84

Clarification of the right to engage in professional or business activities

The contracting entity may require a candidate or tenderer to present, in accordance with the legislation of its country of establishment:

- 1) an extract from a register indicating that it is entered in a professional or trade register;
- 2) a sworn statement or certificate that it engages in the business operation; or
- 3) an operating licence or certificate of organisation membership, indicating its right to provide a service in its country of

establishment.

Section 85

Economic and financial capacity

- (1) The contracting entity may impose requirements to ensure that candidates and tenderers have the economic and financial resources required to implement a procurement agreement. The contracting entity may accordingly impose requirements on minimum turnover or on the ratio of assets to liabilities. The contracting entity may also require adequate liability insurance.
- (2) The minimum annual turnover to be required of candidates and tenderers may not exceed twice the estimated value of the procurement agreement. The minimum turnover requirement may exceed this for a legitimate reason. The contracting entity shall specify the grounds for any such requirement in the call for tenders or the procurement decision.
- (3) If a procurement has been divided into lots in accordance with section 75, then the minimum turnover requirement shall apply to each lot. The contracting entity may nevertheless impose a minimum turnover requirement on groups of lots in cases where a procurement agreement is concluded with the same tenderer for several lots to be implemented simultaneously.
- (4) If procurements based on a framework agreement are made by the competitive tendering referred to in subsection 3 of section 43, then the minimum turnover requirement referred to in subsection 2 shall be imposed on the basis of the estimated maximum value of the procurement agreements to be implemented simultaneously or, where this is not known, on the basis of the estimated value of the framework agreement. A requirement of minimum annual turnover in a dynamic purchasing system shall be imposed on the basis of the estimated maximum value of the agreements to be concluded in the system.

Section 86

Technical capacity and professional competence

- (1) The contracting entity may impose requirements to ensure that candidates and tenderers have the necessary staffing and the technical resources and experience to implement a procurement agreement to the standard required by the contracting entity. The contracting entity may require a demonstration of adequate experience by referring to previously completed agreements.
- (2) In procurements concerning goods requiring assembly or installation work, services or public works contracts, the professional competence of candidates and tenderers to perform the service or to implement the installation measures or public works contract may be evaluated on the basis of skills, experience and reliability.

Section 87

European Single Procurement Document

- (1) The contracting entity shall require use of the European Single Procurement Document as *prima facie* evidence that a candidate or tenderer satisfies the following requirements:
 - 1) none of the grounds for exclusion referred to in section 80 and section 81 applies to the candidate or tenderer;
 - 2) the candidate or tenderer satisfies the suitability requirements referred to in section 83 that were imposed by the contracting entity.
- (2) A candidate or tenderer may use the same European Single Procurement Document to demonstrate satisfaction of the requirements referred to in subsection 1 in several procurement procedures, provided that the candidate or tenderer confirms that the details contained in the document are still valid and that they correspond to the requirements imposed by the contracting entity.

- (3) The European Single Procurement Document shall be prepared electronically using the standard form established in Commission Implementing Regulation (EU) 2016/7 establishing the standard form for the European Single Procurement Document.

Section 88

Investigating exclusion conditions and satisfaction of suitability requirements

- (1) Before concluding the procurement agreement, the contracting entity shall require the selected tenderer to submit current certificates and accounts in order to investigate whether it is subject to any mandatory ground for exclusion referred to in section 80, and whether it satisfies the suitability requirements referred to in section 83 imposed by the contracting entity. If the contracting entity relies on a discretionary ground for exclusion referred to in points 1, 2 or 4 of subsection 1 of section 81, then it shall require the selected tenderer to submit current certificates and accounts before concluding the procurement agreement in order to investigate the existence of the said discretionary ground.
- (2) The provisions of subsection 1 shall also govern procurements based on a framework agreement and concluded within a dynamic purchasing system if the accounts have not been required when approving tenderers for the framework agreement or dynamic purchasing system. The provisions of subsection 1 shall nevertheless not apply to procurements based on a framework agreement when the procurement is made in accordance with the established terms and conditions of the framework agreement without competitive tendering.
- (3) The contracting entity may also ask tenderers and candidates at any time during the procedure to submit all or part of the accounts referred to in subsection 1 where this is necessary to ensure the proper conduct of the procedure.

- (4) The extract from criminal records referred to in subsection 8 of section 6 and in section 6 b of the Criminal Records Act (770/1993), or an extract from criminal records issued by the competent authority of the country of origin or establishment of a candidate or tenderer, of a member of an administrative, managerial or supervisory body thereof, or of a person exercising representative, managerial or regulatory authority therein, shall be acceptable as evidence referred to in subsection 1 with respect to the grounds for mandatory exclusion referred to in section 80 a. The extract from criminal records may not be more than twelve months old. Neither the contracting entity nor the candidate or tenderer may take a copy or privately save the extract from criminal records. After investigating the grounds for exclusion, the contracting entity shall destroy the extract from criminal records or return it to the person to whom it relates. No details from a criminal record may be disclosed to persons other than those who essentially require them for investigating the grounds for exclusion. If the foregoing extract or certificate is not issued in the country of establishment of a candidate or tenderer, then a sworn statement or solemn declaration by the representative of the candidate or tenderer under the legislation of the country of establishment shall be acceptable as alternative evidence.
- (5) A certificate issued by a competent authority shall be acceptable as evidence with respect to points 1, 2 and 4 of subsection 1 of section 81. If such certificates are not issued in the country of establishment of a candidate or tenderer, then a sworn statement or solemn declaration by the representative of the candidate or tenderer under the legislation of the country of establishment shall be acceptable as evidence.
- (6) Evidence of the economic and financial standing of a candidate or tenderer may be provided by means of one or more of the documents listed in Annex D. If, for any acceptable reason, the candidate or tenderer is unable to provide the references requested by the contracting entity, then it may demonstrate its economic and financial

standing by means of some other document that the contracting entity considers appropriate.

- (7) Evidence of the technical competence of a candidate or tenderer may be provided in one or more of the ways listed in Annex D, in accordance with the nature, quantity or scope and use of the procurement.
- (8) The contracting entity may not require the selected tenderer to submit evidence for the purposes referred to in subsection 1 if the contracting entity can obtain the necessary certificates, accounts and other details free of charge from a database in Finland or in another Member State of the European Economic Area. A tenderer may not be required to submit documentary evidence if the contracting entity already possesses the necessary current documents.

Section 89

Electronic certificate directory

- (1) To serve as the evidence referred to in section 88 with respect to investigating the conditions for exclusion and satisfaction of suitability requirements, the contracting entity shall primarily request certificates and other documents belonging to the electronic certificate directory (e-Certis) established by the European Commission.
- (2) The Ministry of Economic Affairs and Employment, or its designated agent, shall ensure that information on certificates and other documentary evidence entered in the electronic certificate directory referred to in subsection 1 is continually kept up to date.

Section 90

Management and quality assurance measures in environmental aspects

- (1) The contracting entity may request a candidate or tenderer to report on environmental impact management measures to be taken when

implementing a public works contract or performing a service. When the contracting entity requires certificates issued by independent bodies attesting that a candidate or tenderer satisfies the requirements of environmental management standards, it shall refer to the European Union eco-management and audit scheme (EMAS) or recognised environmental management systems, or to European or other environmental management standards that recognised institutions have certified based on international industry standards.

- (2) The contracting entity may ask a candidate or tenderer to report on quality assurance measures. A contracting entity requiring certificates issued by independent bodies attesting that a candidate or tenderer satisfies the requirements of quality assurance standards, including accessibility for persons with disabilities, shall refer to quality assurance systems based on the relevant European standards series for the industry that are certified by bodies conforming to the European standards series concerning such certification. The contracting entity shall also accept corresponding certificates issued by bodies in other European Union Member States, and certificates of corresponding quality assurance measures submitted by candidates and tenderers.
- (3) The contracting entity shall also accept other evidence of environmental management or quality assurance measures if a candidate or tenderer has, for reasons beyond its control, been verifiably unable to obtain the certificates referred to in subsections 1 or 2 within any time limits that may have been imposed for them. It shall be a condition that the candidate or tenderer shows that the environmental management or quality assurance measures based on other evidence correspond to the requirements of the environmental management or quality assurance standards.

Section 91

Legal form of a candidate and tenderer, and notice of responsible persons

- (1) A candidate or tenderer that may, under the law of the Member State in which it is established, provide the services that are the subject of a procurement may not be rejected solely on the grounds that it is required to be either a natural or legal person under some other law.
- (2) In service procurements and public works contracts, and in goods procurements involving siting or installation work, the contracting entity may require candidates and tenderers to declare, in their tenders or requests to participate, the names and professional qualifications of the persons responsible for performing the service or public works contract concerned.

Section 92

Group participation in competitive tendering and use of resources of other entities

- (1) Suppliers may submit tenders or declare their candidacy as a group. The contracting entity may not require a group of candidates or tenderers to have any particular legal form in order to submit a tender or a request to participate. A certain legal form may nevertheless be required of a group at the time of agreement if this is necessary for appropriate performance of the procurement agreement. The contracting entity may indicate in the contract notice or call for tenders how candidates and tenderers shall, as a group, jointly satisfy the requirements referred to in section 85 concerning economic and financial standing, the requirements referred to in section 86 concerning technical capacity and professional competence, or the special terms and conditions referred to in section 98. The additional terms and conditions concerning such groups of candidates and tenderers shall be objectively justified and proportionate.
- (2) A candidate or tenderer may use the resources of other entities for implementing a procurement, irrespective of the legal character of the relations between them. A group may also use the resources of other entities for implementing a procurement. Resources relating to the

competence and experience of the staff of other entities may only be used if the said other entities will implement all or part of the public works contracts or services that are the subject of the procurement. A candidate or tenderer or a group thereof shall demonstrate satisfaction of requirements concerning economic and financial standing, technical capacity and professional competence, and other requirements to the contracting entity.

- (3) The contracting entity shall require a candidate or tenderer to replace any supplier whose capacities it uses if the said supplier is subject to a mandatory ground for exclusion referred to in section 80, or if the supplier fails to satisfy the suitability requirements referred to in section 83. The contracting entity may require a candidate or tenderer to replace a supplier that is subject to a discretionary ground for exclusion prescribed in section 81.
- (4) If a candidate or tenderer relies on the capacities of other entities in order to satisfy requirements relating to economic and financial standing, then the contracting entity may require the candidate or tenderer and the said other entities to be jointly liable for performing the procurement agreement.

