

## **N.B. Unofficial translation**

**No 321**

### **Act on the Amendment of the Act on Public Contracts (321/2010)**

Adopted in Helsinki on 30 April 2010

#### *Section 1 – Purpose of the Act*

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This Act implements:

- 1) Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, hereinafter referred to as the *Contract Directive*;
- 2) Council Directive 89/665/EEC on the coordination of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, hereinafter referred to as the *Supervision Directive*; and
- 3) Directives 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, hereinafter referred to as the *Remedies Directive*.

#### *Section 15 – National thresholds*

This Act shall not apply:

- 1) to public supply and service contracts, design contests or service concessions the estimated value of which, net of VAT, is less than EUR 30,000;
- 2) contrary to what is stated in paragraph 1 on public service contracts, health care and social services contracts within the meaning of Annex B (Group 25) and the services mentioned in Annex B and purchased pursuant to section 3 of Chapter 6 of the Act on the public employment service (1295/2002) in a joint purchasing agreement with the employer, provided that the estimated value of the contract, net of VAT, is less than EUR 100,000; and
- 3) to public works and public works concessions contracts the estimated value of which, net of VAT, is less than EUR 150,000.

#### *Section 21 – Application rules for public supply and service contracts, service concessions and public works contracts*

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Provisions laid out in section 35 concerning the publication requirement of contract award notices and the publication of direct award notices, those laid out in sections 44–46 concerning technical specifications, technical specifications for environmental characteristics and proof provided by the tenderer, those laid out in section 77 concerning the standstill period, those laid out in section 78 concerning exceptions to the application of the standstill rule and those laid out in section 79 concerning direct award notices and the conclusion of public contracts shall also be applied to public service contracts mentioned in Annex B which exceed the EU threshold in accordance with section 16(1)(1) or (2).

#### *Section 35 – Public contract notices*

- (1) Contracting authorities shall send prior information notices, contract notices, design contest notices, public works concession notices and contract award notices for publication. Contracting authorities may also send direct award notices for publication. If the concessionaire is not a contracting authority, it shall send a contract notice for public works for publication based on public works concession notices.

- (2) Contract notices shall be sent for publication to the entity indicated by the Ministry of Employment and the Economy.
- (3) Detailed provisions concerning the publication requirements, the means of communication used to submit notices, the content and publication of notices and other matters concerning the submission of notices as defined in subsection 1 which are required in the Contract Directive, the Remedies Directive and nationally, are laid down in a Government decree.

## Chapter 10

### **Decisions concerning the award of contracts, public contracts, procurement rectification and the transparency of contract documents**

#### *Decisions concerning the award of contracts and the notification thereof*

##### *Section 73 – Decisions concerning the award of contracts*

- (1) The contracting authority shall provide in writing the decisions concerning the position of the candidates and tenderers and the results of the tendering procedure, including the grounds for the decision.
- (2) The decision or related documents shall show any points which significantly influenced the results, including the grounds for rejecting the candidate, tenderer or tender and the grounds on which the comparison of accepted tenders was carried out. In a decision concerning contract competition based on framework agreements, it suffices to state the facts showing that the selection and award criteria have been applied as required by section 32. If the standstill period referred to in section 77 applies to the contract, the decision or related documents shall also show after what period of time the contract can be awarded.
- (3) The contracting authority is not required to make a decision as referred to in this section concerning contracts for additional supplies as referred to in section 28 or the temporary arrangements for a contract as referred to in section 93.
- (4) In contracts based on framework agreements the contracting authority is not required to make the decision referred to in this section if:
  - 1) the contract is awarded within the limits of the terms laid down in the framework agreement without competition; or
  - 2) the value of the contract in the competition based on the framework agreement does not exceed the EU threshold.

##### *Section 74 – Instructions for appeal and petition instructions*

- (1) The contracting authority shall include in its decisions instructions for appeal explaining how to refer a case to the Market Court, contact information of the contracting authority for the declaration referred to in section 88, and instructions for seeking rectification (*petition instructions*) explaining how candidates or tenderers can have the case re-submitted as a procurement rectification.
- (2) The provisions with regard to appeal in Chapter 3 of the Administrative Judicial Procedure Act (586/1996) and with regard to petition instructions in Chapter 7 of the Administrative Procedure Act (434/2003) shall apply to the issuing and amendment of instructions of appeal and petition instructions.

