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Public Procurement Act¹

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Amended by the following acts

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13.04.2022	RT I, 05.05.2022, 2	01.06.2022, in part 15.01.2023
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Chapter 1 General Provisions

Subchapter 1 Scope of Regulation and Principles

§ 1. Scope of regulation

(1) This Act provides the rules of public procurement, the rights and obligations of persons involved in public procurement, the rules for exercising regulatory enforcement and administrative oversight, the rules of contestation procedure, and liability for violations 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 by 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 entity's funds, equal treatment of persons and effective use of competition in public procurement.

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

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 3. General principles of public procurement

When carrying out public procurement, the contracting authority or entity must adhere to the following principles:

1) when carrying out public procurement, the authority or entity acts transparently, verifiably and proportionately;

2) the authority or 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 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 authority or entity ensures effective use of competition in public procurement, such that the participation of a public legal person or a private legal person using public funds in public procurement does not distort competition due to its use of public funds;

4) the authority or the entity avoids a competition-distorting conflict of interest;

5) the authority or entity uses funds economically and expediently, 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 administrative 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 administrative 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 mentioned in subsection 2 of § 2 of the Competition Act;

5) 'procurement procedure' means the carrying out of public procurement in accordance with the rules provided by Chapter 2 of this Act;

6) 'Single Procurement Document' means a document where the economic operator certifies the presence or absence of exclusion grounds, compliance with the selection criteria where the contracting authority or entity has established any and, where relevant, compliance with the criteria based on which the authority or entity chooses the candidates whom it invites to tender;

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

8) 'conflict of interest' means a situation where the contracting authority's or 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;

8¹) 'design contest' means a contest, with or without prizes, as a result of which the contracting authority or entity may – primarily in the areas of spatial and urban planning, architecture and engineering or data processing – acquire the conceptual design or design documentation selected by the jury;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

9) 'innovation' means 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 entity that carries out 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 entities, under which 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 under which the operating risk encompassing demand or supply passes to the concessionaire;

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

14¹) 'cost element' means an element in the cost of a tender which is assessed separately;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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 under 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 entity;

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

17¹) ‘procurement proceedings’ means any proceedings conducted under this Act for the purpose of awarding a public contract or framework agreement or of obtaining a conceptual design;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

18) ‘network sector’ means the fields mentioned 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 entity

(1) The rules provided by this Act must be followed by any contracting authority or contracting entity operating in the network sector (hereinafter jointly referred to as *contracting authority or entity*).

(2) ‘Contracting authority’ means:

- 1) the State or a public body;
- 2) a local authority, a local authority agency or an association of local authorities;
- 3) another public legal person or an agency of a public legal person;
- 4) a foundation where the State is one of the founders or where more than half of the founders are contracting authorities mentioned 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 mentioned in clauses 1–3;
- 5) a private legal person which has been established for the purpose of performing, as a principal or an ancillary activity in the public interests, a function that does not have an industrial or commercial character and which is mainly financed by or in which more than half of the members of the management or supervisory body are appointed by or whose management is otherwise jointly or severally controlled by contracting authorities mentioned in clauses 1–4 of this subsection or by contracting authorities or entities of another contracting party of the European Economic Area or by other private legal persons that correspond to the characteristics mentioned in this clause.

[RT I, 08.07.2020, 2 – entry into force 15.07.2020]

(3) ‘Contracting entity operating in the network sector’ means, when such an entity operates in the network sector:

- 1) a contracting authority;
- 2) a person who, by a legal act, administrative decision or administrative contract, has been granted a special or exclusive right to operate in the 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, of a procedure for awarding a concession contract that commences with the publication of a concession notice or of any other procedure carried out in accordance with objective criteria based on a legal act mentioned 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.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 6. Purchases by other persons of works financed by a 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 works mentioned in 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) or of hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes, and the estimated value of which is equal to or greater than the international threshold for public works; or
- 2) services related to a public contract for works mentioned in clause 1 of this subsection and the estimated value of which is equal to or greater than the international threshold for supplies and services set to the contracting authorities mentioned in clauses 2–5 of subsection 2 of § 5 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) When 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 an administrative contract mentioned in § 131 of the Planning Act where 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 – including as a person on whose resources the tenderer or candidate relies – economic operators only from countries mentioned 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. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 by 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 require, 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. Where the clarification of the legal relations between the joint tenderers by a certain method and within a certain scope is required for the appropriate performance of a public contract based on the nature of the subject matter of such a contract, the authority or entity may require the relevant clarification by the time of performance of the 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 provided by this Act. Unless otherwise provided for by this Act, failure to follow the requirements provided by law does not affect the validity of the public contract. Unless otherwise provided for by this Act, public contracts are subject to the provisions of the Law of Obligations Act and of other legal acts governing the relevant contract type.

(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 mentioned 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 mentioned 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 mentioned 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 purchases the execution of works using any funds, provided that the requirements for the purchase are established by the contracting authority or entity who exercises a decisive influence on the works or their design.

(6) [Repealed – RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

Subchapter 2

Planning of Public Procurement

§ 9. Procurement rules and procurement plan

(1) A contracting authority establishes internal procurement rules where the estimated total value, in a budgetary year, of public procurements of supplies and services or of public works that it envisages exceeds, respectively, 80 000 euros or 500 000 euros.

(2) A contracting entity operating in the network sector establishes internal procurement rules where the estimated total value of envisaged public procurements in a budgetary year exceeds 500 000 euros.

(3) A Minister in charge of a policy sector, a local authority or a contracting entity operating in the network sector may establish procurement rules and a procurement plan respectively for the contracting authorities of the Ministry's area of government, for the agencies of the local authority or for contracting entities operating within the group of the contracting entity operating in the network sector.

(4) The procurement rules provide for, among other things, 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 this is needed, rules for purchasing social and other specific services, including with a value below the threshold for social and other specific services, except in the fields of defence and security;
- 5) where this is needed, the light regime for buying services in the fields of defence and security, including with a value below the simple procurement threshold for buying services in the fields of defence and security;
- 6) measures for prevention, identification and remedying of a conflict of interest in public procurement, unless the measures are provided by another internal document on work organisation.

(5) A contracting authority or entity that does not have the obligation to establish procurement rules establishes measures for the prevention, identification and remedying of a conflict of interest in an internal document on work organisation or, where the contracting authority does establish procurement rules, in the procurement rules.

(6) The procurement rules and the procurement plan are public. Where the contracting authority or entity has identified the measures mentioned 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 of such a document, on its website without delay after having established or amended the procurement rules or the measures mentioned 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 without delay after the plan has been approved.

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

(1) The contracting authority or entity may, prior to commencing procurement proceedings, conduct market consultations with a view to preparing the public procurement as well as in order to disseminate information concerning a public procurement envisaged by economic operators and concerning the requirements to be included in such a procurement.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) Where an economic operator has participated in market consultations mentioned in subsection 2 of this section or been otherwise involved in the preparation of the public procurement, the contracting authority or entity takes measures to prevent the distortion of competition, including:

- 1) stating, in the procurement documents, any significant information that was exchanged with the economic operator who participated in the market consultations or was otherwise involved in the preparation of the public procurement;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

2) setting a sufficiently long time limit for the filing of a tender or for seeking an invitation to participate so that the economic operator that participated in the market consultations or was otherwise involved in the preparation of the procurement is not placed in a position of advantage vis-à-vis other economic operators in connection with the prior possession of knowledge.

(3¹) The contracting authority or entity does not disclose, in the procurement documents, any trade secrets of the economic operator who participated in market consultations or was otherwise involved in the preparation of the procurement.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) Where the measures taken by the contracting authority or entity do not ensure adherence to the principle of equal treatment, the authority or entity, before the application of clause 7 of subsection 4 of § 95 of this Act, gives 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.

Subchapter 3

Derogations and Specific Situations

§ 11. Derogations

(1) The contracting authority or entity is not required to apply this Act where:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

1) the main purpose of the public authority when 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;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

2) a public contract is awarded or a design contest organised in accordance with the rules provided by 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 material or a part of such material;

9) a public contract related to the purchasing of 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 issuing, purchase, sale or transfer of securities or of other financial instruments or services provided by the *Eesti Pank* purchased or operations are conducted with the European Financial Stability Facility and the European Stability Mechanism;

13) a loan contract is awarded;

14) an employment contract is awarded;

15) a public contract is awarded to a non-profit organisation or a non-profit association for the purpose of purchasing 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 purchased from a contracting authority or an association of contracting authorities to 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 purchased, 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 presumes adherence, in accordance with legislation, to special security requirements, or where the award of the contract or the holding of a design contest in accordance with the rules provided by this Act would obligate the contracting authority or entity to disclose information that it considers to be contrary to essential security interests of the State, or the application of the derogation is directly necessary for protecting 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 mentioned in subsection 1 of § 43 of this Act.

(2) When awarding a public contract or organising a design contest in the fields of defence and security, the contracting authority or entity is not required to apply this Act only in situations mentioned in clauses 3, 4, 7, 10, 14 and 19 of subsection 1 of this section and in subsection 1 of § 170 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) The contracting authority or entity which entered into an international agreement mentioned in clause 2 of subsection 1 of this section notifies this to the European Commission without delay in writing through the Ministry of Finance.

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

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

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 public or private legal person which meets all of 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 mentioned in clause 1 of subsection 2 of this section is fulfilled where 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 mentioned in clause 1 of subsection 5 of this section is fulfilled where all of the controlling contracting authorities are represented in the decision-making bodies of the controlled legal person; in such a situation, an individual representative may represent several or all of the controlling authorities, and such 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 authorities.

(7) A contracting authority is not required to apply this Act where the authority awards a public contract to another contracting authority or to other contracting authorities and all of the following conditions are fulfilled: [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

- 1) the public contract establishes the foundations for cooperation between the participating contracting authorities or the terms of implementation of such cooperation 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 such 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 mentioned 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 due to the authority's or legal person's having been created or having commenced its activities or having been reorganised, the share of these activities may be assessed by means of business projections. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 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 – and whose day-to-day principal operations focus on – 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, undertakings or programmes are disabled workers, workers with reduced ability to work or disadvantaged workers.

(2) 'Sheltered workshop' means – for the purposes of clause 4 of § 4 of this Act – an economic operator 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. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

Subchapter 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 fields 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 operating in the network sector;
- 3) 300 000 euros in the case of a public works contract in the fields of defence and security and a public works contract awarded by a contracting entity operating in the network sector.

(2) For the purposes of this Act, the public procurement threshold is:

- 1) 60 000 euros in the case of a public supply or service contract, a contract for specific services mentioned in Titles 6–15 of Annex XIV to Directive 2014/24/EU of the European Parliament and of the Council or Titles 6–15 of Annex XVII to Directive 2014/25/EU of the European Parliament and of the Council, a concession contract for specific services mentioned in Titles 6–15 of Annex IV to Directive 2014/23/EU of the European Parliament and of the Council (OJ L 94, 28.03.2014, pp 1–64), and a design contest;
- 2) 150 000 euros in the case of a public works contract;
- 3) 300 000 euros in the case of a contract for social services mentioned in Titles 1–5 of Annex XIV to Directive 2014/24/EU of the European Parliament and of the Council and Titles 1–5 of Annex XVII to Directive 2014/25/EU of the European Parliament and of the Council, a concession contract, including a concession contract for social services mentioned in Titles 1–5 of Annex IV to Directive 2014/23/EU of the European Parliament and of the Council, and services subject to the light regime in the fields of defence and security.

(3) The international threshold, including the international threshold for social and other specific services, is an amount that is established periodically by the European Commission on the basis of Articles 8 and 9 of Directive 2014/23/EU of the European Parliament and of the Council, Articles 4 and 6 of Directive 2014/24/EU of the European Parliament and of the Council, and Articles 15 and 17 of Directive 2014/25/EU of the European Parliament and of the Council, and published in the Official Journal of the European Union. The international threshold is published by the chief processor of the register on its website without delay after each publication of the threshold by the European Commission.

(4) The international threshold in the fields of defence and security is an amount that is enacted periodically by the European Commission on the basis of Articles 8 and 68 of Directive 2009/81/EC of the European Parliament

and of the Council, and published in the Official Journal of the European Union. The public procurement threshold in the fields of defence and security is published by the controller of the register on its website without delay after each publication of the threshold by the European Commission.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

(1) When awarding a public contract, the contracting authority applies the rules provided by Subchapter 1 of Chapter 3 of this Act where the estimated value of the public contract equals or exceeds the simple procurement threshold, but remains below the public procurement threshold.

(2) When awarding a public contract, the contracting authority applies the rules provided by Chapter 2 of this Act where the estimated value of the public contract equals or exceeds the public procurement threshold.

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

(4) When awarding a public contract in the fields of defence and security, the contracting authority or entity follows the rules provided by Subchapter 1 of Chapter 3 of this Act where the estimated value of the public contract equals or exceeds the simple procurement threshold, but is below the international threshold.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) When awarding a public contract in the fields of defence and security, the contracting authority or entity applies the rules provided by Chapter 6 of this Act where the estimated value of the public contract equals or exceeds the international threshold for those fields.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) When awarding a public contract, in the fields of defence and security, for services whose orders are subject to the light regime, the contracting authority or entity applies the rules provided by § 171 of this Act where the estimated value of the public contract equals or exceeds the simple procurement threshold for orders of services in those fields.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(7) When awarding a public contract, the contracting authority may apply the rules provided by Chapter 5 instead of the procedural rules provided by Chapter 2 of this Act where 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) When awarding a public contract, a contracting entity operating in the network sector applies the rules provided by Subchapter 1 of Chapter 3 of this Act where 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 where the main purpose of the public contract cannot be established.

(9) When awarding a public contract, a contracting entity operating in the network sector applies the rules provided by Chapter 5 of this Act where 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 where the main purpose of the public contract cannot be established.

(10) When awarding a public contract for special and other specific services, the contracting entity operating in the network sector applies the rules provided by § 166 of this Act where the estimated value of the public contract equals or exceeds the threshold for social and other specific services and the main purpose of the public contract is related to its operations in the network sector or where 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 a right to apply mandatory rules provided by this Act also when awarding a public contract whose estimated value does not amount to the respective threshold or which, by its nature, does not feature the element that triggers the application such rules.

(12) Where 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 by this Act.

§ 16. Application of procedural rules when awarding a concession contract

(1) When awarding a concession contract in connection with its operations in the network sector, a contracting authority or a contracting entity operating in the network sector applies the rules provided by Subchapter 1 of Chapter 3 and by § 136 of this Act where the estimated value of the concession contract equals or exceeds the simple procurement threshold.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

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

(4) Where, under subsection 11 of § 15 of this Act, the contracting authority or entity, instead of a concession contract award procedure, conducts a procurement procedure, it applies the provisions of § 135 and of § 136.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 17. Application of procedural rules when holding a design contest

(1) When holding a design contest, a contracting authority applies the rules provided by Subchapter 3 of Chapter 3 of this Act where the estimated value of the contest equals or exceeds the public procurement threshold.

(2) When holding a design contest, a contracting entity operating in the network sector applies the rules provided by Subchapter 3 of Chapter 3 of this Act where the design contest is connected with its operations in the network sector and the estimated value of the contest equals or exceeds the public procurement threshold.

§ 18. Application of procedural rules when awarding mixed contracts

[Repealed – RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 18¹. Application of procedural rules when awarding mixed contracts

(1) Where the subject matter of a mixed contract simultaneously includes – as its components – supplies, services and works, or two of the three, and the components cannot, objectively, be separated, the public contract is awarded according to the rules applicable to the main component.

(2) Where the subject matter of a public contract is, in part, social and other specific services and, in part, other services – or, in part, services and, in part, supplies – the prevalent component of the subject matter of the contract is established based on the estimated value of the supplies or services.

(3) Where the subject matter of a mixed contract simultaneously includes – as its components – supplies, services and works, or two of the three, and the components can, objectively, be separated, the contracting authority or entity may award separate contracts, following the procedural rules applicable to each of the components respectively.

(4) Where the contracting authority or entity decides to award a mixed contract mentioned in subsection 3 of this section regardless of the fact that the components of the subject matter of such a contract can, objectively, be separated, the authority or entity awards the contract following the rules applicable to simple procurement proceedings, procurement proceedings or proceedings exceeding the international threshold where the subject matter of the contract represents supplies or services whose estimated value equals or exceeds the simple procurement threshold, the public procurement threshold or the international threshold, and the estimated value of public works remains, respectively, below those thresholds.

(5) Where public works constitute the prevalent component of the subject matter of a mixed contract mentioned in subsection 4 of this section, the contracting authority or entity, when determining the time limit for the filing of tenders, has regard to:

- 1) under the open procedure, the minimum time limit provided by clause 6 of subsection 1 of § 93 of this Act;
- 2) under the restricted procedure or the competitive procedure with negotiations, in an innovation partnership and in a competitive dialogue – the minimum time limit provided by clause 3 of subsection 3 of § 94 of this Act, except in a situation provided for by clause 4 of that subsection;
- 3) under the simple procedure, the minimum time limit that is applicable to a contract for public works provided for by subsection 4 of § 125 of this Act.

(6) Where the contracting authority or entity decides to award a mixed contract mentioned in subsection 3 of this section regardless of the fact that the components of the subject matter of such a contract can, objectively, be separated, the authority or entity awards the contract following:

- 1) the rules provided by Subchapter 1 of Chapter 3 of this Act where the estimated value of the part of the contract that concerns supplies or services equals or exceeds the simple procurement threshold but remains below the public procurement threshold and the estimated value of the part of the contract that concerns social or other specific services remains below the public procurement threshold;
- 2) the rules provided by Subchapter 2 of Chapter 3 of this Act where the estimated value of the part of the contract that concerns supplies or services is below the public procurement threshold and the estimated value of the part of the contract that concerns social or other specific services equals or exceeds the public procurement threshold;
- 3) the rules provided by Chapter 2 of this Act where the estimated value of the part of the contract that concerns supplies or services equals or exceeds the public procurement threshold and the estimated value of the part of the contract that concerns social or other specific services remains below the international threshold;
- 4) the rules provided by Subchapter 2 of Chapter 3 of this Act where the estimated value of the part of the contract that concerns supplies or services remains below the international threshold and the estimated value of the part of the contract that concerns social or other specific services equals or exceeds the international threshold.

(7) Where one component of the subject matter of a mixed contract is an activity falling within the scope of application of this Act and the other component is an activity falling outside the scope of application of this Act, and the components cannot, objectively, be separated, the contracting authority or entity awards the contract following the procedural rules applicable to the prevalent component.

(8) Where one component of the subject matter of a mixed contract is an activity falling within the scope of application of this Act and the other component is an activity falling outside the scope of application of this Act, and the components can, objectively, be separated, the contracting authority or entity may award separate contracts for the components.

(9) Where the contracting authority or entity decides to award a mixed contract mentioned in subsection 8 of this section regardless of the fact that the components of the subject matter of such a contract can, objectively, be separated, the authority or entity awards the contract following the rules provided by this Act where the estimated value of the component that represents the activity that falls within the scope of application of this Act equals or exceeds the threshold provided by this Act for the respective public procurement.

(10) 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.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 19. Application of procedural rules when the contracting authority awards mixed contracts

(1) When awarding a public contract, the contracting authority applies the rules provided by Subchapter 1 of Chapter 3 of this Act where 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) When awarding a public contract, the contracting authority applies the rules provided by Chapter 2 of this Act where 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) When awarding a public contract, the contracting authority applies the rules provided by Subchapter 2 of Chapter 3 of this Act where the subject matter of the contract consists, simultaneously, of social or other specific services and of a concession contract, and the estimated value of the part of the contract concerning such services equals or exceeds the public procurement threshold.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) When awarding a public contract, the contracting authority applies the rules provided by Subchapter 1 of Chapter 3 of this Act where the subject matter of the contract consists, simultaneously, of social or other specific services and of a concession contract and the estimated value of the concession contract part equals or exceeds the simple procurement threshold but remains below the public procurement threshold, and the estimated value of the part of the contract concerning social or other specific services remains below the public procurement threshold.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4¹) When awarding a public contract, the contracting authority applies the rules provided by Chapter 4 of this Act where the subject matter of the contract consists, simultaneously, of social or other specific services and of a concession contract and the estimated value of the concession contract part equals or exceeds the public

procurement threshold while the estimated value of the part of the contract concerning social or other specific services remains below that threshold.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) Where 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) When awarding a public contract mentioned in subsection 5 of this section, the contracting authority applies the rules provided by Subchapter 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 by Chapter 2, provided that the estimated value of the public contract equals or exceeds the public procurement threshold.

(7) Where 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) When awarding a public contract mentioned in subsection 7 of this section, the contracting authority applies the rules provided by Subchapter 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 by Chapter 5, provided that the estimated value of the public contract equals or exceeds the public procurement threshold.

§ 20. Application, by a contracting entity operating in the network sector that is not a contracting authority, of procedural rules when awarding a mixed contract

(1) Where supplies, services or works and a concession contract simultaneously constitute the subject matter of a public contract, a contracting entity operating in the network sector applies one of the following rules when awarding the public contract:

- 1) the rules provided by Subchapter 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 by Subchapter 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 by 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 mentioned in subsection 1 of this section where the estimated value of the supply, services or works part of that contract is below the simple procurement threshold, the contracting entity operating in the network sector applies the rules provided by 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 when awarding of mixed contract containing activities in fields of defence and security

(1) Where activities in the fields of defence and security constitute the subject matter of a public contract and the award of one public contract can be objectively justified or where different parts of the public contract cannot objectively be separated, the contracting authority or entity applies the rules provided by Chapter 6 of this Act.

(2) Where a component of the subject matter of a public contract consists of activities in the fields of defence and security, which have been left outside the scope of application of this Act under subsection 1 of § 170 of this Act, and the awarding of a single contract can be objectively justified or where different parts of the contract cannot objectively be separated, the contracting authority or entity is not required to apply this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 22. Rules for carrying out public procurement of works and of design of buildings

The Minister in charge of the policy sector may, by regulation, enact rules for the carrying out of public procurement of works and of design of buildings that equals or exceeds the public procurement threshold.

Subchapter 5

Calculation of Estimated Value of Public Procurement and Subdivision of Public Procurement into Lots

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

(1) All of the estimated values, estimated total values, values and total values mentioned 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 on performance of the public contract, taking into account, among other things, possible future obligations arising from the contract as well as renewal of the contract;
- 2) possible prizes awarded in a design contest or participation fees and the estimated value of a public service contract where 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 under 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 that must be relied on when calculating the estimated value of a public procurement is the level that corresponds to the average market price at the time immediately preceding commencement of the procurement and that must be effective at the time of commencement.

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

(5) Where 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 is deemed the estimated value of the concession contract.

(6) Where the contracting authority or entity consists of multiple operational units, the estimated total value of the public procurement of all of the units is generally taken into account when determining the estimated value of the authority's or entity's procurement. Where a separate operational unit is independently responsible for its public procurement or for a lot of such a procurement, the estimated value of the procurement of the unit may be relied on when calculating the estimated value of the procurement.

(7) Where 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 by subsection 5 of § 49 of this Act, the estimated total value of the services or works bought under such an additional public contract is 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. Where, based on the provisions of this Chapter, it is possible to calculate the estimated value of public procurement using various methods and, when 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 based on that method.

(9) When commencing public procurement, except by negotiated procedure without prior publication of a contract notice, the contracting authority or entity files with the register the particulars of the estimated value of the procurement and states whether the authority or entity requests that the estimated value be published in the contract notice or concession notice.

[RT I, 01.07.2017, 1 – entry into force 18.10.2018]

§ 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 estimated value of a public works contract is calculated taking into account 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 provided by 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 authority or entity;
- 3) payments or any financial advantage in any form whatsoever made by the authority or entity or any other public body 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 of the movables and services that are made available to the concessionaire by the 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. Subdivision 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 of the lots into account when calculating the estimated value of the public procurement and specifying, in the contract notice or in other procurement documents, whether the authority or entity allows the tenderer to submit a tender for one, several or all of the lots.

(2) Where a public procurement, which has not been divided into lots within the proceedings and whose estimated value equals or exceeds the public procurement threshold – or the international threshold, where this Act does not provide a threshold for such a procurement – the contracting authority or entity states, in the procurement documents, the reasons for its decision not to subdivide the procurement into lots within the proceedings. The duty to state the reasons does not apply if the public contract is awarded under a framework agreement or based on a dynamic purchasing system.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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) When making use of the possibility mentioned in subsection 3 of this section, the contracting authority or entity establishes, in the procurement documents, objective and non-discriminatory grounds which the authority or entity intends to apply for determining the lots that will be awarded where application of award criteria would result in one tenderer being awarded more public contracts than the maximum number established by the authority or entity under 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 authority or entity has provided for such an option in the contract notice or in other procurement documents and identified the lots or groups of lots that may be combined.

§ 28. Subdivision of public procurement into separate public procurements

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

(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 where 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 authority or entity may divide the public procurement into lots where it is justified for objective reasons.

(3) The contracting authority or entity may – except when awarding a concession contract – derogate from the provisions of subsection 2 of this section and, where a public procurement is divided into lots, apply to certain lots of such a procurement the rules for awarding a public contract with the estimated value of the lot, provided that the total value of such lots does not exceed 20 per cent of the total estimated value of the entire procurement.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) Where the total estimated value of all of 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 where 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.

Subchapter 6 Instruments of Public Procurement

Division 1 Framework Agreement

§ 29. Award of framework agreement

(1) Framework agreements are governed by the provisions governing public contracts, unless otherwise provided by 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 under 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 under a framework agreement

(1) When awarding public contracts under a framework agreement, the terms and conditions of the framework agreement and the rules provided by 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 under a framework agreement only to the tenderers to whom the framework agreement was awarded.

(3) Where a framework agreement has been awarded to a single tenderer, a public contract is awarded in accordance with the terms and conditions provided by the framework agreement. Where this is needed, the contracting authority or entity may ask the tenderer to supplement its indicative tender.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) Where the framework agreement which the contracting authority or entity has awarded to multiple tenderers does not lay down all of the terms and conditions of public contracts to be awarded under it, the authority or entity reopens the competition among the tenderers who are party to the agreement in order to award a public contract under that agreement.

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

(6) Where the framework agreement awarded by the contracting authority or entity to multiple tenderers provides for all of the terms and conditions of the public contracts to be awarded under it, the authority or entity is 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 by the framework agreement without reopening the 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 reopened competition.

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

(8) In the framework agreement mentioned 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 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 by the framework agreement are applied to the reopening of competition on the following terms:

1) the contracting authority or entity makes, in a form reproducible in writing, an invitation to tender to all of 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;

[RT I, 08.07.2020, 2 – entry into force 15.07.2020]

3¹) tenders are opened after the time limit for the submission of tenders has expired, provided that the estimated value of the public contract at least equals the simple procurement threshold provided by subsection 1 of § 14 of this Act or the respective public procurement threshold provided by subsection 2, unless this Act provides for a simple procurement threshold for the public procurement;

[RT I, 08.07.2020, 2 – entry into force 15.07.2020]

4) the contracting authority or entity awards the public contract to the tenderer who, in accordance with the assessment criteria – which comply with the conditions provided for by § 85 and § 86 of this Act and which have been set out in procurement documents as applicable to the reopening of competition – has submitted the most economically advantageous tender.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(10) The contracting authority or entity may establish criteria for the additional selection of tenderers by reopening the competition. When reopening the competition, the authority or entity may require that the tenderer have an annual net turnover that may not exceed the double estimated value of the largest of the public contracts performed at the same time under the same framework agreement. Where the estimated values of the contracts are not known, the required minimum annual net turnover is calculated based on the estimated value of the framework agreement.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(10¹) Where a Single Procurement Document was used in procurement proceedings conducted for awarding a framework agreement, the contracting authority or entity verifies, prior to awarding a public contract based on the results of reopening the competition, whether any grounds for exclusion mentioned in subsections 1 and 4 of § 95 of this Act apply – subject to the conditions provided by subsections 2, 3, 5 and 6 of the same section – in respect of the tenderer to whom the authority or entity intends to award the contract, and does not award the contract to a tenderer in whose respect any of the grounds applies.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(10²) Subsection 101 of this section applies where the value of the framework agreement equals or exceeds the international threshold and the estimated value of the public contract equals or exceeds:

- 1) the simple procurement threshold provided by subsection 1 of § 14 of this Act or
- 2) the threshold for the corresponding procurement, if this Act does not establish a simple procurement threshold concerning the public procurement in question.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(10³) When verifying the applicability of the grounds for exclusion under subsection 10¹ of this section, the contracting authority or entity applies the provisions of subsections 2–4 of § 96 of this Act. The authority or entity does not require documents to be produced for verifying the inapplicability of grounds for exclusion if such documents or the corresponding particulars are available to it without material cost, or if it possesses the documents or particulars and, for purposes of verification, those documents or particulars remain relevant.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(10⁴) In relation to a public contract awarded under a framework agreement that was awarded to a single tenderer and where the contract is awarded on the terms and conditions provided by the framework agreement without announcing a reopening of competition – or where the value of the framework agreement is less than the international procurement threshold – was used in procurement proceedings conducted for awarding a framework agreement, the contracting authority or entity may apply subsection 10¹ of this section, provided it has made provision for such application in the procurement documents issued in order to award the agreement.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(11) The contracting authority or entity may make a decision to award a public contract and notify each tenderer who is party to the framework agreement of the decision, indicating the names of the selected tenderer or tenderers and, in the notification addressed to a tenderer who was not selected, also particulars characterising the selected tender and its advantages over the tender of the notification recipient. The notification is made taking account of the fact that the award of the public contract is preceded by a seven-day standstill period counted from the making of the notification.

