Chapter 1
General Provisions

Division 1
Scope of Regulation and Principles

§ 1. Scope of regulation

(1) This Act provides for the rules of public procurement, the rights and obligations of persons involved in public procurement, the rules of exercising state supervision and administrative supervision, review procedure, and the liability for violation of this Act.

(2) Public procurement information is accessed, issued and disclosed in accordance with the rules established in the Public Information Act, unless otherwise provided for in this Act.

§ 2. Purpose

(1) The purpose of this Act is to ensure the transparent, practical and economic use of the contracting authority’s or the contracting entity’s funds, equal treatment of persons, and effective use of competition in public procurement.

(2) Social considerations, implementation of innovation and environmentally friendly solutions are taken into account upon planning and carrying out public procurement.

§ 3. General principles of public procurement

Upon carrying out public procurement, the contracting authority or the contracting entity must adhere to the following principles:
1) the contracting authority or the contracting entity acts transparently, verifiably and proportionately upon carrying out public procurement;
2) the contracting authority or the contracting entity treats all persons whose place of residence or seat is in Estonia, in another Member State of the European Union, in another contracting state of the European Economic Area or in a country that has joined the Government Procurement Agreement of the World Trade Organization equally and the contracting authority or the contracting entity makes certain that all restrictions and criteria imposed on the persons are proportional, relevant and reasoned in relation to the purpose of the public procurement;
3) the contracting authority or the contracting entity ensures effective use of competition in public procurement, whereby the participation of a legal person governed by public law or a legal person governed by private law using public funds in public procurement must not distort competition due to its use of public funds;
4) the contracting authority or the contracting entity avoids a competition-distorting conflict of interest;
5) the contracting authority or the contracting entity uses funds economically and purposefully, awards the public contract based on the best price-quality ratio, and carries out the public procurement within a reasonable time.

§ 4. Definitions

For the purposes of this Act the following definitions apply:
1) ‘exclusive right’ means a right granted by means of a legal act, administrative decision or public law contract which is compatible with the legislation of the European Union as a result of which the ability of other economic operators to carry out such an activity is substantially limited;
2) ‘electronic means’ means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means;

3) ‘special right’ means a right granted by means of a legal act, administrative decision or public law contract which is compatible with the legislation of the European Union as a result of which the ability of third economic operators to carry out such an activity is substantially limited;

4) ‘economic operator’ means an undertaking for the purposes of the Competition Act, including a person specified in subsection 2 of § 2 of the Competition Act;

5) ‘procurement procedure’ means the carrying out of public procurement in accordance with the rules established in Chapter 2 of this Act;

6) ‘Single Procurement Document’ means a document where the economic operator certifies the existence or absence of exclusion grounds, compliance with the selection criteria if the contracting authority or the contracting entity has established any and, where relevant, compliance with the criteria based on which the contracting authority or the contracting entity chooses the candidates whom the contracting authority or the contracting entity will make an invitation to tender;

7) ‘buyer profile’ means an optional heading published on the contracting authority’s or the contracting entity’s website, which may contain indicative notices, information on ongoing, completed and envisioned purchases, awarded public contracts, and other information related to the contracting authority’s purchases;

8) ‘conflict of interest’ means a situation where the contracting authority’s or the contracting entity’s employee, official, management board member or another competent representative involved in the preparation or carrying out of public procurement or who may otherwise influence the outcome of the public procurement has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence;

9) ‘innovation’ means the implementation of a new or significantly improved product, service or process, including production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations;

10) ‘central purchasing body’ means a contracting authority or contracting entity providing centralised purchasing activities and, possibly, ancillary purchasing activities;

11) ‘third country’ means a country that is not a Member State of the European Union, a contracting state of the European Economic Area or a country that has joined the Government Procurement Agreement of the World Trade Organization;

12) ‘concessionaire’ means an economic operator which has been awarded a concession contract;

13) ‘concession contract’ means a public contract awarded to one or more economic operators by one or more contracting authorities or contracting entities whereunder the concessionaire’s consideration consists in the right to solely exploit the works or provide a service or in that right together with payment and whereunder the operating risk encompassing demand or supply transfers to the concessionaire;

14) ‘concession contract award procedure’ means a public procurement procedure by which a concession contract is awarded;

15) ‘framework agreement’ means an agreement awarded by one or more contracting authorities or contracting entities to one or more economic operators, which establishes the terms governing public contracts awarded within the period of validity of the framework agreement on the basis of the framework agreement;

16) ‘public procurement’ means the purchasing of supplies, purchasing of services, receiving a conceptual design, contracting for works or awarding of a concession contract by the contracting authority or the contracting entity;

17) ‘procurement documents’ means a contract notice, concession notice, invitation to design contest, invitation to tender and all other documents drawn up or referred to by the contracting authority or the contracting entity, which specify the details of the specific public procurement, including the conditions and requirements for submission of documents imposed on the tenderer and the candidate, technical specifications, terms of the public contract and award criteria;

18) ‘network sector’ means a field specified in §§ 146–152 of this Act;

19) ‘procurement procedure with a call for competition’ means a procurement procedure that starts with the publication of a contract notice in the public procurement register (hereinafter also register) and includes an open procedure, restricted procedure, competitive dialogue, innovation partnership and competitive procedure with negotiation.

§ 5. Contracting authority or contracting entity

(1) The rules established in this Act must be followed by a contracting authority and a contracting entity (hereinafter jointly referred to as contracting authority or entity).

(2) ‘Contracting authority’ means:

1) the state or a state authority;

2) a local authority, a local authority agency or an association of local authorities;

3) another legal person governed by public law or an agency of a legal person governed by public law;

4) a foundation where the state is one of the founders or where more than half of the founders are contracting authorities specified in clause 2 or 3 of this subsection or where more than half of the members of the supervisory board are appointed by the contracting authorities specified in clauses 1 – 3;

5) 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 contracting authorities specified in clauses 1–3 of this subsection or by respective persons of another contracting state of the European Economic Area and which has been established for the
purpose of performing, as a principal or ancillary activity, in the public interests a function that does not have an industrial or commercial character.

(3) ‘Contracting entity’ means, upon operating in a network sector:
1) a contracting authority;
2) a person who, by a legal act, administrative decision or public law contract, has been granted a special or exclusive right to operate in a network sector as a result of which the ability of other economic operators to operate in the field is substantially limited;
3) an undertaking in which contracting authorities or contracting authorities jointly with relevant persons of another Member State of the European Union hold the majority of the share capital of the undertaking or control the majority of the votes attaching to the shares of the undertaking or can, directly or indirectly, appoint more than half of the members of the management board or supervisory board of the undertaking.

(4) For the purposes of clause 2 of subsection 3 of this section, a right granted as a result of a procurement procedure with a call for competition or a procedure carried out in accordance with objective criteria based on a legal act specified in Annex II to Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.03.2014, pp 243–374) is not deemed to be a special or exclusive right.

§ 6. Purchasing by other persons of works financed by contracting authority or entity and of related services

(1) Each person who purchases the following, which is financed by a contracting authority by more than 50 per cent, is deemed to be a contracting authority:
1) construction of civil engineering constructions or building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes of class 45.21 of Annex II to Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.03.2014, pp 65–242) and the estimated value of which is equal to or greater than the international threshold of works; or
2) services related to the works specified in clause 1 of this subsection and the estimated value of which is equal to or greater than the international threshold of works and services set to the contracting authorities specified in clauses 2–5 of subsection 2 of § 5 of this Act.

(2) Upon awarding a public works contract, each person who purchases the building of a work in order to perform an obligation to transfer an immovable or a related right to the contracting authority or to perform another obligation related to the use of an immovable is deemed to be a contracting authority.

(3) Subsection 2 of this section or clause 2 of subsection 5 of § 8 of this Act do not apply to the performance of a public law contract specified in § 131 of the Planning Act if the value of the public works contract is below the international threshold.

§ 7. Tenderer and candidate

(1) For the purposes of this Act, ‘tenderer’ means an economic operator who has submitted a tender or an indicative tender to a contracting authority or entity in public procurement.

(2) For the purposes of this Act, ‘candidate’ means an economic operator who has submitted a request to participate in public procurement to the contracting authority or entity.

(3) The contracting authority or entity may limit the circle of tenderers and candidates by permitting economic operators only from countries specified in clause 2 of § 3 of this Act to participate in public procurement or by giving tenders submitted by economic operators from these countries advantages over tenders submitted by persons from other countries.

(4) Economic operators may jointly submit a tender, indicative tender or seek an invitation to participate (hereinafter respectively joint tenderers and joint candidates), unless otherwise provided for in this Act.

(5) Joint tenderers or joint candidates appoint from among themselves a representative authorised to take steps relating to public procurement and the conclusion and performance of a public contract.

(6) The contracting authority or entity may not demand, as a prerequisite for the acceptance of a joint tender or a request to participate in a joint tender, that the joint tenderers or joint candidates must have established a legal person or 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 subject-matter of the public contract, the contracting authority or entity may demand the relevant specification by the time of performance of the public contract.
§ 8. Public contract

(1) ‘Public contract’ means a contract for pecuniary interest, including a concession contract, the subject-matter of which is supplies, services or works and which is awarded to an economic operator by a contracting authority or entity.

(2) The contracting authority or entity may award a public contract only in accordance with the rules established in this Act. Failure to follow the requirements established by law does not affect the validity of a public contract, unless otherwise provided by this Act. The provisions of the Law of Obligations Act and other legal acts governing the respective contract type apply to a public contract, unless otherwise provided for in this Act.

(3) A supply contract is a public contract by which the contracting authority or entity purchases, leases, rents or hire-purchases supplies with or without the right to acquire them. A public contract that also includes the siting or installation of supplies is considered a supply contract as well.

(4) A service contract is a public contract by which the contracting authority or entity buys any services, except for the works specified in subsection 5 of this section. By a public service contract in the fields of defence and security, the contracting authority or entity buys services specified in Annexes I and II to Directive 2009/81/EC of the European Parliament and of the Council on the coordination of procedures for the award of certain public 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).

(5) By a public works contract:
1) the contracting authority or entity buys the works or the design and works specified in Annex II Directive 2014/24/EU of the European Parliament and of the Council or in Annex I to Directive 2014/25/EU of the European Parliament and of the Council, or
2) a person other than a contracting authority or entity buys the execution of works with any funds, provided that the requirements for it are established by the contracting authority or entity who exercises decisive influence on the works or design.

(6) A public contract the subject-matter of which simultaneously includes supplies, services and works or two of the three are awarded in accordance with rules applicable to the main item of the subject-matter of the public contract. If the subject-matter of a public contract is, in part, social and special services and, in part, other services or, in part, services and supplies, the subject-matter of the public contract will be established based on the estimated value of the supplies or services.

(7) The contracting authority or entity must award a public contract in a form reproducible in writing if the value of the contract is at least 20 000 euros. In the procurement documents, the contracting authority or entity may stipulate that a public contract is made in writing or in electronic or notarised form.

Division 2
Planning of Public Procurement

§ 9. Procurement rules and procurement plan

(1) The contracting authority establishes internal procurement rules if the estimated total value of proposed acquisition of supplies and proposed provision of services in a budgetary year exceeds 80 000 euros or the estimated total value of proposed works exceeds 500 000 euros.

(2) The contracting entity establishes internal procurement rules if the estimated total value of proposed public procurement in a budgetary year exceeds 500 000 euros.

(3) The minister responsible for the field, the local authority or the contracting entity may establish procurement rules and a procurement plan for the contracting authorities of the area of government of the ministry, agencies of the local authority or buyers operating in the group of the contracting entity, respectively.

(4) The procurement rules provide for, inter alia, the following:
1) rules for planning the public procurement, including the rules and the closing date for drawing up and approval of the annual procurement plan;
2) appointment of a person responsible for the public procurement, including for the performance of the public contract;
3) rules for purchasing supplies, services and works below the simple procurement threshold;
4) where necessary, rules for purchasing social and other specific services, including with a value below the threshold of social and other specific services, except in the field of defence and security;
5) where necessary, light regime for buying services in the field of defence and security, including with a value below the simple procurement threshold for buying services in the field of defence and security;
6) measures for prevention, identification and remedying of a conflict of interest in public procurement, unless the measures are provided for in another internal document on work organisation.
(5) The contracting authority or entity that does not have the obligation to establish procurement rules establishes measures for the prevention, identification andremedy of a conflict of interest in an internal document on work organisation or, if the contracting authority does establish procurement rules, in the procurement rules.

(6) The procurement rules and the procurement plan are public. If the contracting authority or entity has identified the measures specified in subsection 5 of this section in its internal document on work organisation, the respective part of the document must be public.

(7) The contracting authority or entity publishes the procurement rules or another internal document on work organisation or a part thereof on its website immediately after the establishment or amendment of the procurement rules or the establishment or amendment of the measures specified in subsection 5 of this section, and publishes a reference to its website in the register.

(8) The contracting authority or entity publishes its annual procurement plan on its website immediately after the approval of the procurement plan.

§ 10. Market consultation and prior involvement of economic operator in preparation of public procurement

(1) The contracting authority or entity may conduct market consultations with a view to specifying the subject-matter of the public contract and preparing the public procurement.

(2) During market consultations, the contracting authority or entity may consult persons and economic operators operating in the relevant field. The advice may be used in planning and carrying out the public procurement, provided that it does not distort competition. Upon conducting market consultations and using advice obtained in the course thereof in public procurement, the contracting authority or entity ensures adherence to the principles of non-discrimination and transparency.

(3) If an economic operator has participated in market consultations specified in subsection 2 of this section or been otherwise involved in the preparation of the public procurement, the contracting authority or entity will take measures to prevent the distortion of competition, including:
   1) submit in the procurement documents the information that was communicated to the economic operator who participated in the market consultations or was otherwise involved in the preparation of the public procurement in connection with or as a result of participating in the preparation of the public procurement;
   2) sets to the submission of a tender or to the seeking of invitation to participate a sufficiently long time limit so that the economic operator that participated in the market consultations or was otherwise involved in the preparation of the public procurement is not placed in a position of advantage vis-à-vis other economic operators in connection with the prior possession of knowledge.

(4) If the measures taken by the contracting authority or entity do not ensure adherence to the principle of equal treatment, the contracting authority or entity will, before the application of clause 7 of subsection 4 of § 95 of this Act, give the economic operator that participated in the market consultations or was otherwise involved in the preparation of the public procurement a chance to clarify and prove within a reasonable time limit that its involvement in the preparation of the public procurement does not distort competition.

Division 3
Exclusions and Specific Situations

§ 11. Exclusions

(1) The contracting authority or entity is not required to apply the rules provided for in this Act if:
   1) the main purpose of awarding a public contract or organising a design contest is to provide or exploit public communications networks or to provide to the public an electronic communications service;
   2) a public contract is awarded or a design contest organised in accordance with the rules provided for in an international agreement between Estonia and one or more third countries and the signatories use the subject-matter of the public contract jointly or for their joint project;
   3) a public contract is awarded or a design contest is organised in accordance with an obligatory special procedure of an international organisation;
   4) a public contract is awarded on the basis of an international agreement relating to the stationing of troops;
   5) a public contract is awarded or a design contest is organised in accordance with an obligatory special procedure of an international organisation and the contract is fully financed by that organisation;
   6) a public contract or a design contest is co-financed for the most part by an international organisation or international financing institution and the parties have agreed on applicable procurement procedures;
   7) a public contract is awarded for the acquisition or use, regardless of the contract type, of an immovable, existing buildings or related rights;
8) the contracting authority or entity is a media service provider who awards a public service contract or a concession contract for the acquisition, development, production or co-production of programme materials or a part thereof;
9) a public contract related to buying broadcasting time or a programme is awarded to a media service provider;
10) arbitration or conciliation services are bought;
11) a legal service involving the legal representation of a client by an attorney in judicial proceedings before the courts, tribunals or public authorities of Estonia or another country or before international courts, tribunals or institutions or legal advice given in relation to any of the proceedings referred to above or a service related to the authentication of a notarial document or a legal service provided by a trustee or an appointed guardian or another legal service the provider of which is designated by a court or another legal service which is connected with the exercise of official authority is bought;
12) a financial service in connection with the issue, purchase, sale or transfer of securities or other financial instruments or services provided by Eesti Pank are bought or operations are conducted with the European Financial Stability Facility and the European Stability Mechanism;
13) a loan contract is concluded;
14) an employment contract is concluded;
15) a public contract is awarded to a non-profit organisation or a non-profit association for the purpose of buying civil defence, civil protection and danger prevention services which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 established by 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, except patient transport ambulance services;
16) a public contract for public passenger transport services by rail or metro is awarded;
17) a public contract is awarded by a political party in the context of an election campaign for buying political campaign services covered by CPV codes 79341400-0, 92111230-3 and 92111240-6;
18) a service is bought from a contracting authority or an association of contracting authorities whom the exclusive right to provide the service in the respective territory has been granted based on a legal act that is in accordance with the requirements of the Treaty on the Functioning of the European Union;
19) a research and development service covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 is bought, unless the benefits accrue exclusively to the contracting authority or entity for its use in the conduct of its own affairs and the service provided is wholly remunerated by the contracting authority;
20) a public contract is connected with a state secret or classified information of a foreign state for the purposes of the State Secrets and Classified Information of Foreign States Act or the performance of the contract calls for, in accordance with legal acts, adherence to specific security requirements or if the awarding of a public contract or the organisation of a design contest in accordance with the rules established in this Act would obligate the contracting authority or entity to disclose information that it considers against the essential security interests of the state or the application of an exemption is directly necessary for guaranteeing the essential security interests of the state, unless the security interests can be guaranteed using less intrusive measures;
21) the contracting authority or entity makes an agreement with a central purchasing body for the provision of centralised or ancillary purchasing activities or an agreement specified in subsection 1 of § 43 of this Act.

(2) Upon awarding a public contract or organising a design contest in the field of defence and security, the contracting authority or entity is not required to implement the rules established in this Act only in the events specified in clauses 3, 4, 7, 10, 14 and 19 of subsection 1 of this section and in subsection 1 of § 170 of this Act.

(3) The contracting authority or entity which concluded an international agreement specified in clause 2 of subsection 1 of this section immediately informs the European Commission thereof in writing via the Ministry of Finance.

§ 12. In-house transaction and cooperation between contracting authorities

(1) A contracting authority is not required to apply the rules provided for in this Act to in-house transactions.

(2) An in-house transaction is a public contract awarded by a contracting authority (hereinafter in this section also referred to as controlling contracting authority) to a legal person governed by private or public law, which meets all the following conditions (hereinafter in this section also referred to as the controlled legal person):
1) the controlled legal person is controlled by the controlling contracting authority or another legal person who exercises over the controlled legal person concerned a control which is similar to that which it exercises over its own departments;
2) more than 80 per cent of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by another legal person controlled by the latter;
3) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by law, which do not exert a decisive influence on the controlled legal person.

(3) The condition specified in clause 1 of subsection 2 of this section is fulfilled if the controlling contracting authority or another legal person controlled by it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.
(4) An in-house transaction is also a public contract awarded by the controlled legal person as a contracting authority to the controlling contracting authority or to a legal person controlled by the latter, provided that there is no direct private capital participation in the legal person being awarded the public contract with the exception of non-controlling and non-blocking forms of private capital participation required by law and it does not exert a decisive influence on the controlled legal person.

(5) An in-house transaction is also a public contract which the controlling contracting authority awards to a legal person jointly controlled with another controlling contracting authority, provided that all of the following conditions are fulfilled:
   1) the controlling contracting authority exercises jointly with other controlling contracting authorities a control over that legal person which is similar to that which they exercise over their own departments;
   2) more than 80 per cent of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by another legal person controlled by the latter;
   3) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by law, which do not exert a decisive influence on the controlled legal person.

(6) The condition specified in clause 1 of subsection 5 of this section is fulfilled if all the controlling contracting authorities are represented in the decision-making bodies of the controlled legal person; thereby an individual representative may represent several or all of the controlling contracting authorities, and such contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person, and the controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities.

(7) A contracting authority is not required to follow the rules provided for in this Act if the contracting authority awards a public contract to another contracting authority or to other contracting authorities and all of the following conditions are fulfilled:
   1) the public contract establishes the bases of cooperation between the participating contracting authorities or the terms of implementation thereof with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
   2) the implementation of that cooperation is governed solely by considerations relating to public interests;
   3) the participating contracting authorities perform on the open market less than 20 per cent of the activities concerned by the public contract.

(8) For the establishment of the percentages of the activities referred to in this section, the average total turnover or an appropriate alternative activity-based measure such as costs incurred by the contracting authority or the controlled legal person with respect to supplies, services and works for the three years preceding the public contract award or the conclusion of a cooperation contract are taken into consideration. Where such information on the contracting authority or controlled legal person is either not available or no longer relevant, the share of these activities may be assessed by means of business projections.

§ 13. Reservation of public contracts

(1) In the procurement documents, the contracting authority or entity may reserve the right to participate in public procurement to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled persons, persons with reduced ability to work or disadvantaged persons or may provide for such public contract to be performed in the context of sheltered employment programmes, provided that at least 30 per cent of the employees of those workshops, economic operators or programmes are disabled workers, workers with reduced ability to work or disadvantaged workers.

(2) ‘Sheltered workshop’ means a legal person or authority that offers jobs for the long-term unemployed, persons with reduced ability to work or disabled persons who are unable to find employment in the ordinary labour market.

Division 4
Application of Procedural Rules

§ 14. Thresholds

(1) For the purposes of this Act, the simple procurement threshold is:
   1) 30 000 euros in the case of a supply contract or a services contract;
   2) 60 000 euros in the case of a public works contract, a service concession contract, a public supply or service contract in the field of defence and security, except for a public contract subject to the light regime for buying services and a public supply or service contract awarded by a contracting entity;
   3) 300 000 euros in the case of a public works contract in the field of defence and security and a public works contract awarded by a contracting entity.
public contract cannot be established.

(7) Upon awarding a public contract, the contracting authority as well as the contracting entity, where it awards a contract in connection with its operations in the network sector, applies the rules provided for in Chapter 5 of this Act if the estimated value of the public contract equals or exceeds the international threshold of the field of defence and security.

(8) Upon awarding a public contract for services subject to the light regime in the field of defence and security, the contracting authority as well as the contracting entity, where it awards a contract in connection with its operations in the network sector, applies the rules provided for in Division 2 of Chapter 3 of this Act if the estimated value of the public contract equals or exceeds the threshold of social and other specific services.


§ 15. Application of procedural rules upon awarding of public contract, except concession contract

(1) Upon awarding a public contract, the contracting authority applies the rules provided for in Division 1 of Chapter 3 of this Act if the estimated value of the public contract equals or exceeds the simple procurement threshold, but remains below the public procurement threshold.

(2) Upon awarding a public contract, the contracting authority applies the rules provided for in Chapter 2 of this Act if the estimated value of the public contract equals or exceeds the public procurement threshold.

(3) Upon awarding a public contract for social and other specific services, the contracting authority applies the rules provided for in Division 2 of Chapter 3 of this Act if the estimated value of the public contract equals or exceeds the threshold of social and other specific services.

(4) Upon awarding a public contract in the field of defence and security, the contracting authority as well as the contracting entity, where it awards a contract in connection with its operations in the network sector, follows the rules provided for in Division 1 of Chapter 3 of this Act if the estimated value of the public contract equals or exceeds the simple procurement threshold, but is below the international threshold.

(5) Upon awarding a public contract in the field of defence and security, the contracting authority as well as the contracting entity, where it awards a contract in connection with its operations in the network sector, applies the rules provided for in Chapter 6 of this Act if the estimated value of the public contract equals or exceeds the international threshold of the field of defence and security.

(6) Upon awarding a public contract for services subject to the light regime in the field of defence and security, the contracting authority as well as the contracting entity, where it awards a contract in connection with its operations in the network sector, applies the rules provided for in § 171 of this Act if the estimated value of the public contract equals or exceeds the simple procurement threshold for buying services in the field of defence and security.

(7) Upon awarding a public contract, the contracting authority may apply the rules provided for in Chapter 5 instead of the procedural rules provided for in Chapter 2 of this Act if the main purpose of the public contract is related to its operations in the network sector and the estimated value of the public contract equals or exceeds the public procurement threshold.

(8) Upon awarding a public contract, the contracting entity applies the rules provided for in Division 1 of Chapter 3 of this Act if the estimated value of the public contract equals or exceeds the simple procurement threshold, but is below the international threshold and the main purpose of the public contract is related to its operations in the network sector or if the main purpose of the public contract cannot be established.

(9) Upon awarding a public contract, the contracting entity applies the rules provided for in Chapter 5 of this Act if the estimated value of the public contract equals or exceeds the international threshold and the main purpose of the public contract is related to its operations in the network sector or if the main purpose of the public contract cannot be established.
(10) Upon awarding a public contract for special and other specific services, the contracting entity applies
the rules provided for in § 166 of this Act if the estimated value of the public contract equals or exceeds the
threshold of social and other specific services and the main purpose of the public contract is related to its
operations in the network sector or if the main purpose of the public contract cannot be established.

(11) Based on the nature of the public procurement threshold, international threshold or the public contract,
the contracting authority or entity has the right to apply the mandatory rules provided for in this Act also upon
awarding such a public contract the estimated value of which does not amount to the respective threshold or the
nature of which does not correspond to the feature resulting in the procedural rules.

(12) If the contracting authority or entity initiates public procurement in the register without an obligation
arising from law, the contracting authority must follow the procedural rules of public procurement provided for
in this Act.

§ 16. Application of procedural rules upon awarding of concession contract

(1) Upon awarding a concession contract in connection with its operations in the network sector, the contracting
authority or entity applies the rules provided for in Division 1 of Chapter 3 of this Act if the estimated value
of the concession contract equals or exceeds the simple procurement threshold, but is below the public
procurement threshold.

(2) Upon awarding a concession contract in connection with its operations in the network sector, the contracting
authority or entity applies the rules provided for in Chapter 4 of this Act if the estimated value of the concession
contract equals or exceeds the public procurement threshold.

(3) Upon awarding a concession contract for social and other specific services in connection with its operations
in the network sector, the contracting authority or entity applies the rules provided for in § 144 of this Act if the
estimated value of the concession contract equals or exceeds the threshold of social and other specific services.

§ 17. Application of procedural rules upon organisation of design contest

(1) Upon organisation of a design contest, the contracting authority applies the rules provided for in Division
3 of Chapter 3 of this Act if the estimated value of the design contest equals or exceeds the public procurement
threshold.

(2) Upon organisation of a design contest, the contracting entity applies the rules provided for in Division
3 of Chapter 3 of this Act if the design contest is connected with its operations in the network sector and the
estimated value of the design contest equals or exceeds the public procurement threshold.

§ 18. Application of procedural rules upon awarding of mixed contracts

(1) If two or more activities falling within the scope of application of this Act or an activity falling within
the scope of application of this Act and an activity falling outside the scope of application of this Act are
simultaneously the subject-matter of a mixed contract, the contracting authority or entity may award a public
contract separately with regard to each item of the subject-matter. In such an event the contracting authority
or entity applies upon awarding the public contracts such procedural rules that apply separately to the public
contract awarded with regard to each subject-matter.

(2) If both an activity falling within the scope of application of this Act and an activity falling outside the scope
of application of this Act simultaneously constitute the subject-matter of a mixed contract and the items of the
subject matter cannot objectively be separated, the contracting authority or entity will award the public contract
in accordance with the procedural rules applicable to the main item of the subject-matter of the public contract.
If the items of the subject-matters of such a mixed contract can objectively be separated, the contracting
authority or entity will award the mixed contract in accordance with the rules established in this Act, provided
that the part of the activity falling within the scope of application of this Act equals or exceeds the threshold
established to the respective public procurement in this Act.

(3) The contracting authority or entity cannot award a mixed contract or, instead of a mixed contract, multiple
public contracts for the purpose of disregarding the rules or requirements established in this Act for carrying out
public procurement.

§ 19. Application of procedural rules upon awarding of mixed contracts by contracting authority

(1) Upon awarding a public contract, the contracting authority applies the rules provided for in Division 1
of Chapter 3 of this Act if the subject-matter of the public contract is simultaneously supplies or services,
except for social and other specific services, or works and a concession contract, and the estimated value of the
supplies, services or works part of the public contract equals or exceeds the simple procurement threshold, but is
below the public procurement threshold.
(2) Upon awarding a public contract, the contracting authority applies the rules provided for in Chapter 2 of this Act if the subject-matter of the public contract is simultaneously supplies or services, except for social and other specific services, or works and a concession contract, and the estimated value of the supplies, services or works part of the public contract equals or exceeds the public procurement threshold.

(3) Upon awarding a public contract, the contracting authority applies the rules set out in Division 1 of Chapter 3 of this Act if social and other specific services and a service concession simultaneously constitute the subject-matter of the public contract and the estimated value of the service concession part equals or exceeds the simple procurement threshold, but is below the public procurement threshold.

(4) Upon awarding a public contract, the contracting authority applies the rules set out in Chapter 4 of this Act if social and other specific services and a concession contract simultaneously constitute the subject-matter of the public contract and the estimated value of the concession contract part equals or exceeds the public procurement threshold.

(5) If supplies, services or works or supplies, services or works in the network sector simultaneously constitute the subject-matter of a public contract, the contracting authority awards the public contract in accordance with the procedural rules applicable to the main subject-matter.

(6) Upon awarding a public contract specified in subsection 5 of this section, the contracting authority applies the rules provided for in Division 1 of Chapter 3 of this Act, provided that the main subject-matter of the public contract cannot be established and the estimated value of the public contract equals or exceeds the simple procurement threshold, but is below the public procurement threshold, or applies the rules provided for in Chapter 2, provided that the estimated value of the public contract equals or exceeds the public procurement threshold.

(7) If supplies, services or works or supplies, services or works in the network sector and a concession contract simultaneously constitute the subject-matter of a public contract, the contracting authority awards the public contract in accordance with the procedural rules applicable to the main subject-matter.

(8) Upon awarding a public contract specified in subsection 7 of this section, the contracting authority applies the rules provided for in Division 1 of Chapter 3 of this Act, provided that the main subject-matter of the public contract cannot be established and the estimated value of the public contract equals or exceeds the simple procurement threshold, but is below the public procurement threshold, or applies the rules provided for in Chapter 5, provided that the estimated value of the public contract equals or exceeds the public procurement threshold.

§ 20. Application of procedural rules upon awarding of mixed contract by contracting entity that is not contracting authority

(1) If supplies, services or works and a concession contract simultaneously constitute the subject-matter of a public contract, the contracting entity applies one of the following rules upon awarding the public contract:
   1) the rules provided for in Division 1 of Chapter 3 of this Act, provided that the estimated value of the public supply, services or works contract part equals or exceeds the simple procurement threshold, but is below the international threshold;
   2) the rules provided for in Division 1 of Chapter 3 of this Act, provided that the estimated value of the service concession part equals or exceeds the simple procurement threshold, but is below the public procurement threshold;
   3) the rules provided for in Chapter 5 of this Act, provided that the estimated value of the public supply, services or works contract part equals or exceeds the international threshold.

(2) In the case of a public contract specified in subsection 1 of this section where the estimated value of the public supply, services or works contract part is below the simple procurement threshold, the contracting entity applies the rules provided for in Chapter 4 of this Act, provided that the estimated value of the works concession part in the public contract equals or exceeds the public procurement threshold.

§ 21. Application of procedural rules upon awarding of mixed contract containing activities in field of defence and security

(1) If activities in the field of defence and security constitute an subject-matter of a public contract and the awarding of one public contract can objectively be reasoned or if different parts of the public contract cannot objectively be separated, the contracting authority or entity applies the rules provided for in Chapter 6 of this Act.

(2) If activities in the field of defence and security, which have been left outside the scope of application of this Act on the basis of subsection 1 of § 170 of this Act, constitute an subject-matter of a public contract and the awarding of one public contract can be objectively justified or if different parts of the public contract cannot objectively be separated, the contracting authority or entity is not required to apply the rules provided for in this Act.
§ 22. Rules on organisation of public procurement of works and designing of buildings

The rules on organisation of public procurement of works and designing of buildings equal to or exceeding the public procurement threshold may be established by a regulation of the minister responsible for the field.

Division 5
Calculation of Estimated Value of Public Procurement and Division of Public Procurement into Lots

§ 23. Rules on calculation of estimated value of public procurement

(1) All the estimated values, estimated total values, values and total values specified in this Act, and the fees and payments serving as the basis for the aforementioned are calculated exclusive of value added tax.

(2) The estimated value of public procurement includes the following:
   1) the estimated total amount to be paid upon performing a public contract, taking into account, inter alia, possible future obligations arising from the public contract and the renewal of the public contract;
   2) possible prizes awarded in a design contest or participation fees and the estimated value of a public service contract if the contracting authority or entity intends to award a public service contract as a result of the design contest;
   3) total turnover of the works performed and services provided on the basis of a concession contract along with the value of the supplies required for the works and services;
   4) the maximum estimated value of research and development taking place at all stages of the planned innovation partnership and the maximum estimated value of the supplies, services or works developed and delivered as a result of the partnership;
   5) the participation fee covering the participation expenses or the prize, provided that the contracting authority or entity pays or awards it to the participants in the public procurement.

(3) The price level corresponding to the average market price at the time immediately preceding the commencement of the public procurement, which must be effective at the moment of commencement of the public procurement, must be relied on upon calculating the estimated value of public procurement.

(4) The basis for calculation of the estimated value of a framework agreement or public contracts awarded based on a dynamic purchasing system is the maximum total value of public contracts awarded on the basis of the framework agreement or dynamic purchasing system during the period of validity of the framework agreement or dynamic purchasing system.

(5) If the value of a concession contract at the time of awarding the concession contract exceeds the estimated value of the concession contract by at least 20 per cent, the value of the concession contract will be deemed the estimated value of the concession contract.

(6) If the contracting authority or entity comprises of multiple operational units, the estimated total value of the public procurement of all the units will usually be taken into account upon calculation of the estimated value of the public procurement. Where a separate operational unit is independently responsible for its public procurement or lots thereof, the estimated value of the public procurement of only that unit may be relied on upon calculating the estimated value of the public procurement.

(7) If in a procurement procedure with a call for competition the possibility of awarding a new public service or works contract is communicated in a contract notice in accordance with the negotiated procedure without prior publication of a contract notice on the grounds provided for in subsection 5 of § 49 of this Act, the estimated total value of the services or works bought on the basis of such additional public contract will be included in the estimated value of the public contract.

(8) None of the chosen grounds for calculation of the estimated value of public procurement may be used for disregarding the rules or requirements established for carrying out public procurement. If, based on the provisions of this Chapter, it is possible to calculate the estimated value of public procurement using various methods and, upon using at least one of these methods, the estimated value of the public procurement would equal or exceed the simple procurement threshold, public procurement threshold or international threshold, the contracting authority or entity must calculate the estimated value of the public procurement on the basis of the method.

(9) Upon commencement of public procurement, except in the event of negotiated procedure without prior publication of a contract notice, the contracting authority or entity submits to the register information on the estimated value of the public procurement and indicates whether the contracting authority or entity requests that the estimated value be published in the contract notice or concession notice.
§ 24. Calculation of estimated value of public supply or service contract

(1) The estimated value of a supply contract the subject-matter of which is the lease, rental or hire-purchase of supplies is:
1) in the case of a fixed-term public contract with a term of up to 12 months, the estimated total value of the public contract during its period of validity;
2) in the case of a fixed-term public contract with a term of over 12 months, the estimated total value of the public contract along with interest and the estimated residual value of the supplies after the expiry of the period of validity of the public contract;
3) in the case of a public contract without a fixed term or a public contract the term of which cannot be defined at the time of calculation of the estimated value, the estimated monthly value multiplied by 48.