##### *Section 75 – Notification of the award of the contract*

- (1) The decision of the contracting authority, including the grounds for the decision, the instructions for appeal and the petition instructions, shall be submitted in writing to the parties concerned. The decision, together with the aforementioned documents, shall be submitted using the electronic contact information conveyed by candidates and tenderers to the contracting authority. In using the electronic contact information, candidates and tenderers shall be

deemed to have received notification of the decision and accompanying documents on the date that the electronic message containing the aforementioned documents is available in the recipient's reception equipment such that the message can be handled. That point in time shall be considered the date the message was sent if no reliable statement is presented with regard to the non-functioning of the data communication links or other reason due to which the electronic message reached the recipient later. In using electronic notification, the contracting authority shall separately note in the message the date it is sent.

- (2) The decision and the grounds thereof and the instructions for appeal and the petition instructions can also be communicated in a normal letter as provided for in the Administrative Procedure Act. Candidates and tenderers shall be deemed to have received notification of the decision and accompanying documents no earlier than seven days after they are sent if the candidates or tenderers do not prove that the notification occurred later.

### *Public contract*

#### *Section 76 – Conclusion of a public contract*

After the decision to award a contract the contracting authority shall conclude a public contract. The public contract is concluded upon signing a written agreement.

#### *Section 77 – Standstill period*

- (1) In contracts exceeding the EU threshold as defined in section 16, a public contract can be concluded at the earliest 21 days after the candidate or tenderer has received or is deemed to have received the decision and the instructions for appeal (*standstill period*).
- (2) A standstill period shall not be applied in direct awards.
- (3) The effect of an appeal on the conclusion of a contract is provided for in section 90.

#### *Section 78 – Exceptions to the application of the standstill rule*

The standstill period need not be upheld if:

- 1) the contract concerns a procurement carried out on the basis of the framework agreement as referred to in section 32;
- 2) the contract is concluded with the tenderer who has given the only approved tender and there are no other tenderers or candidates whose position is affected by the choice of the contracting party.

#### *Section 79 – Notification of direct awards and conclusion of public contracts*

In direct awards exceeding the EU threshold as referred to in section 16, the contracting authority may, after the award decision, send a notice for publication concerning the direct award before the conclusion of the public contract, in which case the public contract shall be concluded at the earliest 14 days after the publication of the notice in the Official Journal of the European Union.

### *Procurement rectification*

#### *Section 80 – Rectification of procurement*

- (1) A contracting authority can remove an incorrect decision or annul other decisions made in the contract award procedure concerning the legal status of the candidates or tenderers, and make a new decision (*procurement rectification*) if the award decision or another decision reached in the contract award procedure is based on an error occurring in the application of the law.
- (2) The amendment of an award decision or other decision does not require the consent of the party concerned. An award decision or other decision cannot, however, be amended through rectification of a procurement if the contract has been concluded.

### *Section 81 – Initiation of procurement rectifications*

- (1) The contracting authority may decide to take up a procurement rectification on its own initiative or in response to a demand of the party in question. The contracting authority shall immediately inform the parties concerned of the initiation of a procurement rectification.
- (2) The concerned party shall present the demand no later than 14 days after receipt of the notification of the award decision or other decision reached by the contracting authority in the contract award procedure. The contracting authority may itself amend the award decision or other decision no later than 60 days after the date the decision concerning the procurement rectification is made.
- (3) An appeal to the Market Court does not prevent a procurement rectification or its processing. A procurement rectification may also apply to a decision by the contracting authority which has become final if the case has not been submitted to the Market Court for a ruling.