§ 31. Voidness of public contracts awarded under a framework agreement

(1) Unless the contracting authority or entity applied the provisions of subsection 11 of § 30 of this Act, a public contract awarded under a framework agreement is void where the authority or entity, when awarding the contract, violated the terms and conditions of the reopening of competition provided for by subsection 9 of that section.

(2) One can rely on the voidness of a public contract by virtue of subsection 1 of this section only where such voidness has been established in accordance with the provisions of this Act.

Division 2 Dynamic Purchasing System

§ 32. Fundamentals of a dynamic purchasing system

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

(2) The provisions governing the restricted procedure are applied in a dynamic purchasing system without prejudice to special rules provided by this Division.

(3) The contracting authority or entity may not restrict the number of candidates applying to be included 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, among other things, be the maximum permitted value of contracts awarded under the dynamic purchasing system or the geographical area of performance of such contracts.

(5) During the period of operation of a dynamic purchasing system, the contracting authority or entity may require that the candidates included in the system submit an updated Single Procurement Document in accordance with the rules provided by § 104 of this Act. The candidates submit the Single Procurement Document within five working days following presentation of the contracting authority’s or entity’s requirement.

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

(7) For including an economic operator in a dynamic purchasing system, a contracting authority or entity may require the operator to 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 based on the dynamic purchasing system.

(8) The contracting authority's or entity's decision to include a candidate contains a decision on selecting that economic operator.

§ 33. Setting up and closing a dynamic purchasing system

(1) To set up a dynamic purchasing system, the contracting authority or entity files with the register a contract notice that states:

- 1) the period of operation of the dynamic purchasing system;
- 2) where 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.

(1¹) In procurement documents, the contracting authority or entity states the nature and estimated number of public contracts envisaged under the dynamic purchasing system, relevant information concerning electronic devices to be used as part of the system as well as technical arrangements – and a description of such arrangements – for connecting to the system.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The contracting authority or entity has a right to modify the period of operation of a dynamic purchasing system by filing a contract notice with the register.

(3) The dynamic purchasing system closes when its period of operation expires. The contracting authority or entity has a right to close the dynamic purchasing system before the date of expiry by filing a contract award notice with the register.

§ 34. Inclusion in the dynamic purchasing system

(1) Throughout the period of operation of the dynamic purchasing system, the contracting authority or entity allows any economic operator to apply for inclusion in the system. Such applications may be submitted at any time.

(2) The contracting authority or entity finalises assessment of applications for inclusion in the dynamic purchasing system within ten working days following their receipt. The time limit 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 time limit longer than the one mentioned in subsection 2 of this section for examination of applications for inclusion that are submitted within 30 days following 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 candidates included in the system to submit a tender. Where the dynamic purchasing system has been divided into categories, the authority or entity invites all candidates who have been included in the relevant category of the system to submit a tender.

(2) In the invitation to tender, the contracting authority or entity may elaborate the particulars of the award criteria stated in the contract notice.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) Tenders are submitted within ten days following receipt of the invitation to tender, unless the contracting authority has provided for a longer time limit for submission of tenders in the invitation. A contracting entity operating in the network sector and tenderers who have been included in its dynamic purchasing system may agree on a different time limit for submission of tenders, provided all such tenderers are set an equal time limit for submitting their tenders.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

Division 3

Electronic Auction

§ 36. Grounds for an 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 following the reopening of competition between parties to a framework agreement where 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 to the tender offering the lowest price;
- 2) value, which is based on the tender price and other numerically expressed award criteria, where the contract is awarded to the tenderer whose tender shows the best price-quality ratio;
- 3) the tender price or cost, where the contract is awarded to 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 and, where the authority or entity operates in the network sector and the public procurement commences by a selection system notice, in the invitation to tender – or, where the procurement commences by a periodic indicative notice, in the invitation to participate.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 – at the same time – 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.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

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

(6) The electronic auction cannot start sooner than two working days following 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. Where the contracting authority or entity has previously indicated such option, the 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 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 authority or entity has laid down the timetable for all of the stages in the invitation.

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

(3) Having closed the electronic auction, the contracting authority or entity awards the public contract based on the results of the auction.

Division 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) Where electronic communication is used, the contracting authority or entity may require 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 authority or entity states this in the contract notice, or – where the authority or entity operates in the network sector and the public procurement commences by a selection system notice, in the invitation to tender – or, where the procurement commences by a periodic indicative notice, in the invitation to participate.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) Where an electronic catalogue is required or accepted, the contracting authority or entity indicates in the procurement documents the entire necessary information in accordance with the requirements provided for under subsection 8 of § 45 of this Act concerning the form, the electronic equipment used as well as the technical connection arrangements and specifications for the catalogue.

§ 40. Use of electronic catalogue when reopening the competition

(1) Where a framework agreement has been awarded to more than one economic operator following the submission of tenders in the form of electronic catalogues, the contracting authority may provide that reopening the competition for specific contracts takes place based on updated electronic catalogues. In such a case, the contracting authority uses one of the following methods:

1) inviting tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question;

2) – provided that the use of such a method has been announced in the procurement documents – notifying 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 mentioned in clause 2 of subsection 1 of this section, the contracting authority presents the collected information to the tenderer concerned before awarding the public contract, so as to give it the opportunity to contest or confirm that the tender constituted by the contracting authority based on the collected information does not contain any material errors.

§ 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 form 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 application for inclusion in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and form established by the contracting authority or entity. That

catalogue is filled out subsequently by the candidates where the authority or entity informs them of exercising the option mentioned in clause 2 of subsection 1 of § 40.

§ 41¹. Scope of application of this Division

(1) This Division is applied to public procurements whose estimated value at least equals:
1) the simple procurement threshold provided by subsection 1 of § 14 of this Act, or
2) the respective public procurement threshold provided by subsection 2 of § 14 of this Act, unless this Act provides for a simple procurement threshold for the public procurement.

(2) This Division applies to awarding a public contract under a framework agreement or dynamic purchasing system where the estimated value of the public contract at least equals:

1) the simple procurement threshold provided by subsection 1 of § 14 of this Act, or
2) the respective public procurement threshold provided by subsection 2 of § 14 of this Act, unless this Act provides for a simple procurement threshold for the public procurement.

[RT I, 08.07.2020, 2 – entry into force 15.07.2020]

Division 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 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 by § 44 of this Act.

(4) Subsection 3 of this section is not applied to public procurement carried out by a constitutional institution, a public legal person, a private legal person 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 under subsection 5 of this section.

(7) A body or another company acting as a central purchasing body may, in the form of cooperation provided by 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 mentioned in clause 2 of subsection 2 of § 5 of this Act when authorised by the authority or entity.

(7¹) A local authority may, within its purview, appoint a central purchasing body and determine the extent within which the body is to arrange public procurements for contracting authorities or entities, as well as decide that the body is not – within a set limit – to make such arrangements independently or jointly with other contracting authorities or entities.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(8) The contracting authority or entity may join the public procurement carried out by the central purchasing body, executing with the central purchasing body an agreement that, where this is needed, sets out, among other things, the scope of representation of the body, compensation for costs related to central purchasing operations or payment of remuneration to the body.

(9) The contracting authority or entity may use a dynamic purchasing system created by the central purchasing body where 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 or operations carried out by the 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 such authorities or entities.

(2) Where this is needed, the agreement mentioned in subsection 1 of this section sets out, among other things, 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 where the public procurement is carried out fully in the interests of all of the respective contracting authorities or entities, even where the public procurement is managed on its own behalf by one of the contracting authorities or entities.

(4) Where 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 by 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, including awards of contracts based on a dynamic purchasing system or a framework agreement, are conducted in accordance with the law of the Member State where the central purchasing body is located.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) Several contracting authorities or entities of different Member States of the European Union may agree on joint arrangements for public procurement by concluding an agreement that serves as the basis for their cooperation and determines the division of responsibilities between the authorities or entities and, accordingly, the applicable national law – which must be published in the procurement documents – as well as 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 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.

Subchapter 7

Rules Applicable to Communication and Requirements for Form of Documents

§ 45. Communication

(1) Unless otherwise provided by this Act, 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, where the estimated value of the public procurement at least equals:

- 1) the simple procurement threshold provided by subsection 1 of § 14 of this Act, or
- 2) the respective public procurement threshold provided by subsection 2 of § 14 of this Act, unless this Act provides for a simple procurement threshold for the public procurement.

[RT I, 08.07.2020, 2 – entry into force 15.07.2020]

(1¹) Subsection 1 of this section applies to awarding a public contract under a framework agreement or dynamic purchasing system where the estimated value of the public contract at least equals:

- 1) the simple procurement threshold provided by subsection 1 of § 14 of this Act, or
- 2) the respective public procurement threshold provided by subsection 2 of § 14 of this Act, unless this Act provides for a simple procurement threshold for the public procurement.

[RT I, 08.07.2020, 2 – entry into force 15.07.2020]

(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, samples or site layout boards which cannot be transmitted using electronic means;

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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 files with the Public Procurement Register all of 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) selection system notice;
- 9) optional notice;
- 10) concession notice.

(4) The notices mentioned in subsection 3 of this section must contain at least the information provided for regarding the respective notice in annexes to Directives 2009/81/EC, 2014/23/EU, 2014/24/EU and 2014/25/EU of the European Parliament and of the Council.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

(6) When filing a notice with 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 authority or entity would like to have the notice optionally transmitted to the Publication Office of the European Union. In a negotiated procedure without prior publication of a contract notice or in another situation where the authority or entity finds that the filing of a notice with the register for the purpose of commencement of public procurement is not required under this Act, the 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.

[RT I, 08.07.2020, 2 – entry into force 15.07.2020]

(7¹) The contracting authority or entity examines the content of tenders and requests to participate only after the closing date set for submitting them has expired where the estimated value of the public procurement at least equals:

- 1) the simple procurement threshold provided by subsection 1 of § 14 of this Act, or
 - 2) the respective public procurement threshold provided by subsection 2 of § 14 of this Act, unless this Act provides for a simple procurement threshold for the public procurement.
- [RT I, 08.07.2020, 2 – entry into force 15.07.2020]

(7²) Subsection 7¹ of this section applies to awarding a public contract under a framework agreement or dynamic purchasing system where the estimated value of the public contract at least equals:

- 1) the simple procurement threshold provided by in subsection 1 of § 14 of this Act, or
 - 2) the respective public procurement threshold provided by subsection 2 of § 14 of this Act, unless this Act provides for a simple procurement threshold for the public procurement.
- [RT I, 08.07.2020, 2 – entry into force 15.07.2020]

(8) Requirements for electronic communication devices are enacted by a regulation of the Minister in charge of the policy sector.

§ 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 receipt of a corresponding request for clarification. Where the entire public procurement communication and information exchange does not take place electronically, the authority or entity submits clarifications or documents allowing for clarification within the same time limit to all of the economic operators interested in the public procurement, which are known to the authority or entity, in a form reproducible in writing.

(2) Unless there is at least a six-day period between receipt, by the contracting authority or entity, of the request for clarification regarding procurement documents and the closing date for submission of tenders or, in situations mentioned in clause 2 of subsection 2 of § 93 and subsection 4 of § 94 of this Act, at least a four-day period or, in a simple procedure or a special procedure for social or other specific services, at least a two-day period, the authority or entity is not required to respond to the request for clarification.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 inapplicability of grounds for exclusion, regarding information offered as proof of self-cleaning or of qualifications, or regarding information provided in the tender within three working days following receipt of the corresponding requirement from the authority or entity. Where a valid reason is present, the authority or entity may extend the time limit set to the operator for submission of documents or clarifications.

§ 46¹. Trade secret

(1) The tenderer identifies, in their tender, the information that constitutes a trade secret, and states the reasons for regarding it as such. When designating certain information as a trade secret, the provisions of subsection 2 of § 5 of the Restriction of Unfair Competition and Protection of Business Secrets Act are followed. The tenderer may not designate as a trade secret:

- 1) the cost of the tender or any of its cost elements;
- 2) where a public contract for services is concerned, in addition to what has been mentioned in clause 1 of this subsection, any other numerical indicators that characterise the tender and correspond to award criteria;
- 3) where a public contract for supplies or works is concerned, in addition to what has been mentioned in clause 1 of this subsection, any other indicators that characterise the tender and correspond to award criteria.

(2) The contracting authority or entity does not disclose the part of substantive content of the tender that has been identified by the tenderer in that tender as a trade secret.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 47. Notifying economic operators of decisions of the contracting authority or entity

(1) The contracting authority or entity communicates, to the economic operator who – at the time the decision was made – was a participant in the public procurement, a notice in a form reproducible in writing concerning the following decisions:

- 1) decision to exclude the economic operator from the procurement procedure;
- 2) decision not to exclude the economic operator from procurement proceedings, made under subsection 2 of § 97 of this Act;

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- 3) decision to select;
- 4) decision not to select;
- 5) decision to reject the tender;

- 6) decision to reject all tenders;
- 7) the decision mentioned in subsection 3 of § 70 of this Act;
- 8) decision to allow the operator to be included in the dynamic purchasing system;
- 9) decision to declare the tender suitable;
- 10) decision to declare the tender successful;
- 11) decision to award a public contract mentioned in subsection 11 of § 30 and subsection 6¹ of § 72 of this Act;
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 12) decision to declare the public procurement ineffective under clause 6 of subsection 3 of § 73 of this Act;
- 13) a decision mentioned in subsection 7 of § 111 of this Act.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 communicated regarding the decision mentioned in clause 12 of subsection 1 of this section the reasons for declaring the public procurement ineffective.

(4) Along with the notice mentioned in subsection 1 of this section, the contracting authority or entity communicates:

- 1) to the economic operator the reasons for excluding or not selecting the operator;
- 1¹) to the economic operator, the reasons for deciding not to consider the operator's tender;
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 2) to the tenderer the reasons for rejecting its tender;
- 3) to the tenderer who submitted a suitable tender, the name of the tenderer (hereinafter *successful tenderer*) or names of the tenderers who submitted the successful tender and the particulars which characterise that tender and which gave it an advantage over the suitable tender.

(4¹) Where the decision mentioned in subsection 1 of this section is followed by the award of a public contract or of a framework agreement, the contracting authority or entity includes, with the notice that is communicated concerning the decision, a note on the length of the period during which the authority or entity may not award the contract (hereinafter *waiting period*).

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(5) In a notice mentioned in subsection 1 of this section, the contracting authority or entity does not include information whose disclosure 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 derogate from the time limit provided by subsection 1 of this section where the authority or entity presents the information mentioned in subsections 1, 3 and 4 to the economic operator at once within three working days following the making of the decision to declare the tender successful or of the decision that serves as the ground for conclusion of the public procurement, provided that the decision has been made not later than within ten working days following the opening of the tenders.

Chapter 2 Procurement Procedure

Subchapter 1 Types of Procurement Procedure and their Application

Division 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 by this Act.

(2) The contracting authority or entity has a right to set up an innovation partnership where the 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 authority or entity and the participants.

(3) The contracting authority or entity has a right to use a competitive procedure with negotiation or a competitive dialogue where:

- 1) the estimated value of the public procurement is below the international threshold;
- 2) all of 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 or complexity of the supplies, services or works that constitute the subject matter of the public contract, or the legal or financial circumstances or risks related to such supplies, services or works 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;
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 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 a 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 of 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 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, or where there is no reasonable alternative 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 when creating or acquiring a unique work of art or artistic performance; or
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 3) awarding the public contract in an expeditious manner is needed due to a situation of extreme urgency brought about by events unforeseeable to, and beyond the control of, the contracting authority or entity, which does not allow to comply with the time limits provided by §§ 92–94, by subsection 4 of § 125 or by subsection 6¹ of § 126 of this Act.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 set out in the procurement documents and the contracting authority’s or entity’s needs.

(3) When awarding a public supply contract, the contracting authority or entity has a 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 switching the 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) When awarding a public supply contract or a public service contract, the contracting authority or entity has a right, in addition to the grounds provided by 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) When awarding a public service contract or a public works contract, the contracting authority or entity has a right, in addition to the grounds provided by subsections 1 and 4 of this section, to use a negotiated procedure without prior publication for purchasing new services or works consisting in the repetition of similar services or works that were commissioned from the same tenderer as a result of a procurement procedure with a call for competition under 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 scope of such services or works, the terms and conditions of such a contract and the possibility of awarding it as a result of the procurement procedure with a call for competition.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) When awarding a public service contract, the contracting authority or entity has a right, in addition to the grounds provided by subsections 1, 4 and 5 of this section, use a negotiated procedure without prior publication where the public contract is awarded in accordance with the rules provided by 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 by the invitation to the design contest. Where 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) Where the European Commission issues a corresponding requirement, the contracting authority or entity files a report on the circumstances of application of the ground provided by clause 1 of subsection 1 of this section to the Commission through 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 by § 49 of this Act, the contracting authority or entity has a right to use a negotiated procedure without prior publication where 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 mentioned 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 an archival or other record, a publication, a licence to use publications or a property item of cultural value which is to be included in a museum collection;
- [RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 7) the subject matter of the public contract is a property item that is directly usable for research and development, and the contracting authority or entity is a research and development institution within the meaning of the Research and Development Organisation Act;
- [RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 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 of 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;
 - 11) the subject matter of the public contract is the purchase of electricity by means of the universal service within the meaning of § 76⁵ of the Electricity Market Act and the contracting authority or entity arranges the participation of at least three undertakings in the proceedings.

[RT I, 23.02.2023, 1 – entry into force 24.02.2023]

Division 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 procurement documents.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The contracting authority or entity opens all tenders submitted by the closing date, verifies the absence of the grounds for exclusion regarding each tenderer and the tenderers' qualifications in accordance with this Act and with the provisions of the procurement documents, verifies the conformity of the tenders of selected tenderers with the terms and conditions established in the procurement documents, and assesses suitable tenders in accordance with the rules established in this Chapter.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 a situation, the 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 authority or entity.

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

Division 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 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 procurement documents.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) In accordance with the provisions of this Act and of the procurement documents, 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.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 this is needed, 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, to each selected candidate or, where the 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 selected candidates a simultaneous invitation to tender in a form reproducible in writing.

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

§ 56. Opening and assessment of tenders

(1) The contracting authority or entity opens all of 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 of 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.

Division 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 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 procurement documents.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) In accordance with the provisions of this Act and of the procurement documents, 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.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 this is needed, 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-discriminatory criteria mentioned in subsection 3 of this section may be, above all, related to the candidate's ability in the fields of research and development and in those of development and application of innovative solutions.

§ 59. Invitation to tender in innovation partnership

(1) The contracting authority or entity makes each selected candidate or, where the 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 selected candidates a simultaneous invitation to tender in a form reproducible in writing.

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

(2) Concerning suitable tenders and negotiations held in stages, the contracting authority or entity may hold negotiations over all further tenders in order to select the successful tender. The award criteria or the minimum requirements for negotiable terms and conditions cannot be negotiated.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 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) Where the contracting authority or entity has provided for such an option in the procurement documents, it 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. Where suitable tenders are present, 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 of the participating tenderers whose tenders have not been rejected under 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. Changes to the minimum requirements for negotiable terms and conditions are not allowed. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 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 final tenders. The authority or entity is not allowed to hold negotiations during procurement procedure after having issued a notice on the termination of negotiations. No negotiations are held over final tenders.

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

§ 62. Setting up an 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 partnership, its intermediate targets and payment of the remuneration in instalments. When determining the stages of the innovation partnership, the authority or entity follows the sequence of steps in the research and innovation process, which may include manufacturing of the supplies, provision of the services or 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 to whom a public contract for setting up the innovation partnership has been awarded (hereinafter *partners*), provided that the contracting authority or entity has established such an option, and the conditions of its exercise, 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.

Division 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 procurement documents. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) In accordance with the provisions of this Act and of the procurement documents, the contracting authority or entity verifies the inapplicability of grounds for exclusion and the qualifications of each candidate who has submitted a request to participate in the procurement procedure by the closing date. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 this is needed, 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 selected candidate or, where the 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 selected 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 meetings its needs.

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

(2¹) In a situation provided for by clause 2 of subsection 3 of § 48 of this Act, a contracting authority makes a decision by which it continues the public procurement in the form of a competitive dialogue and commences such a dialogue, provided it commences the dialogue only with all those candidates who have not been eliminated previously during the open or restricted procurement procedure, who were selected and who have submitted a tender in the required form. In such a situation, subsections 4 and 8 of this section do not apply. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) During a dialogue, the contracting authority or entity ensures equal treatment of all candidates participating in the dialogue. The 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 indicated such an 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. Where suitable solutions are present, the number of solutions discussed in the last stage must be sufficient to ensure competition.

(5) All of the terms and conditions of the prospective public contract may be discussed during the dialogue. Award criteria cannot be discussed during the dialogue. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 the record signed by the contracting authority or entity and the candidate.

(8) The contracting authority or entity may award prizes to tenderers or pay remuneration for their participation, in order to compensate them for those costs related to developing the solutions offered during the dialogue whose amount may be adjusted depending on the suitability of the solution in light of the criteria.

§ 66. Issuing an invitation to tender, opening and assessing the tenders in competitive dialogue

(1) Having identified the solutions best meeting its needs, the contracting authority or entity notifies all of the candidates participating in the dialogue of terminating the dialogue and, simultaneously and in a form reproducible in writing, issues an invitation to the candidates to submit tenders based on solutions submitted and clarified during the dialogue. The invitation to tender must contain the information mentioned 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 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 by this Chapter.

(3¹) Where this is needed, the contracting authority or entity may ask the tenderer to clarify their final tender, to state its limits or to provide further details, provided this does not amount to amending the tender or the procurement documents, and does not entail a risk of distorting competition or treating the tenderers in an unequal manner.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) The contracting authority or entity is allowed to hold negotiations with the successful tenderer to further elaborate the terms and conditions of the public contract, provided this does not amount to materially amending

the tender or the procurement documents, and does not entail a risk of distorting competition or treating the tenderers in an unequal manner.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

Division 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 procurement documents.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 this is needed, 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, to each selected candidate or, where the 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 selected candidates a simultaneous invitation to tender in a form reproducible in writing.

(2) Where the number of selected candidates is smaller than the minimum number of candidates mentioned in the contract notice, the contracting authority or entity may continue the procurement procedure, making an invitation to tender to all selected 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 a situation mentioned in subsection 3 of this section, and verifies their conformity with the terms and conditions of the procurement documents.

(2) Concerning 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 requirements for negotiable terms and conditions cannot be negotiated.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) In a situation provided for by clause 2 of subsection 3 of § 48 of this Act, the contracting authority makes a decision to continue the public procurement as a competitive procedure with negotiation and to commence negotiations, provided the authority commences negotiations over tenders only with all those tenderers who have not been eliminated previously during the open or restricted procurement procedure, who were selected and who submitted a tender in the required form. In such a situation, subsections 6 and 7 of this section do not apply.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) In a situation mentioned in subsection 3 of this section, the tenders over which negotiations are held do not need to be in conformity with all of 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 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) Where the contracting authority or entity has provided for such option in the procurement documents, the 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. Where suitable tenders are present, the number of tenders negotiated in the last stage must be sufficient to ensure competition.

(6¹) The contracting authority or entity notifies, at the same time and in a form reproducible in writing, all tenderers who participate in the proceedings and whose tenders have not been eliminated under subsection 6 of this section of any modifications to the technical description or to any other terms or conditions and allows the tenderers sufficient time to submit new tenders. It is not allowed to make modifications to the minimum requirements for the terms and conditions to be negotiated.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(7) The contracting authority or entity may decide to carry out competitive procedure with negotiation without holding negotiations, provided that the 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 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 of the suitable tenders in accordance with the rules provided by this Chapter.

Division 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 authority or entity.

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

(4) Where this is needed, 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 by 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 the qualifications and, where this is needed, a description of the subject matter of the public contract along with the invitation to negotiate.

(5) Where the contracting authority or entity also makes an invitation to submit a tender in the invitation to negotiate, the 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.

(6¹) Where several tenderers participate in the procurement procedure, the contracting authority or entity makes a decision by which it declares a tender successful. Where, in a procurement procedure which does not require the submission of tenders, the authority or entity negotiates with several economic operators, the authority or entity makes a decision by which it awards the public contract.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(7) The contracting authority or entity does not award the contract to an economic operator where a ground for exclusion provided by subsection 1 of § 95 of this Act exists regarding a member of the operator's administrative, management or supervisory body or any other statutory representative of the operator or a

contractual representative involved in the respective public procurement – except in a situation provided for by subsection 3 of § 95 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(8) To verify the grounds for exclusion and the qualifications of an economic operator, the contracting authority or entity may require the operator to submit a Single Procurement Document following the rules provided by this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

Subchapter 2

Fundamentals of Procurement Procedure

Division 1

Commencement and Conclusion of Procurement Procedure; Procurement Documents

§ 73. Commencement and conclusion 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 an open procedure or as of the presentation of other procurement documents to candidates or economic operators in other types of procurement procedure, an invitation to tender is deemed to have been issued in accordance with the terms and conditions set out in the procurement documents.

(3) The procurement procedure concludes when:

- 1) the public contract or framework agreement has been awarded;
- 2) all tenders have been rejected for the reason that no tender was found to be in conformity with the procurement documents or that the value of all of the tenders was abnormally low;
- 3) all tenders have been rejected on the grounds provided by § 116 of this Act;
- 4) all tenderers or candidates have been excluded from the procurement procedure or when none of the tenderers or candidates has been selected;
- 5) no tenders or requests to participate have been submitted within the time limit established in accordance with the rules provided by this Act;
- 6) the procurement procedure has been declared ineffective by a decision of the contracting authority or entity on the basis of a compliance notice issued in enforcement or oversight proceedings conducted by the Ministry of Finance or, where there is a justifiable need, on the authority's or entity's own motion;
- 7) the period of validity of all tenders expires, unless any tenderer agrees to extend the period of validity of their tender.

(4) Where the contracting authority or entity has divided the public procurement into lots within a single procedure, the procurement procedure concludes with regard to each lot by virtue of the presence of a ground provided by subsection 3 of this section or where the decision mentioned in clause 6 of subsection 3 to declare the procedure ineffective is made with regard to the entire 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 files a contract notice with the register.

§ 75. Indicative notice

(1) To provide notification of planned procurement procedures, the contracting authority or entity may file an indicative notice with the register or publish an indicative notice in the buyer profile. Where the authority or entity publishes the indicative notice in the buyer profile, the authority or entity files with the register the corresponding 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 filed in a social and other specific procedure in which the 12-month limit is not applied.

(3) Where the contracting authority or entity wishes to apply reduced time limits mentioned 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 authority or

entity must file the indicative notice with the register or publish the indicative notice in the buyer profile 35 days to 12 months before the date of filing the contract notice.

