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Public Procurement Act¹

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Amended by the following acts

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08.06.2009	RT III 2009, 30, 218	08.06.2009
21.04.2010	RT I 2010, 20, 102	01.07.2010, in part 01.01.2011
22.04.2010	RT I 2010, 22, 108	01.01.2011, will enter into force on the date specified in the decision of the Council of the European Union regarding the abrogation of the derogation established in favour of the Republic of Estonia on the ground provided for in Article 140(2) of the Treaty on the Functioning of the European Union, Decision No. 2010/416/EU of the Council of the European Union of 13 July 2010 (OJ L 196, 28.07.2010, pp. 24-26).
16.12.2010	RT I, 31.12.2010, 2	01.01.2011, in part 01.01.2012 and 01.01.2013
16.12.2010	RT I, 06.01.2011, 1	16.01.2011
27.01.2011	RT I, 23.02.2011, 3	01.01.2012
25.01.2012	RT I, 14.02.2012, 1	24.02.2012
13.06.2012	RT I, 06.07.2012, 1	01.04.2013

Chapter 1 GENERAL PROVISIONS

§ 1. Purpose

The purpose of this Act is to ensure the transparent, purposeful and economical use of the financial resources of the contracting authority, the equal treatment of persons and the effective use of existing competition in public procurement.

§ 2. Scope of application of Act

(1) This Act provides for the public procurement procedures, the rights and obligations of subjects involved in public procurement, the procedure for the exercise of state supervision and for the settlement of requests for review, and the liability for violation of this Act.

(2) For the purposes of this Act, 'public procurement' means purchasing supplies, contracting for services, organising design contests, contracting for public works, awarding public works concessions and service concessions by contracting authorities, and contracting for public works by concessionaires of public works concessions.

§ 3. General principles of public procurement

A contracting authority is required to comply with the following principles of public procurement:

- 1) the contracting authority must use financial resources economically and for their intended purpose and achieve the purpose of the public procurement at a reasonable price by ensuring the best value for money by comparing various tenders in the event of competition;
- 2) the contracting authority must ensure that the public procurement is transparent and capable of being reviewed;
- 3) all persons whose place of residence or seat is in Estonia, in another Member State of the European Union, in another contracting party to the EEA Agreement or in a state that has joined the Government Procurement Agreement (GPA) of the WTO must be treated equally and without discrimination by the contracting authority and the contracting authority must make certain that all restrictions and criteria established for the persons are proportional, relevant and justified in relation to the purpose of the public procurement;
- 4) the contracting authority must ensure effective use of the existing competition in public procurement, whereby the participation of a public legal person or a private legal person using public funds in the public procurement must not distort competition due to its use of public funds;
- 5) the contracting authority must avoid a conflict of interests distorting the competition;
- 6) if possible, the contracting authority will prefer green solutions.

§ 4. Public contract

(1) For the purposes of this Act, 'public contract' means a contract establishing mutual material obligations, which has been awarded to one or multiple persons by one contracting authority or multiple contracting authorities as a result of public procurement and the objects of which are supplies, services or public works. The provisions of legislation regulating the respective contract type apply to public contracts.

(2) A public contract may be awarded by a contracting authority only on the terms and conditions provided for in this Act. Non-compliance with the requirements provided for in an Act does not affect the validity of a public contract, unless provided otherwise in this Act.

(3) A public works contract involves contracting for:

1) construction or construction and design specified in Annex V to 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 (OJ L 74, 15.03.2008, pp. 1#375) (hereinafter *CPV Regulation*);

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

2) construction or construction and design of a building, or

3) before acquisition, lease or rental of an immovable or a related right by a contracting authority or granting a contracting authority use thereof on another legal basis, performance of construction work regarding the immovable in accordance with the requirements specified by the contracting authority in any manner and with any means.

(4) A public supply contract is a contract by which supplies are purchased or leased with or without the right to acquire them. A public contract that also includes the delivery and installation of supplies is considered a public supply contract as well.

(5) The services specified in Annexes VI and VII to the CPV Regulation are purchased under a public service contract. The services specified in Annexes 3 and 4 to this Act are purchased under a public service contract in the fields of defence and security.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

(6) A public contract under which supplies are purchased and the services specified in Annexes VI and VII to the CPV Regulation are contracted for will be deemed a public service contract if the expected value of the services contracted for under the public contract exceeds that of the supplies to be purchased. Otherwise it is a public supply contract.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(7) A public contract under which supplies are purchased and the services specified in Annexes VI and VII to the CPV Regulation are contracted for and which also includes contracting for the construction work specified in Annex V, which is of an accessory nature and does not constitute the main goal of the public contract, is considered either a public supply contract or a public service contract.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(8) A contracting authority may not purchase supplies or contract for services under a public works contract if the purchase of the supplies or the contracting for the services is not necessary for the construction work that constitutes the object of the public contract.

§ 5. Form of public contract

(1) If the value of a public contract is at least 10 000 euros net of value added tax, the contracting authority will award the contract in writing.

(2) Each contracting authority must establish formal requirements for public contracts whose value remains below the level specified in subsection (1) of this section.

(3) Failure to comply with the formal requirements specified in this section has no impact on the validity of a public contract.

§ 6. Concessions

(1) For the purposes of this Act, a public works concession is awarded by a contract whose object is the same as that of the public works contract specified in subsection (3) of § 4 of this Act and according to which the fee for the works specified in the same subsection lies either in the right of the concessionaire to exploit the construction works or in that right with a monetary payment by the contracting authority.

(2) For the purposes of this Act, a service concession is granted by a public contract whose object is the contracting for the services specified in Annexes VI and VII of the CPV Regulation and according to which the fee for the provision of the service lies either in the right of the concessionaire to provide the specific service and receive the fee for the provision of the service from the users of the service or in that right along with a monetary payment by the contracting authority.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

§ 6¹. Public#private partnership

For the purposes of this Act, ‘public#private partnership’ means performance of public works or provision of services on the basis of a public contract awarded by way of a procurement procedure or on the basis of an awarded public works concession or a service concession, whereby all the following criteria have been met:

- 1) the purpose of cooperation is the performance of public works or the provision of a service in public interests;
- 2) cooperation lasts for at least 20 years;
- 3) the contracting authority and the tenderer jointly use the means required for cooperation, such as supplies, money, expertise and experience;
- 4) the contracting authority and the tenderer share the liability and risks relating to cooperation.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

§ 7. Framework agreement

(1) For the purposes of this Act, ‘framework agreement’ means an agreement awarded by one or more contracting authorities to one or more persons, the purpose of which is to establish the terms governing public contracts to be awarded within the term of validity of the framework agreement on the basis of the framework agreement, in particular with regard to price or price and the quantities or volumes envisaged.

(2) The provisions governing public contracts apply to framework agreements, unless otherwise provided for in this Act.

§ 8. Dynamic purchasing system

(1) For the purposes of this Act, ‘dynamic purchasing system’ means an electronic process for awarding public contracts, during which all interested persons who meet the qualification requirements and submit an indicative tender that complies with the technical specifications drawn up by a contracting authority may join the system and the contracting authority may award public contracts to the tenderers who have joined the dynamic purchasing system within this period of use in accordance with simplified procedure.

(2) The dynamic purchasing system may be established by a contracting authority for a term of up to four years if a longer term is not, given the object of the dynamic purchasing system, objectively necessary or justified. When creating a dynamic purchasing system and awarding public contracts on the basis thereof, the contracting authority must follow, among other things, the provisions of subsections (2) and (3) of § 58 of this Act.

(3) The conditions of and procedure for creating and using a dynamic purchasing system and awarding public contracts based on a dynamic purchasing system will be established by the Government of the Republic.

(4) For the purposes of this Act, ‘indicative tender’ means an expression of will of a person to join a dynamic purchasing system that complies with the technical specifications drawn up by a contracting authority. An indicative tender is not an expression of the will to enter into a public contract.

[RT I 2008, 14, 92 - entry into force 01.12.2009]

§ 9. Design contest

(1) For the purposes of this Act, 'design contest' means a procedure that enables a contracting authority to acquire a plan or design selected by a jury in the course of a competition predominantly in the fields of planning, architecture, engineering works, information systems, software development or data processing.

(2) A design contest may be organised with the aim of awarding a public service contract to the winner of the design contest or solely with the aim of finding a suitable design solution for the contracting authority, by giving prizes to the winners or by paying participation fees to the participants.

§ 10. Contracting authority

(1) The following persons, authorities, entities and agencies (hereinafter *contracting authority*) must follow the procedure provided for in this Act:

- 1) the state or state authorities;
- 2) local authorities, local authority agencies and associations of local authorities;
- 3) other legal persons governed by public law and agencies of legal persons governed by public law;
- 4) foundations where the state is one of the founders or where more than half of the founders are persons specified in clauses 2) or 3) of this subsection or where more than half of the members of the supervisory board are appointed by the persons specified in clauses 1) to 3) of this subsection;
- 5) non-profit associations where more than half of the members are the persons specified in clauses 1) to 3) of this subsection;
- 6) other legal persons governed by private law and having the characteristics specified in subsection (2) of this section.

(2) For the purposes of clause 6) of subsection (1) of this section, a contracting authority is a legal person governed by private law:

- 1) which has been founded for the purpose of performing or which performs, as its primary or ancillary activity, functions in the public interests and has no industrial or commercial character, and
- 2) which is mainly financed by or where more than half of the members of the management body, administrative body or supervisory body are appointed by or where the management is otherwise jointly or severally controlled by the persons specified in clauses 1) to 5) of subsection (1) or by other persons specified in clause 6) of subsection (1) or by the respective persons of any other state that is a contracting party to the EEA Agreement.

(3) For the purposes of this Act, in operations in the fields of activity specified in §§ 83#89 of this Act, the following are also deemed to be contracting authorities:

- 1) persons who have received the special or sole right to act in the fields of activity specified in §§ 83#89;
- 2) companies where more than a half of the share capital belongs to or where more than a half of the votes represented by shares are controlled by or where more than a half of the members of the management board or supervisory board are appointed directly or indirectly by the persons specified in subsection (1) of this section or by such persons jointly with the respective persons of another Member State of the European Union.

(4) [Repealed – RT I 2010, 20, 102 – entry into force 01.07.2010]

(5) Authorities, agencies or persons appointed by the Government of the Republic organise, to the extent established by the Government of the Republic, procurement procedures for the contracting authorities specified in clause 1) of subsection (1) of this section, except for the constitutional institutions.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(6) For the purposes of this Act, 'central purchasing body' means a contracting authority specified in this section that purchases supplies, contracts for services and public works or organises procurement procedures for purchasing supplies and for contracting for services and public works in the name of other contracting authorities specified in this section.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

§ 11. Contracting by other persons for public works financed by contracting authority and for public works of immovables to be delivered to contracting authority

(1) The provisions of this Act governing the contracting authorities specified in subsection (1) of § 10 of this Act must be followed by each person contracting for the following works to be financed to the extent of more than 50 per cent by the persons specified in subsection (1) of § 10:

1) construction of civil engineering works or buildings for medical or educational establishments, administrative buildings or sports, recreational or leisure facilities specified under class 45.21 in Annex V of the CPV Regulation and the estimated value of these works net of value added tax is equal to or exceeds the public procurement threshold applicable to public works contracts, or

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

2) the services related to the works specified in clause 1) of this subsection and the estimated value of these services net of value added tax is equal to or exceeds the public procurement threshold applicable to public supply contracts and public service contracts.

(2) When awarding a public works contract, each person contracting for the works specified in clause 3) of subsection (3) of § 4 of this Act for performing an obligation relating to the delivery of an immovable or a related right to the contracting authority or for performing another obligation relating to the use of another immovable, must follow the provisions of this Act applicable to the relevant contracting authority.

§ 12. Tenderer and candidate

(1) For the purposes of this Act, ‘tenderer’ means a person who has submitted a tender in a procurement procedure or an indicative tender in the event of a dynamic purchasing system.

(2) For the purposes of this Act, ‘candidate’ means a person who has submitted a request to participate in a procurement procedure in the event of a restricted procedure, negotiated procedure with prior publication of a contract notice or competitive dialogue.

(3) Any person who provides supplies or services or performs construction work on the market may be a tenderer or a candidate. In a contract notice the contracting authority may limit the circle of tenderers and candidates in a procurement procedure by not permitting persons from states other than the ones specified in clause 3) of § 3 of this Act to participate in the procurement procedure or by granting tenders submitted by persons from the countries specified in clause 3) of § 3 of this Act advantages over tenders submitted by persons from other states.

(4) Persons may jointly submit a tender, indicative tender or request to participate in a procurement procedure (hereinafter respectively *joint tenderers* and *joint candidates*), unless otherwise provided for in this Act.

(5) Joint tenderers or joint candidates must appoint a representative authorised to take steps relating to the procurement procedure and to the award and performance of a public contract.

(6) A contracting authority may not require, as a prerequisite for the adoption of a request to participate in a joint tender or joint procurement procedure, that the joint tenderers or joint candidates must have established a legal person or must have joined in another legal form. If the specification of the legal relations between the joint tenderers in a certain method and within a certain scope is required for the appropriate performance of a public contract on the basis of the nature of the object of the public contract, the contracting authority may require the relevant specification by the time of performance of the public contract.

(7) For the purposes of this Act, an undertaking related to a tenderer or candidate means any undertaking that is directly or indirectly under the dominant influence of the tenderer or candidate or any undertaking that exerts dominant influence over the tenderer or candidate or that is, jointly with the tenderer or candidate, under the dominant influence of a third party on the basis of a right of ownership, financial participation, legislation or on another basis. Dominant influence on the part of an undertaking is presumed when it directly or indirectly holds or controls more than half of the other undertaking’s share capital or of the votes represented by shares or if the undertaking may appoint more than a half of the members of the other undertaking’s management body or supervisory body.

§ 13. Consolidation of public procurement and authorisation of organisation of public procurement

(1) Contracting authorities may organise a public procurement jointly, authorising one of the contracting authorities to organise the public procurement. When organising public procurement jointly, the contracting authorities apply the rules that each of these contracting authorities should apply under this Act in the event of organising such public procurement alone. In the event of organising public procurement jointly, the rules are applied on the basis of the total estimated value of the public contracts.

(2) A contracting authority is entitled to authorise other contracting authorities to perform any and all obligations arising from this Act and relating to the organisation of its public procurement.

(3) A contracting authority has the right to authorise other persons to take steps relating to the procurement procedure.

(4) The authorisation specified in subsections (2) and (3) of this section is granted in writing.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

§ 13¹. Procurement rules

A contracting authority will establish internal procurement rules if the estimated total value of public supply contracts and service contracts planned by the contracting authority for a budgetary year exceeds 80 000 euros or if the estimated total value of public works contracts planned by the contracting authority for a budgetary year exceeds 500 000 euros. The procurement rules regulate, among other things, the following:

1) the procedure for planning public procurement, including the procedure and time limit for drawing up and approving the annual procurement plan;

- 2) the person or persons responsible for public procurement or appointment of such persons, including a person responsible for the performance of a public contract;
 - 3) the procedure for organisation of public procurement falling below the threshold specified in subsection 15 (3) of this Act, which ensures the adherence to the principles of public procurement provided for in § 3;
 - 4) the procedure for purchasing a service to be purchased in accordance with simplified procedure.
- [RT I, 31.12.2010, 2 - entry into force 01.01.2012]

§ 14. Exceptions

(1) A contracting authority is not required to follow the rules provided for in this Act if:

- 1) supplies are purchased or services or public works are contracted for or a concession is awarded or a design contest is organised with the main aim of offering or operating electronic communications networks available to the public or providing an electronic communications service to the public for the purposes of the Electronic Communications Act;
- 2) a contract to be awarded or a design contest to be organised involves a state secret or classified information of foreign states for the purposes of the State Secrets and Classified Information of Foreign States Act or the security of Eesti Pank or information not subject to disclosure or if the performance of the contract calls for fulfilment of special security requirements in accordance with legislation or if the application of the exception is directly required for protecting the overriding interests of the state;
[RT I, 14.02.2012, 1 - entry into force 24.02.2012]
- 3) supplies are purchased or public works are contracted for or a works concession is awarded in accordance with the rules of an international agreement between Estonia and a foreign state, except a Member State of the European Union, in compliance with the Treaty establishing the European Community and the purpose of the purchase of these supplies or contracting for the public works or awarding the works concession is the joint performance of the public works by Estonia and the foreign state or the joint use of the construction works or if services are contracted for or a design contest is organised in accordance with the rules of such international agreement and the purpose of contracting for the services or organising the design contest is the implementation or use of the joint project of Estonia and the foreign state;
- 4) a contract is awarded or a design contest is organised on the basis of an international agreement relating to the location of military units;
- 5) a contract is awarded or a design contest is organised on the basis of a special procedure of an international organisation;
- 6) a contract is awarded for the acquisition, lease or rental of immovables or the related rights, regardless of the type of the contract;
- 7) a public service contract is awarded for the acquisition, development, production or co#production of programme material or a part thereof by media service providers and upon concluding contracts relating to transmission time;
[RT I, 06.01.2011, 1 - entry into force 16.01.2011]
- 8) arbitration or conciliation services are contracted for;
- 9) a financial service relating to the issue, purchase, sale or assignment of securities or other financial instruments, including a service relating to the involvement of money or capital is and services provided by Eesti Pank are contracted for;
- 10) a contract of employment is concluded;
- 11) research and development services are contracted for;
- 12) services are contracted for from another contracting authority or from an association of contracting authorities to which the exclusive right to provide the service in the relevant territory has been granted on the basis of legislation complying with the requirements of the Treaty establishing the European Community;
- 13) [Repealed – RT I, 31.12.2010, 2 – entry into force 01.01.2011]

(2) The European Commission will be immediately notified in writing via the Ministry of Finance of the award of the international agreement specified in clause 3) of subsection (1) of this section by the contracting authority that awarded it.

(3) The exception specified in clause 6) of subsection (1) of this section is not applied to contracting for financial services relating to the acquisition, lease or rental of immovables or related rights.

(4) The exception specified in clause 11) of subsection (1) of this section will not be applied if only the contracting authority benefits from the research and the contracting authority pays for the contracted service in full.

(5) If a contracting authority operating in the field of national defence specified in subsection (1) of § 10 of this Act awards a contract for defence purposes, the contracting authority will apply the procedure provided for in this Act to the extent that is in accordance with Article 346 of the Treaty establishing the European Community and the provisions of the legislation established on the basis thereof.
[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

§ 14¹. In#house transaction

(1) A contracting authority is not required to follow the rules provided for in this Act in the event of in#house transactions.

(2) In-house transaction means a contracting authority's contract with a company whose shares are held entirely and directly by the contracting authority or by the contracting authority and other contracting authorities or with a foundation founded exclusively by the contracting authority or exclusively by the contracting authority jointly with other contracting authorities.

(3) An in-house transaction may be made if:

- 1) no service concession is awarded with the transaction;
- 2) the direct recipient of the supplies or service to be purchased with the transaction is the contracting authority;
- 3) the operations of a company or foundation that is the contracting authority's counterparty is mainly related to selling supplies, providing services or performing public works to the contracting authority that is the shareholder of the company or the founder of the foundation or to the contracting authorities that are the shareholders of the company or the founders of the foundation and if the respective obligation has been set out in the articles of association;
- 4) the company or foundation that is the contracting authority's counterparty acts in the interests of the shareholders or the founding contracting authorities within the limits of the territorial jurisdiction of the contracting authority and if the respective obligation has been set out in the articles of association;
- 5) decisions of the general meeting of the shareholders or of a meeting of the shareholders of the company that is the contracting authority's counterparty or decisions of the supervisory board of the foundation that is the contracting authority's counterparty are made unanimously and the respective obligation has been set out in the articles of association;
- 6) the articles of association of a public limited company that is the contracting authority's counterparty and whose shares belong to two or more contracting authorities provide for the right of pre-emption of the other contracting authorities that are shareholders and, at the request of the public limited company, a notation regarding the right of pre-emption has been registered in the Estonian Central Register of Securities.

(4) If after making an in-house transaction it becomes evident that at least one of the requirements specified in subsection (2) or (3) of this section has not been fulfilled, the contracting authority will initiate a public procurement procedure within 14 days for purchasing the supplies or service or for contracting for public works. [RT I, 31.12.2010, 2 - entry into force 01.01.2011]

§ 15. Thresholds

(1) For the purposes of this Act, the threshold of the value of organising a public procurement procedure, awarding a public works concession and organising a design contest (hereinafter *public procurement threshold*) is:

- 1) 30 000 euros in the event of a public supply contract, a public service contract and a design contest and 190 000 euros in the event of a public works contract and a public works concession, provided that the public procurement procedure has been launched in 2007;
- 2) 40 000 euros in the event of a public supply contract, a public service contract and a design contest and 250 000 euros in the event of a public works contract and a public works concession, provided that the public procurement procedure has been launched in 2008 or later.

(2) The international threshold is a sum established periodically by the European Commission on basis of Article 69 of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.04.2004, pp. 1#113) and Article 78 of 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 (OJ L 134, 30.04.2004, pp. 114#240). The international threshold will be published on the website of the chief processor of the public procurement register (hereinafter also *register*) immediately after each publication of the threshold by the European Commission. [RT I, 31.12.2010, 2 - entry into force 01.01.2012]

(2¹) The public procurement threshold in the fields of defence and security is an amount periodically established by the European Commission on the basis of Article 68 of Directive 2009/81/EC of the European Parliament and of the Council on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.08.2009, pp. 76-136) and published in the Official Journal of the European Union. The public procurement threshold in the fields of defence and security will be published by the chief processor of the register on the register's website immediately after each publication thereof by the European Commission. [RT I, 14.02.2012, 1 - entry into force 24.02.2012]

(3) For the purposes of this Act, the threshold of organisation of a simplified procurement procedure (hereinafter *simplified procurement threshold*) is 10 000 euros in the event of a public supply contract and a public service contract and 30 000 euros in the event of a public works contract. The simplified procurement threshold in the event of public procurement in the fields of defence and security is 40 000 euros for a public supply contract and a public service contract and 250 000 euros for a public works contract.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

§ 16. Application of rules of procedure upon awarding public contracts

(1) A contracting authority specified in subsection (1) of § 10 of this Act will not be required to organise a procurement procedure in accordance with the rules provided for in this Act if the estimated value of the public contract net of value added tax is below the public procurement threshold. In such an event the contracting authority follows the general principles of public procurement and § 18² of this Act when awarding public contracts.

[RT I, 31.12.2010, 2 - entry into force 01.01.2012]

(2) When awarding a public contract, a contracting authority specified in subsection (1) of § 10 of this Act follows the rules provided for in Chapter 2 if the estimated value of the public contract net of value added tax is equal to or exceeds the public procurement threshold.

(2¹) When awarding a public contract in the fields of defence and security, a contracting entity specified in clause 1) of subsection (1) of § 10 of this Act may apply the procedure laid down in Chapter 2 with the specifications laid down in Chapter 5¹ if the estimated value of the public contract net of value added tax is equal to or exceeds the public procurement threshold in the fields of defence and security.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

(3) A contracting authority specified in subsection (1) of § 10 of this Act may, when awarding a public contract, follow the rules provided for in Chapter 5 instead of the rules provided for in Chapter 2 if it awards a public contract whose main purpose is related to the contracting authority's activities in the fields specified in §§ 83#89 and the estimated value of the public contract net of value added tax is equal to or exceeds the public procurement threshold.

(4) A contracting authority specified in subsection (3) of § 10 of this Act is not required to organise a procurement procedure in accordance with the rules provided for in this Act if the estimated value of the public contract net of value added tax is below the international threshold. In such an event the contracting authority follows § 18² of this Act.

[RT I, 31.12.2010, 2 - entry into force 01.01.2012]

(5) A contracting authority specified in subsection (3) of § 10 of this Act will follow the procedure provided for in Chapter 5 if the contracting authority awards a public contract whose main purpose is related to the contracting authority's activities in the fields specified in §§ 83#89 and the estimated value of the public contract net of value added tax is equal to or exceeds the international threshold. The contracting authority also has this obligation if the award of the public contract is related to the contracting authority's activities in the fields specified in §§ 83#89, but the main purpose of the public contract cannot be specified.

(6) [Repealed – RT I, 31.12.2010, 2 – entry into force 01.01.2012]

(7) [Repealed – RT I, 31.12.2010, 2 – entry into force 01.01.2012]

(8) A contracting authority has the right to follow the compulsory rules arising from the public procurement threshold, international threshold, simplified procurement threshold or the nature of the public contract also upon awarding the public contract whose estimated value does not amount to the relevant financial level or whose nature does not correspond to the characteristics calling for following the procedure.

[RT I, 31.12.2010, 2 - entry into force 01.01.2012]

(9) If a contracting authority commences a procurement procedure without being required to do so under law, the contracting authority will follow the respective rules of procurement procedure provided for in this Act.

§ 17. Application of rules of procedure upon awarding concessions

(1) When awarding a public works concession, a contracting authority specified in subsection (1) of § 10 of this Act follows the rules provided for in Chapter 3 if the total estimated value of the public works carried out on the basis of the public works concession is equal to or exceeds the public procurement threshold.

(2) When granting a service concession, a contracting authority specified in subsection (1) of § 10 of this Act will follow the rules of the open procedure or negotiated procedure with prior publication of a contract notice provided for in Chapter 2 if the estimated total value of the services to be provided on the basis of the service concession is equal to or exceeds the public procurement threshold. If the estimated total value of the services to be provided on the basis of the service concession is below the public procurement threshold, a contracting authority specified in subsection (1) of § 10 will follow § 18² when awarding a service concession.

[RT I, 31.12.2010, 2 - entry into force 01.01.2012]

(3) A contracting authority specified in subsection (3) of § 10 of this Act is not required to follow the rules of awarding public works concessions provided for in this Act and, when awarding public works concessions, follows the rules provided for in § 18² if the contracting authority awards the public works concession in

connection with operations in the fields specified in §§ 83#89 or if the estimated total value of the public works to be carried out on the basis of the public works concession is below the public procurement threshold.
[RT I, 31.12.2010, 2 - entry into force 01.01.2012]

(4) A contracting authority specified in subsection 10 (3) of this Act is not required to follow the rules of awarding public works concessions and service concessions provided for in this Act and follows § 18² when awarding public works concessions and service concessions.
[RT I, 31.12.2010, 2 - entry into force 01.01.2012]

§ 18. Application of rules of procedure upon organising design contests

(1) When organising a design contest, a contracting authority specified in subsection (1) of § 10 of this Act will follow the rules provided for in Chapter 4 if the estimated value of design contest is equal to or exceeds the public procurement threshold.