### *Section 82 – Effect of the processing of procurement rectifications on the proceedings in the Market Court*

- (1) The initiation and processing of a procurement rectification does not affect the time limit during which the concerning party has the right, on the basis of this Act, to appeal against the decision before the Market Court.
- (2) If the amended decision or other decision reached during the contract award procedure has been appealed against before the Market Court, the Market Court shall be notified of the processing of the case as a procurement rectification and informed of the decision reached. In the processing of a procurement rectification, the contracting authority may prohibit or suspend the implementation of the award decision or other decision. The Market Court shall be informed of a prohibition and suspension of the implementation if an appeal has been lodged against the decision in the Market Court.
- (3) If the contracting authority amends its decision to award a contract or another decision as a procurement rectification such that the appellant to the Market Court no longer has the need for judicial relief or the need for a justified decision, the Market Court may decline to process such a matter without giving a ruling on the principal claim.

### *Section 83 – The application of procurement rectifications on other contracts*

A procurement rectification can also be applied to the amendment of such award decisions or other decisions made in the contract award procedure by contracting authorities to which this Act does not otherwise apply. It is not possible to lodge an appeal in the Market Court against a decision reached on the basis of such a procurement rectification.

### *Transparency of contract documents*

#### *Section 84 – Application of provisions concerning the transparency of documents*

- (1) The Act on the Openness of Government Activities (621/1999) shall apply to the transparency of the contracting authority's documents, payments for obtaining the documents and a party's right to obtain information, insofar as the contracting authority is the authority as defined in section 4 of the aforementioned Act or if it must comply with the Act, pursuant to provisions laid down elsewhere in law.
- (2) Where the contracting authority organising the competitive bidding does not fall within the meaning of subsection 1, the provisions laid down in the Act on the Openness of Government Activities concerning the party's rights concerning documents, rules on the transparency of documents, and the procedure and decisions concerning access to information, shall apply to the right of the participants to be informed of the documents drawn up and received for purposes of the tendering procedure and the confidentiality rule concerning the employees of the contracting authority.

- (3) Appeals against a decision reached by the contracting authority on the obtaining of information on documents can be made in accordance with the provisions in section 33 of the Act on the Openness of Government Activities. The administrative court competent to process appeals lodged against parties other than a contracting authority acting as a public authority is the administrative court in the judicial district of which the contracting authority is established.
- (4) The provisions of the Church Act (1054/1993) shall apply to the public availability of documents of the Evangelical Lutheran Church and parishes thereof.

## Chapter 11

### **Appeal and penalties**

#### *Section 85 – Parties entitled to appeal*

An interested party may refer cases concerning the contract to the Market Court. A case may also be referred to the Market Court by:

- 1) the Ministry of Employment and the Economy in a case concerning community procedure, for the purpose of monitoring;
- 2) in respect of cases specified in section 13, the referral can also be made by a state or municipal authority or other agency which has granted a project-specific subsidy to execute a works contract.

#### *Section 86 – Object of the appeal*

- (1) An appeal may be lodged before the Market Court against an award decision or other decision reached in a contract award procedure by the contracting authority as defined in this Act concerning the position of the candidate or tenderer.
- (2) An appeal may not be lodged before the Market Court against an award decision or other decision of the contracting authority which concerns only the preparation of the contract award procedure.
- (3) An appeal may not be lodged against a contract award based on the framework agreement referred to in section 32 above, if the Market Court does not give authorisation for the proceedings. Authorisation shall be given if:
  - 1) the processing of the case is important in other matters with regard to the application of the law; or
  - 2) there is a weighty reason concerning the procedures of the contracting authority.

#### *Section 87 – Period for appeal*

- (1) If not otherwise provided in this section, an appeal must be lodged in writing no later than 14 days after the candidate or tenderer has received or is deemed to have received notification of the award decision with the instructions for appeal.
- (2) If the contracting authority has concluded a public contract after the decision to award a contract on the basis of section 78, paragraph 1 without complying with the standstill period, the appeal shall be lodged no later than 30 days after the tenderer has received notification of the decision with the instructions for appeal.
- (3) An appeal before the Market Court shall be lodged no later than six months after the decision to award the contract has been reached in the event the candidate or tenderer has received notification of the decision with the instructions for appeal and the decision to award the contract or instructions for appeal were materially deficient.
- (4) If the contracting authority has sent the notice concerning a direct award for publication in the Official Journal of the European Union the appeal shall be lodged no later than 14 days after the publication of the notice.
- (5) If the notice referred to in subsection 4 has not been published, the appeal concerning a direct award shall be lodged:

- 1) no later than 30 days after a contract award notice has been published in the Official Journal of the European Union; or
- 2) no later than six months after the conclusion of the public contract.