§ 76. Optional notice

(1) At least 14 days before the awarding of a public contract, the contracting authority or entity may file with the register an optional notice – if the authority or entity has not filed a contract notice – provided that the award of the 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 filed at least ten days before the award of the contract.

(2) The optional notice contains at least the following information:

- 1) the name and contact particulars 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 authority or entity decided to award the public contract without filing a contract notice;
- 4) the name and contact particulars 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 creates procurement documents in accordance with the requirements provided by 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 by this Act.

(2) Where the procurement documents cannot, for a reason mentioned 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 of the economic operators who have submitted the respective application within one working day following 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 situations mentioned in clause 2 of subsection 2 of § 93 and subsection 5 of § 94 of this Act, the authority or entity transmits 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 certain requirements or require certain measures to be taken – stating the reasons for maintaining the confidentiality of such information – and restrict access to such confidential information by economic operators who do not comply with these requirements or who have not taken these measures. In such a situation, the authority or entity is not required to make the part of procurement documents that contains confidential information available from the start of the procurement procedure.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) Unless otherwise provided by this Act or where 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 issued in accordance with §§ 87–89 of this Act, except in 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 requires the submission of alternative solutions only in addition to a solution meeting all of the terms and conditions set out in the procurement documents or separately;
 - 4) all of the terms and conditions of the prospective public contract, which may involve economic, innovation-related, ecofriendliness, social or employment-related considerations, except for the circumstances mentioned in clause 5 of this subsection;
- [RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 5) all of the circumstances on which the contracting authority or entity seeks competitive tenders;
 - 6) the information mentioned 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 the submission of 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 requires such submission;
- 14) in a competitive dialogue, information on the prizes given or participation remuneration paid to the tenderers where 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 mentioned 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 security where the contracting authority or entity requires the provision of such a security;
- 19) contact particulars for additional enquiries concerning the content of the procurement documents;
- 20) the grounds for rejection of all tenders, provided that the contracting authority or entity wishes to establish them.

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

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) Where 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.

(6¹) Where ecofriendliness criteria have been set to supplies or services that constitute the subject matter of the public contract, the procurement documents must contain terms and conditions that take into account the energy and environmental impact throughout the service life.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(7) [Repealed – RT I, 08.07.2020, 2 – entry into force 15.07.2020]

(7¹) Ecofriendliness criteria and the terms and conditions provided for by subsections 6 and 6¹ of this section are enacted by a regulation of the Minister in charge of the policy sector.

[RT I, 08.07.2020, 2 – entry into force 15.07.2020]

(7²) The regulation mentioned in subsection 7¹ of this section enacts the criteria and the terms and conditions, unless these have been enacted under the Energy Sector Organisation Act.

[RT I, 08.07.2020, 2 – entry into force 15.07.2020]

(8) Where 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) Where the information stated in the contract notice differs from that stated in other procurement documents, the contract notice is relied on.

(10) Where contracting authorities or entities carry out public procurement jointly under § 43 of this Act, the contracting authority or entity authorised to carry out the public procurement names in the procurement documents the authorities or entities who will be parties to the public contracts to be awarded and states the allocation of contracts to the authorities or entities and their shares in performing the obligations arising from the contracts.

§ 78. Additional particulars of procurement documents in an innovation partnership

(1) In 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 or commissioning supplies, services or works already available on the market. The information that is provided must be sufficiently precise to make it possible for economic operators to determine the nature and scope of the required solution and to decide whether to submit a request to participate in the procurement procedure.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

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

§ 79. Additional particulars of procurement documents when holding an electronic auction

Where the contracting authority or entity has announced the holding of an electronic auction in the contract notice, the procurement documents must contain at least the following particulars:

- 1) numerical or percentage indicators which are to be stated in the tender and whose values will be the subject matter of the comparison operated by the auction;
- 2) limits of the values of the indicators mentioned in clause 1 of this section, which arise from the subject matter of the public contract;
- 3) information which will be provided to tenderers during the auction and, where this is needed, the time of its provision;
- 4) information concerning the auction process;
- 5) conditions based on which tenderers are to participate in the auction, above all, the minimum differences by which new values or prices bid during the auction must contrast with those offered earlier;
- 6) relevant information on the technical characteristics and arrangements concerning the electronic means and the Internet connection to be used.

§ 80. Descriptive document in competitive dialogue

[Repealed – RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 80¹. Invitation to submit a tender

(1) An invitation to submit a tender, which is mentioned in subsection 1 of § 55, subsection 1 of § 59 and subsection 1 of § 69 of this Act as well as the invitation to start a dialogue, which is mentioned in subsection 1 of § 65, contain at least the following particulars:

- 1) a reference to the published contract notice;
- 2) the closing date and place for submission of tenders – except in a competitive dialogue;
- 3) where the contracting authority or entity allows tenders to be submitted in a foreign language, the language or languages in which the tender or any other documents to be submitted by the economic operator are to be stated – except in a competitive dialogue;
- 4) in a competitive dialogue, the time and place of commencement of the dialogue and – where the contracting authority or entity allows the dialogue to be conducted in a foreign language – the language or languages to be used;
- 5) a reference to a list of the documents required from the tenderer under subsections 7 and 8 of § 104 of this Act;
- 6) where, in the procurement documents, the contracting authority or entity has specified a weighting range for the award criteria, the relative weighting attributed to such criteria.

(2) In the case of competitive dialogue, the particulars provided for by clauses 2 and 3 of subsection 1 of this section are stated in the invitation to submit a tender mentioned in subsection 1 of § 66 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

(1) The contracting authority or entity may modify 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 authority or entity modifies the closing date for submission of tenders or requests to participate after the date's expiry only where, on expiry of the time limit for submission of tenders or requests to participate, the procurement procedure has been suspended in a situation mentioned in subsection 1 of § 193 or in subsection 2 of this section of this Act.

(1¹) Under a restricted procedure, competitive procedure with negotiation, competitive dialogue and innovation partnership, the contracting authority or entity may – prior to the closing date for submission of tenders – modify procurement documents that it has not, for reasons mentioned in subsection 3 of § 77 of this Act, made available from the start of the procurement procedure, provided that it has established requirements or required measures to be taken in order to maintain confidentiality in respect of the information contained in the procurement documents and, accordingly, only presents the part of such documents that contains confidential information to candidates who meet the requirements or have taken the measures.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) Where 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*) has not been operational for more than 15 minutes at a time within eight hours preceding arrival of the closing date for submission of tenders or request to participate, procurement proceedings are automatically suspended and the closing date is not deemed to have arrived.

(2¹) Where the expert was enlisted, request was addressed to the European Court of Justice or notification was made to the Ministry of Finance before a hearing was held in the case or, in written procedure, the time limit set by the Review Committee for offering additional clarifications and documents expired, the ten-day time limit mentioned in subsection 2 of this section is extended by the period that is required for performing the operations provided for by §§ 194–196 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) In a situation mentioned in subsection 2 of this section and provided that the tenders or requests have not been opened, when the operation of the electronic system has been restored the contracting authority or entity extends, by a reasonable period, the time limit for submission of tenders or requests to participate and notifies the candidates and economic operators who, to the knowledge of the authority or entity, are interested in the public procurement, about the extension of the time limit, without modifying the contract notice. The extended time limit may not be less than one day following the sending of the notice concerning the extension.

(4) On suspension of the procurement procedure, the contracting authority or entity may perform only the operations mentioned in the second sentence of subsection 1 and in subsection 3 of this section. A procurement procedure that was suspended by virtue of subsection 2 of this section resumes when the notice concerning extension of the time limit mentioned in subsection 3 has been sent.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

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

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

(1) When it modifies the procurement documents, the contracting authority or entity must extend the time limit for submission of tenders or requests to participate such that, as of the publication of the modified contract notice in the register or – where the contract notice has not been modified – as of the sending or making of modified procurement documents available, the time limit for submission of tenders or requests to participate would be equal to at least half of the respective minimum time limit provided by § 93 or 94 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(1¹) Where the estimated value of the public procurement equals or exceeds the international threshold or where the contracting authority or entity wishes the particulars held in the register concerning the procurement to be sent to the Publications Office of the European Union (hereinafter *Publications Office*), the content of any notices, including any rectifications, is not published in the register before the notice has been published by the Publications Office, or before 48 hours have elapsed following reception, from the Office, of an acknowledgement of receipt.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The contracting authority does not need to extend the time limit mentioned in subsection 1 of this section where the modifications concern only the contact particulars or where the modifications cannot render a tender created based on the initial procurement documents non-conformant with those documents or where the tenderer or candidate who meets the selection criteria based on the initial contract notice cannot remain unselected due to the modifications or where the modification made would not change the circle of the economic operators interested in the public procurement, or change the substance of the tenders.

(3) Where the contracting authority or entity does not make the procurement documents available to economic operators by the method mentioned in subsection 1 of § 77 of this Act or within the time limits provided by subsection 2 or does not make additional information available to the economic operators within the time limits provided by subsection 1 of § 46, even though these were applied for in a timely manner, the authority or entity, where this is needed, extends the time limit for submission of tenders by a reasonable time and, where this is needed, postpones the time of opening of tenders, so that all of the economic operators may 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 of the extension, modify the time of the opening of the tenders or requests to participate. Where the authority or entity merely extends the time limit and modifies the time of opening, the modified time limit is not required to comply with the provisions of subsection 1 of this section. The time limit does not extend where the initial closing date arrives before the publication of the modified contract notice in the register or before the modified procurement documents are made available. Reduction of time limits is not allowed.

§ 83. Notification of conclusion of the procurement procedure

(1) Within 30 days following conclusion of the procurement procedure, the contracting authority or entity files with the register a public contract award notice or, where the procurement procedure was concluded by virtue of clauses 2–7 of subsection 3 of § 73 of this Act, states in the register the main circumstances related to such conclusion. Where the authority or entity did not commence the public procurement in the register under subsection 3 of § 72, the authority or entity files a public contract award notice only where the procurement was concluded by the award of a public contract or framework agreement.

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

(3) In the case of a framework agreement, the contracting authority or entity, within 30 days following the passing of each 12-month period following the award of the framework agreement, files with the register particulars concerning the time of award of the public contracts under the agreement over the 12 month-period, and concerning the value of such contracts.

(3¹) In the case of a centralised or joint procurement, the contracting authority or entity that conducts the procurement states, in the public contract award notice, the names of the authorities or entities who will be purchasing supplies or commissioning services or works under the contract awarded as a result of the procurement. Where the procurement leads to the conclusion of a multilateral contract, the names of the parties funding the purchases of supplies or the commissioning of services or works must also be stated in the notice of award of the public contract.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3²) Where a payment is made prior to the closing date for filing particulars of the award of a public contract with the register, the State accounting entity whose accounts are maintained in the State's integrated accounting software, files the particulars of the award of the contract with the Register of Public Procurement before transmitting the invoice to an employee of the Accounting Unit for processing.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) Where the contracting authority or entity has divided the public procurement into lots within a single procedure, the authority or entity submits a public contract award notice within 30 days following the award of the first public contract or framework agreement, provided that none of the grounds which are provided by subsection 3 of § 73 of this Act and by virtue of which procurement procedures are concluded is present in respect of all the lots. With regard to the remaining lots, the contracting authority or entity files a separate public contract award notice within 30 days following the award of the public contract or framework agreement in respect of each lot.

(5) Where the contracting authority or entity has commenced the procurement procedure with an indicative notice, the authority or entity states, in the public contract award notice filed regarding the last public contract covered by the notice, that the authority or entity will not award additional public contracts in the period covered by the notice.

(6) In a public contract award notice, the contracting authority or entity does not disclose any information whose publication would interfere with the application of legislative instruments, be contrary to public interest – including defence or security interests – compromise the trade secrets of economic operators or distort competition between economic operators, and states the reasons for the decision not to disclose the information.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(7) Within 30 days following completion of a public contract, the contracting authority or entity files with the register the following information:

- 1) the actual value of the contract;
- 2) amendments made to the contract regarding which no contract modification notice was given.
- 3) [Repealed – RT I, 05.05.2022, 2 – entry into force 01.06.2022].

(7¹) The contracting authority or entity files with the register information concerning any breach of the public contract by the economic operator which in the view of the authority or entity corresponds to the exclusion ground provided by clause 8 of subsection 4 of § 95 of this Act, within 30 days following application of a legal remedy. Where the authority's or entity's claim has been contested, it adds the corresponding particulars within 10 days following contestation.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022].

(8) In the case of a framework agreement, the contracting authority or entity files the information mentioned in subsection 7 of this section within 30 days following completion of the agreement or of the last public contract awarded under the agreement, where that contract is completed later than the agreement.

§ 84. Report filed with the European Commission

(1) Where the European Commission issues the corresponding requirement, the contracting authority or entity draws up and files with the Commission, in writing and through 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 authority or entity;
- 2) the subject matter and value of the public contract, framework agreement or dynamic purchasing system;
- 3) where the authority or entity has reduced the number of candidates to whom it 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 extent 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 conclusion of the procurement procedure where no public contract or framework agreement was awarded;
- 9) the reasons for not using electronic means for submission of the tender
- 10) identified conflicts of interests and measures taken to eliminate them.

(2) The report mentioned in subsection 1 of this section is not filed regarding public contracts awarded under a framework agreement or where the information that the report is required to state has been set out in the contract award notice.

Division 2 Award Criteria

§ 85. Establishment of award criteria

(1) To identify the most economically advantageous tender, the contracting authority or entity establishes, in the procurement documents, award criteria that are related to the subject matter of the public contract and ensure actual competition. A selection criterion established to tenderers or candidates under §§ 99–101 of this Act may not be established as an award criterion – with the exception of particulars mentioned in clause 6 of subsection 1 of § 101 concerning the educational or professional qualifications of the tenderer or candidate, of their directors or of the persons in charge of the provision of services or of the management of construction operations, where such particulars represent an indication for the authority or entity of the economically advantageous nature of the tender and where these are not used for the purposes of selection.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

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

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) When 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 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 when identifying the economically most advantageous tender.

(6) Where software solutions are being purchased, the contracting authority or entity, when identifying the most economically advantageous tender, takes into account life cycle costs in accordance with § 86 of this Act in addition to the tender price or states the reasons for disregarding such costs in the procurement documents.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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, ecofriendliness or social criteria.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(8) The qualitative, ecofriendliness or social criteria may be, above all, the following:
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

- 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, as well as terms and conditions for delivery and installation.

(9) The contracting authority or entity specifies, in the procurement documents, the relative weighting that it attributes to each of the award criteria chosen to determine the most economically advantageous tender. The weighting may be expressed as the relevant maximum range.
[RT I, 05.05.2022, 1 – entry into force 15.01.2023]

(10) Where, for objective reasons described in the procurement documents, it is not possible to determine the weighting to be attributed to the award criteria, the contracting authority or entity states the criteria in decreasing order of importance.
[RT I, 05.05.2022, 1 – entry into force 15.01.2023]

§ 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) When performing life-cycle costing, the contracting authority or entity takes in part or in full into account the following:

- 1) costs, borne by the authority or entity or by 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 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.

Division 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, among other things, the following:

- 1) ecofriendliness criteria;
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 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, among other things, the following:

- 1) ecofriendliness criteria and structural requirements, including accessibility for disabled persons;
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 2) conformity assessment;
- 3) requirements for performance, safety or dimensions;
- 4) measures for ensuring the quality level required 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) compliance notices 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. Issue of technical specifications

(1) Where there is no technical regulation in the respective field, the contracting authority or entity issues technical specifications as a description of the characteristics of use or as functional requirements for the subject matter of the public contract, which may include ecofriendliness requirements and must be sufficiently precise so that the tenderer could identify the subject matter of the public contract and the contract could be awarded, or using the method mentioned in subsection 2 of this section or by combining the two.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) When issuing technical specifications, the contracting authority or entity may rely on the following in the following order:

- 1) a European standard transposed as an Estonian standard;
- 2) a European standard;
- 3) a European technical approval, which has been granted by an approval body designated by a Member State of the European Union and which certifies that, from 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 basis mentioned in subsection 2 of this section is accompanied by the words ‘or equivalent.’
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

(5) The contracting authority or entity may require that the tenderer 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) When creating technical specifications for the subject matter of a public contract to be used by natural persons, consideration must be given to potential needs, with regard to that subject-matter, of users with disabilities – or the technical specifications must be created such that everyone would be able to use the subject matter of the contract, except in duly justified situations. Where mandatory accessibility requirements have been provided by a legislative instrument of the European Union, the contracting authority or entity includes in the technical specifications a reference to the relevant instrument.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 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, among other things, on ecofriendliness, 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:
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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 authority or entity does not require the label as such but may refer to those of the detailed specifications of that label, or of a part of that label, that are linked to the supplies, services or works which constitute the subject matter of the contract and are appropriate to define the characteristics of such subject matter.

Division 4 Tender Security

§ 90. Requiring a tender security

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

(2) Where the contracting authority or entity has divided the public procurement into lots within a single procedure, the authority or entity may also require a tender security for a lot in proportion to the estimated value of the lot. Such a security for the lot must be required from all tenderers in the same amount.

(3) The tenderer provides the tender security required 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 authority or entity.

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

§ 91. Calling in and return of tender security

(1) The contracting authority or entity does not return a tender security to the tenderer or calls it in where, as a result of the tenderer’s acts or omissions, the public contract is not awarded or the tenderer does not, within the time limit set by the authority or entity and for a reason due to the tenderer, commence performance of the contract that they have concluded by providing their acceptance.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The contracting authority or entity may retain the tender security or call it in where the tenderer is not selected on the ground provided by subsection 5 of § 178 of this Act.

(3) Where the contracting authority or entity calls in or refuses to return the tender security, the authority or entity returns the security to the extent that it exceeds the harm suffered by the authority or entity.

(4) The contracting authority or entity returns a tender security to the tenderer within five working days following:

- 1) conclusion of the procurement procedure by virtue of clause 1 of subsection 3 of § 73 of this Act;
- 2) entry into effect of the decision concluding the procurement procedure under clause 2, 3, 4, 6 or 7 of subsection 3 of § 73 of this Act;
- 3) entry into effect of the decision mentioned in subsection 5 of § 96 of this Act or of the decision not to select mentioned in subsection 5 of § 98 or subsection 6 of § 104 or of the tender rejection decision mentioned in subsection 1 of § 114 or subsection 8 of § 115;
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 4) the expiry of the period of validity of the tender;
- 5) withdrawal of the tender in a situation provided for by subsection 3 of § 111 of this Act;
- 6) the decision to dismiss the tender under subsection 7 of § 111 of this Act.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) In situations set out in subsection 4 of this section, where the tender security is a guarantee, the contracting authority or entity informs the guarantor of waiving the rights arising from the guarantee.

Division 5

Time Limits for Submission of Tenders and Requests to Participate

§ 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) Where 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 filing of the contract notice with the register, except in the case of a public works contract where 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 by electronic means;
- 2) 20 days from the filing of the contract notice with the register, except in the case of a public works contract where 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 by electronic means;
- 3) 25 days from the filing of the contract notice with the register in the case of a public works contract where 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 filing of the contract notice with the Publications Office, except in the case of a public works contract where 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 by electronic means;
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 5) 35 days from the filing of the contract notice with Publications Office, except in the case of a public works contract where 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 by electronic means;
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 6) 45 days from the filing of the contract notice with the Publications Office in the case of a public works contract where the estimated value of the public procurement equals or exceeds the public procurement threshold.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

1) the authority or entity has filed an indicative notice in accordance with the rules provided by subsection 3 of § 75 of this Act and the indicative notice contains the entire mandatory information required in a contract notice, which was available at the time of filing the indicative notice, or

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

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) Where the register sends to the contracting authority or entity a notification concerning elimination of defects presented by the contract notice, the authority or entity sets a new time limit for submission of tenders counting the filing with the register of a contract notice, free of defects.

§ 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 filing of the contract notice with the register where 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 filing of the contract notice with the Publications Office where the estimated value of the public procurement equals or exceeds the international threshold.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) Where the register sends to the contracting authority or entity a notice of the elimination of deficiencies contained in the contract notice, the authority or entity sets a new time limit for submission of requests to participate, counting from the filing with the register of a contract notice, free of defects.

(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 filing of the contract notice with the register, except in the case of a public works contract, where 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 filing of the contract notice with the register in the case of a public works contract where 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 issue 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 by electronic means;

4) 30 days from the issue 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 by electronic means.

(4) In a restricted procedure or a competitive procedure with negotiation, the contracting authority or entity may reduce the time limits mentioned in subsection 3 of this section to up to ten days in the case of a public contract for supplies or services or to up to 15 days in the case of a public works contract where:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

1) the authority or entity has filed an indicative notice in accordance with the rules provided by subsection 3 of § 75 of this Act and the indicative notice contains the full mandatory information required in a contract notice, which was available at the time of filing the indicative notice, or

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

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

Subchapter 3 Qualitative Selection of Tenderer and Candidate

Division 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 a member of whose administrative, management or supervisory board, or whose registered legal representative or any other person who is authorised to represent the economic operator in question, to make decisions on behalf of the operator or to exercise control over the operator, has been convicted of participation in a criminal organisation, of violating the duty of integrity, of a corrupt act, of fraud, of commission of a terrorist act or of any other criminal offence linked to terrorist activities or of inciting or aiding or abetting or attempting to commit such an offence, of a money laundering offence, or of terrorist financing;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

2) who or a member of whose administrative, management or supervisory board, or whose registered legal representative or any other person who is authorised to represent the economic operator in question, to make decisions on behalf of the operator or to exercise control over the operator, has been convicted of enabling an alien who is unlawfully staying in Estonia to work here or of enabling a breach of the conditions for an alien's employment in Estonia, including of payment of a salary below the statutory rate;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

3) who or a member of whose administrative, management or supervisory board, or whose registered legal representative or any other person who is authorised to represent the economic operator in question, to make decisions on behalf of the operator or to exercise control over the operator, has been convicted of illegal use of child labour or of an act related to the trafficking of human beings;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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 has their seat;

5) the awarding of the public contract to whom would violate an international sanction or a sanction imposed by the Government of the Republic within the meaning of the International Sanctions Act.

[RT I, 04.08.2022, 2 – entry into force 14.08.2022]

(2) Clauses 1–3 of subsection 1 of this section are applied for as long as the particulars of the person's conviction have not been removed from the Criminal Records Database in accordance with the Criminal Records Database Act or for as long as the conviction remains unspent under the legislation of the country of residence or the country where the person has their seat, but in any case for not more than up to five years following the entry into effect of the judgment of conviction.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) The contracting authority or entity is not required to apply clauses 1–4 of subsection 1 of this section where overriding requirements in the general interest make the award of the public contract indispensable and no public contract would be awarded should the tenderer or candidate be excluded. The authority or entity makes a reasoned written decision concerning non-exclusion of the tenderer or candidate from procurement proceedings, and may award the contract to the tenderer or candidate regardless of the presence of a ground for exclusion.

[RT I, 04.08.2022, 2 – entry into force 14.08.2022]

(4) The contracting authority or entity may exclude from the procurement procedure a tenderer or candidate:

1) [Repealed – RT I, 05.05.2022, 2 – entry into force 01.06.2022]

2) who has breached environmental, social or labour law duties arising from law or from a collective agreement;

3) who is bankrupt or in liquidation, against whom bankruptcy or liquidation proceedings have been initiated, whose business activities have been suspended or who is in another similar situation under the legislation of the country where they have their seat, except when purchasing supplies in a situation and on conditions provided by subsection 4 of § 49 of this Act;

4) who has engaged in grave professional misconduct which renders its integrity questionable;

5) due to an agreement distorting competition, a decision of an association of economic operators or concerted action;

6) where a conflict of interests cannot be avoided by any other means;

7) whose tender or request to participate has been created with the involvement of a person who has participated in preparing the same public procurement or who is otherwise related to the authority or entity and who, as a result, possesses information that gives them an advantage over other participants in the procurement; and the distortion of competition that this creates cannot be avoided by any other means;

8) who has been in a fundamental or constant breach of a material term or condition – or several such terms or conditions – of a previously awarded public contract or contracts, such that the breach has resulted in withdrawal from or termination of the contract, a reduction of the price, compensation for harm or payment of a contractual penalty;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

9) who has given false information on meeting the selection criteria established in this section or on meeting the selection criteria established by the authority or entity under §§ 98–101 of this Act or failed to submit the information or the additional documents required by the authority or entity under subsections 7 and 8 of § 104;

10) who has engaged in a course of action aiming to influence the authority or entity or who has negligently submitted misleading information that may have had an impact on the decisions of the authority or entity in the

public procurement, or who has engaged in a course of action aiming to obtain confidential information that may have given them an advantage over other participants in the public procurement;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

11) who or whose member of an administrative, management or supervisory board or another legal representative has been convicted by final judgment for tax offences;

12) who does not have a right to submit a tender or request to participate by virtue of this Act, except in a situation provided for by subsection 6 of § 111.

(4¹) The contracting authority or entity may, in the procurement documents, reserve to itself the right to exclude from procurement proceedings any tenderer or candidate that, for the purposes of the Taxation Act, has an outstanding tax debt of a local tax of the locality in which the authority or entity has its seat, or – in the case of a joint procurement – of the localities in which of each of the respective joint contracting authorities or entities has their seat, or – where the contracting authority is a group of local authorities – of the seat of each of the contracting authorities that belongs to the group.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) Clauses 2–11 of subsection 4 of this section are applied in procurement proceedings that have commenced within three years following commission of the act or occurrence of the ground mentioned in subsection 4.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) Where the contracting authority or entity identifies at any time during the procurement procedure that a ground provided by clause 4 of subsection 1 or by subsection 4¹ of this section applies regarding a tenderer or candidate, the authority or entity gives the tenderer or candidate at least three working days to settle the tax debt or to obtain a deferral. Where valid reasons are present, the authority or entity may extend the time limit given to the tenderer or candidate. If the tenderer or candidate has settled the tax debt or obtained a deferral by the due date set by the authority or entity, the authority or entity does not exclude the tenderer or candidate from the procurement procedure.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 96. Verification concerning grounds for exclusion

(1) When conducting a verification concerning grounds for exclusion, the rules provided by § 104 of this Act apply, unless otherwise provided by this Act.

(2) In order to verify the inapplicability of grounds for exclusion regarding the tenderer or candidate, or a member of the tenderer's or candidate's administrative, management or supervisory board, or the tenderer's or candidate's registered legal representative or any other person who is authorised to represent the economic operator in question, to make decisions on behalf of the operator or to exercise control over the operator, the contracting authority or entity may require that the tenderer or candidate to file strictly the following documents:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

1) report from the criminal records database on the absence of the circumstances mentioned 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 has their seat;

2) certificate of a competent authority of the country in which the tenderer or candidate has their seat regarding the circumstances mentioned in clause 4 of subsection 1 and clause 3 of subsection 4 of § 95 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2¹) The contracting authority or entity verifies the ground for exclusion provided by clause 5 of subsection 1 of § 95 of this Act based on a declaration made by the tenderer or candidate. In the case of reasonable doubt, the authority or entity may require the tenderer or candidate to file additional information or evidence to allow for verification of the ground for exclusion.

[RT I, 04.08.2022, 2 – entry into force 14.08.2022]

(2²) The contracting authority or entity notifies – in accordance with provisions of § 179¹ of this Act – any exclusion decisions made under clause 5 of subsection 1 of § 95 to the Financial Intelligence Unit.