(2) When organising a design contest, a contracting authority specified in subsection (3) of § 10 of this Act will follow the rules provided for in Chapter 4 if the contracting authority organises the design contest in connection with the contracting authority's operations in the fields specified in §§ 83#89 and the estimated value of the design contest is equal to or exceeds the international threshold.

§ 18¹. Rules of public procurement of construction and design work

(1) On the basis of a proposal of the Minister of Economic Affairs and Communications, the Government of the Republic will establish the rules of public procurement of construction and design work exceeding the public procurement threshold.

(2) The rules of public procurement for public works and design of construction works in the fields of defence and security may be established by a regulation of the Government of the Republic on the proposal of the Minister of Defence.
[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

§ 18². Organisation of simplified procurement

(1) A simplified procurement procedure will commence as of the publication of a notice in the register and terminate in the events specified in subsection (3) of § 29 of this Act.

(2) A contracting authority specified in subsection (1) of § 10 of this Act will submit a simplified contract notice to the register for publication if the estimated value of the public contract net of value added tax is equal to or exceeds the simplified procurement threshold. A contracting authority specified in subsection (3) of § 10 will submit a simplified contract notice to the register for publication if the estimated value of the public contract net of value added tax is equal to or exceeds the public procurement threshold.

(3) In a simplified contract notice the contracting authority will set a reasonable time limit for submission of tenders, but the time limit must not be shorter than four working days, taking into account the supplies, services or public works that constitute the object of the public contract.

(4) For the purpose of organisation of a simplified procurement procedure, a contracting authority may establish a simplified procurement document, taking into account the supplies, services or public works that constitute the object of the public contract. Upon drawing up a simplified procurement document, the contracting authority must adhere to § 24, subsections (2) to (5) and (8) of § 31, §§ 32 and 33, subsections (1) to (3¹) and (5) of § 38, §§ 39-41 and §§ 47-50 of this Act or some of the provisions. Upon drawing up a simplified procurement document in the fields of defence and security, the contracting authority may follow the specifications laid down in Chapter 5¹ of this Act. If the contracting authority does not establish a simplified procurement document, the contracting authority will follow the general principles of public procurement upon organisation of the simplified procurement procedure.
[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

(5) A contracting authority will include a reference to an e-mail address or website or upload the simplified procurement documents to a register through which interested persons can electronically download the simplified procurement documents. The registration of interested persons is governed by subsection (1¹) of § 57 of this Act.

(6) A contracting authority may organise a simplified procurement procedure in stages or hold negotiations in the framework of a simplified procurement procedure. The contracting entity will stipulate such possibility and the terms and conditions thereof in a simplified procurement notice.

(7) Upon notifying of decisions made in a simplified procurement procedure, a contracting authority must follow §§ 54 and 55 of this Act.

(8) Upon awarding and amending a public contract, the contracting authority must follow subsections (2) to (6) of § 69 of this Act.

(9) After termination of a simplified procurement procedure in the events specified in subsection (3) of § 29 of this Act, a contracting authority will submit a public procurement report and an annex thereto in accordance with the procedure provided for in § 37.

[RT I, 31.12.2010, 2 - entry into force 01.01.2012]

§ 19. Services contracted for by simplified procedure

(1) A contracting authority is not obliged to organise a procurement procedure in accordance with the rules provided for in this Act in the event of awarding a public service contract whereby the services specified in Annex VII of the CPV Regulation account for more than 50 per cent of the value of the contract.

(2) Regardless of the provisions of subsection (1) of this section, a contracting authority is required to organise a procurement procedure if, besides the services specified in Annex VII of the CPV Regulation, the total estimated value of the supplies constituting the object of the public service contract and the services specified in Annex VI or the estimated value of public works is equal to or exceeds the public procurement threshold.

(3) Upon contracting for services to be contracted for in accordance with simplified procurement procedure, a contracting authority will follow the principles of public procurement provided for in § 3 of this Act and award a public contract in writing in the events specified in § 5.

(4) A contracting authority will announce its wish to award a public contract specified in subsection (1) of this section, whose estimated value net of value added tax exceeds 40 000 euros.

(5) If the estimated value of the public contract specified in subsection (1) of this section net of value added tax is equal to or exceeds the international threshold, the contracting authority must follow, in addition to subsection (3) of this section, the rules of drawing up the technical specification provided for in § 33 of this Act.

(6) After awarding the public contract specified in subsection (3) of this section, the contracting authority will submit a public procurement report and an annex thereto in accordance with the procedure provided for in § 37 of this Act if the value of the public contract net of value added tax exceeds 40 000 euros.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

§ 20. Rules for calculation of estimated value of public procurement

(1) The estimated value of public procurement is, net of value added tax, as follows:

1) the total amount to be presumably paid by a contracting authority in performing a public contract, taking, among other things, into account potential future obligations based on the public contract and renewals of the public contract;

2) potential awards or participation fees awarded in a design contest;

3) the estimated total value of public works to be carried out based on a public works concession.

(2) The estimated value of public procurement must be calculated on the basis of the price level corresponding to the average market price at the moment of disclosure of the notice of the procurement procedure or the design contest or the public works concession in the register.

(3) The estimated value of public procurement or the estimated value of public contracts to be awarded based on a dynamic purchasing system is calculated on the basis of the estimated maximum total value of public contracts to be awarded on the basis of the framework agreement or the dynamic purchasing system within the term of validity of the framework agreement or the dynamic purchasing system.

(4) If in the event of an open or restricted procedure the possibility of awarding a new public works contract or public service contract by way of negotiated procedure without prior publication of a contract notice is communicated in a contract notice in accordance with the procedure provided for in clause 2 of subsection (5) of § 28 of this Act, the estimated total value of the public works or services contracted for on the basis of such additional public contract will be included in the estimated value of the public contract.

(5) If a contracting authority does not preclude the award of a public service contract based on the results of a design contest, the estimated value of the design contest will consist of the estimated value of the public service contract to be presumably awarded.

(6) No choice of the basis for calculating the estimated value of public procurement will be used for carrying out the public procurement for disregarding the established procedures or rules or requirements. If estimated value of public procurement can be calculated using various methods under this Chapter and in using at least one of these methods the estimated value of the public procurement would be equal either to the public procurement threshold or international threshold or would exceed the relevant threshold, the contracting authority must calculate the estimated value of the public procurement using this method.

(7) If in the events specified in this Act a contracting authority pays the participation fee to the participants for the purpose of covering the expenses relating to participation, the contracting authority will include the participation fee in the estimated value of the public procurement.

§ 21. Calculation of estimated value of public supply contract or public service contract

(1) The estimated value of a public supply contract whose object is the lease or rental of supplies is:

- 1) in the event of a fixed-term public contract having a term of validity of 12 months or less, the estimated total value of the public contract within its term of validity;
- 2) in the event of a fixed-term public contract having a term of validity of over 12 months, the estimated total value of the public contract along with the estimated residual value of the supplies following the expiry of the term of the public contract;
- 3) in the event of a public contract awarded for an unspecified term or a public contract whose term of validity cannot be specified at the moment of calculating the estimated value, the estimated monthly payment multiplied by 48.

(2) The estimated value of a public supply contract or a public service contract, which is regular in its nature or which is to be renewed within a specific period, is:

- 1) the total value of successive similar public contracts awarded over the preceding 12 months or the preceding previous financial or budgetary year, taking, if possible, into account the estimated changes in the quantities to be purchased or ordered or in the price over the next period, or
- 2) the estimated total value of successive similar public contracts awarded over the next 12 months or the next financial or budgetary year following the award of the first public contract.

(3) Insurance premium and other fees and charges payable serve as the basis for calculation of the estimated value of a public contract of insurance services.

(4) Service fees, commissions and other charges serve as the basis for calculation of the estimated value of a public contract of banking or other financial services.

(5) A fee for services, commissions and other charges serve as the basis for calculation of the estimated value of a public contract of design services.

(6) The estimated value of a public service contract that does not provide for the total value of the contract is:

- 1) in the event of a fixed-term public contract awarded for a term of 48 months or less, the estimated total value throughout the term of validity of the public contract;
- 2) in the event of a public contract awarded for an unspecified term or public contract awarded for a term exceeding 48 months, the value of provision of services per month multiplied by 48.

§ 22. Calculation of estimated value of public works contract

(1) The estimated value of a public works contract is calculated based on the estimated value of construction work to be carried out in one building or in multiple buildings that are functionally related to one another and the estimated value of the supplies required for the performance of the construction work and to be handed over to the tenderer by the contracting authority will, as determined as of the moment of handing the supplies over to the tenderer, be added to the estimated value of the construction work.

(2) If the tenderer is granted use of supplies for the period of performance of construction work and the supplies do not amortise in full during the performance of the construction work, the average market price of using the supplies during the period when the supplies were used by the tenderer will be added to the estimated value of the construction work.

§ 23. Division of public procurement into lots

(1) A contracting authority cannot divide public procurement into lots to evade the procedure or rules or requirements established in this Act for carrying out public procurement, especially if the object of the public contract is supplies, services or public works that function jointly or that are needed for achieving the same purpose.

(2) The procedure applicable to awarding a public contract with the total estimated value of all lots applies to awarding a public contract with regard to each lot of public procurement that has been divided into lots.

(3) If the total estimated value of all lots of public procurement to be divided into lots is equal to or exceeds the international threshold, the contracting authority may deviate from the requirements provided for in subsection (2) of this section and, in the event of awarding public contracts with regard to some lots, apply the public contract award procedure with the estimated value of the relevant lot, provided that the total value of these lots does not exceed 20 per cent of the total estimated value of the public procurement and the value of each such lot net of value added tax is less than:

- 1) 80 000 euros in the event of a public supply contract or a public service contract;
- 2) 1 million euros in the event of a public works contract.

§ 24. Division of public procurement into lots within one procurement procedure

A contracting authority may divide public procurement into lots within one procurement procedure by taking the estimated total value of all lots into account in calculating the estimated value of the public procurement and by stipulating in the contract notice, whether the contracting authority allows one tenderer to submit a tender regarding one lot, several lots or all lots.

Chapter 2 PROCUREMENT PROCEDURE

Division 1

Types of Procurement Procedure and Application Thereof

§ 25. Open procedure and restricted procedure

(1) Open procedure is a procurement procedure whereby any interested person compliant with the requirements provided for in subsection (3) of § 12 and with possible restrictions established on the basis of the same subsection (hereinafter in this Division referred to as *interested person*) may submit a tender.

(2) Restricted procedure is a procurement procedure whereby any interested person may submit a request to participate in the procurement procedure, but a tender may be submitted only by candidates selected by the contracting authority on the basis of objective and non-discriminatory criteria, to whom the contracting authority submits an invitation to tender.

(3) A contracting authority is required to organise a procurement procedure as an open procedure or a restricted procedure, unless otherwise provided in this Act.

§ 26. Competitive dialogue

(1) Competitive dialogue is a procurement procedure whereby any interested person may submit a request to participate in the procurement procedure and whereby the contracting authority conducts negotiations with the candidates selected on the basis of objective and non-discriminatory criteria with the aim of identifying one or more of the most suitable solutions capable of meeting the contracting authority's needs in terms of the properties of use and functional requirements. The contracting authority submits an invitation to tender to the candidates selected as a result of the negotiations and makes a decision to award the contract on the basis of the award criteria laid down in the contract notice or in the invitation to tender.

(2) A contracting authority is entitled to organise a procurement procedure in the form of a competitive dialogue if the contracting authority is not objectively able to define the technical solutions meeting its needs in accordance with the § 33 of this Act or if the contracting authority is objectively unable to specify the legal or financial circumstances relating to the procurement with adequate precision and thus a public contract cannot be awarded without unreasonable expenses or technical problems by way of an open procedure or restricted procedure and the contracting authority awards a public contract on the basis of the most economically advantageous tender.

(3) Regardless of the provisions of subsection (2) of this section, a contracting authority has the right to organise a procurement procedure in the form of a competitive dialogue if the estimated value of the public procurement is below the international threshold.

§ 27. Negotiated procedure with prior publication of contract notice

(1) Negotiated procedure with prior publication of contract notice is a procurement procedure whereby any interested person may submit a request to participate in the procurement procedure and the contracting authority submits an invitation to tender to at least three candidates selected by it on the basis of objective and non-discriminatory criteria and negotiates the tenders with them in order to adjust the tenders submitted by them to the requirements established in the contract documents and select the successful tender.

(2) A contracting authority has the right to organise a negotiated procedure with prior publication of a contract notice if:

- 1) in the course of an open procedure or a restricted procedure or a competitive dialogue no tender compliant with the requirements established in the contract documents or contract notice were submitted and the essence of the original terms of the public procurement is not altered;
- 2) the nature of the public works, supplies or services constituting the object of the public contract or the risks attaching thereto do not allow for specifying the estimated value of the public contract;
- 3) the nature of the services constituting the object of the public contract, including the services within category 6 of Annex VI of the CPV Regulation, and services relating to intellectual property rights, e.g. services

involving the design of works, does not allow for defining the terms of the public contract with sufficient precision to permit the award of the public contract as a result of an open procedure or restricted procedure; [RT I, 31.12.2010, 2 - entry into force 01.01.2011]

4) construction work constituting the object of a public contract is performed solely for purposes of research or development or for testing and not with the aim of ensuring profitability or recovering research and development costs.

(3) Regardless of the terms provided for in subsection (2) of this section, a contracting authority is entitled to organise a procurement procedure in the form of a negotiated procedure with prior publication of a contract notice if the estimated value of the public procurement is below the international threshold.

§ 28. Negotiated procedure without prior publication of contract notice

(1) In the event of a negotiated procedure without prior publication of a contract notice a contracting authority negotiates the terms of a public contract with one or more interested persons at its own choice, having previously submitted the contract documents to them.

(2) A contracting authority is entitled to organise a procurement procedure in the form of a negotiated procedure without prior publication of a contract notice if:

1) no tenders or no requests to participate in the procurement procedure were submitted during an open procedure or a restricted procedure or if all submitted tenders were substantially different from the technical specifications of the object of the public contract specified in the contract documents and the initial terms of the public procurement are not altered in essence;

2) for technical or artistic reasons or for reasons relating to the protection of exclusive rights, a public contract may be awarded only to a particular tenderer;

3) the urgent award of a public contract is necessary due to extreme urgency brought about by unforeseeable events independent of the contracting authority, which do not allow for complying with the time limit specified in § 35 of this Act.

(3) At the request of the European Commission, a contracting authority will send to the European Commission via the Ministry of Finance a relevant report on the circumstances of implementation of the basis specified in clause 1) of subsection (2) of this section.

(4) Upon awarding a public supply contract, a contracting authority has the right to, in addition to the bases specified in subsection (2) of this section, organise a procurement procedure in the form of a negotiated procedure without prior publication of a contract notice if:

1) the supplies that constitute the object of the contract are manufactured purely for the purpose of research, experimentation, study or development and if such manufacturing does not involve quantity manufacturing to establish commercial viability or recovery of research and development costs;

2) supplies are purchased from the same tenderer for partial replacement or extension of the supplies purchased earlier and where a change of the tenderer would oblige the contracting authority to acquire supplies with different technical characteristics that would result in incompatibility with the existing supplies or technical difficulties in operation and maintenance; thereby the length of such recurrent contracts must not exceed three years;

3) supplies are purchased on a commodity market;

4) supplies are purchased on particularly advantageous terms, from either a person with regard to whom a liquidation procedure has been initiated or from a bankruptcy trustee on the basis of an arrangement with creditors.

(5) Upon awarding a public works contract or a public service contract, a contracting authority has the right to, in addition to the bases provided for in subsection (2) of this section, organise the public procurement procedure in the form of a negotiated procedure without prior publication of a contract notice if:

1) additional works or services not included in the initially considered project or in the original contract but that have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, are awarded to the same tenderer to the extent of 20 per cent of the value of the original public contract when such additional works or services cannot be technically or economically separated from the object of the original contract without causing major expenses to the contracting authority or when such additional works or services are strictly necessary for its completion;

2) new public works or services consisting in the repetition of the public works or services awarded to the same tenderer up to three years ago under a contract awarded by way of an open procedure or a restricted procedure and provided that such works or services are in conformity with the original project and whereby the possibility of awarding of such public contract has been communicated in the original contract notice.

(6) A contracting authority is entitled to organise a procurement procedure in the form of a negotiated procedure without prior publication of a contract notice in awarding a public service contract in addition to the bases specified in section (2) of this section if the public contract will be awarded to the winner of a design contest or to one of the winners thereof and such condition has been specified in the notice of the design contest.

If the public contract is awarded to one of the winners of the design contest, negotiations will be held with all winners.

(7) A contracting authority has the right to organise a procurement procedure in the form of a negotiated procedure without prior publication of a contract notice in addition to the bases specified in subsections (2) and (4) to (6) of this section if the estimated value of the public procurement is below the international threshold and:

- 1) the object of the public contract is a licence to use the documents or database of a library;
- 2) supplies are purchased at a price that is considerably lower than the usual market price, taking advantage of especially advantageous terms offered within a very short time period;
- 3) supplies are purchased or services or works are contracted for a diplomatic representation in a foreign state;
- 4) supplies are purchased or services are contracted for by the contracting authority specified in clauses 1) or 2) of subsection (1) of § 10 of this Act from a penal institution or from a state company managing the production units of a penal institution;
- 5) the object of the public contract is air transport services.

Division 2

General Principles of Procurement Procedure

§ 29. Opening and termination of procurement procedure

(1) In order to start an open procedure, restricted procedure or negotiated procedure with prior publication of a contract notice or a competitive dialogue, a contracting authority will submit a contract notice to the register through the website of the register.

(2) A procurement procedure, except for a negotiated procedure without prior publication of a contract notice, will start with publishing a contract notice in the register. A negotiated procedure without prior publication of a contract notice will start with the submission of contract documents by the contracting authority to one or more interested persons selected by the contracting authority.

(3) A procurement procedure will terminate with:

- 1) the award of the public contract or framework agreement;
- 2) the rejection of all tenders due to the reason that no tender was declared admissible;
- 3) the rejection of all tenders on the bases provided for in § 49 of this Act;
- 4) the exclusion or disqualification of all tenderers or candidates from the procurement procedure;
- 5) failure to submit tenders or requests to participate in a procurement procedure in accordance with the procedure provided for in this Act within the prescribed term;
- 6) the declaration of the procurement procedure invalid by a decision of the Ministry of Finance or by a decision of the contracting authority on the basis of a precept of the Ministry of Finance or, in the event of a justified need, at the contracting authority's own initiative;
- 7) the termination of the term of validity of all tenders if no tenderer agrees to extend the term of validity of the tender.

(4) If a contracting authority has divided public procurement into lots within one procurement procedure, the procurement procedure will terminate following the occurrence of any ground specified in subsection (3) of this section with regard to any lot or in the event where the decision specified in clause 6) of subsection (3) regarding declaring the procurement procedure invalid is made with regard to the entire procurement procedure.

§ 30. Indicative notice

If a contracting authority wishes to apply the shortened time limits specified in subsection (6) of § 35 of this Act for the submission of tenders, the contracting authority must submit an indicative notice to the register:

- 1) as soon as possible after the beginning of the contracting authority's financial or budgetary year, on the public supply contracts and on the public service contracts involving services specified in Annex VI to the CPV Regulation and in Annex 3 to this Act, as planned for the financial or budgetary year, based on the types of the supplies or the categories of the services listed in Annex VI to the CPV Regulation and in Annex 3 to this Act; [RT I, 14.02.2012 – entry into force 24.02.2012]
- 2) on the planned public works contracts as soon as possible after the adoption of the relevant decision.

§ 30¹. Voluntary notice

At least 14 days before awarding a public contract, a contracting authority may submit to the register a voluntary indicative notice (hereinafter *voluntary notice*) via the website of the register if the contracting authority has not submitted a contract notice presuming that the award of a public contract without the prior publication of a contract notice is permissible under this Act.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

§ 31. Contract documents

(1) A contracting authority will, in the event of an open procedure or a negotiated procedure without prior publication of a contract notice, draw up contract documents before commencing the procurement procedure and, in the event of a restricted procedure or a negotiated procedure with prior publication of a contract notice, draw up contract documents not later than within the time limit of submission of requests to participate in the procurement procedure. The contract documents will be drawn up in writing or, in accordance with the requirements provided for in this Act and in the legislation established on the basis thereof, electronically, provided that the contracting authority has notified of using the electronic form in the contract notice.

(2) Contract documents must include at least the following information, unless otherwise provided for in this Act or if the relevant information has not been specified in the contract notice:

- 1) the invitation to tender according to the terms included in the contract notice and contract documents if the contracting authority prepares the contract documents in an open procedure;
- 2) the technical specifications of the object of the public contract drawn up in accordance with the requirements provided for in § 33 of this Act;
- 3) all terms of the future public contract or the draft public contract, excluding the circumstances specified in clause 4) of this subsection;
- 4) all the circumstances on which the contracting authority has requested competitive tenders;
- 5) the structure of the tender and the list of required documents and the requirements for labelling the tender;
- 6) the language or languages in which the tender must be drawn up;
- 7) the structure and currency in which the value of the tender must be presented;
- 8) the requirement for the tenderer to confirm in the tender the transposition of all the terms contained in the contract notice and contract documents and to submit the tender only regarding the circumstances on which the contracting authority has requested competitive tenders;
- 9) [Repealed – RT I, 31.12.2010, 2 – entry into force 01.01.2011]
- 10) the time limit and place of submission of tenders;
- 11) the minimum tender validity period;
- 12) the amount of the tender security if the contracting authority requires the submission of a tender security;
- 13) contact details at which additional information on the content of the contract documents can be asked;
- 14) the exact place and time of opening tenders;
- 15) the grounds for rejection of all tenders, if the contracting authority would like to establish any.

(2¹) If the object of a public contract is road vehicles, the contract document must contain terms that take into account the energy and environmental impact covering the entire service life of the vehicle. More detailed terms regarding the energy and environmental impact covering the entire service life of vehicles, which are to be taken into account upon acquisition of road vehicles, will be established by the Government of the Republic on the proposal of the Minister of the Environment.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

(3) A contracting authority will specify in contract documents whether it awards the public contract on the basis of the most economically advantageous tender or solely on the basis of the lowest price, unless it has been specified in the contract notice. A contracting authority may award a public contract only on the basis of the lowest price if the economical advantageousness of the tender for the contracting authority depends only on the price of the tender and all other terms of the future public contract, including the criteria relating to the object of the public contract, have been exhaustively specified in the contract documents.

4) If a contracting authority awards a public contract on the basis of the most economically advantageous tender, the contracting authority will also specify the award criteria enabling objective evaluation relating to the object of the public contract, including above all, quality, price, technical value, aesthetical and functional properties, properties influencing the environment, operating expenses, feasibility, post#sales maintenance and technical assistance and the cost thereof, specific proven skills or experience of the persons directly responsible for the provision of services or performance of public works, on which the quality of the works performed or services provided directly depends, and the term of performance of the public contract. For the purpose of evaluation of the economical advantageousness of tenders the contracting authority will specify the objectively founded relative weight to be attributed to each selected award criterion.

(5) If a contracting authority awards a public contract on the basis of the most economically advantageous tender and the contracting authority has stipulated the possibility to also submit variants in the tender in addition to the solution compliant with all the terms specified in the contract notice and contract documents, the contracting authority will specify in the contract documents the requirements that the variants should comply with and the terms of submission of variants.

(6) If a contracting authority plans to organise a competitive dialogue or a negotiated procedure with prior publication of a contract notice in successive stages by reducing the number of solutions being the object of the dialogue in each stage or the number of tenders negotiated tenders, the contracting authority will communicate it in the contract documents or in the invitation to tender.

(6¹) If the event of a negotiated procedure with prior publication of a contract notice, the contracting authority will establish in the contract documents a negotiation procedure that contains, among other things, the methodology of reducing the number of negotiated tenders, provided that negotiations are held in successive stages.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(7) In the event of the award of a public service contract or a public works contract, the contracting authority may establish in the contract documents the condition that a tenderer must provide most of the services or perform most of the public works (perform most of the public contract) itself. Based on the nature of the public contract, such restriction of subcontracting will be necessary for ensuring the quality of performance of the public contract, the verifiability of performance of the public contract or have another objective reason and be in accordance with the generally accepted good business practice in the relevant field. The restriction of subcontracting does not apply to subcontracting involving an undertaking related to the tenderer.

(8) If a contracting authority has notified of carrying out an electronic auction in the contract notice, the contract documents must also contain at least the following data:

- 1) numerical or percentage indicators to be given the tender, the comparison of whose values constitutes the object of the electronic auction;
- 2) restrictions to the values of the indicators specified in clause 1) of this subsection arising from the object of the public contract;
- 3) information that will be made available to tenderers in the course of the electronic auction and, if necessary, the time of giving the information;
- 4) information concerning the electronic auction procedure;
- 5) terms on the basis of which tenderers participate in the electronic auction, in particular, the minimum differences by which the new values or prices presented during the auction must differ from the earlier ones;
- 6) relevant information concerning the arrangement and technical specifications of the electronic equipment and Internet connection.

[RT I 2008, 14, 92 - entry into force 01.12.2009]

(8¹) In the event of the award of a public contract whose performance involves intellectual property, the contracting authority will request that the tenderer or candidate certify that it has the intellectual property rights required for the performance of the public contract.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

(9) If contracting authorities organise public procurement jointly on the basis provided for in § 13 of this Act, the contracting authority authorised to organise the public procurement will specify in the contract documents the contracting authorities being the parties to the public contracts to be awarded, their division between the public contracts and their shares in performing the obligations arising from the public contracts.

(10) A contracting authority must allow interested parties to access the contract documents free of charge. The contracting authority will allow for accessing the contract documents at its seat or on its website. The contracting authority may charge a fee for the delivery of contract documents on paper, but such fee must not exceed the photocopying and delivery costs of the contract documents.

§ 32. Technical specifications

(1) For the purposes of this Act, technical specification means the following that has been established by a contracting authority using the terminology and the degree of accuracy understandable to persons engaged in the relevant field in order to describe the object of a public contract:

- 1) set of the characteristics and technical requirements for public works constituting the object of a public works contract;
- 2) list of the characteristics and essential properties of supplies or services constituting the object of a public supply contract or a public service contract.