*Section 88 – Notification of appeal to the contracting authority and the list of procurement cases*

- (1) The appellant against a procurement case shall inform the contracting authority in writing of the submission of the case to the Market Court.
- (2) The notification shall be sent to the contracting authority no later than as the appeal against the contract is submitted to the Market Court. The notification shall be sent to the address stated by the contracting authority.
- (3) The Market Court shall maintain and publish a complete and up-to-date list of procurement cases that have been initiated at the Market Court.

*Section 89 – The contracting authority as opponent and compensation of legal costs*

- (1) In the proceedings of a procurement case the contracting authority shall be considered the opponent of the party or agency lodging the appeal.
- (2) The provisions in section 74(1) and (2) of the Administrative Judicial Procedure Act shall apply to the compensation of legal costs in a procurement case.
- (3) The provisions in section 74(1) and (2) of the Administrative Judicial Procedure Act concerning public authorities or other public parties shall apply to the assessment of the liability to pay the opponent's legal costs. If the contracting authority is not a public authority or legal person, the obligation regarding the compensation of the opponent's legal costs may be directed at such a public authority or legal person participating in or belonging to such a contracting authority. If a contracting authority has acted as an agent in the tendering procedure on behalf of other contracting authorities, the liability to pay legal costs may be directed at the contracting authority acting for other such contracting authorities.

*Section 90 – The effect of appeal on the conclusion of a public contract*

- (1) In a contract where the standstill period or the time limit referred to in section 79 must be observed, the contracting authority cannot conclude a public contract if the case has been submitted to the Market Court for a ruling.
- (2) If the Market Court decides a case concerning implementation or gives a ruling in a principal claim before the standstill period or the time limit referred to in section 79 has expired, the contracting authority shall observe the standstill period or the time limit referred to in section 79 to the end of the period or limit notwithstanding the ruling of the Market Court.

*Section 91 – Interim decisions of the Market Court*

- (1) After an appeal has been initiated, the Market Court may prohibit, suspend or permit the implementation of the decision to award the contract or otherwise issue instructions to suspend the contract award procedure as an interim measure for the period of proceedings in the Market Court.
- (2) In its decision concerning the measure defined in subsection 1, the Market Court shall take into consideration that the harm caused by the measure to the opponent, the rights of third parties or the public interest may not outweigh its benefits.
- (3) A legally trained member of the Market Court may alone issue a ruling as an interim measure.

*Section 92 – Interim obligations of the contracting authority*

- (1) After an appeal has been initiated, the contracting authority may give the Market Court a written undertaking not to implement the decision to award the contract as long as the case is pending in the Market Court.

- (2) If the contracting authority gives the Market Court the undertaking referred to in subsection 1, the Market Court shall not without specific reason render a decision on the obligation concerning the interim prohibition on implementing the decision to award the contract.

#### Section 93 – *Temporary organisation of a contract*

- (1) If an appeal has been lodged against a contract before the Market Court, the contracting authority may temporarily organise the contract by ordering it from a participant in the contract award procedure or a previous supplier if, due to its nature, the contract cannot be postponed for the period of proceedings in the Market Court.
- (2) The temporary organisation of the contract must have no effect on the chances that as a result of the appellant's petition a ruling of the Market Court may:
  - 1) wholly or in part cancel a decision by the contracting authority;
  - 2) forbid the contracting authority from applying an incorrect section in a document relating to the contract or otherwise to pursue an incorrect procedure; or
  - 3) require the contracting authority to rectify an incorrect procedure.