(2) The estimated value of a public supply or service contract which is regular in nature or which is intended to be renewed within a given period is:
1) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial or budgetary year adjusted, where possible, to take account of the changes in quantity or value which would occur during the next period of validity of the public contract, or
2) the total estimated value of the successive contracts awarded during the 12 months or the financial or budgetary year following the awarding of the first public contract.

(3) The basis for calculation of the estimated value of a public service contract is:
1) the premium payable and other forms of remuneration under an insurance services contract;
2) the fees, commissions payable, interest and other forms of remuneration under a banking and other financial services contract;
3) the fees, commissions payable and other forms of remuneration under a design contract.

(4) The estimated value of a public service contract which does not indicate a total value of the public contract is:
1) in the case of a fixed-term public contract with a term of up to 48 months, the estimated total value of the public contract during its period of validity;
2) in the case of a contract without a fixed term or with a term longer than 48 months, the monthly value of provision of the service multiplied by 48.

§ 25. Calculation of estimated value of public works contract

The calculation of the estimated value of a public works contract takes account of both the cost of the works and the estimated value of the supplies and services that are made available to the tenderer by the contracting authority or entity, provided that they are necessary for executing the works.

§ 26. Calculation of estimated value of concession contract

(1) The contracting authority or entity calculates the estimated value of a concession contract using an objective method specified in the procurement documents.

(2) When calculating the estimated value of the concession contract, the contracting authority or entity takes into account in particular:
1) the value of any form of option and the possibility of any extension of the duration of the concession contract;
2) revenue from the payment of fees and fines by the users of the works or services other than those collected on behalf of the contracting authority or entity;
3) payments or any financial advantage in any form whatsoever made by the contracting authority or entity or any other body governed by public law to the concessionaire, including compensation for compliance with the obligation to perform the service concession and public investment subsidies;
4) the value of grants or any other financial advantages, in any form, from third parties for the performance of the concession contract;
5) revenue from sales of any assets which are part of the concession contract;
6) the value of all the movables and services that are made available to the concessionaire by the contracting authority or entity, provided that they are necessary for executing the works or providing the services;
7) any prizes or payments to candidates or tenderers.

§ 27. Division of public procurement into lots within single procedure

(1) Within a single procedure the contracting authority or entity may divide the public procurement into lots, taking the estimated total value of all the lots into account upon calculating the estimated value of the public procurement and specifying in the contract notice or in other procurement documents whether the contracting authority or entity allows the tenderer to submit a tender for one, for several or for all of the lots.

(2) If the public procurement the estimated value of which equals or exceeds the public procurement threshold has not been divided into lots within a single procedure, the contracting authority or entity will provide an indication of the reasons for its decision not to subdivide the public procurement into lots within a single procedure.
(3) The contracting authority or entity may limit the number of public contracts that may be awarded to one tenderer, stating the maximum number of public contracts per tenderer in the contract notice or in another procurement document.

(4) Upon making use of the possibility specified in subsection 3, the contracting authority or entity indicates in the procurement documents the objective and non-discriminatory grounds they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more public contracts than the maximum number prescribed by the contracting authority or entity based on subsection 3.

(5) The contracting authority or entity may combine public contracts to be awarded to one tenderer into a single public contract where the contracting authority or entity has specified in the contract notice or in other procurement documents that they reserve the possibility of doing so and indicated the lots or groups of lots that may be combined.

§ 28. Division of public procurement into separate public procurements

(1) The contracting authority or entity may divide public procurement into lots and purchase supplies, services or works separately where it applies the rules for awarding a public contract or concession contract with the total estimated value of all lots to the awarding of a public contract or concession contract with regard to each lot.

(2) The contracting authority or entity cannot divide the public procurement into lots for the purpose of disregarding the rules or requirements established in this Act for carrying out public procurement, especially if the subject-matter of the public contract is interoperable supplies, services or works or supplies, services or works that are necessary for the attainment of the same purpose. The contracting authority or entity may divide the public procurement into lots if it is justified for objective reasons.

(3) The contracting authority or entity may deviate from the provisions of subsection 2 of this section and apply to a lot of the public procurement the rules for awarding a public contract with the estimated value of the respective lot, provided that the total value of the lots does not exceed 20 per cent of the total estimated value of the public procurement.

(4) If the total estimated value of all the lots of the public procurement divided into lots equals or exceeds the international threshold, the contracting authority or entity may apply subsection 3 of this section only if the estimated value of each such lot is:
1) below 80 000 euros in the case of a supply or services contract;
2) below one million euros in the case of a public works contract.

Division 6
Instruments of Public Procurement

Subdivision 1
Framework Agreement

§ 29. Award of framework agreement

(1) Framework agreements are governed by the provisions governing public contracts, unless otherwise provided for in this Act.

(2) A framework agreement may be awarded for a term of up to four years, unless a longer term is justified, in particular taking account of the subject-matter of the framework agreement. It is prohibited to award a framework agreement without a fixed term.

(3) The term of a public contract awarded on the basis of a framework agreement during the period of validity of the framework agreement may be shorter or longer than the term of the framework agreement.

§ 30. Award of public contracts based on framework agreement

(1) Upon awarding public contracts based on a framework agreement, the terms and conditions of the framework agreement and the procedure provided for in this section are applied without substantially amending the terms and conditions of the framework agreement.
(2) Only contracting authorities or entities that can be identified based on procurement documents award a public contract on the basis of the framework agreement only to the tenderers whom the framework agreement was awarded.

(3) On the basis of a framework agreement awarded to a single tenderer a public contract is awarded in accordance with the terms and conditions provided for in the framework agreement. If necessary, the contracting authority or entity may ask the tenderer to clarify the indicative tender.

(4) If the framework agreement which the contracting authority or entity has awarded to multiple tenderers does not lay down all the terms and conditions of the public contracts awarded on the basis thereof, the contracting authority or entity will reopen the competition among the tenderers party to the framework agreement, in order to award a public contract based on the framework agreement.

(5) The reopening of a competition means a competition conducted between the tenderers party to a framework agreement in accordance with the rules provided for in this Act and in the framework agreement for the purpose of awarding a public contract.

(6) If the framework agreement awarded by the contracting authority or entity to multiple tenderers provides for all the terms and conditions of the public contracts to be awarded on the basis thereof, the contracting authority or entity will be able to choose between the following options of awarding a public contract:
1) the public contract is awarded in accordance with the terms and conditions provided for in the framework agreement without conducting a reopening of competition;
2) the public contract is awarded in part based on the terms and conditions of the framework agreement and in part based on the results of a reopening of competition.

(7) The option specified in clause 2 of subsection 6 of this section must be provided for in the procurement documents, indicating the objective criteria based on which the contracting authority or entity decides in favour of conducting the reopening of a competition with regard to the subject-matter of the public contract or the lot of the public procurement. The procurement documents must specify which terms and conditions of the framework agreement the reopening of the competition may cover.

(8) In the framework agreement specified in subsection 6 of this section, the contracting authority or entity may lay down the condition of awarding a public contract according to which the contracting authority or entity may award a public contract to a freely chosen tender who is part to the framework agreement, provided that the total value of the public contracts does not exceed 20 per cent of the value of the entire framework agreement and the value of each such public contract is below the public procurement threshold.

(9) The rules provided for in the framework agreement are applied to the reopening of the competition on the following terms:
1) the contracting authority or entity makes, in a form reproducible in writing, an invitation to tender to all the tenderers party to the framework agreement that are able to perform such public contract;
2) the contracting authority or entity sets a reasonable time limit for submission of tenders, taking account of the complexity of the subject-matter of the public contract and the time required for submitting tenders;
3) tenders are submitted in a form reproducible in writing and opened after the expiry of the time limit specified in subsection 2 of this section;
4) the contracting authority or entity awards the public contract to the tenderer who, in accordance with the procurement documents, has submitted the most economically advantageous tender.

(10) The contracting authority or entity may establish requirements for the additional qualification of the tenderer by way of a reopening of the competition. Upon conducting the reopening of the competition, the contracting authority or entity may demand that the tenderer have an annual net turnover that does not exceed the double estimated value of the largest public contract of the public contracts performed at the same time on the basis of the same framework agreement. If the estimated values of the public contracts are not known, the required minimum annual net turnover is calculated on the basis of the estimated value of the framework agreement.

(11) The contracting authority or entity may make a decision to award a public contract and submit to each tenderer party to the framework agreement a notice regarding the decision, indicating the names of the selected tenderer or tenderers and, in a notice given to a tenderer who was not selected, also the details characterising the selected tender and its advantages over the tender of the recipient of the notice. The notice is given taking account of the fact that the awarding of the public contract is preceded by a seven-day standstill period from giving the notice.

§ 31. Ineffectiveness of public contract awarded under framework agreement

(1) A public contract awarded on the basis of a framework agreement is ineffective if the contracting authority or entity breached the terms and conditions of the conduct of the reopening of competition provided for in subsection 9 of § 30 of this Act upon awarding the public contract, unless the contracting authority or entity applied the provisions of subsection 11.

(2) One can rely on the ineffectiveness of a public contract on the ground provided for in subsection 1 of this section only if the ineffectiveness of the public contract has been identified in accordance with this Act.
Subdivision 2
Dynamic Purchasing System

§ 32. Grounds of dynamic purchasing system

(1) ‘Dynamic purchasing system’ means an electronic process for awarding public contracts, in which the economic operators who meet the qualification requirements may participate at any time during the period of validity of the system and the contracting authority or entity may award public contracts to the tenderers who have been admitted to the system in accordance with the rules provided for in § 35 of this Act.

(2) The provisions governing the restricted procedure are applied in a dynamic purchasing system, taking account of the specifications provided for in this Subdivision.

(3) The contracting authority or entity may not restrict the number of candidates wishing to participate in a dynamic purchasing system.

(4) A dynamic purchasing system may be divided into categories based on the objective characteristics of public contracts. Such a characteristic may, inter alia, be the maximum allowable size of public contracts awarded on the basis of the dynamic purchasing system or the geographical area of performance of public contracts.

(5) During the period of validity of a dynamic purchasing system, the contracting authority or entity may demand that the admitted candidates submit an updated Single Procurement Document in accordance with the rules provided for in § 104 of this Act. The candidates submit the Single Procurement Document within five working days after the submission of the contracting authority’s or entity’s request.

(6) No fee related to the dynamic purchasing system may be charged from candidates who have been admitted to or wish to participate in a dynamic purchasing system.

(7) The contracting authority or entity may demand that the economic operator wishing to participate in a dynamic purchasing system have a net annual turnover that does not exceed the double estimated value of the public contract that has the highest value among the public contracts to be awarded on the basis of the dynamic purchasing system.

(8) The contracting authority’s or entity’s decision on the admission of a candidate contains a decision on qualifying the economic operator.

§ 33. Setting up and termination of dynamic purchasing system

(1) To set up a dynamic purchasing system, the contracting authority or entity submits to the register a contract notice specifying:
   1) the period of validity of the dynamic purchasing system;
   2) if the dynamic purchasing system has been divided into categories, the characteristics defining the categories and the selection criteria applicable to each category;
   3) the award criteria.

(2) The contracting authority or entity has the right to change the period of validity of a dynamic purchasing system by submitting a contract notice to the register.

(3) The dynamic purchasing system terminates upon expiry of its period of validity. The contracting authority or entity has the right to terminate the dynamic purchasing system before the date of expiry by submitting a contract award notice to the register.

§ 34. Admission to dynamic purchasing system

(1) Throughout the period of validity of the dynamic purchasing system, the contracting entity or authority gives any economic operator the possibility to seek participation in the system. Participation requests may be submitted at any time.

(2) The contracting authority or entity finalises assessment of requests to participate in the dynamic purchasing system within ten working days following their receipt. The deadline may be prolonged to 15 working days in individual cases where justified, in particular because of the need to examine additional documentation or to otherwise verify whether the selection criteria are met.
(3) The contracting authority or entity may establish a deadline longer than the deadline specified in subsection 2 of this section for examination of requests to participate submitted within 30 days after the publication of the contract notice.

§ 35. Award of public contract

(1) In order to award a public contract under the dynamic purchasing system, the contracting authority or entity invites all admitted candidates to submit a tender. Where the dynamic purchasing system has been divided into categories, the contracting authority or entity invites all candidates having been admitted to the category of the dynamic purchasing system to submit a tender.

(2) In the invitation to tender, the contracting authority or entity indicates the nature and estimated quantity of the purchases envisaged under the dynamic purchasing system, as well as all the necessary information concerning the dynamic purchasing system, including the electronic equipment used and the technical connection arrangements and specifications. In the invitation to tender, the contracting authority or entity may clarify the award criteria provided for in the contract notice.

(3) Tenders are submitted within ten days following the receipt of the invitation to tender, unless the contracting authority has provided for a longer deadline for submission of tenders in the invitation.

(4) The contract is awarded to the tenderer that submitted the best tender on the basis of the award criteria and in accordance with in the procurement documents.

Subdivision 3
Electronic Auction

§ 36. Bases of electronic auction

(1) During an electronic auction, the contracting authority or entity evaluates and compares the values of the quantitative indicators of tenders in order to rank the tenders using automatic evaluation methods.

(2) An electronic auction can be used in the simple procedure, open procedure, restricted procedure, competitive procedure with negotiation, and also for the purpose of awarding a public contract in a dynamic purchasing system or upon the reopening of competition between parties to a framework agreement if the subject-matter of the public contract can be described with precision.

(3) Certain public service contracts and certain public works contracts having as their subject-matter intellectual performances which cannot be ranked using automatic evaluation methods, cannot be the subject-matter of electronic auctions.

(4) The electronic auction is based on one of the following elements of the tenders:
   1) solely on prices where the contract is awarded on the basis of the lowest price;
   2) the value based on the tender price and other numerically expressed award criteria, where the contract is awarded on the basis of the best price-quality ratio;
   3) the tender price or cost, where the contract is awarded on the basis of the tender with the lowest cost.

§ 37. Holding of electronic auction

(1) The contracting authority or entity announces the holding of an electronic auction in the contract notice.

(2) Before proceeding with an electronic auction, the contracting authority or entity evaluates the suitable tenders in accordance with the award criteria and with the weighting fixed for them.

(3) The contracting authority or entity invites all tenderers that have submitted suitable tenders to participate in the electronic auction. The invitation is accompanied by the outcome of the evaluation of the tenderer’s tender.

(4) The invitation specified in subsection 3 of this section states the mathematical formula to be used in the electronic auction to determine the automatic re-rankings on the basis of the values submitted and, except where the most economically advantageous offer is identified on the basis of price alone, that formula incorporates the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the procurement documents. For that purpose, any ranges are reduced beforehand to a specified value.

(5) Where variants are authorised, a separate formula specified in subsection 4 of this section is provided for each variant.

(6) The electronic auction cannot start sooner than two working days after the date on which invitations are sent out.

(7) The electronic auction may take place in a number of successive stages. The contracting authority or entity may also at any time inform the tenderers of the number of participants in that stage of the auction.
(8) Throughout each stage of the electronic auction the tenderers must have sufficient information to enable them to ascertain their relative rankings at any moment. If the contracting authority or entity has previously indicated such option, the contracting authority or entity may communicate to the tenderers other information concerning prices or values submitted.

(9) In no case may the contracting authority or entity disclose the identities of the tenderers during any stage of the electronic auction.

§ 38. Closing of electronic auction

(1) The contracting authority or entity closes the electronic auction:
   1) at the date and time indicated in the invitation to take part in the electronic auction;
   2) when it receives no more new prices or new values which meet the requirements concerning minimum differences, provided that they have previously stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
   3) when the previously indicated number of stages in the auction has been completed and the contracting authority or entity has laid down the timetable of all the stages in the invitation.

(2) The bases specified in clauses 2 and 3 of subsection 1 of this section may be applied simultaneously.

(3) After closing the electronic auction, the contracting authority or entity awards the public contract on the basis of the results of the electronic auction.

Subdivision 4
Electronic Catalogue

§ 39. Presentation of tender in form of electronic catalogue

(1) ‘Electronic catalogue’ means a single tool for drawing up and submitting tenders electronically.

(2) In the case of electronic communication, the contracting authority or entity may demand the submission of a tender in the form of an electronic catalogue or the addition of an electronic catalogue to the tender. Tenders presented in the form of an electronic catalogue may be accompanied by other documents completing the tender.

(3) Economic operators establish electronic catalogues, taking account of the requirements of the respective public procurement laid down by the contracting authority or entity in the procurement documents.

(4) Where the presentation of tenders in the form of electronic catalogues is accepted or required by the contracting authority or entity, the contracting authority or entity states so in the contract notice.

(5) If an electronic catalogue is required or accepted, the contracting authority or entity indicates in the procurement documents all the necessary information in accordance with the requirements provided for on the basis of subsection 8 of § 45 of this Act concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.

§ 40. Use of electronic catalogue upon reopening of competition

(1) Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, the contracting authority may provide that the reopening of competition for specific contracts takes place on the basis of updated electronic catalogues. In such a case, the contracting authority uses one of the following methods:
   1) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question;
   2) provided that the use of such method has been announced in the procurement documents, notify tenderers that the contracting authority intends to collect from the electronic catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the reopening of competition.

(2) Where the contracting authority exercises the option specified in clause 2 of subsection 1 of this section, the contracting authority notifies each tenderer of the date and time at which the contracting authority intends to collect the information needed to constitute tenders adapted to the requirements of the reopening of competition and gives the tenderers the possibility to refuse such collection of information. The contracting authority allows for an adequate period between the notification and the actual collection of information.

(3) Where the contracting authority exercises the option specified in clause 2 of subsection 1 of this section, the contracting authority presents the collected information to the tenderer concerned before awarding the public
§ 41. Use of electronic catalogue in dynamic purchasing system

(1) The contracting authority or entity may award a public contract based on a dynamic purchasing system by requiring that offers for a specific public contract are to be presented in the format of an electronic catalogue.

(2) The contracting authority or entity may also award contracts based on a dynamic purchasing system in accordance with clause 2 of subsection 1 and subsections 2 and 3 of § 40 of this Act, provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting authority or entity. That catalogue will be completed subsequently by the candidates if the contracting authority or entity informs them of exercising the option specified in clause 2 of subsection 1 of § 40.

Subdivision 5
Centralisation of Public Procurement

§ 42. Centralised public procurement

(1) ‘Centralised public procurement’ means the purchasing of supplies or services for a contracting authority or entity by a central purchasing body or the awarding of a public contract or framework agreement by a central purchasing body for the purpose of purchasing supplies, services or works for a contracting authority or entity.

(2) The Government of the Republic may appoint a central purchasing body and establish the extent to which the central purchasing body carries out public procurement for contracting authorities and entities.

(3) The Government of the Republic may decide that a contracting authority or entity does not carry out public procurement on its own or jointly to the extent determined by the Government of the Republic, except on the grounds provided for in § 44 of this Act.

(4) Subsection 3 of this section is not applied to public procurement carried out by a constitutional institution, a legal person governed by public law, a legal person governed by private law acting in the capacity of a contracting authority or entity, or by a local authority.

(5) The minister may appoint a central purchasing body within the limits of the area of government of the ministry and establish the extent to which the central purchasing body carries out public procurement for contracting authorities and entities.

(6) The minister may decide that the contracting authority or entity cannot carry out public procurement on its own or jointly to the extent determined on the basis of subsection 5 of this section.

(7) A body or another company acting as a central purchasing body may, in the form of cooperation provided for in clause 3 of subsection 1 of § 62 of the Local Government Organisation Act, carry out the public procurement instead of the contracting authority or entity specified in clause 2 of subsection 2 of § 5 of this Act when authorised by the contracting authority or entity.

(8) The contracting authority or entity may join the public procurement carried out by the central purchasing body, concluding with the central purchasing body an agreement that, where necessary, sets out, inter alia, the scope of representation of the central purchasing body, compensation for costs related to central purchasing or payment of remuneration to the central purchasing body.

(9) The contracting authority or entity may use a dynamic purchasing system created by the central purchasing body if such option has been set out in the contract notice for the dynamic purchasing system.

(10) ‘Ancillary purchasing activity’ means an activity consisting in the provision of support to purchasing activities, in particular the management of technical infrastructure for the purpose of awarding public contracts, advice on public procurement, and preparation and management of procurement procedures on behalf and for the account of the contracting authority or entity.

(11) In the case of central purchasing activities, the contracting authority or entity is responsible only for the public procurement stages carried out or steps taken by the contracting authority or entity on its own.

§ 43. Joint procurement

(1) ‘Joint procurement’ means public procurement carried out on the basis of an agreement concluded by two or more contracting authorities or entities where one of the contracting authorities or entities participating in the joint procurement is authorised to carry out the public procurement for another or other contracting authorities or entities.
(2) Where necessary, the agreement specified in subsection 1 of this section sets out, inter alia, the scope of representation of the contracting authority or entity and compensation for costs or payment of remuneration related to joint procurement.

(3) Contracting authorities or entities bear joint and several liability for adherence to the requirements of this Act if the public procurement is carried out fully in the interests of all the respective contracting authorities or entities, even if the public procurement is managed on its own behalf by one of the contracting authorities or entities.

(4) If merely some stages of public procurement are carried out or some steps of public procurement are taken jointly, the contracting authorities or entities concerned bear joint and several liability for adherence to the requirements of this Act to the extent of the stages or steps. Each contracting authority or entity bears sole liability for the stages of public procurement carried out and the steps of public procurement taken on its own.

§ 44. Cross-border public procurement

(1) Contracting authorities and entities of different Member States of the European Union may carry out joint or central cross-border public procurement in accordance with the rules provided for in this section.

(2) Contracting authorities or entities of different Member States of the European Union do not carry out cross-border public procurement for the purpose of avoiding the application of national provisions in conformity with Union law to which they are subject in their Member State.

(3) Centralised purchasing activities are conducted in accordance with the law of the Member State where the central purchasing body is located.

(4) Several contracting authorities or entities of different Member States of the European Union may agree on the joint organisation of public procurement by concluding an agreement that serves as the basis for their cooperation, determining the division of responsibilities between the contracting authorities or entities and the relevant applicable national provisions arising therefrom, which must be published in the procurement documents, and the organisational details of the procurement procedure.

(5) In the case of central purchasing activities, the contracting authority or entity is responsible only for the public procurement stages carried out or steps taken by the contracting authority or entity on its own.

(6) Where several contracting authorities from different Member States of the European Union have set up a joint entity, a decision of the competent body of the joint entity sets out the applicable national public procurement law which may be either the public procurement law of the Member State where the joint entity has its registered office or the public procurement law of the Member State where the joint entity is carrying out its activities.

(7) The agreement referred to in subsection 6 of this section may either apply for an undetermined period, when fixed in the constitutive act of the joint entity, or may be limited to a certain period of time, certain types of public contracts or to one or more individual public contract awards.

Division 7

Rules Applicable to Communication and Formal Requirements for Documents

§ 45. Communication

(1) All communication and information exchange related to public procurement between the contracting authority or entity and the economic operator, including making procurement documents available and submitting tenders, requests to participate and clarifications, is carried out by electronic means, unless otherwise provided for in this Act.

(2) Communication and information exchange does not need to be electronic in the following situations:
   1) due to the specialised nature of the procurement, the use of electronic means would require specific tools, devices or file formats that are not generally available or supported by generally available applications;
   2) the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority;
   3) the procurement documents require the submission of physical or scale models or samples which cannot be transmitted using electronic means;
   4) the use of means of communication other than electronic means is necessary either because of a breach of security of the electronic means of communications or for the protection of the particularly sensitive nature
of information requiring such a high level of protection that it cannot be ensured by using electronic tools and devices that are either generally available to economic operators or can be made available to them by the contracting authority or entity;
5) the contracting authority or entity is in negotiations or in a dialogue with the economic operator.

(3) Notwithstanding subsection 2 of this section, the contracting authority or entity submits to the public procurement register all the following notices using the standard form established by the European Commission:
1) prior information notice and periodic indicative notice;
2) buyer profile notice;
3) contract notice;
4) contract award notice;
5) design contest notice;
6) results of design contest;
7) notice of modification of public contract;
8) qualification system notice;
9) optional notice;
10) concession notice.

(4) The notices specified in subsection 3 of this section must contain at least the information provided for regarding the respective notice in annexes to Directives 2014/23/EU, 2014/24/EU and 2014/25/EU of the European Parliament and of the Council.

(5) Oral communication is permitted in other than essential elements of public procurement, provided that the content thereof is documented to a sufficient degree. Essential elements of public procurement whereby oral communication is not permitted are the procurement documents, the tender and the request to participate.

(6) Upon submission of a notice to the register for the purpose of commencement of public procurement, the contracting authority or entity indicates whether the estimated value of the public procurement equals or exceeds the international threshold or whether the contracting authority or entity would like to have the notice optionally forwarded to the Publication Office of the European Union. In the case of negotiated procedure without prior publication of a contract notice or in another event where the contracting authority or entity finds that the submission of a notice to the register for the purpose of commencement of public procurement is not required under this Act, the contracting authority or entity indicates the information in the optional notice or in the contract award notice.

(7) In communication and information exchange, the contracting authority or entity ensures the integrity of information and the confidentiality of the tender and request to participate. The contracting authority or entity examines the content of tenders and requests to participate only after the time limit set for submitting them has expired.

(8) Requirements for electronic communication devices are established by a regulation of the minister responsible for the field.

§ 46. Clarifications

(1) The contracting authority or entity makes clarifications pertaining to procurement documents or documents that allow for clarification electronically available within three working days following the receipt of a relevant request for clarification. If the entire public procurement communication and information exchange does not take place electronically, the contracting authority or entity submits clarifications or documents allowing for clarification within the same time limit to all the economic operators interested in the public procurement, which are known to the contracting authority or entity, in a form reproducible in writing.

(2) Unless there is at least six days between the receipt of the request for clarification regarding procurement documents by the contracting authority or entity and the closing date for submission of tenders or, in the cases specified in clause 2 of subsection 2 of § 93 and clause 2 of subsection 4 of § 94 of this Act, at least four days or, in the case of simple procedure, at least one day, the contracting authority or entity is not required to respond to the request for clarification.

(3) Clarifications or documents allowing for clarification submitted regarding procurement documents must not contain new information without which it is not possible to submit tenders or without which the submitted tenders would become non-compliant with the procurement documents or their content would change. It is prohibited to modify the procurement documents based on the clarifications and documents allowing for clarification.

(4) The economic operator submits to the contracting authority or entity clarifications or documents allowing for clarification regarding the absence of grounds for exclusion, data submitted in proof of self-cleaning or qualifications, or data given in the tender within three working days following the receipt of a respective request from the contracting authority or entity. With good reason the contracting authority or entity may extend the time limit given to the economic operator for submission of documents or clarifications.
§ 47. Notifying economic operators of decisions of contracting authority or entity

(1) The contracting authority or entity submits to the economic operator participating in public procurement a notice in a form reproducible in writing on the following decisions within three working days following the making of the decision:
1) decision to exclude the economic operator from the procurement procedure;
2) decision not to exclude the economic operator from the procurement procedure made on the basis of subsection 2 of § 97 of this Act;
3) decision to qualify;
4) decision not to qualify;
5) decision to reject the tender;
6) decision to reject all tenders;
7) the decision specified in subsection 3 of § 70 of this Act;
8) decision to allow participation in the dynamic purchasing system;
9) decision to declare the tender suitable;
10) decision to declare the tender successful;
11) decision to award the public contract specified in subsection 11 of § 30 and subsection 9 of § 125 of this Act;
12) decision to declare the public procurement invalid based on clause 6 of subsection 3 of § 73 of this Act.

(2) For the purposes of this section, an economic operator participating in public procurement means a tenderer, candidate or economic operator who participated in a negotiated procedure without prior publication of a contract notice where the submission of a tender was not required.

(3) The contracting authority or entity adds to the notice given regarding the decision specified in clause 12 of subsection 1 of this section the reasons for declaring the public procurement invalid.

(4) Along with the notice specified in subsection 1 of this section, the contracting authority or entity submits:
1) to the economic operator the reasons for excluding or not qualifying the economic operator;
2) to the tenderer the reasons for rejecting its tender;
3) to the tenderer who submitted a suitable tender the names of the tenderer (hereinafter successful tenderer) or tenderers who submitted the successful tender and the data characterising the successful tender, which gave the successful tender an advantage over their tender.

(5) In a notice specified in subsection 1 of this section, the contracting authority or entity does not submit information the disclosure of which would obstruct adherence to legislation, be in conflict with public interests, compromise the trade secrets of economic operators or distort competition.

(6) The contracting authority or entity may deviate from the time limit provided for in subsection 1 of this section if the contracting authority or entity submits the information specified in subsections 1, 3 and 4 to the economic operator at once within three working days after the making of the decision to declare the tender successful or decision serving as the basis for termination of the public procurement, provided that the decision has been made not later than within ten working days after the opening of the tenders.

Chapter 2
Procurement Procedure

Division 1
Types of Procurement Procedure and Application Thereof

Subdivision 1
Grounds for Choice of Procedure

§ 48. Choice of procedure

(1) The contracting authority or entity is required to use the open or restricted procedure, unless otherwise provided for in this Act.

(2) The contracting authority or entity has the right to set up an innovation partnership if the contracting authority or entity has the need for innovative supplies, services or works that cannot be met by purchasing supplies, services or works already available on the market. The innovation partnership aims at the development of innovative supplies, services or works and the subsequent purchase of the resulting supplies, services
or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting authority or entity and the participants.

(3) The contracting authority or entity has the right to use a competitive procedure with negotiation or a competitive dialogue if:
1) the estimated value of the public procurement is below the international threshold;
2) all the tenders submitted during the open or restricted procedure were unacceptable or irregular;
3) the contracting authority or entity is objectively unable to determine the technical solutions meeting its needs in accordance with §§ 87 and 88 of this Act;
4) the nature of the supplies, services or works that constitute the subject-matter of the public contract, the legal or financial circumstances or risks related thereto do not allow for determining the terms and conditions of the public contract with sufficient precision in order to award the public contract as a result of the open or restricted procedure;
5) the subject-matter of the public contract includes the purchasing of a design service or the development of innovative solutions; or
6) the needs of the contracting authority or entity cannot be met without adaptation of readily available solutions.

(4) For the purposes of clause 2 of subsection 3 of this section, ‘unacceptable or irregular tender’ means a tender:
1) that does not meet the terms and conditions of the procurement documents;
2) that has been submitted late;
3) that has been submitted as a result of a prohibited agreement, a concerted practice or a decision of an association of undertakings restricting competition, or corruption;
4) the value of which is abnormally low;
5) the value of which exceeds the estimated value of the public procurement, which has been established and documented before the commencement of the open or restricted procedure; or
6) that has been submitted by a tenderer who does not meet the selection criteria.

§ 49. Use of negotiated procedure without prior publication

(1) A contracting authority or entity has the right to use a negotiated procedure without prior publication where:
1) no tenders or suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure or all the requests to participate were submitted by candidates who are to be or may be excluded based on subsection 1 or 4 of § 95 of this Act or who do not meet the selection criteria, and provided that the initial conditions of the contract are not substantially modified;
2) the nature of the supplies, services or works that constitute the subject-matter of the public contract, the legal or financial circumstances or risks related thereto do not allow for determination of the terms and conditions of the public contract with sufficient precision in order to award the public contract as a result of the open or restricted procedure;
3) the contracting authority or entity is objectively unable to determine the technical solutions meeting its needs in accordance with §§ 87 and 88 of this Act;
4) the nature of the supplies, services or works that constitute the subject-matter of the public contract, the legal or financial circumstances or risks related thereto do not allow for determining the terms and conditions of the public contract with sufficient precision in order to award the public contract as a result of the open or restricted procedure;
5) the subject-matter of the public contract includes the purchasing of a design service or the development of innovative solutions; or
6) the needs of the contracting authority or entity cannot be met without adaptation of readily available solutions.

(2) For the purposes of clause 1 of subsection 1 of this section and clause 10 of § 50 of this Act, a tender is considered not to be suitable where it is manifestly incapable, without substantial changes, of meeting the requirements as specified in the procurement documents and the contracting authority’s or entity’s needs.

(3) Upon awarding a public supply contract, the contracting authority or entity has the right to, in addition to the grounds laid down in subsection 1 of this section, use a negotiated procedure without prior publication:
1) where the supplies that constitute the subject-matter of the public contract are manufactured purely for the purpose of research, experimentation, study or development and the subject-matter of the public contract does not include quantity production to establish commercial viability or to recover research and development costs;
2) for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority or entity to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the duration of such contracts as well as that of recurrent contracts cannot, as a general rule, exceed three years; or
3) for supplies purchased on a commodity market.

(4) Upon awarding a public supply contract or a public service contract, the contracting authority or entity has the right, in addition to the grounds provided for in subsections 1 and 3 of this section, use a negotiated procedure without prior publication for the purchase of supplies or services on particularly advantageous terms, from either a person with regard to whom liquidation proceedings have been initiated, or from a bankruptcy trustee for the purpose of enforcement of an arrangement with creditors.

(5) Upon awarding a public service contract or a public works contract, the contracting authority or entity has the right, in addition to the grounds provided for in subsections 1 and 4 of this section, use a negotiated procedure without prior publication for purchasing new works or services consisting in the repetition of similar services or works that were purchased from the same tenderer as a result of a procurement procedure with a call for competition based on a public contract awarded up to three years earlier and that are in conformity with the
basic project, provided that the original contract notice set out the terms and conditions of such public contract and the possibility of awarding it as a result of the procurement procedure with a call for competition.

(6) Upon awarding a public service contract, the contracting authority or entity has the right, in addition to the grounds provided for in subsections 1, 4 and 5 of this section, use a negotiated procedure without prior publication if the public contract is awarded in accordance with the rules provided for in this Act to the winner or one of the winners of the design contest and such condition was established in the under the rules provided for in the invitation to the design contest. If the public contract is awarded to one of the winners of the design contest, all winners must be invited to participate in the negotiations.

(7) At the request of the European Commission, the contracting authority or entity sends a report on the circumstances of application of the ground provided for in clause 1 of subsection 1 of this section to the European Commission via the Ministry of Finance.

§ 50. Use of negotiated procedure without prior publication in public procurements with estimated value below international threshold

In addition to the grounds provided for in § 49 of this Act, the contracting authority or entity has the right to use a negotiated procedure without prior publication if the estimated value of the public procurement is below the international threshold and:
1) the subject-matter of the public contract is a licence to use the documents or database of a library;
2) the supplies are purchased taking advantage of an especially advantageous opportunity offered over a very short period at a price considerably lower than the market price;
3) the supplies, services or works are purchased for a diplomatic representation in a foreign country;
4) the supplies or services are purchased from a custodial institution or a state-owned company managing its production units by a contracting authority specified in clauses 1 and 2 of subsection 2 of § 5 of this Act;
5) the subject-matter of the public contract is air transport services;
6) the subject-matter of the public contract is a record, publication, a licence to use publications or a thing of cultural value for the purpose of including it in a museum collection, provided that the contracting authority is a museum, archive or library;
7) the subject-matter of the public contract is a third that is directly usable for research and development, provided that the contracting authority is a research and development institution evaluated on the basis of the Research and Development Organisation Act;
8) the supplies are purchased in connection with the preparation and conduct of a play or concert programme, provided that the contracting authority is a performing arts institution;
9) food products are purchased; or
10) no tenders or suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to a competitive dialogue, innovation partnership or competitive procedure with negotiation or all the requests to participate were submitted by candidates who are to be or may be excluded based on subsection 1 or 4 of § 95 of this Act or who do not meet the selection criteria, and provided that the initial conditions of the contract are not substantially modified.