[RT I, 07.06.2024, 1 – entry into force 17.06.2024]

(3) Where the country in which the tenderer or candidate has their seat does not issue the documents mentioned in subsection 2 of this section, they may be replaced by a sworn affidavit of the tenderer or candidate or of the tenderer's or candidate's representative or – if the country in which the tenderer or candidate has their seat does not issue such a document – by a sworn affidavit before a competent judicial or administrative authority, notary or a competent professional or trade body in accordance with the legislation of that country.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3¹) The contracting authority or entity does not require the filing of the documents mentioned in subsections 2–3 of this section if the documents or the corresponding particulars are available to the authority or entity free of charge based on the information in a database, or if the authority or entity holds those documents or particulars,

and the documents or particulars remain relevant for purposes of verification of the inapplicability of grounds for exclusion in respect of the tenderer or candidate.
[RT I, 04.08.2022, 2 – entry into force 14.08.2022]

(4) The contracting authority or entity may apply grounds for exclusion that are not mentioned in subsection 2 of this section or that are mentioned in clause 4 of subsection 1 of § 95 of this Act provided the authority or entity is able to prove by any method that grounds for exclusion of the tenderer or candidate are present.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) When it excludes a tenderer or candidate from the procurement procedure, the contracting authority or entity makes a corresponding reasoned decision in writing. The excluded tenderer or candidate cannot participate in the procurement procedure any further.

§ 97. Self-cleaning

(1) In public procurement whose estimated value equals or exceeds the international threshold, a tenderer or candidate regarding whom at least one of the grounds mentioned in clauses 1–3 and 5 of subsection 1 and in clauses 2–11 of subsection 4 of § 95 of this Act applies may offer evidence to the effect that it has taken measures to restore its reliability. Such measures may be, for instance, the payment of compensation for harm caused by an offence or assumption of the corresponding obligation, active collaboration with investigative authorities and comprehensive clarification of the facts and circumstances of the act or technical, organisational and staff measures that make it possible to prevent further offences.
[RT I, 04.08.2022, 2 – entry into force 14.08.2022]

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

(3) The contracting authority or entity may also apply this section in a public procurement whose estimated value is below the international threshold, making provision for such an option in the procurement documents.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

Division 2 Selection of Tenderers and Candidates

§ 98. Verification of qualifications of tenderers and candidates

(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) Where 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 authority or entity verifies 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 select 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) Where the tenderer or candidate does not submit, within the time limit set by the contracting authority or entity, the documents required to prove qualifications, or clarifications regarding the contents of the documents that have been submitted, or information or documents allowing for such clarification, and the information or documents are not available free of charge to the authority or entity based on public information in a database, the authority or entity makes a decision not to select the tenderer or candidate.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4¹) The contracting authority or entity does not require submission of the documents or information mentioned in subsection 4 of this section if these are available to it free of charge based on public information in a database, or if it holds those documents or information and they remain relevant for the purposes of selecting the tenderer or candidate.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) The contracting authority or entity makes a reasoned written decision by which it selects or does not select the tenderer or candidate. The authority or entity does not make the decision if it has not established selection criteria.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5¹) Where a tenderer or candidate does not meet the selection criteria that have been established, the contracting authority or entity makes a decision not to select them. A tenderer or candidate in respect of whom a decision has been made not to select them cannot participate in the procurement procedure any further.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 where the 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) Where, under the legislation of the country where the tenderer or candidate has their seat, an economic operator must be registered in a professional or commercial register or where the activities to be performed under a public contract for services have been made – by the legislation of that country – subject to the requirement to hold an authorisation or to belong to an organisation, the contracting authority or entity may state in the contract notice the registration or authorisation that tenderers or candidates are required to hold or the organisation that they are required to belong to in order to be selected.

(2) To verify whether the requirement mentioned in subsection 1 of this section has been met, the contracting authority or entity may require the tenderer or candidate to present a certificate concerning the registration or authorisation, or concerning its belonging to the organisation – unless this is available free of charge to the authority or entity based on public information held in a database.

(3) Where a tenderer or candidate does not hold the relevant registration or authorisation or does not belong to the required organisation, the contracting authority or entity makes a decision not to select the tenderer or candidate.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 100. Economic and financial standing

(1) To verify whether economic and financial standing of the tenderer or candidate meets the selection criteria, the contracting authority or entity may, as a rule, require submission of the following documents:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

1) relevant bank certificate or other relevant document declared suitable by the 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 this is needed;

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

3) approved annual reports of up to three latest financial years that have ended by the time the public procurement commenced or extracts of such reports, which indicate, for instance, the level of the required financial ratio;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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) Where it specifies a ratio mentioned in clause 3 of subsection 1 of this section, the contracting authority or entity describes the methods and criteria used to arrive at the specification.

(3) By virtue 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. Where due to the risks related to the performance of the public contract it is necessary to set a higher yearly turnover requirement, the authority or entity must state the reasons for the requirement in the procurement documents. Where the authority or entity has divided the public procurement into lots within a single procedure, the 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) Where a tenderer or candidate cannot submit the required documents for a valid reason, they may characterise their economic and financial standing using other documents that have been declared suitable by the contracting authority or entity, provided that this does not place the tenderer or candidate in an advantageous position in comparison with other tenderers or candidates.

(5) Where the tenderer's or candidate's annual reports are not public under the legislation of the country where the tenderer or candidate has their seat, the tenderer or candidate may, in the stead of the annual reports mentioned in clause 3 of subsection 1 of this section, or of extracts of such reports, use other relevant documents to characterise its economic and financial standing.

§ 101. Technical and professional ability

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

- 1) list of the major works contracts that have the characteristics determined by the 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 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 this is needed for providing the services or managing the works, and the information is not used when assessing the tenders;
- 7) environmental management measures to be 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 this is needed;
- 12) certificates issued 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) When establishing the criteria mentioned 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 has their seat 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 this is needed, also on the means of study and research which are available to it and the quality control measures it will operate.

(4) Where the subject matter of a public supply contract is, in addition to supplies, their siting or installation work or where 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 presentation of certificates issued by independent bodies attesting that the tenderer or candidate complies with certain quality assurance standards, the 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 submission of a list of environmental management measures mentioned in clause 7 of subsection 1 of this section, the 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 a situation mentioned 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 mentioned in subsection 5 of this section for reasons beyond their control, the contracting authority or entity also accepts 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. e-Certis, the online database of certificates

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

When applying §§ 95–101 of this Act, the contracting authority or entity takes account of the information published in e-Certis, the European Commission's electronic system of certificates (e-Certis).

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 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 uses them for performing the public contract.

(2) In relation to educational and professional qualifications provided for by clause 6 of subsection 1 of § 101 of this Act and to the experience provided for by clause 1 or 2, it is allowed to rely on the resources of another economic operator only where the holding of such educational and professional qualifications or experience is necessary for the performance of the public contract or a lot of the contract and the economic operators whose resources are relied on personally perform the contract or lot.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) Where a 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 require in the procurement documents that the tenderer or candidate and the other economic operator assume joint and several liability for due performance of the public contract.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 by subsections 1–3 and 7 of this section. The contracting authority or entity may require 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 whether the grounds for exclusion provided by subsection 1 or 4 of § 95 of this Act apply regarding the economic operators whose resources are relied on in accordance with this section and where they meet the established selection criteria regarding which the tenderer or candidate has relied on their indicators.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) The contracting authority or entity requires the tenderer or candidate to replace the economic operator whose resources are relied on in accordance with this section and regarding whom the grounds for exclusion provided by subsection 1 of § 95 of this Act apply or who does not meet the relevant selection criterion, allowing a time limit of at least five working days for this. The authority or entity may require the tenderer or candidate to replace, within the same time limit, an economic operator regarding whom the grounds for exclusion provided by subsection 4 of § 95 of this Act apply. Where the authority or entity has required the tenderer or candidate to replace the economic operator, but the tenderer or candidate does not do so, the authority or entity makes a decision not to select the tenderer or candidate, unless the tenderer or candidate meets the selection criteria on its own.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6¹) Where the contracting authority or entity ascertains, during procurement proceedings, that the ground provided by clause 4 of subsection 1 of § 95 of this Act – or, where subsection 4¹ is applied, the ground provided by that subsection – applies to the economic operator whose resources are relied on in accordance with this section, the authority or entity – through the tenderer or candidate – allows the operator at least three working days to settle the tax debt or to obtain a deferral. Where valid reasons are present, the authority or entity may extend the time limit. If the operator has settled the debt, or obtained a deferral, by the due date set by the authority or entity, the authority or entity does not apply the provisions of subsection 6 of this section.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(7) When 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 require 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 requires submission of a Single Procurement Document containing updated declarations of the tenderer or candidate regarding – in respect of that tenderer or candidate – the absence of exclusion grounds, compliance with the selection criteria and, where relevant, compliance with the objective and non-discriminatory criteria mentioned in subsection 3 of § 54, subsection 3 of § 58, subsection 3 of § 64, subsection 3 of § 68 or subsection 2 of § 141 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The Single Procurement Document must contain the following:

1) the tenderer's or candidate's declaration that none of the grounds provided by subsection 1 or 4 of § 95 of this Act apply to the tenderer or candidate;

2) the tenderer's or candidate's declaration that it meets all of the conditions established in the procurement documents regarding selection of tenderers or candidates, as well as any information required by the contracting authority or entity concerning fulfilment of those conditions;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

3) the candidate's declaration that it meets all of the conditions established for limiting the number of candidates, provided that these have been provided by 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 particulars or documents corresponding to the tenderer's or candidate's declaration where this is needed, and the tenderer's or candidate's declaration that it can present the documents to the contracting authority or entity without delay when this is needed;

5) a reference to whether the particulars or documents corresponding to the tenderer's or candidate's declarations are available free of charge to the contracting authority or entity based on public information in an electronic database – along with the address of the corresponding website, identification data and, where this is needed, the tenderer's or candidate's declaration that it consents to the disclosure of its data.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) The Single Procurement Document is submitted on the standard form established by the European Commission.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) Where the tenderer or candidate wishes to prove that it meets the requirements established in respect of economic and financial standing and of technical and professional ability based on the resources of other economic operators, the tenderer or candidate must submit the Single Procurement Document also regarding the person whose resources it relies on.

[RT I, 08.07.2020, 2 – entry into force 15.07.2020]

(4¹) The Single Procurement Document submitted by virtue of subsection 4 of this section must contain a declaration stating that none of the grounds for exclusion provided by subsection 1 or 4 of § 95 of this Act applies to the economic operator whose resources the tenderer or candidate relies on, and the operator fulfils the selection criterion regarding which the tenderer or candidate relies on the resources of another economic operator, as well as information required by the contracting authority or entity concerning fulfilment of the criterion.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

(5¹) Where this is needed, the Single Procurement Document is submitted separately for each lot in a public procurement that the contracting authority or entity has divided into lots within a single procurement proceeding.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) Based on the information stated in the Single Procurement Document, the contracting authority or entity makes a decision by which it excludes or does not exclude the tenderer or candidate – where it has set selection criteria to tenderers or candidates – and by which it deems or does not deem the tenderer or candidate to be selected, except in situations provided for by subsection 3 of § 52 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(7) The contracting authority or entity has a right to verify the absence of the grounds for exclusion regarding the tenderer or candidate and the qualifications of the tenderer or candidate throughout the public procurement, and at any time require that the tenderer or candidate submit all or some of the documents corresponding to the declarations made in the Single Procurement Document or clarify the contents of the documents submitted or submit or modify information or documents that facilitate clarification. Where the 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 authority or entity may make a decision to exclude or to not select the tenderer or candidate and exclude the tenderer or candidate from the public procurement or decide not to select the tenderer or candidate.

(8) Before awarding a public contract, the contracting authority or entity requires the tenderer to submit documents corresponding to all of the relevant declarations made in the Single Procurement Document. Having made the decision by which it declared the tender to be successful, the authority or entity verifies the inapplicability of grounds for exclusion regarding the successful tenderer and whether the successful tenderer meets the selection criteria that have been set, and makes a decision to exclude or not to exclude the successful tenderer— where it has set selection criteria to tenderers – and whether or not to select that tenderer.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(9) Where, within a time limit of at least five working days set by the contracting authority or entity, the tenderer or candidate does not submit the documents required by the authority or entity for verifying the inapplicability of the grounds for exclusion or fulfilment of the selection criteria and where the information or documents are not available to the authority or entity free of charge based on public information in a database, the authority or entity excludes the tenderer or candidate from the public procurement or makes a decision not to select the tenderer or candidate.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(10) On a reasoned application of the tenderer or candidate, or of its own motion, the contracting authority or entity may extend the time limit provided by subsection 9 of this section.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(11) The contracting authority or entity does not require submission of the documents mentioned in subsections 7 and 8 of this section where the data or documents are available to the authority or entity based on information in a database or the 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 selecting 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 by §§ 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 authority or entity where 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 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 mentioned in subsection 2 of this section, require that the tenderer or candidate offer additional evidence in proof of the payment of national taxes, local taxes or social security contributions mandatory in the country where the tenderer or candidate has their seat.

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

(5) The contracting authority or entity does not require that a tenderer or candidate who has their seat in another Member State of the European Union be entered in the list in Estonia in order to participate in the public procurement.

§ 106. Creating and keeping an official list of approved economic operators; entry of economic operators in the list

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

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

(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 entry in the list and the person whose resources the person applying for entry in the list relies on simultaneously meets the criteria in respect of which its resources are being relied on.

(4) The grounds of and rules for creating, keeping and updating the list of the field and for entry of economic operators in the list are enacted by a regulation of the Government of the Republic.

(5) The keeper of the list for a specific field is the Ministry in charge of the corresponding policy sector. With the consent of the Government of the Republic, the Ministry may commission the keeping of the list from another person by concluding an administrative contract to that effect.

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

(7) The fee rates for entry in the list and for updates to the entry are enacted by a regulation of the Government of the Republic. The rates must be in accordance with reasonable costs of the relevant operations performed by the keeper of the list; when establishing the rates, the economic operator's selection class is taken into account and the rates must not exceed 200 euros for entry in the list or 70 euros for updates to the entry.

Subchapter 4 Request to Participate and Tender

Division 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 by the procurement documents.

§ 108. Submitting a 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 by this Act and in the legislation enacted under it.

(2) The candidate can withdraw the request to participate before the closing date for submission of requests to participate. Where the request to participate or a part of such a request has not been 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 a 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 of such a request has not been submitted by electronic means, the authority or entity opens the request, or a part of the request, at the place specified in the procurement documents.

(2) Having opened the requests to participate, the names and registry codes of the candidates –or, where the candidate does not possess such a code, another feature that makes it possible to identify them, or their personal identification code or, where the candidate does not possess such a code, their date of birth – are published in the electronic system.

(3) Where a request to participate or a part of such a request has not been submitted by electronic means, the contracting authority or entity opens such a request, verifies its conformity with the list of documents and particulars set out in the procurement documents and creates a record to reflect the opening of the request.

(4) The report mentioned in subsection 3 of this section states the candidates' names and registry codes – or, where the candidate does not possess such a code, another feature that makes it possible to identify them, or their personal identification code or, where the person does not possess such a code, their date of birth – as well as information showing which requests to participate were not, at the time the requests were opened, in conformity with the list of documents and particulars set out in the procurement documents. The report states the

particulars mentioned in subsection 2 of this section as well as information on which requests to participate were not in conformity with the list of documents and particulars set out in the procurement documents.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) In a situation provided for by subsection 3 of this section, the contracting authority or entity files the record of the opening of requests to participate to the electronic system within three working days following the opening.

(6) Following the filing of the record in the electronic system, the names and registry codes of the candidates – or, where the candidate does not possess such a code, another feature that makes it possible to identify them, or their personal identification code or, where the person does not possess such a code, their date of birth – are published in the electronic system.

Division 2 Tender

§ 110. Tender

(1) A tender is the tenderer's declaration of intent to award a public contract, which is binding on the tenderer from the closing date for submission of tenders at least until 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 by the procurement documents.

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

(4) Where joint tenderers submit a joint tender, they are deemed to 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, mentioned in subsection 1 of § 117 of this Act, has been made. Information contained in a tender may be disclosed only in a situation and to the extent provided for by 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 by this Act and in the legislation enacted under it.

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

(3) The tenderer may withdraw a submitted tender before the closing date for submission of tenders. Where the tender or a part of the tender has not been 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) Where the contracting authority or entity has permitted to submit variants, the tenderer may submit a tender together with variants.

(5) [Repealed – RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) The economic operator does not have a right to submit a tender where:

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 authority or entity;

2) the contracting authority or entity has reserved the public contract under § 13 of this Act and the economic operator does not have the characteristics mentioned in that section.

(7) The contracting authority or entity dismisses a tender mentioned in subsection 6 of this section and issues a reasoned written decision to that effect. An economic operator regarding whose tender the decision is made to dismiss it does not participate in the procurement procedure any further.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(8) Where the tender or a part of the tender has been submitted in accordance with the rules provided by subsection 2 of § 45 of this Act, the contracting authority or entity, on the tenderer's application, without delay presents to the tenderer an acknowledgement of receipt of the tender or of its part.

§ 112. Extension of period of validity of tender

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

(2) The contracting authority or entity is required to make the proposal mentioned in subsection 1 of this section to each tenderer who participates in the public procurement at the time such a proposal is made, at least ten days before expiry of the period of validity of the tender provided procurement proceedings have not been concluded by that time. The tenderer informs the authority or entity of the extension of the period of validity – or of its refusal to extend that period – within five working days following receipt of the proposal.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 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 of a tender has not been submitted by electronic means, the authority or entity opens the tender or a part of the tender at the place specified in the procurement documents.

(2) When opening the tenders, the names and registry codes of the tenderers – or, where a tenderer does not possess such a code, another feature that makes it possible to identify them, or their personal identification code or, where the person does not possess such a code, their 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 or, where a tenderer does not possess such a code, another feature that makes it possible to identify them, or their personal identification code or, where the tenderer does not possess such a code, their date of birth; the values of the submitted tenders, including the values of the parts of the tender where these are taken account of when assessing the tenders; and other numerical indicators that characterise the tender and meet the award criteria.

(2¹) Subsection 2 of this section does not apply in a negotiated procedure without prior publication.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) Where a tender or a part of a tender has not been submitted by electronic means, the contracting authority or entity opens the tender, verifies its conformity with the list of documents and particulars set out in the procurement documents and creates a record that reflects the opening of the tender.

(4) The particulars mentioned in subsection 2 are entered in the record mentioned in subsection 3 of this section. The record states which of the submitted tenders were not in conformity with the list of documents and particulars set out in the procurement documents as well as information on the non-examination of tenders under subsection 7 of § 111 of this Act. Where a tender has been submitted in part by electronic means, the record states those of the particulars mentioned in subsection 2 of this section which were not submitted by electronic means.

(5) The record of the opening of tenders does not need to be created in negotiated procedure without prior publication or when opening the tenders on a reopening of competition.

(6) In a situation mentioned in subsection 3 of this section, the contracting authority or entity files the record of the opening of tenders in the electronic system within three working days following such opening, except when opening the tenders in a negotiated procedure without prior publication and on a reopening of competition. In the electronic system, the record of the opening of tenders is made available to an economic operator participating in the procurement procedure immediately after the filing of the record.

(7) Following the filing of the record in the electronic system, the names and registry codes of the tenderers – or, where a tenderer does not possess such a code, another feature that makes it possible to identify them, or their personal identification code or, where the person does not possess such a code, their date of birth – are published in the electronic system.

(8) [Repealed – RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 114. Verifying the suitability of tenders

(1) The contracting authority or entity verifies whether the tenders submitted by tenderers or, in a situation provided for by subsection 3 of § 52 of this Act, the tenders opened before the selection of tenderers in accordance with the rules provided by § 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. A tenderer whose tender has been rejected cannot participate in the procurement procedure any further.

(2) The contracting authority or entity rejects a tender where 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 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 authority or entity may declare a tender suitable where it does not contain any substantive deviations from the terms and conditions mentioned in the procurement documents.

(2¹) The contracting authority or entity rejects the tender if awarding the public contract based on that tender would violate an international sanction or a sanction imposed by the Government of the Republic within the meaning of the International Sanctions Act. The contracting authority or entity notifies – in accordance with provisions of § 179¹ of this Act – the Financial Intelligence Unit of the rejection.
[RT I, 07.06.2024, 1 – entry into force 17.06.2024]

(3) Where, in the technical specifications of the subject matter of the public contract, the contracting authority or entity has referred to a condition mentioned in subsection 2 of § 88 of this Act, the authority or entity does not reject a tender due to unsuitability if the tenderer proves in its tender by a method acceptable to the authority or entity by any relevant items of evidence that the solutions offered by the tenderer meet the requirements set out in the technical specifications.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) Where the contracting authority or entity has issued technical specifications of the subject matter of the public contract in accordance with the rules provided by subsection 1 of § 88 of this Act based on performance or functional requirements, the authority or entity does not reject a tender where the offered supplies, services or works meet some of the terms and conditions provided by subsection 2 which concern the performance or functional requirements that serve as the basis for the technical specifications and the tenderer proves it to the satisfaction of the authority or entity based on relevant evidence.

(5) Where the contracting authority or entity has established a condition mentioned in subsection 2 of § 89 of this Act in the technical specifications of the subject matter of the public contract, the authority or entity also accepts other equivalent labels as proof of conformity with the requirements of the label that has been named in the technical specifications.

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

(7) Where, 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 authority or entity accepts other relevant evidence, provided that the tenderer proves to the satisfaction of the authority or entity that the offered supplies, services or works meet the requirements of the specific label or the requirements established by the 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 authority or entity is the statutory prerequisite for the provision of the supplies, services or works on the market.

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

(9) Where 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 continues to participate in the procedure regarding these lots.

(10) Where a tenderer has submitted more than one tender or, in a public procurement that has been 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 continues to participate in the procedure with its suitable tender or tenders.

§ 115. Abnormally low tenders

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

(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 require the tenderer whose tender it intends to declare suitable to provide the clarification mentioned in subsection 1 of this section where:

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) during the reference period, the average salary of the employees of the tenderer or of the subcontractors mentioned in its tender was less than 70 per cent of the average salary in the same period in the field corresponding to the subject matter of the contract.

[RT I, 01.07.2017, 1 – entry into force 01.01.2018]

(2¹) The contracting authority or entity may, in a procurement document, state a percentage value that differs from the deviation provided for by clause 1 of subsection 2 of this section. The deviation provided for in a procurement document by reference to the tender that is next in terms of its value may amount to 5–15 per cent and by reference to the average value of the tenders, to 10–30 per cent. Where the authority or entity has not, in a procurement document, made provision for the special rule provided for by this subsection, the provision of clause 1 of subsection 2 of this section applies.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) In order to identify the circumstances provided by clause 2 of subsection 2 of this section, the contracting authority or entity requires the tenderer to present, within a reasonable time limit set by the authority or entity, a certificate that has been issued by the competent authority of the country where the tenderer and any subcontractor named in the tender have their seat, which contains the following information:

- 1) the average salary paid by the tenderer during the reference period;
- 2) the average salary of each subcontractor named in the tender during the reference period;
- 3) the average salary during the reference period in the field corresponding to the subject matter of the public contract in the country where the tenderer and the subcontractor named in the tender have their seat.

[RT I, 01.07.2017, 1 – entry into force 01.01.2018]

(4) Where, for a reason beyond the control of the tenderer, they cannot offer the item of evidence mentioned in subsection 3 of this section, they may, for the purpose of establishing the circumstances provided for by clause 2 of subsection 2, offer other relevant evidence that allows the contracting authority or entity to decide whether to require clarifications. Where this is needed, the authority or entity may find evidence on its own.

[RT I, 01.07.2017, 1 – entry into force 01.01.2018]

(5) The contracting authority or entity does not require the offering of the item of evidence mentioned in subsection 3 of this section where the authority or entity has the corresponding information and it remains relevant for establishing the circumstances provided for by clause 2 of subsection 2.

[RT I, 01.07.2017, 1 – entry into force 01.01.2018]

(6) 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. Where the tenderer or a subcontractor named in the tender was established or commenced business operations after the start of the reference period, the start of its reference period is the calendar month of establishment or commencement of business operations and the end of its reference period is the calendar month preceding the calendar month of commencement of the public procurement.

[RT I, 01.07.2017, 1 – entry into force 01.01.2018]

(7) 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.

(8) The contracting authority or entity verifies the clarification and assesses the evidence offered, consulting with the tenderer, where this is needed. Where the authority still finds that the value of the tender is abnormally low or where the tenderer offers no required clarifications to the authority or entity, the authority or entity rejects the tender by a reasoned written decision.

(9) Where 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 authority or entity rejects the tender.

(10) Where the contracting authority or entity establishes that the value of a tender is abnormally low because the tenderer has obtained state aid, the authority or entity may reject the tender only after the tenderer has been unable to prove, within a reasonable time limit set by the authority or entity, that the State aid granted to it was lawful. Where the authority or entity rejects the tender on such a ground and the estimated value of the public contract equals or exceeds the international threshold, the authority or entity notifies this to the European Commission through the Ministry of Finance.

§ 116. Rejection of all tenders

(1) The contracting authority or entity may make a reasoned written decision to reject all tenders where:

- 1) the values of all of the tenders or tenders which have been declared suitable exceed the estimated value of the public contract, or
- 2) the 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.

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

- 1) regarding the lot for which the tenders that have been submitted present a ground provided by subsection 1 of this section;
- 2) regarding the lots for which it is impractical to award a public contract or for which the award of such a contract would not – in a situation where a public contract could not, due to the presence of a ground for conclusion of the procurement procedure provided by clauses 2–7 of subsection 3 of § 73 of this Act, be awarded for another lot – correspond to the purpose of the public procurement as established by the authority or entity.

§ 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 mentioned in the procurement documents. By a reasoned written decision, the authority or entity declares the most economically advantageous tender based on the award criteria successful.

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

(3) Where there is a calculation error in the value of a tender, the contracting authority or entity corrects it and notifies this to the tenderer without delay in a form reproducible in writing. The tenderer responds to the authority or entity in the same form within two working days following receipt of the notice, indicating whether it consents to the correction of the calculation error. Where the tenderer does not consent to the correction of the calculation error, the authority or entity rejects the tender.

(4) The contracting authority or entity may decide not to award the public contract to the successful tenderer where the 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 a situation, the authority or entity rejects the successful tender by a written decision, assesses all of 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, when 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 on withdrawal of successful tender

(1) Where the successful tenderer does not sign the public contract within the time limit set by the contracting authority or entity or, for reasons due to the tenderer, does not, during the time limit set by the authority or entity, commence performance of the public contract that it entered into by issuing the required acceptance, the authority or entity assesses all of the remaining tenders anew in accordance with subsection 1 of § 117 of this Act and declares successful the tender that is economically the most advantageous.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The contracting authority or entity is not required to assess tenders anew on the ground mentioned in subsection 1 of this section 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 a right to claim compensation for harm from the successful tenderer mentioned 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 any additional costs which the authority or entity must bear in connection with the award of the public contract based on the tender that was declared successful after a new assessment of the tenders, as well as to the extent of the costs that arose from the new assessment of the tenders.

(4) A tender security not returned to the tenderer is deducted from the harm mentioned in subsection 3 of this section.

Subchapter 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 tender that has been declared successful.

(2) The contracting authority or entity may not issue the acceptance required to award a public contract before 14 days have elapsed following publication of a notice concerning the decision that is to be followed by the award.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) Application of the standstill period is not required where a public contract is awarded under a framework agreement or dynamic purchasing system, in a negotiated procedure without prior publication or where, at the time the decision mentioned in subsection 2 is made, a single tenderer participates in procurement proceedings. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

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

§ 121. Voidness of a public contract

(1) A public contract is void where:

1) the contracting authority or entity has not filed a contract notice with the register and not filing the notice was not allowed under this Act, including where the use of negotiated procedure without prior publication was not allowed under this Act and, as a result of the activities of the authority or entity, the economic operator has been deprived of its opportunity to defend its interests in the contestation procedure;

2) when it filed a contract notice with the register, the contracting authority or entity did not indicate that the estimated value of the public procurement equals or exceeds the international threshold or did not indicate that it would like the contract notice to be transmitted to the Publications Office of the European Union in accordance with § 183 of this Act, provided that transmission of the notice was required under this Act;

3) when awarding the public contract based on a dynamic purchasing system, the contracting authority or entity has breached the requirements provided by § 35 of this Act.

(2) A public contract is not void by virtue of clause 1 of subsection 1 of this section if the following conditions are simultaneously present:

1) the contracting authority or entity has filed with the register an optional notice in accordance with § 76 of this Act;

2) the contracting authority or entity has applied the standstill period provided by subsection 2 of § 120 of this Act as of the day following publication of the optional notice.