#### Section 94 – *Sanctions issued by the Market Court*

- (1) Where a breach of this Act or any regulations based thereon, of European Union law or of the World Trade Organisation Agreement on Government Procurement is committed in respect of the contract, the Market Court may:
  - 1) wholly or in part cancel a decision by the contracting authority;
  - 2) forbid the contracting authority from applying an incorrect section in a document relating to the contract or otherwise from pursuing an incorrect procedure;
  - 3) require the contracting authority to rectify an incorrect procedure;
  - 4) order the contracting authority to pay compensation to a party who would have had a genuine chance of winning the contract if the procedure had been correct;
  - 5) issue an ineffectiveness sanction on the contracting authority;
  - 6) order the contracting authority to pay the state an infringement fine;
  - 7) reduce the contract term so as to end after a period of time specified by the Court.
- (2) The provisions in sections 95–98 shall apply to the issuing of the sanctions referred to in subsection 1 (4–7) above. The Market Court may, when issuing these sanctions, consider the contract to have been concluded on the basis of specific circumstances if the contracting authority has explicitly commenced implementation of the contract.
- (3) Ineffectiveness fines, infringement fines and reductions of contract terms may only be issued in contracts exceeding the EU threshold referred to in section 16. An ineffectiveness fines, however, cannot be issued in a service contract in accordance with Annex B of the Act.

#### Section 95 – *Compensation*

- (1) Provision for compensation may be made if the harm caused to the contracting authority, rights of third parties and the public interest by the measure defined in section 94(1)(1–3) is considered to outweigh the benefits or if the petition has been initiated following the conclusion of the contract. With respect to setting the amount of compensation, account shall be taken of the nature of the infringement or omission by the contracting authority, the value of the contract in question, and the costs and damages incurred by the petitioner. The Market Court may, however, decide not to provide for compensation if the contracting authority has refrained from implementing the contract during the proceedings in the Market Court.
- (2) Without specific reason, the amount of compensation shall not exceed 10 per cent of the value of the contract.

#### Section 96 – *Ineffectiveness*

- (1) The Market Court may declare a contract ineffective if:

- 1) the contracting authority has made a direct award without the basis referred to in this Act and the usage referred to in section 79 has not been complied with in the direct award;
  - 2) the contracting authority has concluded the contract though there is an obligation in the contract to observe the standstill period;
  - 3) the contracting authority has concluded the contract contrary to section 90, though the procurement case has been submitted to the Market Court for a decision.
- (2) In addition, a requirement in the situation referred to in subsection 1(2) and (3) above is that the contracting authority has made another breach of this Act which has affected the chances of the appellant to win the contract.
  - (3) If the contracting authority has concluded the contract in a competition based on the framework agreement on the basis of section 78 without observing the standstill period and if a breach has been committed in the competition in respect of section 32(2) or (3) such that this has affected the chances of the appellant to win the contract, the Market Court may declare the contract ineffective.
  - (4) The Market Court decides to which contractual obligations ineffectiveness shall apply. Ineffectiveness shall apply only to unfulfilled contractual obligations.

#### *Section 97 – Non-imposition of ineffectiveness*

In the situations referred to in section 96 above, the Market Court may decide not to impose ineffectiveness for compelling reasons related to the public interest. Economic interests which are directly related to the contract may be deemed compelling only if ineffectiveness of the contract would exceptionally have inequitable consequences.

#### *Section 98 – Fines and reduction of the contract term*

- (1) The Market Court may order a contracting authority to pay the state an infringement fine if:
  - 1) the Market Court has declared the contract ineffective;
  - 2) the contracting authority has concluded the contract, though there is an obligation in the contract to observe the standstill period;
  - 3) the contracting authority has concluded the contract contrary to section 90, though the procurement case has been submitted to the Market Court for a decision; or
  - 4) the Market Court has decided not to declare the contract ineffective for compelling reasons related to the public interest.
- (2) In the situation provided for in subsection 1(4) referred to above, the Market Court may, in addition to or instead of imposing a sanction, reduce the contract term so as to end after a period of time specified by the Court.
- (3) The Market Court may order a contracting authority to pay the state an infringement fine or reduce the contract term so as to end after a period of time specified by the Court with regard to service contracts referred to in Annex B of this Act, the value of which exceeds the EU threshold as defined in section 16, if the contracting authority:
  - 1) has made a direct award without the basis referred to in this Act and the usage referred to in section 79 not having been complied with in the direct award;
  - 2) has concluded the contract though there is an obligation in the contract to observe the standstill period;
  - 3) has concluded the contract contrary to section 90, though the procurement case has been submitted to the Market Court for a decision; or
  - 4) has concluded the contract in a competition based on the framework agreement on the basis of section 78 without observing the standstill period and if a breach has been committed in the competition in respect of section 32(2) or (3) such that this has affected the chances of the appellant to win the contract.
- (4) In addition, a requirement in the situation referred to in subsection 3(2) and (3) above is that the contracting authority has made another infringement of this Act which has affected the chances of the appellant to win the contract.