Section 93

Selecting the most economically advantageous tender

- (1) The most economically advantageous tender shall be selected. The most economically advantageous tender shall be a tender at the lowest price, at the most affordable cost, or with the best price-quality ratio for the contracting entity. A contracting entity that, other than in procurements of goods, applies the lowest price as the sole criterion for determining the most economically advantageous tender shall set out the justifications for doing so in the procurement documents, in the procurement decision, or in a separate statement on the procurement procedure.
- (2) The contracting entity may impose price-quality ratio comparison

criteria related to qualitative, societal, environmental or social considerations or innovative characteristics. Qualitative criteria may include technical merits, aesthetic and functional characteristics, accessibility, a design that meets the requirements of all users, operating costs, cost-effectiveness, after-sales service and technical support, servicing and delivery date, or delivery or implementation period and other terms and conditions of delivery. The contracting entity may also consider the qualifications and experience of staff assigned to implement the procurement agreement and the organisation of staff if the quality of assigned staff may significantly affect implementation of the procurement agreement.

- (3) The contracting entity may also set out price-quality ratio cost factors in the form of a fixed price or costs, in which case the tenderers shall compete solely on quality-related grounds.
- (4) The contracting entity shall indicate the criterion for determining the most economically advantageous tender or the price-quality ratio comparison criteria that it employs in the contract notice, the call for tenders or the invitation to negotiate. The contracting entity shall specify the relative weighting of comparison criteria in the contract notice, the invitation to negotiate, or the call for tenders. The weighting may also be expressed by indicating a reasonable range. If no relative weighting of comparison criteria can be specified for objective reasons, then the comparison criteria shall be indicated in decreasing order of importance.
- (5) The comparison criteria shall be linked to the procurement in accordance with section 94, they shall not afford the contracting entity unlimited freedom of choice, and they shall be non-discriminatory and ensure the possibility of genuine competition. The contracting entity shall impose the comparison criteria in a manner that enables a tenderer to verify the information based on them for the purpose of comparing tenders. The contracting entity shall effectively verify the accuracy of the information and proof provided by the tenderers in unclear cases.

Section 94

Link to the subject of procurement

A price-quality ratio comparison criterion shall be linked to the subject of procurement if it relates to an agreement concerning public works contracts, goods procurements or services to be provided under the agreement concerned in any respect and at any stage of their life cycle. This shall also apply in circumstances where the factors stated as comparison criteria are not a physical part of the procurement.

Section 95

Life-cycle costs

- (1) The contracting entity may apply life cycle costs as a criterion for evaluating the costs of a procurement. The life cycle costs shall be the procurement costs incurred by the contracting entity or other users of the procurement, the operating costs, the maintenance costs and costs at the recycling and waste disposal stage, and other costs over the life cycle of the public works contracts, goods or services.
- (2) Life cycle costs shall also include costs incurred from external environmental impacts and associated with the procurement over its life cycle if their monetary value can be determined and verified. A further condition of considering costs incurred from external environmental impacts shall be that:
 - 1) the evaluation method is based on objectively verifiable and non-discriminatory criteria;
 - 2) the evaluation method does not unduly favour or discriminate against certain suppliers;
 - 3) the evaluation method is accessible and available to all interested parties; and
 - 4) supplying the information required for cost calculations will not

require unreasonable effort from suppliers exercising normal diligence.

- (3) A contracting entity that assesses the costs using a life-cycle costing approach shall indicate in the procurement documents the data that tenderers and candidates must provide for the cost calculation and the method that it will use for calculating the life-cycle costs.

Section 96

Abnormally low tenders

- (1) The contracting entity shall require the tenderer to provide an account of the prices or costs of any tender that seems to be abnormally low. The request and explanation may relate in particular to the manufacturing method, the economic and technical solutions for performing a service or for a construction method, exceptionally low-cost terms and conditions of procurement, the originality of public works contracts, goods or services, compliance with the obligations referred to in point 5 of subsection 1 of section 81, subcontracting, and State aid received by the tenderer.
- (2) The contracting entity may reject a tender with an abnormally low price or cost in relation to the nature and scope of the procurement if the explanation supplied by the tenderer and other evidence provided does not satisfactorily account for the low level of prices or costs tendered. The contracting entity shall reject any tender whose abnormally low price or costs are due to non-compliance with the obligations referred to in point 5 of subsection 1 of section 81.
- (3) The contracting entity may only reject a tender of abnormally low price or costs due to unlawful State aid received by the tenderer if the tenderer is unable to prove, within an adequate time limit imposed by the contracting entity, that the State aid was lawfully granted. The contracting entity shall notify the Ministry of Economic Affairs and Employment of the rejection of any tender on the grounds referred to in in this subsection.

Section 97

Consideration of a subsidy provided by a contracting entity when comparing tenders

If a tenderer is an in-house entity within the organisation of the contracting entity, or if the tenderer has received or is receiving financial support from a contracting entity that affects the tendering price, then the contracting entity shall take the said financial support and other real factors affecting the tendering price caused thereto into consideration when comparing tenders.

Section 98

Special terms and conditions of a procurement agreement

- (1) The contracting entity may impose special terms and conditions on the implementation of a procurement agreement, provided that the said terms and conditions are linked to the procurement in the manner referred to in section 94. The terms and conditions may relate to the financial or social aspects of the procurement, or to its innovative, environmental and employment aspects. The special terms and conditions of the procurement agreement shall be indicated in the contract notice, in the invitation to negotiate or in the documents of the call for tenders.
- (2) A condition shall be included in a procurement agreement concluded between a central government authority and the successful tenderer in competitive tendering requiring compliance with at least the minimum terms and conditions of employment governing work of the same nature under the law and collective agreements of Finland in work that forms part of a procurement agreement to be implemented in Finland.
- (3) The provisions of subsection 2 concerning the duty of a central government authority shall also apply when another contracting entity concludes a procurement agreement concerning a public works

contract.

PART III

PROCEDURES FOR NATIONAL PROCUREMENTS, SOCIAL AND HEALTH SERVICES AND OTHER SPECIFIC SERVICE PROCUREMENTS AND CONCESSIONS

Chapter 11

National procedures

Section 99

Provisions governing national procurements

In addition to the provisions of Parts I and IV concerning procurement agreements, procurements of goods and services, design contests and public works contracts whose value falls below the European Union threshold values prescribed in section 26 but is not less than the national threshold values prescribed in points 1–3 of subsection 1 of section 25 shall be governed by the provisions of this chapter. The provisions of this chapter shall also govern foreign service procurements based on the development co-operation agreements referred to in subsection 2 of section 8.

Section 100

Procurement procedure

(1) A contracting entity shall comply with a procedure for competitive

tendering of procurements that is consistent with the principles referred to in subsection 1 of section 3. The contracting entity shall outline the procurement procedure that it applies in the contract notice or in the call for tenders.

- (2) Direct procurements shall be governed by the provisions of sections 40 and 41.

Section 101

Announcement of procurement

- (1) A contracting entity shall submit a notice concerning a procurement or design contest governed by this chapter for electronic publication in the Finnish or Swedish language at the Internet address www.hankintailmoitukset.fi using the form intended for a national contract notice.
- (2) The contracting entity may also publish the contract notice on other appropriate media. The notice may not be published elsewhere before it has been published in the manner prescribed in subsection 1.

Section 102

Contents of the contract notice

- (1) The contract notice shall include at least the following details:
 - 1) the official name and contact details of the contracting entity;
 - 2) the nature of the contracting entity;
 - 3) the name given by the contracting entity to the procurement and a description of the procurement;
 - 4) the price range or estimated value excluding value-added tax, or information as to whether the estimated value of the procurement is not less than the national threshold value referred to in section 25;

- 5) the type of procurement;
 - 6) a description of the procurement procedure;
 - 7) the criteria for determining the most economically advantageous tender;
 - 8) information as to whether partial or variant tenders will be approved;
 - 9) information as to whether the procurement is reserved for sheltered workshops or corresponding suppliers, or for performance in the course of work programmes;
 - 10) a reasonable deadline, having regard to the size and nature of the procurement, by which tenders or requests to participate must be submitted to the contracting entity.
- (2) The reference nomenclature established in Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) shall be used when specifying the content of the procurement.
- (3) If the contracting entity selects the candidates that may submit tenders or participate in negotiations, and sets suitability requirements for assessing tenderers or candidates, then the contract notice must announce the setting of requirements and the place from which further details of any requirements and of the documents required to verify them are available. The contract notice shall also indicate whether there is any limit on the number of candidates. The details provided in the contract notice may be supplemented with information available elsewhere, as shall be indicated in the contract notice.

Section 103

Exchange of information in national procedures

- (1) The exchange of information related to the procurement procedure shall be arranged in the manner chosen by the contracting entity. The

selected means of communication shall be generally available, and the choice of means shall not jeopardize the ability of suppliers to participate in the procurement procedure.

- (2) The provisions of section 62 shall apply if the exchange of information related to the procurement procedure is arranged using electronic means.

Section 104

The call for tenders and tender

- (1) In the contract notice or call for tenders, the contracting entity shall ask suppliers to submit their tenders within the time limit. The call for tenders shall be made in writing and drafted in a manner that ensures that it can serve as the basis for submitting mutually comparable tenders.
- (2) A tenderer shall demonstrate in its tender that its tendered goods, services or public works contract comply with the requirements set out in the contract notice and the call for tenders. Any tenders that fail to correspond to the contract notice, the call for tenders or the terms and conditions of the tendering procedure shall be excluded from the competitive tendering. The contracting entity may ask the tenderer or candidate to supply, add, clarify or supplement any missing or defective information or documents within a time limit.

Section 105

Suitability and exclusion of a tenderer

- (1) The contracting entity may impose requirements on the suitability of a tenderer. The suitability requirements shall be proportionate to the procurement. The contracting entity shall announce its requirements in the contract notice or in the call for tenders. The contracting entity shall exclude from competitive tendering any candidate or tenderer that fails to satisfy the suitability requirements imposed. The

contracting entity may require tenderers to issue an assurance that they satisfy the suitability requirements imposed by the contracting entity as part of their tenders. The veracity of the information provided in the assurance shall be checked for the winner of the competitive tendering before signing the procurement agreement.

- (2) The exclusion of candidates and tenderers from competitive tendering and the imposition of suitability requirements may comply with the provisions of sections 80–86.

Section 106

Selecting the most economically advantageous tender

The most economically advantageous tender shall be selected. The most economically advantageous tender shall be a tender at the lowest price, at the most affordable cost, or with the best price-quality ratio for the contracting entity. The comparison criteria applied when evaluating the price-quality ratio shall be relevant to the procurement and enable an impartial comparison of tenders. The contracting entity shall announce the basis and any comparison criteria that it applies for determining the most economically advantageous tender in the contract notice or in the call for tenders.