(2) A set of technical requirements applicable to public works must describe the requirements for materials, products or supplies in a manner that enables their compatibility with the purpose of use of the object established by the contracting authority to be evaluated. These requirements may involve, among other things, environmental protection requirements and constructional requirements, including the requirement of accessibility for people with disabilities, conformity assessment, requirements for performance, security or measurements, quality assurance measures, terminology used, symbols, testing and test methods, requirements for packaging, marking and labelling, and for the production process and production technology. The requirements may also include the precepts related to the planning and cost of a building, conditions of testing, supervision and acceptance, requirements for instructions of use and construction methods, technology and any and all other technical terms and conditions that the contracting authority is able to describe and that are related to completed buildings, their materials or parts.

(3) A list of the essential characteristics of supplies or services may include, among other things, environmental protection requirements, requirements for quality and construction, including the requirement of accessibility for people with disabilities, conformity assessment, performance, requirements for performance, security or measurements of a product, and for the name of the product under which it is distributed, conformity requirements, terminology used, symbols, testing and test methods, packaging, marking and labelling, user

instructions as well as requirements for the production process and production technology, and conformity assessment methods.

§ 33. Preparation of technical specifications

(1) If the relevant field has no technical standard, the technical specifications of the object of a public contract must be prepared in the following order:

- 1) an Estonian standard transposing a European standard;
- 2) a European standard;
- 3) a European technical approval issued by the approval body appointed by a Member State of the European Union and which confirms that from the technical viewpoint the product is suitable for serving the particular purpose in terms of its properties, which comply with the essential requirements established for public works and in terms of its features and the prescribed terms of application or use;
- 4) common technical specifications established in accordance with the procedure approved by a Member State of the European Union and published in the Official Journal of the European Union;
- 5) an international standard;
- 6) a technical control system established by a European standardisation organisation;
- 7) an original Estonian standard, Estonian technical approval or Estonian technical specifications relating to the design of works, accounting methods or implementation of works or use of products.

(2) Each reference made by a contracting authority to the basis specified in subsection (1) of this section in technical specifications must be accompanied by the words 'or equivalent.'

(3) Technical specifications may also be prepared as a whole or some of their features may be based on specifications of performance or functional requirements of the object of a public contract instead of the bases specified in subsection (1) of this section, which could also include environmental protection requirements. Such specifications must be sufficiently precise for specifying the object of the public contract by a tenderer and for the award of the public contract.

(4) In preparing the technical specifications on the basis specified in subsection (3) of this section, the basis specified in subsection (1) may be referred to by the contracting authority as the means of guaranteeing the compliance with the performance requirements or functional requirements specified in subsection (3).

(5) If technical specifications are, among other things, based on the environmental protection requirements specified in subsection (3) of this section, these requirements may also be specified as a set of or single requirements expressed as the prerequisite for receiving European, Estonian or international or other eco#labels, provided that:

- 1) such requirements are appropriate to define the characteristics of the supplies or services that constitute the object of the public contract;
- 2) such requirements have been established on the basis of scientific information;
- 3) upon adopting these eco#labels, a procedure open to all interested parties and organisations has been used;
- 4) all interested parties can apply for a permit to use these eco#labels.

(6) Technical specifications may stipulate that supplies or services bearing the eco#label compliant with the terms specified in subsection (5) of this section are deemed to comply with the technical specifications in terms of the requirements expressed as the prerequisite of receiving this eco#label.

(7) Technical specifications must not refer to a specific purchase source, process, trademark, patent, type, origin or manner of production, which may give certain tenderers or products advantages over others or preclude their participation. Such reference will be permitted if this is unavoidably necessary resulting from the object of the public contract due to the fact that preparation of technical specifications on the bases provided for in subsections (1) and (3) of this section does not allow for sufficiently accurate or understandable description of the object of the public contract. Such reference must be accompanied by the words 'or equivalent.'

(8) Technical specifications must grant all tenderers equal opportunities for submission of tenders and will not create objectively unjustified obstacles to the opening up of public procurement to competition.

(9) If it is technically possible and relevant, the possible usage requirements for people with disabilities need to be taken into consideration in preparing the technical specifications relating to the object of a public contract or the technical specifications must be prepared in such a manner that everyone can use the object of the public contract.

§ 34. Tender security

(1) A contracting authority may request a tender security from a tenderer, which ensures the full or partial compensation of losses incurred due to the failure to fulfil the obligations within the procurement procedure to the contracting authority by the tenderer, but no more than one per cent of the estimated value of the public contract.

(2) A tender security should be requested in the same amount from all tenderers.

(3) If a contracting authority has divided a public procurement within one procurement procedure into lots, the contracting authority may request a tender security also with regard to some lots. A tender security regarding a lot will be requested in the same amount from all tenderers.

(4) A contracting authority will request a tender security in the form of a guarantee of a credit institution or financial institution or insurer or in the form of a deposit of a cash amount on a current account of the contracting authority.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(5) A contracting authority will not return a tender security to a tenderer or will realise it if the tenderer withdraws the tender within the tender validity period.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

(5¹) A contracting authority may retain a tender security or sell it if the tenderer or the candidate is disqualified on the ground provided for in subsection (2) of 103¹⁰ of this Act.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

(6) A contracting authority will return a tender security to a tenderer within three working days after:

- 1) the awarded public contract has entered into force;
- 2) expiry of the tender validity period;
- 3) the procurement procedure has been declared invalid;
- 4) the tender has been withdrawn in the event specified in subsection (2) of § 44 of this Act.

§ 35. Time limits for submitting tenders and requests to participate in procurement procedure

(1) A contracting authority will establish time limits for submission of tenders or requests to participate in a procurement procedure based on the object of the public contract, above all, its complexity and quantity, volume or amount.

(2) In the event of an open procedure the time limit for submission of tenders must not be shorter than 52 days from publishing the contract notice in the register.

(3) In the event of a restricted procedure, negotiated procedure with prior publication of a contract notice and competitive dialogue the time limit for submission of requests to participate in the procurement procedure must not be shorter than 37 days from publishing the contract notice in the register.

(4) In the event of a restricted procedure the time limit for submission of tenders must not be shorter than 40 days from the submission of an invitation to tender to the candidates.

(5) In the event of a negotiated procedure with prior publication of a contract notice and competitive dialogue the time limit for submission of tenders may be established by agreement between the contracting authority and the candidates selected by the contracting authority, provided that all selected candidates have equal time for submitting tenders. If no agreement is reached, the contracting authority will establish a time limit for submission of tenders, which must not be shorter than 24 days from submitting the invitation to tender.

(6) A contracting authority may shorten the time limits specified in subsections (2) to (4) of this section as follows:

- 1) if the contracting authority has submitted an indicative notice for publication in accordance with the procedure provided for in § 30 of this Act 52 days to 12 months before the submission of a contract notice and at the time of submission the indicative notice contains all the compulsory information that must be given in a contract notice and that is available at the time of submission of the indicative notice, the time limit for submitting tenders in the event of the procurement procedures specified in subsections (2) and (4) of this section may be shortened to up to 36 days;
- 2) if notices are sent to the Publications Office of the European Union for electronic publication, the time limit for submission of the tenders specified in subsection (2) and requests specified in subsection (3) may be shortened by seven days;
- 3) if, as of the submission of a contract notice to the register, the contracting authority grants unlimited and full electronic access to the contract documents and refers to the respective website in the contract notice, the time limit for submission of the tenders specified in subsections (2) and (4) of this section may be shortened by five days.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(6¹) If a contracting authority has the right to shorten the time limits specified in subsections (2) to (4) of this section on multiple grounds provided for in clauses 1) to 3) of subsection (6), the contracting authority may total the permitted shortenings of the time limit and shorten the time limits specified in subsections (2) to (4) to the extent thereof.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(6²) In the event of the procurement procedures specified in subsections (2) and (4) of this section the time limit of submission of tenders must not be shorter than 22 days in any event.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(7) If the estimated value of a public contract is equal to or exceeds the public procurement threshold, but below the international threshold, the time limit specified in subsection (2) of this section must be at least 22 days in the event of a public works contract, at least 15 days in the event of a public supply contract or a public service contract, the date specified in subsection (3) must be at least seven days, and the time limit specified in subsection (4) in the event of a public works contract must be at least 22 days and in event of a public supply contract or a public service contract must be at least 15 days.

(8) If a contracting authority does not submit contract documents or additional information to candidates or persons interested in participating in a procurement procedure within the time limits specified in this section, although these were applied for in a timely manner, or if tenders may be submitted only after a visit to the site of performance of the contract or after on#the#spot inspection of the documents supporting the contract documents, above all, of the documents that constitute the basis for preparing technical specifications, the contracting authority will, once such need becomes evident, extend the time limit for submission of tenders to a reasonable extent and, if necessary, postpone the time of opening tenders, so all candidates or persons interested in participation in the procurement procedure can receive the information needed for submitting a tender.

(9) A contracting authority may extend the time limit for submission of tenders or requests to participate in a procurement procedure and, if necessary, change the time limit of opening the tenders accordingly. A time limit will not be extended if the original due date arrives before publishing the amended contract notice in the register or before sending the amended contract documents to all tenderers and to these candidates and interested persons who have received the contract documents.

§ 36. Amendment of contract notice and contract documents

(1) A contracting authority may amend a contract notice or contract documents before the due date of submission of tenders or requests to participate in the procurement procedure specified in the contract notice. After the due date of submission of tenders or requests to participate in the procurement procedure specified in the contract notice, the contracting authority may change the due date of submission of tenders or requests to participate in the procurement procedure specified in the contract notice or in the contract documents if, upon arrival of the due date of submission of tenders or requests to participate in the procurement procedure, the procurement procedure has been suspended in accordance with the procedure specified in subsection (3) of § 123 of this Act.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(2) In order to amend the contract notice, the contracting authority will submit a new contract notice to the register and immediately notify all tenderers, candidates and the interested persons who have received the contract documents thereof.

(3) Upon amending the contract documents, the contracting authority will send the amended contract documents simultaneously to all tenderers and to the candidates and interested persons who have received the contract documents.

(4) Upon amending the contract notice or contract documents, the contracting authority extends the time limit for submission of tenders or requests to participate in the procurement procedure so that as of the publication of the amended contract notice in the register or as of sending the amended contract documents to the persons specified in subsection (3) of this section the time limit of submission of tenders or requests to participate in the procurement procedure would be at least equal to a half of the relevant minimum time limit provided for in this Act. The contracting authority does not have to extend the specified date if the amendments concern only the contact details or in other events where the tender drawn up on the basis of the original notice and contract documents cannot become non#compliant due to the amendments made or if the tenderer or candidate compliant with the award criteria on the basis of the original notice cannot remain unqualified due to the amendments made.

(5) If only time limits are extended and the time of opening tenders is changed on the basis provided for in subsection 35 (9) of this Act, the changed time limit does not have to comply with the provisions of subsection (4) of this section.

§ 37. Public procurement report

(1) A contracting authority must submit a public procurement report to the register through the register's website within 20 days after the termination of the procurement procedure.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(1¹) A contracting authority, when submitting to the register a voluntary notice on the bases provided for in § 30¹ of the Act, must submit to the register a public procurement report via the register's website within ten days after awarding the public contract.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(2) A contracting authority will also submit a public procurement report to the register within 20 days after awarding a public contract if the value of the public contract, net of value added tax, exceeds 10 000 euros in the event of supplies or services or 30 000 euros in the event of public works. In the event of public procurement in the fields of defence and security, a contracting authority will submit a public procurement report to the register within 20 days after awarding a public contract also if the value of the public contract net of value added tax exceeds 40 000 euros in the event of supplies or services or 250 000 euros in the event of public works. The obligation does not apply in the event of public contracts awarded on the basis of a framework agreement.
[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

(3) If a contracting authority has divided public procurement into lots within one procurement procedure, the contracting authority must submit a public procurement report within 45 days after awarding a public contract concerning a lot, provided that by such moment any grounds for termination of the procurement procedure specified in subsection (3) of § 29 of this Act have not occurred with regard to all lots. The contracting authority must submit a separate public procurement report on the remaining lots within 45 days following the occurrence of any grounds for termination of the procurement procedure specified in subsection (3) of § 29 of this Act with regard to any of these lots.

(4) Within 20 days after the termination of a public contract or framework agreement, the contracting authority will submit an annex to the public procurement report, indicating the following:

1) amendments made to the public contract along with the reasons for the amendments and the major differences of performance of the public contract compared to the provisions of the public contract, above all, a breach or early termination of the public contract, or

2) the values of the public contracts awarded on the basis of the framework agreement or the descriptions of the performances made on the basis of the latter.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

Division 3

Verification of Qualifications of Tenderers and Candidates

§ 38. Exclusion of tenderer and candidate from procurement procedure

(1) A contracting authority will not award a public contract to a person and will exclude from a procurement procedure a tenderer or candidate:

[RT I 2010, 20, 102 - entry into force 01.07.2010]

1) who or whose legal representative has been convicted of organising a criminal group or belonging thereto or violating the requirements of public procurement or fraud or committing offences relating to professional misconduct or money laundering or tax offences in criminal or misdemeanour proceedings, and whose data concerning the conviction have not been deleted from the registry of convictions in accordance with the Registry of Convictions Act or whose conviction is valid in accordance with the legislation of their country of residence or country of location;

[RT I 2010, 20, 102 - entry into force 01.07.2010]

2) who is bankrupt or under liquidation, whose business operations have been suspended or who is in another similar state under the legislation of its country of location, except upon purchase of supplies in the event and on the conditions provided for in clause 4) of subsection (4) of § 28 of this Act;

3) against whom a compulsory liquidation procedure or another similar procedure has been initiated in accordance with the legislation of its country of location;

4) who has arrears of state taxes or local taxes of their place of residence or seat or arrears of social insurance contributions or interest charged on overdue tax amount (hereinafter *tax arrears*) as of the date of commencement of the procurement procedure or if the payment of the tax arrears has been staggered for a period exceeding six months starting from the date of commencement of the procurement procedure, unless the staggering of payment of the tax arrears has been guaranteed in full. For the purposes of this Act, arrears of state taxes or local taxes of the place of residence or seat means state taxes or local taxes of the place of residence or seat not paid by a tenderer or candidate by the due date and the interest charged on the tax arrears, which exceed 100 euros.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

5) who has submitted a joint tender in the same public procurement or concerning the same lot in the event where the public procurement has been divided into lots within one procurement procedure, having at the same time submitted the tender alone, having at the same time submitted several joint tenders with other different joint tenderers or having at the same time given another tenderer the written consent to be named as a subcontractor in the performance of the public contract;

[RT I 2010, 20, 102 - entry into force 01.07.2010]

6) who has given false information on the compliance with the requirements established by the contracting authority in this Division or based on the provisions of this Division.

(1¹) After declaring a tender successful, but before awarding the public contract, the contracting authority will verify the absence of tax arrears and information about the staggering of tax arrears regarding clause 4) of subsection (1) of this section on the basis of public data available in a database or request a certificate of the Tax and Customs Board and a certificate of the tax authority of the local taxes of the place of residence or seat of the tenderer or candidate or a certificate of the competent authority of the country of location of the tenderer regarding the absence of tax arrears as of the date indicated by the contracting authority.
[RT I 2010, 20, 102 - entry into force 01.01.2011]

(2) A contracting authority may exclude from the procurement procedure a tenderer or candidate:
1) who or whose representative has, on the basis of a decision of the court of honour of a professional association or another similar basis, been found guilty of grave professional misconduct;
2) who has not submitted the data or documents requested by the contracting authority regarding the absence of the grounds for exclusion of the tenderer or candidate from the procurement procedure, unless the data or documents are available to the contracting authority on the basis of public information kept in a database without incurring any major expenses;
[RT I 2010, 20, 102 - entry into force 01.07.2010]
3) who failed to inform the contracting authority of a significant change of the circumstances specified in subsection (1) of this section;
4) whose tender has been drawn up with the participation of a person who has participated in drawing up the contract documents of the same public procurement or who is in another way related to the contracting authority and the information known to that person gives them advantage over other tenderers;
5) [Repealed – RT I 2008, 14, 92 – entry into force 28.03.2008]

(3) A contracting authority will request from a tenderer or candidate, along with documents proving their suitability:
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]
1) the submission of a written certificate of the absence of the circumstances specified in clauses 1) to 3) of subsection (1) of this section;
2) the submission of a certificate of a certificate of the Tax and Customs Board and a certificate of the tax authority of the local taxes of the place of residence or seat of the tenderer or candidate or a certificate of the competent authority of the country of location of the tenderer regarding the absence of the circumstances specified in clause 4) of subsection (1) of this section, unless the contracting authority can verify the data on the basis of public information available in a database. If the competent authority of the country of location of the tenderer or candidate does not issue a certificate of the absence of the circumstances specified in clause 4) of subsection (1) of this section, the tenderer or candidate will submit a certificate of the absence of tax arrears issued by the competent authority.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(3¹) A contracting authority may request that a tenderer or candidate submit, along with the documents to be submitted by them for the purpose of certifying the suitability or separately, a written confirmation of the tenderer or candidate or a certificate issued by a competent authority, which indicates that no grounds specified in subsection (2) of this section exist with regard to the tenderer or candidate.
[RT I 2008, 14, 92 - entry into force 28.03.2008]

(4) [Repealed – RT I, 31.12.2010, 2 – entry into force 01.01.2011]

(4¹) [Repealed – RT I, 31.12.2010, 2 – entry into force 01.01.2011]

(4²) [Repealed – RT I, 31.12.2010, 2 – entry into force 01.01.2011]

(5) If a contracting authority has justified doubts that the grounds specified in clauses 1) to 4) of subsection (1) of this section exist with regard to a tenderer or candidate, the contracting authority may request from the tenderer or candidate a relevant certificate of the registry of convictions on the absence of the specified grounds or submit an enquiry to the authorised processor of the registry of convictions or request an equivalent document issued by a court or an administrative authority of the country of location of the tenderer or candidate or a certificate issued by any other competent authority or written authorisation of the tenderer or candidate for addressing relevant authorities in order to obtain a confirmation of the absence of the given grounds. If the country of location of the tenderer or candidate issues does not issue such documents, these may be replaced by a testimony given by the tenderer or candidate or their representative under oath or with a testimony given before the competent justice or administrative authority or notary public or professional association in accordance with the legislation of the country of location of the tenderer or candidate.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(6) A contracting authority will request that, along with the documents submitted for the proving of their suitability, joint tenderers or joint candidates submit a power of attorney issued to their representative.

(7) Upon excluding a tenderer or candidate from a procurement procedure on the grounds provided for in this section, a contracting authority will make a reasoned written decision.

§ 39. Verification of suitability of tenderer and candidate

(1) A contracting authority will verify whether the financial and economic standing and the technical and professional ability of a tenderer or candidate comply with the award criteria specified in the contract notice. The award criteria must be sufficient for proving the tenderer's or candidate's ability to duly perform the public contract and relevant and proportional to the nature, quantity and purpose of the supplies, services or public works that constitute the object of the public contract.

(2) If a contracting authority has divided public procurement into lots within one procurement procedure and has established different award criteria to different lots, the contracting authority will separately verify the compliance of the financial and economic standing and technical and professional ability of the tenderers or candidates who have submitted a tender or a request to participate in the procurement procedure regarding all various lots with the award criteria specified in the contract notice. For qualifying such tenderer or candidate who submits a tender or requests to participate in the procurement procedure with regard to more than one lot, the contracting authority may establish stricter award criteria for the totalled indicators in proportion to the estimated value of the lots.

(3) A contracting authority has the right to verify the suitability of a tenderer or candidate throughout the entire procurement procedure and if the contracting authority learns that the financial and economic standing or the technical and professional ability of the tenderer or candidate does not comply with the award criteria provided for in the contract notice, the contracting authority has the right to make a new decision on qualifying the tenderer or candidate and disqualify the tenderer or candidate.

(4) A contracting authority may request that a tenderer or candidate explain the contents of documents submitted for verification of the suitability or that a tenderer or candidate submit data or documents allowing for explanation.

(4¹) If a tenderer or candidate has failed to submit a document attesting the suitability requested in a contract notice or if a tenderer or candidate does not, at the request of the contracting authority, does not submit an explanation regarding the content of the documents submitted for attesting the suitability or information or document allowing for explanation and this information or documents are not available to the contracting authority without incurring major expenses owing to public information kept in a database, the contracting authority will disqualify the tenderer or candidate.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(5) A contracting authority will not disqualify a tenderer or candidate on the grounds that the tenderer or candidate has no prior public contracts for the purposes of § 4 of this Act.

(6) A contracting authority will make a reasoned written decision on the qualification or disqualification of a tenderer or candidate.

(7) A disqualified tenderer or candidate will not participate in the procurement procedure any further.

§ 40. Financial and economic standing of tenderer and candidate

(1) In order to verify the compliance of the financial and economic standing of a tenderer or candidate with the award criteria, a contracting authority will require the submission of one or several of the following documents specified in the contract notice:

- 1) appropriate statements from a bank or any other relevant document accepted by the contracting authority, which proves that the tenderer or candidate has the funds required for ensuring the performance of the public contract;
- 2) annual reports or extracts from the annual reports of up to the last three years if the annual reports are public according to the legislation of the country of location of the tenderer or candidate;
- 3) information on the net sales of the entirety of the business operations of the tenderer or candidate or on the net sales in the field relating to the public contract or to the extent corresponding to the object of the public contract regarding a period of up to three financial years, if available.

(2) A contracting authority may request that a tenderer or candidate submit a professional liability insurance certificate or any other relevant document accepted by the contracting authority, which indicates that the tenderer or candidate has the funds required for the compensation of loss that may be caused by a possible violation of the public contract or that the tenderer or candidate has the possibility to obtain them.

(3) If necessary and relevant for proving the suitability of a tenderer or candidate, the tenderer or candidate may prove their compliance with the requirements set for their financial and economic standing in the framework of the performance of the particular public contract, in addition to its own indicators, also on the basis of the funds of another person, if the tenderer or candidate proves to the contracting authority in an acceptable manner that this person has the funds necessary for the performance of the public contract and corresponding to the object of the public contract at its disposal, and the tenderer or candidate may use the relevant funds of that person, if necessary, for performance of the public contract.

(4) In the event of indicators summed up for the purpose of proving the compliance of their financial and economic standing with the award criteria, joint tenderers or joint candidates may rely on the summed up indicators of all joint tenderers or joint candidates.

(5) If a tenderer or candidate is with good reason unable to submit the documents prescribed in a contract notice by a contracting authority, the tenderer or candidate may characterise its financial and economic standing using the documents accepted by the contracting authority, provided that the tenderer or the candidate will not be placed in a better situation in comparison with other tenderers or candidates.

§ 41. Technical and professional ability of tenderers and candidates

(1) In order to verify the compliance of technical and professional ability of a tenderer or candidate with the award criteria, a contracting authority will request in a contract notice the submission of one or several of the following data and documents, depending on the nature, quantity and usage method of the services or public works to be contracted and supplies to be purchased on the basis of the public contract:

1) the list of the public works performed during up to the last five years and matching the properties specified by the contracting authority, which reflects the value, time of performance and site of all major works performed, including, provided that it is practical and possible, public works awarded, and the evidence attesting that these works were completed in accordance with the rules of the awarded contracts and good practice;

2) the list of the supplies contracts or service contracts performed during up to the last three years and matching the properties specified by the contracting authority, which reflects the value, dates of award and counterparty details of the contracts, including, provided that it is practical and possible, public supplies contracts and public service contracts awarded;

3) the details of the technical staff or technical bodies of the tenderer or candidate, notably those responsible for quality control, regardless of whether they are part of the staff of the undertaking of the tenderer or candidate or act as subcontractors; in the event of a works contract, the details of the persons or technical bodies responsible for the performance of the works;

4) a description of the technical equipment used for ensuring quality and the tools and measures of monitoring and analysing the quality of work;

5) the data on the experience, education and professional qualifications of the tenderer or candidate or its managerial staff and persons responsible for providing services or managing works;

6) the environmental management measures, if appropriate, applied for the performance of a public contract in the event of a works contract or a service contract;

7) in the event of a public service contract or a public works contract, the average number of the employees, members of the management board of the tenderer or candidate, and of the persons employed in the enterprise on another contractual basis over the last three years;

8) confirmation by the tenderer on the existence of the tools or vehicles, plant and technical equipment or on the existence of the relevant written statement for the acquisition or taking into use of necessary equipment that can be used by the tenderer or candidate in performing the public contract;

9) in the event of a public service contract, an indication of the proportion of the contract that the tenderer or candidate intends to subcontract;

10) samples, descriptions or photographs of the supplies that constitute the object of the public contract, along with evidence of their authenticity, if necessary;

11) certificates issued by technical inspection or surveillance authorities regarding the conformity of the supplies constituting the object of the public contract, clearly identified by references to technical regulations or standards.

(2) If the estimated value of a public contract is equal to or exceeds the international threshold, the contracting authority will always request in the contract notice, among other things, the information specified in clause 1) or 2) of subsection (1) of this section.

(3) If special requirements have been established in legislation for an activity to be carried out under a public contract, the contracting authority will specify in the contract notice which special requirements, registrations or activity licences are required for qualifying the tenderer or candidate. For the purpose of verifying the fulfilment of the requirements established in legislation, the contracting authority will request in the contract notice that the tenderer or candidate submit relevant evidence attesting that the tenderer or candidate holds an activity licence or has a registration or fulfils other special requirements or evidence attesting that the tenderer or candidate is a member of a relevant organisation in accordance with the legislation of the country of location of the tenderer or candidate, unless such evidence is available to the contracting authority on the basis of public information in a database without incurring major expenses. If the tenderer or candidate does not hold the activity licence or does not have the registration or is not a member of the relevant organisation in accordance with the legislation of the country of location, the contracting authority will disqualify the tenderer or candidate.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(4) At the request of the contracting authority, the following will be attached to the list specified in clause 2) of subsection (1) regarding the due performance of principal contracts:

1) a certificate issued by the counterparty if the counterparty is the contracting authority specified in clauses 1) to 3) of subsection (1) of § 10 of this Act;

2) a confirmation of the counterparty or a written confirmation of the tenderer or candidate if the counterparty is a legal person governed by private law or a natural person.

(5) If the supplies or services that constitute the object of a public contract are complex or meant for a special purpose, the contracting authority or the competent authority of the country of location of the tenderer or candidate will verify, by agreement with the contracting authority, the production facilities or technical competence of the tenderer or candidate and, if necessary, also the possibilities of carrying out research and development work and the quality assurance measures to be applied.