- (5) With respect to the issuing of a sanction, the Market Court shall take into account the nature of the mistake or omission by the contracting authority and the value of the contract in question. The sanction shall not exceed 10 per cent of the value of the contract.

#### Section 99 – *Direction of sanctions and combination effect*

- (1) If a contracting authority has acted as an agent in the tendering procedure on behalf of other contracting authorities, the Market Court may direct the sanction at the contracting authority acting for such other contracting authorities. If the contracting authority acting as an agent in the tendering procedure is a contracting authority which is not a public authority or legal person, the sanction may be directed at such a contracting authority participating in the activity of a contracting authority which is a public authority or a legal person.
- (2) With respect to the sanctions referred to in this Act, the Market Court shall bear in mind that the combination effect should not be inequitable for the contracting authority or its contracting party.

#### Section 100 – *Conditional fines*

- (1) The Market Court may, in order to emphasise the importance of complying with prohibitions or obligations referred to in this Act, impose a conditional fine. The provisions in the Act on Conditional Fines (1113/1990) shall apply to the imposing of, and sentencing to payment of, conditional fines.
- (2) If a contracting authority has acted as an agent in the tendering procedure or other measure on behalf of other contracting authorities, the Market Court may direct the conditional fine at the contracting authority acting for other such contracting authorities. If the contracting authority which has acted as an agent in the tendering procedure is a contracting authority which is not a public authority or legal person, the conditional fine may be directed at such a contracting authority participating in the activity of a contracting authority which is a public authority or legal person.

#### Section 101 – *Notification of the Market Court's decision*

- (1) The ruling of the Market Court, together with instructions for appeal shall be verifiably notified under the provisions of the Administrative Judicial Procedure Act.
- (2) With the consent of the appellant and the contracting authority, the Market Court's decision, together with instructions for appeal, may be notified using the electronic contact information provided to the Market Court by these parties.
- (3) In using electronic contact information, the appellant and the contracting authority shall be deemed to have received notification of the decision and instructions for appeal on the date that the message concerning this matter is available in the recipient's reception equipment such that the message can be handled. The provisions in section 75(1) shall apply to electronic notification.

#### Section 102 – *Prohibition to appeal*

A case falling within the jurisdiction of the Market Court cannot be appealed against under the provisions of the Local Government Act (365/1995) or the Administrative Judicial Procedure Act.

#### Section 103 – *Appeals against the decisions by the Market Court*

- (1) Appeals against rulings by the Market Court can be lodged in the Supreme Administrative Court in accordance with the Administrative Judicial Procedure Act.
- (2) An appeal cannot be lodged against a ruling by the Market Court as referred to in section 91(1) in the Supreme Administrative Court. A ruling by the Market Court does not prevent the case

from being reconsidered by the Market Court if the grounds for the previous ruling have changed.

- (3) If the Market Court has ruled that it will not grant the processing authorisation referred to in section 86(3), then an appeal against this ruling can only be lodged if the Supreme Administrative Court grants leave to appeal.

#### Section 104 – *Appeals against decisions to award a contract by Church authorities*

Appeals lodged against decisions by authorities of the Evangelical Lutheran Church shall fall within the scope of the Church Act.

#### Section 105 – *Application of the Administrative Judicial Procedure Act*

The Administrative Judicial Procedure Act shall apply to appeals unless otherwise provided by this Act.