Subdivision 2
Open Procedure

§ 51. Principles of open procedure

In an open procedure, a tender may be submitted by any economic operator whose participation in the public procurement is not precluded based on restrictions imposed under subsection 3 of § 7 of this Act.

§ 52. Submission, opening and assessment of tenders

(1) Along with the tender, the tenderer submits the Single Procurement Document in accordance with the requirements set out in the contract notice.

(2) The contracting authority or entity opens all tenders submitted by the closing date, verifies the absence of the grounds for exclusion regarding all tenderers and the tenderers’ qualifications in accordance with the law and the contents of the contract notice, verifies the conformity of the tenders of the qualified tenderers with the terms and conditions established in the procurement documents, and assesses the suitable tenders in accordance with the rules established in this Chapter.

(3) Before verifying the absence of the grounds for exclusion and the qualifications, the contracting authority or entity may verify the conformity of tenders with the terms and conditions set out in the procurement documents and assess the suitable tenders in accordance with the rules established in this Act. In such an event the contracting authority or entity ensures that the public contract is not awarded to the tenderer who should have
been excluded from the procurement procedure based on subsection 1 of § 95 of this Act or who does not meet the selection criteria established by the contracting authority or entity.

(4) The contracting authority or entity is prohibited to hold negotiations in an open procedure.

Subdivision 3
Restricted Procedure

§ 53. Principles of restricted procedure

In a restricted procedure, any economic operator may submit a request to participate in the procurement procedure, but a tender can be submitted only by candidates who have been chosen by the contracting authority or entity based on objective and non-discriminatory criteria and whom the contracting authority or entity has invited to submit a tender.

§ 54. Submission and examination of requests to participate

(1) Along with a request to participate in the procurement procedure, the candidate submits a Single Procurement Document in accordance with the requirements set out in the contract notice.

(2) In accordance with the provisions of this Act and the contract notice, the contracting authority or entity verifies the absence of the grounds for exclusion and qualifications of each candidate who has submitted a request to participate in the procurement procedure.

(3) The contracting authority or entity may limit the number of the candidates whom it invites to submit a tender, establishing in the contract notice a numerical minimum level that may be no less than five and, where necessary, a maximum level as well as objective and non-discriminatory criteria for choosing these candidates. The number of candidates who receive an invitation must be sufficient to ensure competition.

§ 55. Invitation to tender

(1) The contracting authority or entity makes each qualified candidate or, if the contracting authority or entity has limited the number of candidates in the contract notice in accordance with subsection 3 of § 54 of this Act, at least to the specified number of chosen qualified candidates a simultaneous invitation to tender in a form reproducible in writing.

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

§ 56. Opening and assessment of tenders

(1) The contracting authority or entity opens all the tenders that were submitted by the closing date, verifies their conformity with the terms and conditions set out in the procurement documents and assesses all the tenders that were declared suitable in accordance with the rules established in this Chapter.

(2) The contracting authority or entity is prohibited to hold negotiations in a restricted procedure.

Subdivision 4
Innovation Partnership

§ 57. Principles of innovation partnership

(1) In an innovation partnership, any economic operator may submit a request to participate in the procurement procedure, but only candidates who have been chosen by the contracting authority or entity based on objective and non-discriminatory criteria and whom the contracting authority or entity has made an invitation to tender can participate in the negotiations and submit a tender.

(2) An innovation partnership can be set up with one or several tenderers.

§ 58. Submission and review of requests to participate in innovation partnership

(1) Along with a request to participate in the procurement procedure, the candidate submits a Single Procurement Document in accordance with the requirements set out in the contract notice.

(2) In accordance with the provisions of this Act and the contract notice, the contracting authority or entity verifies the absence of the grounds for exclusion and qualifications of each candidate who has submitted a request to participate in the procurement procedure.
(3) The contracting authority or entity may limit the number of the candidates whom it invites to submit a tender, establishing in the contract notice a numerical minimum level that may be no less than three and, where necessary, a maximum level as well as objective and non-discriminatory criteria for choosing these candidates. The number of candidates who receive an invitation must be sufficient to ensure competition.

(4) The objective and non-discriminator criteria specified in subsection 3 of this section may be, above all, related to the candidate’s ability in the field of research and development and in the field of development and application of innovative solutions.

§ 59. Invitation to tender in innovation partnership

(1) The contracting authority or entity makes each qualified candidate or, if the contracting authority or entity has limited the number of candidates in the contract notice in accordance with subsection 3 of § 58 of this Act, at least to the specified number of chosen qualified candidates a simultaneous invitation to tender in a form reproducible in writing.

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

§ 60. Opening tenders and holding negotiations in innovation partnership

(1) The contracting authority or entity opens all indicative tenders that have been submitted by the closing date and verifies their conformity with the terms and conditions established by the contracting authority or entity in the procurement documents.

(2) In the case of suitable tenders and negotiations held in stages, the contracting authority or entity may hold negotiations over all further tenders in order to select a successful tender. The award criteria or the minimum level of the negotiable terms and conditions cannot be negotiated.

(3) During the negotiations, the contracting authority or entity ensures equal treatment of all tenderers and does not disclose information received during the negotiations in a discriminatory manner which could give one tenderer an advantage over other tenderers. The contracting authority or entity does not disclose any confidential information received from a tenderer or a candidate to other participants in negotiations without the consent of the tenderer or the candidate.

(4) If the contracting authority or entity has provided for such option in the procurement documents, the contracting authority or entity may arrange the negotiations in successive stages and reduce the number of negotiated tenders in each stage, applying for that purpose the award criteria set out in the procurement documents. In the case of suitable tenders, the number of tenders negotiated in the last stage must be sufficient to ensure competition.

(5) The contracting authority or entity notifies simultaneously and in a form reproducible in writing all the participating tenderers whose tenders have not been rejected in accordance with subsection 4 of this section of all changes made to the technical specifications or other terms and conditions and gives the tenderers enough time to submit new tenders. It is not allowed to make changes to the minimum level of negotiable terms and conditions.

§ 61. Assessment of tenders in innovation partnership

(1) The contracting authority or entity notifies tenderers of the termination of negotiations and sets a time limit for the submission of the final tenders. The contracting authority or entity is not allowed to hold negotiations during procurement procedure after the submission of a notice on the termination of negotiations. No negotiations are held over final tenders.

(2) The contracting authority or entity verifies the conformity of the final tenders with the terms and conditions established in the procurement documents and assesses all the suitable tenders in accordance with the rules provided for in this Chapter.

§ 62. Setting up of innovation partnership

(1) In a public contract for setting up an innovation partnership, the contracting authority or entity determines the successive stages of the structure of the innovation partnership, intermediate targets and payment of the remuneration in instalments. Upon structuring the stages of the innovation partnership, the contracting authority or entity follows the sequence of steps in the research and innovation process, which may include the manufacturing of the supplies, the provision of the services or the completion of the works.
(2) Based on the achievement of the intermediate targets, the contracting authority may decide after each stage to terminate the innovation partnership or to reduce the number of tenderers whom a public contract for setting up the innovation partnership has been awarded (hereinafter partners), provided that the contracting authority or entity has indicated those possibilities and the conditions thereof in the procurement documents.

(3) The contracting authority or entity ensures that the structure of the innovation partnership, including the duration and value of the different stages reflect the degree of innovation of the proposed solution and the nature of the research and innovation activities required for the development of the innovative solution. The estimated value of supplies, services or works purchased as a result of the innovation partnership must not be disproportionate in relation to the investment required for their development.

(4) The contracting authority or entity does not reveal to the other partners solutions proposed or other confidential information communicated by a partner in the framework of the innovation partnership without that partner’s consent.

Subdivision 5
Competitive Dialogue

§ 63. Principles of competitive dialogue

In a competitive dialogue, any economic operator may submit a request to participate in the procurement procedure and the contracting authority or entity holds negotiations with the candidates chosen by it based on objective and non-discriminatory criteria in order to identify one or more solutions most suitable for meetings its needs in terms performance or functionality.

§ 64. Submission and examination of requests to participate in competitive dialogue

(1) Along with a request to participate in the procurement procedure, the candidate submits a Single Procurement Document in accordance with the requirements set out in the contract notice.

(2) In accordance with the provisions of this Act and the contract notice, the contracting authority or entity verifies the absence of the grounds for exclusion and the qualifications of each candidate who has submitted a request to participate in the procurement procedure.

(3) The contracting authority or entity may limit the number of the candidates whom it invites to submit a tender, establishing in the contract notice a numerical minimum level that may be no less than three and, where necessary, a maximum level as well as objective and non-discriminatory criteria for choosing these candidates. The number of candidates who receive an invitation must be sufficient to ensure competition.

§ 65. Conduct of dialogue

(1) The contracting authority or entity makes each qualified candidate or, if the contracting authority or entity has limited the number of candidates in the contract notice in accordance with subsection 3 of § 64 of this Act, at least to the specified number of chosen qualified candidates a simultaneous invitation to participate in a dialogue in a form reproducible in writing for the purpose of identifying one or more solutions most suitable for meeting its needs.

(2) If the number of qualified candidates is smaller than the minimum number of candidates specified in the contract notice, the contracting authority or entity may continue the procurement procedure, making an invitation to participate in a dialogue to all qualified candidates.

(3) During a dialogue, the contracting authority or entity ensures equal treatment of all candidates participating in the dialogue. The contracting authority or entity is not allowed to disclose information in a discriminatory manner or reveal to the other participants or third parties participating in the dialogue solutions proposed or other confidential information communicated by a candidate participating in the dialogue without the candidate’s agreement.

(4) Where the contracting authority or entity has indicates such option in the contract notice or the descriptive document, the dialogue may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the procurement documents. In the case of suitable solutions, the number of solutions discussed in the last stage must be sufficient to ensure competition.

(5) All the terms and conditions of the prospective public contract may be discussed during the dialogue.

(6) The contracting authority or entity holds a dialogue with the candidates until solutions best suited for its needs are identified.

(7) A solution or solutions developed during the dialogue are entered in minutes signed by the contracting authority or entity and the candidate.
(8) The contracting authority or entity may give prizes to tenderers or pay remuneration for participation for the purpose of compensation of costs related to developing solutions offered during the dialogue the size of which may differ depending on the conformity of the offered solution with the established terms and conditions.

§ 66. Making of invitation to tender, opening of tenders and assessment of tenders in competitive dialogue

(1) After the contracting authority or entity has identified the solutions best meeting its needs, the contracting authority or entity notifies all the candidates participating in the dialogue about concluding the dialogue and simultaneously and in a format reproducible in writing makes them an invitation to submit a tender on the basis of the solutions submitted and clarified during the dialogue. The invitation to tender must contain the information specified in subsection 4 of § 77 of this Act, which is necessary for the submission of tenders and for carrying out the procurement procedure in accordance with requirements and which has not been made available at the time of commencement of the procurement procedure, because it could not be identified at the time of commencement of the procurement procedure owing to the nature of the public procurement.

(2) The contracting authority or entity may make an invitation to submit the final tenders based on the solution offered by each candidate itself or on the assumption that the candidates have consent to the disclosure of the solution offered by them to other candidates based on a single solution selected by the contracting authority or entity.

(3) The contracting authority or entity opens all tenders and verifies their conformity with the description of the subject-matter of the public procurement and the requirements which it has set out in the procurement documents and assesses all suitable tenders in accordance with the rules provided for in this Chapter.

(4) The contracting authority or entity is not allowed to hold negotiations during the procurement procedure after making an invitation to tender.

Subdivision 6
Competitive Procedure with Negotiation

§ 67. Principles of competitive procedure with negotiation

In a competitive procedure with negotiation, any economic operator may submit a request to participate in the procurement procedure and the contracting authority or entity invites candidates chosen by it based on objective and non-discriminatory criteria an invitation to submit a tender and holds negotiations with them over the tenders in order to improve their contents and select a successful tender.

§ 68. Submission and review of requests to participate in competitive procedure with negotiation

(1) Along with a request to participate in the procurement procedure, the candidate submits a Single Procurement Document in accordance with the requirements set out in the contract notice.

(2) In accordance with the provisions of this Act and the contract notice, the contracting authority or entity verifies the absence of the grounds for exclusion and qualifications of each candidate who has submitted a request to participate in the procurement procedure by the closing date.

(3) The contracting authority or entity may limit the number of the candidates whom it invites to submit a tender, establishing in the contract notice a numerical minimum level that may be no less than three and, where necessary, a maximum level as well as objective and non-discriminatory criteria for choosing these candidates. The number of candidates who receive an invitation must be sufficient to ensure competition.

§ 69. Making of invitation to tender in competitive procedure with negotiation

(1) The contracting authority or entity makes each qualified candidate or, if the contracting authority or entity has limited the number of candidates in the contract notice in accordance with subsection 3 of § 68 of this Act, at least to the specified number of chosen qualified candidates a simultaneous invitation to tender in a form reproducible in writing.

(2) If the number of qualified candidates is smaller than the minimum number of candidates specified in the contract notice, the contracting authority or entity may continue the procurement procedure, making an invitation to tender to all qualified candidates.
§ 70. Opening of tenders and holding of negotiations in competitive procedure with negotiation

(1) The contracting authority or entity opens all indicative tenders submitted by the closing date, except in the event specified in subsection 3 of this section, and verifies their conformity with the terms and conditions of the procurement documents.

(2) In the case of suitable tenders and negotiations held in stages, the contracting authority or entity may hold negotiations over all further tenders in order to choose a successful tender. The award criteria or the minimum level of the negotiable terms and conditions cannot be negotiated.

(3) In the case provided for in clause 2 of subsection 3 of § 48 of this Act, the contracting authority or entity makes a decision to continue the public procurement as a competitive procedure with negotiation and to commence negotiations if the contracting authority or entity commences negotiations over tenders only with all those tenderers who were qualified earlier during an open or restricted procedure and who submitted a tender in conformity with formal requirements. In such a case subsections 6 and 7 of this section are not applied.

(4) In the case specified in subsection 3 of this section, the tenders over which negotiations are held do not need to be in conformity with all the terms and conditions set out in the procurement documents.

(5) During the negotiations, the contracting authority or entity ensures equal treatment of all tenderers and does not reveal information received during the negotiations in a discriminatory manner which could give one tenderer an advantage over other tenderers. The contracting authority or entity does not reveal any confidential information received from a tenderer or a candidate to other participants in negotiations without the consent of the tenderer or the candidate.

(6) If the contracting authority or entity has provided for such option in the procurement documents, the contracting authority or entity may arrange the negotiations in consecutive stages and reduce the number of negotiated tenders in each stage, applying for that purpose the award criteria set out in the procurement documents. In the case of suitable tenders, the number of tenders negotiated in the last stage must be sufficient to ensure competition.

(7) The contracting authority or entity may decide to carry out competitive procedure with negotiation without holding negotiations, provided that the contracting authority or entity has reserved such possibility in the procurement documents.

§ 71. Assessment of tenders in competitive procedure with negotiation

(1) The contracting authority or entity notifies tenderers of the termination of negotiations and sets a time limit for the submission of the final tenders. The contracting authority or entity is not allowed to hold negotiations during the procurement procedure after the submission of a notice on the termination of negotiations. No negotiations are held over final tenders.

(2) The contracting authority or entity verifies the conformity of the final tenders with the terms and conditions established in the procurement documents and assesses all the suitable tenders in accordance with the rules provided for in this Chapter.

Subdivision 7

Negotiated Procedure without Prior Publication

§ 72. Rules of negotiated procedure without prior publication

(1) The contracting authority or entity invites one or more economic operators whose economic and financial standing and technical and professional ability is presumably sufficient for the proper performance of the public contract to hold negotiations for the purpose of awarding a public contract.

(2) In the invitation to hold negotiations, the contracting authority or entity may make an invitation to submit a tender by the closing date set by the contracting authority or entity.

(3) In the case of a negotiated procedure without prior publication, the contracting authority or entity has the right to deviate from subsection 1 of § 45 of this Act.

(4) Where necessary, the contracting authority or entity may verify the conformity of the economic operator’s qualifications with the selection criteria in accordance with the rules provided for in this Act before the commencement of negotiations over the terms and conditions of the public contract, submitting to that end the selection criteria, requirements for submission of documents certifying qualifications and, where necessary, a description of the subject-matter of the public contract along with the invitation to negotiate.

(5) If the contracting authority or entity also makes an invitation to submit a tender in the invitation to negotiate, the contracting authority or entity opens all tenders submitted by the closing date and verifies their conformity with the terms and conditions of the procurement documents.
(6) To award a public contract, the contracting authority or entity holds negotiations with an economic operator or economic operators over the terms and conditions of the public contract.

(7) The contracting authority or entity does not award the contract to an economic operator if a ground for exclusion specified in subsection 1 of § 95 of this Act exists regarding a member of an administrative, management or supervisory body of the economic operator or another legal representative of the economic operator or a contractual representative involved in the respective public procurement.

### Division 2
**General Bases for Public Procurement**

### Subdivision 1
**Commencement and Termination of Public Procurement and Procurement Documents**

§ 73. Commencement and termination of procurement procedure

(1) A procurement procedure, except a negotiated procedure without prior publication, starts with the publication of a contract notice in the register. A negotiated procedure without prior publication starts with the making of an invitation to negotiate to one or several economic operators invited by the contracting authority or entity.

(2) As of the publication of a contract notice in the register in the case of an open procedure or as of the submission of other procurement documents to candidates or economic operators in other types of procurement procedure, an invitation to tender is deemed as submitted in accordance with the terms and conditions set out in the procurement documents.

(3) The procurement procedure terminates upon:

1) awarding of the public contract or framework agreement;
2) rejection of all tenders for the reason that no tender was found to be in conformity with the procurement documents or that the value of all the tenders was abnormally low;
3) rejection of all tenders on the grounds provided for in § 116 of this Act;
4) exclusion of all tenderers or candidates from the procurement procedure or upon not qualifying any of the tenderers or candidates;
5) failure to submit tenders or requests to participate within the time limit established in accordance with the rules provided for in this Act;
6) upon declaring the procurement procedure invalid by a decision of the contracting authority or entity on the basis of a precept made in supervisory proceedings carried out by the Ministry of Finance or, if there is a justifiable need, on its own initiative;
7) expiry of the period of validity of all tenders, unless any tenderer agrees to extend the period of validity of the tender.

(4) If the contracting authority or entity has divided the public procurement into lots within a single procedure, the procurement procedure with regard to each lot will terminate upon existence of any ground provided for in subsection 3 of this section or if the decision specified in clause 6 of subsection 3 to declare the procurement procedure invalid is made with regard to the entire procurement procedure.

§ 74. Contract notice

To commence an open procedure, restricted procedure, competitive procedure with negotiation, competitive dialogue or innovation partnership, the contracting authority or entity submits a contract notice to the register.

§ 75. Indicative notice

(1) To notify of planned procurement procedures, the contracting authority or entity may submit an indicative notice to the register or publish an indicative notice in the buyer profile. If the contracting authority or entity publishes the indicative notice in the buyer profile, the contracting authority or entity submits to the register a respective buyer profile notice and does not publish the indicative notice in the buyer profile before its publication in the register.

(2) The indicative notice may contain information on procurement procedures commenced within maximum 12 months from the publication of the notice, except for an indicative notice submitted in a social and other specific procedure whereby the 12-month limit is not applied.
(3) If the contracting authority or entity wishes to apply the shortened time limits specified in clause 1 of subsection 2 of § 93 or clause 1 of subsection 4 of § 94 of this Act for the submission of tenders, the contracting authority or entity must submit the indicative notice to the register or publish the indicative notice in the buyer profile 35 days to 12 months before the date of submission of the contract notice.

§ 76. Optional notice

(1) At least 14 days before the awarding of a public contract, the contracting authority or entity may submit to the register an optional notice if the contracting authority or entity has not submitted a contract notice assuming that the awarding of the public contract without prior publication of a contract notice is permitted under this Act. In public procurements whose estimated value is below the international threshold, an optional notice is submitted at least ten days before the awarding of the public contract.

(2) The optional notice contains at least the following information:
   1) the name and contact details of the contracting authority or entity;
   2) the description of the subject-matter of the public contract;
   3) the contracting authority or entity’s reasons as to why the contracting authority or entity decided to award the public contract without submitting a contract notice;
   4) the name and contact details of the economic operator whom the contracting authority or entity intends to award the public contract;
   5) other relevant information.

§ 77. Procurement documents

(1) The contracting authority or entity draws up procurement documents in accordance with the requirements provided for in this Act in a form reproducible in writing and makes them electronically available to economic operators free of charge and without restrictions from the start of the procurement procedure, unless otherwise provided for in this Act.

(2) If the procurement documents cannot, for a reason specified in subsection 2 of § 45 of this Act, be made electronically available, the contracting authority or entity indicates it in the contract notice and sends the procurement documents to all the economic operators who have submitted the respective application within one working days after the receipt of the application, but not later than six days before the closing date for submission of tenders, provided that they have been applied for in a timely manner. In the events specified in clause 2 of subsection 2 of § 93 and subsection 5 of § 94 of this Act, the contracting authority or entity forwards the procurement documents not later than four days before the closing date for submission of tenders.

(3) To maintain the confidentiality of the information given in the procurement documents, except for the contract notice, the contracting authority or entity may establish in the contract notice requirements or measures and restrict access to such confidential information by economic operators who do not comply with the requirements or measures. In such an event the contracting authority or entity does not have to make the procurement documents electronically available.

(4) Unless otherwise provided for in this Act or if the relevant information has not been published in the contract notice, the procurement documents must contain at least the following information:
   1) the technical specifications of the subject-matter of the public contract drawn up in accordance with §§ 87–89 of this Act, except in the case of an innovation partnership;
   2) the award criteria in accordance with §§ 85–86 of this Act;
   3) alternative solutions and the requirements for submitting them, including information on whether the contracting authority or entity allows or demands the submission of alternative solutions only in addition to a solution meeting all the terms and conditions set out in the procurement documents or separately;
   4) all the terms and conditions of the prospective public contract, which may involve economic, innovation-related, environmental, social or employment-related considerations, except for the circumstances specified in clause 5 of this subsection;
   5) all the circumstances on which the contracting authority or entity seeks competitive tenders;
   6) the information specified in § 122 of this Act on subcontractors;
   7) the rules for holding negotiations in a competitive procedure with negotiation;
   8) information on carrying out a competitive dialogue or competitive procedure with negotiation in successive stages;
   9) the list of required documents and data;
   10) information on whether a tender can be submitted only after inspecting the place of performance of the public contract or on-site verification of documents clarifying the procurement documents;
   11) the language or languages of the tender and other documents submitted by the economic operator, provided that the contracting authority or entity allows for submitting tenders also in a foreign language;
   12) the structure and currency of the tender price or cost;
   13) the terms of and rules for the submission of a sample, provided that the contracting authority or entity demands the submission of a sample;
   14) in the case of a competitive dialogue, information on the prizes given or participation remuneration paid to the tenderers if the contracting authority or entity has provided for the giving of the prize or payment of the participation remuneration;
   15) information on the prize or participation remuneration specified in clause 2 of subsection 1 of § 128 of this Act;
16) the closing date for submission of tenders and the time of opening of tenders;
17) the minimum period of validity of tenders;
18) the value and the terms of calling in of the tender guarantee if the contracting authority or entity demands the provision of a tender guarantee;
19) contact details from where additional information on the contents of the procurement documents can be asked;
20) the grounds for rejection of all tenders, provided that the contracting authority or entity wishes to establish them.

(5) In public procurement that allows for negotiations, the contracting authority or entity omits from the procurement documents data that, given the nature of the public procurement, cannot be identified at the time of commencement of the procurement procedure or that will be negotiated in the public procurement. In an innovation partnership and in competitive procedure with negotiation, the contracting authority or entity determines the minimum level of the negotiable terms and conditions, which will not be negotiated during the procurement procedure.

(6) If the subject-matter of the public contract is a road vehicle, the procurement documents must contain terms and conditions that take into account the energy and environmental impact over the entire service life of the vehicle.

(7) More detailed terms and conditions regarding the energy and environmental impact spanning over the entire service life of a road vehicle, which are to be taken into account upon purchasing a road vehicle, are established by a regulation of the minister responsible for the field.

(8) If the exchange of information between the contracting authority or entity and the economic operator does not take place electronically, the procurement documents must, in addition to the provisions set out in subsection 4 of this section, contain the following data:
1) the structure of the tender and requirements for the marking and labelling of the tender;
2) the place of submission of tenders.

(9) In the event of differences between information given in the contract notice and other procurement documents, the information given in the contract notice is relied on.

(10) If contracting authorities or entities carry out public procurement jointly on the basis provided for in § 43 of this Act, the contracting authority or entity authorised to carry out the public procurement names in the procurement documents the contracting authorities or entities who will be parties to the public contracts to be awarded, their division per public contract and their shares in performing the obligations arising from the public contracts.

§ 78. Additional details of procurement documents in case of innovation partnership

(1) In the case of an innovation partnership, the contracting authority or entity describes in the procurement documents as precisely as possible its need for innovative supplies, services or works, which cannot be met by purchasing supplies, services or works already available on the market.

(2) The contracting authority or entity adds to the description specified in subsection 1 of this section the minimum requirements applicable to the contract subject-matter, which all the tenders must meet.

(3) In the procurement documents, the contracting authority or entity establishes the arrangements applicable to intellectual property rights in the case of an innovation partnership.

§ 79. Additional details of procurement documents upon carrying out electronic auction

If the contracting authority or entity has announced the organisation of an electronic auction in the contract notice, the procurement documents must contain at least the following details:
1) numerical or percentage indicators given in the tender the comparison of the values of which is the subject-matter of the electronic auction;
2) limits of the values of the indicators specified in clause 1 of this section, which arise from the subject-matter of the public contract;
3) information given to tenderers during the electronic auction and, where necessary, the time of giving the information;
4) information concerning the electronic auction process;
5) conditions based on which tenderers participate in the electronic auction, above all, the minimum differences by which new values or prices given during the auction must contrast with those offered earlier;
6) relevant information on the arrangement and technical characteristics of the electronic means and web connection.
§ 80. Descriptive document in competitive dialogue

In the case of a competitive dialogue, the contracting authority or entity may draw up a separate descriptive document that contains the following information:

1) the description of the subject-matter of the public contract or a reference to the relevant web address if the contracting authority or entity ensures unlimited and full electronic access to the description;
2) a reference to the published contract notice;
3) the time and place of commencement of the dialogue and the language or languages used;
4) the conditions applicable to the participants in the dialogue regarding whether the contracting authority or entity demands the transfer of the intellectual or other property rights to the solutions offered during the dialogue;
5) the rules of procedure of the dialogue which, inter alia, contain the methodology of reducing the number of the solutions constituting the subject-matter of the dialogue, provided that the contracting authority or entity holds the dialogue in successive stages.

§ 81. Changing of procurement documents and disruption in electronic system for submission of tenders and requests to participate

(1) The contracting authority or entity may change the contract notice or other procurement documents before the closing date for submission of tenders in an open procedure and before the time limit for submission of requests to participate in a restricted procedure, competitive procedure with negotiation, competitive dialogue and innovation partnership. The contracting authority or entity changes the closing date for submission of tenders or requests to participate after its expiry only if upon expiry of the time limit for submission of tenders or requests to participate the procurement procedure has been suspended in the case specified in subsection 1 of § 193 or in subsection 2 of this section of this Act.

(2) If tenders or requests to participate can only be submitted electronically and the electronic system for submission of tenders and requests to participate (hereinafter electronic system) is not operational upon expiry of the closing date for submission of tenders or requests to participate or within eight hours before the expiry of the time limit, the public procurement is automatically suspended and the time limit for submission of tenders or requests to participate does not expire.

(3) In the event specified in subsection 2 of this section and provided that the tenders or requests have not been opened, the contracting authority or entity extends the time limit for submission of tenders or requests to participate by a reasonable time after the operation of the electronic system has been restored and notifies the candidates and economic operators interested in the public procurement to the knowledge of the contracting authority or entity about the extension of the time limit without changing the contract notice. The extended time limit must not come less than one day following the sending of the notice of the extension of the time limit.

(4) Upon suspension of the procurement procedure, the contracting authority or entity may take only the steps specified in the second sentence of subsection 1 and in subsection 3 of this section. Public procurement suspended on the basis of subsection 2 of this section resumes after the sending of a notice on the extension of the time limit specified in subsection 3.

(5) To change the contract notice, the contracting authority or entity submits a changed contract notice to the register and makes certain that a notice on the changing of the contract notice has been sent to all tenderers, candidates and other economic operators interested in the public procurement who are known to the contracting authority or entity.

(6) Upon modification of other procurement documents, the contracting authority or entity makes the modified procurement documents electronically available or, if communication and exchange of information between the contracting authority or entity and the economic operator does not take place electronically, send them simultaneously to all tenderers, selected candidates or other economic operators who to the knowledge of the contracting authority or entity are interested in the public procurement, indicating the modified parts of the procurement documents separately.

§ 82. Extension of time limits in connection with modification of procurement documents

(1) Upon modification of the procurement documents, the contracting authority or entity must extend the time limit for submission of tenders or requests to participate in such a manner that as of the publication of the changed contract notice in the register or as of sending or making the modified procurement documents available the time limit for submission of tenders or requests to participate would equal to at least half of the respective minimum time limit provided for in § 93 or 94 of this Act.

(2) The contracting authority does not need to extend the time limit specified in subsection 1 of this section if the modifications concern merely the contact details or if the tender drawn up based on the initial procurement documents cannot turn non-conformant with the procurement documents due to the modifications or if the tenderer or candidate who meets the selection criteria based on the initial contract notice cannot remain
unselected due to the modifications made or if the modification made would not change the circle of the economic operators interested in the public procurement or change the contents of the tenders.

(3) If the contracting authority or entity does not make the procurement documents available to economic operators in the manner specified in subsection 1 of § 77 of this Act or within the time limits provided for in subsection 2 or does not make additional information available to the economic operators within the time limits provided for in subsection 1 of § 46, even though these were applied for in a timely manner, the contracting authority or entity will, where necessary, extend the time limit for submission of tenders by a reasonable time and, where necessary, postpone the time of opening of tenders, so that all the economic operators could receive the information needed to submit a tender.

(4) The contracting authority or entity may extend the time limit for submission of tenders or requests to participate and, as a result thereof, change the time of opening of tenders or requests to participate. If the contracting authority or entity merely extends the time limit and changes the time of opening tenders or requests to participate, the changed time limit does not need to comply with subsection 1 of this section. The time limit is not extended if the initial closing date arrives before the publication of the changed contract notice in the register or before the modified procurement documents are made available. The shortening of the time limits is not allowed.

§ 83. Notification of termination of procurement procedure

(1) Within 30 days after the termination of the procurement procedure, the contracting authority or entity submits to the register a notice of awarding the public contract or, if the procurement procedure has terminated on the basis of clauses 2–7 of subsection 3 of § 73 of this Act, indicates the main circumstances related to the termination of the procurement procedure in the register. If the contracting authority or entity has not commenced the public procurement in the register based on subsection 3 of § 72, the contracting authority or entity submits a public contract award notice only if the public procurement has terminated with the awarding of a public contract or framework agreement.

(2) In the case of a dynamic purchasing system, the contracting authority or entity submits a public contract award notice within 30 days after the end of each quarter regarding public contracts awarded during the quarter.

(3) In the case of a framework agreement, the contracting authority or entity submits to the register details on the time of awarding and value of public contracts awarded on the basis of the framework agreement over a period of 12 months within 30 days after the passing of each 12-month period from the awarding of the framework agreement.

(4) If the contracting authority or entity has divided the public procurement into lots within a single procedure, the contracting authority or entity submits a public contract award notice within 30 days after the awarding of the first public contract or framework agreement, provided that any of the grounds for termination of the procurement procedure provided for in subsection 3 of § 73 of this Act has not occurred with regard to all the lots. With regard to the remaining lots, the contracting authority or entity submits a separate public contract award notice within 30 days after the awarding of a public contract or framework agreement with regard to each lot.

(5) If the contracting authority or entity has commenced the procurement procedure with an indicative notice, the contracting authority or entity notes in a public contract award notice submitted on the last public contract covered by the indicative notice that the contracting authority or entity will not award additional public contracts in the period covered by the indicative notice.

(6) In a public contract award notice, the contracting authority or entity does not indicate the information the publication of which would obstruct the work of law enforcement bodies, be in conflict with public interests, compromise the trade secrets of economic operators or distort competition between economic operators.

(7) Within 30 days after the termination of a public contract, the contracting authority or entity submits to the register the following information:
   1) the actual value of the public contract;
   2) amendments made to the public contract regarding which no public contract modification notice was given;
   3) breaches of the public contract by the economic operator, as a result of which a legal remedy specified in clause 8 of subsection 4 of § 95 of this Act has been applied, and information on whether the contracting authority’s or entity’s claim has been contested.

(8) In the case of a framework agreement, the contracting authority or entity submits the information specified in subsection 7 of this section within 30 days after the termination of the framework agreement or termination of the last public contract awarded on the basis of the framework agreement, provided that the public contract terminates later than the framework agreement.
§ 84. Report submitted to European Commission

(1) At the request of the European Commission, the contracting authority or entity draws up and submits to it in writing via the Ministry of Finance a report on each procurement procedure and dynamic purchasing system whose estimated value equals or exceeds the international threshold, which contains the following information:

1) the name and address of the contracting authority or entity;
2) the subject-matter and value of the public contract, framework agreement or dynamic purchasing system;
3) if the contracting authority or entity has reduced the number of the candidates whom its makes an invitation to submit a tender in a restricted procedure, competitive dialogue, innovation partnership or competitive procedure with negotiation or reduced the number of negotiated solutions in a competitive dialogue or innovation partnership, the names of the chosen candidates and rejected candidates or the names of the tenderers who offered the chosen solutions and rejected solutions and the reasons for choosing or rejecting them;
4) the reasons for the rejection of abnormally low tenders;
5) the name of the successful tenderer and the reasons for declaring its tender successful;
6) the size of the public contract or lot of the framework agreement on which the successful tenderer intends to award subcontracts and the names of the possible subcontractors, provided that the information is known at the time of drawing up the report;
7) the basis of and reasons for using competitive procedure with negotiation, competitive dialogue or negotiated procedure without prior publication;
8) the basis of and reasons for termination of the procurement procedure if no public contract or framework agreement was awarded;
9) upon submission of a tender, the reasons for not using electronic means;
10) identified conflicts of interests and measures taken to eliminate them.

(2) The report specified in subsection 1 of this section is not drawn up regarding public contracts awarded on the basis of the framework agreement or if the information requested in the report is contained in the public contract award notice.

Subdivision 2
Award Criteria

§ 85. Establishment of award criteria

(1) In the procurement documents, the contracting authority or entity sets out the award criteria related to the subject-matter of the public contract and ensuring actual competition for the purpose of determining the most economically advantageous tender.

(2) The award criteria are linked to the subject-matter of the public contract also if upon formulating the criteria account is taken of processes related to the provision or marketing of the supplies, services or works that constitute the subject-matter of the public contract or activities and costs at other stages of the life cycle, even if these do not constitute essential parts of the subject-matter of the public contract.