(6) If necessary and appropriate for attesting the suitability of the tenderer or candidate, the tenderer or candidate may attest the compliance of its technical and professional ability with the award criteria in the context of the performance of the specific public contract, in addition to the tenderer's or candidate's own indicators, also on the basis of the relevant indicators of other persons regarding the means and measures or specialists, regardless of the legal nature of the relationship between the tenderer or candidate and such person. To that end the tenderer or candidate will have to attest in a manner acceptable to the contracting authority that this person has relevant means and measures or specialists and that the tenderer or candidate can use them, if necessary, for the performance of the public contract.

(7) Joint tenderers or joint candidates may rely on the competence of other joint tenderers or joint candidates in attesting the compliance of their technical and professional ability with the award criteria, if the nature of the relevant criterion makes it possible.

(8) If the object of a public supply contract includes, in addition to the supplies, their delivery or installation or involves services or works, the contracting authority may verify the suitability of the tenderer or candidate or the other person specified in subsection (6) of this section in providing such services or performing such works, taking into account, above all, the technical and professional ability of such person.

(9) If a contracting authority requests in a contract notice the submission of the certificates of independent bodies regarding the compliance of the tenderer or candidate with certain quality assurance standards, the contracting authority will refer to quality assurance systems based on the relevant European standards series certified by authorities conforming to the European standards series concerning certification. The contracting authority will recognise the equivalent certificates issued by authorities established in other Member States of the European Union and accept other evidence of equivalent quality assurance measures submitted by the tenderer or candidate.

(10) If a contracting authority requests in a contract notice the submission of the list of environmental management measures applied on the basis of clause 6) of subsection (1) of this section, the contracting authority will refer to the Eco-Management and Audit Scheme (EMAS) of the European Union or to the European Union legislation based on the relevant European or international standards regulating certification or to the environmental management standards based on the relevant European or international standards certified by the relevant authorities. The contracting authority will recognise equivalent certificates from the authorities established in other Member States of the European Union and will accept other evidence of equivalent environmental management measures submitted by the tenderer or candidate.

§ 42. Official list of approved undertakings and certification of undertakings

(1) A person registered in the official list of approved undertakings or certified as an approved undertaking may, for the purpose of attesting their suitability, submit a certificate issued by the keeper of the official list of approved undertakings regarding including the person in the list or a certificate of an accredited certification institution attesting the person's certification as an approved undertaking. The certificates must set out the details on the basis of which the person was included in the list or on the basis of which the certificate was issued to the person and indicate the classification attributed to the person in the list.

(2) A certificate issued by the keeper of the official list of the undertakings approved in Estonia or in another Member State of the European Union on registering a person in the official list of approved undertakings or a certificate of the competent certification body on the certification of a person as an approved undertaking attests to a contracting authority the compliance of the person with the award criteria provided for in §§ 38#41 regarding the data that served as the basis for the person's certification or registration in the list. The specified attests the compliance of the person with the criterion established by the contracting authority in an event where the criterion serving as the basis for certification was equal to or higher than the criterion established by the contracting authority.

(3) In addition to the data that did not serve as the basis for registration of a person in the list or for certification of a person, a contracting authority may request an additional certificate from the candidate or tenderer, besides the certificate specified in subsection (2) of this section, on the payment of compulsory state or local taxes or social insurance contributions in its country of location.

(4) A contracting authority will apply subsections (2) and (3) of this section only to a tenderer or candidate that is seated in a Member State of the European Union and has established a procedure for creating and keeping the official list of approved undertakings or a procedure for certifying approved undertakings.

(5) The Government of the Republic will establish the procedure of creating, keeping and updating of the official list of approved undertakings of specific fields or the procedure for certification of approved undertakings on proposal of the minister responsible for the relevant field in Estonia.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(6) The keeper of the official list of the approved undertakings of a specific field will be the ministry responsible for the relevant field. With the permission of the Government of the Republic, the ministry may delegate the keeping of the official list of approved undertakings to another legal person under a public law contract.

(7) The keeper of the official list of approved undertakings or the certification body authorised to certify approved undertakings may charge a fee from an undertaking for including it in the list or for certification and for updating an entry or a certificate. The fees compliant with the reasonable expenses of the relevant operations of the keeper of the list or the certification body, established on the basis of the qualification classes of undertakings and not exceeding 200 euros in the event of inclusion in the list or certification and not exceeding 70 euros in the event of updating an entry or a certificate, will be established by the Government of the Republic.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(8) Upon establishment of conditions for registration in the official list of approved undertakings or certification requirements, only the provisions of §§ 38#41 of this Act will be taken into account.

(9) If persons whose country of location is another Member State of the European Union are included in the official list of approved undertakings or certified, no other data or certificates other than those requested from the persons seated in Estonia will be requested from them.

(10) The keeper of the official list of approved undertakings or the certification body authorised to certify approved undertakings will not refuse to register an undertaking in the list or to certify an undertaking without reason.

(11) The competent certification body for the purposes of this Act is the institution corresponding to the European certification standards.

Division 4

Tender and Submission, Opening and Evaluation Thereof

§ 43. Tender

(1) A tender is the expression of will of a tenderer to award a public contract that is binding upon the tenderer from the due date of submission of tenders until at least the termination of the minimum term of validity of the tender specified in the contract documents.

(2) A tender must comply with the terms provided for in a contract notice, contract documents and, if a separate invitation to tender is submitted in accordance with the procedure provided for in this Act, with the terms provided for in the invitation.

(3) A joint tender of joint tenderers must contain a confirmation that the joint tenderers bear joint and several liability for the performance of the public contract.

(4) A tender is confidential. The information included in a tender may be disclosed only in the events and within the scope provided for in this Act.

§ 44. Submission of tender

(1) A tender must be submitted in writing in a sealed and marked package or in electronic form in accordance with the requirements provided for in this Act and legislation established on the basis thereof.

(2) A tenderer may withdraw a tender before the due date of submission of tenders by submitting to the contracting authority a relevant notice in the same form as the tender.

(3) If a tenderer submits a new tender within the time limit for submission of tenders, the tenders previously submitted by the tenderer will not become invalid, unless the tenderer has submitted the notice specified in subsection (2) of this section.

(4) If a contracting authority has allowed variants to be submitted, a tenderer may submit a tender with variants.

(5) A tenderer may not submit a joint tender if the tenderer submits a tender alone or if the tenderer submits a joint tender with other joint tenderers. A tenderer may not submit a tender if it has given another tenderer the consent to be indicated as a subcontractor in the other tenderer's tender in performing the public contract.

(5¹) A contracting authority will return a tender to the tenderer and a request to the candidate if the tenderer or candidate does not have the right to submit a tender or request under this Act.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(6) A contracting authority will immediately submit a confirmation of the receipt of a tender to the tenderer at the tenderer's request.

§ 45. Extension of tender validity period

(1) A tenderer may extend the tender validity period on the written proposal of the contracting authority.

(2) A contracting authority is required to submit the proposal specified in subsection (1) of this section to the tenderer at least ten days before the end of the tender validity period if the procurement procedure has not terminated by that moment. The tenderer will notify the contracting authority of the extension of the tender validity period or of its refusal within five working days after the receipt of the relevant proposal.

§ 46. Opening tenders

(1) The contracting authority will open tenders in the place and at the time specified in the contract notice, contract documents or invitation to tender.

(2) Upon opening tenders, the contracting authority will verify the compliance of the submitted tenders with the tender structure and the list of documents specified in the contract documents or, in the event of a competitive dialogue, with the tender structure and the list of documents specified in the invitation to tender, and will take minutes of opening tenders, recording the tenderers' names and registry codes and the values of the submitted tenders, including the values of the lots if these are taken into account upon evaluation of tenders and the values of other numerical indicators describing the tender that comply with the award criteria. Tenders not compliant with the provisions of the contract documents or invitation to tender on the basis of the circumstances verified upon opening and the reasons for non-compliance will also be recorded in the minutes.

(3) A contracting authority will forward a copy of the minutes of opening tenders to all tenderers within three working days from opening the tenders. The contracting authority may submit the copy of the minutes of opening the tenders to the tenderers with a notice of the decision to declare a tender successful or with a notice of the decision that is the basis for termination of the procurement procedure if the contract authority sends the information on the decisions made during the procurement procedure to the tenderers or candidates in accordance with the provisions of subsection (4) of § 54 of this Act and has notified of such possibility in the contract documents or in the invitation to tender.

(4) A contracting authority will allow tenderers or their authorised representatives to attend opening tenders.

(5) Upon opening tenders, a contracting authority will not disclose the contents of the tenders to an extent that would violate the trade secrets of the tenderers or harm competition between them.

§ 47. Verification of admissibility of tenders

(1) A contracting authority will verify the compliance of tenders that have been submitted by qualified tenderers and opened in accordance with the procedure provided for in § 46 of this Act with the terms established in the contract notice and contract documents and, if the contracting authority submits a separate invitation to tender in accordance with the procedure provided for in this Act, with the terms established in the invitation, and make a reasoned written decision to declare the tenders admissible or to reject the tenders.

(2) A contracting authority will reject a tender if it does not comply with the terms established in the contract notice or contract documents or, if the contracting authority submits a separate invitation to tender in accordance with the procedure provided for in this Act, with the terms established in the invitation. The contracting authority may declare a tender admissible if it does not contain any substantive deviations from the established terms.

(3) A contracting authority will reject a tender, among other things, if the tender does not contain the certificate specified in subsection (8¹) of § 31 of this Act.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(4) If in the technical specifications of the object of a public contract the contracting authority has referred to the ground specified in subsection (1) of § 33 of this Act, the contracting authority will not reject a tender due to inadmissibility if the tenderer proves in the tender, in a manner acceptable to the contracting authority, using any appropriate evidence, that the offered solutions are equivalent to the requirements established in the technical specifications.

(5) If a contracting authority has prepared the technical specifications of the object of a public contract in accordance with the procedure provided for in subsection (3) of § 33 of this Act based on the performance requirements or functional requirements of the object of the public contract, the contracting authority will not reject the tender if the offered public works or services comply with any of the grounds provided for in clauses 1) to 7) of subsection (1) of § 33 of this Act, which regulate the performance requirements or functional requirements that serve as the basis for the technical specifications of the object of the public contract and the tenderer proves this using appropriate evidence in a manner acceptable to the contracting authority.

(6) If a contracting authority has established the prerequisite specified in subsection (6) of § 33 of this Act in the technical specifications of the object of a public contract, the contracting authority will accept other relevant evidence submitted by the tenderer for attesting the compliance of the factors, which have an impact on the environment and constitute the basis for the technical specifications, with the eco#label requirements.

(7) The appropriate evidence for the purpose of subsections (4) to (6) of this section can be the technical dossier of a product or the test protocol of an approved body.

(8) If a contracting authority has divided public procurement into lots within one procurement procedure, the contracting authority will verify the compliance of the tenders submitted regarding each lot with the terms established in the contract notice, contract documents and, if the contracting authority submits a separate invitation to tender in accordance with the procedure provided for in this Act, with the terms established in the invitation.

(9) A tenderer whose tender has been rejected will not participate in the procurement procedure any further.

(10) If a contracting authority has divided public procurement into lots within one procurement procedure and a tenderer has submitted a tender with regard to more than one lot and the tender submitted with regard to a lot has been declared admissible, the tenderer will participate in further procurement procedure regarding these lots.

(11) If a tenderer has submitted more than one tender or more than one tender with regard to the same lot of public procurement in the event the latter has been divided into lots within one procurement procedure and if any of the tenders submitted by the tenderer in this public procurement or with regard to any lot has been declared admissible, the tenderer will participate in further procurement procedure with the tenders that have been declared admissible.

§ 48. Abnormally low tenders

(1) If the contracting authority finds that the value of a tender is abnormally low in comparison with the estimated value of the public contract, the contracting authority will, in writing, request a relevant written explanation from the tenderer. The tenderer is required to submit the written explanation to the contracting authority within five working days from the receipt of the relevant request.

(2) The low value of a tender in the explanation specified in subsection (1) of this section may be justified, above all, by the following:

- 1) the economy of the construction method, manufacturing process or service;
- 2) the technical solution chosen by the tenderer or exceptionally favourable conditions that are available to the tenderer for the performance of the public contract;
- 3) the uniqueness of the public works, supplies or services;
- 4) provisions in force in the place of performance of the public contract, which regulate the protection of employees and working conditions;
- 5) the tenderer's access to state aid.

(3) A contracting authority will verify the explanation given and evaluate the evidence submitted, thereby consulting with the tenderer, if necessary. If the contracting authority still finds that the value of the tender is abnormally low or if the tenderer submits no required explanation to the contracting authority, the contracting authority may reject the tender on the basis of a reasoned written decision.

(4) If a contracting authority establishes that the value of a tender is abnormally low because the tenderer has obtained state aid, the contracting authority may reject the tender only after the tenderer is unable to prove within a reasonable term set by the contracting authority that the state aid granted was in accordance with legislation. If the contracting authority rejects the tender on such ground and the estimated value of the public contract is equal to or exceeds the international threshold, the contracting authority will inform the European Commission thereof via the Ministry of Finance.

§ 49. Rejection of all tenders

(1) A contracting authority may make a reasoned written decision to reject all tenders if:

- 1) the values of all tenders that have been declared admissible significantly exceed the estimated value of the public contract, or

2) the contracting authority has specified in the contract documents the possibility of rejection of all tenders as well as the relevant objective and non-discriminatory ground and the ground exists.

(2) If a contracting authority has divided public procurement into lots within one procurement procedure, the contracting authority may make a decision to reject all tenders:

- 1) with regard to the lot whereby any ground specified in subsection (1) of this section exists;
- 2) with regard to the lots whereby the award of a public contract is unreasonable or does not comply with aim of the public procurement established by the contracting authority without the award of the public contract with regard to this lot, regarding of which any grounds of termination of the procurement procedure provided for in clauses 3) to 7) of subsection (3) of § 29 of this Act exist.

§ 50. Evaluation of tenders and declaration of tender successful

(1) A contracting authority will evaluate the tenders that have been declared admissible. Upon evaluation of tenders, the contracting authority will take into account the award criteria specified only in the contract notice, contract documents or invitation to tender

(2) If a contracting authority awards a public contract based on the most economically advantageous tender, the contracting authority will evaluate tenders on the basis of the relative share assigned to the evaluation criteria relating to the object of the public contract, as specified in the contract notice or contract documents. The contracting authority will declare the most economically advantageous tender successful by a reasoned written decision on the basis of the tender evaluation criteria.

(3) If a contracting authority awards a public contract on the basis of lowest price, the contracting authority will evaluate tenders only on the basis of their value and declare the tender with the lowest price successful by a reasoned written decision.

(4) If a contracting authority has divided public procurement into lots within one procurement procedure, it will evaluate tenders and declare the tenders successful in lots.

(5) If unit prices given in tenders serve as the basis for a fee payable under a public contract and an obvious calculation error has been made regarding the value of a tender and the calculated total value does not match the value calculated on the basis of the unit prices given in the tender, the contracting authority will correct the calculation error by calculating the value of the tender on the basis of the unit prices given in the tender and immediately notify the tenderer thereof in writing. The tenderer will communicate to the contracting authority in writing within two working days as of the receipt of the relevant notice whether it agrees with the correction of the calculation error. If the tenderer disagrees with the correction of the calculation error, the contracting authority will reject the tender.

§ 51. Electronic auction

(1) Electronic auction is the final stage of evaluation for identifying the successful tender, during which the contracting authority evaluates and compares in an electronic environment the quantitatively measurable values of the terms specified in the tenders in accordance with the procedure provided for in this section.

(2) In the event of an open procedure and a restricted procedure and in the event of a negotiated procedure with prior publication of a contract notice, in a situation specified in clause 1) of subsection (2) of § 27 of this Act, the contracting authority may organise an electronic auction on the condition that the object of the public contract can be described accurately. As a result, an electronic auction may not be organised upon awarding a public services contract or a public works contract whose object is an intellectual activity, such as planning design of works.

(3) An electronic auction may also be used for the award of a public contract upon organising a competition between the tenderers who are the parties to a framework agreement and in the event of a dynamic purchasing system.

(4) An electronic auction must be based:

- 1) solely on the values of tenders if the contracting authority awards the public contract based on the tender with the lowest price, or
- 2) on the values of tenders or other numerically expressed criteria of tender evaluation if the contracting authority awards the public contract based on the most economically advantageous tender.

(5) A contracting authority communicates the organisation of an electronic auction in a contract notice.

(6) Before starting an electronic auction, the contracting authority will verify the compliance of tenders with the terms provided for in the contract documents and if the contracting authority awards the public contract on the basis of the most economically advantageous tender, the contracting authority will evaluate the tenders before starting the auction on the basis of the evaluation criteria of tenders and their relative weight.

(7) The requirements for equipment used for carrying out an electronic auction and for the auction procedure will be established by the Government of the Republic.

(8) The requirements provided for in subsection (5) of § 55 of this Act do not apply to the submission of tenders in the course of an electronic auction, unless the Government of the Republic establishes the relevant requirements on the basis of subsection (7) of this section.
[RT I 2008, 14, 92 - entry into force 01.12.2009]

§ 52. Evaluation of variants

(1) A contracting authority will evaluate variants if it awards a public contract on the basis of the most economically advantageous tender and has indicated in the contract notice that variants are allowed.

(2) A contracting authority will evaluate only the variants that comply with the requirements established for variants in the contract documents and that have been declared admissible based on these requirements.

(3) A contracting authority may not reject a variant given in a tender for the reason that the award of the public contract on the terms specified in the variant would result in a public service contract instead of a public supply contract or vice versa.

§ 53. Continuation of procurement procedure if successful tenderer refuses award of public contract

(1) If the tenderer who submitted the successful tender withdraws its tender due to reasons independent of the contracting authority:

- 1) the contracting authority will declare the second best tender in terms of the price as successful if the contracting authority awards the public contract on the basis of the tender with the lowest price;
- 2) if the contracting authority awards the public contract on the basis of the most economically advantageous tender, the contracting authority will re-evaluate all the remaining tenders in accordance with subsection (2) of § 50 of this Act and declare the most economically advantageous tender among the tenders that have been declared admissible on the basis of the tender evaluation criteria specified in the contract notice, contract documents or invitation to tender as successful.

(2) In the event provided for in clause 1) of subsection (1) of this section, the contracting authority has the right to request compensation for loss from the tenderer who withdrew their tender that was declared successful to the extent of the difference between the value of the withdrawn tender and that of the next tender that was declared successful.

(3) In the event provided for in clause 2) of subsection (1) of this section, the contracting authority has the right to request compensation for loss from the tenderer who withdrew their tender that was declared successful to the extent of all possible additional expenses that the contracting authority has to incur in connection with the award of the public contract instead of the withdrawn tender on the basis of tender that was declared successful after the re-evaluation of tenders as well as to the extent of expenses arising from the re-evaluation of tenders.

(4) The tender security not returned to the tenderer will be deducted from the loss provided for in subsections (2) and (3) of this section.

Division 5 Notification

§ 54. Notification of tenderers and candidates about decisions

(1) A contracting authority will submit to tenderers or candidates immediately, but not later than within three working days, a written notice on a decision to exclude a tenderer or candidate from the procurement procedure, a decision to qualify a tenderer or candidate, a decision to disqualify the tenderer or candidate, a decision to reject a tender, a decision to reject all tenders, a decision specified in subsection (4) of § 65 of this Act, a decision to declare a tender admissible, and a decision to declare a tender successful, indicating the names of the tenderers or candidates with regard to whom or whose tender the decision was made as well as the reasons why it was decided not to award the public contract or framework agreement or why it was decided to restart the procurement procedure.

(2) At the request of a tenderer or candidate, the contracting authority will, within three working days from the receipt of such request, submit in writing:

- 1) the reasons for disqualification of the tenderer or candidate;
- 2) the reasons for rejection of the tenderer's tender, including in events where the decision stated that the tender is not equal for the purposes of subsection (2) of § 33 of this Act or does not comply with the performance or functional requirements established for the purposes of subsection (3);
- 3) to each tenderer who submitted a tender that was declared admissible, the details describing the successful tender and the advantages thereof in comparison with the tenderer's tender, and the names of the successful tenderer or tenderers.

(3) Out of the notices specified in subsection (1) of this section, a contracting authority may decide not to send to tenderers or candidates the information the disclosure of which would impede the work of law enforcement authorities, contradict the public interest, violate the trade secrets of undertakings or distort their mutual competition.

(4) A contracting authority may deviate from the terms provided for in subsections (1) and (2) of this section by submitting the information specified in subsections (1) and (2) to tenderers or candidates together promptly, but no later than within five working days from making a decision of declaring a tender successful or a decision that serves as the basis for the termination of the procurement procedure.

§ 55. Rules of exchange of information and formal requirements of documents

(1) The notices and other information specified in this Chapter may be communicated by post, fax or personal delivery or electronically, unless otherwise provided for in this Chapter. Any notice or other information communicated by the contracting authority based on the terms of this Chapter will be deemed as submitted on time, unless the notice has been duly sent within the time limit established for submitting notices.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(2) The means of communication and electronic telecommunications used by the contracting authority must be generally available and technically interoperable with the information and communication technology in general use and must not restrict the participation of the interested persons in the procurement procedure without reason.

(3) Communication and exchange and storage of information must be carried out in a way that guarantees the inviolability of data and the confidentiality of tenders, requests to participate in a procurement procedure and other documents and that the contracting authority can open tenders and requests for participating in a procurement procedure and examine their content only after the time limit for submission thereof has expired.

(4) The information and technical requirements needed for the electronic submission of the tenders and requests to participate in the procurement procedure, including encryption, must be available to the interested persons.

(5) In the event of electronic submission of tenders and requests to participate in a procurement procedure at least the following requirements must be met:

1) electronic signatures must comply with the requirements provided for in the Digital Signatures Act or with the requirements established in the legislation of a Member State of the European Union on the basis of Directive 1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures (OJ L 13, 19.01.2000, pp. 12#20);

2) the contracting authority may set the precise time of receipt of tenders and requests to participate in the procurement procedure;

3) it has been guaranteed that before the due date of submission of tenders or requests to participate in the procurement procedure no one but their sender has access to these documents;

4) if the prohibition on access specified in clause 3) of this subsection is violated, such violation can be clearly identified;

5) the time of opening the tenders or requests to participate in the procurement procedure may be set or changed only by the persons appointed by the contracting authority;

6) in the course of the procurement procedure the persons appointed by the contracting authority have access to the tenders and requests to participate in the procurement procedure only as a result of a simultaneous act and after the date specified by the contracting authority;

7) the data given in the tenders and requests to participate in the procurement procedure must remain accessible only to the persons appointed by the contracting authority.

[RT I 2008, 14, 92 - entry into force 01.12.2009]

(6) Requirements for the equipment used for electronic submission of tenders and requests to participate in the procurement procedure will be established by the Government of the Republic.

[RT I 2008, 14, 92 - entry into force 01.12.2009]

(7) A contracting authority will enable the electronic submission of tenders and requests at least to the extent of no less than 50 per cent of the financial capacity of public procurement planned by the contracting authority for the budgetary year.

[RT I, 31.12.2010, 2 - entry into force 01.01.2013]

§ 56. Explanations

(1) Each person participating in a procurement procedure and each interested person, who at the respective moment has the possibility to participate in the procurement procedure, has the right to receive explanations or additional information regarding the contract notice, contract documents and the invitation to tender.

(2) The contracting authority will submit the explanations regarding the contract notice, contract documents, invitation to tender or other additional information the publication of which is considered possible by the contracting authority to the person asking simultaneously for explanations or additional information, to all tenderers and candidates who have received the contract documents or invitation to tender or to the interested persons who have received contract documents, who at the respective moment have the possibility to participate

in the procurement procedure and discloses these with the contract documents. The contracting authority will submit the specified information within three working days from receiving the respective request.

(3) The contracting authority may request that the tenderer or candidate give the explanations, data or documents specified in subsection (4) of § 39 of this Act and that the tenderer give reasoned explanations, delimitations or specifications regarding the information presented in the tender. The tenderer or candidate is required to submit the latter within three working days from the receipt of the relevant request.

Division 6 Open Procedure

§ 57. Issue of contract documents in open procedure

(1) A contracting authority will allow all interested persons to take out contract documents at the contracting authority's seat or electronically via the website or in the register, as indicated in the contract notice. In addition, the contracting authority may also issue contract documents in written form by post and in electronic form by electronic mail.

(1¹) If a contracting authority allows for taking out contract documents via the website, an interested person will have the possibility to register oneself on the website as a person who has received the contract documents, disclosing their contact details to the contracting authority. In other events the contracting authority will register all the persons who have taken out the contract documents.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(2) A contracting authority will set a time limit for submission of tenders on the basis of the object of the public contract, above all, its complexity and quantity, volume or amount, taking into account the minimum time limits provided for in § 35 of this Act.

(3) If a contracting authority does not guarantee unlimited and full electronic access to the contract documents from publishing the contract notice in the register, the contracting authority will submit the contract documents to the interested person within three working days from receiving the respective request.

§ 58. Submission, opening and evaluation of tenders in open procedure

(1) In an open procedure every interested person may submit a tender. Documents attesting the suitability of the tenderer will be submitted along with the tender in accordance with the requirements of the contract notice.

(2) A contracting authority will open all tenders submitted by the due date and verify the suitability of all the tenderers in accordance with the provisions of this Act and contract notice and the compliance of the tenders of qualified tenderers with the terms specified in the contract notice and contract documents and evaluate, in accordance the procurement procedure provided for in this Act, the tenders that have been declared admissible.

(3) A contracting authority may not conduct negotiations in the course of a procurement procedure.

Division 7 Restricted Procedure

§ 59. Candidates in restricted procedure

(1) In a restricted procedure each interested person may submit a request to participate in the procurement procedure along with the documents certifying the suitability of the candidate as required in the contract notice. A request to participate in a procurement procedure must be submitted in writing or electronically in accordance with the requirements provided for in this Act and legislation established on the basis thereof. The contracting authority will immediately submit a confirmation of receipt of the request to the candidate at the candidate's request.

(2) In a contract notice the contracting authority may restrict the number of candidates participating in the procurement procedure to whom it will submit an invitation to tender by establishing a numerical minimum limit in the contract notice, which may be a minimum of five and, if required, an upper limit as well as objective and non#discriminatory criteria for the selection of those candidates.

(3) In accordance with the terms provided for in this Act and in the contract notice, a contracting authority will verify the suitability of all candidates who have submitted a request to participate in the procurement procedure.