(3) The public contract is not void by virtue of clause 3 of subsection 1 of this section where the contracting authority or entity has presented to each tenderer included in the dynamic purchasing system a notice of the decision to declare the tender successful, which contains the particulars 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 where the authority or entity has applied the standstill period.

(4) One can rely on the voidness of a public contract by virtue of subsection 1 of this section only where such voidness has been established 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 or works concession whose estimated value equals or exceeds the public procurement threshold and in the case of a public service contract which involves services provided on site under direct supervision of the contracting authority or entity and whose estimated value equals or exceeds

the international threshold, the authority or entity requires in the procurement documents that the tenderer who has been awarded the public contract submit to the authority or entity at the latest by the time of commencement of performance of the public contract the names and contact particulars as well as particulars of statutory representatives of any subcontractors who are known at that time to participate in the performance of the contract. The authority or entity also requires submission of the same information regarding each subcontractor who participates in the performance of the works contract or works concession and regarding whom information has not been submitted to the authority or entity by the time of commencement of performance of the contract. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) In the case of a public works contract or works concession, the contracting authority or entity requires in the procurement documents that the tenderer warrant in their tender that they will not enlist, in the performance of the contract, a subcontractor who would be subject to replacement under subsection 7 of this section. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) When applying subsections 1, 2 and 11 of this section, the contracting authority or entity may verify the inapplicability of 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 where the authority or entity has indicated such possibility and conditions in the procurement documents.

(5) In the case of a public works contract or works concession, the contracting authority or entity verifies, during procurement proceedings, the inapplicability of grounds for exclusion mentioned in subsection 1 of § 95 of this Act – or, in the fields of defence and security, in clauses 1, 4 or 5 of that subsection – regarding the subcontractors mentioned in the successful tenderer's tender and, following the award of the contract, regarding any subcontractor who is added in the course of its performance. Such verification is not required in a negotiated procedure without prior publication or during performance of the contract awarded as a result of that procedure. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) When verifying 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 authority or entity does not require documents to be submitted in order to verify the inapplicability of grounds for exclusion where such documents or the corresponding particulars are available free of charge to the authority or entity based on information in a database or where the authority or entity possesses the documents or particulars and these remain relevant for verifying the inapplicability of grounds for exclusion regarding a subcontractor. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(7) Where the contracting authority or entity, when it conducts a verification of the inapplicability of grounds for exclusion regarding a subcontractor, ascertains that, regarding the subcontractor, the grounds provided by subsection 1 of § 95 of this Act – or, in the fields of defence and security, the grounds provided by clauses 1, 4 or 5 of that subsection – apply, the authority or entity requires the subcontractor to be replaced. Where the ground provided by subsection 4 of § 95 – or, in the fields of defence and security, the grounds provided by clauses 3 or 4 of that subsection, or by subsection 2 of § 177 – applies regarding the subcontractor, the authority or entity may require that the subcontractor be replaced. If the tenderer has been required to replace a subcontractor but does not do so, the authority or entity rejects the tender, unless the tenderer warrants that it will perform the relevant part of the contract itself. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(7¹) Where the contracting authority or entity, during procurement proceedings or during performance of the public contract, ascertains that, regarding a subcontractor, the grounds provided by clause 4 of subsection 1 of § 95 of this Act – or, where subsection 4¹ is applied, the ground provided by that subsection – apply, the authority or entity grants the subcontractor, through the tenderer, a period of at least three days to settle the tax debt or obtain a deferral. Where valid reasons are present, the authority or entity may extend the time limit. If the subcontractor has, by the due date set by the authority or entity, settled the tax debt or obtained a deferral, the authority or entity does not apply the provisions of subsection 7 of this section. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(8) In the case of a public works contract or works concession whose estimated value equals or exceeds the public procurement threshold, the contracting authority or entity, based on a request for information filed by a subcontractor who participated in the performance of the contract, presents to the subcontractor information on whether the tenderer has been remunerated for proven works performed by the subcontractor to the extent that the tenderer is required to remunerate the subcontractor. In the request, the subcontractor files with the authority or entity proof of existence of the sub-contract, the amount of the claim and whether the claim has fallen due. The authority or entity informs the tenderer without delay of the filing of the request and transmits a copy to the tenderer along with enclosed evidence and the information presented to the subcontractor. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(9) In the case of a public works contract or works concession whose estimated value equals or exceeds the public procurement threshold, where a subcontractor who participated in the performance of the contract or concession files with the contracting authority or entity a reasoned application in connection with groundless non-performance of a financial obligation by the tenderer under the subcontract concluded with the subcontractor, the authority or entity decides not to perform a corresponding part of the financial claim presented to it by the tenderer under the contract or concession. The authority or entity performs the financial obligation to the tenderer once the financial obligation to the subcontractor has been performed or evidence showing the subcontractor's claim to be unfounded has been filed with the authority or entity.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(10) Non-performance of a financial obligation towards the tenderer based on an application of the subcontractor mentioned in subsection 9 of this section is not deemed a breach of the public contract by the contracting authority or entity.
[RT I, 01.07.2017, 1 – entry into force 01.01.2019]

(11) Where the contracting authority or entity provides for such possibility and relevant conditions in the procurement documents, the 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 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 a 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 total value of the modifications does not exceed the limit provided by subsection 3 or 4 of § 14 of this Act or ten per cent of the initial cost of the supplies or services or 15 per cent of the initial cost of the contract for works or ten per cent of the initial value of the concession contract;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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 by the procurement documents in clear, precise and unequivocal clauses;

3) additional supplies, services or works that the authority or entity needs but that were not specified in the procurement documents are purchased from the same economic operator, if switching the tenderer would cause significant inconvenience or substantial additional costs for the authority or entity, and could not be made for economic or technical reasons such as requirements of interchangeability or interoperability with supplies, services, or installations, provided that any increase in value resulting from any modifications does not exceed 50 per cent of the original value of the public contract;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

4) the modification is caused by circumstances unforeseeable to a diligent authority or entity, and the overall nature of the public contract is not altered and, as a result of any modification, the value of the public contract does not increase by more than 50 per cent of its original value;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

5) an economic operator is replaced by another one, if the procurement documents contained the corresponding modification clause;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

6) due to an economic operator's reorganisation – including takeover, merger, transfer or insolvency – the operator is partly or entirely replaced by a new one who would not be subject to exclusion under § 95 of this Act and who fulfils the selection criteria established in the procurement documents, provided such a replacement does not entail other substantial changes to the public contract;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

7) irrespective of its value, 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 in the balance of mutual contractual obligations arising from the public contract in favour of the economic operator in a way not provided for by the public contract;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

4) an economic operator is replaced with a new one in a situation other than those mentioned in clause 5 or 6 of subsection 1 of this section.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) The value threshold of a modification provided for by clauses 3 and 4 of subsection 1 of this section does not apply to public procurements in the network sector or to concession contracts in the fields of activity mentioned 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 mentioned in clauses 1, 3 and 4 of subsection 1 of this section is calculated based on the indexed value of the 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 under clause 3 or 4 of subsection 1 of this section, the contracting authority or entity files a public contract modification notice with the register within ten days following the making of the modification, except where the contract that was modified had been awarded under a framework agreement.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 124. Termination of and withdrawal from public contract

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(1) The contracting authority or entity has a right to terminate, or withdraw from, the public contract where:
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

1) modifications not permitted under § 123 of this Act have been made to the public contract;
2) a ground provided by clauses 1–4 of subsection 1 of § 95 of this Act applied to the economic operator at the time of award of the public contract and the operator should have been excluded from the procurement proceedings or should not have been awarded the contract, or

[RT I, 07.06.2024, 1 – entry into force 17.06.2024]

2¹) during performance of the public contract, a ground provided by clauses 1–4 of subsection 1 of § 95 of this Act applies to the economic operator to whom the contract was awarded;

[RT I, 07.06.2024, 1 – entry into force 17.06.2024]

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 when awarding the public contract.

(1¹) The contracting authority or entity is required to terminate, or withdraw from, the public contract where:

1) the economic operator to whom the contract was awarded is characterised – at the time of award or at any time following the award – by a ground provided by clause 5 of subsection 1 of § 95 of this Act or

2) continuing to perform the public contract would violate an international sanction, or a sanction of the Government of the Republic within the meaning of the International Sanctions Act.

[RT I, 07.06.2024, 1 – entry into force 17.06.2024]

(1²) The contracting authority or entity notifies – in accordance with provisions of § 179¹ of this Act – any termination of or withdrawal from a public contract under subsection 1¹ of this section to the Financial Intelligence Unit.

[RT I, 07.06.2024, 1 – entry into force 17.06.2024]

(2) Where a public contract has been awarded by issuing the required acceptance, but the tenderer who received such acceptance does not commence performance of the public contract within the time set by the contracting authority or entity, the authority or entity may resort to early termination of the public contract or withdraw from the contract, and apply the rules provided by § 119 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

Chapter 3 Particular Procurement Regimes

Subchapter 1 Simple Procedure

§ 125. Rules for simple procedure

(1) The simple procedure starts with the publication of a contract notice in the register, except in a situation provided for by subsection 3 of this section, and ends on the grounds provided by subsection 3 of § 73 of this Act. An invitation to submit tenders according to the conditions provided by the procurement documents is deemed to have been issued by publication of the notice in the register or, where the simple procedure is

conducted in several stages, by presenting other public procurement documents to the candidates. When the simple procedure ends, the provisions of subsection 4 of § 73 of this Act are applied.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The contracting authority or entity establishes the rules of the simple procedure in the procurement documents. In addition to the requirements provided by this Subchapter, the authority or entity may also rely on other provisions of this Act when establishing such rules.

(3) The contracting authority or entity has a right to use the simple procedure as a negotiated procedure without prior publication where any of the grounds provided by subsections 1 and 3–5 of § 49, by § 50 or by subsection 1 of 156 of this Act apply or where no tender or request to participate has been submitted during the simple procedure that commenced by publication of the contract notice – or no such tender or request that meets the terms and conditions of the procurement documents has been submitted – and the original terms and conditions of the public procurement are not modified substantially.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 ten working days following the filing of the notice with the register in the case of a public contract for supplies or services and 15 days in the case of a public works contract.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) When conducting a simple procedure, the contracting authority or entity follows the provisions of Chapter 1 and of §§ 77, 81 and 82 of this Act. When it extends, under subsection 1 of § 81, the time limit for submission of tenders or of requests to participate, the authority or entity has regard to the respective minimum time limit provided by subsection 4 of this section. Unless otherwise provided by the procurement documents, the authority or entity, when conducting a simple procedure, applies the provisions of §§ 85, 110–112, 114–117 and 119 of this Act.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 authority or entity has provided for such an option, and the conditions of its exercise, in the procurement documents.

(7) Except in the fields of defence and security, before awarding a public contract, the contracting authority verifies the inapplicability, concerning the economic operator, of the grounds for exclusion provided by subsection 1 of § 95 of this Act. When awarding a contract in those fields, the authority verifies the inapplicability, concerning the economic operator, of the grounds for exclusion provided by clauses 1, 4 and 5 of subsection 1 of § 95 of this Act.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(8) When awarding a public contract, the contracting authority or entity follows § 120 of this Act and, when modifying such a contract, § 123 of this Act, without prejudice to special rules provided by subsection 9 of this section.

(9) The contracting authority or entity may not issue the acceptance required to award a public contract before five working days have passed following presentation of a notice on a decision that will be followed by award of the contract. Observation of the standstill period is not required if, at the time the decision is made, there is only one tenderer participating in the simple procedure.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(10) The contracting authority or entity informs the register of the conclusion of the simple procedure and of the performance of the contract in accordance with the rules provided by § 83 of this Act.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

Subchapter 2

Social and Other Specific Services

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

(1) The specific procedure for social and other specific services is a public procurement procedure that is used for purchasing the social or other specific services mentioned 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 for social and other specific services. In addition to the requirements provided by this Subchapter, the authority or entity, when establishing the rules of that procedure, may also rely on other provisions of this Act.

(3) Except in a situation provided for by subsection 6 of this section, the specific procedure for social and other specific services starts with the publication, in the register, of a contract notice or an indicative notice

mentioned in subsection 4 and concludes by virtue of the grounds provided by subsection 3 of § 73 of this Act. An invitation to submit tenders according to the conditions provided by the procurement documents is deemed to have been issued by publication of the contract notice in the register or, where the contracting authority or entity commences that procedure by an indicative notice, by publication of the latter in the register. When the procedure concludes, the provisions of subsection 4 of § 73 of this Act are applied.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

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

(5¹) When it commences the specific procedure for social or other specific services by an indicative notice, the contracting authority or entity makes procurement documents available, at the latest, at the time when it issues an invitation to tender mentioned in subsection 5 of this section.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

(6¹) In the contract notice, the contracting authority or entity sets a reasonable time limit for submission of tenders which may not be shorter than ten days from the filing of the notice with the register or, where the estimated value of the public procurement exceeds the international threshold, with the Publications Office.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(7) When conducting the specific procedure for social and other specific services, the contracting authority or entity follows the provisions of Chapter 1 and of §§ 77, 81 and 82 of this Act, taking into account the specifics of social and other specific services. When it extends the time limit for submission of tenders or requests for participation under subsection 1 of § 82 of this Act, the authority or entity has regard to the minimum time limit provided by subsection 6¹ of this section. When it conducts the procedure, the authority or entity applies the provisions of §§ 85, 110–112, 114–117 and 119 of this Act, unless otherwise provided by the procurement documents. When awarding the contract, the authority or entity may have regard to considerations of service quality, continuity, accessibility, affordability, availability and comprehensiveness, the specific needs of different categories of users, including specific needs of disadvantaged persons, the involvement of users and innovation.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(7¹) The contracting authority or entity may modify the procurement documents – with the exception of the indicative notice – prior to the closing date for submission of tenders, provided it has made those documents available in a situation mentioned in subsection 5¹ of this section together with the invitation to tender.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(8) Where the contracting authority or entity uses the specific procedure for social and other specific services as an open procedure, restricted procedure, negotiated procedure without prior publication, innovation partnership, competitive dialogue or design contest, the authority or entity applies the rules 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 by subsection 1 of § 95 of this Act.

(10) When awarding a public contract, the contracting authority or entity follows § 120 of this Act and, when modifying a public contract, § 123 of this Act. The contracts are subject to § 121.

(11) The contracting authority or entity informs the register of the conclusion of a specific procedure for social and other specific services and of performance of the public contract following the rules provided by § 83 of this Act. The authority or entity may gather and transmit contract award notices concerning public contracts awarded within a quarter as a single batch. Notices gathered in such a manner are transmitted within 30 days following the final day of the quarter.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

(1) In the contract notice, 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 mentioned in subsection 2 of this section to participate in the specific procedure for social and other specific services, provided that the subject matter of the public contract is the provision of health, social and cultural services whose CPV codes are 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.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) An economic operator whom the contracting authority or entity allows to participate in the specific procedure for social and other specific services must simultaneously fulfil all of the following conditions:
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

- 1) its objective is to provide public services corresponding to the CPV codes listed in subsection 1 of this section based on considerations of public interest;
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 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) Where the value of the public contract for social and other specific services equals or exceeds the international threshold, the contracting authority or entity may allow the economic operator who meets the conditions provided by subsection 2 of this section to participate in the specific procedure for such services only if the authority or entity has not awarded that operator a public contract regarding the same subject matter within the last three years counting from the date of commencement of the procedure.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) Where in the specific procedure for 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 does not examine the tender submitted by such a tenderer.

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

Subchapter 3 Design Contest

§ 128. Grounds for holding a 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 a situation provided for by clause 1 of subsection 1 of this section, the authority or entity has a right to award a public service contract to the winner or one of the winners of the design contest under subsection 6 of § 49 of this Act, provided that the 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 files a contest notice with the register.
- (2) In the contest notice, the contracting authority or entity indicates, among other things, where the authority or entity requires that the winner of the contest and other participants in the contest transfer to the authority or entity their economic rights or other ownership to the submitted conceptual designs.
- (3) The contracting authority or entity establishes the rules for holding a design contest in the procurement documents. In addition to the requirements provided by this Subchapter, the authority or entity may also rely on other provisions of this Act in establishing the rules for a design contest.

(3¹) When conducting a design contest, the contracting authority or entity follows the provisions of §§ 110 and 111 and of subsections 1 and 2 of § 114 of this Act subject to special rules provided by subsections 3²–3⁴ of this section.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3²) The contracting authority or entity may modify the invitation to participate in the design contest or other procurement documents prior to the closing date for submission of conceptual designs. When that date has arrived, the authority or entity modifies it only if, on arrival of the initial closing date, the contest was suspended due to a situation provided for by subsection 1 of § 193 of this Act or subsection 3³ of this section.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3³) Where a conceptual design can only be submitted electronically and, on arrival of the closing date for submission of such designs, the electronic system is not operational – or is not operational for more than 15 minutes at a time during the eight hours preceding arrival of the closing date – the public procurement is suspended automatically and the closing date is deemed not to have arrived.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3⁴) When it modifies the procurement documents, the contracting authority or entity must extend the time limit for submission of conceptual designs by a reasonable period.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 files 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 when:

- 1) the winner is or winners are announced;
- 2) the winner is not announced, where the jury of the design contest finds that no conceptual design can be declared the best;
- 3) all of the conceptual designs are rejected for the reason that none of them meets the terms and conditions established in the procurement document or where the contracting authority or entity has provided an objective and non-discriminatory ground for the rejection of all tenders in the procurement documents and such a ground applies;
- 4) a decision is made not to select any of the participants;
- 5) no conceptual designs have been submitted within the time limit prescribed in accordance with the rules provided by this Act;
- 6) the design contest is declared ineffective by a decision of the contracting authority or entity on the basis of a compliance notice issued in enforcement or oversight proceedings conducted by the Ministry of Finance or, where there is a justifiable need, on the authority's or entity's own motion.

§ 130. Design contest jury

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

(2) The members of the jury 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 keeps a record of its work, 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 put questions to participants in the design contest through the contracting authority or entity regarding circumstances reflected in the record which require clarification. The questions and the answers are entered in the record. The record is signed by all members of the jury.

Chapter 4 Concession Contracts

Subchapter 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 in which 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 in which an operating risk encompassing demand or supply passes to the concessionaire.

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

(4) ‘Operating risk encompassing demand or supply’ means a risk in relation to which, 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. Special rules for scope of implementation of this Act in relation to awards of concession contracts

(1) The contracting authority or entity is not required to apply this Act when:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

1) acting in the network sector, the authority or entity, operating in the network sector, awards a concession contract to provide services to an economic operator to whom a corresponding exclusive right has been 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;

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2) the authority or entity awards a services concession contract to an economic operator who holds a corresponding operating licence within the meaning of Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, pp 3–20);

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3) the authority or entity awards a concession contract for the provision of public passenger transport services within the meaning of Regulation (EC) No 1370/2007 of the European Parliament and of the Council on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 03.12.2007, pp 1–13);

4) the authority or entity awards a services concession contract to provide lottery services which are covered by CPV code 92351100-7 to an economic operator that holds a corresponding exclusive right;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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, irrigation or land drainage works related to the activities mentioned in clause 5 of this subsection, provided that more than 20 per cent of the total volume of water made available by such works will be used for the supply of drinking water represents, or for the disposal or treatment of sewage.

(2) When granting an exclusive right mentioned 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 a publication obligation. When it grants an exclusive right to operate in the network sector, the contracting authority or entity notifies this to the European Commission within one month following the granting of the right.

(3) A notice concerning the granting of the exclusive right mentioned in clause 4 of subsection 1 of this section is published in the Official Journal of the European Union.

§ 133. Special rules for scope of implementation of this Act in relation to awards of concession contracts by contracting entities operating in the network sector

(1) A contracting entity operating in the network sector is not required to apply this Act when awarding a concession contract:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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 entity;

3) to a legal person or civil law partnership established by the entity who is a party to the contract and by 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 entities who established it to participate in such a person or partnership during at least an equal 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 by § 154 of this Act.

(2) A legal person or civil law partnership established exclusively by contracting entities operating in the network sector with the aim of operating in the network sector is not required to follow this Act when awarding a contract:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

1) to a contracting entity operating in the network sector that established it or participates in it, provided that the legal person or 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 entities who established it undertake to participate in it for at least an equal period;

2) to an economic operator affiliated to the contracting entity operating in the network sector that established it or participates in it.

(3) The derogation provided for by clause 3 of subsection 1 or by 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 provision of services or execution of works to the contracting entities or economic operators affiliated to the contracting entities mentioned in clause 3 of subsection 1 or clause 2 of subsection 2 of this section.

(4) Where the turnover of an affiliated economic operator mentioned 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 by the method mentioned in subsection 3 is credible. Where similar services are provided or similar works are executed by multiple economic operators affiliated to the contracting entity operating in the network sector, the percentage rate mentioned in subsection 3 is calculated taking account the total turnover generated by the method mentioned in subsection 3 by all 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 operating in the network sector or an economic operator who is, directly or indirectly, subject to a dominant influence by such an entity by the method mentioned in clause 3 of subsection 3 of § 5 of this Act or who exercises a dominant influence over the entity or who, in common with the entity, is subject to the dominant influence of the same person.

(6) When it applies the derogations provided for by clauses 2 and 3 of subsection 1 and by subsection 2 of this section, the contracting authority or entity must, where this is required by the European Commission, state the names of the economic operators to whom the authority or entity has awarded a concession contract, a description of the nature and the value of the awarded concession contracts and, where this is deemed necessary by the European Commission, evidence of conformity of the relationships between the contracting authorities or entities and their affiliated economic operators with the provisions of this section through the Ministry of Finance in writing.

§ 134. Special rules for scope of implementation of this Act in relation to awards of concession contracts in fields of defence and security

The contracting authority or entity is not required to apply this Act when awarding a concession contract in the fields of defence and security:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

Where 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 award of a concession below the international threshold, the contracting authority or entity declares the concession award procedure ineffective and carries out a new concession award procedure in accordance with the procedural rules applicable to the award 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.

Subchapter 2 Concession Contract Award Procedure

§ 137. Commencement and end of concession contract award procedure

(1) A concession contract award procedure, except in a situation provided for by subsection 2 of this section, commences with the publication of a concession notice in the register and concludes in situations provided for by subsection 3 of § 73 of this Act. When the procedure concludes, the provisions of subsection 4 of § 73 of this Act are applied.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The contracting authority or entity has a right to carry out a concession contract award procedure without filing the notice mentioned in subsection 1 of this section where:

- 1) the concession contract can be awarded only to one economic operator 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 mentioned 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 where the aim of the concession is the creation or acquisition of a unique work of art or artistic performance;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

- 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's or entity's needs and requirements as established 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 end of a concession contract award procedure in accordance with § 83 of this Act.

§ 138. Procurement documents in relation to awards of concession contracts

(1) When creating, presenting and modifying procurement documents for awarding a concession contract, the contracting authority or entity follows §§ 77, 81 and 82 of this Act. Where the concession contract award procedure is conducted in several stages, the authority or entity makes the procurement documents available, at the latest, at the time that it issues the invitation to tender.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) Where due to exceptional security considerations or technical reasons or due to the sensitive nature of trade secrets requiring a high level of protection, unrestricted access free of charge by electronic means to the procurement documents cannot be offered, the contracting authority indicates in the concession notice or invitation to tender how those documents will be made available to economic operators and provides a longer time limit for submission of tenders.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) With the exception of the concession notice, the contracting authority or entity may modify the procurement documents prior to the closing date for submission of tenders, provided the authority or entity has, for reasons

mentioned in subsection 1 or 2 of this section, made such documents available together with the invitation to tender.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 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) Technical and functional requirements may, among other things, include quality levels, ecofriendliness criteria, structural requirements and requirements for building design documentation, including the requirement of accessibility for disabled persons, requirements for security, dimensions, marking and labelling, user instructions, conformity assessment, for the terminology used, for symbols, testing and test methods.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 mentioned in subsection 3 of this section does not apply where – for the reason that the preparation of technical and functional requirements on the grounds provided by 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 – this is strictly necessary due to the subject matter of the contract. Such a reference is accompanied by the words ‘or equivalent.’

(5) The contracting authority or entity does 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 contract in the order of priority, which ensure effective competition at the time of assessment of the tenders and allow the authority or entity to identify an overall economic advantage of the contract, and states which particulars are required based on the established award criteria. Such criteria may include, among other things, ecofriendliness, social or innovation-related criteria.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 authority or entity, the authority or entity may modify the ranking order of the award criteria to take into account that innovative solution.

(3) On the ground mentioned 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 issued, files a new concession notice with the register and sets a new time limit for submission of tenders, taking account of the minimum time limits provided by § 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 by this Subchapter, the authority or entity may also rely on other provisions of this Act when establishing such rules. The authority or entity informs all interested economic operators without delay of modifications to the rules.

(2) The contracting authority or entity may limit the number of candidates to whom it makes an invitation to submit a tender or an invitation to negotiate, specifying the numerical minimum and, where this is needed, maximum level as well as objective and non-discriminatory criteria for the selection of such candidates in the procurement documents. The number of candidates to receive the invitation must be sufficient to ensure competition.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) In the concession contract award procedure, tenders are subject to the provisions of subsection 2 of § 73 and of §§ 110–112 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) The contracting authority or entity verifies the inapplicability of grounds for exclusion under §§ 95 and 96 of this Act regarding all tenderers or candidates – without prejudice to special rules provided by this section – and verifies their selection in accordance with the provisions of this Chapter and of the concession notice, also verifying, where this is needed, the conformity of selected 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 of the procurement documents.

(5) In addition to the grounds provided by 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 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.

(5¹) In the concession contract award procedure, the provisions of §§ 96, 116, 117 and 119 of this Act are applied.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5²) If the contracting authority or entity has provided conformity conditions in the concession contract award procedure, it follows § 114 of this Act when verifying the conformity of the tenders.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6¹) In the concession contract award procedure and when performing the contract, the contracting authority or entity follows the provisions of § 122 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(7) When awarding a concession contract, the contracting authority or entity follows the provisions of § 120 of this Act and, when modifying such a contract, those of § 123 of this Act. Concession contracts are subject to the provisions of §§ 121 and 124.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 142. Selection of tenderers and candidates

(1) To conduct a selection among 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 such subject matter and indicates in the concession notice what data and documents are required for proving that the established terms and conditions have been met.

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

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

(1) When setting a time limit for submission of tenders and requests to participate, the contracting authority or entity follows the provisions of § 92 of this Act. If a tender can only be submitted after having acquainted oneself with the place of performance of the public contract, or after on-site verification of further documents, the authority or entity must set a time limit for submission of tenders that is longer than the minimum limit.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) In the concession contract award procedure, the time limit for submission of requests to participate and – where the request to participate is accompanied by a tender – of tenders must not be shorter than 30 days from the filing of the concession notice with the register or, where the estimated value of the public procurement equals or exceeds the international threshold, with the Publications Office.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 presentation of the invitation to tender, provided that the entire exchange of information in the procurement procedure takes place by electronic means;

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2) 22 days from presentation of the invitation to tender, provided that the exchange of information in the procurement procedure does not take place entirely by electronic means.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) Where the register sends to the contracting authority or entity a notice of the elimination of deficiencies contained in the concession notice, the authority or entity sets a new time limit for the submission of tenders or requests to participate as of the filing with the register of a concession notice, free of defects.

Subchapter 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 filing of an indicative notice with the register and ends on the grounds provided by subsection 3 of § 73 of this Act.

(1¹) The contracting authority or entity establishes the rules for awarding a contract for social or other specific services in the procurement documents. In addition to the requirements provided by this Subchapter, the authority or entity may also base such rules on other provisions of this Act.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) When awarding a concession contract for social and other specific services, the contracting authority or entity follows the provisions of § 120 of this Act. Concession contracts for social and other specific services are subject to the provisions of § 121.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

Chapter 5 Procurement Procedure in the Network Sector

Subchapter 1 Application of this Chapter

§ 145. Application of provisions

When arranging a public procurement in the network sector, the provisions of Chapter 2 of this Act apply, unless otherwise provided by this Chapter. The provisions of subsections 2–6 of § 115 and of subsections 2, 3 and 5–10 of § 122 apply when the estimated value of a public works contract equals or exceeds the simple procurement threshold.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 146. Operating in fields related to gas and thermal energy

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

(2) The supply, by a contracting entity that operates in the network sector and that is not a contracting authority, of gas or thermal energy 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:
1) the production of gas or thermal energy by that entity is the unavoidable consequence of carrying out an activity other than those mentioned in §§ 147–149 of this Act or in this section, and
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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 entity’s turnover based on the average turnover for the last three years.