(3) Upon identifying the most economically advantageous tender, the contracting authority or entity takes into account the best price-quality ratio that includes qualitative, environmental or social criteria in accordance with subsection 8 of this section, the tender price or cost, including costs that are likely to be incurred upon performance of the public contract and the costs of the life cycle in accordance with § 86 of this Act.

(4) Upon identifying the most economically advantageous tender, the contracting authority or entity may take into account only the tender price or cost, provided that the economic advantageousness of the tender for the contracting authority or entity depends solely on the tender price or cost and all other terms and conditions of the prospective public contract, including criteria related to the subject-matter of the public contract, have been exhaustively determined in the procurement documents.

(5) In an innovation partnership and in a competitive dialogue, the contracting authority or entity takes into account only the best price-quality ratio upon identifying the economically most advantageous tender.

(6) When purchasing software development services the contracting authority or entity, upon identifying the most economically advantageous tender, takes into account the costs of the life cycle in accordance with § 86 of this Act in addition to the tender price or states the reasons for disregarding the costs of the life cycle in the procurement documents.

(7) The contracting authority or entity may determine the price or cost of the public contract in the procurement documents and assess tenders solely based on qualitative, environmental or social criteria.

(8) The qualitative, environmental or social criteria may be, above all, the following:

1) quality, including the technical merit, aesthetic, functional, environmental, social and innovative characteristics, accessibility, and trading conditions;
2) specific and proven organisation, qualification or experience of persons directly involved in performing the public contract, where the quality of performance of the public contract directly depends on it;
3) after-sales service and technical assistance, delivery conditions and conditions of completion.
(9) The contracting authority or entity specifies, in the procurement documents, the relative weighting which it gives to each of the award criteria chosen to determine the most economically advantageous tender.

§ 86. Life-cycle costing

(1) ‘Life cycle’ means all consecutive or interlinked stages of provision of supplies, services or works, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation.

(2) Upon life-cycle costing, the contracting authority or entity takes in part or in full into account the following:
   1) costs, borne by the contracting entity or authority or third parties, such as costs relating to acquisition, costs of use, maintenance costs, end of life costs;
   2) cost imputed to environmental externalities, provided their monetary value can be determined and verified.

(3) The contracting authority or entity indicates in the procurement documents the method which the contracting authority or entity uses to determine the life-cycle costs and the documents to be submitted by the tenderer for determining the costs.

(4) The method used for the assessment of costs imputed to environmental externalities must be publicly available and be based on verifiable and non-discriminatory criteria that do not restrict competition. The data and documents required for determining the costs can be provided with reasonable effort by normally diligent tenderer.

### Subdivision 3

**Technical Specifications**

§ 87. Content of technical specifications

(1) For the purposes of this Act, ‘technical specifications’ means the following established by the contracting authority or entity for the purpose of describing the subject-matter of the public contract using the terminology and the level of accuracy understandable to persons engaged in the respective field:
   1) list of the characteristics of and requirements applicable to the supplies or services that constitute the subject-matter of a public supply contract or a public service contract;
   2) body of the characteristics of and requirements applicable to the works that constitute the subject-matter of a public works contract.

(2) The list of requirements applicable to supplies or services may include, inter alia, the following:
   1) environmental protection requirements;
   2) quality and construction requirements, including the requirement of accessibility for disabled persons;
   3) requirements applicable to conformity assessment, performance, product performance requirements, safety and dimensions;
   4) requirements for conformity with the name under which the product is traded;
   5) terminology and symbols used;
   6) testing and test methods;
   7) requirements for packaging, marking and labelling, and user instructions;
   8) requirements for the production process and technology at any stage of the life cycle of the product or service;
   9) conformity assessment methods.

(3) The body of technical requirements for works must describe requirements for materials, products or supplies in a manner that allows for assessing their conformity with the purpose of use of the subject-matter determined by the contracting authority or entity.

(4) Requirements for works may include, inter alia, the following:
   1) environmental requirements and construction requirements, including accessibility for disabled persons;
   2) conformity assessment;
   3) requirements for performance, safety or dimensions;
   4) measures for ensuring the quality level demanded by the contracting authority or entity;
   5) terminology and symbols used;
   6) testing and test methods;
   7) requirements for packaging, marking and labelling, and for the production process and technology at any stage of the life cycle of the works;
   8) precepts related to the design and cost of the works;
   9) conditions of testing, supervision and acceptance;
   10) requirements for user instructions;
11) construction methods, technology and other technical conditions, which the contracting authority or entity is able to describe and which are related to completed works, their materials or parts.

§ 88. Drawing up technical specifications

(1) If there is no technical regulation in the respective field, the contracting authority or entity draws up technical specifications as a description of the characteristics of use or functional requirements for the subject-matter of the public contract, which may include environmental protection requirements and must be sufficiently precise so that the tenderer could determine the subject-matter of the public contract and the public contract could be awarded, or in the manner specified in subsection 2 of this section or by combining the two.

(2) Upon drawing up the technical specifications, the contracting authority or entity may rely on the following in the following order:
1) the European standard transposed as the Estonian standard;
2) the 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 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 the rules 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) the original Estonian standard, Estonian technical approval or Estonian technical specifications relating to the design, calculation and execution of works or use of products.

(3) Every reference that the contracting authority or entity makes in the technical specifications to any ground specified in subsection 2 of this section as a criterion of the conformity of a tender with the technical specifications is accompanied by the words ‘or equivalent.’

(4) Upon drawing up technical specifications on the ground specified in subsection 1 of this section, the contracting authority or entity may refer to any ground specified in subsection 2 as the performance requirements specified in subsection 1 or as a means of ensuring conformity with functional requirements.

(5) The contracting authority or entity may demand that provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

(6) Technical specifications do not refer to a specific source, process, trade mark, patent, type, origin or type of production with the effect of favouring or eliminating certain undertakings or certain products. Such reference is permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the public contract in accordance with subsections 1 and 2 of this section is not possible. Such reference is accompanied by the words ‘or equivalent.’

(7) Technical specifications must ensure that the conditions for the submission of a tender are equal for all tenderers and must not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

(8) Where technically possible and relevant, account must also be taken of accessibility for persons with disabilities in connection with the subject-matter of the public contract or the technical specifications must be drawn up in such a way that everyone would be able to use the subject-matter of the public contract.

§ 89. Labels

(1) ‘Label’ means any document, certificate or attestation confirming that the supplies, services, works, processes or procedures in question meet certain requirements.

(2) Where the technical specifications are based, inter alia, on environmental, social or other special characteristics, the contracting authority or entity may require a specific label as means of proof that the supplies, services or works correspond to the required characteristics, provided that:
1) the label requirements only concern criteria which are linked to the subject-matter of the public contract and are appropriate to define characteristics of the supplies, services or works;
2) the label requirements are based on objectively verifiable and non-discriminatory criteria;
3) the label is established in a procedure in which all interested parties and organisations may participate;
4) application for a licence to use the label is publicly accessible to all interested parties;
5) the label requirements have been set by a party over which the economic operator applying for the label cannot exercise a decisive influence.

(3) Where contracting authority or entity does not require the supplies, services or works to meet all of the label requirements, it indicates which label requirements are referred to.
(4) Where a label also sets out requirements not linked solely to the supplies, services or works that constitute the subject-matter of the public contract, the contracting authority or entity does not require the label as such but may refer to those of the detailed specifications of that label or a part thereof that is linked to the supplies, services or works that constitute the subject-matter of the public contract and are appropriate to define characteristics of this subject-matter.

**Subdivision 4**

**Tender Guarantee**

**§ 90. Demanding of tender guarantee**

(1) The contracting authority or entity may demand that the tenderer provide a tender guarantee to secure the full or partial compensation for costs arising from the tenderer’s failure to perform obligations during the public procurement, including to secure the awarding of the public contract, but not to an extent exceeding one per cent of the estimated value of the public contract. The tenderer guarantee must be demanded from all tenderers in the same amount.

(2) If the contracting authority or entity has divided the public procurement into lots within a single procedure, the contracting authority or entity may also demand a tender guarantee for a lot in proportion to the estimated value of the lot. The tender guarantee for the lot must be demanded from all tenderers in the same amount.

(3) The tenderer provides the tender guarantee demanded by the contracting authority or entity in the form of a guarantee issued by a credit or financial institution or insurer or in the form of a cash deposit paid to the current account of the contracting authority or entity.

(4) If the tender guarantee has been provided for a fixed term until the expiry of the period of validity of the tender, the tenderer must, upon extension of the period of validity of the tender based on subsection 1 of § 112 of this Act, submit to the contracting authority or entity proof of the extension of the tender guarantee or give a new guarantee.

**§ 91. Calling in and return of tender guarantee**

(1) The contracting authority or entity will not return the tender guarantee to the tenderer or will call it in where the tenderer withdraws the tender during its period of validity after the time limit for submission of tenders, the public contract is not awarded due to the tenderer’s other acts or omissions or, within the time limit set by the contracting authority or entity, the tenderer fails for a reason arising from the tenderer to commence the performance of the public contract concluded by acceptance.

(2) The contracting authority or entity may retain the tender guarantee or call it in if the tenderer is not qualified on the ground provided for in subsection 5 of § 178 of this Act.

(3) If the contracting authority or entity calls in or refuses to return the tender guarantee, the contracting authority or entity returns the tender guarantee to the extent that it exceeds the damage suffered by the contracting authority or entity.

(4) The contracting authority or entity returns the tender guarantee to the tenderer within five working days after:
   1) termination of the procurement procedure on the basis of clause 1 of subsection 3 of § 73 of this Act;
   2) entry into force of the procurement procedure termination decision on the basis of clause 2, 3, 4, 6 or 7 of subsection 3 of § 73 of this Act;
   3) entry into force of the decision specified in subsection 5 of § 96 or subsection 5 of § 98 or the tender rejection decision specified in subsection 1 of § 114 of this Act;
   4) the expiry of the period of validity of the tender;
   5) withdrawal of the tender in the case provided for in subsection 3 of § 111 of this Act.

(5) If the tender guarantee is a guarantee, the contracting authority or entity informs the guarantor of a waiver of the rights arising from the guarantee in the events specified in subsection 4 of this section.

**Subdivision 5**
§ 92. Time limits for submission of tenders and requests to participate in procurement procedure

(1) The contracting authority or entity determines the time limit for the submission of tenderers or requests to participate based on the subject-matter of the public contract, in particular, its complexity and quantity, volume or amount.

(2) The contracting authority or entity may set the closing date for submission of tenders or requests to participate on any day between Monday and Friday, except where it is a public holiday, between 9:00 a.m. and 4:00 p.m.

(3) If tenders can be submitted only after inspecting the place of performance of the public contract or examining the documents clarifying the procurement documents on site, the contracting authority or entity sets a time limit for the submission of tenders, which allows all economic operators to receive enough information to submit a tender.

§ 93. Time limits for submission of tenders in open procedure

(1) In an open procedure, the time limit for the submission of tenders must not be shorter than:

1) 15 days from the submission of the contract notice to the register, except in the case of a public works contract whereby the estimated value of the public procurement equals or exceeds the public procurement threshold, but is below the international threshold and the entire communication and the entire exchange of information in the procurement procedure takes place via electronic means;

2) 20 days from the submission of the contract notice to the register, except in the case of a public works contract whereby the estimated value of the public procurement equals or exceeds the public procurement threshold, but is below the international threshold and the entire communication and the entire exchange of information in the procurement procedure does not take place via electronic means;

3) 25 days from the submission of the contract notice to the register in the case of a public works contract whereby the estimated value of the public procurement equals or exceeds the public procurement threshold, but is below the international threshold;

4) 30 days from the submission of the contract notice to the register, except in the case of a public works contract whereby the estimated value of the public procurement equals or exceeds the international threshold and the entire communication and exchange of information in the procurement procedure takes place via electronic means;

5) 35 days from the submission of the contract notice to the register, except in the case of a public works contract whereby the estimated value of the public procurement equals or exceeds the international threshold and the entire communication and exchange of information in the procurement procedure does not take place via electronic means;

6) 45 days from the submission of the contract notice to the register in the case of a public works contract whereby the estimated value of the public procurement equals or exceeds the public procurement threshold.

(2) The contracting authority or entity may shorten the time limits specified in clauses 2, 4 and 5 of subsection 1 of this section to 15 days and the time limit specified in clause 6 to 25 days if:

1) the contracting authority or entity has submitted an indicative notice in accordance with the rules provided for in subsection 3 of § 75 of this Act and the indicative notice contains all the mandatory information required in a contract notice, which was available at the time of submission of the indicative notice, or

2) the contracting authority or entity is unable to adhere to the minimum time limits for the submission of tenders due to objective and urgent circumstances whose reasons are set out in the procurement documents.

(3) If the register sends to the contracting authority or entity a notice of the elimination of deficiencies contained in the contract notice, the contracting authority or entity will set a new time limit for the submission of tenders as of the submission of a non-deficient contract notice to the register.

§ 94. Time limits for submission of tenders and requests to participate in restricted procedure, competitive procedure with negotiation, innovation partnership and competitive dialogue

(1) In a restricted procedure, competitive procedure with negotiation, innovation partnership and competitive dialogue, the time limit for submission of requests to participate must not be shorter than:

1) 15 days from the submission of the contract notice to the register if the estimated value of the public procurement equals or exceeds the public procurement threshold, but is below the international threshold;

2) 30 days from the submission of the contract notice to the register if the estimated value of the public procurement equals or exceeds the international threshold.

(2) If the register sends to the contracting authority or entity a notice of the elimination of deficiencies contained in the contract notice, the contracting authority or entity will set a new time limit for the submission of requests to participate as of the submission of a non-deficient contract notice to the register.
(3) In a restricted procedure, competitive procedure with negotiation, innovation partnership and competitive dialogue, the time limit for submission of tenders must not be shorter than:

1) 15 days from the submission of the contract notice to the register, except in the case of a public works contract, if the estimated value of the public procurement equals or exceeds the public procurement threshold, but is below the international threshold;
2) 25 days from the submission of the contract notice to the register in the case of a public works contract whereby the estimated value of the public procurement equals or exceeds the public procurement threshold, but is below the international threshold;
3) 25 days from the submission of the invitation to tender if the estimated value of the public procurement equals or exceeds the international threshold and the entire communication and exchange of information takes place via electronic means;
4) 30 days from the submission of the invitation to tender if the estimated value of the public procurement equals or exceeds the international threshold and the entire communication and exchange of information does not take place via electronic means.

(4) The contracting authority or entity may shorten the time limits specified in clauses 1, 3 and 4 of subsection 3 or this section to up to ten days in the case of a public supply contract and a public service contract or to up to 15 days in the case of a public works contract if:

1) the contracting authority or entity has submitted an indicative notice in accordance with the rules provided for in subsection 3 of § 75 of this Act and the indicative notice contains all the mandatory information required in a contract notice, which was available at the time of submission of the indicative notice, or
2) the contracting authority or entity is unable to adhere to the minimum time limits for the submission of tenders due to objective and urgent circumstances whose reasons are set out in the procurement documents.

(5) On the ground provided for in clause 2 of subsection 4 of this section, the contracting authority or entity may shorten the time limit specified in clause 2 of subsection 1 to 15 days.

Division 3
Qualitative Selection of Tenderer and Candidate

Subdivision 1
Exclusion of Tenderer and Candidate

§ 95. Grounds for exclusion of tenderer and candidate

(1) The contracting authority or entity does not award a public contract to a tenderer or a candidate and excludes from the procurement procedure a tenderer or a candidate:

1) who or whose member of an administrative, management or supervisory board or another legal representative or a contractual representative involved in the public procurement has been convicted by final judgment for participating a criminal group, violating the duty of integrity, corrupt practice, fraud, terrorist act, other criminal offence linked to terrorist activities or inciting or aiding or abetting or attempting to commit an offence, money laundering offence, or terrorist financing;
2) who or whose member of an administrative, management or supervisory board or another legal representative or a contractual representative involved in the public procurement has been convicted by final judgment for provision of employment for an alien staying in the country without a legal basis;
3) who or whose member of an administrative, management or supervisory board or another legal representative or a contractual representative involved in the public procurement has been convicted by final judgment for illegal use of child labour or another form of trafficking in human beings;
4) who has tax arrears within the meaning of the Taxation Act regarding state taxes, contributions or environmental charges or tax arrears or overdue social security contributions under the legislation of the country where the tenderer or candidate is established;
5) who or whose member of an administrative, management or supervisory board is a subject of an international sanction within the meaning of the International Sanctions Act.

(2) Clauses 1–3 of subsection 1 of this section are applied until the conviction data of the person have not been deleted from the criminal records database in accordance with the Criminal Records Database Act or the conviction is valid under the legislation of the country of residence or the country where the person is established, but not after five years have passed from the entry into force of the final judgment of conviction, taking account of the time of commencement of the public procurement.

(3) The contracting authority or entity does not need to apply subsection 1 of this section if overriding requirements in the general interest make a public contract award indispensable and no public contract would be awarded upon exclusion of the tenderer or candidate.
§ 96. Verification of grounds for exclusion

(1) Upon verification of grounds for exclusion, the rules provided for in § 104 of this Act are applied, unless otherwise provided for in this Act.

(2) The contracting authority or entity may demand that the tenderer or candidate submit only the following documents for the purpose of verifying the absence of the grounds for exclusion regarding the tenderer or candidate:

1) report from the criminal records database on the absence of the circumstances specified in clauses 1–3 of subsection 1 of § 95 of this Act or an equivalent document issued by a judicial or administrative body of the country where the tenderer or candidate is established;

2) certificate of a competent authority of the country where the tenderer or candidate is established regarding the circumstances specified in clause 4 of subsection 1 and clauses 1 and 3 of subsection 4 of § 95 of this Act.

(3) Where the country of location of the tenderer or candidate does not issue the documents specified in subsection 2 of this section, they may be replaced by a declaration on oath made by the tenderer or candidate or its representative before a competent judicial or administrative authority, a notary or a competent professional or trade body in accordance with the legislation of the country where the tenderer or candidate is established.

(4) The contracting authority or entity may apply grounds for exclusion not specified in subsection 2 of this section if the contracting authority or entity is able to prove in any manner that grounds for exclusion of the tenderer or candidate exist.

(5) Upon exclusion of the tenderer or candidate from the procurement procedure, the contracting authority or entity makes a respective reasoned written decision. An excluded tenderer or candidate cannot participate in the procurement procedure any further.
§ 97. Self-cleaning

(1) In public procurement the estimated value of which equals or exceeds the international threshold, a tenderer or candidate regarding whom there is at least one of the grounds specified in clauses 1–3 of subsection 1 and clauses 2–11 of subsection 4 of § 95 of this Act may submit along with the tender or request to participate or, in a negotiated procedure without prior publication, evidence to the effect that it has taken measures to restore its reliability. Such measures may be, for instance, the payment of compensation in respective of damage caused by an offence or assumption of the respective obligation, active collaboration with the investigating authorities and clarification of the facts and circumstances in a comprehensive manner or technical, organisational and staff measures that allow for preventing further offences.

(2) The contracting authority or entity evaluates the evidence specified in subsection 1 of this section and if the contracting authority or entity considers the evidence to be sufficient to prove the reliability of the tenderer or candidate, the contracting authority or entity will not exclude the tenderer or candidate from the procurement procedure by a respective reasoned written decision and may award the public contract to the tenderer or candidate in spite of the existence of the ground for exclusion.

Subdivision 2
Qualification of Tenderer and Candidate

§ 98. Verification of qualifications of tenderer and candidate

(1) The contracting authority or entity may verify the suitability of a tenderer or candidate to pursue the professional activity and establish selection criteria to its economic and financial standing as well as technical and professional ability. The selection criteria must correspond to the nature, quantity and purpose of the supplies, services or works that constitute the subject-matter of the public contract and be proportionate thereto.

(2) If the contracting authority or entity has divided the public procurement into lots within a single procedure and established different selection criteria with regard to the lots, the contracting authority or entity will verify the conformity of the tenderers or candidates with the selection criteria established in the procurement documents regarding each lot.

(3) The contracting authority or entity cannot refuse to qualify a tenderer or candidate for the reason that the tenderer or candidate does not have prior public contracts for the purposes of § 8 of this Act.

(4) If the tenderer or candidate fails to submit within the time limit set by the contracting authority or entity the required documents in proof of qualifications or clarifications regarding the contents of the submitted documents or data or documents allowing for clarification or if the documents are not available to the contracting authority or entity based on public data in a database without incurring significant costs, the contracting authority or entity will not qualify the tenderer or candidate.

(5) The contracting authority or entity makes a respective reasoned written decision regarding qualifying or not qualifying the tenderer or candidate. A tenderer or candidate who is not qualified cannot participate in the procurement procedure any further.

(6) The contracting authority or entity may decide that the tenderer or candidate does not meet the criteria established to the technical and professional ability based on § 101 of this Act if the contracting authority or entity establishes that the tenderer or candidate has conflicting interests that may adversely affect the performance of the public contract.

§ 99. Suitability to pursue professional activity

(1) If, under the legislation of the country where the tenderer or candidate is established, the economic operator must be entered in a professional or commercial register or if special requirements have been established in the legislation for an activity pursued on the basis of a public service contract, the contracting authority or entity may specify in the contract notice which special requirements must be met or which registrations or authorisations must be held in order to qualify the tenderer or candidate.

(2) To verify the meeting of the requirement specified in subsection 1 of this section, the contracting authority or entity may demand that the tenderer or candidate submit relevant evidence in proof of the existence of the registration or authorisation or fulfilment of the specials requirement, unless these are available to the contracting authority or entity based on public data in a database without incurring significant costs.

(3) If the tenderer or candidate does not hold the respective registration or authorisation or does not meet the established special requirements, the contracting authority or entity will not qualify the tenderer or candidate.
§ 100. Economic and financial standing

(1) To verify if economic and financial standing of the tenderer or candidate meets the selection criteria, the contracting authority or entity may demand the submission of the following documents:

1) relevant bank certificate or other relevant document declared suitable by the contracting authority or entity, which indicates that the funds required for ensuring the performance of the public contract are at the disposal of the tenderer or candidate, where necessary;

2) evidence of professional risk indemnity insurance or another relevant document declared suitable by the contracting authority or entity, which indicates that the tenderer or candidate has or is able to obtain the funds required for indemnification of damage that may be caused by a possible breach of the public contract;

3) approved annual reports of up to the last three financial years preceding the public procurement or extracts of such reports, which indicate the level of the ratio of assets and liabilities;

4) a statement of the tenderer’s or candidates overall turnover or of turnover in the field covered by the public contract or to the extent corresponding to its subject-matter for a maximum of the last three financial years available by the time of commencement of the public procurement, depending on the date on which the tenderer or candidate was set up or started trading and on the availability of information on the minimum yearly turnover required, including in the field covered by the public contract.

(2) Upon determining the ratio specified in clause 3 of subsection 1 of this section, the contracting authority or entity describes the methods and criteria used for determining the ratio.

(3) On the basis of clause 4 of subsection 1 of this section, the contracting authority or entity is not allowed to require the tenderer or candidate to have a net turnover exceeding the estimated value of the public contract more than twice. If due to the risks related to the performance of the public contract it is necessary to set a higher yearly turnover requirement, the contracting authority or entity must state the reasons for the requirement in the procurement documents. If the contracting authority or entity has divided the public procurement into lots within a single procedure, the contracting authority or entity may establish to the net turnover of the tenderer or candidate who submits a tender or request to participate with regard to more than one lot a higher requirement in proportion to the estimated value of the lots.

(4) If a tenderer or candidate cannot submit the required documents with good reason, the tenderer or candidate can characterise its economic and financial standing using other documents that have been declared suitable by the contracting authority or entity, provided that the tenderer or candidate is not put into an advantageous position in comparison with other tenderers or candidates.

(5) Instead of the annual reports specified in clause 3 of subsection 1 of this section or extracts of such reports, the tenderer or candidate may characterise its economic and financial standing using other relevant documents, where the annual reports are not public under the legislation of the country where the tenderer or candidate is established.

§ 101. Technical and professional ability

(1) In order to verify if the technical and professional ability of the tenderer or candidate meets the selection criteria, the contracting authority or entity may demand the submission of the following information and documents, depending on the nature, quantity and manner of use of the supplies, services or works purchased on the basis of the public contract:

1) list of the major works contracts that have the characteristics determined by the contracting authority or entity and have been performed within 60 months preceding the commencement of the public procurement, and evidence proving that the works were performed in accordance with the requirements;

2) list of supply contracts or service contracts that have the characteristics determined by the contracting authority or entity and have been performed within 36 months preceding the commencement of the public procurement, along with information on their value, dates and other contracting parties;

3) information on technicians or technical bodies involved, whether or not belonging directly to the tenderer’s or candidate’s undertaking or acting as subcontractors, especially those responsible for quality control; in the case of a public works contract, indication on persons or technical bodies responsible for the performance of works;

4) description of the technical facilities used for ensuring quality, and the quality, study and research facilities and measures;

5) information on the supply chain management and tracking systems that the tenderer or candidate will be able to apply when performing the contract;

6) information on the educational and professional qualifications of the tenderer or candidate, its managers or persons responsible for the provision of services or management of works, where these are necessary for providing the services or managing the works and the information is not used upon assessment of tenders;

7) environmental management measures applied when performing the public contract;

8) statement of the average annual number of employees, management board members and persons working for the undertaking on another contractual basis in the last three years;

9) statement of the tools, plant and technical equipment available or a respective written agreement on the acquisition or deployment of technical equipment required for performance of the public contract;

10) information on the proportion of the public contract which the tenderer or candidate intends possibly to subcontract;

11) samples, descriptions or photographs with regard to the products to be supplied, the authenticity of which must be certified, where necessary;
12) certificates drawn up by a technical inspection or technical regulatory authority attesting the conformity of the supplies which constitute the subject-matter of the public contract, along with references to technical specifications or standards.

(2) Upon establishing the criteria specified in clauses 1 and 2 of subsection 1 of this section, the contracting authority or entity may, for the purpose of ensuring sufficient competition, take account of information on works contracts performed more than 60 months ago or supplies or services contracts performed more than 36 months ago.

(3) Where the supplies or services that constitute the subject-matter of the public contract are complex or required for a special purpose, the contracting authority or entity or on its behalf a competent official body of the country in which the tenderer or candidate is established may carry out a check on the production facilities of the tenderer or candidate or the technical capacity of the tenderer or candidate and, where necessary, also on the means of study and research which are available to it and the quality control measures it will operate.

(4) If the subject-matter of a public supply contact is, in addition to supplies, their siting or installation work or if other services or works are involved, the contracting authority or entity may check the qualifications of the tenderer or candidate to provide the service or to execute the work, taking account of, in particular, the person’s technical and professional ability.

(5) Where the contracting authority or entity requires the submission of certificates drawn up by independent bodies attesting that the tenderer or candidate complies with certain quality assurance standards, the contracting authority or entity refers to quality assurance systems based on the relevant European standards series certified by accredited bodies.

(6) Where the contracting authority or entity requires the submission of a list of the environmental management measures applied on the basis of clause 7 of subsection 1 of this section, the contracting authority or entity refers to the Eco-Management and Audit Scheme (EMAS) of the Union or to European Union certification legislation based on international standards or to environmental management standards based on the relevant European or international standards by accredited bodies.

(7) The contracting authority or entity recognises equivalent certificates from bodies established in other Member States of the European Union and, in the case specified in subsection 6 of this section, accepts other evidence provided by the tenderer or candidate on equivalent environmental management measures.

(8) Where the tenderer or candidate is unable to provide the evidence specified in subsection 5 of this section for reasons not dependent on the tenderer or candidate, the contracting authority will also accept other evidence of equivalent quality assurance measures, provided that these measures are equivalent to those required under the contracting authority's or entity's quality assurance standard.

§ 102. Online repository of certificates (e-Certis) and Internal Market Information System

(1) Upon implementation of §§ 95–101 of this Act, the contracting authority or entity takes account of the information published in the European Commission’s online repository of certificates (e-Certis).

(2) To verify the correctness of the information required on the basis of this Act, the contracting authorities or entities may use the Internal Market Information System established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council (IMI Regulation) on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (OJ L 316, 14.11.2012, pp 1–11).

(3) Organisations that issue certificates containing the information required on the basis of this Act are required to respond to enquiries submitted via the Internal Market Information System specified in subsection 2 of this section within 30 days from the submission of the enquiry.

§ 103. Reliance on resources of other economic operator

(1) With regard to criteria relating to economic and financial standing and to criteria relating to technical and professional ability, a tenderer or candidate may, where appropriate and for a particular public contract, rely on the resources of other economic operators, regardless of the legal nature of the links which it has with them. To that effect the tenderer or candidate must prove to the satisfaction of the contracting authority or entity that the economic operators have the respective resources, they consent to the use of these resources, and the tenderer or candidate will use them for performing the public contract.

(2) In the case of the educational and professional qualifications provided for in clause 6 of subsection 1 of § 101 of this Act and the respective experience, it is allowed to rely on the resources of another economic operator only if having such educational and professional qualifications or experience is necessary for the performance of the public contract or a lot thereof and the economic operators whose resources are relied on personally perform the public contract or the lot thereof.
(3) If the tenderer or candidate wishes to prove that it meets the requirements for economic and financial standing based on the resources of another economic operator, the contracting authority or entity may demand in the procurement documents that the tenderer or candidate and the other economic operators bear joint and several liability for the performance of the lot of the public contract with regard to which the resources of the other economic operator were relied on.

(4) To prove their economic and financial standing and technical and professional ability, joint tenderers and joint candidates may rely on the resources of other joint tenderers or joint candidates in accordance with the terms and conditions provided for in subsections 1–3 and 7 of this section. The contracting authority or entity may demand in the procurement documents that the joint tenderers indicate the value and nature of the lot of the public contract performed by each joint tenderer.

(5) The contracting authority or entity verifies if the grounds for exclusion provided for in subsection 1 of § 95 of this Act exist regarding the economic operators whose resources are relied on in accordance with this section and if they meet the established selection criteria regarding which the tenderer or candidate has relied on their indicators.

(6) The contracting authority or entity demands that the tenderer or candidate replace the economic operator whose resources are relied on in accordance with this section and regarding whom the grounds for exclusion provided for in subsection 1 of § 95 of this Act exist, giving a time limit of at least five working days to that effect. The contracting authority or entity may demand that the tenderer or candidate replace within the same time limit such economic operator regarding whom the grounds for exclusion provided for in subsection 4 of § 95 of this Act exist. If the contracting authority or entity demands that the tenderer or candidate replace the economic operator, but the tenderer or candidate fails to comply with the demand, the contracting authority or entity will not qualify the tenderer or candidate, unless the tenderer or candidate meets the selection criteria on its own.

(7) Upon awarding public service contracts or public works contracts or such public supply contracts the subject-matter of which involves the siting or installation of supplies, the contracting authority or entity may demand in the procurement documents that the tenderer or candidate perform some of the essential works under the public contract on its own.

§ 104. Single Procurement Document

(1) The contracting authority or entity demand the submission of a SingleProcurement Document containing the updated declarations of the tenderer or candidate regarding the absence of exclusion grounds, compliance with the selection criteria and, where relevant, compliance with the objective and non-discriminatory criteria specified in subsection 3 of § 54, subsection 3 of § 58, subsection 3 of § 64 and subsection 2 of § 141 of this Act.

(2) The Single Procurement Document must contain the following:
1) the tenderer’s or candidate’s declaration that none of the grounds provided for in subsection 1 of 4 of § 95 of this Act exist regarding it;
2) the tenderer’s or candidate’s declaration that it meets all the requirements set out in the contract notice for qualifying the tenderer or candidate;
3) the candidate’s declaration that it meets all the conditions established for limiting the number of candidates, provided that these have been provided for in the case of a restricted procedure, competitive procedure with negotiation, competitive dialogue or innovation partnership;
4) a reference to which authority or third party issues the data or documents corresponding to the tenderer’s or candidate’s declaration, where necessary, and the tenderer’s or candidate’s declaration that it can immediately submit the documents to the contracting authority or entity, where necessary;
5) a reference to whether the data or documents corresponding to the tenderer’s or candidate’s declaration are available to the contracting authority or entity on the basis of public data in an electronic database without incurring significant costs along with the address of the respective website, identification data and, where necessary, the tenderer’s or candidate’s declaration that it consents to the disclosure of its data.

(3) In public procurement whose estimated value equals or exceeds the international threshold, the SingleProcurement Document is submitted on the standard form established by the European Commission.

(4) If the tenderer or candidate wishes to prove that it meets the requirements established to the economic and financial standing based on the resources of other economic operators, the tenderer or candidate must submit the SingleProcurement Document also regarding the person whose resources it relies on.

(5) The tenderer or candidate may resubmit the SingleProcurement submitted in one public procurement procedure in another public procurement procedure if the tenderer or candidate declares that the information contained therein is true.

(6) On the basis of the information given in the SingleProcurement Document, the contracting authority or entity makes a decision regarding the exclusion, qualification or non-qualification of the tenderer or candidate.

(7) The contracting authority or entity has the right to verify the absence of the grounds for exclusion of the tenderer or candidate and the qualifications of the tenderer or candidate throughout the public procurement
and at any time demand that the tenderer or candidate submit all or some of the documents corresponding to
the declarations made in the Single Procurement Document or clarification of the contents of the submitted
documents or the submission or modification of data or documents that allow for clarification. If the contracting
authority or entity learns of the existence of a ground for exclusion of the tenderer or candidate or that the
tenderer or candidate does not meet the selection criteria established in the contract notice, the contracting
authority or entity may make a decision to exclude or to not qualify the tenderer or candidate and exclude the
tenderer or candidate from the public procurement or not qualify the tenderer or candidate.

(8) Before awarding a public contract, the contracting authority or entity demands that the tenderer submit
documents corresponding to all the relevant declarations made in the Single Procurement Document, except
in the case of a public contract awarded on the basis of a framework agreement, provided that the framework
agreement has been awarded to a single tenderer or the public contract is awarded on the terms and conditions
provided for in the framework agreement without reopening competition. After verifying the absence of grounds
for exclusion regarding the successful tenderer and whether the successful tenderer meets the established
selection criteria, the contracting authority or entity makes a decision to exclude or not to exclude and to qualify
or not to qualify the successful tenderer.

(9) If the tenderer or candidate does not submit the documents required by the contracting authority or entity
for verifying the absence of the grounds for exclusion or the meeting of the selection criteria at least within five
working days and if the data or documents are not available to the contracting authority or entity on the basis of
public data in a database without incurring significant costs, the contracting authority or entity will exclude the
tenderer or candidate from the public procurement or does not qualify the tenderer or candidate.

(10) On the basis of a reasoned application of the tenderer or candidate, the contracting authority or entity may
extend the time limit specified in subsection 9 of this section.

(11) The contracting authority or entity does not demand the submission of the documents specified in
subsections 7 and 8 of this section if the data or documents are available to the contracting authority or entity on the basis of
public data in a database or the contracting authority or entity has the documents or data and these are
still relevant for verifying the absence of the grounds for exclusion regarding the tenderer or candidate or for
qualifying the tenderer or candidate.