Chapter 12

Social and health services, and other specific service procurements

Section 107

Provisions governing social and health services, and other specific service procurements

In addition to the provisions of Parts I and IV concerning procurement agreements, the service procurements listed in Schedule E whose value is

not less than the threshold values prescribed in points 4 or 5 of subsection 1 of section 25 shall be governed by the provisions of this chapter.

Section 108

Considering the needs of service users in procurements

- (1) In service procurements under this chapter, the contracting entity shall give consideration to the legislation governing the service concerned. To ensure the individual and long-term, and the recurrent care or social services of service users in procurements of social and health services, the contracting entity shall give consideration to the special needs of users and consultation as elsewhere prescribed by law.
- (2) In addition to the provisions of subsection 1, the contracting entity in a procurement of social and health services shall consider factors related to the quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, to the special needs of various user groups, to user participation and increased empowerment, and to innovation.
- (3) In a procurement of health and social services that concerns long-term care and client relationships, the contracting entity shall specify the duration and other terms and conditions of agreements so that the agreements do not give rise to unreasonable or inappropriate consequences for service users.

Section 109

Procurement procedure

- (1) A contracting entity shall comply with a procedure for competitive tendering of procurements that is consistent with the principles referred to in subsection 1 of section 3. The contracting entity shall outline the procurement procedure that it applies in the contract notice or in the call for tenders.
- (2) Direct procurements shall be governed by the provisions of sections

40 and 41 governing direct procurement in service procurements.

110 §

Direct procurement in special circumstances

In addition to the provisions of subsection 2 of section 109, the contracting entity may make a direct procurement in individual cases concerning social and health service procurements under this chapter if arranging competitive tendering or changing a service provider would be manifestly unreasonable or especially inappropriate in order to secure some care or client relationship that is important for the client.

Section 111

Notification

The contracting entity shall announce service procurements under this chapter in the manner prescribed in Chapter 7.

Section 112

Exchange of information

- (1) The exchange of information related to the procurement procedure shall be arranged in the manner chosen by the contracting entity. The selected means of communication shall be generally available, and the choice of means shall not jeopardize the ability of suppliers to participate in the procurement procedure.
- (2) The provisions of section 62 shall apply if the exchange of information related to the procurement procedure is arranged using electronic means.

Section 113

The call for tenders and tender

- (1) In the contract notice or call for tenders, the contracting entity shall

ask suppliers to submit their tenders within the time limit. The call for tenders shall be made in writing and drafted in a manner that ensures that it can serve as the basis for submitting mutually comparable tenders.

- (2) A tenderer shall demonstrate in its tender that its tendered service complies with the requirements set out in the call for tenders. Any tenders that fail to correspond to the call for tenders or to the terms and conditions of the tendering procedure shall be excluded from the competitive tendering. The contracting entity may ask the tenderer or candidate to supply, add, clarify or supplement any missing or defective information or documents within a time limit.

Section 114

Suitability and exclusion of a tenderer

- (1) The contracting entity may impose requirements on the suitability of a tenderer. The suitability requirements shall be proportionate to the procurement. The contracting entity shall announce its requirements in the contract notice or in the call for tenders. The contracting entity shall exclude from competitive tendering any candidate or tenderer that fails to satisfy the suitability requirements imposed. The contracting entity may require tenderers to issue an assurance that they satisfy the suitability requirements imposed by the contracting entity as part of their tenders. The veracity of the information provided in the assurance shall be checked for the winner of the competitive tendering before signing the procurement agreement.
- (2) The contracting entity shall apply the exclusion criteria prescribed in section 80 and may apply the exclusion criteria prescribed in section 81. Corrective measures of candidates and tenderers and the imposition of suitability requirements may be governed by the provisions of sections 82–86.

Section 115

Selecting the most economically advantageous tender

- (1) The most economically advantageous tender shall be selected. The most economically advantageous tender shall be a tender at the lowest price, at the most affordable cost, or with the best price-quality ratio for the contracting entity. The comparison criteria applied when evaluating the price-quality ratio shall be relevant to the procurement and enable an impartial comparison of tenders. The contracting entity shall announce the basis and any comparison criteria that it applies for determining the most economically advantageous tender in the contract notice or in the call for tenders.
- (2) A contracting entity that applies the lowest price as the sole criterion for determining the most economically advantageous tender shall set out the justifications for doing so in the procurement documents, in the procurement decision, or in a separate statement on the procurement procedure.

Chapter 13

Concession contracts

Section 116

Provisions governing concession contracts

- (1) In addition to the provisions of Chapters 1, 2, 4, 8 and 14–17, excluding subsection 1 of section 12 and of sections 124 and 170, concession contracts with an estimated value of not less than the threshold value prescribed in point 6 of subsection 1 of section 25 shall be governed by the provisions of this chapter. Concession contracts shall also be governed by the provisions of sections 31, 67–69, 71, 73, 77–83, 91 and 92.
- (2) The provisions of subsection 1 shall also govern concession contracts concerning the services listed in Schedule E. Concession contracts

concerning these services shall also be governed by the provisions of sections 108 and 110.

Section 117

Duration of the concession

- (1) A concession contract shall be concluded for a limited period.
- (2) The maximum duration of concession contracts concluded for longer than five years shall not exceed the time that a concessionaire could reasonably be expected to take in order to recoup the investments that it has made in operating the works or services, and to secure a return on invested capital and on the investments required to achieve the aims of the contract.

Section 118

Applicable procedure when concluding a concession contract

- (1) A contracting entity shall comply with a procedure for competitive tendering of concession contracts that is consistent with the principles referred to in subsection 1 of section 3. The contracting entity shall outline the procurement procedure that it applies in the contract notice or in the call for tenders. Any changes in a call for tenders shall be notified to tenderers participating in the procurement procedure, and any changes in a contract notice shall be notified by issuing a new notice.
- (2) The contracting entity may impose an advance limit on the number of candidates from which a tender will be requested. The candidates approved as tenderers shall be selected on transparent and objective criteria. A sufficient number of candidates to ensure genuine competition, having regard to the scale and nature of the procurement, must be invited to join the procedure.
- (3) The contracting entity may hold negotiations with candidates and

tenderers. The subject-matter of the concession, the criteria for determining the most economically advantageous tender award and the minimum requirements shall not be changed during the course of the negotiations.

Section 119

Direct procurement

A contracting entity may make a direct procurement if:

- 1) no requests to participate or tenders, or suitable requests to participate or tenders have been received in response to the original concession contract procedure; it shall be a further condition that no essential change occurs in the original terms and conditions of the concession contract;
- 2) only a certain supplier can implement the procurement for a technical reason, or for a reason related to protecting an exclusive right; it shall be a further condition that there are no reasonable alternatives or substitute solutions, and that the absence of competition is not due to an artificial narrowing of the terms and conditions of the procurement; or
- 3) the aim of the concession is the creation or acquisition of a unique work of art or artistic performance.

Section 120

Notification

The contracting entity shall announce concession contracts under this chapter in the manner prescribed in Chapter 7.

Section 121

Time limits

- (1) A minimum time limit of 30 days, reckoned from the date of sending

the contract notice, shall be set aside for submitting tenders. If the contracting entity selects the candidates that may submit tenders, then at least 30 days shall be set aside for submitting a request to participate and at least 22 days shall be set aside for submitting tenders. The time limit for submitting a request to participate in this case shall be reckoned from the date of sending the contract notice, and the time limit for submitting tenders shall be reckoned from the date when candidates are invited to submit the tenders.

- (2) The time limits for submitting tenders referred to in subsection 1 may be reduced by five days if the contracting entity approves the submission of tenders in electronic form.
- (3) When setting the time limits for a procurement procedure, the contracting entity shall consider the nature and complexity of the concession contract and its associated procedure, and the time required for preparing and submitting tenders and requests to participate. If tenders can be made only after a visit to the site or after onsite inspection of the documents supporting the procurement documents, then the time limit for receiving tenders shall be set so that all suppliers may be aware of all of the information needed to produce tenders. The tendering period in such cases shall be longer than the minimum time limits imposed in subsections 1 and 2.

Section 122

Selecting the most economically advantageous tender

- (1) The most economically advantageous tender shall be selected. The most economically advantageous tender shall be a tender at the lowest price, at the most affordable cost, or with the best price-quality ratio for the contracting entity. The comparison criteria applied when evaluating the price-quality ratio shall be relevant to the procurement, shall enable an impartial comparison of tenders, and shall not confer unfettered freedom of choice on the contracting entity. The contracting entity shall announce the basis and any comparison

criteria that it applies for determining the most economically advantageous tender in the contract notice or in the call for tenders. The contracting entity shall impose the comparison criteria in a manner that enables a tenderer to verify the information based on them for the purpose of comparing tenders. The contracting entity shall effectively verify the accuracy of the information and proof provided by the tenderers in unclear cases.

- (2) When announcing the criteria for determining the most economically advantageous tender referred to in subsection 1 above, the contracting entity shall list the comparison criteria that it applies in descending order of importance. The contracting entity may change the order of importance that it has announced if it receives a tender in the course of competitive tendering that proposes an innovative solution of exceptionally high standard with respect to functional performance that a diligent contracting entity could not have foreseen. In such cases the contracting entity shall inform all tenderers of the change in order of importance, and shall issue a new call for tenders in compliance with the minimum time limits referred to in section 121. The change in order of importance shall not compromise equitable and non-discriminatory treatment.

PART IV

COMMON PROVISIONS ON PROCUREMENT DECISIONS, PROCUREMENT AGREEMENTS, REGULATORY CONTROL AND REMEDIES, AND MISCELLANEOUS PROVISIONS

Chapter 14

Procurement decisions and procurement agreement

Section 123

Procurement decisions

- (1) A contracting entity shall make a written decision on resolutions affecting the status of candidates and tenderers and on procurement procedure resolutions, which shall be substantiated.
- (2) The decision or its associated documents shall state the facts that integrally affected the resolution, which shall at least include the grounds for rejecting a candidate, tenderer or tender, and the principal criteria on which the comparison of approved tenders was made. In a decision concerning competitive tendering of a procurement based on a framework agreement, it shall be sufficient to state the facts that show that the selection and comparison criteria for tenders were applied in the manner required under section 43. If the standstill period referred to in section 129 must be observed in a procurement, then the decision or its associated documents shall also state the time period within which the procurement agreement may be concluded.
- (3) The contracting entity shall not be required to make the decision referred to in this section concerning the additional order referred to in section 41 or the interim arrangement of a procurement referred to in section 153.
- (4) The contracting entity shall not be required to make the decision referred to in this section in a procurement based on a framework agreement if:
 - 1) the procurement is made without competitive tendering, in accordance with the terms and conditions stipulated in the

framework agreement, or

- 2) the value of the procurement in competitive tendering based on the framework agreement does not exceed the European Union threshold value.