#### Section 106 – *Implementation of rulings*

- (1) A ruling of the Market Court, with which the Market Court has issued the sanction referred to in section 94(1)(1–3), has to be observed notwithstanding any appeal, unless the Supreme Administrative Court orders otherwise.
- (2) A ruling of the Market Court on the issuing of a sanction as referred to in section 94(1)(4–7) may only be implemented on the basis of a final ruling. A decision to award a contract against which an appeal has been rejected by the Market Court may be implemented notwithstanding any appeal, unless the Supreme Administrative Court orders otherwise.
- (3) The implementation of a ruling concerning a sanction shall be supervised by the Legal Register Centre. The Legal Register Centre must be informed of any ruling by the Market Court and Supreme Administrative Court to issue a sanction.

#### Section 107 – *Compensation for damages*

- (1) Those who, while acting in breach of this Act or any regulations based thereon, European Union law or the World Trade Organisation Agreement on Government Procurement, cause damage to candidates, tenderers or suppliers shall be liable to pay compensation for the said damage.
- (2) However, where the claim for damage refers to costs incurred from the tendering procedure, the candidate or tenderer is entitled to compensation if he or she can provide proof of the incorrect procedure as defined in subsection 1 and that had the procedure been correct, he or she would have possessed a genuine chance of winning the tender.
- (3) In respect of cases defined in subsection 1 and 2, the court of first instance shall be the competent court in accordance with Chapter 10 of the Code of Judicial Procedure.

## Chapter 12

### **Further provisions**

#### Section 108 – *Disclosure of information*

- (1) Notwithstanding the provisions concerning confidentiality provided for in the Act on the Openness of Government Activities or in any other Act, contracting authorities shall forward statistical and other information on the different stages of the contract and the performed contracts to the Finnish authorities and bodies of the European Union on the scale required by European Union law, for the purpose of monitoring contracts and exchanging information. Notwithstanding confidentiality regulations, the Ministry of Employment and the Economy has

the right to forward information it has received pursuant to this Act to the European Union authorities.

- (2) More specific provisions are given in a government decree on the statistical obligations referred to in subsection 1 and stipulated by Articles 75 and 76 of the Contract Directive, and on the obligation of the contracting authority to draw up reports concerning tendering procedures and contract decisions and other information, referred to in Article 43 of the Contract Directive, to be forwarded to bodies of the European Union.
- (3) This Act shall enter into force on 1 June 2010.
- (4) If the tendering procedure has been initiated before the entry into force of this Act, regulations existing on entry into force of this Act shall apply to the contract. The tendering procedure shall be deemed to have been initiated at the moment of publication of the tender notice. In respect of contracts which do not require the publication of a contract notice, the contract shall be deemed to have been initiated at the moment at which the invitation to tender or negotiations is sent or the negotiations are commenced with the suppliers.
- (5) Notwithstanding the provisions in subsection 2, on entry into force of this Act the provisions of this Act on the direction of sanctions, conditional fines and obligation to pay legal costs and on the imposition of legal costs shall, however, apply to a case pending in the Market Court, the Administrative Court and the Supreme Administrative Court.
- (6) If the tendering procedure has been initiated before the entry into force of this Act and the decision of the contracting authority or other decision of the tendering procedure which affects the position of the candidate or supplier is made after the entry into force of this Act, the provisions in sections 73, 80–93 and 99–103 of this Act shall, subsection 2 notwithstanding, apply to the contract decision and the processing of the case in the Market Court. Provisions of this Act on the direction of sanctions, conditional fines and obligation to pay legal costs and on the imposition of legal costs shall also apply to petitions brought before the Market Court after the entry into force of this Act regarding contract decisions made before the entry into force of this Act.
- (7) In situations referred to in subsection 4, the provisions in section 95(2) concerning the maximum amount of compensation and other provisions concerning compensation valid on the entry into force of this Act shall apply to the prescription of compensation in the Market Court and the Supreme Administrative Court.
- (8) Any measures necessary for the implementation of this Act can be undertaken before the entry into force of the Act.

Helsinki, 30 April 2010

**President of the Republic**

**TARJA HALONEN**

Minister of Labour *Anni Sinnemäki*