§ 105. Official list of approved economic operators and certified economic operators

(1) A person entered in the official list of approved economic operators (hereinafter list) or certified as an
economic operator may submit a certificate issued by the keeper of the official list of approved economic
operators (hereinafter list keeper) on including the person in the list or a certificate issued by the accredited
certification body that meets the European certification standards (hereinafter certification body) on the
certification of the person as an approved economic operator (hereinafter certification). The evidence indicates
the data based on which the person was entered in the list or the certificate was issued to the person, and the
classification given to the person in the list.

(2) A certificate issued by the list keeper in Estonia or another Member State of the European Union regarding
the entry of the person in the list or a certificate of the certification body in the certification of the person proves
to the contracting authority or entity that the person meets the selection criteria provided for in §§ 99–101 of this
Act regarding the data that served as the basis for the entry of the person in the list or for the certification of the
person. This evidence proves that the person meets the criteria established by the contracting authority or entity
if the criteria that served as the basis for the entry of the person in the list or for the certification of the person
were equal to or stricter than the criteria established by the contracting authority or entity.

(3) In addition to the data that was not the basis for the entry of the person in the list or for the certification
of the person, the contracting authority or entity may, in addition to the evidence specified in subsection 2 of
this section, demand that the tenderer or candidate submit additional evidence in proof of the payment of state
taxes, local taxes or social security contributions mandatory in the country where the tenderer or candidate
is established.

(4) The contracting authority or entity applies subsections 2 and 3 of this section only to the tenderer or
candidate who is established in a Member State of the European Union where the rules for the drawing up and
keeping of the list or certification of approved economic operators have been established.

(5) The contracting authority or entity does not demand that a tenderer or candidate established in another
Member State of the European Union be entered in the list in Estonia in order to participate in the public
procurement.
§ 106. Drawing up and keeping of official list of approved economic operators and entry of economic operators in list

(1) Upon establishment of the criteria for entry in the list, only the provisions of §§ 99–101 of this Act are followed. If persons established in another Member State of the European Union are entered in the list, they are not asked to submit data or evidence other than those asked from persons established in Estonia.

(2) The list keeper may not refuse to enter a person in the list or to certify a person without reason.

(3) Entry in the list may be applied for by persons wishing to participate in public procurement as joint tenderers or joint candidates who rely on the resources of another joint tenderer or joint candidate in proving their qualifications. To that effect these persons must prove to the list keeper that the respective resources are at their disposal throughout the period of validity of the evidence certifying the entry in the list and the person whose resources the person applying for entry in the list relies on simultaneously meets the criteria on the basis of which its resources are being relied on.

(4) The grounds of and procedure for drawing up, keeping and updating the list of the field and entry of economic operators in the list are established by a regulation of the Government of the Republic.

(5) The keeper of the list of a field is the ministry responsible for the respective field. With the consent of the Government of the Republic, the ministry may purchase the keeping of the list from another person by concluding an administrative agreement to that effect.

(6) The list keeper may charge a fee from the economic operator for entry into the list and for updating the entry.

(7) The fee rates for entry in the list and updating the entry are established by a regulation of the Government of the Republic. The fee rates must be in accordance with reasonable costs of the relevant steps of the list keeper; the economic operator’s qualification class is taken into account upon establishing them and they must not exceed 200 euros upon entry in the list or 70 euros upon updating the entry.

Division 4
Request to Participate and Tender

Subdivision 1
Request to Participate

§ 107. Request to participate

(1) A request to participate is the candidate's declaration of intent to participate in the procurement procedure.

(2) A request to participate must be in conformity with the terms and conditions provided for in the procurement documents.

§ 108. Submission of request to participate

(1) A request to participate is submitted to the contracting authority or entity in a form reproducible in writing in accordance with the requirements provided for in this Act and in legislation established on the basis thereof.

(2) The candidate can withdraw the request to participate before the closing date for submission of requests to participate. If the request to participate or a part thereof is not submitted by electronic means, the candidate must submit a notice to the contracting authority in the same form in order to withdraw the request.

§ 109. Opening of request to participate

(1) The contracting authority or entity opens requests to participate at the time indicated in the procurement documents. Where a request to participate or a part thereof has not been submitted by electronic means, the contracting authority or entity opens requests to participate or parts thereof at the place indicated in the procurement documents.

(2) Upon opening requests to participate, the names and registry codes of the candidates or, upon absence of a registry code, another feature enabling the identification of the candidate or the personal identification code or, upon absence of a personal identification code, the date of birth are published in the electronic system.

(3) If a request to participate or a part thereof has not been submitted by electronic means, the contracting authority or entity verifies the conformity of the requests to participate with the list of documents and data indicated in the procurement documents and draws up minutes of the opening of requests to participate.
(4) The names and registry codes or, upon absence of a registry code, another feature enabling the identification of the candidate or the personal identification code or, upon absence of a personal identification code, the date of birth of the candidate and information of which requests to participate were not in conformity with the list of documents and data indicated in the procurement documents upon opening of the requests are entered in the minutes specified in subsection 3 of this section.

(5) In the event specified in subsection 3 of this section, the contracting authority or entity submits the minutes of the opening of requests to participate to the electronic system within three working days following the opening of the requests.

(6) Following the submission of the minutes to the electronic system, the names and registry codes of the candidates or, upon absence of a registry code, another feature enabling the identification of the candidate or the personal identification code or, upon absence of a personal identification code, the date of birth are published in the electronic system.

Subdivision 2
Tender

§ 110. Tender

(1) A tender is the tenderer’s declaration of intent to conclude a public contract, which is binding upon the tenderer from the closing date for submission of tenders to at least the expiry of the minimum period of validity of the tender as specified in the procurement documents.

(2) A tender must be in conformity with the terms and conditions provided for in the procurement documents.

(3) By submitting a tender, the tenderer declares acceptance of all the terms and conditions set out in the procurement documents. Submission of a conditional tender is not permitted.

(4) Upon submission of a joint tender of joint tenderers, it is deemed that the joint tenderers bear joint and several liability for the performance of the public contract.

(5) A tender is confidential until a decision to declare the tender successful as specified in subsection 1 of § 117 of this Act has been made. Information contained in a tender may be disclosed only in the events and to the extent provided for in this Act.

§ 111. Submission of tender

(1) A tender is submitted to the contracting authority or entity in a form reproducible in writing in accordance with the requirements provided for in this Act and in legislation established on the basis thereof.

(2) If the tenderer submits a new tender within the time limit for submission of tenders, the previous tender submitted by the tenderer will not become invalid as a result thereof.

(3) The tenderer may withdraw the submitted tender before the closing date for submission of tenders. If the tender or a part thereof is not submitted by electronic means, the tenderer must submit a notice to the contracting authority in the same form in order to withdraw the tender.

(4) If the contracting authority or entity has permitted to submit variants, the tenderer may submit a tender together with variants.

(5) The tenderer indicates in the tender what information is the tenderer’s trade secret and justifies the designation of the information as a trade secret: 1) the value of the tender or a part thereof; 2) in the case of a public service contract, other numerical indicators characterising a tender meeting the award criteria, in addition to the ones specified in clause 1 of this subsection; 3) in the case of a public supply contract and a public works contract, other indicators characterising a tender meeting the award criteria, in addition to the ones specified in clause 1 of this subsection.

(6) The economic operator does not have the right to submit a tender if:
1) the contracting authority or entity has stated in the procurement documents that a tender can be submitted only after examining the place of performance of the public contract or examination of the documents clarifying the procurement documents on site, but the economic operator has failed to do so within the time set by the contracting authority or entity;
2) the contracting authority or entity has reserved the public contract on the basis of § 13 of this Act and the economic operator does not have the characteristics specified in the section.
(7) The contracting authority or entity does not examine the tender specified in subsection 6 of this section.

(8) If the tender or a part thereof is submitted in accordance with the rules provided for in subsection 2 of §45 of this Act, the contracting authority or entity immediately submits to the tenderer at its request a confirmation of the receipt of the tender or a part thereof.

§ 112. Extension of period of validity of tender

(1) The tenderer may extend the period of validity of the tender on its own initiative or on a proposal of the contracting authority or entity made in a form reproducible in writing.

(2) The contracting authority or entity is forced to make the proposal specified in subsection 1 of this section to each tenderer at least ten days before the expiry of the period of validity of its tender if the procurement procedure has not terminated by that time. The tenderer informs the contracting authority or entity of the extension of the period of validity of the tender or refusal to extend it within five working days following the receipt of the respective proposal.

§ 113. Opening of tenders

(1) The contracting authority or entity opens tenders at the time indicated in the procurement documents. Where a tender or a part thereof has not been submitted by electronic means, the contracting authority or entity opens tenders or parts thereof at the place indicated in the procurement documents.

(2) Upon opening tenders, the names and registry codes of the tenderers or, upon absence of a registry code, another feature enabling the identification of the tenderer or the personal identification code or, upon absence of a personal identification code, the date of birth are published in the electronic system. The following is disclosed to an economic operator participating in the procurement procedure: the names and registry codes of the tenderers; upon absence of a registry code, another feature enabling the identification of the tenderer or the personal identification code or, upon absence of a personal identification code, the date of birth of the tenderer; the values of the submitted tenders, including the values of the parts of the tender where these are taken account of upon assessment of the tenders; and other numerical indicators characterising the tender, which meet the award criteria.

(3) If a tender or a part thereof has not been submitted by electronic means, the contracting authority or entity verifies the conformity of the tenders with the list of documents and data indicated in the procurement documents and draws up minutes of the opening of tenders.

(4) The data specified in subsection 2 is entered in the minutes / report specified in subsection 3 of this section. The minutes set out which of the submitted tenders were not in conformity with the list of documents and data indicated in the procurement documents as well as information on the non-examination of the tender based on subsection 7 of § 111 of this Act. If a tender has been submitted in part by electronic means, the data of the tender specified in subsection 2 of this section, which has not been submitted by electronic means, is set out in the minutes.

(5) The minutes of the opening of tenders does not need to be drawn up in negotiated procedure without prior publication or upon opening tenders in the case of the reopening of competition.

(6) In the event specified in subsection 3 of this section, the contracting authority or entity submits the minutes of the opening tenders to the electronic system within three working days following the opening of tenders, except upon opening tenders in a negotiated procedure without prior publication and in the case of the reopening of competition. In the electronic system, the minutes of the opening of tenders are made available to an economic operator participating in the procurement procedure immediately after the submission of the minutes.

(7) Following the submission of the minutes to the electronic system, the names and registry codes of the tenderers or, upon absence of a registry code, another feature enabling the identification of the tenderer or the personal identification code or, upon absence of a personal identification code, the date of birth are published in the electronic system.

(8) The contracting authority or entity does not publish the contents of the tenders to the extent that it has been designated as a trade secret by the tenderer.

§ 114. Verification of suitability of tenders

(1) The contracting authority or entity verifies whether tenders submitted by tenderers or, in the event specified in subsection 3 of § 52 of this Act, tenders opened before the qualification of tenderers and tenders opened in accordance with the rules provided for in § 113 meet the terms and conditions established in the procurement documents, and makes a reasoned written decision to declare the tenders suitable or to reject the tenders. The tenderer whose tender has been rejected cannot participate in the procurement procedure any further.

(2) The contracting authority or entity rejects a tender if it does not meet the terms and conditions established in the procurement documents, the tenderer fails to provide clarifications by within the time limit required by the contracting authority or entity or it is not possible to clearly assess whether the tender meets the terms
and conditions established in the procurement documents. The contracting authority or entity may declare a
tender suitable if it does not contain any substantive deviations from the terms and conditions specified in the
procurement documents.

(3) If the contracting authority or entity has in the technical specifications of the subject-matter of the public
contract referred to a condition specified in subsection 2 of § 88 of this Act, the contracting authority or entity
will not, upon awarding a public supply contract or a public service contract, reject a tender due to unsuitability
if the tenderer certifies in its tender in a manner acceptable to the contracting authority or entity that the
solutions offered by the tenderer meet the requirements established in the technical specifications.

(4) If the contracting authority or entity has drawn up the technical specifications of the subject-matter of the
public contract in accordance with the rules provided for in subsection 1 of § 88 of this Act on the basis of the
performance or functional requirements, the contracting authority or entity will not reject a tender if the offered
supplies, services or works meet some of the terms and conditions provided for in subsection 2 which concerns
the performance or functional requirements serving as the basis for the technical specifications of the subject-
matter of the public contract and the tenderer proves it to the satisfaction of the contracting authority or entity
based on relevant evidence.

(5) If the contracting authority or entity has established the condition specified in subsection 2 of § 89 of
this Act in the technical specifications of the subject-matter of the public contract, the contracting authority
or entity also accepts other equivalent labels in proof of the conformity of the label specified in the technical
specifications with requirements.

(6) If the contracting authority or entity has demanded that the tenderer provide a test report or a certificate
issued by a conformity assessment body, the contracting authority or entity also accepts test reports or
certificates issued by other equivalent conformity assessment bodies as proof of conformity with requirements.

(7) If, for objective reasons, the tenderer cannot obtain the label required by the contracting authority or entity
or an equivalent label or a test report or a certificate issued by a specific conformity assessment body or by
an equivalent conformity assessment body within the prescribed time limit, the contracting authority or entity
will accept other relevant evidence, provided that the tenderer proves to the satisfaction of the contracting
authority or entity that the offered supplies, services or works meet the requirements of the specific label or the
requirements established by the contracting authority or entity, unless the label, equivalent label or test report
or another certificate of the specific conformity assessment body or equivalent conformity assessment body
required by the contracting authority or entity is the statutory prerequisite for the provision of the supplies,
services or works on the market.

(8) If the contracting authority or entity has divided the public procurement into lots within a single procedure,
the contracting authority or entity verifies the conformity of the tenders submitted regarding each lot with the
terms and conditions of the procurement documents separately.

(9) If the contracting authority or entity has divided the public procurement into lots within a single procedure
and a tenderer has submitted a tender regarding more than one lot and its tender regarding any of the lots has
been declared suitable, the tenderer will continue to participate in the procedure regarding these lots.

(10) If a tenderer has submitted more than one tender or, in the case of public procurement divided into lots
within a single procedure, more than one tender regarding the same lot and any of the tenders submitted in
the public procurement or tenders submitted regarding the lots have been declared suitable, the tenderer will
continue to participate in the procedure with its suitable tender or tenders.

§ 115. Abnormally low tenders

(1) If the contracting authority or entity finds that the value of a tender is, given the subject-matter of the public
contract, unreasonably low, the contracting authority or entity must, in a form reproducible in writing, ask the
tenderer for relevant clarifications and these must be given in the same form. The tenderer must submit a written
explanation to the contracting authority or entity within five working days following the receipt of the respective
request.

(2) In the case of a public works contract or a works concession whose estimated value equals or exceeds the
public procurement threshold, the contracting authority or entity is required to ask the tenderer whose tender it
intends to declare suitable for a clarification specified in subsection 1 of this section if:
1) in the procurement procedure, at least three tenders have been declared to be suitable and the value of the
tender of the tenderer is at least 10 per cent lower than the value of next tender who has been declared suitable
or the value of the tenderer’s tender is at least 20 per cent lower than the average value of the tenders that have
been declared suitable, or
2) the average salary of the employees of the tenderer or the subcontractors specified in its tender was during
the reference period less than 70 per cent of the average salary in the same period in the field corresponding to
the subject-matter of the public contract.
In order to identify the circumstances provided for in clause 2 of subsection 2 of this section, the contracting authority or entity requires the tenderer to submit within a reasonable time limit set by the contracting authority or entity such a certificate issued by the competent authority of the country where the tenderer and the subcontractor specified in the tender is established, which contains the following information:

1. the average salary paid by the tenderer during the reference period;
2. the technical solutions chosen by the tenderer or any exceptionally favourable conditions available to the tenderer for the performance of the public contract;
3. the originality of the supplies, services or works;
4. provisions governing the fields of environmental, social and labour law in the place of performance of the public contract, which the tenderer or the subcontractor must adhere to;
5. the possibility of the tenderer obtaining state aid.

If, for a reason not dependent on the tenderer, the tenderer cannot submit the evidence specified in subsection 3 of this section, the tenderer may, for the purpose of establishing the circumstances provided for in subsection 2 of subsection 2, submit other relevant evidence that allows the contracting authority or entity to decide whether to request clarifications. Where necessary, the contracting authority or entity may seek evidence on its own.

The contracting authority or entity does not require the submission of the evidence specified in subsection 3 of this section if the contracting authority or entity has the respective information and it remains relevant for establishing the circumstances provided for in clause 2 of subsection 2.

For the purpose of this section, the reference period is six calendar months the last of which is the calendar month preceding the calendar month preceding the calendar month of commencement of the public procurement. If the tenderer or a subcontractor specified in the tender was established or commenced business operations after the start of the reference period, the start of its reference period will be the calendar month of establishment or commencement of business operations and the end of its reference period will be the calendar month preceding the calendar month preceding the calendar month of commencement of the public procurement.

The low value of a tender may be justified, above all, by the following:

1. the economics of the manufacturing process, of the services provided or of the construction method;
2. the technical solutions chosen by the tenderer or any exceptionally favourable conditions available to the tenderer for the performance of the public contract;
3. the originality of the supplies, services or works;
4. provisions governing the fields of environmental, social and labour law in the place of performance of the public contract, which the tenderer or the subcontractor must adhere to;
5. the possibility of the tenderer obtaining state aid.

The contracting authority or entity verifies the clarification and assesses the evidence submitted, consulting with the tenderer, where necessary. If the contracting authority still finds that the value of the tender is abnormally low or if the tenderer submits no required clarifications to the contracting authority or entity, the contracting authority or entity will reject the tender on the basis of a reasoned written decision.

If the contracting authority or entity establishes that the abnormally low value of a tender is caused by disregarding provisions governing the fields of environmental, social and labour law in the place of performance of the public contract, the contracting authority or entity will reject the tender.

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

§ 116. Rejection of all tenders

The contracting authority or entity may make a reasoned written decision to reject all tenders if:

1. the values of all the tenders or tenders which have been declared suitable exceed the estimated value of the public contract;
2. the contracting authority or entity has provided for the possibility of rejection of all tenders on objective and non-discriminatory grounds in the procurement documents and such grounds exist.

If the contracting authority or entity has divided the public procurement into lots within a single procedure, the contracting authority or entity may make a decision to reject all tenders:

1. regarding the lot whereby any of the grounds provided for in subsection 1 of this section exists regarding the submitted tenders;
2. regarding the lots whereby it is impractical to award a public contract or whereby the awarding of a public contract does not correspond to the purpose of the public procurement established by the contracting authority or entity, thereby not awarding a public contract with regard to the lot where any of the grounds for termination of the procurement procedure provided for in clauses 2–7 of subsection 3 of § 73 of this Act exists.
§ 117. Assessment of tenders and declaration of tender successful

(1) The contracting authority or entity assesses suitable tenders in accordance with the weighting fixed for the award criteria specified in the procurement documents. By a reasoned written decision, the contracting authority or entity declares the most economically advantageous tender based on the award criteria successful.

(2) If the contracting authority or entity has divided the public procurement into lots within a single procedure, the contracting authority or entity assesses tenders and declares tenders successful per lot.

(3) If there is a calculation error in the value of a tender, the contracting authority or entity will correct it and inform the tenderer thereof immediately in a form reproducible in writing. The tenderer will respond to the contracting authority or entity in the same form within two working days following the receipt of the notice, indicating whether it consents to the correction of the calculation error. If the tenderer does not consent to the correction of the calculation error, the contracting authority or entity will reject the tender.

(4) The contracting authority or entity may decide not to award the public contract to the successful tenderer if the contracting authority or entity establishes that the tenderer has not taken account of the provisions governing the fields of environmental, social and labour law in the place of performance of the public contract. In such an event, the contracting authority or entity rejects the successful tender by a written decision, assesses all the remaining tenders again in accordance with subsection 1 of this section and declares the tender that, based on the award criteria set out in the procurement documents, is the most economically advantageous tender among suitable tenders successful.

§ 118. Assessment of variants

(1) The contracting authority or entity assesses variants, provided that it has allowed for the submission of tenders with variants in the contract notice.

(2) The contracting authority or entity assesses only those variants that have been declared to be in conformity with the requirements established to variants in the procurement documents.

(3) The contracting authority or entity cannot reject a variant submitted in a tender for the reason that, upon awarding the public contract on the terms and conditions given in the variant, the public contract would constitute a public service contract instead of a public supply contract or vice versa.

§ 119. Continuance of procurement procedure upon withdrawal of successful tender

(1) If the successful tenderer withdraws its tender for reasons not dependent on the contracting authority or entity, the contracting authority or entity will not sign the public contract within the time limit set by the contracting authority or entity or will not, within the prescribed time, commence performance of the public contract awarded by granting acceptance due to reasons arising from the tenderer, assess all the remaining tenders of the again in accordance with subsection 1 of § 117 of this Act and declares the tender that is the most economically advantageous tender among suitable tenders successful.

(2) The contracting authority or entity is not required to assess tenders on the basis specified in subsection 1 of this section again and may declare the tender ranked second in the initial assessment successful where the withdrawal of the successful tender cannot affect the mutual ranking of the remaining tenders.

(3) The contracting authority or entity has the right to claim damages from the successful tenderer specified in subsection 1 of this section to the extent of the difference between the value of the tender that was initially declared successful and the value of the next-ranking successful tender as well as to the extent of all possible additional costs which the contracting authority or entity must bear in connection with the awarding of the public contract on the basis of the tender that was declares successful after assessing the tenders again, as well as to the extent of the costs that arose from the new assessment of the tenders.

(4) The tender guarantee not returned to the tenderer is debited from the damages specified in subsection 3 of this section.

Division 5
Award and Performance of Public Contract

§ 120. Award of public contract

(1) A public contract is awarded on the terms and conditions set out in the procurement documents and in accordance with the successful tender.
(2) The contracting authority or entity cannot grant acceptance to the awarding of the public contract before 14 days have passed from the non-exclusion of the successful tenderer specified in subsection 8 of § 104 of this Act and submission of a notice on the qualification decision (hereinafter standstill period). In public procurement whose estimated value is below the international threshold, the contracting authority or entity applies a ten-day standstill period.

(3) The standstill period does not need to be applied in the event of awarding a public contract based on a framework agreement or dynamic purchasing system, in the event of a negotiated procedure without prior publication or if a tender was submitted by only one tenderer in another type of procurement procedure.

(4) A public contract awarded before the expiry of the standstill period is ineffective.

(5) If the contracting authority or entity has divided the public procurement into lots within a single procedure, the contracting authority or entity may award a public contract separately for each lot.

§ 121. Ineffectiveness of public contract

(1) A public contract is ineffective if:
1) the contracting authority or entity has not submitted a contract notice to the register and the non-submission of the notice was not allowed under this Act, including if the use of negotiated procedure without prior publication was not allowed under this Act and, as a result of the activities of the contracting authority or entity, the economic operator has been deprived of its opportunity to defend its interests in the review procedure;
2) upon submission of a contract notice to the register, the contracting authority or entity has not indicated that the estimated value of the public procurement equals or exceeds the international threshold or not indicated that it would like the contract notice to be forwarded to the Publications Office of the European Union in accordance with § 183 of this Act, provided that the forwarding of the contract notice was required under this Act;
3) upon awarding the public contract on the basis of a dynamic purchasing system, the contracting authority or entity has breached the requirements provided for in § 35 of this Act.

(2) A public contract is not ineffective under clause 1 of subsection 1 of this section if the following terms and conditions appear together:
1) the contracting authority or entity has submitted to the register an optional notice in accordance with § 76 of this Act;
2) the contracting authority or entity has applied the standstill period provided for in subsection 2 of § 120 of this Act as of the day following the publication of the optional notice.

(3) The public contract is not ineffective in accordance with clause 3 of subsection 1 of this section if the contracting authority or entity has submitted to each tenderer included in the dynamic purchasing system a notice of the decision to declare a tender successful, which contains the details characterising the successful tender, its advantages over the tender of the recipient of the notice and the name of the tenderer or the names of the tenderers who submitted the successful tender, and if the contracting authority or entity has applied the standstill period.

(4) One can rely on the ineffectiveness of the public contract on the ground provided for in subsection 1 of this section only if the ineffectiveness of the public contract has been identified in accordance with this Act.

§ 122. Subcontracting

(1) In the procurement documents, the contracting authority or entity may require the tenderer to indicate the proportion and nature of the lot of the public contract which the tenderer intends to subcontract, along with the names of the planned subcontractors.

(2) In the case of a public works contract and a works concession whose estimated value equals or exceeds the public procurement threshold and in the case of a public service contract involving services provided on site under the direct supervision of the contracting authority or entity the estimated value of which equals or exceeds the international threshold, the contracting authority or entity requires in the procurement documents that the tenderer who awarded the public contract submit to the contracting authority or entity by the time of commencement of the performance of the public contract the names and contact details of the subcontractors known at the time to participate in the performance of the public contract and information of their legal representatives. The contracting authority or entity requires the submission of the same information also on each subcontractor who participates in the performance of a public works contract or works concession and on whom information has not been submitted to the contracting authority or entity by the time of commencement of performance of the public contract.

(3) In the case of a public works contract and works concession, the contracting authority or entity requires in the procurement documents that the tenderer certify in the tender that the tenderer does not involve in the performance of the public contract a subcontractor who would be subject to replacement under subsection 7 of this section.

(4) Upon application of subsections 1, 2 and 11 of this section, the contracting authority or entity may verify the absence of the grounds for exclusion regarding the subcontractors and whether they meet the selection criteria in accordance with the provisions of this Act during the procurement procedure or after awarding the public contract.
contract if the contracting authority or entity has indicated such possibility and conditions in the procurement documents.

(5) In the case of a public works contract and works concession, the contracting authority or entity verifies, during the procurement procedure, the absence of the grounds for exclusion specified in subsection 1 of § 95 of this Act regarding the subcontractors specified in the tender and, upon performance of the public contract following the contract award, regarding an added subcontractor.

(6) Upon verification of the grounds for exclusion based on subsection 5 of this section, the contracting authority or entity applies subsections 2–4 of § 96 of this Act. The contracting authority or entity does not require the submission of documents for the purpose of verifying the absence of the grounds for exclusion if these documents or respective data are available to the contracting authority or entity based on data in a database without incurring significant costs or the contracting authority or entity has the documents or data and these remain relevant for verifying the absence of the grounds for exclusion regarding a subcontractor.

(7) If the contracting authority or entity verifies the absence of the grounds for exclusion of subcontractors and finds that the ground specified in subsection 1 of § 95 of this Act exists regarding a subcontractor, the contracting authority or entity will demand that the tenderer replace the subcontractor. If the ground specified in subsection 4 of § 95 exists regarding a subcontractor, the contracting authority or entity may demand that the tenderer replace the subcontractor.

(8) In the case of a public works contract and works concession, the contracting authority or entity, based a request for information received from a subcontractor who participated in the performance of the public contract, submits to the subcontractor information on whether the tenderer has been remunerated for the proven works performed by the subcontractor to the extent that the tenderer is required to remunerate the subcontractor. In the request for information, the subcontractor submits to the contracting authority or entity proof of the existence of the subcontract, size of the claim and whether the claim has fallen due. The contracting authority or entity immediately informs the tenderer of the submission of the request for information and submits to it a copy of the request along with enclosed evidence and the information submitted to the subcontractor.

(9) In the case of a public works contract and works concession, the contracting authority or entity will not perform to the respective extent a financial claim submitted to it by the tenderer under the contract or concession if a subcontractor who participated in the performance of the contract or concession submits to it a reasoned application in connection with the groundless non-performance of the financial obligation by the tenderer under the subcontract concluded with the subcontractor. The contracting authority or entity will perform the financial obligation towards the tenderer once the financial obligation towards the subcontractor has been performed or evidence in proof of the groundlessness of the subcontractor’s claim has been submitted to the contracting authority or entity.

(10) The non-performance of the financial obligation towards the tenderer based on the application of the subcontractor specified in subsection 9 of this section is not considered a breach of the public contract by the contracting authority or entity.

(11) Where the contracting authority or entity provides for such possibility and relevant conditions in the procurement documents, the contracting authority or entity may apply this section also in the case of:
1) public supply contracts;
2) public service contracts, where the services are not provided on site under the direct supervision of the contracting authority or entity;
3) subcontracts concluded for the purchasing or delivery of supplies required for execution of works or provision of services;
4) subcontracts concluded by subcontractors.

§ 123. Modification of public contract

(1) The contracting authority or entity has the right to modify a public contract without carrying out new public procurement where:
1) the overall nature of the public contract, for example, the subject-matter of the public contract is not altered and the value of the modification does not exceed the limit specified in subsection 3 or 4 of § 14 of this Act and the total value of the modifications does not exceed ten per cent of the initial value of a public supply contract or public service contract or 15 per cent of that of a public works contract or ten per cent of the initial value of a concession contract;
2) regardless of the value of the modification, the overall nature of the public contract is not altered and the scope, substance and terms of application of the modification, for instance, regarding the review of the price, were provided for in the procurement documents in clear, precise and unequivocal clauses;
3) additional supplies, services or works that the contracting authority or entity needs but that are not specified in the procurement documents are purchased from the same tenderer, a change of tenderer would cause significant inconvenience or substantial duplication of costs for the contracting authority or entity, and could not be made for economic or technical reasons such as requirements of interchangeability or interoperability with
existing equipment, services or installations, provided that any increase in value resulting from a modification does not exceed 50 per cent of the original value of the public contract;

4) the modification is caused by circumstances unforeseeable to a diligent contracting authority or entity where the overall nature of the public contract is not altered and the value of any modification does not exceed 50 per cent of the original value of the public contract;

5) the tenderer is replaced by a tenderer who meets the award criteria provided for in the procurement documents of the new public procurement procedure where the procurement documents provided for such a modification clause;

6) universal or partial succession into the position of the initial tenderer, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another tenderer that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the public contract;

7) irrespective of the value of the modification, the modification is not substantial.

(2) A modification is considered to be substantial for the purposes of this section where the overall nature of the public contract is altered substantially, in particular, where:

1) the modification introduces a condition which, had it been part of the procurement documents, would have attracted additional participants in the procurement procedure or increased the number of tenders to be declared suitable;

2) the modification results in a change of the ratio of contractual obligations arising from the public contract in favour of a tenderer in a manner not provided for in the public contract;

3) the modification extends the scope of the subject-matter of the public contract considerably;

4) where a tenderer is replaced with a new tenderer in a case other than those specified in clause 5 or 6 of subsection 1 of this section.

(3) The value threshold of a modification provided for in clauses 3 and 4 of subsection 1 of this section does not apply to public procurement in the network sector or to concession contracts of the fields of activity specified in Annex II to Directive 2014/23/EU of the European Parliament and of the Council.

(4) Where the public contract includes an indexation clause, the value specified in clauses 1, 3 and 4 of subsection 1 of this section is calculated on the basis of the indexed value of the public contract. Where the concession contract lacks an indexation clause, the indexed value of the public contract is calculated based on the average inflation in Estonia as published by the Estonian Statistical Office.

(5) Regarding a modification made on the basis of clause 3 or 4 of subsection 1 of this section, the contracting authority or entity submits a notice to the register on the modification of the public contract within ten days following the making of the modification.

§ 124. Termination of public contract

(1) The contracting authority or entity has the right to extraordinarily terminate the public contract early where:

1) modifications not permitted under § 123 of this Act have been made to the public contract;

2) a ground provided for in subsection 1 of § 95 of this Act existed at the time of awarding the public contract to the tenderer and the tenderer should have been excluded from the procurement procedure or the public contract should not have been concluded with the tenderer, or

3) the Court of Justice has established in proceedings based on Article 258 of the Treaty on the Functioning of the European Union that the obligations arising from the treaty or from Directive 2014/23/EU, 2014/24/EU or 2014/25/EU of the European Parliament and of the Council were breached in the public procurement or upon awarding the public contract.

(2) If a public contract has been awarded by granting acceptance, but the tenderer who received the acceptance fails to commence performance of the public contract within the time set by the contracting authority or entity, the contracting authority or entity may terminate the public contract early and apply the rules provided for in § 119 of this Act.

Chapter 3
Particular Procurement Regimes

Division 1
Simple Procedure

§ 125. Regime for simple procedure

(1) The simple procedure starts with the publication of a contract notice in the register, except in the event provided for in subsection 3 of this section, and ends on the ground provided for in subsection 3 of § 73 of this Act.
(2) The contracting authority or entity establishes the regime for the simple procedure in the procurement documents. In addition to the requirements provided for in this Division, the contracting authority or entity may also rely on other provisions of this Act in establishing the regime for the simple procedure.

(3) The contracting authority or entity has the right to use the simple procedure as a negotiated procedure without prior publication if any of the grounds provided for in subsections 1 and 3–5 of § 49 and in § 50 of this Act exists or if no tender or request to participate or no tender or request to participate meeting the terms and conditions of the procurement documents was submitted during the simple procedure started with a contract notice and the original terms and conditions of the public procurement are substantially not modified.

(4) In the contract notice, the contracting authority or entity sets a reasonable time limit for the submission of tenders, given the supplies, services or works that constitute the subject-matter of the public contract. The time limit must not be shorter than five working days in the case of a public supply contract or a public service contract or 15 days in the case of a public works contract.

(5) Upon using the simple procedure, the contracting authority or entity follows the general principles of carrying out public procurement provided for in § 3 of this Act.

(6) The contracting authority or entity may carry out the simple procedure in successive stages or hold negotiations in the simple procedure, provided that the contracting authority or entity has provided for such possibility and the conditions thereof in the procurement documents.

(7) Before awarding a public contract, the contracting authority or entity verifies the absence of the grounds for exclusion of the economic operator provided for in subsection 1 of § 95 of this Act.

(8) Upon awarding a public contract, the contracting authority or entity follows § 120 of this Act and, upon modification of a public contract, § 123 of this Act, taking account of the specifications provided for in subsection 9 of this section.

(9) The contracting authority or entity cannot grant acceptance to the awarding of a public contract before five working days have passed from the submission of a notice on a decision to declare a tender successful or a decision to award the public contract.

(10) The contracting authority or entity informs the register of the termination of a simple procedure in accordance with the rules provided for in § 83 of this Act.

Division 2
Social and Other Specific Services

§ 126. Rules of specific procedure of social and other specific services

(1) The specific procedure of social and other specific services is a public procurement procedure that is used for purchasing the social or other specific services specified in Annex XIV to Directive 2014/24/EU of the European Parliament and of the Council.

(2) The contracting authority or entity establishes the rules of the specific procedure of social and other specific services. In addition to the requirements provided for in this Division, the contracting authority or entity may also rely on other provisions of this Act in establishing the rules of the specific procedure of social and other specific services.

(3) The specific procedure of social and other specific services, except in the case provided for in subsection 6 of this section, starts with the publication of a contract notice or an indicative notice specified in subsection 4 in the register and terminates on the ground provided for in subsection 3 of § 73 of this Act.

(4) To start the specific procedure of social and other specific services, the contracting authority or entity may submit to the register an indicative notice instead of a contract notice.

(5) Upon starting the specific procedure of social and other specific services, economic operators submit a confirmation of interest to the contracting authority or entity within the time limit and in the form determined by the contracting authority or entity. To award a public contract, the contracting authority or entity submits an invitation to tender simultaneously to all economic operators who have submitted a confirmation of interest within the time limit.

(6) The contracting authority or entity has the right to carry out a specific procedure of social and other specific services as a negotiated procedure without prior publication if at least one of the grounds provided for in subsections 1, 4 and 5 of § 49 and subsections 1, 3 and 4 of § 50 of this Act exists or if during the specific
procedure of social and other specific services started with a contract notice or indicative notice no tender or request to participate or no tender or request to participate meeting the terms and conditions established in the procurement documents and the original terms and conditions of the public procurement are not substantially modified.  