Section 124

Report on a procurement procedure

- (1) A report shall be prepared concerning a procurement agreement of value exceeding the European Union threshold values, and of a procurement agreement, a framework agreement, a procurement referred to in subsection 3 of section 43 based on a framework agreement, or the establishment of a dynamic purchasing system for a service procurement in Schedule E that exceeds the national threshold value. Preparation of a report shall not be required insofar as the corresponding information is included in a decision on the procurement, a contract award notice, or other procurement documents. The report shall include the following details:
 - 1) the contact details of the contracting entity, and the subject-matter and value of the procurement agreement, framework agreement or dynamic purchasing system;
 - 2) the names of candidates and tenderers excluded from the procedure in accordance with sections 80, 81 and 83 and selected for the procedure, and the grounds for rejection or selection;
 - 3) the grounds for rejecting abnormally low tenders;
 - 4) the grounds for using the lowest price as the sole criterion for determining the most economically advantageous tender;
 - 5) the grounds for failing to divide a procurement;
 - 6) the grounds for requiring more than double turnover from a supplier;

- 7) the name of a tenderer selected as a contractual party, the justifications for the selection, and an estimate of the parts of the agreement or framework agreement to be subcontracted to third parties, or the names of potential subcontractors;
 - 8) the grounds for using a direct procurement, negotiated procedure or competitive negotiated procedure;
 - 9) the grounds for suspending the procurement;
 - 10) the grounds for using non-electronic means of communication;
 - 11) a description of any conflicts of interest that may have been found in the procurement procedure and of the consequent measures taken.
- (2) The contracting entity shall not be required to prepare the report referred to in this section in a procurement based on a framework agreement if the procurement is made without competitive tendering, in accordance with the terms and conditions stipulated in the framework agreement.
 - (3) The contracting entity shall adequately document the various stages of the procurement procedure and the associated resolutions. The documents shall be archived for not less than three years, reckoned from the date of concluding the procurement agreement. The report shall be submitted on request to the European Commission and to the Ministry of Economic Affairs and Employment.

Section 125

Suspension of procurement procedure

- (1) A procurement procedure may only be suspended for a real and legitimate reason.
- (2) The decision to suspend a procurement procedure shall be governed by the provisions of section 123 concerning procurement decisions.

Section 126

Instructions for appeal and rectification

- (1) The contracting entity shall append appeal instructions to a decision that it has made, explaining how the case may be referred for review by the Market Court, providing the contact details of the contracting entity for the purposes of the notice referred to in section 148, and issuing instructions for exercising rectification measures (*instructions for rectification*) that explain how a candidate or tenderer may refer the case for reconsideration.
- (2) The issuing and correction of instructions for appeal and rectification shall otherwise be governed by the provisions of Chapter 3 of the Administrative Judicial Procedure Act (586/1996) with respect to appeals and by the provisions of Chapter 7 of the Administrative Procedure Act (434/2003) with respect to instructions for rectification.

Section 127

Notifying the procurement decision

- (1) The decision made by the contracting entity with its justifications, and the instructions for appeal and rectification shall be served in writing to the parties concerned. The decision and foregoing documents shall be served using the electronic contract details that the candidate and tenderer notified to the contracting entity. The candidate and tenderer shall be deemed to have received notice of a decision served using electronic contact details on the day when the electronic document concerning the case became available to the recipients of the message on their reception devices in a form in which the electronic message can be processed. Such a time shall be considered the date of dispatching the message, in the absence of a reliable explanation of an electronic communications failure or other corresponding factor that caused the electronic message to reach the recipient at a later time. A contracting entity using electronic service of process shall separately

endorse its messages with details of the day of dispatching the message.

- (2) The decision and its justifications and the instructions for appeal and rectification may also be served by means of a letter sent by post in the manner prescribed in the Administrative Procedure Act. The candidate and tenderer shall be deemed to have received notice of the decision and its attachments on the seventh day following their dispatch, unless the candidate or tenderer shows that service of process was effected at a later time.

Section 128

Conclusion of a procurement agreement

The contracting entity shall conclude a procurement agreement after making the procurement decision. The procurement agreement shall be concluded by making a separate written agreement.

Section 129

Standstill period

- (1) In a procurement exceeding the European Union threshold value and in a service procurement or concession contract under Schedule E that exceeds the national threshold value, the agreement may be concluded no sooner than 14 days after the candidate or tenderer has received or is deemed to have received notice of the decision and instructions for appeal (*standstill period*).
- (2) The standstill period referred to in subsection 1 shall be 10 days in procurements based on a dynamic purchasing system and a framework agreement.
- (3) No standstill period shall apply in a direct procurement.
- (4) The provisions of section 150 govern the effect of an appeal on the conclusion of a procurement agreement.

Section 130

Exceptions to compliance with the standstill period

No standstill period need be observed if:

- 1) the agreement concerns a procurement to be made on the basis of the framework agreement referred to in section 42;
- 2) the agreement is concluded with the sole tenderer that submitted an acceptable tender, and no other tenderers or candidates remain in the competitive tendering process whose status is affected by the choice of contractual partner; or
- 3) the agreement concerns a procurement made within a dynamic purchasing system.

Section 131

Notification of a direct procurement and conclusion of the procurement agreement

- (1) After the procurement decision in a direct procurement exceeding the European Union threshold value and in a service procurement and concession contract under schedule E that is implemented as a direct procurement exceeding the national threshold value, the contracting entity may submit a direct procurement notice for publication prior to concluding the procurement agreement. The procurement agreement may then be concluded no sooner than 14 days after publishing the notice in the Official Journal of the European Union.
- (2) After the procurement decision in a direct procurement falling below the European Union threshold value, the contracting entity may submit a national direct procurement notice for publication prior to concluding the procurement agreement. The notice shall at least include the details referred to in points 1–5 of subsection 1 of section 102. The names and contact details of the contractual partner or partners and the justifications for using a direct procurement shall also

be announced. The procurement agreement may be concluded no sooner than 14 days after publishing the notice at the Internet address referred to in section 101.

Section 132

Rectifying a procurement

- (1) A contracting entity may quash its own erroneous decision or cancel some other resolution made in a procurement procedure with legal effects on the status of candidates or tenderers and decide the matter again (*rectification of procurement*) if the decision or other resolution made in the procurement procedure is based on an erroneous application of the law, or if new information has come to light in the case that could affect the decision, the resolution, or the conditions for concluding the procurement agreement.
- (2) Rectification of a decision or resolution shall not require the consent of the concerned party.

Section 133

Initiating rectification of procurement

- (1) A contracting entity may initiate rectification of procurement on its own initiative or at the request of a concerned party. The contracting entity shall immediately notify the concerned parties that an action for rectification of procurement is pending.
- (2) The concerned party shall submit its claim within 14 days of receiving notice of the decision of the contracting entity or of some other resolution made in the procurement procedure. A contracting entity initiate its own measures to rectify a procurement decision or resolution within 90 days of making the decision or resolution that is the subject-matter of a rectification of procurement.
- (3) Appeal to the Market Court shall not preclude rectification of procurement or processing of rectification of procurement. A

rectification of procurement may also concern a legally final decision of the contracting entity if the case has not been referred for review by the Market Court.

Section 134

Effect of a pending rectification of procurement on Market Court proceedings

- (1) The initiation and processing of a rectification of procurement shall not affect the time limit within which a concerned party is entitled under this Act to seek review by appealing to the Market Court.
- (2) If a decision or other procurement procedure resolution subject to rectification has been submitted for review by the Market Court, then the Market Court shall be notified of the initiation of a rectification of procurement and of the decision made thereupon. While considering a rectification of procurement, the contracting entity may impose a stay of implementation of the decision or resolution, or order its suspension. The Market Court shall be notified of the stay of implementation and suspension if an appeal concerning the case is pending at the Market Court.
- (3) If the contracting entity corrects its procurement decision or other resolution by rectification of procurement so that an appellant to the Market Court no longer requires a remedy or substantiated judgement, then the Market Court may dismiss the case without prejudice as to the principal claim.

Section 135

Application of rectification of procurement to other procurements

Rectification of procurement shall also apply to the correction of a decision or other procurement procedure resolution of a contracting entity that is not otherwise subject to this Act. The decision issued on such a

rectification of procurement shall not be open to review by appeal to the Market Court.

Section 136

Amendment of a procurement agreement during the agreement period

- (1) A procurement agreement or framework agreement concluded in procurements that exceed the European Union threshold value, or in service procurements or concession contracts under Schedule E that exceed the national threshold value, may not be amended in any integral respect during the agreement period without a new procurement procedure under this Act. An amendment shall at least be considered integral if:
 - 1) the amendment introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;
 - 2) the amendment changes the economic balance of the agreement or framework agreement in favour of the contractual partner in a manner that was not specified in the original agreement or framework agreement;
 - 3) the amendment considerably broadens the scope of the agreement or framework agreement;
 - 4) a new contractual partner replaces the contractual partner with which the contracting entity originally concluded the agreement.
- (2) Notwithstanding the provisions of subsection 1, a procurement agreement and a framework agreement may be amended with no new procurement procedure if:

- 1) it is based on contractual terms and conditions or on terms for their amendment that were known during the procurement procedure and referred to in the procurement documents, irrespective of their financial value, and the said terms and conditions are clear, precise and unambiguous and do not modify the general character of the procurement agreement or framework agreement;
- 2) it is necessary for the original contractual partner to perform additional work, services or extraordinary deliveries of goods that were not included in the original agreement, and a change of contractual partner is not possible for financial or technical reasons and would cause significant inconvenience or a significant overlap of costs for the contracting entity;
- 3) the need for amendment is due to circumstances that a diligent contracting entity could not have foreseen, and the amendment does not affect the general character of the procurement agreement;
- 4) the original contractual partner is replaced with a new contractual partner under an unambiguous condition for amending the agreement in accordance with point 1, or the status of the original contractual partner is wholly or partly assigned to another operator that satisfies the originally established qualitative selection criteria due to corporate restructuring, takeovers, mergers, changes of controlling interest or insolvency, provided that this does not entail other substantial amendments to the agreement and does not seek to circumvent the application of this Act;
- 5) the case concerns a minor contractual amendment that falls below the national threshold values in procurements and concession contracts concerning the services referred to in Schedule E, or the European Union threshold values in other procurements, and does not affect the general character of the

agreement.