§ 60. Submission of invitation to tender in restricted procedure

(1) A contracting authority will submit an invitation to tender to all qualified candidates or, if the contracting authority has limited the number of candidates in the contract notice in accordance with subsection (2) of § 59, to at least the respective number of selected qualified candidates simultaneously. An invitation to tender will be submitted in writing or electronically in accordance with the requirements provided for in this Act and in the legislation established on the basis thereof.

(2) If the number of qualified candidates is less than the numerical minimum limit of candidates specified in the contract notice, the contracting authority may continue the procurement procedure by submitting an invitation to tender to all qualified candidates.

(3) By an invitation to tender the contract documents or a reference to the website will be sent if the contracting authority grants unlimited and full electronic access to the contract documents and a reference to the contract notice published in the register.

§ 61. Opening and evaluation of tenders in restricted procedure

(1) A contracting authority will open all tenders and check their compliance with the terms established in the contract notice, contract documents and invitation to tender, and will, in accordance with the procurement procedure provided for in this Chapter, evaluate all tenders that have been declared admissible.

(2) A contracting authority may not conduct negotiations in the course of a procurement procedure.

Division 8 Competitive Dialogue

§ 62. Candidates in competitive dialogue

(1) In a competitive dialogue each interested person may submit a request to participate in the procurement procedure along with the documents certifying the suitability of the candidate as required in the contract notice. A request to participate in a procurement procedure must be submitted in writing or electronically in accordance with the requirements provided for in this Act and in the legislation established on the basis thereof. The contracting authority will immediately submit a confirmation of receipt of the request to the candidate at the candidate's request.

(2) The contracting authority may limit the number of candidates participating in the procurement procedure with whom to have a dialogue by establishing a numerical minimum limit that may be a minimum of three and, if desired, an upper limit and the objective and non-discriminatory criteria for the selection of those candidates.

(3) The contracting authority will verify the suitability of all candidates in accordance with the provisions of this Act and the contract notice.

§ 63. Dialogue

(1) For the purposes of identifying a solution than meets the needs of the contracting authority the best, the contracting authority will, in a form that can be reproduced in writing, make a proposal to start a dialogue simultaneously to all qualified candidates or, if the contracting authority has limited the number of candidates in the procurement notice in accordance with subsection (2) of § 62 of this Act, at least to the respective number of selected qualified candidates.

(2) If the number of qualified candidates is less than the numerical minimum limit of candidates specified in the contract notice, the contracting authority may continue the procurement procedure by making a proposal to start a dialogue to all qualified candidates.

(3) The proposal to start a dialogue specified in subsection (1) of this section must contain the following:

- 1) a description of the object of the public contract or a reference to the website if the contracting authority grants unlimited and full electronic access to the description;
- 2) reference to the published contract notice;
- 3) the time and place of starting a dialogue and the language or languages used;
- 4) the terms submitted to the participants in the dialogue on whether the contracting authority requires the transfer of the intellectual or other property of the solutions offered in the course of the dialogue, whether the offered solutions are available to other participants in the dialogue and whether the final tenders are submitted on the basis of one solution selected by the contracting authority or in the course of the dialogue on the basis of each solution offered by the candidate itself;
- 5) in the event of giving awards for compensation of expenses related to working out the solutions offered in the course of the dialogue or in the event of payment of a participation fee, the amount and the terms of and procedure for payment of the participation fee;

6) the procedure for holding the dialogue that contains, among other things, the methodology of reducing the number of the solutions that constitute the object of the dialogue, if the contracting authority holds the dialogue in consecutive stages.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(4) The contracting authority will not add these data to the description of the object of the public contract that resulting from the nature of the competitive dialogue may not be specified in making the proposal specified in subsection 1 of this section or over which the negotiations are held in the course of the dialogue.

(5) The contracting authority ensures the equal treatment of all candidates participating in the dialogue in the course of the dialogue. The contracting authority may not disclose information in a discriminatory manner or disclose in the course of the dialogue the solutions offered by any candidate or any other confidential information to other candidates participating in the dialogue or to third parties without the consent of the candidate.

(6) If the contracting authority has established such possibility in the contract notice, it may hold the dialogue in consecutive stages by reducing the number of solutions discussed in each stage. In the event of existence of admissible solutions, the number of solutions discussed in the last stage must be sufficient to ensure competition.

(7) All terms of the future public contract may be addressed in the course of the dialogue.

(8) The contracting authority will hold the dialogue with the candidates until the solutions most compliant with its needs are found.

(9) The solutions worked out in the course of the dialogue will be recorded in the minutes signed by the contracting authority and the candidate.

(10) The contracting authority may give awards to the tenderers or pay a participation fee for compensation of expenses relating to working out the solutions offered in the course of the dialogue, the amount of which may be differentiated depending on the terms submitted on the suitability of the offered solution.

§ 64. Submission of invitation to tender and evaluation of tenders in competitive dialogue

(1) After identifying the solutions most suited to its needs, the contracting authority will notify all candidates participating in the dialogue about the termination of the dialogue and will simultaneously submit to them an invitation to tender on the basis of the solutions presented and specified in the course of the dialogue. The invitation to tender must include the data specified in subsection (2) of § 31 of this Act that are needed to submit the tenders and appropriate implementation of the procurement procedure and that have not been specified in the contract notice. The invitation to tender must be made in writing or electronically in accordance with the requirements provided for in this Act and legislation established on the basis thereof.

(2) The contracting authority will open all tenders and verify their compliance with the description and requirements of the object of the public contract that it has given in the contract notice and invitation to tender and will evaluate all tenders that have been declared admissible in accordance with the procurement procedure provided for in this Chapter.

(3) After submitting an invitation to tender, the contracting authority will not hold negotiations in the course of the procurement procedure.

Division 9

Negotiated Procedure with Prior Publication of Contract Notice

§ 65. Starting negotiated procedure with prior publication of contract notice

(1) In the event of a negotiated procedure with prior publication of a contract notice each interested person may submit a request to participate in the procurement procedure along with the documents certifying the suitability of the candidate as required in the contract notice. A request to participate in a procurement procedure must be submitted in writing or electronically in accordance with the requirements provided for in this Act and in the legislation established on the basis thereof. The contracting authority will immediately forward a confirmation of receipt of the request to the candidate at the candidate's request.

(2) The contracting authority may limit the number of candidates participating in a procurement procedure to whom it will submit an invitation to tender by stipulating the relevant numerical minimum rate in the contract notice, which may be a minimum of three and, if desired, an upper limit and the objective and non-discriminatory criteria for selecting these candidates.

(3) The contracting authority will verify the suitability of all candidates in accordance with the terms provided for in this Act and contract notice.

(4) In the event specified in clause 1) of subsection (2) of § 27 of this Act, the contracting authority may continue a procurement procedure, which was started as an open procedure, restricted procedure or competitive dialogue, in the form of a negotiated procedure with prior publication of a contract notice without submitting a new contract notice for starting the negotiated procedure with prior publication of a contract notice or re#verifying the suitability of the candidates when starting the negotiations on tenders with only these tenderers who were earlier qualified during the same procurement procedure and who submitted a tender compliant with the formal requirements verified upon opening tenders. In such an event the contracting authority will make a reasoned written decision on the substantive inadmissibility of all tenders without rejecting them and on opening negotiations over the tenders.

§ 66. Submission of invitation to tender in negotiated procedure with prior publication of contract notice

(1) The contracting authority will submit an invitation to tender simultaneously to all qualified candidates or, if the contracting authority has limited the number of candidates in the contract notice in accordance with subsection (2) of § 65 of this Act, at least to the relevant number of qualified candidates. An invitation to tender must be submitted in writing or electronically in accordance with the requirements provided for in this Act and the legislation established on the basis thereof.

(2) If the number of qualified candidates is smaller than the numerical minimum rate of the candidates specified in the contract notice, the contracting authority may continue the procurement procedure by submitting an invitation to tender to all qualified candidates.

(3) An invitation to tender must be accompanied by contract documents or a relevant reference to the website, provided that the contracting authority grants unlimited and full electronic access to the contract documents, and by a reference to the contract notice published in the register. The contracting authority will not add the data specified in subsection (2) of § 31 of this Act to the contract documents that as a result of the nature of the negotiated procedure with prior publication of a contract notice may not be specified at the moment of submitting the invitation to tender or that are negotiated during the procurement procedure.

§ 67. Opening tenders and holding negotiations in negotiated procedure with prior publication of contract notice

(1) A contracting authority will open all tenders, except in the event provided for in subsection (4) of § 65 of this Act, and hold negotiations with the tenderers regarding the tenders to adjust these, if necessary, to the requirements established in the contract notice and contract documents and select the successful tender.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(1¹) If a term not included in the contract documents specified in subsection (3) of § 66 this Act and unspecified at the moment of submission of an invitation to tender, which may change the value of the tender if amended, is negotiated, the object of the negotiations will be the value of the tender as well.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(2) During negotiations the contracting authority ensures equal treatment of all tenderers. Negotiations are confidential. The contracting authority will not disclose information about tenders received during the negotiations in a discriminatory manner that could give an advantage to one tenderer over the others.

(3) If a contracting authority has specified such a possibility in a contract notice or contract documents, the contracting authority may organise the negotiations in consecutive stages by decreasing the number of tenders negotiated in each stage. In the event of existence of qualified tenders the number of tenders negotiated in the last stage will be sufficient for ensuring competition.

Division 10

Negotiated Procedure without Publication of Contract Notice

§ 68. Rules of negotiated procedure without publication of contract notice

(1) In the event of a negotiated procedure without publication of a contract notice the contracting authority will submit contract documents to one or several interested persons whose economic and financial standing and technical and professional ability are presumably sufficient for proper performance of the public contract.

(2) The contracting authority will not add to the contract documents the data specified in subsection (2) of § 31 of this Act that as a result of the nature of the negotiated procedure without publication of a contract notice could not be specified at the moment of submission of the contract documents or which are negotiated during the procurement procedure.

(3) The contracting authority will, along with the contract documents, submit to the interested person the qualification terms and the requirements for submission of documents certifying the suitability and verify the

suitability of the person in accordance with the provisions in this Act and the established award criteria before starting the negotiations over the terms of the public contract.

(4) The contracting authority will negotiate the terms of the public contract with the interested persons who have received the contract documents, in order to award the public contract in accordance with the provisions of subsections (2) and (3) of § 50 of this Act.

Division 11

Award and Amendment of Public Contract

§ 69. Award and amendment of public contract

(1) A contracting authority will not consent to the award of a public contract before 14 days have passed from forwarding a notice of the decision to declare a tender successful, except in the event of a negotiated procedure without publication of contract notice or if the tender was submitted by only one tenderer in another type of procurement procedure. A public contract awarded before the expiry of the standstill period is ineffective.

(1¹) A public contract will be ineffective if:

- 1) the contracting authority has not submitted a contract notice to the register and the non#submission a contract notice was not permitted under this Act;
- 2) the contracting authority has not indicated in the contract notice that the estimated value of the public procurement is equal to or exceeds the international threshold or that the contracting authority would like the contract notice to be forwarded to the Publications Office of the European Union in accordance with subsection (1) of § 106 of this Act, provided that the forwarding of the contract notice was required under this Act;
- 3) in the event of a negotiated procedure without prior publication of a contract notice, the contracting authority has not, within the prescribed term after the award of the public contract, submitted to the register a public procurement report along with the reasons for using the given procurement procedure or has not informed the tenderers about the decision to declare a tender successful and has not, in accordance with clause 3) of subsection (2) of § 54 of this Act, submitted to each tenderer, at their request, a comparison of the successful tender with the tender submitted by the particular tenderer.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

(1²) Under clause 1) of subsection (1¹) of this section, a public contract is not ineffective if all the following conditions exist simultaneously:

- 1) the contracting authority finds that the entry into the public contract without prior publication of a contract notice is permitted under this Act;
- 2) the contracting authority has submitted to the register a voluntary notice in accordance with § 30¹ of this Act;
- 3) the public contract was not made before 14 days had passed from the day following the publication of the voluntary notice.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

(1³) The ineffectiveness of a public contract on the grounds provided for in subsection (1¹) of this section can be relied on only if the ineffectiveness of the public contract has been identified in accordance with the provisions of this Act.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

(2) The parties to a public contract may draw up the public contract as a separate document.

(3) A contracting authority may agree on the amendment of an awarded public contract only if the amendment is caused by objective circumstances that the contracting authority could not foresee during the award of the public contract and if, in the event of leaving the public contract unamended, the achievement of the purpose sought with the public contract would be fully or to a material extent in jeopardy.

(4) A contracting authority may not agree on the amendment of a public contract, if the purpose sought with amendment can be achieved with the award of a new public contract.

(5) Violation of the requirements provided for in subsections (3) and (4) of this section will have no impact on the validity of the public contract.

(6) If a contracting authority has divided public procurement into lots within one procurement procedure, the contracting authority may award the public contract separately per lot.

Division 12

Framework Agreements

§ 70. Award of framework agreement

(1) A contracting authority may award a framework agreement for a term of up to four years. A longer term is allowed if it is objectively necessary and founded based on the object of the framework agreement.

(2) A contracting authority will not award a framework agreement for the purpose of precluding, limiting or distorting competition.

(3) A framework agreement will be awarded as a result of a procurement procedure organised in accordance with the procedure provided for in this Chapter. Tenders to which the consent for the award of a framework agreement is given will be chosen in accordance with the procedure for evaluation of tenders provided for in § 50 of this Act based on the ranking.

(4) A framework agreement will be awarded, if possible, to at least three tenderers, provided that a sufficient number of qualified tenderers submit a tender compliant with the requirements provided for in the contract documents.

§ 71. Award of public contracts under framework agreement

(1) The terms of the framework agreement and the rules provided for in this section must be followed upon awarding public contracts under the framework agreement. If the terms of the public contracts awarded under a framework agreement differ from the terms of the framework agreement, the terms of the public contract must be more advantageous for the contracting authority than the terms provided for in the framework agreement; above all the unit price of the object of the public contract may be lower than the unit price provided for in the framework agreement.

(2) Under a framework agreement awarded to one tenderer by a contracting authority, public contracts will be awarded within the scope of the terms provided for in the framework agreement. Upon awarding public contracts, the contracting authority may hold negotiations with the tenderer in a form that can be reproduced in writing or take minutes of the negotiations in the same form and ask the tenderer to modify the tender, if necessary.

(3) If all the terms of awarding public contracts under a framework agreement have been set out in the framework agreement awarded by the contracting authority to more than one tenderer, the public contracts will be awarded on the terms provided for in the framework agreement.

(4) If not all the terms of awarding public contracts under a framework agreement have been set out in the framework agreement awarded by the contracting authority to more than one tenderer, the contracting authority will award the public contracts on the basis of the framework agreement in accordance with the following procedure:

1) the contracting authority must hold negotiations with all tenderers that are the parties to the framework agreement in writing or in the form of minutes;

2) the contracting authority must grant the tenderers that are parties to the framework agreement a reasonable term for the award of the public contract on the basis of the framework agreement, taking into account the complexity of the object of the public contract and the time needed for submission of tenders;

3) the tenderers that are parties to the public contract will submit tenders whose content will be confidential until expiry of the terms specified in clause 2) of this subsection to the contracting authority in writing; [RT I, 31.12.2010, 2 - entry into force 01.01.2011]

4) the contracting authority will award the public contract under the framework agreement to the tenderer who has submitted the most advantageous tender in accordance with the terms of awarding public contracts provided for in the framework agreement.

(5) The contracting authority will notify other tenderers that are the parties to the framework agreement of the award of the public contract under the framework agreement immediately but not later than within three working days from the award of the public contract.

Chapter 3 PUBLIC WORKS CONCESSION

Division 1

Award of Public Works Concession

§ 72. Notice of public works concession

(1) If a contracting authority wishes to award a public contract for granting a public works concession (hereinafter *concession contract*), the contracting authority will submit a notice of public works concession to the register.

(2) In accordance with the terms provided for in the notice of public works concession, all interested persons are entitled to submit a concession application.

§ 73. Time limit for submission of concession applications and public procurement report

(1) A contracting authority will set a time limit for submission of concession applications, which must not be less than 52 days from the publication of the notice of the public works concession in the register.

(2) If the total estimated value of public works to be performed on the basis of a public works concession is equal to or exceeds the public procurement threshold, but is lower than the international threshold, the time limit specified in subsection (1) of this section must be at least 22 days.

(3) If a contracting authority submits no information required for submitting concession applications within a reasonable period from the receipt of the relevant application or when it has been submitted at least six days before the due date of submission of the concession application or if concession applications may be submitted only after examining the place of performing the concession contract or after verification of technical documents on site, the contracting authority will extend the time limit for submitting concession applications so that the interested persons could obtain all the information required for submitting a concession application.

(4) The contracting authority will submit a public procurement report to the register within ten days after the award of the concession contract.

§ 74. Subcontracting

(1) A contracting authority may request that:

1) the concessionaire award, based on the concession, to subcontractors public contracts that include at least 30 per cent of the total estimated value of the public works to be performed based on the public works concession, giving the concession candidate the possibility to increase this rate, or

2) the concession candidate indicate in the concession application to how large an extent of the estimated total value of the public contracts to be awarded based on the public works concession the concession candidate intends to award subcontracts.

(2) Contracts that have been awarded by the concessionaire to an undertaking related to it or to another person who submitted a joint concession application with the concessionaire will not be considered among the subcontracts specified in subsection (1) of this section.

(3) A connected undertaking for the purposes of this section is any undertaking over which the concessionaire has a dominant influence, whether directly or indirectly, or any undertaking that has a dominant influence on the concessionaire or that, along with the concessionaire, is under the dominant influence of a third party as a result of ownership, financial participation, legislation or on another basis. A dominant influence over an undertaking is presumed when, directly or indirectly in relation to another undertaking, it holds a majority of the undertaking's share capital, controls a majority of the votes based on the shares or has power to appoint more than half of the members of the undertaking's management or supervisory body.

(4) A concession candidate will add a full list of the undertakings connected to it to the concession application. The concessionaire will update this list after each subsequent change in the inter#undertaking relations and submit the amended list immediately to the contracting authority.

§ 75. Contracting for additional public works from concessionaire

A contracting authority is not required to apply the procedure provided for in this Act when it contracts for additional public works that have proved to be necessary due to an unforeseeable circumstance for the purpose of performance of the public works described in a concession contract or project, not included in the initial concession contract, within up to 50 per cent of the value of original concession contract, provided that such additional public works could neither be technically nor economically separated without incurring major costs for the contracting authority or that additional public works are unavoidably necessary for performing the original concession contract.

Division 2

Award of Public Works Contract Based on Public Works Concession

§ 76. Award of public works contract based on public works concession by concessionaire that is not contracting authority

If a concessionaire that is not a contracting authority for the purposes of § 10 of this Act wishes to award a public works contract on the basis of a concession whose estimated value is equal to or exceeds the public procurement threshold, the concessionaire will follow the procedure provided for in § 78, unless provided otherwise in § 77.

§ 77. Specifications of award of public works contract based on public works concession by concessionaire that is not contracting authority

(1) A concessionaire is not required to apply the terms provided for in § 76 upon awarding a public works contract based on a public works concession if any of the terms for application of a negotiated procedure without publication of a contract notice provided for in § 28 of this Act have been met.

(2) A concessionaire is not required to apply the terms provided for in § 76 of this Act based on a public works concession upon awarding a public works contract to a connected undertaking or another person who has submitted a joint concession application with the concessionaire.

§ 78. Rules of award of public works contract based on public works concession by concessionaire that is not contracting authority

(1) A concessionaire will submit a contract notice to the register for awarding a public works contract based on a public works concession.

(2) A concessionaire will set the time limit for submission of tenders or requests to participate in the procurement procedure based on the complexity of the public contract and the time period presumably needed for preparing and submitting tenders based on subsections (3) to (9) of § 35 of this Act.

(3) If a concessionaire does not grant unlimited and complete electronic access to contract documents as of the publication of a contract notice in the register, the concessionaire will submit the contract documents to the interested person within three working days from the receipt of the relevant request.

(4) A concessionaire will submit a public procurement report to the register within ten days after the award of a public contract.

Chapter 4

DESIGN CONTEST

§ 79. Types of design contest

(1) A contracting authority may organise a design contest:

- 1) with the aim of awarding a public service contract to the winner of the design contest based on the conceptual design offered by it;
- 2) only for the receipt of a conceptual design by granting awards to the winner or winners of the design contest or by paying participation fees to the participants.

(2) In the event specified in clause 1) of subsection (1) of this section the contracting authority will be entitled to award the public service contract with the winner of the design contest based on subsection (6) of § 28 of this Act if the contracting authority does not exclude this possibility in the design contest notice and the estimated value of the public contract to be awarded has been included in the estimated value of the design contest in accordance with the terms provided for in subsection (5) of § 20 of this Act.

§ 80. Procedure for organisation of design contest

(1) In order to start a design contest, the contracting authority will submit an invitation to the design contest to the register.

(2) The contracting authority will specify in the design contest notice, among other things, whether it requires the transfer of the copyright or other ownership of the submitted conceptual designs from the winner of the design contest and other participants in the design contest.

(3) The contracting authority may restrict the number of participants by establishing clear and non-discriminatory criteria for selection of participants. The number of invited participants must be sufficient to ensure competition.

(4) The contracting authority may establish professional qualifications requirements for the participants of the design contest if it is practicable according to objective criteria.

(5) Conceptual designs will be assessed by the jury of the design contest.

(6) The contracting authority will declare the participant who, in the opinion of the jury, submitted the best conceptual design as the winner of the design contest. There can be one winner or multiple winners.

(7) The contracting authority will submit the results of the design contest to the register within ten days after the announcement of the winner of the design contest.

§ 81. Jury of design contest

(1) The contracting authority will appoint the jury of the design contest for evaluation of conceptual designs submitted to the design contest.

(2) The members of the jury of the design contest must be natural persons independent of the participants of the design contest.

(3) If the contracting authority has established requirements for professional qualifications of the participants of the design contest, at least one-third of the members of the jury of the design contest must have equivalent professional qualifications.

(4) The jury of the design contest must be independent in its decisions and opinions and proceed only from the criteria provided for in the invitation to design contest.

(5) Conceptual designs will be anonymous until the jury has reached a decision.

(6) The jury of the design contest will take minutes of its activities, indicating the rankings of evaluated conceptual designs, the awards granted to the winners of the design contest, the participation fees paid to the participants, comments by the members of the jury and potential circumstances requiring further explanation. Via the contracting authority, the jury may ask questions from the participants of the design contest about the circumstances entered in the minutes, which require clarification. Questions and answers will be entered in the minutes. The minutes will be signed by all members of the jury of the design contest.

Chapter 5 PROCUREMENT PROCEDURE IN UTILITIES SECTORS

Division 1 Application of Chapter

§ 82. Application of provisions

The provisions of Chapter 2 apply to the organisation of procurement procedures in utilities sectors on the basis of § 15 of this Act, unless otherwise provided by this Act.

§ 83. Activities in sectors related to gas and thermal energy

(1) For the purposes of this Act, activities in sectors related to gas and thermal energy include the following:

- 1) the activity of a fixed network intended to provide a service to the public in connection with the transfer or distribution of gas or thermal energy or with the production, transport or distribution of gas or thermal energy, or
- 2) the supply of gas or thermal energy to such networks.

(2) If a contracting authority, except the contracting authority specified in clause 1) of subsection (1) of § 10 of this Act, supplies the networks providing a public service with gas or thermal energy, this will not be considered an activity within the meaning of subsection (1) of this section if:

- 1) the production of gas or thermal energy by the contracting authority is the unavoidable consequence of carrying out an activity other than those referred to in §§ 84-89 of this Act or in this section, and

2) the public networks are supplied with gas or thermal energy of the contracting authority's own consumption surplus aimed only at the economic exploitation of such production and such surplus does not amount to more than 20 per cent of the contracting authority's average turnover in the last three years.

§ 84. Activities in sectors related to electricity

(1) For the purposes of this Act, activities in sectors related to electricity include the following:

- 1) the activity of the fixed network intended to provide a service in connection with the production, transfer or distribution of electricity to the public, or
- 2) the supply of electricity to such networks.

(2) If a contracting authority, except the contracting authority specified in clause 1) of subsection (1) of § 10 of this Act, supplies the networks providing a public service with electricity, this will not be considered an activity within the meaning of subsection (1) of this section if:

- 1) the production of electricity by the contracting authority takes place because its consumption is necessary for carrying out an activity other than those referred to in §§ 83 and 85#89 of this Act or in this section, and
- 2) supply to the public network depends only on the contracting authority's own consumption and has not exceeded 30 per cent of the contracting authority's total production of energy, having regard to its average production of energy in the last three years.

§ 85. Activities in sectors related to water

(1) For the purpose of this Act, activities in sectors related to water include the following:

- 1) the activity of public water supply and sewerage systems intended to provide a service in connection with the production, transport or distribution of drinking water to the public,
- 2) the supply of drinking water to such public water supply systems,
- 3) hydraulic engineering projects, land irrigation or drainage works, if more than 20 per cent of the total volume of the water received in the course of the specified projects, irrigation or drainage works is used for the supply of drinking water, or
- 4) the discharge, purification and processing of waste water.

(2) If a contracting authority, except the contracting authority specified in clause 1) of subsection (1) of § 10 of this Act, supplies the water supply facility providing the public service with drinking water, this will not be considered an activity within the meaning of subsection (1) of this section if:

- 1) the production of drinking water by the contracting authority takes place because its consumption is necessary for carrying out an activity other than those referred to in §§ 83#84 and 86#89 or in this section, and
- 2) supply to the public water supply systems depends only on the contracting authority's own consumption and has not exceeded 30 per cent of the contracting authority's total production of drinking water, having regard to its average production of drinking water in the last three years.

§ 86. Activities in sectors related to transport services

(1) For the purposes of this Act, activity in sectors related to transport services includes the operation of networks or the provision of transport service by train, bus, tramway, trolley bus, automated systems or cableway to the public.

(2) A network is considered to exist within the meaning of subsection (1) of this section where the service is provided under operating conditions laid down by a competent authority authorised to do so under legislation, such as the list of the routes to be served, the capacity to be made available or the frequency of the service.

(3) The provision of bus transport services to the public within the meaning of subsection (1) of this section will not be considered to be an activity in a sector related to transport services within the meaning of this Act if other persons have the right to provide bus transport services in the same region and on the same conditions.

§ 87. Activities in sectors related to postal services

(1) For the purposes of this Act, activities in sectors related to postal services include the provision of postal services or other services listed in subsection (4) of this section.