(7) Upon using the specific procedure of social and other specific services, the contracting authority or entity follows the general principles of use of public procurement provided for in § 3 of this Act, taking account of the specifications of social and other specific services. The contracting authority or entity may take into account the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services, the specific needs of different categories of users, including disadvantaged and vulnerable groups, the involvement and empowerment of users and innovation.  

(8) If the contracting authority or entity uses the specific procedure of social and other specific services as an open procedure, restricted procedure, negotiated procedure without prior publication, innovation partnership, competitive dialogue or design contest, the contracting authority or entity applies the regime provided for the respective procedure.  

(9) Before awarding the public contract, the contracting authority or entity verifies the absence of the grounds for exclusion of the economic operator provided for in subsection 1 of § 95 of this Act.  

(10) Upon awarding a public contract, the contracting authority or entity follows § 120 of this Act and, upon modifying a public contract, § 123 of this Act. Section 121 is applied to public contracts.  

(11) The contracting authority or entity informs the register of the termination of a specific procedure of social and other specific services in accordance with the regime provided for in § 83 of this Act. The contracting authority or entity may gather and send contract award notices concerning public contracts awarded within a quarter at once. Notices gathered in such a manner are sent within 30 days following the final day of the same quarter.  

§ 127. Reservation of public contracts for social and other specific services  

(1) In the procurement documents, the contracting authority or entity may limit the circle of economic operators participating in the public procurement, allowing only legal persons corresponding to the characteristics specified in subsection 2 of this section to participate in the specific procedure of social and other specific services, provided that the subject-matter of the public contract is the provision of such health, social and cultural services, which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, 85000000-9–85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8.  

(2) A legal person who the contracting authority or entity allows to participate in the specific procedure of social and other specific services must fulfil all of the following conditions:  
1) its objective under its articles of association is to provide public services corresponding to the CPV codes listed in subsection 1 of this section, ensuring reliance on public interests upon provision of the services;  
2) profits are reinvested with a view to achieving its objective or distributed based on participatory considerations;  
3) the structures of management or ownership of the legal person are based on participatory principles or require the active participation of employees, users or stakeholders.  

(3) If the value of the public contract of social and other specific services equals or exceeds the international threshold, the contracting authority or entity may allow the legal person who meets the conditions provided for in subsection 2 of this section to participate in the specific procedure of social and other specific services only if the contracting authority or entity has not concluded a public contract with it regarding the same public contract subject-matter within three years from the date of commencement of the specific procedure.  

(4) If in the specific procedure of social and other specific services a tender is submitted by an economic operator that does not meet the conditions established in subsection 2 of this section or, where applicable, in subsection 3 of this section, the contracting authority or entity will not examine the tender submitted by such tenderer.  

(5) The maximum term of a public contract awarded on the basis of this section may be three years.  

Division 3  
Design Contest  

§ 128. Bases of holding of design contest  

(1) The contracting authority or entity may hold a design contest:  
1) with the aim of awarding a public contract to the winner of the design contest based on the conceptual design suggested by it;
2) solely for the purpose of obtaining a conceptual design by giving prizes to the winner or winners of the design contest or by remunerating participants in the design contest.

(2) In the event provided for in clause 1 of subsection 1 of this section, the contracting authority or entity has the right to award a public service contract to the winner or one of the winners of the design contest on the basis of subsection 6 of § 49 of this Act, provided that the contracting authority or entity has indicated the contract award intent in the 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 clause 2 of subsection 2 of § 23.

(3) A participant in a design contest is an economic operator who has submitted a design concept in the design contest.

§ 129. Procedure for holding of design contest

(1) To start a design contest, the contracting authority or entity submits a contest notice to the register.

(2) In the contest notice, the contracting authority or entity indicates, inter alia, if the contracting authority or entity demands that the winner of the contest and other participants in the contest transfer to the contracting authority or entity their economic rights or other ownership to the submitted conceptual designs.

(3) The contracting authority or entity establishes the procedure for holding a design contest in the procurement documents. In addition to the requirements provided for in this Division, the contracting authority or entity may also rely on other provisions of this Act in establishing the procedure for a design contest.

(4) The contracting authority or entity may limit the number of participants in a contest by establishing clear and non-discriminatory conditions for the selection of participants. The number of invited participants must be sufficient to ensure competition.

(5) Where practical, the contracting authority or entity may, based on objective criteria, establish requirements for the professional ability of participants in the contest.

(6) Conceptual designs are evaluated by the jury of the design contest. The contracting authority or entity declares the participant who, in the opinion of the jury, submitted the best design concept, as the winner of the design contest. There can be one winner or multiple winners.

(7) Within 30 days after announcing the winner of the design contest, the contracting authority or entity submits the results of the design contest to the register. Where the release of information on the outcome of the contest would impede law enforcement, would be contrary to general interests or would prejudice the legitimate commercial interests of a particular economic operator or might prejudice fair competition between service providers, such information may be withheld from publication.

(8) The design contest ends upon:
1) announcing the winner or winners;
2) not announcing the winner if the jury of the design contest finds that no conceptual design can be declared the best;
3) rejection of all the conceptual designs for the reason that none of the conceptual designs meets the terms and conditions established in the procurement document or if the contracting authority or entity has on an objective and non-discriminatory ground provided for the rejection of all tenders in the procurement documents and such ground exists;
4) non-qualification of all the participants;
5) non-submission of conceptual designs within the prescribed time limit in accordance with the rules provided for in this Act;
6) upon declaring the design contest invalid by a decision of the contracting authority or entity on the basis of a precept made in supervisory proceedings carried out by the Ministry of Finance or, if there is a justifiable need, on its own initiative.

§ 130. Jury of design contest

(1) The contracting authority or entity appoints a jury to assess conceptual designs submitted in the design contest.

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

(3) Where a particular professional qualification is required of participants in a contest, at least a third of the jury members must have at least an equivalent qualification.
(4) The jury is autonomous in its decisions or opinions and relies solely on the criteria indicated in the contest notice.

(5) Conceptual designs are anonymous until the jury has reached its decision.

(6) The jury takes minutes of its activities, indicating the ranking list of the assessed conceptual designs, the prizes to be given to the winners of the contest, the participation remuneration to be paid to the participants, the comments of the members of the jury, and possible circumstances that need further clarification. The jury may forward questions to participants in the design contest via the contracting authority or entity regarding circumstances specified in the minutes, which require clarification. The questions and answers are recorded in the minutes. The minutes are signed by all members of the jury of the design contest.

Chapter 4
Concession Contracts

Division 1
General Provisions

§ 131. Definition of service concession and works concession

(1) ‘Concession contract’ means a service concession or a works concession.

(2) ‘Service concession’ means a public contract whereby the consideration for the provision and the management of services consists either solely in the right to provide or manage the services or in that right together with payment and whereby an operating risk encompassing demand or supply transfers to the concessionaire.

(3) ‘Works concession’ means a public contract whereby the consideration for the execution of works consists either solely in the right to exploit the works or in that right together with payment whereby an operating risk encompassing demand or supply transfers to the concessionaire.

(4) ‘Operating risk encompassing demand or supply’ means a risk whereby, under normal operating conditions, the recouping of the investments made or the costs incurred in connection with the concession contract or compensation for loss resulting from the vagaries of the market is not ensured.

§ 132. Specifications of scope of implementation of Act upon award of concession contract

(1) The contracting authority or entity is not required to follow the rules provided for in this Act when:
   1) granting an exclusive right to provide services upon acting in the network sector, provided that the exclusive right is granted in accordance with the Treaty on the Functioning of the European Union and other legislation of the European Union laying down common rules on access to the market applicable to activities in the network sector;
   4) granting an exclusive right to provide lottery services which are covered by CPV code 92351100-7;
   5) awarding a concession contract for the provision or operation of such fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water, or for the supply of drinking water to such networks;
   6) awarding a concession contract for implementing hydraulic engineering projects, irrigation or land drainage specified in clause 5 of this subsection, provided that the volume of water to be used for the supply of drinking water represents more than 20 per cent of the total volume of water made available by such works, or for the disposal or treatment of sewage.

(2) Upon granting the exclusive right specified in clause 1 of subsection 1 of this section, subsection 1 of § 137 of this Act applies where the legal act of the European Union based on which the exclusive right to operate in the network sector is granted has not laid down the publication obligation. Upon granting the exclusive right to operate in the network sector, the contracting authority or entity informs the European Commission thereof within one month after granting the exclusive right.

(3) A notice on granting the exclusive right specified in clause 4 of subsection 1 of this section is published in the Official Journal of the European Union.
§ 133. Specifications of scope of implementation of Act upon award of concession contract by contracting entity

(1) The contracting entity is not required to follow the rules provided for in this Act upon awarding a concession contract:

1) for the purpose of operating in the network sector in the territory of a third country, provided that a network or a geographical area located in the territory of a Member State of the European Union is not used to that effect;  
2) to an economic operator affiliated to the contracting entity;  
3) to a legal person or a civil law partnership established by the contracting entity who is a party to the contract and other contracting entities with the aim of operating in the network sector for at least three years and whose articles of association or foundation resolution or civil law partnership agreement obligates the contracting entities who established it to participate therein during at least the equivalent period;  
4) for the purpose of operating in the network sector, provided that the activity is directly exposed to competition on the terms and conditions provided for in § 154 of this Act.

(2) A legal person established and a civil law partnership established solely by contracting entities with the aim of operating in the network sector is not required to follow the rules provided for in this Chapter upon awarding a contract:

1) to a contracting entity that established it or participates in it, provided that the legal person or the civil law partnership has been established with the aim of operating in the network sector for at least three years and, under its articles of association, foundation resolution or partnership agreement, the contracting entities who established it undertake to participate in it for at least the same period;  
2) to an economic operator affiliated to the contracting entity that established it or participates in it.

(3) The exception specified in clause 3 of subsection 1 or clause 2 of subsection 2 of this section may be applied on the condition that at least 80 per cent of the average turnover of the economic operator in the preceding three years has been obtained from the provision of services or execution of works to the contracting entities or economic operators affiliated to the contracting entities specified in clause 3 of subsection 1 or clause 2 of subsection 2 of this section.

(4) If the turnover of an affiliated economic operator specified in subsection 3 of this section cannot be indicated due to the time of establishment or commencement of operations, the economic operator can, by means of business projections, prove that its turnover which has been generated in the manner specified in subsection 3 is credible. If similar services are provided or similar works are executed by multiple economic operators affiliated to the contracting entity, the percentage rate specified in subsection 3 is calculated taking account the total turnover generated in the manner specified in subsection 3 by all the affiliated economic operators.

(5) For the purposes of this Chapter, ‘affiliated economic operator’ means an economic operator whose annual accounts are consolidated with the annual accounts of the contracting entity or an economic operator who is, directly or indirectly, subject to a dominant influence by the contracting entity in the manner specified in clause 3 of subsection 3 of § 5 of this Act or who exercises a dominant influence over the contracting entity or who, in common with the contracting entity, is subject to the dominant influence of the same person.

(6) In the event of application of the exceptions specified in clauses 2 and 3 of subsection 1 and in subsection 2 of this section, the contracting entity must submit at the request of the European Commission the names of the economic operators whom the contracting entity has awarded a concession contract, a description of the nature and the value of the awarded concession contracts and, where deemed necessary by the European Commission, evidence of the conformity of the relationships between the contracting entities and their affiliated economic operators with the provisions of this section via the Ministry of Finance in writing.

§ 134. Specifications of scope of implementation of Act upon award of concession contract in fields of defence and security

The contracting authority or entity is not required to implement the rules provided for in this Act upon awarding a concession contract in the fields of defence and security:

1) in accordance with a specific procedure arising from an international agreement made between a Member State or several Member States of the European Union and a third country or several third countries;  
2) in accordance with a specific procedure arising from an international agreement relating to the stationing of troops;  
3) in the framework of a cooperative programme based on research and development, conducted jointly by at least two Member States of the European Union for the development of a new product and, where applicable, the later stages of the life-cycle of the product;  
4) to another government relating to works and services directly linked to military equipment or sensitive equipment, or works and services specifically for military purposes, or sensitive works and sensitive services;  
5) when forces are deployed outside the territory of the Union where operational needs require those concessions to be concluded with economic operators located in the area of operations.
§ 135. Application of procedural rules

If the value of a concession contract exceeds the estimated value of the concession contract by at least 20 per cent and therefore equals or exceeds the international threshold and public procurement is organised using procedural rules applicable to the awarding of a concession below the international threshold, the contracting authority or entity will declare the concession award procedure invalid and carry out a new concession award procedure in accordance with the procedural rules applicable to the awarding of a concession above the international threshold.

§ 136. Duration of concession contract

The duration of a concession contract is up to five years or until the concessionaire can within a reasonable time recoup the investments made in operating the works or services, including investments made at the time of awarding the concession contract and during the duration of the concession contract, together with a return on invested capital, taking into account the investments required to achieve the specific contractual objectives.

Division 2
Concession Contract Award Procedure

§ 137. Commencement and termination of concession contract award procedure

(1) A concession contract award procedure, except in the event provided for in subsection 2 of this section, starts with the publication of a concession notice in the register and ends in the events provided for in subsection 3 of § 73 of this Act.

(2) The contracting authority or entity has the right to carry out a concession contract award procedure without the submission of a notice specified in subsection 1 of this section if:
   1) the concession contract can be awarded only to one tenderer for technical reasons, reasons related to the protection of exclusive rights and intellectual property rights or reasons related to the protection of exclusive rights not specified in clause 1 of § 4 of this Act, and the absence of competition is not the result of an artificial narrowing down of the parameters of the concession award, or the aim of the concession is the creation or acquisition of a unique work of art or artistic performance;
   2) no requests to participate, no tenders, no suitable tenders or no suitable requests to participate were submitted in response to a prior concession procedure announced in a prior concession notice, and provided that the initial conditions of the concession contract are not substantially modified.

(3) For the purposes of clause 2 of subsection 2 of this section a tender is considered not to be suitable where it is manifestly incapable, without substantial changes, of meeting the contracting authority or entity’s needs and requirements as specified in the procurement documents. A request to participate submitted by a candidate who is to be or may be excluded under clause 1, 2, 4 or 5 of subsection 1 or subsection 4 of § 95 of this Act or who does not meet the selection criteria.

(4) The contracting authority or entity announces the termination of a concession contract award procedure in accordance with § 83 of this Act.

§ 138. Procurement documents upon award of concession contract

(1) Upon drawing up, submission and modification of procurement documents for the purpose of awarding a concession contract, the contracting authority or entity follows §§ 77, 81 and 82 of this Act.

(2) Where due to exceptional security, or technical reasons or due to the particularly sensitive nature of commercial information requiring a very high level of protection, unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered, contracting authority will indicate in the concession notice how the procurement documents concerned will be made available to economic operators.

§ 139. Technical and functional requirements

(1) In the technical and functional requirements, the contracting authority or entity establishes a list of the characteristics of services or works, technical requirements or essential properties for the purpose of describing the subject-matter of the concession contract, using the terminology and level of precision understandable to persons operating in the relevant field. The technical and functional requirements may also refer to the specific process of production or provision of the requested works or services provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.

(2) The characteristics may for instance include quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, terminology, symbols, testing and test methods, marking and labelling, or user instructions.
(3) Technical and functional requirements do not refer to a specific source, process, trade mark, patent, type, origin or type of production with the effect of favouring or eliminating certain undertakings or certain products.

(4) The prohibition specified in subsection 3 of this section does not apply, on an exceptional basis, where it is indispensable owing to the subject-matter of the public contract for a reason that the preparation of the technical and functional requirements on the grounds provided for in subsections 1 and 2 of this section does not allow for a sufficiently precise and intelligible description of the subject-matter of the public contract. Such reference is accompanied by the words ‘or equivalent.’

(5) The contracting authority or entity will not reject a tender on the grounds that it does not comply with the technical and functional requirements, once the tenderer proves in its tender, by any appropriate means, that the solutions it has proposed satisfied in an equivalent manner the technical and functional requirements.

§ 140. Award criteria

(1) In the procurement documents for awarding a concession contract, the contracting authority or entity establishes the contract award criteria related to the subject-matter of the concession contract in the order of priority, which ensure effective competition upon assessment of tenders and allow the contracting authority or entity to identify an overall economic advantage of the entire concession contract, and indicates which data is required on the basis of the established award criteria. The award criteria may include, inter alia, environmental, social or innovation-related criteria.

(2) Where the contracting authority or entity receives a tender which proposes an innovative solution with an exceptional level of functional performance which could not have been foreseen by a diligent contracting authority or entity, the contracting authority or entity may modify the ranking order of the award criteria to take into account that innovative solution.

(3) On the ground specified in subsection 2 of this section, the contracting authority or entity informs all tenderers about the modification of the order of importance and issues simultaneously to all tenderers a new invitation to submit tenders or, where no invitation to submit tenders has been made, submits a new concession notice to the register and sets a new time limit for submission of tenders, taking account of the minimum time limits provided for in § 143 or this Act.

§ 141. Rules of concession contract award procedure

(1) The contracting authority or entity establishes the rules of the concession contract award procedure in procurement documents. In addition to the requirements provided for in this Division, the contracting authority or entity may also rely on other provisions of this Act upon establishing the rules of the concession contract award procedure. The contracting authority or entity immediately informs all interested economic operators of modifications to the rules of the concession contract award procedure.

(2) The contracting authority or entity may limit the number of candidates whom it makes an invitation to submit a tender or an invitation to negotiate, specifying the numerical minimum level and, where necessary, maximum level as well as objective and non-discriminatory criteria for the selection of these candidates in the procurement documents.

(3) In the concession contract award procedure, §§ 110 and 111 of this Act are applied to tenders.

(4) The contracting authority or entity verifies the absence of grounds for exclusion under §§ 95 and 96 of this Act regarding all tenderers or candidates, taking account of the specifications provided for in this section, the qualification provided for in this Chapter and in the concession notice and, where necessary, the conformity of the qualified tenderers’ tenders with the terms and conditions established in the procurement documents, and assesses suitable tenders in accordance with the provisions of this Chapter and the procurement documents.

(5) In addition to the grounds provided for in subsection 4 of § 95 of this Act, the contracting authority or entity does not need to award a concession contract to a person in the fields of defence and security and may exclude from the concession contract award procedure in the fields of defence and security where the contracting authority or entity is able to demonstrate in any way that the economic operator is not sufficiently reliable, given the essential security interests of Estonia.

(6) The contracting authority or entity may hold negotiations in the concession contract award procedure. The award criteria or the minimum level of the negotiable terms and conditions cannot be negotiated.

(7) Upon awarding a concession contract, the contracting authority or entity follows § 120 of this Act and, upon modifying a concession contract, § 123 of this Act. Section 121 is applied to concession contracts.
§ 142. Qualification of tenderers and candidates

(1) To qualify tenderers or candidates, the contracting authority or entity establishes non-discriminatory and, given the subject-matter of the concession contract, proportional and competition-ensuring terms and conditions related to the subject-matter of the concession contract and indicates in the concession notice what data and documents are required for proving that the established terms and conditions are met.

(2) The tenderer or candidate may prove that it meets the selection criteria established by the contracting authority or entity on the basis of the indicators of another economic operator in accordance with the rules provided for in § 103 of this Act.

§ 143. Time limits for submission of tenders and requests to participate

(1) Upon setting a time limit for submission of tenders and requests to participate, the contracting authority or entity follows § 92 of this Act.

(2) In the concession contract award procedure, the time limit for submission of requests to participate and, where a tender is submitted along with the request to participate, tenders must not be shorter than 30 days as of the submission of a concession notice to the register.

(3) When the concession contract award procedure is carried out in successive stages, the time limit for submission of the first tender must not be shorter than:

1) 17 days from the submission of the invitation to tender, provided that the entire communication and exchange of information in the procurement procedure takes place by electronic means;
2) 22 days from the submission of the invitation to tender, provided that the entire communication and exchange of information in the procurement procedure does not place by electronic means.

(4) If the register sends to the contracting authority or entity a notice of the elimination of deficiencies contained in the concession notice, the contracting authority or entity will set a new time limit for the submission of tenders or requests to participate as of the submission of a non-deficient concession notice to the register.

Division 3
Social and Other Specific Services

§ 144. Concession contracts for social and other specific services

(1) The procedure for awarding a concession contract for social and other specific services set out in Annex IV to Directive 2014/23/EU of the European Parliament and of the Council starts with the submission of an indicative notice to the register and ends on the grounds provided for in subsection 3 of § 73 of this Act.

(2) Upon awarding a concession contract for social and other specific services, the contracting authority or entity follows § 120 of this Act.

(3) The contracting authority or entity announces the termination of the concession contract award procedure for social and other specific services in accordance with § 83 of this Act. The contracting authority or entity may gather and send contract award notices concerning public contracts awarded within a quarter at once. Notices gathered in such a manner are sent within 30 days following the final day of the same quarter.

Chapter 5
Procurement Procedure in Network Sector

Division 1
Application of Chapter

§ 145. Application of provisions

Upon carrying out a procurement procedure in the network sector, the provisions of Chapter 2 of this Act apply, unless otherwise provided for in this Chapter.

§ 146. Operating in fields related to gas and heat

(1) For the purposes of this Act, ‘operating in the fields related to gas and heat’ means:
1) the provision or operation of a fixed network intended to provide to the public a gas or heat transport or distribution service or a service in connection with the production, transport or distribution of gas or heat, or
2) the supply of gas or heat to such networks.
(2) The supply, by a contracting entity other than a contracting authority, of gas or heat to fixed networks which provide a service to the public is not considered to be a relevant activity within the meaning of subsection 1 of this section where all of the following conditions are met:
1) the production of gas or heat by that contracting entity is the unavoidable consequence of carrying out an activity other than those referred to in §§ 150–152 of this Act or in this section, and
2) the supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 per cent of the contracting entity’s turnover on the basis of the average for the preceding three years, including the current year.

§ 147. Operating in fields related to electricity

(1) For the purposes of this Act, ‘operating in the fields related to electricity’ means:
1) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity, or
2) the supply of electricity to such networks.

(2) The supply, by a contracting entity other than a contracting authority, of electricity to fixed networks which provide a service to the public is not considered to be a relevant activity within the meaning of subsection 1 of this section where all of the following conditions are met:
1) the production of electricity by that contracting entity takes place because its consumption is necessary for carrying out an activity other than those referred to in § 146, 148 or 149 of this Act on in this section, and
2) supply to the public network depends only on that contracting entity’s own consumption and has not exceeded 30 per cent of that contracting entity’s total production of energy, on the basis of the average for the preceding three years, including the current year.

§ 148. Operating in fields related to water

(1) For the purposes of this Act, ‘operating in the fields related to water’ means:
1) the provision or operation of a public water supply and sewerage system intended to provide a service to the public in connection with the production, transport or distribution of drinking water;
2) the supply of drinking water to a public water supply system specified in clause 1 of this section;
3) implementation of hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 per cent of the total volume of water made available by such projects or irrigation or drainage installations, or
4) the disposal and treatment of sewage.

(2) The supply, by a contracting entity other than a contracting authority, of drinking water to a fixed network which provide a service to the public is not considered to be a relevant activity within the meaning of subsection 1 of this section where all of the following conditions are met:
1) the production of drinking water by that contracting entity takes place because its consumption is necessary for carrying out an activity other than those referred to in § 146, 147 or 149 of this Act on in this section, and
2) supply to the public network depends only on that contracting entity’s own consumption and has not exceeded 30 per cent of that contracting entity’s total production of drinking water, on the basis of the average for the preceding three years, including the current year.

§ 149. Operating in fields related to transport services

(1) For the purposes of this Act, ‘operating in the fields related to transport services’ means activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, bus, tramway, trolley bus, automated systems or cable.

(2) A network is considered to exist for the purposes of subsection 1 of this section where the service is provided under operating conditions laid down by a competent authority, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

§ 150. Operating in fields related to ports or airports

For the purposes of this Act, ‘operating in the fields related to ports or airports’ means activities relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

§ 151. Operating in fields related to postal services

(1) For the purposes of this Act, ‘operating in the fields related to postal services’ means provision of postal services or other services listed in subsection 4 of this section.

(2) For the purposes of subsection 1 of this section, ‘postal services’ means services consisting of the clearance, sorting, routing and delivery of postal items. These services include both reserved postal services as well as

(3) 'Postal item' specified in subsection 2 of this section means an item addressed in the final form in which it is to be carried, 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) For the purposes of subsection 1 of this section, ‘other services than postal services,’ which is considered operating in the fields related to postal services, means services specified in subsection 2, which are provided by the contracting entity in the following areas:

1) mail service management services (services both preceding and subsequent to despatch, including mailroom management services);
2) services concerning postal items not included in subsection 3 of this section, which are not covered by the term ‘postal item,’ such as direct mail bearing no address.

§ 152. Operating in fields related to extraction of oil and gas and exploration for, or extraction of, coal, oil shale, peat or other solid fuels

For the purposes of this Act, ‘operating in the fields related to the extraction of oil and gas and exploration for, or extraction of, coal, oil shale, peat or other solid fuels’ means activities relating to the exploitation of a geographical area for the purpose of extracting oil or gas, and exploring for, or extracting, coal, oil shale, peat or other mineral resources used as solid fuels.

§ 153. Specifications of area of implementation of Act

(1) The contracting entity is not required to follow the rules provided for in this Act upon:

1) awarding contracts for purposes of resale or lease to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and other entities are free to sell or lease it under the same conditions as the contracting entity;
2) awarding contracts for the purpose of operating in the network sector in the territory of a third country, provided that a network or a geographical area located in the territory of a Member State of the European Union is not used to that effect;
3) awarding a contract to an economic operator affiliated to the contracting entity;
4) awarding a contract to a legal person or a civil law partnership established solely by contracting entities with the aim of operating in the network sector for at least three years and whose articles of association or foundation resolution or civil law partnership agreement obligates the contracting entities who established it to participate therein during at least the equivalent period;
5) awarding a contract or holding a design contest to enable operating in the network sector, provided that the activity is directly exposed to competition on a market to which access is free on the conditions provided for in § 154 of this Act.

(2) A legal person and a civil law partnership established solely by contracting entities with the aim of operating in the network sector in the territory of a third country, is not required to follow the rules provided for in this Chapter upon awarding a contract:

1) to a contracting entity that established it or participates in it, provided that the legal person or the civil law partnership has been established with the aim of operating in the network sector for at least three years and, under its articles of association, foundation resolution or partnership agreement, the contracting entities who established it undertake to participate in it for at least the same period;
2) to an economic operator affiliated to the contracting entity that established it or participates in it.

(3) The exceptions specified in clause 3 of subsection 1 and clause 2 of subsection 2 of this section may be applied upon:

1) awarding a public supply contract, provided that at least 80 per cent of the average turnover of the economic operator in the preceding three years has been obtained from the provision of supplies to the contracting entities or economic operators affiliated to the contracting entities specified in clause 3 of subsection 1 or clause 2 of subsection 2 of this section;
2) awarding a public service contract, provided that at least 80 per cent of the average turnover of the economic operator in the preceding three years has been obtained from the provision of services to the contracting entities or economic operators affiliated to the contracting entities specified in clause 3 of subsection 1 or clause 2 of subsection 2 of this section;
3) awarding a public works contract, provided that at least 80 per cent of the average turnover of the economic operator in the preceding three years has been obtained from the provision of works to the contracting entities or economic operators affiliated to the contracting entities specified in clause 3 of subsection 1 or clause 2 of subsection 2 of this section.

(4) If the turnover of an affiliated economic operator specified in subsection 3 of this section cannot be indicated due to the time of establishment or commencement of operations, the economic operator can by other means, in particular, by means of business projections, prove that its turnover which has been generated in the manner specified in subsection 3 is credible. If similar services or supplies are provided or similar works are executed by multiple economic operators affiliated to the contracting entity, the percentage rate specified in
subsection 3 is calculated taking account the total turnover generated in the manner specified in subsection 3 by all the affiliated economic operators.

(5) Upon applying the exception specified in clause 1 of subsection 1 of this section, the contracting entity, if so requested by the European Commission, notifies the European Commission in writing via the Ministry of Finance of all the categories of products or activities which the contracting entity regards as excluded.

(6) Upon applying the exception specified in clause 2 of subsection 1 of this section and upon awarding contracts for a purpose other than activities aimed at operating in the network sector, the contracting entity, if so requested by the European Commission, notifies the European Commission in writing via the Ministry of Finance of activities which the contracting entity regards as excluded.

(7) In the event of application of the exceptions specified in clauses 3–5 of subsection 1 and in subsection 2 of this section, the contracting entity, if so requested by the European Commission, must submit the names of the economic operators, a description of the nature and the value of the awarded contracts and, where deemed necessary by the European Commission, evidence of the conformity of the relationships between the contracting entities and their affiliated economic operators with the provisions of this section via the Ministry of Finance in writing.

(8) For the purposes of this Chapter, ‘affiliated economic operator’ means an economic operator whose annual accounts are consolidated with the annual accounts of the contracting entity or an economic operator who is, directly or indirectly, subject to a dominant influence by the contracting entity in the manner specified in clause 3 of subsection 3 of § 5 of this Act or who exercises a dominant influence over the contracting entity or who, in common with the contracting entity, is subject to the dominant influence of the same person.

(9) A contracting entity operating in the fields related to gas or hear for the purposes of subsection 1 of § 146 of this Act, a contracting entity operating in the fields related to electricity for the purposes of subsection 1 of § 147, and a contracting entity operating in the fields related to the extraction of oil and gas and exploration for, or extraction of, coal, oil shale, peat or other solid fuels for the purposes of § 152 is not required to follow the rules provided for in this Chapter upon awarding a contract for purchasing energy or fuel for the production of energy.

(10) A contracting entity operating in the fields related to water for the purposes of subsection 1 of § 148 of this Act is not required to follow the rules provided for in this Act upon purchasing water.

§ 154. Direct exposure of activity to competition

(1) The contracting entity is not required to follow the rules provided for in this Chapter if the respective activity in the network sector is directly exposed to competition on a market to which access is not restricted and the European Commission has adopted a respective decision.

(2) The direct exposure of an activity to competition is established in accordance with the rules provided for in Article 35 of Directive 2014/25/EU of the European Parliament and of the Council.

Division 2
Specifications of Procurement Procedure upon Awarding and Performing Public Contracts

Subdivision 1
Specifications of Procurement Procedure

§ 155. Procurement procedures with prior publication

Upon awarding a public contract, the contracting entity has the right to, in accordance with the rules provided for in this Chapter, carry out the procurement procedure, at its own discretion, as an open procedure, restricted procedure, competitive procedure with negotiation, competitive dialogue or innovation partnership.

§ 156. Negotiated procedure without prior publication

(1) The contracting entity has the right to organise a negotiated procedure without prior publication if:

1) no tender or request to participate was submitted during the procurement procedure to be published or all submitted tenders or requests to participate were unsuitable and the initial terms and conditions of the public procurement are not substantially modified;

2) the public contract is awarded solely for the purpose of research, experimentation, study or development, but not for the purpose of recovering research and development costs, and on the condition that it does not
restrict the awarding of further contracts by way of a procurement procedure with a call for competition for these purposes;

3) the public contract can be awarded only to a particular economic operator for technical reasons or reasons related to the protection of exclusive rights, including intellectual property rights, and the absence of competition is not the result of an artificial narrowing down of the parameters of the public procurement, or for artistic reasons, including upon creation or acquisition of a unique work of art or artistic performance;

4) the urgent awarding of the public contract is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable to the contracting entity, the time limits specified in § 93, 94 or 158 of this Act cannot be followed;

5) for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting entity to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

6) new works or services consisting in the repetition of similar services or works purchased from the same tenderer as a result of a procurement procedure with a call for competition based on a public contract and in conformity with the basic project are purchased, provided that the initial contract notice sets out the terms and conditions of such public contract and the possibility of awarding such a public contract and the estimated value of the initial public contract includes the total value of the subsequent services or works;

7) supplies are purchased on a commodity market;

8) supplies are purchased seizing an especially advantageous opportunity offered over a very short period, taking advantage of a price considerably lower than the market price;

9) supplies or services are purchased 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;

10) the public contract is awarded to the winner or one of the winners of the design contest and such condition was established in the invitation to the design contest, and where the public contract is awarded to one of the winners of the design contest, negotiations are held with all winners.

(2) For the purposes of clause 1 of subsection 1 of this section a tender is considered not to be suitable where it is incapable, without substantial changes, of meeting the requirements specified in the procurement documents or the contracting entity’s needs. A request to participate is not suitable where the candidate concerned is to be or may be excluded pursuant to clause 1, 2, 4 or 5 of subsection 1 or subsection 4 of § 95 of this Act or does not meet the selection criteria.

§ 157. Specifications of commencement of procurement procedure and submission of contract award notice in network sector

(1) To start a procurement procedure with a call for competition, the contracting entity submits one of the following notices to the register:

1) periodic indicative notice;
2) qualification system notice;
3) contract notice.

(2) The contracting entity may start a procurement procedure in the manner specified in clause 1 of subsection 1 of this section if the contracting entity carries it out in the form of a restricted procedure or a competitive procedure with negotiation.

(3) The contracting entity may start a procurement procedure in the manner specified in clause 2 of subsection 1 of this section if the contracting entity carries it out in the form of a restricted procedure, competitive procedure with negotiation, competitive dialogue or innovation partnership.

(4) In a contract award notice submitted regarding public contracts for research and development services, the information concerning the nature and quantity of the services may be limited to:

1) the indication “R & D services” where the contract has been awarded by a negotiated procedure without a call for competition;
2) information indicated in the contract notice or periodic indicative notice.

(5) If the contracting entity has commenced a procurement procedure with a periodic indicative notice, the contracting entity indicates in the contract award notice submitted regarding the last public contract covered by the periodic indicative notice that it will not award additional public contracts during the period covered by the period indicative notice.

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

(1) In the case of an open procedure, the contracting entity applies the provisions governing indicative notices, which are provided for in subsection 2 of § 75 and clause 1 of subsection 2 of § 93 of this Act, when setting a time limit for submission of tenders.

(2) In the case of a restricted procedure and a competitive procedure with negotiation, the time limit for participating in the procurement procedure must not be shorter than 30 days from the submission of a contract notice to the register or making the invitation specified in subsection 5 of § 159 of this Act, provided that the
procurement procedure was started with a periodic indicative notice. In exceptional cases where the application of a shorter time limit is necessary due to unforeseeable events, the time limit may be reduced to 15 days.

(3) In the case of an innovation partnership or a competitive dialogue, the time limit for submission of requests to participate in the procurement procedure must not be shorter than 30 days from the submission of a contract notice to the register. In exceptional cases where the application of a shorter time limit is necessary due to unforeseeable events, the time limit may be reduced to 15 days.

(4) In the case of a restricted procedure and a competitive procedure with negotiation, the time limit for submission of tenders may be set by mutual agreement between the contracting entity and candidates chosen by the contracting entity, provided that all the chosen candidates have the same time to submit a tender. Failing agreement, the contracting entity sets a time limit that is not be shorter than ten days from the date on which the invitation to tender was made.

§ 159. Periodic indicative notice

(1) To notify of a planned procurement procedure, the contracting entity may submit a periodic indicative notice to the register or publish it in the buyer profile. If the contracting entity publishes the indicative notice in the buyer profile, the contracting entity submits to the register a respective notice before publishing the indicative notice.