- (3) The value of the amendment referred to in points 2 and 3 of subsection 2 shall not exceed 50 per cent of the value of the original agreement. If multiple amendments referred to in points 2 and 3 of subsection 2 are made consecutively, then each amendment shall be assessed as an independent item. Such modifications shall not seek to circumvent the provisions of this Act.
- (4) The value of the amendment referred to in point 5 of subsection 2 shall be less than 10 per cent of the value of the original service procurement or supply contract, or concession contract for services, and 15 per cent of the value of the original public works contracting agreement or concession contracting agreement. If multiple successive amendments referred to in point 5 of subsection 2 are made, then the value shall be assessed on the basis of the net cumulative value of the successive modifications.
- (5) The revised price for the purpose of reckoning the price referred to in subsections 3 and 4 shall be the reference value when the agreement includes an indexation clause.

Section 137

Termination of procurement agreement in special circumstances

In addition to the terms and conditions of the procurement agreement, a contracting entity may terminate the procurement agreement with immediate effect if:

- 1) an integral amendment has been made to the agreement in the sense of subsection 1 of section 136;
- 2) the supplier was subject to a mandatory exclusion criterion prescribed in section 80 at the time of concluding the agreement; or

- 3) the agreement could not have been concluded with the supplier, as in the course of a procedure pursuant to Article 258 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union has found that the contracting entity seriously infringed obligations under the European Union Treaties and the Procurement Directive.

Section 138

Application of provisions on public access to documents

- (1) Public access to documents of a contracting entity, fees collected for documents, and the right of a concerned party to information shall be governed by the Act on the Openness of Government Activities (621/1999) if the contracting entity is a public authority in the sense of section 4 of the said Act, or if the contracting entity is required to comply with the said Act under some other statutory provision.
- (2) The right of a participant in competitive tendering arranged by a contracting entity not referred to in subsection 1 to obtain information on documents that were drawn up and received for the purpose of processing a tender, and the duty of confidentiality of persons in the service of a contracting entity shall be governed by the provisions of the Act on the Openness of Government Activities concerning the right of a concerned party to a document, determination of public disclosure of a document, and the processing and resolution of questions of access to information.
- (3) Amendment to decision of a contracting entity that has settled a question of access to a document may be sought in the manner prescribed in section 33 of the Act on the Openness of Government Activities. The administrative court with jurisdiction over an appeal concerning a decision of a contracting entity not serving as a public authority shall be the administrative court within whose territorial jurisdiction the contracting entity is located.
- (4) Public access to documents of the Evangelical Lutheran Church and

its parishes shall be governed by the Church Act (1054/1993).

Chapter 15

Regulatory control of procurements

Section 139

Control authority and taking of measures to investigate an unlawful procedure

- (1) The Finnish Competition and Consumer Authority shall supervise compliance with this Act.
- (2) Anyone who considers that a contracting entity has contravened this Act may submit a request to the Finnish Competition and Consumer Authority for measures to investigate the legality of the procedure. The submission and processing of a request for measures shall be governed by the provisions of Chapter 8 a of the Administrative Procedure Act concerning complaints alleging maladministration. Processing of a request for measures shall lapse if the Finnish Competition and Consumer Authority finds that the action constituting the subject-matter of the request gives cause under section 53 c of the Administrative Procedure Act for taking measures to initiate a statutory procedure prescribed in this Act or elsewhere.
- (3) The Finnish Competition and Consumer Authority may also initiate an investigation of a matter falling within its competence on its own initiative.

Section 140

Stay of implementation of a direct procurement decision

- (1) The Finnish Competition and Consumer Authority may issue a decision prohibiting a contracting entity from implementing a procurement decision in whole or in part if the Authority finds that the

contracting entity has made a direct procurement without the grounds prescribed in this Act. No stay may be ordered if a procurement agreement has already been concluded in the case.

- (2) During an investigation by the Finnish Competition and Consumer Authority, the contracting entity may issue a written undertaking to the Finnish Competition and Consumer Authority to refrain from implementing a procurement decision. The Finnish Competition and Consumer Authority may terminate the investigation in such cases.

Section 141

Proposal of the Finnish Competition and Consumer Authority to the Market Court

- (1) If a contracting entity has made a procurement exceeding the European Union threshold value or a service procurement or concession contract referred to in Schedule E that exceeds the national threshold value as a direct procurement without the grounds prescribed in this Act, and if a procurement agreement has already been concluded in the case, then the Finnish Competition and Consumer Authority may call on the Market Court:
 - 1) to impose an inefficiency sanction;
 - 2) to impose a penalty fine;
 - 3) to shorten the agreement period;
 - 4) to quash the procurement decision, provided that the Authority has called for the sanction referred to in point 1.
- (2) The motion referred to in subsection 1 shall be submitted within six months of concluding the procurement agreement. Investigative measures of the Finnish Competition and Consumer Authority shall interrupt the passage of the period of limitation, which shall then be restarted from the beginning.

- (3) The Finnish Competition and Consumer Authority may not submit the motion referred to in subsection 1 if the case is already pending at the Market Court on appeal. If an appeal is filed at the Market Court concerning the same procurement while a motion of the Finnish Competition and Consumer Authority on the case is pending, then the motion and the appeal shall be settled together.
- (4) The motion referred to in subsection 1 may nevertheless not be submitted if the contracting entity has issued the direct procurement notice referred to in section 131 with respect to the procurement. A manifestly deficient or incorrect direct procurement notice shall not preclude submission of a motion.

Section 142

Duty of disclosure of a contracting entity, contractual partner and tenderer

- (1) Notwithstanding confidentiality provisions, a contracting entity, its contractual partner, a party exercising a controlling interest in a contracting entity and a trader that has participated in a procurement procedure shall be required to supply the Finnish Competition and Consumer Authority on request with all of the information and documentation necessary for determining the legality of the procurement procedure.
- (2) The information shall be provided in written form where so requested.
- (3) The Finnish Competition and Consumer Authority may impose a conditional fine to enforce compliance with the request referred to in subsection 1. The Market Court shall order payment of the conditional fine.

Section 143

Disclosure of information to another public authority

Notwithstanding confidentiality provisions, the Finnish Competition and

Consumer Authority may, where necessary, disclose information or documentation received in the course of regulatory control on its own initiative:

- 1) to the Finnish Tax Administration for the purpose of performing a function prescribed in section 2 of the Tax Administration Act (503/2010)
- 2) to a pre-trial investigation authority for the purpose of preventing, detecting, investigating and considering prosecution of criminal offences, and for other functions that are consistent with the said authority's purposes in gathering and recording information;
- 3) to public prosecutors for the purpose of performing official functions to the extent prescribed in section 25 of the Act on the Prosecution Service (439/2011);
- 4) to employment authorities for the purpose of processing a case concerning regulatory control of the residence permit or work of an employed or self-employed person;
- 5) to the Financial Intelligence Unit for the purpose of performing its separately assigned statutory functions;
- 6) to the enforcement authorities for the purpose of performing their function under the Enforcement Code (705/2007);
- 7) to the Finnish Centre for Pensions for the purpose prescribed in point 1 of subsection 2 of section 2 of the Act on the Finnish Centre for Pensions (397/2006) concerning regulatory control of compliance with the duty to insure in accordance with earnings-related pension statutes;
- 8) to the Finnish Workers' Compensation Centre (TVK) for the purpose of regulatory control of the duties to insure referred to in subsection 1 of section 177 and in section 179 of the Occupational Accidents, Injuries and Diseases Act (459/2015);

- 9) to a State aid authority for the purpose of granting and regulatory control of operational financing issued to organisations pursuant to the Act on Discretionary Government Transfers (688/2001);
- 10) to the Finnish Patent and Registration Office for the purpose of performing the regulatory control function prescribed in section 1 of Chapter 14 of the Foundations Act (487/2015);
- 11) to the Unemployment Insurance Fund (TVR) for the purpose of regulatory control of implementation of the procedure for recovering unemployment insurance contributions referred to in subsection 1 of section 10 of the Act on Financing Unemployment Benefits (555/1998);
- 12) to the structural funds program administration authority for the purpose of discharging the function referred to in section 8 of the Act on Regional Development and Administration of Structural Fund Operations (7/2014);
- 13) to the Bankruptcy Ombudsman for the purpose of regulatory control of the administration of the bankruptcy estates, as referred to in the Act on the Supervision of the Administration of Bankruptcy Estates (109/1995); and
- 14) to the competent licencing and control authority for the purpose of issuing and revoking operating licences in accordance with the Act on the Commercial Carriage of Goods by Road (693/2006) and the Public Transport Act (869/2009).

Section 144

Reporting the results of regulatory control

The Finnish Competition and Consumer Authority shall prepare an annual report of its regulatory control activities under this Act, which shall include a summary of:

- 1) unlawful procedures and practices harmful to transparency or non-discrimination that are detected in the course of regulatory control activities, and their most common background factors;
- 2) the number and content of the measures referred to in section 139;
- 3) the number and content of the prohibitions and undertakings referred to in section 140;
- 4) the number and content of the motions referred to in section 141, and the court rulings issued in response to these motions.

Chapter 16

Legal remedies

Section 145

Parties entitled to appeal

- (1) A concerned party may bring a case concerning a procurement to the Market Court by filing an appeal.
- (2) A case may also be referred to the Market Court on appeal:
 - 1) by the Ministry of Economic Affairs and Employment in a matter concerning a European Union regulatory control procedure;
 - 2) in a matter referred to in section 23, also by a central or local government agency or other party that has granted project-specific aid for implementing a construction project.

Section 146

Subject of review and restrictions

- (1) An appeal may be submitted to the Market Court concerning the

decision of a contracting entity referred to in in this Act, or some other resolution made by a contracting entity in a procurement procedure that affects the status of a candidate or tenderer.

- (2) No appeal may be submitted to the Market Court in respect of a decision or other resolution of a contracting entity that concerns:
 - 1) solely the preparation of a procurement procedure;
 - 2) failure to divide a procurement agreement into parts pursuant to section 75; or
 - 3) use of the lowest price or costs alone as the criterion for determining the most economically advantageous tender referred to in subsection 1 of section 93.
- (3) A procurement based on the framework agreement referred to in section 42 or a resolution of a contracting entity concerning approval of the dynamic purchasing system referred to in section 51 shall not be open to review by appeal unless the Market Court grants leave to hear the case. The leave shall be granted if:
 - 1) a hearing of the case is important for application of the law in other similar cases; or
 - 2) there is some pressing reason for doing so, related to the procedure of the contracting entity.