§ 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

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

2) the supply of electricity to such networks.

(2) The supply, by a contracting entity that operates in the network sector and that is not 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 or by the 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 strictly on the entity's own consumption and has not exceeded 30 per cent of the entity's total production of energy, based on the average production during the last three years.

§ 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;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

2) the supply of drinking water to a public water supply system mentioned 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.

(1¹) Activities mentioned in clauses 3 and 4 of subsection 1 of this section are deemed to amount to operating in the fields related to water within the meaning of this Act, provided the contracting authority or entity, at the same time, engages in an activity mentioned in clause 1 or 2.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The supply, by a contracting entity that operates in the network sector and that is not 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 the 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 strictly on the entity's own consumption and has not exceeded 30 per cent of the entity's total production of drinking water, based on the average production during the last three years.

§ 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 whose purpose is providing a transport service to the public by railway, bus, tramway, trolley bus, automated systems or cable.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 services other than reserved services under Article 7 of Directive 97/67/EC of the European Parliament and of the Council on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.01.1998, pp 14–25).

(3) 'Postal item', as mentioned 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 mentioned in subsection 2, which are provided by the contracting authority or 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. Special rules for the scope of application of this Act

(1) A contracting entity operating in the network sector is not required to apply this Act when:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

1) awarding contracts for purposes of resale or lease to third parties, provided that the 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 entity;

2) awarding contracts or arranging a design contest whose purpose amounts to activities in the network sector in the territory of a third country – unless a network or a geographical area located in the territory of a Member State of the European Union is used for the activity;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

3) awarding a contract to an economic operator affiliated to the entity;

4) awarding a contract to a legal person or civil law partnership established by a contracting entity who operates in the network sector and who is a party to the contract and by other such 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 obligate the entities who established such a person or partnership to participate in it during at least an equal 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 by § 154 of this Act.

(2) A legal person or civil law partnership established strictly by contracting entities operating in the network sector with the aim of operating in that sector is not required to follow this Act when awarding a contract:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

1) to an entity that established it or participates in it, provided that the person or 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 entities who established it undertake to participate in it for at least an equal period;

2) to an economic operator affiliated to an entity that established it or participates in it.

(3) The derogations mentioned in clause 3 of subsection 1 and in clause 2 of subsection 2 of this section may be applied when:

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 entities – or economic operators affiliated to such entities – mentioned 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 entities – or economic operators affiliated to such entities – mentioned 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 entities – or economic operators affiliated to such entities – mentioned in clause 3 of subsection 1 or clause 2 of subsection 2 of this section.

(4) Where the turnover of an affiliated economic operator mentioned 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 by the method mentioned in subsection 3 is credible. Where similar services or supplies are provided or similar works are executed by multiple economic operators affiliated to the contracting entity, the percentage rate mentioned in subsection 3 is calculated taking account the total turnover generated by the method mentioned in subsection 3 by all of the affiliated economic operators.

(5) When applying the derogation mentioned in clause 1 of subsection 1 of this section, the contracting entity, where this is required by the European Commission, notifies the Commission in writing and through the Ministry of Finance of all of the categories of products or activities which the entity regards as excluded.

(6) When applying the derogation mentioned in clause 2 of subsection 1 of this section and when awarding contracts for a purpose other than activities aimed at operating in the network sector, a contracting entity, where this is required by the European Commission, notifies the Commission in writing and through the Ministry of Finance of activities which the entity regards as excluded.

(7) When applying the derogations mentioned in clauses 3–5 of subsection 1 and in subsection 2 of this section, the contracting entity, where this is required by the European Commission, must state 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 conformity of the relationships between the contracting entities and their affiliated economic operators with the provisions of this section through 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 by a method mentioned 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 thermal energy 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 – for the purposes of § 152 – in the fields related to the exploration sites presenting deposits of oil, gas, coal and other solid fuels, or to extraction at such sites, is not required to follow this Act when awarding a contract for purchasing energy or fuel for the production of energy. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 this Act when purchasing water. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 154. Direct exposure of activity to competition

(1) The contracting authority or entity is not required to apply this Act if the corresponding activity in the network sector is directly exposed to competition on a market with unrestricted access and the European Commission has adopted a corresponding decision. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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

Subchapter 2 Special Rules for Procurement Procedure when Awarding and Performing Public Contracts

Division 1 Special Rules for Procurement Procedure

§ 155. Procurement procedures with prior publication

When awarding a public contract, the contracting authority or entity has a right to, in accordance with the rules provided by this Chapter, arrange the procurement procedure – at its own discretion – as an open procedure, restricted procedure, competitive procedure with negotiation, competitive dialogue or innovation partnership, except for the method provided on the grounds of clause 2 of subsection 3 of § 48 of this Act by subsection 2¹ of § 65 or by subsection 3 of § 70. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 156. Negotiated procedure without prior publication

(1) The contracting authority or entity has a right to arrange a public procurement as a negotiated procedure without prior publication where: [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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 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, where no reasonable alternative exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement, or for artistic reasons, for instance when creating or acquiring a unique work of art or artistic performance;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

4) awarding the public contract in an expeditious manner is needed due to a situation of extreme urgency brought about by events unforeseeable to the authority or entity, which does not allow to comply with the time limits provided by § 93, § 94, by subsection 4 of § 125 or by § 158 of this Act;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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 switching the supplier would lead to acquisitions of supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

6) new services or works that are to be purchased consist in the repetition of similar services or works which were purchased from the same tenderer under a public contract awarded as a result of a procurement procedure with a call for competition and which are in conformity with the basic project, provided that the initial contract notice states the possibility of such a contract being awarded, the terms and conditions of the contract and the extent of the services and works, and the estimated value of the initial public contract includes the total value of subsequent services or works;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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 in whose respect liquidation proceedings have been initiated or from a bankruptcy trustee based on 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 established in the procurement documents or the contracting authority's or 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. Special rules for commencement of procurement procedure and the filing of the contract award notice in the network sector

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

- 1) periodic indicative notice;
- 2) selection system notice;
- 3) contract notice.

(2) The contracting authority or entity may start a procurement procedure by a method mentioned in clause 1 of subsection 1 of this section where the authority or entity carries it out in the form of a restricted procedure or a competitive procedure with negotiation.

(3) The contracting authority or entity may start a procurement procedure by the method mentioned in clause 2 of subsection 1 of this section where the authority or 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 filed 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) Where the contracting authority or entity has commenced a procurement procedure with a periodic indicative notice, the authority or entity indicates in the contract award notice filed regarding the last public contract covered by the periodic notice that it will not award additional public contracts during the period covered by that notice.

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

(1) In an open procedure, the contracting authority or entity applies the provisions governing indicative notices, which are provided by 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 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 filing of a contract notice with the register or making the invitation mentioned in subsection 5 of § 159 of this Act, provided that the procurement procedure was started with a periodic indicative notice. In exceptional situations 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 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 filing of a contract notice with the register. In exceptional situation 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 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 authority or entity and the candidates chosen by it, provided that all of the chosen candidates have the same amount of time to submit a tender. Where no agreement is reached, the authority or 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 provide notification of a planned procurement procedure, the contracting authority or entity may file a periodic indicative notice with the register or publish it in the buyer profile. Where the authority or entity publishes an indicative notice in the buyer profile, it files a corresponding buyer profile notice with the register before publishing the indicative notice.

(2) The contracting authority or entity files a period indicative notice:

- 1) with the register or publishes it in the buyer profile where the contracting entity wishes to apply the reduced time limit for submission of tenders provided by clause 1 of subsection 2 of § 93 of this Act, or
- 2) with the register where the authority or 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 a situation mentioned in subsection 2 of this section, the contracting authority or entity files with the register or publishes in the buyer profile an indicative notice 35 days to 12 months before the date of filing the contract notice or the date of issuing the invitation mentioned in subsection 5.

(5) Where the commencement of a procurement procedure has been notified in a periodic indicative notice, the contracting authority or entity makes, before choosing the candidates to 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 mentioned 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) When awarding public contracts in fields related to networks, the indicative notice provisions provided by Chapter 2 of this Act are not applied, unless otherwise provided by this Chapter.

§ 160. Procurement documents when the procurement procedure is commenced by a periodic indicative notice or a selection system notice; technical specifications in relation to regular public contracts

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(1) Where the contracting authority or entity commences a procurement procedure by means of a periodic indicative notice, it makes the procurement documents available, at the latest, at the time that it issues an invitation to submit the request mentioned in subsection 5 of § 159 of this Act.

(2) Where the contracting authority or entity commences a procurement procedure by means of a selection system notice, it makes the procurement documents available, at the latest, at the time that it issues an invitation to tender or an invitation to commence a dialogue in the framework of competitive dialogue.

(3) Based on a request to participate submitted by an interested economic operator and in accordance with the rules provided by this Act, the contracting authority or entity makes available, to the operator, the technical specifications of the subject matter of the public contract based on which the authority or entity has regularly awarded public contracts or based on which the authority or 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, transmission of the corresponding reference is sufficient.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 161. Exclusion and selection of tenderers and candidates

(1) To exclude or select tenderers or candidates, a contracting entity that operates in the network sector and that is not a contracting authority may establish terms and conditions which must be objective, whose content must be available to all interested persons and which may include the grounds provided by §§ 95–106 of this Act, which are applied in accordance with the rules laid down in those sections.

(2) A contracting entity that operates in the network sector and that is a contracting authority applies the rules provided by §§ 95–97 of this Act when excluding tenderers and candidates and establishes criteria for selection of tenderers or candidates on the grounds and in accordance with the rules provided by §§ 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 by § 103 of this Act. When relying on the indicators of other persons in the framework of a selection system, the candidate proves to the contracting authority or entity that the resources of such persons are available to the candidate throughout the period of operation of the system.

(4) When selecting tenderers or candidates or – where the restricted procedure, competitive procedure with negotiation, competitive dialogue or innovation partnership is used – candidates, the contracting authority or entity is not allowed to:

- 1) establish additional administrative, technical or financial conditions for certain tenderers or candidates;
- 2) require tests or evidence which would duplicate the evidence already available.

(5) Where the restricted procedure, competitive procedure with negotiation, competitive dialogue or innovation partnership is used, the contracting authority or entity may limit the number of candidates to 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 authority or 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 authority or 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) Where the contracting authority or entity does not reject a tender under subsection 1 of this section, the authority or entity, provided that two or more tenders are equal under the award criteria, gives preference to the tender that does not have the characteristics mentioned in subsection 1, unless giving preference would force the authority or entity to award a public contract aimed at purchasing equipment which would not be technically compatible with existing equipment or whose operation and maintenance 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 where 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.

Division 2

Selection System

§ 163. Selection system notice

(1) Where the contracting authority or entity wishes to establish a selection system provided for by § 164 of this Act, the authority or entity files with the register a selection system notice which specifies, among other things, the period of operation of the system, the purpose of establishing the system and the terms and conditions for inclusion in the system, or includes a reference to relevant documents.

(2) Where the contracting authority or entity wishes to modify the period of applicability of the selection system, the authority or entity files with the register:

- 1) a selection system notice – where the period of applicability is modified without revoking the applicability of the system;
- 2) a contract award notice – where the validity of the system is revoked prematurely.

§ 164. Selection system

(1) To select candidates, the contracting authority or entity may establish a selection system following the rules provided by this Subchapter.

(2) An interested economic operator may apply for selection and inclusion in the selection system at any time.

(3) Selection under a selection system may involve multiple stages.

(4) A selection system must be based on objective criteria and comply, among other things, with the provisions of § 161 of this Act.

(5) The contracting authority or entity keeps a list of candidates who have been included in the selection system; the list may be divided into categories based on the types of public contracts that trigger selection based on the established selection system.

(6) When an interested economic operator requires this, the contracting authority or entity informs it about the criteria mentioned in subsection 4 of this section.

(7) Where the contracting authority or entity finds that the selection system of another contracting authority or entity meets its needs based on the criteria on which such a system is founded, the authority or entity communicates to the economic operator that applied for inclusion in the selection system the name of the other authority or entity and information concerning the corresponding system.

(8) Where the contracting authority or entity provides a notification of the commencement of a procurement procedure by means of a selection system notice, the authority or entity chooses, based on objective and non-discriminatory criteria, from among candidates which have been selected based on the rules of the selection system and which participate in the system, the candidates to whom it issues an invitation to tender.

(9) In the invitation to tender, the contracting authority or entity provides notification of holding an electronic auction and states whether it accepts or requires submission of tenders in the form of an electronic catalogue.

(10) Where the contracting authority or entity uses a selection system, the authority or entity files a contract award notice with the register in accordance with the rules provided by § 83 of this Act regarding each public contract awarded based on the selection system. The procurement procedure ends when the period of applicability of the selection system expires.

§ 165. Notification of candidates when a selection system is used

(1) The contracting authority or entity provides notification – to all candidates who have been included in the selection system as well as to interested persons who have applied for inclusion – of having updated the selection criteria.

(2) The contracting authority or entity who has established a selection system notifies a candidate who has applied for inclusion in the system of a decision to select the candidate and include them in the system, or not to select the candidate, within four months following the filing of the application. Where it takes over four months to make the decision, the authority or entity communicates to the candidate the reasons for the longer decision-making period within two months following the filing of the application and the time limit for granting or denying the application, which cannot exceed six months from the filing of the application.

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(3) The contracting authority or entity notifies a candidate who has applied for inclusion in the selection system of a decision to select the candidate and include them in the system, or not to select the candidate, within 15 days following the making of the decision, including the reasons for the decision.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) The contracting authority or entity notifies a candidate included in the selection system of the decision to deem its selection to have been concluded at least 15 days in advance, stating the reasons for the conclusion, unless the reason for conclusion of the candidate's selection is expiry of the period of applicability of the system.

Subchapter 3 Social and Other Specific Services

§ 166. Special rules for awarding public contracts for social and other specific services in the network sector

(1) When awarding public contracts for social and other specific services mentioned in Annex XIV to Directive 2014/25/EU of the European Parliament and of the Council, the contracting authority or entity applies § 126 of this Act, unless otherwise provided by this section.

(2) The contracting authority or entity may reserve participation in the specific procedure for social and other specific services, taking account of the conditions and rules of awarding a public service contract provided by § 127 of this Act.

(3) The specific procedure for social and other specific services, except in a situation provided for by 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) selection system notice.

(4) When commencing the specific procedure for social and other specific services by a notice mentioned in clause 2 of subsection 3 of this section, economic operators submit to the contracting authority or entity a confirmation of interest within the time limit and in the form determined by the authority or entity. To award a public contract in the period covered by the periodic indicative notice, the authority or entity issues an invitation to tender simultaneously to all economic operators who have submitted a confirmation of interest within the time limit.

(5) When commencing the specific procedure for social and other specific services by a notice mentioned in clause 3 of subsection 3 of this section, the contracting authority or entity applies §§ 164 and 165 of this Act.

Subchapter 4 Framework Agreements in the Network Sector

§ 167. Special rules for framework agreements in the 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

Subchapter 1 Application of this Chapter

§ 168. Application of provisions

Unless otherwise provided by this Chapter, the provisions of Chapter 2 of this Act apply to procurement procedures held in the fields of defence and security. Where the estimated value of a public works contract equals or exceeds the simple procurement threshold, the provisions of subsections 2–6 of § 115 and of subsections 2, 3 and 5–10 of § 122 of this Act apply.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 169. Public procurements in the fields of defence and security

(1) For the purposes of this Act, ‘public procurements in the fields of defence and security’ mean:

- 1) purchasing defence-purpose 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, related repair and maintenance supplies, other materials used for military purposes, including any part, component or subassembly of such materials, or any one of these;
- 2) purchasing security-purpose supplies – including any part, component or subassembly of such supplies – which presuppose or include or come with a State secret or classified information of a foreign state or any other restricted-access information (hereinafter in this Chapter also *classified information*);
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 3) purchasing supplies, services or works directly related to and necessary for the stages of the life cycle of the supplies mentioned in clauses 1 and 2 of this section;
- 4) purchasing military or security-purpose services and works which presuppose or include or come with a State secret or classified information of a foreign state or any other restricted-access information.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The rules provided by this Chapter are applied when awarding such a public contract whose subject matter is the purchasing of the supplies, services and works mentioned in subsection 1 of this section along with other public procurement falling within the scope of regulation of this Act, provided that the award of a single public contract is objectively justified.

§ 170. Special rules for scope of application of this Act in public procurement in the fields of defence and security

(1) The contracting authority or entity is not required to apply this Act where:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

- 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 activities;
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 3) the application of this Act would obligate the authority or entity to give information the disclosure of which is considered by the authority or entity to be contrary to 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, as the contracting authority, awards a contract to another country from whom the supplies or services mentioned 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 mentioned in clause 4 of subsection 1 of this section notifies the European Commission, through the Ministry of Finance, of the share of research and development expenditure in the overall cost of the programme, of the cost-sharing agreement as well as of the intended share of purchases per authority or entity, where 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 by this Act when awarding such a public service contract under which the services mentioned 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) Where the estimated value of a public contract mentioned in subsection 1 of this section equals or exceeds the public procurement threshold in the fields of defence and security, the contracting authority or entity must:

- 1) provide notification through the register’s website of the intention to award a public contract;
- 2) follow the rules for issuing technical specifications provided by § 176 of this Act;
- 3) after awarding the public contract, file a contract award notice in accordance with the rules provided by § 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 where, besides the services mentioned 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.

Subchapter 2

Special Rules for Procurement Procedures

§ 172. Restricted procedure, competitive procedure with negotiation and competitive dialogue

(1) Unless otherwise provided by this Act, the contracting authority or entity, when awarding a public contract, is required to – at its own discretion following the rules provided by this Chapter – conduct the procurement procedure in the form of a restricted procedure or competitive procedure with negotiation.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The contracting authority or entity has a right to conduct a public procurement in the form of a competitive dialogue where it is not possible for the authority or entity to award the public contract without unreasonable costs or technical problems by means of the restricted procedure or competitive procedure with negotiation, and where the authority or entity is objectively unable to issue technical specifications in accordance with the provisions of §§ 87–89 and 176 of this Act or where the authority or entity cannot, objectively and with sufficient precision, establish the legal or financial circumstances related to the procurement.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) Where the number of selected candidates in 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 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 a situation mentioned in subsection 3 of this section, the contracting authority or entity, after the submission of requests to participate, issues an invitation to tender or an invitation to participate in a dialogue to candidates selected under both contract notices.

§ 173. Negotiated procedure without prior publication

(1) The contracting authority or entity has a right to conduct a public procurement as a negotiated procedure without prior publication where:

1) the restricted procedure, competitive procedure with negotiation or competitive dialogue has not yielded a single tender or request to participate, or where, by their nature, none of the tenders meet the conditions set out in the procurement documents and the needs of the authority or entity, and no substantial modification is made to the initial conditions of the procurement;

2) the tenders submitted in the course of the restricted procedure, competitive procedure with negotiation or competitive dialogue do not meet the conditions set out in the procurement documents or where all of the requests to participate have been submitted by candidates who are to be, or may be, excluded based on clause 1, 4 or 5 of subsection 1 or on subsection 4 of § 95 of this Act or who do not meet the selection criteria, and no substantial modification is made to the initial conditions of the procurement;

3) for technical reasons or reasons related to protection of exclusive rights, the public contract can be awarded only to a particular tenderer;

4) the public contract involves air or maritime transport services for units of the Defence Forces, police or border guard operating or about to operate in a foreign country, which the authority or entity must purchase from economic operators the short validity period of whose tenders does not allow to comply with the time limits provided by § 94, by subsection 4 of § 125 or by § 174 of this Act;

5) awarding the public contract in an expeditious manner is needed due to urgent need resulting from a crisis situation or to a situation of extreme urgency brought about by events unforeseeable to, and beyond the control of, the authority or entity, which does not allow to comply with the time limits provided by § 94, by subsection 4 of § 125 or by § 174 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) On the ground mentioned in clause 2 of subsection 1 of this section, a public procurement may be conducted as a negotiated procedure without prior publication, provided that the procedure includes tenderers and candidates to whom the grounds for exclusion from the procurement procedure provided by this Act do not apply, who meet the established selection criteria and who, in the initial restricted procedure or competitive dialogue, have submitted a tender in the required form.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2¹) Where this is required by the European Commission, the contracting authority or entity transmits, through the Ministry of Finance, to the Commission a report concerning the circumstances surrounding application of the ground provided by clause 1 of subsection 1 of this section.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) When awarding a public supply contract or a public service contract, the contracting authority or entity has a right to, in addition to the grounds provided by clause 1 of subsection 3 of § 49 of this Act and by subsection

1 of this section, conduct the public procurement as a negotiated procedure without prior publication if research and development services are purchased under the contract.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) When awarding a public supply contract, the contracting authority or entity has a right, in addition to the grounds provided by subsection 1 of this section, to conduct the public procurement as a negotiated procedure without prior publication on the grounds provided by clause 3 of subsection 3 and by subsection 4 of § 49 of this Act as well as where supplies are purchased from the same tenderer as a partial replacement for or an extension of previously purchased supplies and where switching the tenderer would oblige the authority or entity to purchase supplies which have different technical characteristics and which would not be technically compatible with existing supplies or whose operation and maintenance would entail disproportionate technical difficulties. The duration of such an additional contract may not extend five years, save for exceptional situations, having regard to the estimated service life of the products, equipment and systems as well as technical difficulties that switching the tenderer might entail.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) When awarding a public service contract or a public works contract, the contracting authority or entity has a right to, in addition to the grounds provided by subsection 1 of this section, carry out the public procurement as a negotiated procedure without prior publication where the following is to be purchased:
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

1) additional works or services which were not included in the basic project or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described in that contract, to the extent of up to 50 per cent of the value of the contract, where such additional services or works cannot be technically or economically separated from the contract without major inconvenience to the authority or entity or when such services or works are strictly necessary for its completion;
2) new services or works which consist in a repetition of similar services or works purchased from the same tenderer under a contract awarded as a result of a restricted procedure or a competitive procedure with negotiation and which are in conformity with the basic project up to five years earlier as a result of a restricted procedure or a competitive procedure with negotiation, provided that the initial contract notice states the possibility of such a contract being awarded and the estimated value of the initial public contract includes the total value of subsequent services or works.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) Under clause 2 of subsection 5 of this section, a public procurement may be conducted as a negotiated procedure without prior publication within five years following the award of the initial contract, save for exceptional situations, having regard to the estimated service life of the products, equipment and systems as well as technical difficulties that switching the tenderer might entail.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 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) [Repealed – RT I, 05.05.2022, 2 – entry into force 01.06.2022]
2) 35 days from the issuing 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 by electronic means;
3) 40 days from the issuing 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 by electronic means.

(2) The contracting authority or entity may reduce the time limit mentioned in clause 2 of subsection 1 of § 94 in a restricted procedure or a competitive procedure with negotiation, and reduce the time limits mentioned in subsection 1 of this section to up to ten days where the authority or entity cannot adhere to the minimum time limits for the submission of tenders due to urgent circumstances justified in the procurement documents.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) The contracting authority or entity may reduce the time limits mentioned in clauses 2 and 3 of subsection 1 of this section to up to 22 days where the authority or entity has filed an indicative notice in accordance with the rules provided by subsection 3 of § 75 of this Act and the indicative notice, at the time of its filing, contains all of the available and mandatory information required in a contract notice.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 175. Procurement documents

(1) The contracting authority or entity may establish requirements for tenderers or candidates in the procurement documents, including requirements which concern the presence of a facility security clearance or personnel security clearance or personnel security clearance certificate, whose purpose is to protect State secrets or classified information of foreign states or any other restricted-access information which is disclosed to the tenderer or candidate during the procurement procedure. The authority or entity may also require the tenderer or candidate to ensure that its subcontractors follow such requirements.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) In order to verify that a tenderer meets the requirements for the security of supply, the contracting authority or entity may require, in the procurement documents, that tenderers submit in their tenders, among other things, one or more of the following particulars or documents:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

- 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 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 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 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 authority or entity without delay of any change in its organisation, supply chain or industrial strategy that may affect its obligations to the authority or entity;
- 8) a commitment from the tenderer or candidate to provide the 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 mentioned 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.

(5) Where a public procurement relates to a State secret, classified information of a foreign state or other restricted-access information, the contracting authority or entity may, in order to verify whether tenderers meet the requirements for information security, require in the procurement documents that they include, with their tender, the following particulars and documents:

- 1) a declaration by the tenderer and by any subcontractors who have been confirmed by the time of submission of the tender that they will ensure protection, in accordance with applicable legislation, of any classified information that they have at their disposal or that they become privy to during the validity period of the contract or after its completion;
- 2) a declaration by the tenderer to the effect that any subcontractors who have been not been confirmed by the time of submission of the tender will ensure protection, in accordance with applicable legislation, of any classified information that they have at their disposal or that they become privy to during the validity period of the contract or after its completion;
- 3) information concerning any subcontractors that have been confirmed by the time of submission of the tender, which makes it possible for the authority or entity to become convinced that the subcontractors are able to ensure protection of classified information to be communicated to them during performance of work under the subcontract or to be created by the subcontractors during performance of the contract;
- 4) a declaration by the tenderer to the effect that they will, prior to the award of the contract, submit information concerning any subcontractors that have not been confirmed by the time of submission of the tender which makes it possible for the authority or entity to become convinced that the subcontractor is able to ensure protection of classified information that will be communicated to it during performance of work under the subcontract or that will be created by the subcontractor during performance of the contract.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) When commencing the procurement procedure, the contracting authority or entity states, in the register, whether the particulars listed in subsection 2 of § 109 or in the first sentence of subsection 2 of § 113 of this Act will be made public in the electronic system on the opening of the tenders or – where the tender or a part of the tender is not submitted electronically – whether these particulars will be made public in the electronic

system when the record of the opening of applications or tenders is uploaded into the system. Where publication of the tenderers' particulars would interfere with the application of legislative instruments or would be contrary to a public interest – including defence or security interests – the decision may be made not to publish those particulars.

[RT I, 23.02.2023, 1 – entry into force 24.02.2023]

§ 176. Technical specifications

Where there are no technical standards in the respective field, the following is relied on when issuing technical specifications for the subject matter of a public contract, in the following order:

- 1) the grounds mentioned 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 the creation of technical specifications to be repeatedly or constantly applied in that field, and a description of defence supplies corresponding to that standard;
- 4) the ground mentioned 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 to an economic operator and excludes the operator from the procurement procedure on the grounds provided by clause 1, 4 or 5 of subsection 1 and on the conditions mentioned in subsections 2, 3 and 6 of § 95 of this Act.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) In addition to the grounds provided by clauses 3 and 4 of subsection 4 of § 95 of this Act, the contracting authority or entity may, on the conditions mentioned in subsection 5, decide not to award a public contract to and exclude from the procurement procedure an economic operator who:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

- 1) to the knowledge of the authority or entity, is not sufficiently reliable to rule out the risks posed to national security;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

- 2) has submitted false particulars on meeting the criteria provided by this section or established by the authority or entity under the provisions of §§ 98–101 and 178 of this Act – or has failed to submit such particulars or any documents required by the authority or entity under subsection 2 of § 96, unless the particulars or documents are available to the authority or entity based on public information in a database free of charge.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(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 order to verify whether tenderers' technical and professional ability meets the selection criteria, the contracting authority or entity may, in addition to what has been provided for in clauses 1, 3, 8, 11 and 12 of subsection 1 and in subsections 3–6 of § 101 of this Act, in the contract notice require submission of the following particulars and documents:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

- 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) statement of the geographical location of the sources of supply – where the location is outside the territory of the European Union;
- 4) a list of contracts for the sale of supplies, or for performance of services, which meet the characteristics determined by the authority or entity and which have been performed within 60 months preceding commencement of procurement proceedings, together with their value, dates and a certificate issued or countersigned by a public-law recipient or certification by a private purchaser;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

- 5) a description of the technical facilities and measures and of the study and research facilities used by the undertaking to ensure the quality that is required by the authority or entity when purchasing supplies, services or works, as well as internal rules regarding intellectual property;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

- 6) in the case of works contracts, service contracts or supply contracts also covering siting and installation operations or services, the educational and professional qualifications of the undertaking and/or those of the undertaking's managerial staff and, in particular, those of the person or persons responsible for providing the services or managing the work;

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

- 7) for works contracts and services contracts – in appropriate cases – a list of the environmental management measures that the economic operator will be able to apply when performing the contract.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) To cope with any additional needs which may arise for the contracting authority or entity or to carry out maintenance, modernisation or adaptation of the supplies covered by the contract, submission of the particulars

and documents listed in subsection 1 of this section may be required for the performance of a public contract in an emergency or during a state of emergency or a state of war or in a similar situation in another Member State of the European Union or a third country.