(2) The contracting entity submits a period indicative notice:
1) to the register or publishes it in the buyer profile if the contracting entity wishes to apply the reduced time limit for submission of tenders specified in clause 1 of subsection 2 of § 93 of this Act, or
2) to the register if the contracting entity wishes to commence a restricted procedure or a competitive procedure with negotiation with a periodic indicative notice.

(3) A periodic indicative notice may contain information on procurement procedures to be commenced within the next 12 months from the publication of the indicative notice.

(4) In the case specified in subsection 2 of this section, the contracting entity submits to the register or publishes in the buyer profile an indicative notice 35 days to 12 months before the date of submission of the contract notice or the date of submission of the invitation specified in subsection 5.

(5) If the commencement of a procurement procedure has been notified of in a periodic indicative notice, the contracting entity makes, before choosing the candidates whom to make an invitation to tender, an invitation to submit a request to participate in the procurement procedure also to all economic operators who have demonstrated interest in the public procurement.

(6) The invitation to submit a request to participate specified in subsection 5 of this section must contain the entire information required for the submission of a request to participate, where it has not been given in a periodic indicative tender, and the award criteria and their relative weighting, provided that these have not been indicated in the procurement documents.

(7) A request to participate is submitted along with documents certifying the candidate’s qualifications in accordance with the requirements set out in the procurement documents.

(8) Upon awarding public contracts in fields related to networks, the indicative notice provisions provided for in Chapter 2 of this Act are not applied, unless otherwise provided for in this Chapter.

§ 160. Submission of technical specifications in case of regular public contracts

Based on a request to participate submitted by an interested economic operator and in accordance with the rules provided for in this Act, the contracting entity makes available the technical specifications of the subject-matter of the public contract based on which the contracting entity has regularly awarded public contracts or based on which the contracting entity intends to award public contracts as a result of a procurement procedure commenced with a periodic indicative notice in accordance with § 159 of this Act. Where such technical specifications are based on publicly available materials, the forwarding of a respective reference is sufficient.

§ 161. Exclusion and qualification of tenderers and candidates

(1) To exclude and qualify tenderers or candidates, a contracting entity other than a contracting authority may establish terms and conditions that must be objective and the substance of which must be available to all interested persons and that may include the grounds provided for in §§ 95–106 of this Act, which are applied in accordance with the rules laid down in the sections.
(2) A contracting entity who is a contracting authority applies the rules provided for in §§ 95–97 of this Act upon excluding tenderers and candidates and establishes criteria for qualification of tenderers or candidates on the grounds and in accordance with the rules provided for in §§ 98–106.

(3) The tenderer or candidate may prove its compliance with requirements established to the economic and financial standing and the technical and professional ability based on the resources of other persons on the terms and conditions provided for in § 103 of this Act. Upon relying on the indicators of other persons in the case of a qualification system, the candidate proves to the contracting entity that the resources of the other persons are available to the candidate throughout the period of validity of the qualification system.

(4) Upon qualification of tenderers or candidates or upon qualification of candidates in the case of a restricted procedure, a competitive procedure with negotiation, a competitive dialogue and innovation partnership, the contracting entity is not allowed to:
   1) establish additional administrative, technical or financial conditions on certain tenderers or candidates;
   2) require tests or evidence which would duplicate evidence already available.

(5) In the case of a restricted procedure, competitive procedure with negotiation, competitive dialogue or innovation partnership, the contracting entity may limit the number of candidates whom it makes an invitation to tender, establishing objective and non-discriminatory criteria in the procurement documents for choosing these candidates. The number of candidates who receive an invitation must be sufficient to ensure competition.

§ 162. Rejection of tender

(1) The contracting entity may reject a tender submitted for awarding a public supply contract where supplies whose third country origin has been determined in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 269, 10.10.2013, pp 1–101) account for over 50 per cent of the total value of the tender. The contracting entity does not reject a tender where the European Union has made an agreement with the relevant third country, which ensures economic operators of the Member States of the European Union comparable and effective access to the markets of third countries.

(2) For the purposes of subsection 1 of this section, software used in telecommunications network equipment is regarded as supplies.

(3) If the contracting entity does not reject a tender on the basis of subsection 1 of this section, the contracting entity will, provided that two or more tenders are equal on the basis of the award criteria, give preference to the tender that does not have the characteristics specified in subsection 1, unless giving preference would force the contracting entity to award a public contract aimed at purchasing such equipment that would not be technically compatible with the existing equipment or the operation and maintenance of which would result in excessive technical problems or disproportionately high costs.

(4) For the purposes of subsection 3 of this section, the price of a tender which does not exceed the price of a comparable tender by more than three per cent is also deemed equal.

(5) Subsections 1–4 of this section are not applied if the Council of the European Union has made a decision on the application of Directive 2014/25/EU of the European Parliament and of the Council in a third country.

Subdivision 2
Qualification System

§ 163. Qualification system notice

(1) If the contracting entity wishes to establish a qualification system provided for in § 164 of this Act, the contracting entity submits to the register a qualification system notice, which specifies, inter alia, the period of validity of the qualification system, the purpose of establishment of the qualification system and the terms and conditions of joining the qualification system or makes references to respective documents.

(2) If the contracting entity wishes to change the period of validity of the qualification system, the contracting entity submits to the register:
   1) a qualification system notice if the period of validity is changed without terminating the validity of the system;
   2) a contract award notice if the validity of the system is terminated early.

§ 164. Qualification system

(1) To qualify candidates, the contracting entity may establish a qualification system specified in this Division.

(2) An interested economic operator may apply for its qualification and participation in the qualification system at any time.
(3) Qualification under the qualification system may consist of multiple stages.

(4) The qualification system must be based on objective criteria and comply with, inter alia, § 161 of this Act.

(5) The contracting entity keeps a list of candidates participating in the qualification system, which may be divided into categories based on the types of the public contracts whereby qualification is based on the established qualification system.

(6) At the request of an interested economic operator, the contracting entity informs it about the terms and conditions specified in subsection 4 of this section.

(7) If the contracting entity finds that the qualification system of another contracting entity meets its needs based on the terms and conditions serving as the basis thereof, the contracting entity communicates the name of the other contracting entity to the economic operator that applied for participation in the qualification system and the details of the respective qualification.

(8) If the contracting entity notifies of the commencement of a procurement procedure in a qualification system notice, the contract authority chooses, based on objective and non-discriminatory criteria, from among candidates qualified on the basis of the rules of the qualification system and participating in the system the candidates whom to make an invitation to tender.

(9) In the invitation to tender, the contracting entity notifies of holding an electronic auction and indicates if it accepts or demands the submission of tenders in the form of an electronic catalogue.

(10) If the contracting entity uses a qualification system, the contracting entity submits a contract award notice to the register in accordance with the rules provided for in § 83 of this Act regarding each public contract awarded on the basis of the qualification system. The procurement procedure terminates with the expiry of the period of validity of the qualification system.

§ 165. Notification of candidates in case of qualification system

(1) The contracting entity notifies of the updating of the selection criteria all the candidates participating in the qualification system and interested persons who have applied for participating.

(2) The contracting entity who has established a qualification system notifies a candidate who has applied for participation in the system about a decision to qualify the candidate and to accept or reject the candidate within four months after the submission of the application. If it takes over four months to make the decision, the contracting entity communicates to the candidate the reasons for the longer decision-making period within four months from the submission of the application and the time limit for granting or denying the application, but such limit cannot exceed six months from the submission of the application.

(3) The contracting entity informs a candidate who has submitted an application to participate in the qualification system about the decision to qualify the candidate and to accept or reject the candidate within 15 days after making the decision.

(4) The contracting entity notifies a candidate accepted to the qualification system of the decisions to deem its qualification terminated at least 15 days in advance, stating the reasons for the termination, unless the reason for the termination of the qualification is the expiry of the period of validity of the qualification system.

Division 3
Social and Other Specific Services

§ 166. Specifications of awarding public contracts for social and other specific services in network sector

(1) Upon awarding public contracts for social and other specific services specified in Annex XIV to Directive 2014/25/EU of the European Parliament and of the Council, the contracting entity applies § 126 of this Act, unless otherwise provided for in this section.

(2) The contracting entity may reserve participation in the specific procedure of social and other specific services, taking account of the conditions and rules of awarding a public service contract provided for in § 127 of this Act.

(3) The specific procedure of social and other specific services, except in the case provided for in subsection 6 of § 126 of this Act, starts with the publication of the following notice in the register:
   1) contract notice;
   2) periodic indicative notice, or
3) qualification system notice.

(4) Upon commencement of the specific procedure of social and other specific services based on a notice specified in clause 2 of subsection 3 of this section, economic operators submit to the contracting entity a confirmation of interest within the time limit and in the form determined by the contracting entity. To award a public contract in the period covered by the periodic indicative notice, the contracting entity submits an invitation to tender simultaneously to all economic operators who have submitted a confirmation of interest within the time limit.

(5) Upon commencement of the specific procedure of social and other specific services based on a notice specified in clause 3 of subsection 3 of this section, the contracting entity applies §§ 164 and 165 of this Act.

Division 4
Framework Agreements in Network Sector

§ 167. Specifications of framework agreements in network sector

(1) A framework agreement may be awarded for a term of up to eight years, unless a longer term is justified, in particular taking account of the subject-matter of the framework agreement.

(2) Section 31 of this Act does not apply to framework agreements.

Chapter 6
Procurement Procedure in Fields of Defence and Security

Division 1
Application of Chapter

§ 168. Application of provisions

Upon carrying out a procurement procedure in the fields of defence and security, the provisions of Chapter 2 of this Act apply, unless otherwise provided for in this Chapter.

§ 169. 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 military supplies designed or adapted for a military purpose, including munitions, explosives, arms, engineering and communication and surveillance equipment, clothing and special equipment, land vehicles, sea-going vessels, aircraft, repair and maintenance supplies related to them, other materials used for military purposes, 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 supplies, services or works directly related to and necessary for the stages of the life cycle of the supplies specified in clauses 1 and 2 of this section;
   4) purchasing services and works of a military purpose and services and works of a security purpose.

(2) The rules provided for in this Chapter are applied upon awarding such a public contract whose subject-matter is the purchasing of the supplies, services and works specified in subsection 1 of this section along with other public procurement falling within the scope of regulation of this Act, provided that the awarding of a single public contract is objectively justified.

§ 170. Specifications of scope of application of Act in public procurement in fields of defence and security

(1) The contracting authority or entity is not required to apply the rules provided for in this Act if:
   1) the 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 country or several third countries;
   2) the contract is related to intelligence or counter-intelligence, including the intelligence activities of a security authority or of the Defence Forces;
   3) the application of this Act would obligate the contracting authority or entity to give information the disclosure of which is considered by the contracting authority or entity to be against the essential security interests of the state;
   4) the contract is awarded in the framework of a cooperative programme based on research and development conducted jointly by at least two Member States of the European Union for the development of a new product and, where applicable, the later phases of the life-cycle of the product;
   5) the contract is awarded in a foreign country, except in a Member State of the European Union, for non-military purchases of supplies, services or works for logistical purposes and that is performed where forces
are deployed outside the territory of the European Union and operational needs require it to be awarded to an economic operator located in the area of operations;
6) the state, being the contracting authority or entity, awards a contract to another country from whom the supplies or services specified in subsection 1 of § 169 of this Act are purchased;
7) a financial service, with the exception of an insurance service, is purchased.

(2) A contracting authority or entity participating in a cooperative programme specified in clause 4 of subsection 1 of this section indicates 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 or entity, if any.

§ 171. Services purchased by way of simple procedure

(1) The contracting authority or entity is not required to organise a procurement procedure in accordance with the rules provided for in this Act upon awarding such a public service contract whereby the services specified in Annex II to Directive 2009/81/EC of the European Parliament and of the Council account for more than 50 per cent of the estimated value of the contract.

(2) If the estimated value of a public contract specified in subsection 1 of this section equals or exceeds the public procurement threshold of the fields of defence and security, the contracting authority or entity must:
1) notify via the website of the register of the desire to award a public contract;
2) follow the rules of drawing up technical specifications provided for in § 176 of this Act;
3) after awarding the public contract, submit a contract award notice in accordance with the rules established in § 83 of this Act.

(3) Regardless of subsection 1 of this section, the contracting authority or entity is required to carry out a procurement procedure if, besides the services specified in subsection 1, the estimated total value of the supplies and services constituting the subject-matter of the same contract or the estimated value of works equals or exceeds the public procurement threshold in the fields of defence and security.

Division 2
Specifications of Procurement Procedure

§ 172. Restricted procedure, competitive procedure with negotiation and competitive dialogue

(1) Upon awarding a public contract in accordance with the rules provided for in this Chapter, the contracting authority or entity is required to, at its own discretion, carry out the procurement procedure in the form of a restricted procedure or competitive procedure with negotiation, unless otherwise provided for in this Act.

(2) The contracting authority or entity has the right to carry out the procurement procedure in form of a competitive dialogue where the contracting authority or entity cannot award a public contract without unreasonable costs or technical problems as a result of a restricted procedure or a competitive procedure with negotiation and where the contracting authority or entity is objectively unable to draw up technical specifications in accordance with the provisions of §§ 87–89 and 176 of this Act or where the contracting authority or entity cannot objectively establish the legal or financial circumstances related to the procurement with sufficient precision.

(3) If the number of qualified candidates in the event of a restricted procedure, competitive procedure with negotiation or competitive dialogue is smaller than the minimum number of candidates indicated in the contract notice and, in the opinion of the contracting authority or entity, it is not sufficient to ensure competition, the contracting authority or entity may suspend the procurement procedure and re-publish the initial contract notice, setting a new time limit for submission of requests to participate.

(4) In the event specified in subsection 3 of this section, the contracting authority or entity, after the submission of requests to participate, make an invitation to tender or an invitation to participate in a dialogue to candidates qualified on the basis of both contract notices.

§ 173. Negotiated procedure without prior publication

(1) In addition to the provisions of clauses 1 and 2 of subsection 1 of § 49 of this Act, the contracting authority or entity has the right to carry out the procurement procedure as a negotiated procedure without prior publication where:
1) no tenders or suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to a competitive procedure with negotiation or a competitive dialogue or all the requests to participate were submitted by candidates who are to be or may be excluded based on clause 1, 4 or 5 of
subsection 1 or subsection 4 of § 95 of this Act or who do not meet the selection criteria, and where the initial conditions of the contract are not substantially modified;

2) the public contract involves air or maritime transport services of units of the Defence Forces, police or border guard operating or about to operate in a foreign country, which the contracting authority or entity must purchase from economic operators whose tender is valid for such a short period that the time limits specified in § 93, 94 or 174 of this Act cannot be complied with;

3) the urgent awarding of the public contract is necessary when, for reasons of extreme urgency brought about by unforeseeable events not dependent on the contracting authority or entity, the time limits specified in § 93, 94 or 174 of this Act cannot be followed.

(2) On the ground specified in clause 1 of subsection 1 of this section, the procurement procedure may be carried out as a negotiated procedure without prior publication, provided that tenderers and candidates with regard to whom the grounds for exclusion from the procurement procedure provided for in this Act are absent, who meet the established selection criteria and who submitted a tender meeting the formal requirements in the initial procurement procedure.

(3) Upon awarding a public supply contract or a public service contract, the contracting authority or entity has the right to, in addition to the grounds provided for in clause 1 of subsection 3 of § 49 of this Act and in subsection 1 of this section, carry out the procurement procedure as a negotiated procedure without prior publication where a research and development service is purchased.

(4) Upon awarding a public supply contract, the contracting authority or entity has the right, in addition to the grounds provided for in subsection 1 of this section, to carry out the procurement procedure as a negotiated procedure without publication on the grounds provided for in clause 3 of subsection 3 and subsection 4 of § 49 of this Act as well as where the supplies are purchased from the same tenderer as a partial replacement of supplies or as the extension of existing supplies and where a change of tenderer would oblige the contracting authority or entity to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; thereby the duration of such public contract must not exceed five years.

(5) Upon awarding a public service contract or a public works contract, the contracting authority or entity has the right to, in addition to the grounds provided for in subsection 1 of this section, carry out the procurement procedure as a negotiated procedure without prior publication where 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, where such additional services or works cannot be technically or economically separated from the original contract without major inconvenience to the contracting authority or entity or when such services or works are strictly necessary for its completion;

2) new services or works consisting in the repetition of similar services or works purchased from the same tenderer under a contract awarded up to five years earlier as a result of a restricted procedure or a competitive procedure with negotiation, provided that such services or works are in conformity with the original project.

§ 174. Time limits for submission of tenders and requests to participate in restricted procedure, competitive procedure with negotiation and competitive dialogue

(1) In a restricted procedure, competitive procedure with negotiation and competitive dialogue, the time limit for submission of tenders must not be shorter than:

1) 15 days from the submission of the invitation to tender where the estimated value of the public procurement equals or exceeds the public procurement threshold, but is below the international threshold;

2) 35 days from the submission of the invitation to tender where the estimated value of the public procurement equals or exceeds the international threshold and the entire communication and exchange of information takes place via electronic means;

3) 40 days from the submission of the invitation to tender where the estimated value of the public procurement equals or exceeds the international threshold and the entire communication and exchange of information does not take place via electronic means.

(2) The contracting authority or entity may reduce the time limits specified in clause 1 of subsection 1 of § 94 and in subsection 1 of this section to up to ten days where the contracting authority or entity cannot adhere to the minimum time limits for the submission of tenders due to objective and urgent circumstances justified in the procurement documents.

(3) The contracting authority or entity may reduce the time limits specified in clauses 2 and 3 of subsection 1 of this section to up to 22 days where the contracting authority or entity has submitted an indicative notice in accordance with the rules provided for in subsection 3 of § 75 of this Act and the indicative notice contains all the mandatory information required in a contract notice, which was available at the time of submission of the indicative notice.

§ 175. Procurement documents

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

(2) In the procurement documents, the contracting authority or entity may demand that the tenderer submit in its tender one or more of the following references for the purpose of verification of meeting the requirements for the security of supply:

1) certificates or documents demonstrating to the satisfaction of the contracting authority that the tenderer or candidate is able to perform its obligations regarding the export, transfer and transit of supplies associated with the contract, including any supporting documents received from the European Union Member State(s) concerned;

2) the indication of any restriction on the contracting authority or entity, which results from export control or security measures;

3) certificates or documents demonstrating that the organisation and location of the tenderer’s supply chain allow it to comply with the requirements concerning the security of supply set out in the procurement documents, and a commitment to ensure that possible changes in its supply chain during the execution of the contract will not adversely affect compliance with these requirements;

4) a commitment from the tenderer or candidate to meet additional needs required by the contracting authority or entity 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 country;

5) any supporting documentation received from the tenderer’s or candidate’s competent national authorities regarding the fulfilment of additional required by the contracting authority or entity 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 country;

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 or candidate to inform the contracting authority or entity without delay of any change in its organisation, supply chain or industrial strategy that may affect its obligations to the contracting authority or entity;

8) a commitment from the tenderer or candidate to provide the contracting authority or entity, 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) The security of supply requirements specified in subsection 2 of this section are requirements aimed at ensuring the reliable and timely provision of defence and security supplies and services in a sufficient quantity or the constant availability of maintenance, repair, spare parts and other support under any circumstances.

(4) The tenderer or candidate may not be required to obtain a commitment from a Member State of the European Union that would prejudice that 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.

§ 176. Technical specifications

If there are no technical standards in the respective field, the following is relied on upon drawing up the technical specifications of the subject-matter of a public contract in the following order:

1) the grounds specified in clauses 1–6 of subsection 2 of § 88 of this Act;

2) civil technical specifications stemming from industry and widely recognised by it;

3) a non-mandatory standard 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 supplies specifications similar to that standard;

4) the grounds specified in clause 7 of subsection 2 of § 88 of this Act.

§ 177. Exclusion of tenderer and candidate from procurement procedure

(1) The contracting authority or entity does not award a public contract and excludes from the procurement procedure an economic operator on the grounds provided for in clause 1, 4 or 5 of subsection 1 of § 95 of this Act and on the conditions specified in subsections 2, 3 and 6 of § 95 of this Act.

(2) In addition to the grounds provided for in clauses 1–3 of subsection 4 of § 95 of this Act, the contracting authority or entity may, on the conditions specified in subsection 5, refuse to award a public contract to and exclude from the procurement procedure an economic operator who:

1) to the knowledge of the contracting authority or entity, 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 given false information on meeting the criteria established by the contracting authority or entity on the basis of this section or §§ 98–101 and 178 of this Act or failed to submit the information or the documents required by the contracting authority or entity on the basis of subsection 2 of § 96, unless the data or documents are not available to the contracting authority or entity based on public data in a database without incurring significant costs.

(3) Sections 97 and 104 of this Act are not applied to procurement procedures in the fields of defence and security.

§ 178. Technical and professional ability of tenderer and candidate

(1) In addition to the data and documents specified in clauses 1-4 and 7-12 of subsection 1 and in subsections 3-6 of § 101 of this Act, the contracting authority or entity may require in the contract notice the submission of the following data and documents / references for the purpose of verifying whether the technical and professional ability of the tenderer or candidate meet the selection criteria:

1) description of tools, material, technical equipment, staff numbers and their know-how, which the economic operator has at its disposal;
2) description of the sources of supply;
3) indication of the geographical location of the sources of supply when it is outside the territory of the European Union.

(2) The submission of the data and documents listed in subsection 1 of this section may be required for the performance of a public contract in an emergency, state of emergency or state of war or in a similar situation in another Member State of the European Union or a third country to cope with any additional needs required by the contracting authority or entity or to carry out the maintenance, modernisation or adaptation of the supplies covered by the contract.

(3) If the contract to be awarded involves state secrets or classified information of foreign states, the contracting authority or entity establishes in the procurement 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 or entity may demand that the tender contain, among other things, the following:

1) tenderer’s or candidate’s facility security clearance or staff security clearance or staff security clearance certificate;
2) a certificate of the competent authority of the country of location of the tenderer or candidate or a commitment by the tenderer or candidate that the tenderer or the candidate ensures, in accordance with the requirements, 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.

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

(5) Before awarding a public contract, the contracting authority or entity verifies 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 staff security clearance regarding state secrets and classified information of foreign states as of the day indicated by the contracting authority or entity after making a decision to declare the tender successful. If it becomes evident that the tenderer does not have the required clearance or certificate as of the given day, the contracting authority or entity will not award the public contract to the person and will make a new decision to not qualify the tenderer.

(6) If the successful tenderer is not qualified on the basis of subsection 4 of this section, the contracting authority or entity will implement the rules provided for in § 119 of this Act and apply to the tenderer who was not qualified the provisions of the same section which concern a tenderer who has withdrawn its tender.

§ 179. Specifications of awarding framework agreement in public procurement in fields of defence and security

A framework agreement may be awarded for a term of up to seven years, unless a longer term is justified, in particular taking account of the subject-matter of the framework agreement.
Competence of Ministry of Finance Regarding Public Procurement

§ 180. Competence of Ministry of Finance regarding public procurement

In the field of public procurement, the Ministry of Finance:
1) makes, coordinates and implements the public procurement policy and is responsible for legislative drafting;
2) advises in matters pertaining to the implementation of this Act, thereby approves the procurement rules of a contracting authority or entity at the latter’s request, organises training in public procurement, gives advisory instructions and guidelines, and publishes updated know-how;
3) maintains the public procurement register as an electronic database;
4) collects, processes and analyses statistical data and organises the exchange of data and information with the Publications Office of the European Union and the European Commission in accordance with legislation;
5) engages in supranational cooperation with foreign authorities and international organisations;
6) exercises state supervision and administrative supervision over adherence to this Act and legislation adopted on the basis thereof and carries out extrajudicial proceedings in misdemeanour cases in accordance with the rules and to the extent provided by law;
7) once a year submits to the Government of the Republic an overview of the public procurement policymaking, advisory and training activities, state supervision and the activities of the public procurement register;
8) performs other duties, tasks and functions arising from laws.

Division 2
Public Procurement Register

§ 181. Public procurement register

(1) The register is a database established for processing public procurement data, which is part of the state information system and the purpose of which is to:
1) ensure the publication of public procurement notices and the communication of such notices to the Publications Office of the European Union;
2) indicate the results of review proceedings;
3) enable the electronic public procurement procedure;
4) ensure the gathering of public procurement statistics;
5) publish other relevant public procurement information.

(2) The following is entered in the register:
1) details on public procurement notices;
2) details on the results of review proceedings;
3) details on public procurement procedures;
4) electronic documents on the details specified in clauses 1 and 2 of this subsection;
5) other data and electronic documents provided for in this Act.

(3) The contracting authority or entity is responsible for the correctness of data that it submits to the register.

(4) The data specified in subsection 2 of this section is publicly available, unless access to the data has been restricted on the basis of law.

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

(6) The statutes of the register are established by a regulation of the Government of the Republic.

§ 182. Interbase cross-usage of data

To perform the duties, tasks and functions given to the register by law, the chief and authorised processors of the register are authorised to make electronic queries to the databases of other state databases or local government databases and retrieve data therefrom.

§ 183. Communication of data to Publications Office of European Union

Where the estimated value of the public procurement equals or exceeds the international threshold or in another event where the contracting authority or entity so requests, the register communicates the data contained in public procurement notices to the Publications Office of the European Union in accordance with Commission
§ 184. Communication of statistical data to European Commission


Chapter 8
Review Procedure

Division 1
General Provisions

§ 185. Contesting of actions of contracting authority or entity

(1) A tenderer, candidate or economic operator interested in participating in public procurement (hereinafter requester) may contest actions of the contracting authority or entity by filing a respective request for review with the Public Procurement Review Committee (hereinafter Review Committee) if it finds that an infringement of this Act by the contracting authority or entity infringes its rights or adversely affects its interests.

(2) A request for review may be filed against the following documents or decisions of the contracting authority or entity:
   1) procurement documents;
   2) exclusion of the candidate or tenderer from the procurement procedure;
   3) non-exclusion of a candidate or tenderer from the procurement procedure based on subsection 2 of § 97 of this Act;
   4) qualification or non-qualification of an economic operator;
   5) declaring a tender suitable;
   6) rejection of a tender or rejection of all tenders;
   7) declaring a tender successful;
   8) other decision made by the contracting authority or entity on the basis of this Act, which may infringe the rights of the requester or adversely affect its interests.

(3) If the contracting authority or entity has changed the procurement documents and extended the time limit for submission of tenders, requests to participate or conceptual designs, only the changes made to the procurement documents, which are in conflict with the final decision of the Review Committee or the final judgment made with regard to the same public procurement or changes made independently thereof may be contested during the extended time limit.

(4) The requester may:
   1) file a request for review against the optional notice if the contracting authority or entity has not submitted a contract notice, the non-submission thereof was not permitted under this Act and the contracting authority or entity has submitted an optional notice to the register;
   2) contest the public contract if the contracting authority or entity has used negotiated procedure without prior publication and, following the awarding of the public contract, submitted to the register a contract award notice within the prescribed time limit;
   3) contest the public contract if the contracting authority or entity has not submitted a contract notice, optional notice or notice of award of contract within the prescribed time limit, and the non-submission of the contract was not permitted under this Act;
   4) contest the public contract if, upon submission of the contract notice to the register, the contracting authority or entity has not indicated that the estimated value of the public procurement equals or exceeds the international threshold or not indicated that it would like the contract notice to be forwarded to the Publications Office of the European Union in accordance with § 183 of this Act, provided that the forwarding of the contract notice was required under this Act;
   5) contested the public contract if the contracting authority or entity has awarded it under a dynamic purchasing system in breach of the terms and conditions provided for in § 35 of this Act;
   6) contest the public contract if the contracting authority or entity has awarded it in breach of the rules provided for in subsection 9 of § 30 of this Act.

(5) Clauses 2, 3, 5 and 6 of subsection 4 of this section do not apply if the value of the awarded public contract is below the public procurement threshold.

(6) Following the awarding of the public contract, a request for compensation of damage may be filed with the Review Committee by an economic operator whom the public contract was not awarded due to an unlawful
(7) Parties to the review procedure include the requester, the contracting authority or entity and a third party.

§ 186. State fee

Upon filing a request for review and a request for compensation of damage with the Review Committee, a state fee is paid in accordance with § 258 of the State Fees Act.

§ 187. Review Committee

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

(2) A member of the Review Committee is independent and makes their decisions solely on the basis of laws, other legislation and international agreements binding on Estonia.

(3) A member of the Review Committee is appointed to and removed from office by the Government of the Republic. From among the members of the Review Committee, the Government of the Republic appoints the head of the Review Committee who represents and directs the Review Committee. In review proceedings, the Review Committee is represented by a member of the Review Committee who hears a request for review.

(4) A member of the Review Committee is appointed to office for up to five years based on a public contest announced by the minister responsible for the field.

(5) The suitability of the personal characteristics of a person applying for the position of a member of the Review Committee is assessed on the basis of an interview. Upon making a proposal to the Government of the Republic to appoint a member of the Review Committee, the minister responsible for the field may also take into account other characteristics of essence for performing the duties, tasks and functions of a member of the Review Committee and make inquiries.

(6) Section 47 of the Courts Act is applied to the requirements applicable to a member of the Review Committee. A member of the Review Committee is removed from office before the expiry of the term of office if a circumstance provided for in § 47 of the Courts Act becomes evident, which precludes the appointment of the person to the Review Committee in accordance with the law.

(7) The salary of a member and the head of the Review Committee is equal to the salary of a county court and administrative court judge. The minister responsible for the field may grant the head of the Review Committee additional remuneration amounting to five per cent of the salary of the head of the Review Committee for the performance of the duties, tasks and functions of the head of the Review Committee.

(8) No supervisory control is exercised over a member of the Review Committee. In terms of work organisation and other general matters, a member of the Review Committee reports to the head of the Review Committee and in work organisation and other general matters the head of the Review Committee reports to the minister responsible for the field. The minister responsible for the field has the right to impose a disciplinary penalty.

(9) Section 14, clauses 1 and 2 of § 15, §§ 16–24, 30, 33, 45–46, 52–54, 57, 61, 63, 67, 91 and 98 do not apply to a member of the Review Committee.

(10) A member of the Review Committee cannot, in addition to the service in the Review Committee, be employed elsewhere, except in the field of teaching and research.

(11) If a member of the Review Committee cannot perform their duties, tasks and functions due to a permanent impediment, the minister responsible for the field will, by a directive, appoint a substitute for the member until the lapse of the impediment, but not for longer than three months. The minister responsible for the field may renew the substitution period once for up to three months. The provisions applicable to a member of the Review Committee are applied to the substitute of a member of the Review Committee, taking account of the specifications set out in this subsection.

(12) The administrative expenses of the Review Committee and costs related to review proceedings, including salaries of the members of the Review Committee, are covered from the state budget from funds allocated to the Ministry of Finance for that purpose. The working conditions of the Review Committee, including work premises and technical service, are ensured by the Ministry of Finance.

(13) The statutes of the Review Committee are established by a regulation of the minister responsible for the field.
(14) The Review Committee is the mandatory extrajudicial dispute adjudication body for the purposes of clause 1 of subsection 2 of § 15 of the State Liability Act.

§ 188. Removal

(1) A member of the Review Committee cannot hear a request for review and must remove oneself from hearing a dispute if there is a circumstance that allows for calling the member’s impartiality into doubt.

(2) The occurrence of a circumstance specified in subsection 1 of this section is presumed if the member of the Review Committee hearing the request for review is a party’s or its legal representative’s:
1) relative in the descending or ascending line;
2) sister, half-sister, brother, half-brother or a person who is or has been married to a party to the dispute or its representative’s sister, half-sister, brother or half-brother;
3) foster-parent or foster-child;
4) adoptive parent or adopted child;
5) spouse, cohabitee, spouse’s or cohabitee’s sister, brother or direct relative, including after the end of the marriage or permanent cohabitation.

(3) In addition to subsections 1 and 2 of this section, a member of the Review Committee must remove oneself from hearing a request for review in a case where the member of the Review Committee:
1) is a party to the proceedings or a person against whom a claim may be filed in the proceedings;
2) is or has been a representative or counsel of a party to the proceedings or where the member of the Review Committee participated or had the right to participate as the legal representative of a party to the proceedings;
3) has given an opinion as an expert.

(4) In cases provided for in subsections 1 and 3 of this section, a party to the proceedings may demand that a member of the Review Committee hearing the request for review be removed.

(5) A request for removal is heard by the member of the Review Committee hearing the request for review or the full formation of the Review Committee who also makes the respective decision.

(6) If a request for removal is granted, the head of the Review Committee will appoint a new member of the Review Committee or the full formation of the Review Committee to hear the request for review.

(7) If a member of the Review Committee cannot be substituted or a new member of the Review Committee cannot be appointed to hear the request for review at a hearing, the hearing will be postponed and a new time and place for a hearing will be set.

Division 2

Review Process

§ 189. Time limits for filing request for review and request for compensation of damage

(1) A request for review must be received by the Review Committee within ten days as of the day when the requester learned or had to learn of the infringement of its rights or harming of its interests, except in the case specified in subsections 2–5 of this section, but not after the award of the public contract.

(2) A request for review regarding a procurement document must be received by the Review Committee not later than:
1) two working days before the closing date for submission of tenders, requests to participate or conceptual designs in a simple procedure;
2) five working days before the closing date for submission of tenders, requests to participate or conceptual designs in the procurement procedure if the estimated value of the public procurement equals or exceeds the public procurement threshold, or
3) within ten days as of making a procurement document electronically available where the contracting authority or entity has reduced the time limit for the submission of tenders, requests to participate or conceptual designs in the procurement procedure in accordance with subsection 2 of § 93 or subsection 4 or 5 of § 94 of this Act, but not after the closing date for submission of tenders, requests to participate or conceptual designs in the procurement procedure.

(3) If a procurement document is not made electronically available, the time limit for the submission of a request for review specified in clause 3 of subsection 2 of this section is calculated as of the day when the requester learned or had to learn of the infringement of their rights or harming of their interests.

(4) A request for review in a simple procedure, except in the case specified in clause 1 of subsection 2 of this section, must be received by the Review Committee within three working days after the day when the requester learned or had to learn of the infringement of its rights or harming of its interests, but not after the award of the public contract.
A request for review that is filed in a procedure of awarding a public contract on the basis of a framework agreement must be received by the Review Committee within seven days after the day when the requester learned or had to learn of the infringement of its rights or harming of its interests, but not after the award of the public contract.

A request for review submitted on the basis of clause 1 of subsection 4 of § 185 of this Act must be received by the Review Committee within ten days from the publication of a voluntary notice in the register.

A request for review submitted on the basis of clauses 2, 4 and 5 of subsection 4 of § 185 of this Act must be received by the Review Committee within 30 days from the publication of a contract award notice in the register.

A request for review submitted on the basis of clauses 2, 4 and 5 of subsection 4 of § 185 of this Act must be received by the Review Committee within 30 days from the day when the requester learned or had to learn of the infringement of its rights or harming of its interests.

A request for review may be filed with the Review Committee within six months from the award of the public contract.

A request for review may be filed with the Review Committee within one year from the award of a public contract. A request for compensation of damage is reviewed by the Review Committee within a reasonable time; in other respects, the provisions regulating the reviewing of a request for review are applied to the hearing a request for compensation of damage.