Section 147

Time limit for seeking review

- (1) Unless otherwise provided below, an appeal shall be submitted in writing within 14 days of the date on which the candidate or tenderer received notice of the procurement decision together with instructions for appeal.
- (2) If, following the procurement decision, a contracting entity has made a procurement agreement or concession contract pursuant to point 1 or

3 of section 130 without observing the standstill period, then the appeal shall be filed within 30 days of the date when the tenderer received notice of the decision together with instructions for appeal.

- (3) An appeal to the Market Court shall be submitted no later than six months after making the procurement decision in the event that the candidate or tenderer has received notice of the procurement decision together with instructions for appeal and the procurement decision or the instructions for appeal were essentially defective.
- (4) If a contracting entity has submitted for a notice for publication in the Official Journal of the European Union concerning a direct procurement referred to in section 131 or a contractual amendment referred to in point 9 of subsection 1 of section 58, then the appeal shall be filed within 14 days of the date of publishing the notice.
- (5) If the notice referred to in subsection 4 has not been published, then an appeal concerning a direct procurement shall be filed:
 - 1) within 30 days of the date when a contract award notice concerning the direct procurement was published in the Official Journal of the European Union; or
 - 2) within six months of the date of concluding the procurement agreement.

Section 148

Notification of review to the contracting entity and list of procurement cases

- (1) A party seeking review of a procurement case shall notify the contracting entity in writing that the case has been referred to the Market Court. The Finnish Competition and Consumer Authority shall notify the contracting entity in writing that the motion for sanctions referred to in section 159 has been submitted to the Market Court.

- (2) The notification shall be submitted to the contracting entity by no later than the time of submitting the procurement appeal or the motion of the Finnish Competition and Consumer Authority to the Market Court. The notice shall be sent to the address notified by the contracting entity.
- (3) The Market Court shall maintain and publish an optimally comprehensive and current list of procurement cases filed at the Market Court.

Section 149

A contracting entity as opposing party and compensation for legal costs

- (1) The contracting entity shall be regarded as the party opposing the appellant or the authority that has submitted a motion when hearing a procurement case.
- (2) Compensation for legal costs in a procurement case shall be governed by the provisions of subsections 1 and 2 of section 74 of the Administrative Judicial Procedure Act.
- (3) A contracting entity shall be subject to the provisions of subsections 1 and 2 of section 74 of the Administrative Judicial Procedure Act concerning a public authority or other public party when determining the liability to compensate an opposing party for its legal costs in a procurement case. If the contracting entity is not a public authority or legal person, then the duty to compensate the opposing party for legal costs may be addressed to a public authority or legal person that participates or is involved in such a contracting entity. If some contracting entity has assumed responsibility for a procurement procedure on behalf of other contracting entities, then the duty to compensate for legal costs may be addressed to any such contracting entity that has acted on behalf of other contracting entities.

Section 150

Effect of an appeal on the conclusion of a procurement agreement

- (1) A contracting entity may not conclude a procurement agreement concerning a procurement that is subject to a standstill period or to the time limit referred to in subsection 1 of section 131 if the case has been referred on appeal to the Market Court.
- (2) If the Market Court decides the matter of implementation or issues a judgement on the principal claim before the end of the standstill period or of the time limit referred to in subsection 1 of section 131, then contracting entity shall observe the standstill period or the time limit referred to in subsection 1 of section 131 to the end, notwithstanding the decision of the Market Court.

Section 151

Interim decisions of the Market Court

- (1) After an appeal has been filed, the Market Court may prohibit, suspend or allow implementation of a procurement decision, or otherwise order an interim suspension of the procurement procedure for the duration of proceedings at the Market Court.
- (2) When deciding a measure referred to in subsection 1, the Market Court shall give consideration to ensuring that the harm caused by the measure to the opposing party, to the rights of others or to the public interest does not outweigh the benefits that the measure would bring.

Section 152

Interim undertaking of a contracting entity

- (1) After an appeal has been filed, the contracting entity may issue a written undertaking to the Market Court to refrain from implementing the procurement decision while the case is pending at the Market Court.

- (2) If the contracting entity furnishes the Market Court with the undertaking referred to in subsection 1, then the Market Court shall not decide a claim for an interim stay of implementation of the procurement decision without special cause.

Section 153

Interim arrangement of procurement

- (1) If a procurement has been appealed to the Market Court, then the contracting entity may arrange the procurement on an interim basis unless the nature of the procurement prevents its deferral for the duration of proceedings at the Market Court.
- (2) The interim arrangement of a procurement may not prevent a decision of the Market Court granting the appellant's claim for:
 - 1) annulling the decision of the contracting entity in whole or in part;
 - 2) prohibiting the contracting entity from applying an incorrect point in a procurement document or otherwise adhering to an incorrect procedure; or
 - 3) ordering the contracting entity to rectify its incorrect procedure.

Section 154

Sanctions imposed by the Market Court

- (1) If the procedure in the procurement was contrary to this Act, to European Union legislation, or to the World Trade Organisation Agreement on Government Procurement, then the Market Court may:
 - 1) annul the decision of the contracting entity in whole or in part;
 - 2) prohibit the contracting entity from applying an incorrect point in a procurement document or otherwise adhering to an incorrect procedure;

- 3) order the contracting entity to rectify its incorrect procedure;
 - 4) order the contracting entity to pay a compensatory fine to a concerned party that would have had genuine prospects of winning the competitive tendering under a correct procedure;
 - 5) order the contracting entity to pay an inefficiency sanction;
 - 6) order the contracting entity to pay a penalty fine to the State;
 - 7) shorten the agreement period of the procurement agreement or concession contract to expire within the period stipulated by the court.
- (2) When imposing the sanctions referred to in points 4–7 of subsection 1, the Market Court may deem a procurement agreement or concession contract to have arisen on the basis of circumstances if the contracting entity has explicitly set about implementing the procurement.
- (3) An inefficiency sanction, a penalty fine and shortening of an agreement period may only be ordered in a procurement and concession contract concerning services under Schedule E that exceeds the national threshold value, and in other procurements that exceed the European Union threshold value.
- (4) The sanction referred to in subsection 1 may only be ordered if the unlawful procedure affected the outcome of the procurement procedure or the status of a concerned party in the procurement procedure.

Section 155

Compensatory fine

- (1) A compensatory fine may be imposed if the harm caused by a measure referred to in points 1–3 of subsection 1 of section 154 to the contracting entity, to the rights of others or to the public interest could outweigh the benefits that the measure would bring, or if the appeal

was filed only after the procurement agreement had been concluded. The process of determining the compensatory fine shall consider the nature of the error or default of the contracting entity, the value of the procurement or concession contract that is the subject-matter of the appeal, and the costs and damage caused to the appellant. The Market Court may nevertheless waive the compensatory fine if the contracting entity has refrained from implementing the procurement decision for the duration of proceedings at the Market Court.

- (2) A compensatory fine may not exceed ten per cent of the value of the procurement agreement without special cause.

Section 156

Inefficiency sanction

- (1) The Market Court may find a procurement agreement or concession contract to be inefficient if:
 - 1) the contracting entity has made a direct procurement without the grounds prescribed in this Act and without proceeding in the manner referred to in section 131;
 - 2) the contracting entity has concluded a procurement agreement or concession contract, notwithstanding the duty to observe a standstill period in the procurement process;
 - 3) the contracting entity has concluded a procurement agreement or concession contract in breach of section 150, even though the procurement case had been referred to the Market Court for settlement.
- (2) A further condition in the cases referred to in points 2 and 3 of subsection 1 shall be that the contracting entity has made some other error in contravention of this Act that affected the appellant's prospects of securing the procurement agreement or concession contract.

- (3) The Market Court may find a procurement agreement to be inefficient if the contracting entity has concluded a procurement agreement pursuant to section 130 in competitive tendering based on a framework agreement or a dynamic purchasing system without observing the standstill period, and if the competitive tendering procedure failed to comply with subsections 2 or 3 of section 43 or with sections 49–52, so that the error affected the appellant’s prospects of securing the procurement agreement.
- (4) The Market Court shall determine the contractual obligations to which the inefficiency sanction relates. An inefficiency sanction may only relate to contractual obligations that have not yet been discharged.

Section 157

Waiving of inefficiency sanction

The Market Court may waive an inefficiency sanction on overriding public interest grounds. Economic interests relating directly to an agreement may only be deemed overriding grounds when the inefficiency of the agreement would have exceptionally unreasonable consequences.

Section 158

Penalty fine and shortening of agreement period

- (1) The Market Court may order a contracting entity to pay a penalty fine to the State if;
 - 1) the Market Court has imposed an inefficiency sanction;
 - 2) the contracting entity has concluded an agreement notwithstanding the duty to observe a standstill period in the procurement agreement or concession contract;
 - 3) the contracting entity has concluded a procurement agreement or concession contract in breach of section 150, even though the procurement case had been referred to the Market Court for

settlement; or

- 4) the Market Court has waived a sanction for inefficiency of a procurement agreement or concession contract on overriding public interest grounds in accordance with section 157.
- (2) In the cases referred to in point 4 of subsection 1, the Market Court may, in addition to or instead of imposing a penalty fine, shorten the agreement period of the procurement agreement or concession contract to expire within the period stipulated by the court.
 - (3) When imposing a sanction, the Market Court shall consider the nature of the error or default of the contracting entity and the value of the procurement that is the subject-matter of the appeal. A penalty fine shall not exceed ten per cent of the value of the procurement agreement or concession contract.

Section 159

Imposition of sanction on proposal by the Finnish Competition and Consumer Authority

- (1) On a proposal of the Finnish Competition and Consumer Authority referred to in section 141, the Market Court may:
 - 1) order the contracting entity to pay an inefficiency sanction;
 - 2) order the contracting entity to pay a penalty fine to the State;
 - 3) order a shortening of the agreement period;
 - 4) quash the procurement decision.
- (2) The imposition of an inefficiency sanction shall be governed by the provisions of subsection 4 of section 156. The Market Court may waive an inefficiency sanction on the grounds prescribed in section 157. In such cases the Market Court may order the contracting entity to pay a penalty fine, and in addition to or instead of this, may shorten the agreement period to expire within the period stipulated by the

court in compliance with the provisions of subsection 3 of section 158.