(2) For the purpose of subsection (1) of this section, postal services include services consisting of collecting, sorting, transporting and delivering postal items to the recipients. These services include both reserved postal services and other postal services on the basis of Article 7 of Directive 97/67/EC of the European Parliament and of the Council on the common rules handling the development of the domestic market of postal services of the community and improvement of the service quality (OJ L 15, 21.01.1998, pp. 14#25).

(3) A postal item within the meaning of subsection (2) of this section is an item addressed in the final form in which it is to be delivered, irrespective of weight. In addition to items of correspondence, such items also include, for instance, books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value.

(4) Other services within the meaning of subsection (1) of this section, the provision of which is considered activity in the sectors related to postal services, are the following services provided by the contracting authority that provides the postal services specified in subsection (2):

- 1) postal service management services: services both preceding and subsequent to dispatch of postal items, such as post office management services;
- 2) added value services linked to and provided by electronic means, including secure transmission of encrypted documents by electronic means, address management services and transmission of registered electronic mail;
- 3) services concerning postal items not included in the definition of a postal item within the meaning of subsection (3) of this section, such as direct mail bearing no address;
- 4) financial services, as defined in category 6 of Annex VI to the CPV Regulation and within the meaning of clause 9) of subsection (1) of § 14 of this Act, which include postal money transfer orders and non-cash settlements;
- 5) philately services;
- 6) logistics services combining physical delivery or warehousing with other non-postal functions.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

§ 88. Activities in sectors related to surveys of mines and extraction of oil, gas, coal, oil shale, peat and other solid fuels

For the purposes of this Act, activities in sectors related to surveys of mines and extraction of oil, gas, coal, oil shale, peat and other solid fuels include the exploitation of a geographical area for the purpose of exploring for the mines or extracting oil, gas, coal, oil shale, peat and other mineral resources used as solid fuels.

§ 89. Activities in sectors related to ports or airports

For the purposes of this Act, activities in sectors related to ports or airports include the exploitation of a geographical area for the purpose of the provision of airport or port services to the undertakings of air or water transport.

§ 90. Specifications concerning scope of application of this Chapter

(1) A contracting authority is not required to apply the procedure provided for in this Chapter to the following:

- 1) contracts awarded for purposes of resale or lease to third parties, provided that the contracting authority enjoys no special or exclusive right to sell or lease the object of such contract and other persons have the right to sell or lease it under the same conditions as the contracting authority;
- 2) contracts awarded for purposes of pursuing their activities as described in §§ 83#89 of this Act in the territory of the country not belonging to the European Union on conditions not involving the physical use of a network or geographical area in the territory of a Member State of the European Union;
- 3) contracts entered into with an undertaking connected to the contracting authority;
- 4) contracts awarded to a legal person that has been founded or a civil law partnership that has been set up by the contracting authority that is a party to the established contract and other contracting authorities in order to carry out an activity specified in §§ 83#89 of this Act over a period of at least three years and whereunder, in accordance with the articles of association or foundation resolution or contract of partnership, the contracting authorities that have founded it or set it up undertake to be part thereof for at least over the same period;
- 5) contracts awarded for the purposes of pursuing their activities as described in §§ 83#89 of this Act if such activities are, on the conditions provided for in § 91, directly exposed to competition and there is free access to competition.

(2) A legal person that has been founded or a civil law partnership that has been set up by contracting authorities in order to carry out the activities referred to in §§ 83#89 of this Act is not required to apply the rules provided for in this Chapter to contracts awarded to:

- 1) a contracting authority that has founded it or participates in it;
- 2) an undertaking connected to the contracting authority that has founded it or participates in it.

(3) The exception referred to in clause 3) of subsection (1) and clause 2) of subsection (2) of this section may be applied, provided that at least 80 per cent of the average turnover of the connected undertaking with respect to the provision of services or supplies or performance of public works for the preceding three years derives from the provision of such services, provision of such supplies or performance of such public works to such contracting authorities or undertakings connected to them. If, because of the time of foundation or commencement of the activities of the connected undertaking, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to attest by other means, particularly by means of business projections, that the turnover is credible. If more than one undertaking connected to the contracting authority provides the same or similar services, supplies or public works, the above percentages will be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or public works by those connected undertakings.

(4) In the event of implementation of the exception referred to in clause 2) of subsection (1) of this section and in the event of contracts awarded for purposes other than the pursuit of an activity referred to in §§ 83#89 of this Act, the contracting authority will notify in writing the European Commission, at the latter's request, via the Ministry of Finance of all such activities that are considered to be covered by the exclusion or the purpose.

(5) In the event of implementation of the exceptions referred to in clauses 3) to 5) of subsection (1) of this section and in subsection (2) of this section, the contracting authority will communicate in writing to the European Commission, at the latter's request, via the Ministry of Finance the names of the relevant undertakings, the description of important terms and conditions and the value of the contracts to be awarded and evidence that is deemed necessary by the European Commission and that indicates that the relationship between the contracting authority and the connected undertakings complies with the requirements of this section.

(6) For the purposes of this Chapter, connected undertaking means any undertaking whose annual report is consolidated with those of the contracting authority or an undertaking over which the contracting authority may exercise, directly or indirectly, dominant influence within the meaning of clause 2) of subsection (3) of § 10 of this Act or which may exercise a dominant influence over the contracting authority or which, in common with the contracting authority, is subject to the dominant influence of another undertaking.

(7) A contracting authority operating in sectors related to water within the meaning of subsection (1) of § 85 of this Act is not required to apply the procedure provided for in this Chapter to contracts for the purchase of water.

(8) A contracting authority operating in a sector related to gas or thermal energy within the meaning of subsection (1) of § 83, electricity within the meaning of § 84 or exploration for or extraction of oil, gas, coal or other solid fuels within the meaning of § 88 of this Act is not required to apply the procedure provided for in this Chapter to contracts for the purchase of energy or fuel necessary for the production of energy.

§ 91. Procedure for establishing whether given activity is directly exposed to competition

(1) A contracting authority is not bound by the rules provided for in this Chapter if the activity in the sectors referred to in §§ 83 to 89 of this Act performed at the place of the procurement is directly exposed to competition on markets to which access is not restricted and the European Commission has adopted a relevant decision.

(2) Whether a given activity is directly exposed to competition will be established in accordance with the procedure provided for in Article 30 of Directive 2004/17/EC of the European Parliament and Council and in Decision 2005/15/EC (OJ L 7, 11.01.2005, pp. 7#17) of the Commission adopted on the basis of the Directive.

§ 92. [Repealed – RT I 2010, 20, 102 – entry into force 01.07.2010]

Division 2 Specifications Regarding Procurement Procedure in Awarding Public Contracts

§ 93. Procurement procedure with prior publication of contract notice

In awarding a public contract, the contracting authority may, at its own discretion, use an open procedure, a restricted procedure or a negotiated procedure with prior publication of a contract notice (hereinafter jointly referred to as *procurement procedure with prior publication of contract notice*) in accordance with the procedure provided for in this Chapter.

§ 94. Procurement procedure without prior publication of contract notice

(1) A contracting authority may apply a procurement procedure without prior publication of a contract notice if:

1) no tenders or requests to participate in the procurement procedure were submitted in a procedure with prior publication of the contract notice or if all the tenders submitted were by nature different from the technical description of the object of the public contract provided for in the contract documents and the initial public procurement conditions are not substantially altered;

2) a public contract is awarded purely for the purpose of research, experiments, study or development, and not for the purpose of receiving profit or of covering research and development costs, so that it does not restrict the award of the future contracts for the specified purposes in accordance with the procurement procedure with prior publication of a contract notice;

3) for technical or artistic reasons, or for the reasons connected with the protection of exclusive rights, the public contract may be awarded to only one tenderer;

4) for reasons for extreme urgency brought about by events unforeseeable by the contracting authority, the time limits laid down in §§ 35 or 96 of this Act cannot be adhered to;

5) a public contract is awarded on the basis of a framework agreement, provided that the framework agreement has been entered into in accordance with the procedure provided for in this Act;

6) a public contract is awarded to the winner or one of the winners of a design contest and such condition has been laid down in the design contest notice; if the contract is awarded to one of the winners of the design contest, all the winners will be invited to participate in the negotiations.

(2) In addition to the events specified in subsection (1) of this section, a contracting authority may use a procurement procedure without prior publication of a contract notice if:

- 1) the supplies that are intended either to partially replace or supplement the products purchased previously are purchased from the same tenderer and if a change of tenderer would entail the purchasing of products that are technically incompatible with the products currently in use or the use of which would cause disproportionate technical difficulties in operation and maintenance;
- 2) the supplies are purchased on a commodity market;
- 3) the supplies are purchased for a price that is considerably lower than the normal market price, by taking advantage of especially favourable conditions that are available only for a very limited period of time;
- 4) the supplies are purchased under particularly advantageous terms, from a person with regard to whom liquidation proceedings have been initiated or from a bankruptcy trustee on the basis of an agreement made with creditors.

(3) In addition to the events specified in subsection (1) of this section, a contracting authority may apply a procurement procedure without prior publication of the contract notice to public works contracts or public service contracts if:

- 1) the public works or services to be additionally contracted for were not included in the initial public procurement but have, due to unforeseen circumstances, become necessary, on the condition that the additional public contract is entered into with the same tenderer and due to technical or financial reasons such additional public works or services may not be separated from the initial procurement without causing disproportionate costs to the contracting authority and the additional public works or services are directly necessary for performing the public contract;
- 2) new public works or services are contracted for, which repeat the public works or services contracted for on the basis of a public contract previously entered into by the same contracting parties as a result of a procedure with publication of the contract notice conducted up to three years earlier and that comply with the initial building design documentation, provided that the contract notice in the procurement procedure used to enter into the public contract previously contained notification of the possibility to enter into such public contract.

§ 95. Specifics of starting procurement procedure and submission of public procurement report in utilities sectors

(1) To commence a procedure with prior publication of a contract notice, the contracting authority will submit one of the following notices to the register:

- 1) a periodic indicative notice;
- 2) a notice of establishment of a qualification system;
- 3) a contract notice.

(2) A contracting authority may commence a procedure in the manner specified in clauses 1) and 2) of subsection (1) of this section if the procurement procedure is organised as a restricted procedure or a negotiated procedure with prior publication of a contract notice.

(3) The contracting authority specified in subsection (3) of § 10 of this Act will submit a public procurement report to the register only after the award of the public contract, including after the award of the public contract awarded on the basis of a framework agreement, if the value of the contract is equal to or exceeds the public procurement threshold.

[RT I, 31.12.2010, 1 - entry into force 01.01.2012]

§ 96. Time limits for submission of tenders and requests to participate in procurement procedure

(1) The time limit specified in subsection (2) of § 35 of this Act for an open procedure may be reduced to 22 days from the publication of the contract notice, provided that the contracting authority has submitted to the register a periodic indicative notice that was published in the register not less than 52 days and not more than one year before the submission of the contract notice to the register and that contained additional information in accordance with subsection (5) of § 97 of this Act to the extent that the contracting authority was aware of at the time of submitting the periodic indicative notice to the register.

(2) In restricted procedures and in negotiated procedures with prior publication of the contract notice the time limit for the receipt of requests to participate must be no less than 37 days from the publication of the contract notice or, if the tender procedure was communicated by a periodic indicative notice in accordance with the procedure provided for in subsection (3) of § 97 of this Act, no less than 37 days from the sending the proposal referred to in subsection (4) of § 97 to candidates. In exceptional cases the time limit may be reduced to 22 days if the application of a shorter time limit is required due to unforeseeable events.

(3) In restricted procedures and in negotiated procedures with prior publication of the contract notice the time limit for the receipt of tenders may be set by mutual agreement between the contracting authority and the selected candidates, provided that all the selected candidates have the same amount of time to submit their tenders. If no agreement is reached found, the contracting authority will set a time limit for the submission of tenders, which must not be less than 24 days from the date of submitting the invitation to tender.

(4) If a contracting authority grants unlimited and full electronic access to contract documents as of the publication of the contract notice or in if the procurement procedure was notified of by a periodic indicative notice or by a qualification system notice by publishing the relevant document in the register and the document refers to a relevant website, the time limits for the submission of tenders may be reduced by up to 5 days, provided that the time limit for the submission of tenders was not set by mutual agreement between the contracting authority and the candidates in accordance with subsection (3) of this section.

§ 97. Periodic indicative notice

(1) A contracting authority will submit to the register a periodic indicative notice if the contracting authority wishes to apply the reduced time limits for the submission of tenders provided for in subsections (1) and (2) of § 96 of this Act or if the contracting authority wishes to initiate a procurement procedure by publishing a periodic indicative notice. Only restricted procedures or negotiated procedures with prior publication of a contract notice can be initiated by a periodic indicative notice.

(2) A contracting authority may submit to the register additional indicative notices of public contracts without adding the information included in previously published periodic indicative notices to them.

(3) If a contracting authority wishes to initiate a procurement procedure by publishing a periodic indicative notice, the periodic indicative notice must:

- 1) include a description of the supplies, services or public works that constitute the object of the public contract to be awarded;
- 2) include a notice that the public contract will be awarded by a restricted procedure or by a negotiated procedure whereby no prior contract notice will be published, and invite the interested parties to inform of their interest in participating in the procurement procedure in writing;
- 3) be published in the register not later than 12 months before the submission of the invitation referred to in subsection (4) of this section.

(4) If the commencement of a procurement procedure has been notified of in a periodic indicative notice, the contracting authority will, prior to selecting these candidates to whom it will submit an invitation to tender, additionally send an invitation to submit a request to participate in the procurement procedure to all persons who have taken interest.

(5) The invitation referred to in subsection (4) of this section must include at least the following information:

- 1) the nature and quantity of the object of the public contract, including the possibilities concerning the award of complementary public contracts; the estimated time available for exercising these options for renewable contracts, the nature and quantity of the products to be purchased or the services or public works to be contracted for presumable in the future and, if possible, the publication dates of these contract notices;
 - 2) whether it is a restricted procedure or a negotiated procedure with prior publication of a contract notice;
 - 3) where appropriate, the date on which the delivery of products to be purchased or the execution of public works or services to be contracted for is to commence or terminate;
- the address and closing date for the submission of requests for receipt of contract documents and the language or languages in which they must be drawn up;
- 4) the address of the contracting authority and the information necessary for obtaining the contract documents and other documents;
 - 5) the economic and technical requirements established for the tenderer, financial guarantees and other information;
 - 6) the amount payable for the contract documents and payment procedure;
 - 7) the type of the public contract to be awarded;
 - 8) the tender evaluation criteria and their relative share, if this information is not given in the periodic indicative notice, contract documents or invitation to tender.

(6) A request to participate in a procurement procedure must be submitted along with the documents certifying the suitability of the candidate in accordance with the requirements set out in the invitation specified in subsection (4) of this section.

(7) The regulation applicable to indicative notices provided for in Chapter 2 of this Act does not apply to public contracts awarded in utilities sectors.

§ 98. Submission of technical specifications in event of regular public contracts

(1) On the basis of a request of an interest person, a contracting authority will submit the technical specifications on the basis of which the contracting authority has regularly awarded public contracts or the technical specifications on the basis of which the contracting authority intends to award a public contract specified in a periodic indicative notice published in accordance with § 97 of this Act. Where technical specifications are based on publicly available documents, the inclusion of a reference to those documents is sufficient.

(2) The contracting authority may charge a fee for the issue of technical specifications on paper, but the amount of the fee must not exceed the expenses of copying and delivering the documents.

§ 99. Qualification of tenderers and candidates

(1) A contracting authority will establish criteria for qualification of tenderers or candidates and the criteria must be objective and their content must be accessible to all interested persons.

(2) A contracting authority must apply to tenderers and candidates the grounds for exclusion of tenderers and candidates from a procurement procedure specified in subsection (1) of § 38 of this Act.

(3) Upon qualification of tenderers or candidates or in the event of a restricted procedure or a negotiated procedure with prior publication of a contract notice, the contracting authority must not:

- 1) impose additional administrative, technical or financial conditions on certain tenderers or candidates, which are not imposed on others;
- 2) request tests or evidence that duplicate evidence already available.

§ 100. Qualification system notice

(1) If a contracting authority wishes to establish a system of qualification provided for in § 101 of this Act, the contracting authority will submit a qualification system notice to the register specifying, among other things, the purpose of creating the system of qualification and the conditions for joining the qualification system or references to relevant documents.

(2) If the system of qualification is valid for more than three years, the contracting authority will annually submit a qualification system notice to the register.

§ 101. Qualification system

(1) A contracting authority may establish a system of qualification for qualifying candidates in accordance with the procedure provided for in this title.

(2) An interested person may at all times apply for its qualification and inclusion in the qualification system.

(3) Qualification on the basis of a qualification system may involve different stages.

(4) A qualification system must be operated on the basis of objective award criteria based on the provisions of § 99 of this Act.

(5) If the award criteria referred to in subsection (4) of this section include requirements relating to the economic and financial standing of a candidate, the candidate may, if necessary, rely on the relevant indicators of another entity, provided that the candidate is able to prove to the contracting authority in a manner acceptable to the contracting authority that this entity has the resources that are necessary for performing the presumable public contracts and comply with the object of the public contract and that these resources will be available to the candidate throughout the period of validity of the qualification system.

(6) If the award criteria referred to in subsection (4) of this section include requirements relating to the technical and professional ability of a candidate, the candidate may attest the compliance of the technical and professional abilities with the award criteria, if necessary, on the basis of the relevant indicators of another entity, regardless of the legal nature of the link between the candidate and this entity. To that end the candidate must prove to the contracting authority in a manner acceptable to the contracting authority that this entity has the necessary means and measures or specialists and that these resources will be available to the candidate throughout the period of validity of the qualification system, if necessary.

(7) A contracting authority will keep a written record of the candidates who have joined the qualification system that may be divided into categories based on the type of the public contract, whereby qualification is carried out on the basis of the established qualification system.

(8) At the request of an interested person, the contracting authority will inform the person about the award criteria referred to in subsection (4) of this section.

(9) If a contracting authority finds that the qualification system of a certain other contracting authority, based on the underlying requirements of the qualification system, the contracting authority will communicate the name of such contracting authority and the details of the qualification system to the interested persons who have applied for joining the qualification system.

(10) If a contracting authority notifies of the initiation of a procurement procedure by a qualification system notice, the contracting authority will select candidates to whom an invitation to tender will be sent from amongst the candidates who have joined the qualification system and qualified in accordance with the rules for the qualification system.

(11) If a contracting authority uses a qualification system, the contracting authority will submit a public procurement report on each public contract awarded on the basis of the qualification system to the register in accordance with the requirements provided for in this Act. The procurement procedure will terminate upon the expiry of the term of validity of the qualification system.

§ 102. Notification of candidates

(1) A contracting authority will notify all candidates who have joined the qualification system and any interested persons who have applied for joining the system about updating the award criteria.

(2) A contracting authority that has established a qualification system will notify candidates of the decision concerning their qualification and including them in the qualification system or their non#qualification within two months from the submission of the application. If the decision takes more than two months, the contracting authority will notify the candidates of the reasons for the longer decision#making period within two months from the submission of the application and the term within which their application will be accepted or refused, which must not be more than four months from the date of submission of the application.

(3) A contracting authority will notify a candidate who has submitted a request to join the qualification system of qualifying the candidate and including it in the qualification system or of a decision of non#qualification within 15 days from making the decision.

(4) A contracting authority will notify a candidate included in the qualification system of a decision to consider the candidate's qualification as terminated at least 15 days in advance and give the reason for termination, except if the reason for termination of the qualification is the termination of the validity date of the qualification system.

§ 103. Specifics concerning framework agreements in utilities sectors

(1) If a framework agreement is entered into in utilities sectors, the contracting authority is not required to follow the terms provided in the subsections (1), (3) and (4) of § 70 of this Act. In awarding public contracts on the basis of a framework agreement, the contracting authority is not required to follow subsections (2) to (4) of § 71.

(2) If a contracting authority enters into a framework agreement in a way other than by a procurement procedure organised in accordance with the rules provided for in this Chapter, the contracting authority will award the public contracts related to its activities in the sectors specified in §§ 83#89 of this Act by a procurement procedure organised in accordance with the rules provided for in this Chapter on the basis of this framework agreement.

Chapter 5¹ **PUBLIC PROCUREMENT PROCEDURE** **IN FIELDS OF DEFENCE AND SECURITY**

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

Division 1 **Application of Chapter**

§ 103¹. Application of provisions

Unless otherwise provided for in this Chapter, the provisions of Chapter 2 of this Act apply to the organisation of procurement procedures in the fields of defence and security in accordance with the procedure laid down in this Chapter on the basis of § 15 of this Act.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

§ 103². Public procurement in fields of defence and security

(1) For the purposes of this Act, public procurement in the fields of defence and security means:

- 1) purchasing supplies designed or adapted for military purpose and to be used as a weapon, ammunition or military equipment, including any part, component and subassembly thereof or one of them;
- 2) purchasing such security supplies which are related to state secrets or classified information of foreign states, including any part, component and subassembly thereof or one of them;
- 3) purchasing public works and services directly related to the supplies specified in clauses 1) and 2) of this subsection and purchasing supplies for all the stages of their life cycle;
- 4) purchasing public works and services having a military purpose or purchasing such public works and services for a security purpose, which are related to state secrets or classified information of foreign states.

(2) The procedure provided for in this Chapter applies to the awarding of such a public contract whose object is the purchase of the supplies specified in subsection (1) and purchasing public services and works along with purchasing other supplies and purchasing other public services and works falling within the scope of application of this Act, provided that the awarding of a single public contract is objectively reasoned.
[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

§ 103³. Specifics of scope of application of Act in public procurement in fields of defence and security

- (1) A contracting authority is not required to apply the procedure laid down in this Act if:
- 1) a contract is awarded in accordance with a special procedure arising from an international agreement made between one Member State or several Member States of the European Union and one third state or several third states;
 - 2) a contract is awarded under an international agreement related to the placement of units of the Defence Forces;
 - 3) the application of this Act would obligate the contracting authority to give information whose disclosure is considered by the contracting authority to be against the essential security interests of the state;
 - 4) a contract is related to intelligence activities, including the intelligence activities of a security authority or the Defence Forces;
 - 5) a contract is awarded in the framework of a cooperative programme based on research and development, conducted jointly by at least two Member States for the development of a new product and, where applicable, the later phases of all or part of the life-cycle of this product;
 - 6) a contract concerning the purchase of non-military supplies or public works or services for a logistical purpose is awarded in a foreign state, except a Member State of the European Union, and carried out when forces are deployed outside the territory of the European Union where operational needs require them to be concluded with economic operators located in the area of operations;
 - 7) the state, being the contracting authority, awards a contract to another state from whom the supplies or services specified in subsection 103²(1) are purchased;
 - 8) a financial service, with the exception of an insurance service, is purchased.

(2) A contracting authority participating in a cooperative programme specified in clause 5) of subsection (1) of this section will indicate to the Commission the share of research and development expenditure relative to the overall cost of the programme, the cost-sharing agreement as well as the intended share of purchases per contracting authority, if any.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

§ 103⁴. Services purchased in accordance with simplified procedure

(1) A contracting authority is not required to organise a procurement procedure in accordance with the procedure provided for in this Act upon awarding such a service contract whereby the services specified in Annex 4 to this Act account for more than 50 per cent of the estimated value of the contract.

(2) Regardless of subsection (1) of this section, a contracting authority is required to organise a procurement procedure if, besides the services specified in Annex 4 to this Act, the estimated total value of the supplies and services constituting the object of such service contract or the estimated value of works is equal to or exceeds the public procurement threshold in the fields of defence and security.

(3) A contracting authority will, on its website or via the register's website, announce that it wishes to award a public contract specified in subsection (1) of this section and having an estimated value net of value added tax above 40 000 euros in the event of supplies or services or 250 000 euros in the event of works.

(4) After awarding a public contract specified in subsection (3) of this section, a contracting authority will submit a public procurement report and an annex to the report in accordance with the procedure laid down in § 37 of this Act.

(5) If the estimated value of a public contract specified in subsection (1) of this section, net of value added tax, is equal to or exceeds the public procurement threshold in the fields of defence and security, the contracting entity will, in addition to § 3 of this Act, follow the rules of drawing up the technical specifications provided for in § 103⁸ of this Act.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

Division 2

Specifics of Procurement Procedure upon Awarding Public Contracts

§ 103⁵. Restricted procedure, negotiated procedure with prior publication of contract notice and competitive dialogue

(1) Upon awarding a public contract, a contracting authority is required to, in accordance with the procedure provided for in this Chapter, organise a restricted procedure or a negotiated procedure with prior publication of a contract notice.

(2) A contracting authority has the right to organise a competitive dialogue if the contracting authority is objectively unable to specify the technical solutions satisfying its needs in accordance with §§ 33 and 103⁸ of this Act or unable to identify with objectively sufficient accuracy the legal or financial circumstances relating to the procurement and therefore it is not possible to award the public contract without unreasonable expenses or technical problems by way of restricted procedure or negotiated procedure with prior publication of a contract notice and the contracting authority awards the public contract on the basis of the most economically advantageous tender.

(3) If the number of qualified tenderers or candidates in the event of a restricted procedure, negotiated procedure with prior publication of a contract notice or competitive dialogue is smaller than the minimum number of candidates indicated in the contract notice and in the opinion of the contracting authority it is not sufficient to ensure competition, the contracting authority may suspend the procurement procedure and re-publish the initial contract notice, setting a new term for submission of requests. The contracting authority will make an invitation to tender or a proposal to start a dialogue to tenderers who have qualified under either contract notices.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

§ 103⁶. Negotiated procedure without prior publication of contract notice

(1) A contracting authority has the right to organise a negotiated procedure without the prior publication of a contract notice if:

- 1) no tenders or no suitable tenders or no applications have been submitted in response to a restricted procedure, a negotiated procedure with prior publication of a contract notice or a competitive dialogue or if all the tenders submitted were by nature different from the technical description of the object of the public contract provided for in the contract documents and provided that the initial conditions of the contract are not substantially altered;
- 2) tenders submitted in response to a restricted procedure, a negotiated procedure with prior publication of a contract notice or a competitive dialogue do not comply with the requirements or if the tenders do not comply with the requirements established on the basis of § 1037 of this Act and the initial conditions of the contract are not substantially altered and tenderers and candidates whereby the grounds for exclusion from the procurement procedure laid down in this Act are absent and who comply with the established qualification criteria and who submitted a tender in compliance with the formal requirements in the initial procurement procedure;
- 3) a public contract involves air or maritime transport services of units of the Defence Force, police or Border Guard operating or to operate in a foreign state, which the contracting authority must purchase from economic operators whose tender is valid for such a short term that the time limits specified in § 35 of this Act cannot be complied with;
- 4) for technical or artistic reasons or for reasons relating to the protection of an exclusive right, a public contract can be awarded to only one tenderer;
- 5) the urgent awarding of a public contract is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time-limit specified in § 35 of this Act cannot be complied with.