§ 190. Filing of request for review and request for compensation of damage

A request for review is filed with the Review Committee in writing and it must contain the following data and documents:
1) names, addresses and contact details of all the parties to the proceedings known to the requester;
2) subject-matter of the request for review, including the claim and ground thereof;
3) details on the contested decision or procurement documents;
4) facts supporting the request for review;
5) evidence at the disposal of the requester, which prove the circumstances alleged by the requester, and indication of what fact is being proven with each particular piece of evidence;
6) date when the requester learned of the contested decision or procurement document;
7) indication of whether the requester wishes the matter to be heard at a court hearing or by way of written procedure;
8) list of documents enclosed with the request for review, including details on payment of the state fee and, where necessary, a power attorney proving the right of representation.

A request for compensation of damage must, in addition to the information specified in subsection 1 of this section, also contain the amount of compensation and the circumstances serving as the basis for establishing it.

The subject-matter of a request for review is determined by the claim of the request in accordance with subsection 4 of this section and the ground for the request. The Review Committee cannot make a decision on a claim or ground not specified in the request for review or exceed the boundaries of the claim.

The following can be sought by a request for review:
1) partial or full annulment of a decision of the contracting authority or entity;
2) obligating the contracting authority or entity to bring the procurement documents into compliance with legislation.

A request for compensation of damage may seek compensation for damage suffered as a result of an unlawful decision the contracting authority or entity or procurement documents.

The ground for a request for review is a body of circumstances in connection with which the claim is filed.

The requester encloses with its request for review the information at their disposal on the public procurement in connection with which the request is filed, unless the respective information is available to the Review Committee in the register or in another manner by electronic means.

The request for review and documents enclosed therewith are submitted in Estonian.

The Review Committee assesses the lawfulness of the contracting authority’s or entity’s decision or the procurement document only during the hearing of the request for review or request for compensation of damage.

If multiple requests for review involving the same requester and the same contracting authority or entity have been filed, the Review Committee may join the requests for review into the same proceedings.
§ 191. Change and modification of request for review

(1) The requester may change or modify the claim or ground of the request for review. Documents containing new circumstances or requests must be received by the Review Committee not later than two working days before the day of the hearing or, in written procedure, two days before the closing date set by the Review Committee for the submission of additional clarifications and documents. Each new claim must be filed within the time limits provided for in § 189 of this Act.

(2) If a request for review has become unclear due to changes or modifications or for other reasons, the Review Committee may demand that the requester submit the full text of the request for review if it simplifies the adjudication of the case.

§ 192. Commencement of review proceedings

(1) Within one day from the receipt of a request for review, the Review Committee assesses its compliance with the requirements provided for in this Chapter.

(2) If the Review Committee finds that a request for review has deficiencies that can be eliminated, the Review Committee will give the requester a time limit of two working days for elimination of the deficiencies.

(3) The Review Committee will refuse to hear a request for review and will return it to the requester by its decision if:
1) the request has not been filed by the closing date;
2) the requester has not eliminated the deficiencies of the request within the prescribed time limit;
3) a decision has already been made in the same case in the Review Committee or court;
4) a precept specified in § 208 of this Act has been made regarding the contested public procurement or decision;
5) the contracting authority or entity has annulled the contested public procurement or decision or the offence has been eliminated;
6) upon contesting the procurement documents, the requester does not prove to the satisfaction of the Review Committee that it has a real chance to participate in the public procurement;
7) the requester does not have the right to file a request for review.

(4) If a request for review filed with the Review Committee or documents enclosed with the request are not in Estonian, the Review Committee may deem it a deficiency specified in subsection 2 of this section and demand translation of the request or documents enclosed with the request. If a translation of the documents enclosed with the request is not submitted by the closing date, the Review Committee may disregard the documents enclosed with the request.

(5) The Review Committee involves in hearing a request for review each economic operator participating in the public procurement or interested in participating in the public procurement whose rights may be decided on during hearing the request (hereinafter third party). A third party does not need to be involved if the request is filed against a procurement document and the request does not indicate which third party’s interests it may concern.

(6) Notices of the Review Committee are deemed as given to the parties to the proceedings on the working day following the sending of the notices to the electronic mail address known to the Review Committee.

§ 193. Suspension of public procurement

(1) The Review Committee may, based on a reasoned request of the requester, made a decision to suspend the public procurement at any stage of the review proceedings, taking account of the possible consequences of the suspension to all interests that might be harmed.

(2) A request to suspend public procurement is heard by the Review Committee and the Review Committee makes a decision within three working days following the receipt of a request that does not have any deficiencies. If a request for review has been returned to the requester for the purpose of elimination of deficiencies, the Review Committee will hear a request to suspend public procurement and make a decision within three working days as of the receipt of a request for review that does not have any deficiencies.

(3) To decide on the suspension of public procurement, the Review Committee may ask for the opinions of the parties to the proceedings, which they must provide within one working day following the receipt of the demand from the Review Committee.

(4) At the request of a party to proceedings or on its own initiative, the Review Committee may annul a decision made on the suspension of public procurement at any stage of the review proceedings.

(5) If the contracting authority’s or entity’s decision to declare a tender successful is contested and overriding public interests that might be harmed if no public contract is awarded outweigh the possible harming of the interests, the Review Committee may, on the basis of a reasoned request of the contracting authority or entity, make a decision to authorise the granting of acceptance to the awarding of a public contract at any stage of the review proceedings.
(6) The Review Committee hears a request to authorise the granting of acceptance to the awarding of a public contract specified in subsection 5 of this section within five days after receiving the request. Upon hearing the request, the Review Committee may ask for the opinions of the parties to the proceedings, which they must provide within two working days following the receipt of the demand from the Review Committee.

(7) If the Review Committee has, based on subsection 5 of this section, made a decision to authorise the granting of acceptance to award a public contract, the review proceedings over a decision to declare a tender successful terminated on the basis of clause 1, 3 or 5 of subsection 1 of § 197 of this Act and the contracting authority or entity has not awarded the public contract by the time of termination of the review proceedings, the Review Committee’s decision to authorise the granting of acceptance to award the public contract will become invalid upon termination of the review proceedings.

(8) Where the Review Committee has suspended public procurement and the closing date for submission of tenders, requests to participate or conceptual designs arrives during the review proceedings, the contracting authority or entity has the right to extend the time limit for submission of tenders, requests to participate or conceptual designs by a reasonable time. In the case of suspension of public procurement, the contracting authority or entity has the right to make a proposal to the tenderers to extend the period of validity of the submitted tenders in accordance with subsection 2 of § 112 of this Act.

(9) Where the Review Committee has suspended public procurement or annulled a decision to suspend, the contracting authority or entity will immediately notify via the register all the tenderers, candidates and economic operators interested in participating in the public procurement known to the contracting authority or entity.

§ 194. Organisation of hearing of request for review

(1) The Review Committee ensures the establishment of circumstances of essence to adjudicating the case, gathering evidence, where necessary, or requiring parties to the proceedings to submit evidence.

(2) Upon receiving a request for review whereby the grounds for refusal to hear it specified in subsection 3 of § 193 of this Act are absent, the Review Committee immediately informs the contracting authority or entity and a third party of the filing of the request and sends them a copy thereof.

(3) If the Review Committee gives the requester a time limit for elimination of deficiencies contained in the request for review, the Review Committee will notify the contracting authority or entity of the filing of the request and, after the deficiencies have been eliminated, send to the contracting authority or entity a copy of the request submitted to the Review Committee. If the Review Committee refuses to hear the request based on clause 2 of subsection 3 of § 192 of this Act, the Review Committee will immediately notify the contracting authority or entity thereof.

(4) A public contract awarded after receiving a notice specified in subsection 2 or the first sentence of subsection 3 of this section regarding the request for review, but before the fulfilment of the condition specified in § 201 of this Act is ineffective.

(5) The contracting authority or entity submits a written response to the request for review within three working days following the receipt of a copy of the request from the Review Committee, enclosing all the documents necessary for adjudicating the request, which are required by the Review Committee. In the written response, the contracting authority or entity may make a proposal for adjudication of the request for review.

(6) Where a third party is involved in the hearing of a request for review based on subsection 5 of § 192 of this Act, the third party submits a written response to the request within three working days following the receipt of a copy of the request from the Review Committee, enclosing all the documents necessary for adjudicating the request.

(7) The Review Committee may, based on a respective request, extend the time limit for submission of a written response to the request for review, unless it would result in an unreasonable extension of the review proceedings.

(8) The Review Committee immediately sends copies of the written responses specified in subsections 5 and 6 to the other parties to the proceedings.

(9) Before hearing the request for review, the Review Committee may demand that the requester, contracting authority or entity and the third party submit an additional written explanation or additional evidence regarding the contested procurement document or decision. The requester, the contracting authority or entity and the third party are required to submit the requested documents to the Review Committee within two working days after receiving a respective demand from the Review Committee.

(10) In review proceedings, a party to the proceedings has the right to access documents submitted in the proceedings, taking account of subsection 5 of § 110 of this Act.
§ 195. Hearing of request for review

(1) A request for review is heard either individually by a member of the Review Committee or a formation of at least three members of the Committee where the collegial adjudication of the request for review is important in view of the uniform application of law in the opinion of the head of the Committee.

(2) The Review Committee hears a request for review either based on submitted documents in a written procedure in accordance with the rules provided for in § 196 of this Act or holds a public hearing of the request for review with the participation of the parties to the proceedings. The Review Committee holds a public hearing of a request for review if the Review Committee considers it necessary for adjudication of the request or if the requester and the contracting authority or entity both demand it.

(3) The Review Committee communicates the time and place of the hearing to the contracting authority or entity, the requester and the third party at least four working days before the hearing.

(4) If the contracting authority or entity or the third party fails to appear at the hearing, the Review Committee will hear the request for review at the hearing without the participation of the contracting authority or entity or the third party. If the requester fails to appear at the hearing, the Review Committee will refuse to hear the request for review and return it to the requester by its decision and immediately inform the contracting authority or entity thereof.

(5) Where necessary, the Review Committee may hold an additional hearing that the contracting authority or entity, the requester and the third party are informed of either at the previous hearing or at least three working days before the holding of the additional hearing.

(6) Review proceedings are organised and the request for review is heard in Estonian. A party to the proceedings who does not understand Estonian has the right to make statements and speak at the hearing via an interpreter or a representative who speaks Estonian. The obligation to involve an interpreter and remunerate the interpreter lies with the person who needs an interpreter.

(7) The appearance of a requester who does not speak Estonian at a hearing without an interpreter or a representative who speaks Estonian is deemed equal to failure to appear at the hearing for the purposes of subsection 4 of this section.

(8) The Review Committee may involve experts in hearing a request for review. Sections 153 and 293–305 of the Code of Civil Procedure are applied to the involvement of an expert.

(9) If the Review Committee involves an expert in the hearing of a request for review at the request of a party to the proceedings, the party will pay the expert’s remuneration before the ordering of the expert assessment to the current account indicated by the Review Committee. The expert’s remuneration is paid to the expert immediately after the completion of the expert assessment.

(10) Where during the hearing of a request for review such a circumstance becomes evident, which may result in a precept by the Ministry of Finance on the ground provided for in subsection 1 of § 208 of this Act, the Review Committee will immediately inform the Ministry of Finance and suspend the hearing of the request until supervision exercised by the Ministry of Finance has been completed.

§ 196. Written procedure

(1) The Review Committee may hear a case by way of written procedure if, in the opinion of the Review Committee, circumstances of essence to the adjudication of the case can be established without holding a hearing. Regardless of opting for the written procedure, the Review Committee may, until making a decision, opt for hearing the case at an oral hearing.

(2) Where a case may be heard by way of written procedure under subsection 1 of this section, but the Review Committee considers it necessary to examine a matter of importance in the case at a hearing, the Review Committee may limit the circle of matters discussed at a hearing, but rely on written submissions to the remaining extent.

(3) In the case of the written procedure, the Review Committee gives the parties to the proceedings a time limit during which they can submit additional explanations and documents and also communicates to them the time of announcing the decision. Where necessary, the time of announcement of the decision may be determined later.

§ 197. Termination of review proceedings

(1) The review proceedings terminate in the following situations:
   1) the dispute is settled by agreement;
   2) the requester withdraws their request for review;
   3) the contracting authority or entity admits that the request for review is reasoned;
   4) the Review Committee decides to dismiss the request for review or the request for compensation of damage;
5) the Review Committee decides to grant the request for review in part or in full, annulling the contracting authority’s or entity’s unlawful public procurement decision or obligating the contracting authority or entity to bring a procurement document into compliance with the requirements established by law;
6) the Review Committee makes a decision to grant the request for compensation of damage in part or in full and orders the contracting authority or entity to pay the requester compensation for damage caused by the unlawful decision, step or procurement document of the contracting authority or entity;
7) the Review Committee decides to terminate the review proceedings after the Ministry of Finance has made a precept specified in § 208 of this Act;
8) the Review Committee decides to in part or in full refuse to hear the request for review where the grounds provided in subsection 3 of § 192 of this Act become evident.

(2) Upon granting a request for review filed on the basis of clause 1 of subsection 4 of § 185 of this Act, the Review Committee makes a decision prohibiting the awarding of a public contract.

(3) Upon granting a request for review submitted on the basis of clauses 2–6 of subsection 4 of § 185 of this Act, the Review Committee may, by its decision:
1) establish the ineffectiveness of a public contract on the basis of § 31 or 121 of this Act, or
2) leave the public contract in force, cutting the term of validity thereof if it has established the ineffectiveness of the contract on the grounds provided for in § 31 or 121 of this Act. Upon making the decision, the overriding public interests that may be harmed in the event of the ineffectiveness of the public contract is taken into account.

(4) For the purposes of this Act, economic interests directly related to the respective public contract do not constitute reasons related to overriding public interests. Economic interests directly related to the public contract include, inter alia, costs arising from the postponement of the performance of the public contract, commencement of new public procurement and replacement of the tenderer performing the public contract and costs of legal obligations arising from the ineffectiveness of the public contract. Economic interest may be deemed a reason related to overriding public interests only where in exceptional circumstances the establishment of the ineffectiveness of the public contract would result in disproportionate consequences.

(5) The termination of review proceedings in accordance with clause 1, 2 or 3 of subsection 1 of this section is formalised by a decision of the Review Committee. If the dispute is settled by agreement, the request for review is withdrawn or the request for review is declared reasoned at a hearing, the termination of the review proceedings will be formalised in written minutes.

(6) If the requester withdraws the request for review before it is heard at a public hearing or before a decision is taken in written procedure, the Review Committee will terminate the proceedings by its decision and notify the contracting authority or entity thereof immediately.

(7) The termination of review proceedings in accordance with clause 4, 5 or 6 of subsection 1 of this section is formalised by a reasoned decision of the Review Committee.

(8) Upon termination of review proceedings on the basis of clause 1, 2, 3 or 7 of subsection 1 of this section, the Review Committee does not assess the lawfulness of a procurement document or a decision of the contracting authority or entity.

(9) If the review proceedings involve multiple claims, the Review Committee may terminate the review proceedings with regard to these claims on the basis of different grounds provided for in subsection 1 of this section in a single decision.

§ 198. Division of costs of review proceedings

(1) Where review proceedings terminate on the ground specified in clause 3 or 7 of subsection 1 of § 197 of this Act or where a request for review specified in clause 5 of the same or a request for compensation of damage specified in clause 6 of the same is granted in full, the Review Committee makes a decision ordering the contracting authority or entity to pay the requester the entire state fee paid by the requester in the review proceedings, the expert’s remuneration paid or payable and the costs of the contractual representative to a reasonable and necessary extent.

(2) Where review proceedings terminate upon partial granting of a request for review specified in clause 5 of subsection 1 of § 197 of this Act or partial granting of a request for compensation of damage specified in clause 6, the Review Committee makes a decision ordering the contracting authority or entity to pay the requester the entire state fee paid by the requester in the review proceedings, the expert’s remuneration paid or payable and the costs of the contractual representative in proportion to the granting of the request for review or the request for compensation of damage, taking account the reasonableness and necessity of the expert’s remuneration and the contractual representative’s costs.
procurement into compliance with the decision of the Review Committee, which has entered into force. A

authority or entity. The contracting authority or entity is required to bring all its decision made during the public

(6) Upon granting a request for review, the decision of the Review Committee is binding upon the contracting

extent not covered by the appealed part. Upon adjudicating the case, the court is bound by the decision of the

In the case of partial contestation of a decision of the Review Committee, the decision enters into force to the

recourse to the court where none of the parties to the proceedings filed a claim with the administrative court.

(4) The decision of the Review Committee enters into force after the expiry of the time limit for having

(3) In the case specified in subsection 2 of this section and where a request for review is adjudicated by way of

(1) A request to award the costs of the contractual representative, along with a list of the costs indicating in
detail the composition of the costs, is submitted to the Review Committee at the hearing of the request for
review or, where the request for review is heard by way of written procedure, not later than by the closing date
for submission of additional explanations and documents specified in subsection 3 of § 196 of this Act. The
list of the contractual representative’s costs related to participating in the hearing of the request for review is
submitted to the Review Committee within one working day after the hearing.

(2) A party to proceedings seeking the awarding of the contractual representative’s costs must certify that all
the costs indicated in the list of the contractual representative’s costs have been incurred in connection with the
review proceedings.

§ 199. Rules of awarding contractual representative’s costs

(1) A request to award the costs of the contractual representative, along with a list of the costs indicating in
detail the composition of the costs, is submitted to the Review Committee at the hearing of the request for
review or, where the request for review is heard by way of written procedure, not later than by the closing date
for submission of additional explanations and documents specified in subsection 3 of § 196 of this Act. The
list of the contractual representative’s costs related to participating in the hearing of the request for review is
submitted to the Review Committee within one working day after the hearing.

(2) A party to proceedings seeking the awarding of the contractual representative’s costs must certify that all
the costs indicated in the list of the contractual representative’s costs have been incurred in connection with the
review proceedings.

§ 200. Announcement, entry into force and effect of decision

(1) The Review Committee makes a decision on the substantive adjudication of a request for review within 30
days after the receipt of the request that does not have any deficiencies.

(2) If the Review Committee has involved in the hearing of a request for review an expert on the basis of
subsection 8 of § 195 of this Act, asked the Court of Justice for a preliminary ruling or notified the Ministry of
Finance on the basis of subsection 10 of the same, but the Ministry of Finance does not commence supervisory
proceedings or terminate them without making a precept to declare the public procurement invalid and,
therefore, it is not possible to make a decision within the time limit specified in subsection 1 of this section,
the Review Committee will announce a decision that substantively adjudicates the case within ten working
days following the receipt of the expert opinion, preliminary ruling or notice of the non-commencement or
termination of the supervisory proceedings of the Ministry of Finance.

(3) In the case specified in subsection 2 of this section and where a request for review is adjudicated by way of
written procedure, the Review Committee communicates the time of announcement of a decision to the parties
to the proceedings at least three working days before announcing the decision.

(4) The decision of the Review Committee enters into force after the expiry of the time limit for having
recourse to the court where none of the parties to the proceedings filed a claim with the administrative court.
In the case of partial contestation of a decision of the Review Committee, the decision enters into force to the
extent not covered by the appealed part. Upon adjudicating the case, the court is bound by the decision of the
Review Committee to the extent that it has not been contested.

(5) A decision of the Review Committee to suspend, refuse to suspend or declare the suspension invalid enters
into force as of its announcement.

(6) Upon granting a request for review, the decision of the Review Committee is binding upon the contracting
authority or entity. The contracting authority or entity is required to bring all its decision made during the public
procurement into compliance with the decision of the Review Committee, which has entered into force. A
§ 201. Resumption of public procurement

(1) The contracting authority or entity cannot resume suspended public procurement before 14 have passed from the announcement of a decision of the Review Committee specified in clause 4 or 5 of subsection 1 of § 197 of this Act.

(2) The contracting authority or entity cannot grant acceptance to the awarding of a public contract before 14 have passed from the announcement of a decision of the Review Committee specified in clause 4 or 5 of subsection 1 of § 197 of this Act.

(3) Where review proceedings terminate on grounds not specified in subsections 1 and 2 of this section, except on the basis of clause 2 of subsection 1 of § 197 of this Act or upon refusal to hear the request for review and upon returning it on the basis of subsection 4 of § 195, the contracting authority or entity cannot grant acceptance to the awarding of a public contract before seven days have passed from the announcement of a decision to terminate the review proceedings or to refuse to hear the request for review and to return the request for review.

(4) The contracting authority or entity cannot grant acceptance to the awarding of a public contract before seven days have passed from the making of such a decision by which the Review Committee authorised the contracting authority or entity to grant acceptance to the awarding of a public contract during the review proceedings.

(5) A public contract that is in conflict with the restrictions provided for in this section is ineffective.

§ 202. Request for compensation of damage

(1) To compensate for damage caused by the contracting authority or entity upon carrying out public procurement, awarding a public contract or modifying a public contract, a request may be filed with the contracting authority or entity in accordance with the rules provided for in the State Liability Act, a request may be filed with the Review Committee in accordance with the rules provided for in this Act or a claim may be filed with the administrative court in accordance with the rules provided for in the Code of Administrative Court Procedure.

(2) A request for compensation of damage caused by the Review Committee is filed with the Ministry of Finance.

(3) If the contracting authority or entity, the Review Committee or the Ministry of Finance dismisses a request for compensation of damage or does not decide it within the prescribed time limit or if the aggrieved person does not accept the amount of compensation or the manner of compensation, the aggrieved party may, within 30 days following the receipt of the respective decision, filed with the administrative court a claim for damages.

**Chapter 9**

State Supervision and Administrative Supervision

§ 203. Supervisory competence of Ministry of Finance

(1) The Ministry of Finance exercises state supervision and administrative supervision (hereinafter supervision) only in public interests over compliance with this Act and legislation established on the basis thereof.

(2) The Ministry of Finance acts pursuant to law and is independent upon exercising supervision.

(3) In supervisory proceedings, the lawfulness of the actions of the contracting authority or entity is verified. Supervisory proceedings are not carried out for the purpose of verifying the practicality of the actions of the contracting authority or entity or assessment of the effectiveness of its decisions and steps.

§ 204. Special measures of state supervision

The Ministry of Finance may, for the purpose of exercising state supervision provided for in this Act, take special measures of state supervision provided for in §§ 30, 32, 49 and 50 of the Law Enforcement Act on the grounds and in accordance with the rules provided for in the Law Enforcement Act.
§ 205. Commencement and termination of supervisory procedure

(1) Supervisory proceedings are carried out on the initiative of the Ministry of Finance solely for the purpose of protecting public interests. The Ministry of Finance may commence supervisory proceedings:
1) where there is a reasonable doubt based on a supervisory notice specified in § 207 of this Act or on some other ground if there is sufficient information that refers to a breach of this Act and the circumstances specified in subsection 1 of § 206 are absent;
2) by way of a sample-based inspection.

(2) Supervisory proceedings commence with written notification of the contracting authority or entity or with the first procedural step where unannounced on-site supervision is exercised. Where necessary, clarifications are asked from the contracting authority or entity and data is gathered to decide whether to commence supervisory proceedings.

(3) In the case of supervisory proceedings initiated in accordance with clause 1 of subsection 1 of this section, the contracting authority or entity cannot grant acceptance to the awarding of a public contract or framework agreement before the supervisory proceedings have been completed or before complying with a precept in the case provided for in subsection 2 of § 208 of this Act. A public contract or framework agreement awarded in breach of the prohibition is ineffective.

(4) Supervisory proceedings terminate with:
1) a written notice on the existence of circumstances precluding supervisory proceedings;
2) communicating a precept to the contracting authority or entity;
3) a written inspection report.

§ 206. Circumstances precluding supervisory proceedings

(1) Supervisory proceedings are not commenced or the commenced supervisory proceedings are terminated where:
1) the submitter of a supervisory notice has the right to file a request for review concerning a breach with the Review Committee;
2) the breach is being adjudicated by the Review Committee or a court, except in the case provided for in subsection 10 of § 195 of this Act or when a decision made by the Review Committee or a court, which gives a legal assessment of the circumstances of the breach and terminates the proceedings, has entered into force;
3) the details referring to a breach are not sufficient for giving rise to a reasonable doubt or if there is no breach;
4) the public procurement has ended.

(2) Supervisory proceedings do not need to be commenced where:
1) the submitter of a supervisory notice has not exercised the right to file a request for review with the Review Committee concerning a breach;
2) taking account of the circumstances of the breach and other factors, there are no overriding public interests to carry out supervisory proceedings.

(3) Where a supervisory notice had been submitted for commencement of supervisory proceedings, the Ministry of Finance informs the submitter of the notice of the non-commencement or termination of the proceedings.

(4) The circumstances specified in subsections 1 and 2 of this section do not prevent the commencement or the carrying out of supervisory proceedings in the case specified in clause 2 of subsection 1 of § 205 of this Act.

§ 207. Supervisory notice

(1) A supervisory notice is an address that refers to a breach of this Act and that is governed by provisions of the Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act.

(2) A supervisory notice may be submitted by anyone, regardless of whether the occurrence described as a breach infringes upon the submitter’s personal rights or not.

§ 208. Precept by Ministry of Finance

(1) Before a public contract or framework agreement is awarded, the Ministry of Finance may issue a precept to the contracting authority or entity to declare the public procurement invalid where the contracting authority or entity has breached the requirements provided for in this Act or legislation established on the basis thereof and circumstances that do not allow for continuing the public procurement become evident.

(2) Before a public contract or framework agreement is awarded, the Ministry of Finance has the right to make mandatory precepts aimed at eliminating a breach of this Act and legislation established on the basis thereof, provided that the public procurement can be continued when the breach is eliminated.

(3) If the contracting authority or entity has divided the public procurement into lots within a single procedure and a breach of this Act, which results in the making of a precept by the Ministry of Finance occurs with regard
to a lot or multiple lots, the Ministry of Finance will make a precept regarding only the lots whereby the breach occurs.

(4) Before making a precept, the Ministry of Finance informs the contracting authority or entity or the intention to make a precept, giving the contracting authority or entity a time limit of at least three working days to submit counter-arguments.

(5) In the case of making a precept specified in subsection 1 of this section, all the decisions and steps related to the public procurement are ineffective regardless of whether they have been made before or after making the precept. A public contract or framework agreement awarded after a precept declaring the public procurement invalid has been made is ineffective as well.

(6) If a precept made on the basis of this Act is not complied with, the Ministry of Finance may impose a penalty payment in accordance with the rules provided for in the Substitutive Enforcement and Penalty Payment Act. If a precept is not complied with, the maximum penalty payment in the first instance is up to 2500 euros and in following instances up to 10 000 euros for the purpose of coercion to perform one and the same obligation.

§ 209. Inspection report of Ministry of Finance

(1) A written inspection report is drawn up regarding the results of sample-based inspection carried out by the Ministry of Finance, which is communicated to the contracting authority or entity and published on the public procurement website.

(2) An inspection report sets out the following:
1) the name and registry code of the contracting authority or entity;
2) the date of drawing up the report and the inspection period;
3) the purpose and scope of the supervisory proceedings;
4) the circumstances and breaches established in the supervisory proceedings;
5) assessment of the performance of the contracting authority’s or entity’s obligations (conclusions);
6) the given name and surname, job title and signature of the supervisory official of the Ministry of Finance who drew up the report.

(3) Before signing the inspection report, the contracting authority or entity is given the opportunity to express an opinion on the draft inspection report. An opinion can be expressed in writing within the time limit set by the Ministry of Finance.

§ 210. Recommendations and guidelines of the Ministry of Finance

(1) The Ministry of Finance has the right to give recommendations and guidelines for improved adherence to this Act and for prevention of breaches.

(2) The recommendations and guidelines may be given in the document terminating the supervisory proceedings or separately.

§ 211. Actions of Ministry of Finance in case of suspected offence and corruption case

(1) If the body of circumstances learned by the Ministry of Finance during supervision may give rise to a suspicion of an offence that does not amount to a misdemeanour provided for in §§ 213–215 of this Act or it has the characteristics of a possible corruption case, the Ministry of Finance will inform an investigative body or the Prosecutor’s Office of the circumstances known to the Ministry of Finance.

(2) To prevent corruption cases, the Ministry of Finance may cooperate with an investigative body, the Prosecutor’s Office, other governmental authorities and local authorities within the limits of its duties, tasks, functions and authority. The substance of cooperation lies in, above all, communication and exchange of information between authorities and in coordination of activities.

§ 212. Cooperation with European Commission

(1) Where the European Commission informs a contracting authority or entity in writing of a clear breach of provisions of the public procurement legislation of the European Union or of national legislation implementing it upon organisation of public procurement, the contracting authority or entity is required to, within three working days following the receipt of the notice, send to the Ministry of Finance the entire relevant information on the respective public procurement.

(2) The procedure for handling the information specified in subsection 1 of this section and communicating it to the European Commission is established by a regulation of the minister responsible for the field.
Chapter 10
Liability

§ 213. Modification of public contract or framework agreement in breach of requirements

(1) The penalty for modifying a public contract in breach of the requirements provided for in this Act is a fine of up to 300 fine units.

(2) The penalty for the same act committed by a legal person is a fine of up to 32 000 euros.

§ 214. Awarding of contract on terms and conditions different from those set out in procurement documents

(1) The penalty for awarding a public contract or framework agreement on terms and conditions different from those set out in the procurement documents is a fine of up to 300 fine units.

(2) The penalty for the same act committed by a legal person is a fine of up to 32 000 euros.

§ 215. Awarding of public contract or framework agreement without using required procedure

(1) The penalty for awarding a public contract or framework agreement whereby the award was not preceded by the procedure required in this Act is a fine of up to 300 fine units.

(2) The penalty for the same act committed by a legal person is a fine of up to 32 000 euros.

§ 216. Proceedings

(1) Extrajudicial proceedings of the misdemeanours provided for in §§ 213–215 of this Act are carried out by the Ministry of Finance.

(2) The misdemeanours provided for in §§ 213–215 of this Act expire in three years.

§ 217. Compensation of costs to tenderer

A tenderer does not have the right to demand that the contracting authority or entity compensate costs related to the submission of a tender, including reasonable costs related to the preparation of the tender and participation in the public procurement, unless the tenderer proves that the contracting authority or entity breached the provisions regulating organisation of public procurement, including declared the public procurement invalid without reason, and that the public contract would likely have been awarded to the tenderer had there been no breach.

§ 218. Compensation of damage by the tenderer

If the tenderer has knowingly given false information or falsified documents during public procurement or adjudication of a request for review, the tenderer will compensate damage caused to the contracting authority or entity or other persons due to the submission of such data or documents.

Chapter 11
Implementing Provisions

§ 219. Completion of commenced public procurement, modification of public contracts, adjudication of filed requests for review, continuance of misdemeanour proceedings and validity of legislation established based on Act

(1) Public procurement commenced before the entry into force of this Act is completed in accordance with the requirements of the former Public Procurement Act in force (hereinafter in this Chapter Public Procurement Act), except for the obligation provided for in § 37 of this Act to submit a public procurement report and an annex thereto. When such public procurement terminates, the contracting authority or entity is required to notify of the termination of the procurement procedure in accordance with § 83 of this Act.

(2) Upon awarding public contracts based on framework agreements awarded on the basis of the Public Procurement Act, subsection 5 of § 71 of the Public Procurement Act is not applied.

(3) Upon modification of public contracts awarded before the entry into force of this Act, subsections 3 and 4 of § 69 of the Public Procurement Act are not applied. Upon modification of these public contracts, § 123 of this Act is applied.

(4) In public procurement specified in subsection 1 of this section, requests for review are filed and the Review Committee hears them in accordance with the requirements provided for in the Public Procurement Act.
(5) An act committed by a person before the entry into force of this Act, which is also subject to a penalty as a misdemeanor under this Act, is qualified on the basis of the section of this Act containing the characteristics of the misdemeanour.

(6) A legal act established on the basis of subsection 5 of § 10 of the Public Procurement Act remains in force until repealed.

§ 220. Electronic communication and exchange of information

(1) Until 17 October 2018, the contracting authority or entity enables electronic communication and exchange of information between the contracting authority or entity and the economic operator, including making procurement documents available and submitting requests to participate, tenders and clarifications to the extent of at least 70 per cent of the number of public procurement procedures commenced in the register.

(2) All communication and information exchange between the contracting authority or entity and the economic operator regarding the public procurement of a central purchasing body, including making procurement documents available and submitting tenders, requests and clarifications, is carried out by electronic means, unless otherwise provided for in this Act.

§ 221. Checking subcontractors until 31 December 2018

(1) Until 31 December 2018, the contracting authority or entity checks subcontractors, in addition to subsections 1, 4, 7 and 11 of § 122 of this Act, on the basis of the provisions of this section.

(2) In the case of public works contracts and public service contracts whereby services are provided on site under the direct supervision of the contracting authority or entity, the contracting authority or entity demands in the procurement documents in the case of public procurement whose estimated value equals or exceeds the international threshold that the tenderer whom the public contract was awarded to would, not later than at the time of commencement of the performance of the public contract, submit to the contracting authority or entity the names, contact details and information on the legal representatives of the subcontractors known by the time. The contracting authority or entity demands that the tenderer whom the public contract was awarded to submit the same information on all added subcontractors involved in performing the public contract and information on replacing a subcontractor indicated at the time of commencement of the performance of the public contract.

§ 222. Division of costs of review proceedings until 31 December 2018

(1) Until 31 December 2018, the Review Committee divides the costs of review proceedings, in addition to subsections 4, 5 and 7 of § 198 of this Act, also on the basis of the provisions of this section.

(2) Upon termination of review proceedings on the ground specified in clause 3 or 7 of subsection 1 of § 197 of this Act or where a request for review specified in clause 5 of the same or a request for compensation of damage specified in clause 6 of the same is granted in full, the Review Committee makes a decision ordering the contracting authority or entity to pay the requester the entire state fee paid by the requester in the review proceedings and the expert’s remuneration paid or payable to a necessary and reasonable extent.

(3) In the event of partial granting of a request for review or a request for compensation of damage, the Review Committee makes a decision ordering the contracting authority or entity to pay the state fee and the paid or payable expert’s remuneration in proportion to the granting of the request for review or the request for compensation of damage.

(4) Where review proceedings are terminated on the basis of clause 2 or 4 of subsection 1 of § 197 of this Act, the Review Committee makes a decision ordering the requester to pay the contracting authority or entity or the third party to a necessary and reasonable extent the expert’s remuneration paid or payable by them in the review proceedings. The requester bears the procedural costs paid or payable by the requester.

(5) Where review proceedings terminate based on subsection 9 of § 197 of this Act, the Review Committee makes a decision ordering the parties to the proceedings, taking account of subsections 1–4 of this section with regard to each ground for termination of the review proceedings, to pay the state fee paid and the expert’s remuneration paid or payable by them in the review proceedings.

§ 223–§ 233. [Provisions amending other Acts have been omitted from this translation]

§ 234. Repealing of Public Procurement Act

The Public Procurement Act (RT I 2007, 15, 76) is hereby repealed.
§ 238. Entry into force of Act

(1) This Act enters into force on 1 September 2017.

(2) Subsection 6 of § 85, clause 2 of subsection 2 and subsections 3–6 of § 115 of this Act enter into force on 1 January 2018.

(3) Subsection 9 of § 23 and subsection 1 of § 45 of this Act enter into force on 18 October 2018.

(4) Subsections 1–3 and 6 of § 198, § 199 and subsections 2, 3, 5, 6 and 8–10 of § 122 of this Act enter into force on 1 January 2019.


Eiki Nestor
President of the Riigikogu