Section 160

Application and joint effect of sanctions

- (1) If some contracting entity has assumed responsibility for a procurement procedure on behalf of other contracting entities, then the Market Court may address a sanction that it imposes to any such contracting entity that has acted on behalf of other contracting entities. If the procurement procedure was the responsibility of a contracting entity that is not a public authority or legal person, then the sanction may be addressed to a contracting entity that is a public authority or legal person participating in the operations of the said responsible contracting entity.
- (2) When ordering the sanctions referred to in this Act, the Market Court shall give consideration to ensuring that the joint effect of sanctions does not become unreasonable for a contracting entity or its contracting party.

Section 161

Conditional fine

- (1) The Market Court may impose a conditional fine to enforce a prohibition or duty referred to in this Act. The imposition and ordering of payment of a conditional fine is governed by the Act on Conditional Fines (1113/1990).
- (2) If some contracting entity has assumed responsibility for a procurement decision or other measure on behalf of other contracting entities, then the Market Court may impose a conditional fine on any such contracting entity that has acted on behalf of other contracting entities. If the procurement procedure was the responsibility of a contracting entity that is not a public authority or legal person, then

the conditional fine may be addressed to a contracting entity that is a public authority or legal person participating in the operations of the said responsible contracting entity.

Section 162

Service of a decision of the Market Court

- (1) A decision of the Market Court and its associated instructions for appeal shall be served in a verifiable manner, as provided in the Administrative Judicial Procedure Act.
- (2) Notwithstanding the provisions of subsection 1, a decision of the Market Court and its associated instructions for appeal may, with the consent of the party seeking review and of the contracting entity, be served using the electronic contact details that these parties have notified to the Market Court. The provisions of subsection 1 of section 127 shall govern electronic service of process.

Section 163

Prohibition of review based on appeal grounds

A case falling within the jurisdiction of the Market Court shall not be open to review pursuant to the Local Government Act (410/2015) or the Administrative Judicial Procedure Act.

Section 164

Review of a decision of the Finnish Competition and Consumer Authority

Review of a decision of the Finnish Competition and Consumer Authority pursuant to section 140 may be sought by appealing to the Market Court in the manner provided in the Administrative Judicial Procedure Act. Review of a resolution issued in response to any other request for measures may not be sought by appeal.

Section 165

Review of a decision of the Market Court

Review of decisions of the Market Court referred to in subsection 1 of section 151 and points 1–5 and 7 of section 154 may only be sought by appealing to the Supreme Administrative Court if the Supreme Administrative Court grants leave to appeal. The Administrative Judicial Procedure Act shall govern review in other respects. Review of a decision of the Market Court referred to in point 6 of section 154 may be sought by appealing to the Supreme Administrative Court in the manner provided in the Administrative Judicial Procedure Act.

Section 166

Review of a procurement decision of an ecclesiastical authority

The Church Act shall govern reviews of procurement decisions made by authorities of the Evangelical Lutheran Church.

Section 167

Supplementary provisions

- (1) In addition to the provisions of this Act, the Administrative Judicial Procedure Act shall govern an appeal and a motion submitted by the Finnish Competition and Consumer Authority.
- (2) The Market Court Proceedings Act (100/2013) shall also govern the hearing of cases at the Market Court.

Section 168

Implementation of decisions

- (1) A decision of the Market Court shall be observed notwithstanding any appeal unless the Supreme Administrative Court otherwise orders. A

decision of the Market Court imposing the sanctions referred to in points 4–7 of subsection 1 of section 154 may nevertheless only be enforced when the decision has become legally final.

- (2) A decision of the Market Court and of the Supreme Administrative Court to impose a penalty fine shall be notified to the Legal Register Centre, which shall ensure that the decision is enforced.

Section 169

Compensation for damages

- (1) A person who causes loss or damage to a candidate, tenderer or supplier by a procedure that is contrary to this Act, to European Union legislation, or to the World Trade Organisation Agreement on Government Procurement shall be liable to compensate for the loss or damage that it has caused.
- (2) When a claim for damages concerns the costs incurred in a tendering procedure, it shall be sufficient for an award of damages that the candidate, tenderer or supplier demonstrates the incorrect procedure referred to in subsection 1, and that the claimant would have had genuine prospects of winning a competitive tendering process conducted by a correct procedure.
- (3) The competent court in actions for damages shall be the District Court referred to in Chapter 10 of the Procedural Code.

Chapter 17

Miscellaneous provisions

Section 170

Archiving of procurement agreements

Contracting entities shall archive copies of all concluded procurement agreements with a value of not less than EUR 1,000,000 in the case of

supply contracts and service procurement agreements, and EUR 10,000,000 in the case of public works contracting agreements, for at least the duration of the agreement.

Section 171

Right of access to information

Notwithstanding provisions governing confidentiality, the contracting entities referred to in in points 1–4 of subsection 1 of section 5 shall be entitled to essential information from a public authority and from a party performing a public function concerning the enterprises and corporations referred to in section 3 of the Business Information Act (244/2001) in order to determine the existence of the grounds for discretionary exclusion referred to in subsection 1 of section 81. The information may be supplied by means of a technical user link and without the consent of the party for the protection of whose interests the duty of confidentiality was prescribed.

Section 172

Monitoring report submitted to the Commission and exchange of information between Member States

- (1) The Ministry of Economic Affairs and Employment shall be responsible for submitting a monitoring report to the Commission every three years. The Ministry of Economic Affairs and Employment shall also be responsible for releasing the information referred to in sections 71–73, 80, 81, 88, 90 and 96 to the public authorities of other Member States.
- (2) Contracting entities and other public authorities shall furnish the Ministry of Economic Affairs and Employment, on request, with the information required for drafting the monitoring report, compiling statistics and exchanging information.

Section 173

Entry into force

- (1) This Act shall enter into force on 1 January 2017. Subsection 3 of section 87 of the Act shall nevertheless not take effect until 18 April 2018.
- (2) This Act shall repeal the Act on Public Contracts (348/2007), hereinafter referred to as *the Old Procurement Act*, and the Act on Electronic Auctions and Dynamic Procurement Systems (698/2011).
- (3) The provisions of Chapter 15 concerning regulatory control, and of subsection 1 and 2 of section 148, subsection 1 of section 149, section 159, 164 and 167 on the Finnish Competition and Consumer Authority and its decisions and motions shall apply only as of 1 January 2017.
- (4) If the Old Procurement Act is referred to elsewhere in legislation, then this Act shall be applied in its stead.

Section 174

Transitional provisions

- (1) Chapter 8 of this Act shall govern central purchasing bodies only as of 18 April 2017 and other contracting entities as of 18 October 2018. Chapter 4 of the Government Decree on Public Procurement (614/2007) issued pursuant to the Old Procurement Act shall govern central purchasing bodies until 17 April 2017 and other contracting entities until 17 October 2018.
- (2) Notwithstanding the provisions of subsection 1, Chapter 8 of this Act may govern information exchanges pertaining to a procurement procedure after the entry into force of this Act if information is exchanged in electronic form.
- (3) The percentage and monetary limits prescribed in subsection 1 of section 15 and subsections 3 and 4 of the said section of this Act shall apply to in-house entities operating elsewhere than in the field of

social and health services only as of 1 January 2019. The said percentage and monetary limits and subsections 3 and 4 of section 15 shall apply to in-house entities operating in the field of social and health services only as of 1 January 2022.

- (4) The percentage and monetary limits prescribed in subsection 1 of section 16 and subsections 2 and 3 of the said section of this Act shall apply to contracting entities operating elsewhere than in the field of social and health services only as of 1 January 2019. The said percentage and monetary limits and subsections 2 and 3 of section 16 shall apply to contracting entities operating in the field of social and health services only as of 1 January 2022.
- (5) The percentage referred to in subsection 1 of section 15 and subsection 1 of section 16 applicable to in-house entities and contracting entities operating elsewhere than in the field of social and health services shall be 10 per cent until 31 December 2018. The percentage referred to in subsection 1 of section 15 and subsection 1 of the section 16 applicable to in-house entities and contracting entities operating in the field of social and health services shall be 10 per cent until 31 December 2021. The percentage referred to in subsection 1 of section 15 and subsection 1 of section 16 applicable to in-house entities and contracting entities operating in the field of waste management shall be 15 per cent until 31 December 2017.
- (6) Procurement procedures that are pending on the entry into force of this Act and were initiated before the entry into force of this Act shall be governed by the provisions that were in force when this Act entered into force.

[Government bill 108/2016](#)

Report 31/2016 of the Parliamentary Finance Committee

Response of Parliament 239/2016

Directive 2014/23/EU of the European Parliament and of the Council (32014L0023); OJ L 94, 28.3.2014, p. 1–64

Directive 2014/24/EU of the European Parliament and of the Council
(32014L0024); OJ L 94, 28.3.2014, p. 65–242

Helsinki, 29 December 2016

President of the Republic

Sauli Niinistö

Minister of Justice and Employment

Jari Lindström

Annex

Schedule A

Services referred to in points 11–13 of subsection 1 of section 9 of the Act

Services referred to in point 11 of subsection 1 of section 9 of the Act

CPV reference number

Description of services

Fire-brigade and rescue services 75250000-3

Fire-brigade services 75251000-0

Firefighting services 75251100-1

Fire-prevention services 75251110-4

Forest-firefighting services 75251120-7

Rescue services 75252000-7

Civil defence services 75222000-8

Nuclear safety services 98113100-9

Ambulance services 85143000-3

Services referred to in point 12 of subsection 1 of section 9 of the Act

CPV reference number

Description of services

Advertising campaign services 79341400-0

Propaganda film production 92111230-9

Propaganda video-tape production 92111240-6

Services referred to in point 13 of subsection 1 of section 9 of the Act

CPV reference number

Description of services

Research and development services and related consultancy services 73000000-2

Experimental development services	73120000-9
Design and execution of research and development	73300000-5
Pre-feasibility study and technological demonstration	73420000-2
Test and evaluation	73430000-5

Schedule B

List of public works contracts

NACE Rev. 1					CPV code
SECTION F			BUILDING		
2-digit level	3-digit level	4-digit level	Description	Notes	
45			Construction	This division includes: - construction of new buildings and works, restoring and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: - demolition of buildings and other structures - clearing of building sites - earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. - site preparation for mining: - overburden removal and other development and preparation of mineral properties and sites This class also includes: - building site drainage - drainage of agricultural or forestry land	45110000