(2) Upon awarding a service contract and a supply contract, a contracting authority has the right to, in addition to the grounds laid down in subsection (1) of this section, organise the procurement procedure as a negotiated procedure without prior publication of a contract notice if:

- 1) a research and development service, except the services specified in clause 1033 (1) 5) of this Act, is purchased;
- 2) the supplies that constitute the object of the public contract are produced solely for the purpose of research or development and it does not include supplies produced as mass products for making profit or for covering expenses relating to research or development.

(3) Upon awarding a supply contract, a contracting authority has the right to, in addition to the grounds laid down in subsection (1) of this section, organise the procurement procedure as a negotiated procedure without prior publication of a contract notice if the supplies are purchased:

- 1) from the same tenderer for partial replacement or extension of the supplies purchased earlier and where a change of the tenderer would oblige the contracting authority to acquire supplies with different technical characteristics that would result in incompatibility with the existing supplies or technical difficulties in operation and maintenance; thereby the length of such recurrent contracts must not exceed five years, except in exceptional circumstances determined by taking into account the expected service life of any delivered items, installations or systems, and the technical difficulties which a change of supplier may cause;

- 2) on a commodity market;
- 3) on particularly advantageous terms, from either a person against whom a liquidation procedure has been initiated or from a bankruptcy trustee on the basis of an arrangement with creditors.

(4) Upon awarding a works contract or a service contract, a contracting authority has the right to, in addition to the grounds laid down in subsection (1) of this section, organise the procurement procedure as a negotiated procedure without prior publication of a contract notice if the following is purchased:

- 1) additional works or services not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, to the extent of up to 50 per cent of the value of the original contract, when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authority or when such works or services are strictly necessary for its completion;
- 2) new works or services consisting in the repetition of similar works or services purchased from the same tenderer under a contract awarded up to five years earlier according to the negotiated procedure with publication of a contract notice or the restricted procedure, provided that such works or services are in conformity with the original project.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

§ 103⁷. Contract documents

(1) A contracting authority may establish additional requirements for a tenderer or candidate in contract documents, including with regard to the tenderer's or candidate's facility security clearance or personnel security clearance or personnel security clearance certificate, whose purpose is to protect state secrets or classified information of foreign states, which is disclosed to the tenderer or candidate in the course of the procurement procedure. The contracting authority may demand that the tenderer or candidate also ensure that its subcontractors follow such rules.

(2) If a public contract is made with the aim of ensuring reliable and timely delivery or maintenance, repair and constant availability of spare parts and other support in any conditions, the contracting authority will, for the purpose of verifying the security of supply, demand that the tenderer or candidate submit any or multiple of the following data and documents, unless otherwise specified in this Act or unless such information has been specified in the contract notice:

- 1) certification or documentation demonstrating to the satisfaction of the contracting authority that the tenderer or candidate will be able to honour its obligations regarding the export, transfer and transit of goods associated with the public contract, including any supporting documentation received from the European Union Member State(s) concerned;
- 2) the indication of any restriction on the contracting authority, which results from export control or security measures;
- 3) certification or documentation demonstrating that the organisation and location of the tenderer's supply chain will allow it to comply with the requirements of the contracting authority concerning security of supply set out in the contract documents, and a commitment to ensure that possible changes in its supply chain during the execution of the contract will not affect adversely compliance with these requirements;
- 4) a commitment from the tenderer or candidate to meet possible additional needs required by the contracting authority as a result of an emergency, state of emergency or state of war or a similar situation in another Member State of the European Union or in a third state, according to terms and conditions to be agreed;
- 5) any supporting documentation received from the tenderer's or candidate's national authorities regarding the fulfilment of additional needs required by the contracting authority as a result of an emergency, state of emergency or state of war or a similar situation in another Member State of the European Union or in a third state;
- 6) a commitment from the tenderer or candidate to carry out the maintenance, modernisation or adaptation of the supplies covered by the contract;
- 7) a commitment from the tenderer to inform the contracting authority without delay of any change in its organisation, supply chain or industrial strategy that may affect its obligations to the contracting authority;
- 8) a commitment from the tenderer or candidate to provide the contracting authority, according to terms and conditions to be agreed, with all specific means necessary for the production of spare parts, components, assemblies and special testing equipment, including technical drawings, licenses and instructions for use, in the event that it is no longer able to provide these supplies.

(3) A tenderer or candidate may not be required to obtain a commitment from a Member State of the European Union that would prejudice that Member State's freedom to apply, in accordance with relevant international or European Union law, its national export, transfer or transit licensing criteria in the circumstances prevailing at the time of such a licensing decision.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

§ 103⁸. Technical specifications

(1) If there are no technical standards in the respective field, the following will be relied on upon drawing up the technical specifications of the object of a public contract in the following order:

- 1) an Estonian standard transposing a European standard;
- 2) a European standard;
- 3) a European technical approval, which has been granted by an approval body designated by a Member State of the European Union and which certifies that, based on the technical point of view, the product is suitable for the prescribed purpose in terms of its characteristics, which correspond to the main requirements established for public works, as well as in terms of its features and the prescribed conditions of application or use;
- 4) a Common technical specification, which has been established in accordance with a procedure recognised by a Member State of the European Union and published in the Official Journal of the European Union;
- 5) an international standard;
- 6) a technical reference system established by a European standardisation body;
- 7) civil technical specifications stemming from industry and widely recognised by it;
- 8) a non-mandatory technical specification in the field of defence, which has been approved by a standardisation body specialising in drawing up technical specifications to be repeatedly or constantly applied in the field of defence and defence materiel specifications similar to those standards;
- 9) the original Estonian standard, Estonian technical approval or Estonian technical specifications relating to the design, calculation and execution of works or use of products.

(2) If a contracting authority has in the technical specifications of the object of a public contract referred to a basis specified in subsection (1) of this section, the contracting authority will not, upon awarding a supplies contract or a service contract, reject a tender due to non-compliance if the tenderer certifies in its tender in a manner acceptable to the contracting authority that the solutions offered by the tenderer are equal to the requirements established in the technical specifications.

(3) If a contracting authority has drawn up the technical specifications of the object of a public contract in accordance with the procedure laid down in subsection (3) of § 33 of this Act on the basis of the performance or functional requirements, the contracting authority will not reject a tender if the offered works, supplies or services comply with a basis specified in clauses 1) to 6) and 9) of subsection (1) of this section, which concerns the performance or functional requirements serving as the basis for the technical specifications of the object of the public contract and the tenderer proves it to the satisfaction of the contracting authority using any appropriate means.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

§ 103⁹. Exclusion of tenderer and candidate from procurement procedure

(1) In addition to the provisions of subsection (1) of § 38 of this Act, a contracting authority will not enter into a public contract with a person and will exclude from the procurement procedure a tenderer or candidate:

- 1) who or whose legal representative has been punished in a criminal or misdemeanour procedure for a terrorist offence, preparation thereof or a call to commit one or for financing and supporting activities aimed at a terrorist offence and commitment thereof and whose penal data have not been deleted from the penal register under the Penal Register Act or if a penalty has not been deleted from the penal register under the legislation of their country of residence or location;
- 2) who has given false information about the compliance with the requirements established in this Chapter or by the contracting authority on the basis of the provisions of this Chapter.

(2) In addition to the provisions of subsection (2) of § 38 of this Act, the contracting authority may exclude from the procurement procedure a tenderer or candidate who:

- 1) to the knowledge of the contracting authority, is not sufficiently reliable in order to preclude risks to the national security or with regard to whom or whose representative a wrongful disregard of the rules of professional conduct, including violation of the duties to protect state secrets or classified information of foreign states or the duties of the security of supply in the performance of previous public contracts, has been proven;
- 2) has failed to inform the contracting authority of a significant change of circumstances specified in subsection (1) of § 38 of this Act or subsection (1) of this section.

(3) The contracting authority will demand that the tenderer or candidate submit a written confirmation regarding the absence of the circumstances specified in clause 1) of subsection (1) of this section along with the documents to be submitted for certifying the qualifications of the tenderer or candidate.

(4) If the contracting authority has reasoned suspicion that the grounds specified in clause 1) of subsection (1) of this section exist regarding the tenderer or candidate, subsection (5) of § 38 of this Act will apply.

(5) If the contracting authority has reasoned suspicion that the grounds specified in subsection (2) of this section exist regarding the tenderer or candidate, the contracting authority may, for the purpose of verifying it, make an inquiry to a security authority or, regarding the performance of previous public contracts, to the other party to the contract or demand that the tenderer or candidate authorise the contracting authority in writing to address appropriate authorities for the purpose of obtaining a confirmation on the absence of the grounds.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

§ 103¹⁰. Technical and professional ability of tenderer and candidate

(1) In order to verify the compliance of the technical and professional ability of a tenderer or candidate with the qualification criteria, a contracting authority will request in a contract notice the submission of one or several of the following data and documents, depending on the nature, quantity and usage method of the supplies, services or works to be purchased on the basis of the public contract:

- 1) a list of the supply or service contracts performed during up to the last five years and matching the properties specified by the contracting authority, including, provided that it is practical and possible, a list of the supply contract or service contracts along with the value, dates of awarding and information about the other parties;
- 2) a description of the tools, material and technical equipment which the tenderer has at its disposal to perform the contract, cope with any additional needs required by the contracting authority as a result of an emergency, state of emergency or state of war or another similar situation in another Member State of the European Union or a third state or carry out the maintenance, modernisation or adaptation of the supplies covered by the contract;
- 3) a description of the staff numbers and their know-how or the sources of supply as well as the geographical location when it is outside the territory of the European Union.

(2) If the contract to be awarded involves state secrets or classified information of foreign states, the contracting authority will establish in the contract documents or in the invitation to tender all the required measures and requirements for the purpose of appropriate protection of the state secrets and classified information of foreign states. To that end the contracting authority may demand that a tender contain, among other things, the following:

- 1) the facility security clearance or personnel security clearance or personnel security clearance certificate of the tenderer or candidate;
- 2) a certificate of a competent authority of the country of location of the tenderer or candidate or a confirmation by the tenderer or candidate that the tenderer or the candidate ensures, in accordance with the legislation in force, the confidentiality of all the state secrets and classified information of foreign states at the disposal of the tenderer or candidate or disclosed to the tenderer or candidate during the contract term or after termination of the contract.

(3) The contracting authority may grant a tenderer or candidate who does not have the clearance specified in subsection (2) of this section an additional term for obtaining it, referring to the possibility and term in the contract notice.

(4) Before awarding a public contract, the contracting authority will verify the existence of the required clearance, demanding that the competent authority of the country of location of the tenderer submit a certificate certifying the existence of the facility security clearance or personnel security clearance regarding state secrets and classified information of foreign states as of the day indicated by the contracting authority after making a decision to declare the tender successful. If it becomes evident that the tenderer does not have the required permit as of the given day, the contracting authority will not award the public contract to the person and will make a new decision to disqualify the tenderer.

(5) If the tenderer who submitted a tender that was declared successful is disqualified on a ground laid down in subsection (4) of this section:

- 1) the contracting authority will declare the runner-up tender in terms of the price successful, provided that the contracting authority awards the public contract on the basis of the lowest price;
- 2) the contracting authority will re-evaluate all the other tenderers under subsection 50 (2) of this Act and declare the tender which is the most advantageous under the tender evaluation criteria set out in the contract notice, contract documents or invitation to tender, provided that the contracting authority awards the public contract on the basis of the most economically advantageous tender.

(6) In the event specified in clause 1) of subsection (5) of this section, the contracting authority has the right to demand that the tenderer who submitted a successful tender that was disqualified compensate the damage to the extent of the difference between the value of the submitted tender and the value of the runner-up tender which was declared successful.

(7) In the event specified in clause 2) of subsection (5) of this section, the contracting authority has the right to demand that the tenderer who submitted the successful tender which was disqualified compensate all the possible additional expenses insofar as the contracting authority has to incur them under a contract awarded on the basis of the tender which was declared successful instead of the initial successful tender after the re#evaluation of the tenders as well as to the extent of the expenses arising from the re#evaluation of tenders.

(8) The tender security not refunded to the tenderer will be debited from the compensation for damage specified in subsections (6) and (7) of this section.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

§ 103¹¹. Specifics of awarding framework agreement in public procurement in fields of defence and security

A contracting authority may award a framework agreement for a term of up to seven years. A longer term is permitted if it is objectively necessary and reasoned due to the object of the framework agreement.
[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

**Chapter 6
SUPERVISION AND STATE PUBLIC
PROCUREMENT REGISTER**

[RT I 2010, 20, 102 - entry into force 01.07.2010]

**Division 1
Competence of Ministry of Finance
in Field of Public Procurement**

[RT I 2010, 20, 102 - entry into force 01.07.2010]

§ 104. Tasks, rights and duties of Ministry of Finance in field of public procurement

(1) The Ministry of Finance:

- 1) exercises state supervision over organisation of public procurement and extrajudicial proceedings of misdemeanours in accordance with the procedure and to the extent provided by law;
- 2) gives advice in matters concerning implementation of the Public Procurement Act and organise training in public procurement;
- 3) publishes relevant information about public procurement on its website.

(2) The Ministry of Finance may delegate the tasks specified in clauses 2) and 3) of subsection (1) of this section to an authority or person specified in subsection (5) of § 10 of this Act and appointed by the Government of the Republic.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

**Division 2
State Public Procurement Register**

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

§ 105. State public procurement register

(1) The state public procurement register is a state database maintained for processing the data of public procurement and its purpose is to:

- 1) ensure publication of notices in the field of public procurement and forwarding such notices to the Publications Office of the European Union;
- 2) disclose the results of review proceedings;
- 3) allow for pursuing electronic public procurement proceedings;
- 4) ensure gathering public procurement statistics;
- 5) disclose other relevant information about public procurement.

(2) The following will be registered:

- 1) information about notices in the field of public procurement;
- 2) information about the results of review proceedings;
- 3) information about pursuing public procurement proceedings;
- 4) electronic documents concerning the information specified in clauses 1) and 2) of this subsection;
- 5) other data and electronic documents specified in this Act.

(3) A contracting authority is responsible for the correctness of the data submitted to the register by the contracting authority.

(4) The information specified in subsection (2) of this section is available to the public, except information whose disclosure would impede the work of law enforcement authorities, be contrary to the public interest, violate the trade secrets of undertakings or distort competition between undertakings.

(5) The chief processor of the register is the Ministry of Finance.

(6) The register will be established and the statutes of the register will be adopted by the Government of the Republic.

(7) The Minister of Finance may issue regulations for organisation of the work of the register.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

§ 106. Forwarding information to Publications Office of European Union

The register will forward information contained in notices in the field of public procurement to the Publications Office of the European Union in accordance with Commission Regulation (EC) No. 1564/2005 establishing standard forms for the publication of notices in the field of public procurement in accordance with Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council (OJ L 257, 1.10.2005, pp. 1#126) if the estimated value of public procurement is equal to or exceeds the international threshold or another event if the contracting authority desires it.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

§ 106¹. Forwarding statistical reports to European Commission

By October 31 each year the Ministry of Finance will forward to the European Commission a statistical report and other information specified in Article 67 of Directive 2004/17/EC of the European Parliament and of the Council, Article 76 of Directive 2004/18/EC of the European Parliament and of the Council and in Article 66 of Directive 2009/81/EC of the European Parliament and of the Council. If necessary, the Ministry of Finance has the right to submit additional queries to contracting authorities for gathering statistical information and other information.

[RT I, 14.02.2012, 1 - entry into force 24.02.2012]

Division 3 State Supervision

§ 107. Jurisdiction of Ministry of Finance upon exercising supervision

(1) State supervision is exercised by the Ministry of Finance who, among other things, has the right to:

- 1) during and after a procurement procedure, check the adherence of this Act without hindrance or prior notification at the seat of a contracting authority. If the Ministry of Finance suspects that this Act or legislation adopted on the basis thereof may have been violated, an official of the Ministry of Finance authorised to exercise state supervision (hereinafter *supervisory official*) may attend the opening of tenders or other procedural steps taken on the basis of this Act or the making of decisions as well as check the steps and decisions taken by the contracting authority and demand that the contracting authority correct a mistake or terminate a violation of law on site;
- 2) in the event of electronic submission of notices and other information forwarded in a procurement procedure, obtain electronic documents, data and log data of operations or gain access to the information system used by the contracting authority;
- 3) make a decision or a precept in accordance with § 108 of this Act.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

§ 108. Decision or precept of Ministry of Finance

(1) Before a public contract is awarded, the Ministry of Finance may declare the procurement procedure of a contracting authority specified in clause 1) of subsection (1) of § 10 of this Act invalid or make a precept to the contracting authority specified in clauses 2) to 6) of subsection (1) of § 10 or in subsection (3) of § 10 of this Act to declare the procurement procedure invalid, if the contracting authority:

- 1) has not presented in the contract notice, contract documents or an invitation to tender the evaluation criteria used in deciding on the successfulness of tenders or the relative weight of the criteria or has opened the tenders;
- 2) has not notified all interested persons, tenderers or candidates who have received the contract documents from the contracting authority about amendment of the contract documents;
- 3) has committed a fundamental breach of the procedure of giving explanations provided for in § 56 of this Act;
- 4) upon opening tenders, has not verified the compliance of the submitted documents with the list required in the contract documents;
- 5) has not sent a copy of the minutes of opening tenders to all tenderers in accordance with provisions of subsection (3) of § 46 of this Act;
- 6) upon verifying the admissibility of tenders or upon evaluation of tenders, has used as its representative or expert a person whose relations with the tenderer may cast justified doubt over the objectiveness of the representative or expert;
- 7) has held negotiations in the course of an open procedure or restricted procedure.

(2) The Ministry of Finance has the right to make the decision or the precept specified in subsection (1) of this section in addition to the grounds established in subsection (1) if the contracting authority violates this Act in the

course of the procurement procedure and circumstances that, with full knowledge of the facts, do not allow for proceeding with the procurement procedure, become evident.

(3) If a contracting authority has divided public procurement into lots within the same procurement procedure and a violation of this Act by the contracting authority results in the decision or precept of the Ministry of Finance specified in subsections (1) or (2) of this section, occurs with regard to one lot or some lots, the Ministry of Finance will make a decision or precept with regard to the lots whereby this Act has been violated.

(4) Before making a decision or precept to declare a procurement procedure invalid, the Ministry of Finance will give the contracting authority the possibility to present their objections during a term set by the Ministry of Finance, which must not be longer than three working days.

(5) [Repealed – RT I, 13.12.2010, 2 – entry into force 01.01.2011]

(6) If a decision to declare a procurement procedure invalid or a precept is made, any and all decisions and steps relating to the procurement procedure will be ineffective, regardless of whether they were made before or after the decision declaring the invalidity. Also, a public contract awarded after making a decision to declare a procurement procedure invalid or after making a precept will be ineffective.

(7) The Ministry of Finance has the right to issue compulsory precepts aimed at terminating other violations of this Act and legislation adopted on the basis thereof, which has not been specified in subsections (1) and (2) of this section.

[RT I, 13.12.2010, 2 - entry into force 01.01.2011]

(8) If a precept made on the basis of this Act has not been complied with, the Ministry of Finance may impose a penalty payment in accordance with the procedure established in the Substitutive Enforcement and Penalty Payment Act. If a precept is not complied with, the maximum penalty payment on the first occasion will be up to 1500 euros and on subsequent occasions up to 10 000 euros for the purpose of forcing the addressee to perform the same obligation.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

§ 109. Activities of Ministry of Finance in event of offence

(1) If the Ministry of Finance receives information about an offence relating to the implementation of public procurement or the Ministry of Finance detects an offence in the course of inspection public procurement and the collection of facts that have become known provides grounds for a suspicion of offence and the offence cannot be considered a misdemeanour specified in §§ 111#113 of this Act, the Ministry of Finance will inform the police authorities or the Prosecutor's Office about the findings.

[RT I, 13.12.2010, 2 - entry into force 01.01.2011]

(2) The Ministry of Finance has the right to make proposals to bring disciplinary action against a person who has or persons who have violated this Act or legislation established on the basis thereof or for taking the legal remedies specified in the Law of Obligations Act.

[RT I, 13.12.2010, 2 - entry into force 01.01.2011]

§ 110. Cooperation with European Commission

(1) If the Commission notifies a contracting authority in writing that an obvious violation of the provisions of the law of the European Union governing public procurement or an obvious violation of national acts implementing those acts has been committed in the course of a procurement procedure, the contracting authority will forward the entirety of the relevant information regarding the respective procurement procedure to the Ministry of Finance within three working days from the day of receiving the notification.

(2) The procedure for processing the information specified in subsection (1) of this section and forwarding it to the European Commission will be established by the Government of the Republic.

Division 4 Liability

§ 111. Violation of requirements for organisation of public procurement

(1) [Repealed – RT I, 31.12.2010, 2 – entry into force 01.01.2011]

(2) [Repealed – RT I, 31.12.2010, 2 – entry into force 01.01.2011]

(3) The following violations of the requirements for organising public procurement are punishable by a fine of up to 300 fine units:

1) violation of the confidentiality requirements;

- 2) failure to exclude a candidate or tenderer from a procurement procedure if this Act establishes the obligation to exclude and the contracting authority is aware of the existence of the grounds for the compulsory exclusion regarding the candidate or tenderer;
 - 3) the award or amendment of a public contract in violation of the requirements established by this Act;
 - 4) selection of the type of procurement procedure in violation of the requirements established by this Act;
 - 5) holding negotiations in the course of an open procedure or restricted procedure;
 - 6) failure to inform all interested persons, tenderers or candidates who have received contract documents from the contracting authority about amendment of the contract documents;
 - 7) a fundamental breach of the procedure for giving explanations provided for in § 56 of this Act;
 - 8) a contracting authority has failed to indicate in a contract notice submitted to the register that the estimated value of the public procurement is equal to or exceeds the international threshold or has failed to indicate that the contracting authority would like to have the notice forwarded to the Publications Office of the European Union;
 - 9) repeated failure to submit a public procurement report via the register's website after the termination of the procurement procedure.
- [RT I, 13.12.2010, 2 - entry into force 01.01.2011]

(4) The violation specified in subsection (3) of this section, if committed by a legal person, is punishable by a fine of up to 3200 euros.

[RT I, 13.12.2010, 2 - entry into force 01.01.2011]

§ 112. Submission of tender without firm intention to award public contract

(1) The submission of a tender without a firm intention to enter into a public contract is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 2000 euros.

[RT I, 13.12.2010, 2 - entry into force 01.01.2011]

§ 113. Submission of false information in procurement procedure

(1) The submission of false information in a procurement procedure by the tenderer or candidate is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 2000 euros.

[RT I, 13.12.2010, 2 - entry into force 01.01.2011]

§ 114. Proceedings

(1) The provisions of the Penal Code and the Code of Misdemeanour Procedure apply to the misdemeanours specified in §§ 111#113 of this Act.

(2) The extrajudicial body conducting proceedings of the misdemeanours specified in §§ 111#113 of this Act is the Ministry of Finance.

§ 115. Compensation of expenses to tenderer

A tenderer has no right to request from the contracting authority any compensation of the expenses relating to the submission of the tender, including reasonable expenses relating to the preparation of the tender and participation in the procurement procedure, design contest or award of a public works concession, except if the tenderer proves that the contracting authority violated the provisions governing the organisation of the public procurement, without which the public contract would likely have been awarded to the tenderer.

§ 116. Compensation for loss by tenderer

If a tenderer has knowingly given false information or forged documents in the course of a procurement procedure or in the course of review of a request, the tenderer will compensate for the loss caused by submitting such information or documents to the contracting authority or other persons.

Chapter 7 REQUESTS FOR REVIEW

Division 1

General Provisions

§ 117. Contesting contracting authority's activities

(1) A tenderer, candidate or person interested in participating in a procurement procedure (hereinafter *requester*) may contest an activity of the contracting authority if it finds that the violation of this Act by the contracting authority violates its rights or harms its interests, lodging a respective request for review to the Public Procurement Review Committee (hereinafter *Review Committee*).
[RT I, 13.12.2010, 2 - entry into force 01.01.2011]

(2) A request for review may be submitted with regard to the following documents or decisions of the contracting authority:

- 1) contract notice;
 - 2) invitation to tender;
 - 3) concession notice;
 - 4) periodic indicative notice that starts the procurement procedure;
 - 5) qualification system notice that starts the procurement procedure;
 - 6) invitation to design contest;
 - 7) contract documents;
 - 8) exclusion of the candidate or tenderer from the procurement procedure;
 - 9) qualification and disqualification of the candidate and tenderer;
 - 10) declaring the tender admissible;
 - 11) rejection of the tender or rejection of all tenders;
 - 12) declaring the tender successful;
 - 13) another decision of the contracting authority made in the course of the procurement procedure on the basis of this Act, which could violate the rights or harm the interests of the requester.
- [RT I, 13.12.2010, 2 - entry into force 01.01.2011]

(2¹) A tenderer or interested person may submit a request for review with regard to:

- 1) a voluntary notice if the contracting authority has not submitted a contract notice and the non#submission of the notice was not permitted under this Act and the contracting authority has submitted a voluntary notice to the register;
 - 2) a public contract if the contracting authority has used a negotiated procedure without prior publication of a contract notice and, after awarding the public contract, submitted to the register within the prescribed term a public procurement report that contains reasons for using the said procurement procedure;
 - 3) a public contract if the contracting authority has not submitted a contract notice and the non#submission of the notice was not permitted under this Act, as well as if the contracting authority has not submitted a voluntary notice or a public procurement report within the prescribed term.
- [RT I 2010, 20, 102 - entry into force 01.07.2010]

(2²) Clauses 2) and 3) of subsection (2¹) of this section will not apply if the value of the awarded public contract is not equal to or exceed the public procurement threshold.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(3) After the award of a public contract, an application for compensation of loss may be submitted to the Review Committee by the candidate or tenderer whom the public contract was not awarded due to the unlawful decision, act of the contracting authority or the document specified in clauses 1) to 7) of subsection (2) of this section (hereinafter *procurement source document*).