(3) [Repealed – RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3¹) Where the contract to be awarded involves a State secret, classified information of a foreign state or other restricted-access information, the contracting authority or entity may require the tenderer or candidate to present their facility security clearance, personnel security clearance or personnel security clearance certificate or evidence showing that the tenderer or candidate is able to process restricted-access information in accordance with the level of security that meets the authority's or entity's requirements.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3²) The contracting authority or entity may request that the competent security authority of the country in which the tenderer has its seat check the conformity of the premises and facilities that may be used, the industrial and administrative procedures that will be followed, the methods for managing information or the security clearance level of personnel.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) The contracting authority or entity may grant a tenderer or candidate who does not yet possess the security clearance or certificate mentioned in subsection 3¹ of this section an additional period of time to obtain such a clearance or certificate, providing a reference to that possibility and the period in the contract notice.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) Before awarding the public contract, the contracting authority or entity verifies the existence of the security clearance or security clearance certificate needed, requiring presentation of a certificate of the competent authority of the country of the tenderer's seat to the effect that, on a date that is determined by the authority or entity and that follows the making of a decision by which the tender was declared successful, the tenderer holds the facility security clearance or personnel security clearance or personnel security clearance certificate. Where it comes to light that, on the date in question, the tenderer does not hold the clearance or certificate needed, the authority or entity does not award the contract to the person and makes a new decision by which it declares the tenderer not selected.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) Where a decision is made not to select the successful tenderer on the ground provided by subsection 5 of this section, the contracting authority or entity follows the rules provided by § 119 of this Act and applies – to the tenderer who was not selected – the provisions of that section concerning tenderers who have withdrawn their tender.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 178¹. Relying on resources of another economic operator

(1) The contracting authority or entity verifies whether the grounds for exclusion provided by clauses 1, 4 or 5 of subsection 1 or by clauses 3 or 4 of subsection 4 of § 95 or by subsection 2 of § 177 apply in respect of economic operators whose resources are relied on in accordance with § 103 of this Act and whether those operators meet established selection criteria concerning which the tenderer or candidate has relied on their indicators.

(2) The contracting authority or entity requires the tenderer or candidate to replace an economic operator whose resources are relied on in accordance with this section and regarding whom the grounds for exclusion provided by clauses 1, 4 or 5 of subsection 1 of § 95 of this Act apply or who does not meet the relevant selection criterion, allowing a time limit of at least five working days for the replacement. The authority or entity may require the tenderer or candidate to replace, within the same time limit, an economic operator regarding whom the grounds for exclusion provided by clauses 3 or 4 of subsection 4 of § 95 or by subsection 2 of § 177 of this Act apply. Where the authority or entity has required the tenderer or candidate to replace the economic operator, but the tenderer or candidate does not do so, the authority or entity makes a decision not to select the tenderer or candidate, unless the tenderer or candidate meets the selection criteria on its own.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 179. Special rule for awarding a framework agreement in public procurement in the 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.

Chapter 6¹

Special Rules for Implementing and Applying International Sanctions and Sanctions of the Government of the Republic

[RT I, 07.06.2024, 1 – entry into force 17.06.2024]

§ 179¹. Notifying the Financial Intelligence Unit and collecting additional information

(1) At the latest within three working days, the contracting authority or entity notifies to the Financial Intelligence Unit the following decisions that have been made and operations that have been carried out:

- 1) excluding a tenderer or candidate from procurement proceedings on a ground mentioned in clause 5 of subsection 1 of § 95 of this Act;
- 2) rejecting a tender on a ground mentioned in subsection 2¹ of § 114 of this Act;
- 3) terminating, or withdrawing from, a public contract on a ground mentioned in subsection 1¹ of § 124 of this Act.

(2) Where suspicion has arisen that circumstances are present that warrant making a decision or carrying out an operation mentioned in clauses 1–3 of subsection 1 of this section, the contracting authority or entity is required to gather additional information concerning circumstances that may have significance for making the decision or carrying out the operation. Where the authority or entity ascertains, based on additional information, that he tenderer or candidate must be excluded from procurement proceedings on a ground mentioned in clause 5 of subsection 1 of § 95 of this Act, the tender must be rejected on a ground mentioned in subsection 2¹ of § 114 or the public contract must be terminated or withdrawn from on a ground mentioned in subsection 1¹ of § 124, the authority or entity makes the decision or carries out the operation mentioned in subsection 1 of this section and, at the latest within three working days, notifies this to the Financial Intelligence Unit. Where additional information does not allow the authority or entity to become convinced of the lawfulness of the envisaged decision or operation, the authority or entity notifies this without delay to the Financial Intelligence Unit before making the decision or carrying out the operation.

[RT I, 07.06.2024, 1 – entry into force 17.06.2024]

§ 179². Financial Intelligence Unit: obligation to verify

(1) When it receives a notification mentioned in subsection 1 or 2 of § 179¹ of this Act, the Financial Intelligence Unit verifies whether the decision or operation mentioned in clauses 1–3 of subsection 1 of § 179¹ has been made or carried out – or is envisaged – lawfully, and notifies the contracting authority or entity of the results within 12 working days following reception of the notification.

(2) In situations where this is justified, the Financial Intelligence Unit may extend the time limit provided by subsection 1 of this section up to 60 days, if a longer time limit is needed to perform a thorough investigation or if the need for an extension results from a third party. The Unit notifies the authority or entity that made the notification of having extended the time limit, together with the reasons for extension, at the latest one working day before expiry of the time limit provided by subsection 1 of this section.

[RT I, 07.06.2024, 1 – entry into force 17.06.2024]

Chapter 7 Functions of Ministry of Finance and Public Procurement Register

Subchapter 1 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 public procurement policy and is responsible for legislative drafting;
- 2) advises in matters pertaining to implementation of this Act, including issuing approvals for procurement rules of a contracting authority or entity at the latter's request, organising training in public procurement, providing advisory instructions and guidelines and publishing updated know-how;
- 3) [Repealed – RT I, 23.02.2023, 1 – entry into force 01.04.2023];
- 4) arranges, following the rules prescribed by legislation, the exchange of data and information with the European Commission;

[RT I, 23.02.2023, 1 – entry into force 01.04.2023]

- 5) engages in supranational cooperation with foreign authorities and international organisations;

- 6) exercises regulatory enforcement and administrative oversight of adherence to this Act and of the legislation enacted under it and conducts out-of-court proceedings in misdemeanour cases in accordance with the rules and to the extent provided by law;
- 7) [Repealed – RT I, 23.02.2023, 1 – entry into force 01.04.2023];
- 8) performs other duties, tasks and functions emanating from the law.

Subchapter 2

Public Procurement Register

§ 181. Public Procurement Register

(1) The Register is a database established for processing public procurement data and beneficiary purchase data in order to:

[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

1) ensure the publication of public procurement notices and beneficiary purchase notices, and the communication of public procurement notices to the Publications Office of the European Union;

[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

2) state the results of contestation proceedings;

3) enable the electronic processing of public procurements and beneficiary purchases;

[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

4) ensure the gathering of public procurement statistics;

5) publish other relevant public procurement information.

(2) The following is entered in the register:

1) particulars of public procurement notices and beneficiary purchase notices;

[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

2) particulars of the outcome of contestation proceedings;

3) particulars of public procurement procedures and beneficiary purchase procedures;

[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

4) electronic documents on the particulars mentioned in clauses 1 and 2 of this subsection;

5) other data and electronic documents provided by this Act and by the legislation governing beneficiary purchases.

[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

(3) The contracting authority or entity and the beneficiary are responsible for the correctness of the information that they file with the register.

[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

(4) The information mentioned in subsection 2 of this section is publicly available, unless access to it has been restricted under the law.

(5) The controller and processor of the Register are specified in the Constitutive Regulations of the Register. The Constitutive Regulations identify which of the fields designated as optional in the standard forms enacted by the European Commission the contracting authority or entity is required to fill out.

[RT I, 23.02.2023, 1 – entry into force 01.04.2023]

(5¹) The register processes data on natural persons related to an economic operator participating in a public procurement and in a beneficiary purchase procedure, including data on the education, professional qualifications, experience, convictions for an offence, tax arrears and other similar particulars the production of which the contracting authority or entity has a right to require under the Public Procurement Act or the beneficiary under legislation governing beneficiary purchases.

[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

(5²) The particulars that are mentioned in subsection 5¹ of this section and that are contained in public procurement data that indicate the status ‘carried out’ or ‘concluded without contract,’ in beneficiary purchase data, in information concerning the outcome of contestation proceedings and in data contained in digital procurement documents are retained in the register for 25 years and are then deleted. Public procurement data, beneficiary purchase data, information on the outcome of contestation proceedings and digital public procurement documents that do not contain the particulars mentioned in subsection 5¹ of this section are retained in the register for an unspecified period.

[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

(5³) After a period of ten years has passed from the conclusion of a procurement procedure, the following persons have a right to access the particulars mentioned in subsection 5¹ of this section, which are retained in the register:

- 1) the master user of the register;
 - 2) the person in charge of a public procurement, to the data of the public procurement;
 - 3) the person in charge of a beneficiary purchase procedure, to the data of the purchase of the beneficiary;
 - 4) the tenderer's master user, to the data of its tenderers;
 - 5) another person who has a justified legitimate interest.
- [RT I, 13.03.2019, 2 – entry into force 15.03.2019]

(6) The Constitutive Regulations of the register are enacted by a regulation of the Government of the Republic.

§ 182. Interbase cross-usage of data

To perform the duties, tasks and functions vested in the register by law, the controller and processor of the register are authorised to make electronic queries to national and local authority databases and retrieve data from these.

§ 183. Communication of data to Publications Office of European Union

(1) Where the estimated value of the public procurement equals or exceeds the international threshold or in other cases in which the contracting authority or entity so requests, the register employee in charge of corresponding operations transmits the particulars contained in public procurement notices to the Publications Office in accordance with the Commission's implementing regulation establishing standard forms for the publication of notices in the field of public procurement, at the latest on the working day following the day on which the notice, without defects, was filed with the register.

(2) For a public contract awarded under a framework agreement, the register employee in charge of corresponding operations does not transmit the contract award notice to the Publications Office.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 184. Communication of statistical data to European Commission

The Ministry of Finance communicates to the European Commission the statistical data and other information required in Article 45 of Directive 2014/23/EU of the European Parliament and of the Council, Article 85 of Directive 2014/24/EU of the European Parliament and of the Council, Article 101 of Directive 2014/25/EU of the European Parliament and of the Council and Article 66 of Directive 2009/81/EC of the European Parliament and of the Council. Where this is needed, the Ministry of Finance has a right to make additional queries to contracting authorities and entities for the purpose of pooling statistical data and other information.

Chapter 8 Contestation Procedure

Subchapter 1 General Provisions

§ 185. Contesting the actions of contracting authority or entity

(1) A tenderer, candidate or economic operator interested in participating in public procurement (hereinafter *contesting party*) may contest the actions of the contracting authority or entity by filing a contestation notice with the Public Procurement Review Committee (hereinafter *Review Committee*) if it finds that an infringement of this Act by the authority or entity infringes its rights or adversely affects its interests.

(2) A contestation notice 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 proceedings;
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 3) non-exclusion of a candidate or tenderer from the procurement proceedings under subsection 2 of § 97 of this Act;
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 4) selection or non-selection 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) any other decision which has been made by the authority or entity under this Act and which may infringe the rights of the contesting party or adversely affect its interests.

(3) [Repealed – RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) The contesting party may:

- 1) file a contestation notice against the optional notice where the contracting authority or entity has not filed a contract notice, not filing the notice was not permitted under this Act and the authority or entity has filed an optional notice to the register;
- 2) contest the public contract where the contracting authority or entity has used negotiated procedure without prior publication and, following award of the public contract, filed with the register a contract award notice within the prescribed time limit;
- 3) contest the public contract where the contracting authority or entity has not filed a contract notice, optional notice or notice of award of contract within the prescribed time limit, and the non-filing of the contract notice was not permitted under this Act;
- 4) contest the public contract where, when filing the contract notice with the register, the contracting authority or entity has not stated that the estimated value of the public procurement equals or exceeds the international threshold or not stated that it would like the notice to be transmitted to the Publications Office of the European Union in accordance with § 183 of this Act, provided that transmission of the notice was required under this Act;
- 5) contest the public contract where the contracting authority or entity has awarded it under a dynamic purchasing system in breach of the terms and conditions provided by § 35 of this Act;
- 6) contest the public contract where the contracting authority or entity has awarded it in breach of the rules provided by subsection 9 of § 30 of this Act.

(5) Clauses 2, 3, 5 and 6 of subsection 4 of this section do not apply where the value of the awarded public contract is below the public procurement threshold.

(6) Following the award of the public contract, an application for compensation for harm may be filed with the Review Committee by an economic operator to whom the public contract was not awarded due to an unlawful decision of the contracting authority or entity or due to a procurement document, unless the economic operator has failed to contest the decisions of the authority or entity or the procurement documents in a timely manner even though it had the opportunity.

(7) The parties to proceedings under the contestation procedure are the contesting party, the contracting authority or entity and a third party.

§ 186. Statutory fee

When filing a contestation notice or an application for compensation for harm with the Review Committee, a statutory fee is paid in accordance with § 258 of the Statutory Fees Act.

§ 187. Review Committee

(1) Contestation proceedings are conducted by members of the Review Committee.

(2) A member of the Review Committee is independent and makes their decisions strictly following the 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 President of the Review Committee who represents and presides over the Review Committee. In contestation proceedings, the Review Committee is represented by a member of the Committee who considers the contestation notice.

(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 in charge of the policy sector.

(5) The suitability of the person applying for the position of a member of the Review Committee is assessed by means of an interview. When making a proposal to the Government of the Republic to appoint a member of the Review Committee, the Minister in charge of the policy sector may also take into account other characteristics material to 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 presented to a member of the Review Committee. A member of the Review Committee is removed from office before expiry of the term of office where a circumstance provided by § 47 of the Courts Act comes to light, which precludes appointment of the person to the Review Committee in accordance with the law.

(7) The salary of a member and of the President of the Review Committee is equal to the salary of a district court and administrative court judge. The Minister in charge of the policy sector may grant the President of the Review Committee additional remuneration amounting to five per cent of the President's salary for the performance of the President's duties, tasks and functions.

(8) No internal oversight is exercised in respect of a member of the Review Committee. In terms of work organisation and other general matters, a member of the Committee reports to the President of the Committee and the President reports to the Minister in charge of the policy sector. The right to impose disciplinary sanctions is vested in the Minister.

(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 fields of teaching and research.

(11) Where a member of the Review Committee cannot perform their duties, tasks and functions due to a permanent impediment, the Minister in charge of the policy sector appoints, by administrative decree, a substitute for the member until the impediment lapses, but not for longer than three months. The Minister may renew the substitution period once for up to three months. The provisions applicable to members of the Review Committee are applied to the substitute without prejudice to special rules provided by this subsection.

(12) The administrative expenses of the Review Committee and costs related to contestation 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) Constitutive Regulations of the Review Committee are enacted by a regulation of the Minister in charge of the policy sector.

(14) The Review Committee is a mandatory out-of-court dispute adjudication body for the purposes of clause 1 of subsection 2 of § 15 of the State Liability Act.

§ 188. Recusal

(1) Where a circumstance is present that constitutes a reason for doubting the impartiality of a member of the Review Committee, the member may not consider the contestation notice and must recuse themselves from the case.

(2) The presence of a circumstance mentioned in subsection 1 of this section is presumed where the member of the Review Committee considering the contestation notice 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, or is or has been a registered partner of, a party to the dispute or a sister, half-sister, brother or half-brother of its representative; [RT I, 06.07.2023, 6 – entry into force 01.01.2024]
- 3) foster parent or foster child;
- 4) adoptive parent or adopted child;
- 5) spouse, registered partner, cohabitee, spouse's or registered partner's or cohabitee's sister, brother or direct relative, including after the end of the marriage or registered partnership or permanent cohabitation. [RT I, 06.07.2023, 6 – entry into force 01.01.2024]

(3) In addition to subsections 1 and 2 of this section, a member of the Review Committee must recuse themselves from hearing a contestation notice in a case where the member:

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

(4) In situations provided for by subsections 1 and 3 of this section, a party to proceedings may make a motion to recuse a member of the Review Committee who is to consider the contestation notice.

(5) A motion for recusal is considered by the member of the Review Committee who is to consider the contestation notice, or by the panel of the Review Committee, who also makes the corresponding decision.

(6) Where a motion for recusal is granted, the President of the Review Committee appoints a new member of the Committee or a panel of the Committee to consider the contestation notice.

(7) Where, at the hearing of the case, a member of the Review Committee cannot be substituted or a new member of the Review Committee cannot be appointed to consider the contestation notice, the hearing is postponed and a new time and place for hearing the case is set.

Subchapter 2

Contestation Process

§ 189. Time limits for filing a contestation notice and an application for compensation for harm

(1) A contestation notice must be received by the Review Committee within ten days following the day when the contesting party learned or should have learned of the infringement of its rights or of the harm to its interests, except in a situation mentioned in subsections 2–5 of this section, but not after the award of the public contract.

(2) A contestation notice 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 or requests to participate in a procurement procedure, special procedure for social or other specific services or concession contract award procedure or of conceptual designs in a design contest – where the estimated value of the public procurement equals or exceeds the public procurement threshold – or

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

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) Where a procurement document is not made electronically available, the time limit for the filing of a contestation notice mentioned in clause 3 of subsection 2 of this section is calculated as of the day when the contesting party learned or had to learn of the infringement of their rights or of the harm to their interests.

(3¹) Where the contracting authority or entity has modified the procurement documents and extended the time limit for submission of tenders, requests to participate or conceptual designs, contestation is allowed during the extended time limit only of those modifications to the documents that are contrary to a decision of the Review Committee, or a judgment, which has been rendered in respect of the procurement in question and which has entered into effect – or of modifications made independently of such a decision or judgment. For the purposes of this subsection, a modification exclusively of the time limit for submission of tenders, requests to participate or of conceptual designs is not deemed a modification to the procurement documents.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) A contestation notice in a simple procedure, except in a situation mentioned in clause 1 of subsection 2 of this section, must be received by the Review Committee within three working days following the day when the contesting party learned or had to learn of the infringement of its rights or of the harm to its interests, but not after the award of the public contract.

(4¹) The filing of contestation notices concerning a public procurement whose estimated value is below the simple procurement threshold provided by subsection 1 of § 14 of this Act, or below the corresponding procurement threshold provided by subsection 2 of that section – where no simple procurement threshold has been provided by this Act regarding such a procurement – is subject to the time limits provided for the filing of contestation notices under the simple procurement procedure.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) A contestation notice that is filed in a procedure for awarding a public contract under a framework agreement must be received by the Review Committee within seven days following the day when the contesting party learned or had to learn of the infringement of its rights or of the harm to its interests, but not after the award of the public contract.

(6) A contestation notice filed under clause 1 of subsection 4 of § 185 of this Act must be received by the Review Committee within ten days following publication of the voluntary notice in the register.

(7) A contestation notice filed under clauses 2, 4 and 5 of subsection 4 of § 185 of this Act must be received by the Review Committee within 30 days following publication of the contract award notice in the register.

(8) Under clause 3 of subsection 4 of § 185 of this Act, a contestation notice may be filed with the Review Committee within six months following award of the public contract.

(9) Under clause 6 of subsection 4 of § 185 of this Act, a contestation notice may be filed with the Review Committee within 30 days following the day when the contesting party learned or had to learn of the infringement of its rights or of the harm to its interests.

(10) An application for compensation for harm may be filed with the Review Committee within one year following award of the public contract. Such an application is considered by the Review Committee within a reasonable time; in other respects, consideration of the application is subject to the provisions governing consideration of contestation notices.

§ 190. Filing of contestation notice and of application for compensation for harm

(1) A contestation notice is filed with the Review Committee in writing and must contain the following particulars and documents:

- 1) names, addresses and contact particulars of all parties to proceedings known to the contesting party;
- 2) subject matter of the notice, including the relief sought and its cause;
- 3) particulars of the contested decision or procurement documents;
- 4) facts supporting the notice;
- 5) evidence at the disposal of the contesting party to prove the circumstances alleged by the party, and a reference concerning each item of evidence, showing the fact that the item is offered to prove;
- 6) date when the contesting party learned of the contested decision or procurement document;
- 7) a note on whether the contesting party wishes the matter to be dealt with at a hearing or by written procedure;
- 8) a list of the documents enclosed with the notice, including particulars concerning payment of the statutory fee and, where this is needed, a power attorney proving the right of representation.

(1¹) An attorney is presumed to hold the right of representation. Where a document that is filed in contestation proceedings, including the contestation notice or a response to such a notice, has been signed by an attorney as the party's representative, such a document is not required to be accompanied by a power of attorney, yet the Review Committee has a right to require the filing of the corresponding power of attorney.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) An application for compensation for harm must, in addition to the information mentioned in subsection 1 of this section, also contain the amount of compensation and the circumstances based on which it is to be awarded.

(3) The subject matter of a contestation notice is determined by the relief sought by the notice in accordance with subsection 4 of this section and the cause for the notice. The Review Committee may not render a decision concerning any relief or cause not stated in the notice, or exceed the scope of the relief sought.

(4) A contestation notice may seek the following relief:

- 1) setting aside the decision of the contracting authority or entity in part or in full;
- 2) mandating the contracting authority or entity to bring the procurement documents into conformity with legislation.

(5) An application for compensation for harm may seek compensation for harm suffered as a result of an unlawful decision the contracting authority or entity or procurement documents.

(6) The cause for a contestation notice is the body of circumstances in connection with which relief is sought.

(7) The contesting party encloses with its contestation notice the information at their disposal on the public procurement in connection with which the notice is filed, unless the corresponding information is available to the Review Committee in the register or in another manner by electronic means.

(8) The contestation notice and documents enclosed with the notice are filed in the Estonian language.

(9) The Review Committee assesses the lawfulness of a contracting authority's or entity's decision or a procurement document strictly as part of the process of consideration of the contestation notice or application for compensation for harm.

(10) Where multiple contestation notices involving the same contesting party and the same contracting authority or entity have been filed, the Review Committee may join the notices to be considered in the same proceedings.

§ 191. Amending or supplementing a contestation notice

(1) The contesting party may amend or supplement the relief sought by or the cause of the contestation notice. Documents containing new circumstances or requests for relief 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 Committee for filing additional clarifications and documents. Each new request for relief must be filed within the time limits provided by § 189 of this Act.

(2) Where a contestation notice presents difficulties of comprehension due to amendment or supplementation or for other reasons, the Review Committee may require the contesting party to file the full text of the notice provided it facilitates disposing of the case.

§ 192. Commencement of contestation proceedings

(1) Within one day from receipt of a contestation notice, the Review Committee assesses its compliance with the requirements provided by this Chapter.

(2) Where the Review Committee finds that a contestation notice shows defects that can be cured, the Review Committee gives the contesting party a time limit of two working days to do so.

(3) The Review Committee dismisses a contestation notice and returns it to the contesting party by its decision where:

- 1) the notice has not been filed by the closing date;
- 2) the contesting party has not cured the defects of the notice within the prescribed time limit;
- 3) a decision has already been made in the same case by the Review Committee or the court;
- 4) a compliance notice mentioned in § 208 of this Act has been issued regarding the contested public procurement or decision;
- 5) the contracting authority or entity has declared the contested procurement proceedings ineffective or has revoked the contested decision, or the violation alleged by the contesting party has been eliminated; [RT I, 05.05.2022, 2 – entry into force 01.06.2022]
- 6) when contesting the procurement documents, the contesting party does not prove, by a method acceptable to the Review Committee, that it has a real chance of participating in the public procurement;
- 7) the contesting party does not have a right to file a contestation notice.

(4) Where a contestation notice filed with the Review Committee or documents enclosed with the notice are not in the Estonian language, the Review Committee may deem it a defect mentioned in subsection 2 of this section and require translation of the notice or of documents enclosed with the notice. Where a translation of those documents has not been filed by the due date, the Review Committee may disregard the documents.

(5) The Review Committee includes, in its consideration of a contestation notice, each economic operator participating in the public procurement or interested in participating in that procurement whose rights may be decided on during consideration of the notice (hereinafter *third party*). A third party does not need to be included where the notice is filed against a procurement document and does not indicate which third party's interests it may concern.

(6) Communications by the Review Committee are deemed to have been made known to the parties to proceedings on the working day following the sending of the communication to the electronic mail address known to the Review Committee.

§ 193. Suspension of public procurement

(1) The Review Committee may, based on a reasoned application of the contesting party, make a decision to suspend the public procurement at any stage of contestation proceedings, taking account of the possible consequences of the suspension to all interests that might be harmed.

(2) A motion to suspend public procurement is considered by the Review Committee and the Committee makes a decision within three working days following receipt of the motion that has been filed free of defects. Where a contestation notice has been returned to the contesting party for its defects to be cured, the Committee considers a motion to suspend public procurement and make a decision within three working days following receipt of a contestation notice that is free of defects.

(3) To decide on suspension of the public procurement, the Review Committee may require the parties to proceedings to submit their views, which they must provide within one working day following receipt of the Committee's requirement.

(4) On a motion of a party to proceedings or of its own motion, the Review Committee may discharge a decision made on suspension of public procurement at any stage of contestation proceedings.

(5) Where the contracting authority's or entity's decision which is the most recent one in procurement proceedings before awarding the public contract is contested and where a significant public interest that might be harmed should no public contract be awarded outweighs possible harm to the interests of the contesting party, the Review Committee may, on a reasoned application of the authority or entity and at any stage of contestation proceedings, make a decision to authorise the granting of the acceptance required to award the public contract. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) The Review Committee considers an application to authorise the granting of the acceptance required to award a public contract mentioned in subsection 5 of this section within five days following receipt of the application. When considering the application, the Review Committee may require the parties to proceedings to submit their views, which they must provide within two working days following receipt of the Committee's requirement.

(7) Where the Review Committee has, under subsection 5 of this section, made a decision to authorise the granting of the acceptance required to award the public contract, contestation proceedings concerning a decision to declare a tender successful are concluded by virtue 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 the proceedings concluded, the Review Committee's decision to authorise the granting of the acceptance lapses on conclusion of the 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 contestation proceedings, the authority or entity has a right to extend the time limit for submission of tenders, requests to participate or conceptual designs by a reasonable time. Where the public procurement has been suspended, the authority or entity has a 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 discharged a decision to suspend the procurement, the contracting authority or entity, through the register and without delay, notifies this to all of the tenderers, candidates and economic operators who are interested in participating in the procurement and who are known to the authority or entity.

§ 194. Arranging consideration of a contestation notice

(1) The Review Committee ensures that circumstances material to disposing of the case are ascertained by gathering evidence where this is needed, or by requiring the parties to proceedings to offer evidence.

(2) On receiving a contestation notice which does not present any grounds for dismissal mentioned in subsection 3 of § 192 of this Act, the Review Committee without delay informs the contracting authority or entity and a third party of the filing of the notice and sends them a copy of the notice.