		45.12	Test drilling and boring	<p>This class includes:</p> <ul style="list-style-type: none"> - test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. <p>This class excludes:</p> <ul style="list-style-type: none"> - drilling of production oil or gas wells, see 11.20. - water well drilling, see 45.25, - shaft sinking, see 45.25, - oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20. 	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> - construction of all types of buildings construction of civil engineering constructions, - bridges, including those for elevated highways, viaducts, tunnels and subways 	45210000 except: — 452133 16 452200 00 452310 00 452320 00

				<ul style="list-style-type: none"> - long-distance pipelines, communication and power lines - urban pipelines, urban communication and power lines, - ancillary urban works - assembly and erection of prefabricated constructions on the site <p>This class excludes:</p> <ul style="list-style-type: none"> - service activities incidental to oil and gas extraction, see 11.20 - erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28 - construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23 - building installation, see 45.3 - building completion, see 45.4, - architectural and engineering activities, see 74.20, - project management for construction, see 74.20 	
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> - erection of roofs - roof covering 	452610 00

				- waterproofing work	
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> - construction of highways, streets, roads, other vehicular and pedestrian ways - construction of railways - construction of airfield runways - construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations - painting of markings on road surfaces and car parks <p>This class excludes:</p> <ul style="list-style-type: none"> - preliminary earth moving, see 45.11 	<p>452122 12 and DA03 452300 00 except: - 452310 00 - 452320 00 - 452341 15</p>
		45.24	Water construction	<p>This class includes the following construction work:</p> <ul style="list-style-type: none"> - waterways, harbour and river works, pleasure ports (marinas), locks, etc. - dams and dykes - dredging - underwater construction work 	<p>452400 00</p>
		45.25	Other construction work involving special trades	<p>This class includes:</p> <ul style="list-style-type: none"> - construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment 	<p>452500 00 452620 00</p>

				<ul style="list-style-type: none"> - construction of foundations, including pile driving - water well drilling and construction, shaft sinking - erection of non-self-manufactured steel elements - steel bending - bricklaying and stone setting - scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms - erection of chimneys and industrial ovens <p>This class excludes:</p> <ul style="list-style-type: none"> - renting of scaffolds without erection and dismantling, see 71.32 	
	45.3		Building installation		453000 00
		45.31	Installation of electrical wiring and fittings	<p>This class includes:</p> <p>Installation in buildings or other construction projects of:</p> <ul style="list-style-type: none"> - electrical wiring and fittings - telecommunication systems - electrical heating systems - house aerials - fire alarms - theft alarms 	452133 16 453100 00 except: — 453160 00

				<ul style="list-style-type: none"> - lifts and escalators - lightning conductors, etc. 	
		45.32	Insulation work activities	<p>This class includes:</p> <ul style="list-style-type: none"> - installation in buildings or other construction projects of thermal, sound or vibration insulation <p>This class excludes:</p> <ul style="list-style-type: none"> - waterproofing, see 45.22 	45320000
		45.33	Plumbing	<p>This class includes:</p> <p>Installation in buildings or other construction projects of:</p> <ul style="list-style-type: none"> - plumbing and sanitary equipment - gas fittings - heating, ventilation, refrigeration or air-conditioning equipment and ducts - fire extinguishing systems 	45330000
				<p>This class excludes:</p> <ul style="list-style-type: none"> - installation of electrical heating systems, see 45.31 	
		45.34	Other building installation	<p>This class includes:</p> <ul style="list-style-type: none"> - installation of illumination and signalling systems for roads, railways, airports and harbours - installation in buildings or other construction projects of fittings and fixtures n.e.c. 	4523411545316 00045340000
	45.4		Building completion		45400000

		45.41	Plastering	<p>This class includes:</p> <ul style="list-style-type: none"> - application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials 	45410000
		45.42	Joinery installation	<p>This class includes:</p> <ul style="list-style-type: none"> - installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials - interior finishing work such as ceiling cladding - wall panelling, installation of movable partitions, etc. 	45420000
				<p>This class excludes:</p> <ul style="list-style-type: none"> - laying of parquet and other wood floor coverings, see 45.43 	
		45.43	Floor and wall covering	<p>This class includes:</p> <ul style="list-style-type: none"> - laying, tiling, hanging or fitting in buildings or other construction projects of: <ul style="list-style-type: none"> - ceramic, concrete or cut stone wall or floor tiles - parquet and other wood floor coverings carpets and linoleum floor coverings - including of rubber or plastic - terrazzo, marble, granite or slate floor or wall coverings - wallpaper 	45430000
		45.44	Painting and glazing	<p>This class includes:</p> <ul style="list-style-type: none"> - interior and exterior painting 	45440000

				<p>of buildings</p> <ul style="list-style-type: none"> - painting of civil engineering structures - installation of glass, mirrors, etc. <p>This class excludes:</p> <ul style="list-style-type: none"> - installation of windows, see 45.42 	
		45.45	Other building completion	<p>This class includes:</p> <ul style="list-style-type: none"> - installation of private swimming pools - steam cleaning, sand blasting and similar activities for building exteriors - other building completion and finishing work n.e.c. <p>This class excludes:</p> <ul style="list-style-type: none"> - interior cleaning of buildings and other structures, see 74.70 	45212212 and DA0445450000
	45.5		Hire of construction or demolition equipment with operator		45500000
		45.50	Hire of construction or demolition equipment with operator	<p>This class excludes:</p> <ul style="list-style-type: none"> - renting of construction or demolition machinery and equipment without operators, see 71.32 	45500000

Schedule C

List of international social, environmental and labour conventions referred to in point 5 of subsection 1 of section 81:

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- ILO Convention 98 on the Right to Organise and Collective Bargaining;
- ILO Convention 29 on Forced Labour;
- ILO Convention 105 on the Abolition of Forced Labour;
- ILO Convention 138 on Minimum Age;
- ILO Convention 111 on Discrimination (Employment and Occupation);
- ILO Convention 100 on Equal Remuneration;
- ILO Convention 182 on Worst Forms of Child Labour;
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.

Schedule D

Investigations referred to in subsections 6 and 7 of section 88 of the Act concerning the suitability of a candidate or tenderer:

Economic and financial standing (subsection 6 of section 88)

- appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- the presentation of financial statements or extracts from the financial statements, where publication of financial statements is required under the law of the country in which the economic operator is established;
- a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the procurement agreement for a maximum of the last three financial years, depending on the date on which the undertaking was established or the economic operator began trading, if details of these turnovers are available.

Technical competence (subsection 7 of section 88)

- a list of the works completed over no longer than the preceding five years, accompanied by certificates of satisfactory implementation and outcome for the principal works; where necessary to ensure adequate competition, contracting authorities may indicate that evidence of relevant works completed more than five years before will be taken into account;
- a list of the principal completed supplies or services delivered or performed over no longer than the preceding three years, and details of their value, time and public or private recipient; where necessary to ensure adequate competition, contracting authorities may indicate that evidence of relevant supplies or services delivered or performed more than three years before will be taken into account;
- 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, in the case of public works contracts, those upon whom the contractor can call in order to carry out the work;

- a description of the technical facilities and measures used by the economic operator for ensuring quality and the undertaking's study and research facilities;

- an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract;

- where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement, of the production capacities of the supplier or the technical capacity of the service provider and, where necessary, of the means of study and research which are available to it and the quality control measures that it will apply;

- the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff, provided that they are not assessed as a criterion for evaluating tenders;

- an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;

- a statement of the average annual staffing of the service provider or contractor and the number of managerial staff for the last three years;

- a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the procurement agreement;

- an indication of the proportion of the procurement agreement that the economic operator potentially intends to subcontract;

- in procurements of goods, any samples, descriptions or photographs whose authenticity must be certifiable on request by the contracting

authority;

- in procurements of goods, any certificates drawn up by official quality control institutes or agencies of recognised competence, verifying the conformity of clearly identified products by reference to technical specifications or standards.

Schedule E

Social and health and other specific service procurements referred to in section 107 of the Act:

1) Health, social and related services falling under CPV codes 75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 [Supply services of domestic help personnel]; 79624000-4 [Supply services of nursing personnel] and 79625000-1 [Supply services of medical personnel] 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5; 98500000-8 [Private households with employed persons] and 98513000-2 to 98514000-9 [Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services];

2) Social, education, health care and cultural administration services falling under CPV codes 85321000-5 and 85322000-2, 75000000-6 [Administration, defence and social security services], 75121000-0, 75122000-7, 75124000-1; 79995000-5 to 79995200-7; 80000000-4 General education and vocational training services– 80660000-8; 92000000-1 and 92700000 to 79950000-8 [Exhibition, fair and congress organisation services], 79951000-5 [Seminar organisation services], 79952000-2 [Event services], 79952100-3 [Cultural event organisation services], 79953000-9 [Festival organisation services], 79954000-6 [Party organisation services], 79955000-3 [Fashion show organisation services], 79956000-0 [Fair and exhibition organisation services];

3) Compulsory social security services falling under CPV code 75300000-9, where falling within the scope of the Act;

4) social security benefit services falling under CPV codes 75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1;

5) Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services falling under CPV codes

98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3;

6) Services of religious organisations falling under CPV code 98131000-0;

7) hotel and catering services falling under CPV codes 55100000-1 to 55410000-7; 55521000-8 to 55521200-0 [55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service] 55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services 55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal services;

8) Legal services to the extent not excluded pursuant to section 9, and where falling under CPV codes 79100000-5 to 79140000-7; 75231100-5;

9) Other administrative services and central government services falling under CPV codes 75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3;

10) Services provided to the community falling under CPV codes 75200000-8 to 75231000-4;

11) Prison services, public security and rescue services to the extent not excluded pursuant to section 9, and where falling under CPV codes 75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9;

12) investigation and security services falling under CPV codes 79700000-1 to 79721000-4 [Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services] 79722000-1[Graphology services], 79723000-8 [Waste analysis services];

13) international services falling under CPV codes 98900000-2 [Services

provided by extra-territorial organisations and bodies] and 98910000-5 [Services specific to international organisations and bodies];

14) postal services falling under CPV codes 64000000-6 [Postal and telecommunications services], 64100000-7 [Post and courier services], 64110000-0 [Postal services], 64111000-7 [Postal services related to newspapers and periodicals], 64112000-4 [Postal services related to letters], 64113000-1 [Postal services related to parcels], 64114000-8 [Post office counter services], 64115000-5 [Mailbox rental], 64116000-2 [Post-restante services], 64122000-7 [Internal office mail and messenger services]; or

15) miscellaneous services falling under CPV codes 50116510-9 [Tyre-remoulding services], 71550000-8 [Blacksmith services].