(2) The Review Committee is an extrajudicial dispute settlement body within the meaning of clause 1) of subsection (2) of § 15 of the State Liability Act.

§ 118. State fee

A state fee is paid in the event of submission of an request for review and an application for compensation of loss to the Review Committee in accordance with the procedure provided for in the State Fees Act.

§ 119. Review Committee

(1) Review proceedings will be carried out by members of the Review Committee.

(2) A member of the Review Committee must be independent and make their decisions solely based on law and other legislation as well as international agreements binding on Estonia.

(3) A member of the Review Committee will be appointed to office and removed from office by the Government of the Republic on the proposal of the Minister of Finance. The chairman of the Review Committee representing and managing the Review Committee will be appointed from among the members of the Review Committee by the Government of the Republic on the proposal of the Minister of Finance.

(4) A member of the Review Committee will be appointed for five years.

(5) The provisions provided for in § 47 of the Courts Act apply to the requirements established for a member of the Review Committee. A member of the Review Committee will be released from office before the prescribed time if the fact provided for in § 47 of the Courts Act becomes evident, which precludes the appointment of the person to the position of a member of the Review Committee in accordance with law.

(6) The salary of a member of the Review Committee will be equal to the salary of the judges of county courts and administrative courts. The salary of the chairman of the Review Committee will be equal to the salary of a judge of the circuit court.

(7) No supervisory control will be exercised over a member of the Review Committee. A member of the Review Committee will report to the chairman of Review Committee in terms of work organisation and other general matters, the chairman of the Review Committee will report to the Minister of Finance in terms of work organisation and other general matters. The Minister of Finance has the right to impose disciplinary penalties. Upon application of the provisions of the Employees Disciplinary Penalties Act, the rights of the employer belong to the Minister of Finance.

(8) Sections 14–24, 30, 33, 45–46, 52–54, 57, 61, 63, 67, 91 and 98 of the Public Service Act do not apply to a member of the Review Committee.
[RT I, 06.07.2012, 1 - entry into force 01.04.2013]

(9) A member of the Review Committee may not work elsewhere beside the service in the Review Committee, except pursue academic or research work.

(10) The working conditions of the Review Committee, including the working premises and the clerical support will be provided by the Ministry of Finance.

(11) The administrative expenses of the Review Committee and the expenses relating to the review proceedings, including the salary of the members of the Review Committee, will be covered out of the earmarked funds allocated to the Ministry of Finance.

(12) The statutes of the Review Committee will be approved by the Minister of Finance.

§ 120. Removal

(1) A member of the Review Committee will not review a request and will remove themselves from reviewing the request in the event of occurrence of a fact that gives reason to call their impartiality into doubt.

(2) The occurrence of the fact specified in subsection (1) of this section will be presumed if a member of the Review Committee reviewing a request has the following relationship with a party to the proceedings or to the legal representative of the party to the proceedings:

- 1) relative in descending or ascending line;
- 2) sister, half#sister, brother, half#brother or the person who is or has been married to the party to the proceedings or the sister, half#sister, brother or half#brother of their representative;
- 3) step#parent or foster#parent, step#child or foster#child;
- 4) adoptive parent or adopted child;
- 5) spouse, cohabitee, also the sister or brother or direct blood relative of the spouse or cohabitee, including after termination of marriage or permanent cohabitation.

(3) In addition to the provisions provided for in subsections (1) and (2) of this section, the a member of the Review Committee must remove themselves from the reviewing a request in a case where the member of the Review Committee:

- 1) is a party to the procedure or a person against whom a claim may be brought in the course of the procedure;
- 2) is or has been a representative or counsel of the party to the procedure or where the member of the Review Committee participated or had the right to participate as a legal representative of the party to the procedure;
- 3) has given an expert opinion.

(4) A party to the procedure may request the removal of a member of the Review Committee reviewing a request in the event provided for in subsection (1) of this section.

(5) An application for removal will be reviewed and a decision will be made by the member of the Review Committee reviewing the request or by the panel of the Review Committee.

(6) If an application for removal is satisfied, the chairman will appoint a new member of the Review Committee or the panel of the Review Committee to review the request.

(7) If at a hearing a member of the panel of the Review Committee cannot be replaced or a new member of the Review Committee cannot be appointed to review a request, the hearing will be postponed and a new time and place for a hearing will be set.

Division 2 Review Proceedings

§ 121. Submission of request for review and application for compensation of loss

(1) A request for review must be submitted to the Review Committee within seven working days from the day when the requester became aware of or had to become aware of the violation of its rights or harming of its interests, but not after the award of the public contract. A request for review with regard to the procurement source document must be delivered not later than three working days before the due date of submission of request to participate in the procurement procedure, tenders, conceptual designs or concession applications.

(1¹) A request for review submitted on the grounds provided for in clause 1) of subsection (2¹) of § 117 of this Act must be delivered to the Review Committee within seven working days from the publication of a voluntary notice in the register.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

(1²) A request for review submitted on the grounds provided for in clause 2) of subsection (2¹) of § 117 of this Act must be delivered to the Review Committee within 30 days from the publication of a public procurement report in the register.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

(1³) A request for review submitted on the grounds provided for in clause 3) of subsection (2¹) of § 117 of this Act must be delivered to the Review Committee within six months from the award of the public contract.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

(2) A request for review must be submitted to the Review Committee in writing and it must contain:

- 1) the name, address and other contact information of the requester;
- 2) the name, address and other contact information of the contracting authority;
- 3) the object of the request, its conflict with the terms of this Act and the reasons why the requester considers it to be in violation of their rights or harmful to their interests;
- 4) a clearly expressed request of the requester;
- 5) the list of documents annexed to the request for review.

(3) The request must annex to the request the information at its disposal regarding the procurement procedure in connection with which the request is submitted.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(4) A request for review and the documents annexed thereto must be in Estonian.

(5) An application for compensation of loss may be lodged with the Review Committee within one year from the award of the public contract. An application for compensation of loss will be heard by the Review Committee within a reasonable period; in other respects, the provisions governing the review of requests apply to the review of applications for compensation of loss.

(6) The Review Committee will evaluate the lawfulness of a decision or act of the contracting authority or the lawfulness of a procurement source document only in the course of the review of a request or an application for compensation of loss.

§ 122. Starting review proceedings

(1) The Review Committee will evaluate the compliance of a request for review with the requirements provided for in this Chapter within one working day from the receipt of the request.

(2) If the Review Committee finds that a request for review contains deficiencies that can be eliminated, it will grant a term of two working days to the requester for the elimination of the deficiencies.

(3) The Review Committee will not review a request and return it to the requester by its decision if:

- 1) the request has not been submitted within the prescribed time limit;
- 2) the requester has not eliminated the deficiencies of in the request within the specified time limit;
- 3) a decision has already been made in the same case in the Review Committee or a court;
- 4) the decision or precept specified in subsection 2) of § (1) of 108 of this Act has been made on the procurement procedure or decision to be reviewed;
- 5) the contracting authority has declared the procurement procedure or decision invalid or the violation of law has been eliminated;
- 6) the requester does not have the right to submit the request.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(4) If a request for review submitted to the Review Committee or the documents annexed to a request for review are not in Estonian, the Review Committee may consider it a deficiency specified in subsection (2) of this section and ask for a translation of the request or the documents annexed thereto. If a translation of the

documents annexed to the request is not submitted by the due date, the Review Committee may disregard the documents annexed to the request.

(5) The Review Committee will involve each person participating in the procurement procedure or interested in participating in the reviewing of the request, over which rights may be decided in the course of the review of the request (hereinafter *third party*). A third party will not be involved if a request is submitted with regard to a procurement source document and no specific third party whose interests may be affected can be identified in the request.

§ 123. Suspension of procurement procedure

(1) Upon receipt of a request for review whereby there are no grounds for refusing to review the request as provided for in subsection (2) of § 122 of this Act, the Review Committee will immediately notify the contracting authority and the third party of the submission of the request and forward a copy of the request to them.

(2) If the Review Committee sets a term to the requester for elimination of deficiencies contained in the request for review, it will notify the contracting authority of the submission of the request and forward a copy of the request submitted to the Review Committee after the deficiencies have been eliminated. If the Review Committee refuses to review a request on the basis of clause 2) of subsection (3) of § 122 of this Act, the Review Committee will immediately notify the contracting authority thereof.

(3) The Review Committee may make a decision on the suspension of the procurement procedure, design contest or award of a public works concession at any stage of the review proceedings on the basis of a founded request, taking into account the potential consequences arising from the suspension to all interests that might be harmed. An application for suspension of a procurement procedure, design contest or award of a public works concession will be reviewed by the Review Committee within three working days from its receipt. For the purpose of adjudication of the suspension of an application for suspension of a procurement procedure, design contest or award of a public works concession the Review Committee may request the submissions of the parties to the procedure and the parties will make them within one working day.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(3¹) On the basis of a request of a party to the procedure or on its own motion the Review Committee may declare a decision made on the suspension of a procurement procedure, design contest or public works concession invalid at any stage of the review proceedings.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(3²) On the basis of a reasoned request of a contracting authority the Review Committee may, if the contracting authority's decision to declare a tender successful is being contested, make a decision to permit the approval to award the public contract at any stage of the review proceedings if the overriding public interest that could be harmed in the event of failure to award the public contract overrides the possible harming of the requester's rights. The Review Committee will review a request to permit the approval to award a public contract within five working days as of the receipt of the request. Upon reviewing the request specified in this subsection, the Review Committee may request the submissions of the parties to the procedure and the parties must make them within two working days.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(3³) If the Review Committee has made a decision to permit the approval of the award of a public contract on the basis of subsection (3²) of this section, and the review proceedings concerning the decision to declare a tender successful terminates on the basis of clause 1), 3) or 5) of subsection (1) of § 126 of this Act and the public contract has not been awarded to the requester by the time of termination of the review proceedings, the decision of the Review Committee permitting the approval of the award of the public contract will become invalid upon termination of the review proceedings.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(3⁴) A claim against the decision of the Review Committee made in resolving a request to suspend a procurement procedure, design contest or the award of a public works concession or in resolving a request to permit the approval of the award of a public contract may be lodged with an administrative court within seven days from the day following the day of announcement of the decision.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(4) A public contract awarded after the receipt of the notice specified in subsection (1) or (2) of this section, but before the fulfilment of the condition provided for in § 128 of this Act, is ineffective. If the Review Committee has suspended a procurement procedure, design contest or the award of a public works concession and the due date of submission of tenders, requests, conceptual designs or concession applications arrives at the time of the review proceedings, the requester will extend the time limit for submission of tenders, requests, conceptual designs or concession applications by a reasonable period. In the event of suspension of a procurement

procedure, design contest or the award of a public works concession the contracting authority is required, in accordance with subsection (2) of § 45 of this Act, to make a proposal to the tenderers to extend the term of validity of the submitted tenders, conceptual designs or concession applications.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

(5) If the Review Committee has suspended a procurement procedure, design contest or award of a public works concession or declared the suspension decision invalid, the contracting authority will inform thereof all the persons interested in participating in the procurement procedure, tenderers or candidates in accordance with subsection (1) of § 55 of this Act.

[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

§ 124. Organisation of review of request

(1) A contracting authority will submit a written response to a request for review within two working days from the receipt of a copy of the request from the Review Committee, annexing to it all documents necessary for reviewing the request, as asked by the Review Committee. In the written response the contracting authority may make a proposal to decide the request. If a third party has been involved in the review of a request under subsection (5) of § 122 of this Act, the third party will also submit a written response to the request within two working days from the receipt of a copy of the request from the Review Committee, annexing all documents needed for deciding the request.

(2) The Review Committee will forward a copy of the written response specified in subsection (1) of this section to the other parties to the proceedings within one working day.

(3) The Review Committee may request from the requester, contracting authority and the third party a written explanation on the content of the procurement source document or decision prior to reviewing the request. The requester, contracting authority and third party are required to submit the written explanation to the Review Committee within two working days from the receipt of such request from the Review Committee.

(4) In review proceedings a party to the proceedings has the right to access the documents submitted in the review proceedings, taking into account the provisions of subsection (4) of § 43 of this Act.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

§ 125. Review of request

(1) A request for review will be reviewed solely by a member of the Review Committee or at least a panel of three members if the collegial settlement of the request is important in the opinion of the chairman from the viewpoint of the uniform application of law.

(2) The Review Committee will review a request either on the basis of documents submitted in the written procedure or organise the review of the request at a public oral hearing with the participation of the requester, the contracting authority and a third party within seven working days from the receipt by the Review Committee of the request free of deficiencies. The Review Committee will organise the review of the request at a public oral hearing if at least one of the parties to the review proceedings requests it or if the Review Committee considers it necessary for the settlement of the request.

(3) The Review Committee will notify the contracting authority, requester and third party of the time and place of the hearing at least three working days before the hearing.

(4) If the contracting authority or third party does not attend the hearing, the Review Committee will review the request at the hearing without the participation of the contracting authority or third party. If the requester does not attend the hearing, the Review Committee will not review the request, return it along with its decision to the requester and immediately notify the contracting authority thereof.

(5) If necessary, the Review Committee may organise an additional hearing that the contracting authority, requester and third party are notified of either at the previous hearing or in accordance with the procedure provided for in subsection (3) of this section.

(6) Review proceedings will be organised and a request for review will be reviewed in Estonian. Any parties and third parties who have no command of Estonian have the right to give explanations and speak at the review of the request through the mediation of an interpreter or a representative proficient in Estonian. The involvement of an interpreter and payment of the interpreter's fee is the obligation of the person who needs the services of the interpreter.

(7) If a requester who has no command of Estonian attends the hearing without an interpreter or representative who has command of Estonian it will be deemed that the requester has not attended the hearing within the meaning of subsection (4) of this section.

(8) The Review Committee may involve experts in reviewing a request. An expert may submit their opinion at a written or oral hearing.

(9) The fee of an expert will be triple the rate of the hourly fee equal to the highest level of the salary rate of the wage scale of civil servants.

(10) If during reviewing a request for review a fact that could result in a decision declaring the procurement procedure invalid or a precept by the Ministry of Finance on the basis provided for in subsections (1) and (2) of § 108 of this Act becomes evident, the Review Committee will immediately notify the Ministry of Finance and suspend the review of the request until completion of supervision by the Ministry of Finance.

§ 126. Termination of review proceedings

(1) The review proceedings will end with:

- 1) the resolution of the request by settlement;
 - 2) the waiver of the request by the requester;
 - 3) the declaration of the request as justified by the contracting authority;
 - 4) the decision of the Review Committee to dismiss the request or application for compensation of loss;
 - 5) the decision of the Review Committee to partially or fully grant the request, declaring a decision made by the contracting authority and connected with the procurement procedure and conflicting with this Act invalid or obligating the contracting authority to bring the procurement source document into compliance with the requirements prescribed by legislation;
 - 6) the decision of the Review Committee to partially or fully satisfy an application to have the contracting authority compensate the requester for damage caused by the contracting authority's unlawful decision, act or procurement source document;
 - 7) the decision of the Review Committee to terminate the review proceedings after the Ministry of Finance has made the decision or precept specified in subsection (1), (2) or (7) of § 108 of this Act.
- [RT I, 31.12.2011, 2 - entry into force 01.01.2011]

(1¹) Upon granting a request submitted on the basis of clause 1) of subsection (2¹) of § 117 of this Act, the Review Committee will prohibit the award of the public contract by its decision.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(1²) Upon granting a request submitted on the basis of clause 2) or 3) of subsection (2¹) of § 117 of this Act, the Review Committee may, by its decision:

- 1) to identify the ineffectiveness of the public contract on the grounds provided for in subsections (1¹) and (1²) of § 69 of this Act, or
 - 2) leave the public contract in force, cutting the term of validity of the contract, if it has identified the ineffectiveness of the public contract on the grounds provided for in subsections (1¹) and (1²) of § 69 of this Act.
- Upon making the decision, the overriding public interest that may be harmed in the event of the ineffectiveness of the public contract will be taken into account.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(1³) For the purposes of this Act, overriding reasons do not include economic interests directly related to the relevant public contract. Economic interest directly related to the public contract include, among other things, expenses arising from the postponement of performance of the public contract, commencement of a new procurement procedure, expenses arising from the exchange of the tenderer performing the public contract and expenses of legal obligations arising from the ineffectiveness of the public contract. Economic interests may be considered overriding reasons only if in exceptional cases where the identification of the ineffectiveness of the public contract would have disproportionate consequences.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(2) The termination of review proceedings in accordance with clause 1), 2) or 3) of subsection (1) of this section will be formalised in a decision of the Review Committee. If a settlement is reached, the request is waived or declared founded at the hearing, the termination of the review proceedings will be formalised in written minutes.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(3) If the requester waives the request before it is heard at a public oral hearing or before a decision is made in the written procedure, the Review Committee will terminate the proceedings by its decision and notify the contracting authority thereof immediately.

(4) The termination of review proceedings in accordance with the clause 4), 5) or 6) of subsection (1) of this section will be formalised in a motivated decision of the Review Committee.

(5) Upon termination of review proceedings based on the clause 1), 2), 3) or 7) of subsection (1) of this section, the Review Committee will not evaluate the lawfulness of the procurement source document or a decision or act of the contracting authority.

(6) Upon termination of review proceedings in the event of full granting of the request specified in clause 3), 5) or 7) of subsection (1) of this section or the full granting of the request specified in clause 5) of subsection (1) or the application for compensation of loss specified in clause 6), the Review Committee will order by its decision that the contracting authority pay the requester the full state fee paid by the requester in the review proceedings and, to a necessary and reasonable extent, the expert's fee paid or to be paid. In the event of partial approval of the application for compensation of loss or the request, the Review Committee will order the contracting authority to pay the state fee and the expert's fee in proportion to the granting of the request or application for compensation of loss. Upon termination of review proceedings on the basis of clauses 2) or 4) of subsection (1) of this section, the Review Committee will make a decision ordering the contracting authority to pay to the requester or to the third party, to a necessary and founded extent, the expert's fee paid or to be paid.

§ 127. Announcement, entry into force and effect of decision

[RT I 2010, 20, 102 - entry into force 01.07.2010]

(1) A decision of the Review Committee by which a request is decided substantively will be made public in the office of the Review Committee within ten working days from the termination of the reviewing of the request at the hearing. Upon termination of the hearing, the Review Committee will communicate the date of announcement of its decision.

(2) If the Review Committee reviews a request in the written procedure, a decision by which the request is decided substantively will be announced within ten working days from the receipt of the request without deficiencies by the Review Committee.

(3) If the Review Committee has involved an expert in reviewing a request on the basis of subsection (8) of § 125 of this section or addressed the Court of Justice of the European Union for obtaining a preliminary ruling in the case and thus a decision cannot be made within the time limit specified in subsections (1) and (2) of this section, the decision of the Review Committee by which the request is decided substantively will be disclosed within ten working days from the receipt of the expert opinion or preliminary ruling.

(4) In the events specified in subsections (2) and (3) of this section, the Review Committee will communicate the time of announcement of the decision to the parties to the proceedings at least three working days before announcing the decision.

(4¹) A decision of the Review Committee will enter into force after the term of having recourse to the court has expired, provided that none of the parties or a third party has filed a claim with an administrative court. If a decision of the Review Committee has been contested in part, the decision will enter into force to the extent not related to the contested part. Upon adjudication of the case, the court will be bound by the decision of the Review Committee regarding the part that has not been contested.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(4²) A decision of the Review Committee suspending, refusing to suspend or annulling the suspension of a procurement procedure, design contest or a public works concession will enter into force as of its announcement.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

(5) Upon granting a request, the decision of the Review Committee will be binding on the requester. The contracting authority is required to harmonise all its decisions made during the procurement procedure with the decision of the Review Committee that has entered into force. The public contract awarded by the contracting authority, which conflicts with the decision of the Review Committee, is ineffective.

§ 128. Continuing procurement procedure

(1) The contracting authority may not continue a suspended procurement procedure before 14 days have passed from the announcement of a decision of the Review Committee specified in clauses 4) or 5) of subsection (1) of § 126 of this Act.

(2) The contracting authority will not approve the award of a public contract before 14 days have passed from the announcement of a decision of the Review Committee specified in clauses 4) or 5) of subsection (1) of § 126 of this Act.

(3) Upon termination of an review proceedings on the basis not specified in subsection (1) of this section or upon refusal to review a request and returning it on the basis of subsection (4) of § 125 or subsection (3) of § 122 this Act, the contracting authority will not approve the award of a public contract before seven days have passed from the termination of the review proceedings or refusal to review the request or decision to return the request.

(4) The contracting authority will not approve the award of a public contract before seven days have passed from making the decision of the Review Committee by which the Review Committee permitted the contracting authority to approve the award of the public contract.
[RT I, 31.12.2010, 2 - entry into force 01.01.2011]

§ 129. Application for compensation of loss

(1) Upon organisation of public procurement as well as for compensation of loss caused by a contracting authority with the award or amendment of a public contract, an application may be submitted to the contracting authority in accordance with the procedure established in the State Liability Act, to the Review Committee in accordance with the procedure established in this Act or to an administrative court.

(2) An application for compensation of loss caused by the Review Committee will be submitted to the Ministry of Finance.

(3) If a contracting authority, the Review Committee or the Ministry of Finance refuses to approve an application for compensation of loss or fails to resolve an application for compensation of loss within the prescribed term or if the injured party does not agree with the amount or manner of compensation, the injured party may submit an appeal to an administrative court within 30 days for awarding compensation.
[RT I, 23.02.2011, 3 - entry into force 01.01.2012]

Chapter 8 IMPLEMENTING PROVISIONS

§ 130. Specification of contracting authorities

Persons established and operating by the moment of entry into force of this Act and having the elements provided for in subsection (2) of § 10 of this Act must specify their status as to the elements provided for in subsection (2) within one month from the entry into force of this Act and immediately notify the Ministry of Finance thereof.

§ 131. Termination of started tendering procedures, review of submitted requests and validity of legislation established on the basis of Act

(1) The public procurement procedures started before the entry into force of this Act will be completed in accordance with the requirements provided for in the Public Procurement Act, except the obligation provided for in § 20 of the Public Procurement Act to submit a public procurement declaration. Upon termination of such tendering procedure, the contracting authority must submit a public procurement report to the register in accordance with the procedure provided for in § 37 of this Act.

(2) Design contests started before the entry into force of this Act will be completed in accordance with the requirements provided for in the Public Procurement Act, except the obligation provided for in § 20 of the Public Procurement Act to submit a design contest declaration. Upon termination of the specified design contest, the contracting authority must submit the results of the design contest to the register in accordance with the procedure provided for in subsection (7) of § 80 of this Act.

(3) Requests will be submitted in the public procurement procedures specified in subsection (1) of this section and the Review Committee will review them in accordance with the requirements provided for in the Public Procurement Act.

(4) Legislation adopted on the basis of subsection (1) of § 36¹ of the Public Procurement Act will remain in force until it is repealed or until adoption of legislation by the Government of the Republic on the basis of subsection (5) of § 42 of this Act.

§ 131¹. Completion of pending procurement procedures and review of submitted requests

(1) Procurement procedures commenced before 1 July 2010 will be completed in accordance with the requirements established in the wording of this Act, which was in force until 1 July 2010.

(2) In the procurement procedures specified in subsection (1) of this section, requests for review will be submitted and the Review Committee will review them in accordance with the rules of procedure established in the wording of this Act, which was in force until 1 July 2010.
[RT I 2010, 20, 102 - entry into force 01.07.2010]

§ 131². Completion of pending procurement procedures and review of submitted requests

(1) Procurement procedures commenced before 1 January 2011 will be completed in accordance with the requirements established in the wording of this Act, which was in force until 1 January 2011.

(2) In the procurement procedures specified in subsection (1) of this section, requests for review will be submitted and the Review Committee will review them in accordance with the rules of procedure established in the wording of this Act, which was in force until 1 January 2011.

[RT I 2010, 20, 102 - entry into force 01.01.2011]

§ 131³. Completion of pending procurement procedures and resolution of submitted requests for review

(1) Procurement procedures commenced before 1 January 2012 will be completed in accordance with the requirements established in the wording of this Act that was in force until 1 January 2012.

(2) In the procurement procedures specified in subsection (1) of this section, requests for review will be submitted and the Review Committee will review them in accordance with the rules of procedure established in the wording of this Act, which was in force until 1 January 2012.

[RT I 2010, 20, 102 - entry into force 01.07.2010]

§ 131⁴. Completion of pending procurement procedures and resolution of submitted requests for review

(1) Procurement procedures commenced before 1 January 2013 will be completed in accordance with the requirements established in the wording of this Act that was in force until 1 January 2013.

(2) In the procurement procedures specified in subsection (1) of this section, requests for review will be submitted and the Review Committee will review them in accordance with the rules of procedure established in the wording of this Act, which was in force until 1 January 2013.

[RT I, 31.12.2010, 2 - entry into force 01.01.2013]

§ 132. Specifics of public procurement organised by Eesti Pank

The provisions of clause 3) of § 107, § 108 and §§ 117#129 of this Act do not apply to public procurement organised by Eesti Pank.

§ 133. [Repealed – RT I 2010, 22, 108 – entry into force 01.01.2011]

§ 134.–§ 148.[Omitted from this text.]

§ 149. Entry into force of Act

(1) This Act will enter into force on 1 May 2007.

(2) Section 8, subsection (8) of § 31, § 51 and subsections (5) and (6) of § 55 of this Act will enter into force on 1 December 2009.

[RT I 2008, 14, 92 - entry into force 28.03.2008]

¹ Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.04.2004, pp. 1 113), last amended by Commission Regulation (EC) No. 2083/2005 (OJ L 333, 20.12.2005, pp. 28 29); 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 (OJ L 134, 30.04.2004, pp. 114 240), last amended by Commission Regulation (EC) No. 2083/2005 (OJ L 333, 20.12.2005, pp. 28 29); Council Directive 89/665/EC 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 (OJ L 395, 30.12.1989, pp. 33 35), last amended by Directive 92/50/EEC (OJ L 209, 24.07.1992, pp. 1 24); Council Directive 92/13/EEC coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.03.1992, pp. 14 20); Commission Directive 2005/51/EC amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement (OJ L 257, 01.10.2005, pp. 127 128); Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 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 (OJ L 335, 20.12.2007, pp. 31 46). [RT I 2010, 20, 102 – entry into force 01.07.2010] Annex 1 [Repealed – RT I, 31.12.2010, 2 – entry into force 01.01.2011] Annex 2 [Repealed – RT I, 31.12.2010, 2 – entry into force 01.01.2011]