(3) Where the Review Committee has given the contesting party a time limit to cure the defects found in the contestation notice, the Committee notifies the contracting authority or entity of the filing of the notice and, after the defects have been cured, sends the authority or entity a copy of the notice filed. Where the Committee dismisses the notice under clause 2 of subsection 3 of § 192 of this Act, it notifies this to the authority or entity without delay.

(4) A public contract is void when it is awarded after having received the notification mentioned in subsection 2 or the first sentence of subsection 3 of this section regarding the filing of a contestation notice but before fulfilment of the condition mentioned in § 201 of this Act.

(5) The contracting authority or entity files a written response to the contestation notice within three working days following receipt of a copy of the notice from the Review Committee, enclosing all of the documents which are needed to dispose of the notice and which have been required by the Review Committee. In the written response, the authority or entity may make a proposal for disposing of the notice.

(6) Where, under subsection 5 of § 192 of this Act, a third party has been joined to consideration of a contestation notice, such a party files a written response to the notice within three working days following receipt of a copy of the notice from the Review Committee, enclosing all of the documents needed to dispose of the notice.

(7) The Review Committee may, on a corresponding motion, extend the time limit for filing a written response to the contestation notice, unless it would result in an unreasonable extension of contestation proceedings.

(8) The Review Committee sends copies of written responses mentioned in subsections 5 and 6 to the other parties to proceedings without delay.

(9) Before considering the contestation notice, the Review Committee may require that the contesting party, contracting authority or entity and third party file additional written clarifications or additional evidence regarding the contested procurement document or decision. The contesting party, the authority or entity and the third party must file the requested documents with the Review Committee within two working days following receipt of the Committee's requirement.

(10) In contestation proceedings, a party to proceedings has a right to access documents filed in the proceedings having regard to subsection 5 of § 110 of this Act.

§ 195. Considering a contestation notice

(1) A contestation notice is considered either individually by a member of the Review Committee or by a panel of at least three members of the Committee where, in the opinion of the President of the Committee, collegial adjudication of the notice is important in view of uniform application of the law.

(2) The Review Committee considers a contestation notice either based on the documents filed in the written procedure in accordance with the rules provided by § 196 of this Act or holds a public hearing on the notice with the participation of the parties to proceedings. The Committee holds a public hearing on a notice if it considers

this necessary for disposing of the notice or where the contesting party and the contracting authority or entity both request it.

(3) The Review Committee communicates the time and place of the hearing to the contracting authority or entity, the contesting party and the third party at least four working days before the hearing.

(4) Where the contracting authority or entity or the third party does not appear at the hearing, the Review Committee considers the contestation notice at the hearing without the participation of the authority or entity or the third party. Where the contesting party does not appear at the hearing, the Review Committee dismisses the notice, returns it to the contesting party by its decision and notifies this without delay to the authority or entity.

(5) Where this is needed, the Review Committee may hold an additional hearing of which the contracting authority or entity, the contesting party and the third party are informed either at the previous hearing or at least three working days before the additional hearing is held.

(6) The Estonian language is used for clerical business during contestation proceedings and when considering the contestation notice. A party to proceedings who does not understand Estonian has a right to provide explanations and make submissions at the hearing through an interpreter or a representative who speaks Estonian. The obligation to enlist an interpreter and pay the interpreter's fee lies with the person who requires the interpreter.

(7) The appearance, at the hearing, of a contesting party who does not speak Estonian, without an interpreter or a representative who speaks Estonian, is deemed non-appearance for the purposes of subsection 4 of this section.

(8) The Review Committee may enlist an expert to assist in considering a contestation notice. Sections 153 and 293–305 of the Code of Civil Procedure are applied when enlisting an expert.

(9) Where, on a motion of a party to proceedings, the Review Committee enlists an expert to assist in considering a contestation notice, the party pays the expert's fee to the current account stated by the Review Committee before the commissioning of expert assessment. The expert's fee is paid to the expert immediately after completion of expert assessment.

(10) Where during consideration of a contestation notice a circumstance comes to light which may lead to the issuing by the Ministry of Finance of a compliance notice under subsection 1 of § 208 of this Act, the Review Committee informs the Ministry of Finance without delay and suspends the hearing of the notice until enforcement or oversight proceedings by the Ministry of Finance have been completed.

(11) Where, during consideration of a contestation, it becomes known that the contracting authority or entity has notified the Financial Intelligence Unit in accordance with provisions of § 179¹ of this Act and the Unit has not yet notified the authority or entity of the results of its verification, the Review Committee suspends consideration of the contestation until the results of the Unit's verification become known.
[RT I, 07.06.2024, 1 – entry into force 17.06.2024]

§ 196. Written procedure

(1) The Review Committee may consider a case by written procedure where, in the opinion of the Review Committee, circumstances material to disposing of the case can be ascertained without convening a hearing. Regardless of having listed the case for the written procedure, the Review Committee may, until it renders its decision, re-list it to be considered at a hearing.

(2) Where a case may be considered by written procedure under subsection 1 of this section, but the Review Committee deems it necessary to examine an issue of importance for the case at the hearing, the Review Committee may limit the scope of matters to be discussed at the hearing, and, for the rest, rely on written submissions.

(3) In written procedure, the Review Committee sets the parties to proceedings a time limit during which they can file additional clarifications and documents and also communicates to them the time of announcement of the decision. Where this is needed, the time of announcement may be determined later.

§ 197. Conclusion of contestation proceedings

(1) Contestation proceedings are concluded when:

- 1) the dispute is settled by mutual agreement;
- 2) the contesting party withdraws their contestation notice;
- 3) the contracting authority or entity recognises that the contestation notice is justified;
- 4) the Review Committee decides to deny the contestation notice or the application for compensation for harm;

- 5) the Review Committee decides to grant the contestation notice in part or in full, setting aside the contracting authority's or entity's unlawful public procurement decision or mandating that the authority or entity bring a procurement document into conformity with the requirements prescribed by legislation;
- 6) the Review Committee makes a decision to grant the application for compensation for harm in part or in full and orders the contracting authority or entity to pay the contesting party compensation for the harm caused by the authority's or entity's unlawful decision, operation or procurement document;
- 7) the Review Committee decides to terminate contestation proceedings following the issuing by the Ministry of Finance of the compliance notice mentioned in § 208 of this Act;
- 8) the Review Committee decides to dismiss the contestation notice in part or in full where the grounds provided by subsection 3 of § 192 of this Act come to light.

(2) When granting a contestation notice filed under clause 1 of subsection 4 of § 185 of this Act or one concerning the lawfulness of the use of the derogation provided for by §§ 11, 12, 132–134, 153 or 170, the Review Committee, by its decision, bars the award of the public contract.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) When granting a contestation notice that has been filed under clauses 2–6 of subsection 4 of § 185 of this Act, the Review Committee may, by its decision:

- 1) declare the public contract void by virtue of § 31 or 121 of this Act, or
- 2) leave the public contract in effect but reduce its term of validity – where it has established the presence of circumstances that would make the contract void by virtue of § 31 or 121 of this Act. When making the decision, consideration is given to significant public interests that may be harmed if the contract were void.

(4) For the purposes of this section, economic interests directly related to the public contract in question do not constitute reasons related to significant public interests. Economic interests directly related to the contract include, among other things, costs arising from the postponement of performance of the contract, commencement of new public procurement and replacement of the tenderer performing the contract as well as the costs of legal obligations arising from the voidness of the contract. Economic interests may be deemed a reason related to significant public interests only where – in exceptional circumstances – the declaration of voidness would entail disproportionate consequences.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) The conclusion of contestation proceedings in accordance with clause 1, 2 or 3 of subsection 1 of this section is issued as a decision of the Review Committee. Where the dispute is settled by mutual agreement, the contestation notice is withdrawn or is recognised as justified at the hearing, the conclusion of contestation proceedings is stated in the written record of proceedings.

(6) Where the contesting party withdraws the contestation notice before it is considered at a public hearing or before a decision is taken in written procedure, the Review Committee terminates the proceedings by its decision and immediately notifies this to the contracting authority or entity.

(7) The conclusion of contestation proceedings by virtue of clauses 4, 5 or 6 of subsection 1 of this section is issued as a reasoned decision of the Review Committee.

(8) Where contestation proceedings are concluded by virtue of clauses 1, 2, 3 or 7 of subsection 1 of this section, the Review Committee does not assess the lawfulness of the procurement document or decision of the contracting authority or entity.

(9) Where contestation proceedings involve several requests for relief, the Review Committee may terminate proceedings with regard to such requests in a single decision based on different grounds provided by subsection 1 of this section.

§ 198. Subdivision of costs of contestation proceedings

(1) Where contestation proceedings are concluded by virtue of clause 3 or 7 of subsection 1 of § 197 of this Act or by the granting in full of the contestation notice mentioned in clause 5 of that subsection or of the application for compensation for harm mentioned in clause 6 of the same, the Review Committee, in its decision, orders the contracting authority or entity to pay, to the contesting party, the entire amount of the statutory fee paid by that party in the proceedings, as well as any fees that have been paid or are payable to an expert and, within reasonable and necessary limits, the costs of the party's contractual representative.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) Where contestation proceedings are concluded by a partial grant of the contestation notice mentioned in clause 5 of subsection 1 of § 197 of this Act or of the application for compensation for harm mentioned in clause 6 of that subsection, the statutory fee paid by the contesting party in the proceedings, any fees that have been paid or are payable to an expert and the costs of the party's contractual representative are divided proportionally to the granting of the notice or application, having regard – in respect of the expert's fees and of the costs of the party's contractual representative – to the reasonableness and necessity of such fees and costs.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) Where contestation proceedings are concluded by virtue of clauses 2 or 4 of subsection 1 of § 197 of this Act, the Review Committee makes a decision ordering the contesting party to pay, to the contracting authority

or entity, any fees that have been paid or are payable to an expert by the authority or entity in the proceedings and, within reasonable and necessary limits, the costs of the contractual representative of the authority or entity. The statutory fee that has been paid by the contesting party as well as any fees that have been paid or are payable by that party to an expert, and any costs that the party has incurred on account of enlisting a contractual representative in the proceedings are borne by the party, except in a situation provided for by subsection 4¹ of this section.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) Where, on conclusion of contestation proceedings by virtue of clause 1 of subsection 1 of § 197 of this Act, the contracting authority or entity and the contesting party have not reached an agreement on the division of costs that have been paid or are payable in the proceedings, such costs are borne by the parties, except in a situation provided for by subsection 4¹ of this section.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022].

(4¹) Where contestation proceedings are concluded by virtue of clauses 1 or 2 of subsection 1 of § 197 of this Act prior to the hearing before the Review Committee or before the time limit provided by subsection 3 of § 196, the statutory fee that has been paid is refunded to the contesting party.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) Where a contestation notice is dismissed under the second sentence of subsection 4 or under subsection 7 of § 195 of this Act, the costs of contestation proceedings are borne by the contesting party.

(5¹) Where contestation proceedings are concluded by virtue of clause 8 of subsection 1 of § 197 of this Act for the reason that the contracting authority or entity has declared the contested procurement proceedings ineffective or revoked the contested decision, or has eliminated the violation alleged by the contesting party, the Review Committee, in its decision, orders the authority or entity to pay, to the contesting party, any fees that have been paid or are payable to an expert by that party and, within reasonable and necessary limits, the costs of the party's contractual representative, except where the declaration of ineffectiveness of proceedings or revocation of the decision or elimination of the violation were not triggered by the filing of the contestation notice.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) Where contestation proceedings are concluded under subsection 9 of § 197 of this Act, the Review Committee, by its decision, orders the parties to proceedings to pay the statutory fee paid in the proceedings, any fees that have been paid or are payable to an expert and the costs of any contractual representatives to a reasonable and necessary extent, having regard to subsections 1–4 and 8 of this section in respect of each ground for conclusion of proceedings.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(7) Where the Review Committee has considered a contestation notice regarding at least one request for relief contained in the notice, the statutory fee paid is not subject to refund under the Statutory Fees Act.

(8) Where a third party participates in contestation proceedings, the Review Committee orders the principal party that is adverse to the principal party supported by the third party to pay, to the third party, any fees that have been paid or are payable by the third party to an expert in the proceedings, as well as the costs of the third party's contractual representative, under the same rules that govern payments of costs to a principal party.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 199. Rules for awarding the costs of a contractual representative

(1) An application to award the costs of the contractual representative along with a list of such costs that states their composition in detail is filed with the Review Committee at the hearing held to consider the contestation notice or, where the contestation notice is considered by written procedure, not later than by the due date for the filing of additional clarifications and documents provided by subsection 3 of § 196 of this Act. A list of the contractual representative's costs related to participation in the hearing is filed with the Review Committee within one working day following the hearing.

(2) [Repealed – RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 200. Announcement, entry into effect and operation of the decision

(1) The Review Committee makes a decision by which it rules on the merits of a contestation notice within 30 days or, where the relief sought by or cause of the notice is amended or supplemented under subsection 1 of § 191 of this Act, within 35 days following receipt of the notice, free of defects.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) Where, under subsection 8 of § 195 of this Act, the Review Committee has enlisted an expert to participate in consideration of the contestation notice, addressed a request for a preliminary ruling in the case to the

European Court of Justice or notified the Ministry of Finance under subsection 10 of that section, but the Ministry of Finance has not commenced enforcement or oversight proceedings or terminates such proceedings without issuing a compliance notice containing an instruction to declare the public procurement ineffective and it is not possible for this reason to render a decision within the time limit mentioned in subsection 1 of this section, the Review Committee makes a decision that disposes of the merits of the notice within ten working days following receipt of the expert's opinion, preliminary ruling or notice by the Ministry of Finance of non-commencement or termination of enforcement or oversight proceedings.

(2¹) Where the expert was enlisted, request was addressed to the European Court of Justice or notification was made to the Ministry of Finance before a hearing was held in the case or, in written procedure, before the time limit set by the Review Committee for offering additional clarifications and documents expired, the ten-day time limit mentioned in subsection 2 of this section is extended by the period that is required for performing the operations provided for by §§ 194–196 of this Act.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2²) Where the Review Committee has suspended consideration of the contestation under subsection 1¹ of § 195 of this Act and this rules out the possibility of rendering a decision within the time limit mentioned in subsection 1 of this section, the decision of the Review Committee by which the contestation is disposed of substantively, is announced within 30 days following the day on which the results of the verification by the Financial Intelligence Unit provided for by § 179² of this Act became known to the Review Committee.
[RT I, 07.06.2024, 1 – entry into force 17.06.2024]

(3) In a situation mentioned in subsection 2 of this section and where a contestation notice is disposed of by written procedure, the Review Committee communicates the time of announcement of a decision to the parties to proceedings at least three working days before announcing the decision.

(4) The decision of the Review Committee enters into effect after expiry of the time limit for having recourse to the court provided none of the parties to proceedings has filed a complaint with the administrative court. Where a decision of the Review Committee is contested in part, the part of the decision that is not related to the part that has been appealed enters into effect. When disposing of 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 or refuse to suspend the procurement or to discharge the suspension enters into effect as of its announcement.

(6) Where the Review Committee grants a contestation notice, its decision is binding on the contracting authority or entity. The authority or entity is required to bring all decisions it has made during the public procurement into conformity with the decision of the Review Committee which has entered into effect. A public contract which is awarded by the authority or entity is void when it is contrary to the decision of the Review Committee.

§ 201. Resumption of public procurement

(1) The contracting authority or entity may not resume a suspended public procurement before 14 have passed from announcement of the decision of the Review Committee mentioned in clause 4 or 5 of subsection 1 of § 197 of this Act.

(2) The contracting authority or entity may not issue the acceptance required to award a public contract before 14 have passed following announcement of the decision of the Review Committee mentioned in clause 4 or 5 of subsection 1 of § 197 of this Act.

(3) Where contestation proceedings conclude on grounds not mentioned in subsections 1 and 2 of this section, except on under clause 2 of subsection 1 of § 197 of this Act or where the contestation notice is dismissed and returned under subsection 4 of § 195, the contracting authority or entity may not issue the acceptance required to award the public contract before seven days have passed following announcement of the decision to terminate contestation proceedings or to dismiss and return the notice.

(3¹) The contracting authority or entity may not issue the acceptance required to award a public contract after it has received notice of an appeal filed against the decision of the Review Committee and before a conclusive disposition made concerning that appeal has entered into effect.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) The contracting authority or entity may not issue the acceptance required to award a public contract before seven days have passed from the making of a decision by which the Review Committee – or a judicial disposition by which the court – authorises the authority or entity to grant such acceptance during, respectively, contestation proceedings or judicial proceedings.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(5) A public contract which is contrary to the restrictions provided by this section is void.

§ 202. Application for compensation for harm

(1) To compensate for harm caused by the contracting authority or entity when conducting a public procurement or awarding or modifying a public contract, an application may be filed with the authority or entity in accordance with the rules provided by the State Liability Act or with the Review Committee in accordance with the rules provided by this Act, or a claim may be filed with the administrative court in accordance with the rules provided by the Code of Administrative Court Procedure.

(2) An application for compensation for harm caused by the Review Committee is filed with the Ministry of Finance.

(3) Where the contracting authority or entity, the Review Committee or the Ministry of Finance denies an application for compensation for harm or does not dispose of it within the prescribed time limit or where the aggrieved party does not accept the amount or method of compensation, the party may, within 30 days following receipt of the corresponding decision, file a complaint with the administrative court to set aside the Committee's decision. Where the authority or entity does not accept the Committee's decision on the granting of the application for compensation, the authority or entity may, within 30 days following receipt of the corresponding decision, file a complaint with the administrative court to set aside the Committee's decision. [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

Chapter 9

Regulatory Enforcement and Administrative Oversight

§ 203. Enforcement and oversight competence of the Ministry of Finance

(1) The Ministry of Finance exercises – strictly in the public interest – regulatory enforcement and administrative oversight (hereinafter *enforcement and oversight*) of compliance with this Act and the legislation enacted under it.

(2) The Ministry of Finance follows the law and is independent in its enforcement and oversight work.

(3) In enforcement or oversight proceedings, the lawfulness of the actions of the contracting authority or entity is verified. Enforcement or oversight proceedings are not conducted for the purpose of verifying the practicality of the actions of the authority or entity or of assessment of the effectiveness of its decisions or operations.

§ 204. Special measures of regulatory enforcement

The Ministry of Finance may, for the purpose of exercising regulatory enforcement functions provided for by this Act, apply the special measures of regulatory enforcement provided by §§ 30, 32, 49 and 50 of the Law Enforcement Act on the grounds and in accordance with the rules provided by that Act.

§ 205. Commencement and conclusion of enforcement or oversight proceedings

(1) Enforcement or oversight proceedings are conducted – strictly for the protection of the public interest – on the initiative of the Ministry of Finance. The Ministry of Finance may commence such proceedings:

1) in the case of reasonable doubt based on a regulatory enforcement or oversight notice provided for by § 207 of this Act or on any other indications, where sufficient information is present to suggest a violation of this Act and the circumstances mentioned in subsection 1 of § 206 are not applicable;

2) by way of a sample-based inspection.

(2) Enforcement or oversight proceedings commence with a written notice to the contracting authority or entity – or with the first procedural operation, where unannounced on-site enforcement or oversight is exercised. Where this is needed, the authority or entity is asked to provide clarifications and initial information is gathered for deciding whether to commence proceedings.

(3) Where enforcement or oversight proceedings have been commenced under clause 1 of subsection 1 of this section, the contracting authority or entity may not issue the acceptance required to award the public contract or framework agreement before proceedings have been concluded or before the compliance notice – in a situation provided for by subsection 2 of § 208 of this Act – has been complied with. A public contract or framework agreement awarded in breach of this prohibition is void.

(4) Enforcement or oversight proceedings conclude with:

1) a written notice on the presence of circumstances precluding the proceedings;

2) communication of compliance notice to the contracting authority or entity;

3) a written inspection report.

§ 206. Circumstances precluding enforcement or oversight proceedings

(1) Enforcement or oversight proceedings are not commenced – or proceedings that have been commenced are terminated – where:

- 1) the person who filed an enforcement or oversight notice has a right to file, with the Review Committee, a contestation notice concerning the violation;
 - 2) the violation is being dealt with by the Review Committee or the court, except in a situation provided for by subsection 10 of § 195 of this Act or where a disposition is present which has been rendered by the Review Committee or the court, concludes the proceedings, has entered into effect and contains a legal assessment of the circumstances of the violation;
 - 3) the particulars suggesting a violation are not sufficient for giving rise to a reasonable doubt, or there is no violation;
 - 4) procurement proceedings have been concluded.
- [RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) A decision may be made not to commence enforcement or oversight proceedings – or to terminated proceedings which have been commenced – where:

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

- 1) the person who filed the enforcement or oversight notice has not exercised the right to file a contestation notice with the Review Committee concerning the violation;
- 2) in view of the circumstances of the violation and of other factors, there is no significant public interest to conduct such proceedings or no justified need to issue a compliance notice.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(3) Where an enforcement or oversight notice has been filed seeking commencement of enforcement or oversight proceedings, the Ministry of Finance informs the person who filed the notice of the non-commencement or termination of such proceedings.

(4) The circumstances mentioned in subsections 1 and 2 of this section do not preclude commencement or conduct of enforcement or oversight proceedings in a situation mentioned in clause 2 of subsection 1 of § 205 of this Act.

§ 207. Enforcement or oversight notice

(1) An enforcement or oversight notice is a communication that refers to a violation of this Act and that is governed by provisions concerning notifications in the Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act.

(2) An enforcement or oversight notice may be filed by anyone, regardless of whether the occurrence described as a violation infringes the person's rights or not.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 208. Compliance notice issued by the Ministry of Finance

(1) Where the contracting authority or entity has violated the requirements provided by this Act or by legislation enacted under it and circumstances come to light that do not allow to continue the public procurement, the Ministry of Finance may – before the public contract or framework agreement has been awarded – issue a compliance notice to the authority or entity by which it instructs the authority or entity to declare the procurement proceedings ineffective.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) Before a public contract or framework agreement has been awarded, the Ministry of Finance has a right to issue mandatory compliance notices for ceasing violations of this Act and of the legislation enacted under it, provided that the public procurement can be continued when the violations have ceased.

(3) Where the contracting authority or entity has divided the public procurement into lots within a single procedure and a violation of this Act, which results in the issue of a compliance notice by the Ministry of Finance, is present in relation to one or several lots, the Ministry of Finance issues a compliance notice regarding only the lots in relation to which the violation is present.

(4) Before issuing a compliance notice, the Ministry of Finance informs the contracting authority or entity or the intention to issue the notice, giving the authority or entity a time limit of at least three working days to file objections.

(5) Where a compliance notice mentioned in subsection 1 of this section is issued, all decisions and operations related to the public procurement are void regardless of whether they have been made before or after the notice was issued. The same applies to a public contract or framework agreement which is awarded after the issue of a compliance notice instructing the public procurement to be declared ineffective.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(6) Where a compliance notice issued under this Act has not been complied with, the Ministry of Finance may impose a non-compliance levy in accordance with the rules provided by the Substitutional Performance and

Non-Compliance Levies Act. Where a compliance notice is not complied with, the maximum non-compliance levy on the first such occurrence is up to 2500 euros and on any following occurrence up to 10 000 euros for the purpose of compelling performance of the same obligation.

§ 209. Inspection report of the Ministry of Finance

(1) A written inspection report is filed 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 states the following:

- 1) the name and registry code of the contracting authority or entity;
- 2) the date of filing the report and the inspection period;
- 3) the purpose and scope of enforcement or oversight proceedings;
- 4) the circumstances and violations established in enforcement or oversight 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 enforcement or oversight official of the Ministry of Finance who created 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 a right to issue recommendations and guidelines for improved adherence to this Act and for prevention of violations.

(2) The recommendations and guidelines may be issued in the document terminating the enforcement or oversight proceedings, or separately.

§ 211. Actions of the Ministry of Finance where an offence is suspected and in relation to occurrences of corruption

(1) Where the body of circumstances that has become known to the Ministry of Finance in the course of regulatory enforcement operations may give rise to a suspicion that an offence has been committed which does not qualify as a misdemeanour provided by §§ 213–215 of this Act or where the body of circumstances presents the elements of a potential occurrence of corruption, the Ministry of Finance notifies those circumstances to an investigative body or to the Prosecutor's Office.

(2) The Ministry of Finance may, within the scope of its functions and authority, cooperate with an investigative body, the Prosecutor's Office, other authorities of the executive branch and local authorities. The substance of such cooperation is, above all, communication and exchange of information between authorities and coordination of activities.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 212. Cooperation with the European Commission

(1) Where the European Commission informs the Republic of Estonia in writing of a serious breach, in the course of conducting a public procurement, of provisions of public procurement legislation of the European Union or of such national provisions, the contracting authority or entity that arranged the procurement in question is required to, within three working days following receipt of the corresponding notice from the Ministry of Finance, transmit to the Ministry all relevant information concerning that procurement.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The rules for handling the information mentioned in subsection 1 of this section and for communicating it to the European Commission are enacted by a regulation of the Minister in charge of the policy sector.

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 by 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 a contract on terms and conditions different from those set out in the procurement documents, tender or framework agreement

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(1) The penalty for awarding a public contract or framework agreement on terms and conditions different from those set out in the procurement documents or in the tender that had been declared successful, or for awarding a public contract on terms and conditions different from those set out in the framework agreement is a fine of up to 300 fine units.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The penalty for the same act committed by a legal person is a fine of up to 32,000 euros.

§ 215. Awarding a public contract or framework agreement without following required procedure

(1) The penalty for awarding a public contract or framework agreement – where the award was not preceded by procurement proceedings required by this Act – is a fine of up to 300 fine units.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) The penalty for the same act committed by a legal person is a fine of up to 32,000 euros.

§ 216. Proceedings

(1) Out-of-court proceedings concerning the misdemeanours provided by §§ 213–215 of this Act are conducted by the Ministry of Finance.

(2) The limitation period for the misdemeanours provided by §§ 213–215 of this Act is three years.

§ 217. Compensation of costs to a tenderer

A tenderer does not have a right to require that the contracting authority or entity compensate costs related to submission of the tender, including reasonable costs related to preparation of the tender and participation in the public procurement, unless the tenderer proves that the authority or entity violated the provisions governing the conduct of public procurement, including unjustifiably declaring the public procurement ineffective, and that the public contract would likely have been awarded to the tenderer had there been no violation.

§ 218. Compensation for harm by the tenderer

Where the tenderer has knowingly given false information or falsified documents during public procurement or proceedings on a contestation notice, the tenderer compensates for harm caused to the contracting authority or entity or other persons by submission of such information or documents.

Chapter 11 Implementing Provisions

§ 219. Completion of commenced public procurement, modification of public contracts, adjudication of contestation notices that have been filed, continuance of misdemeanour proceedings and validity of legislation enacted under Acts of Parliament

(1) Public procurements commenced before the entry into force of this Act are completed in accordance with the requirements of the former Public Procurement Act in force (hereinafter in this section *Public Procurement Act*), except for the obligation provided by § 37 of this Act to file a public procurement report and an annex thereto. When such public procurements are completed, the contracting authority or entity is required to provide notification of the procurement procedure in accordance with § 83 of this Act.

(2) When awarding a public contract under a framework agreement awarded under the Public Procurement Act, subsection 5 of § 71 of the Public Procurement Act is not applied.

(3) When modifying a public contract awarded based on requirements provided by the Public Procurement Act, subsections 3 and 4 of § 69 of that Act are not applied. When such a contract is modified, § 123 of this Act is applied.

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(4) In public procurements mentioned in subsection 1 of this section, contestation notices are filed and the Review Committee considers these following the requirements provided by the Public Procurement Act.

(5) An act which was committed by a person before the entry into force of this Act and which is also subject to a sanction as a misdemeanour under this Act, is legally designated under the section that defines the corresponding misdemeanour in this Act.

(6) A legal act adopted under subsection 5 of § 10 of the Public Procurement Act remains in effect until repealed.

(7) Where a public contract awarded based on the requirements of the Public Procurement Act is terminated, § 124 of this Act is applied.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 219¹. Completion of procurement proceedings that have been commenced

[RT I, 05.05.2022, 2 – entry into force 01.06.2022]
Procurement proceedings commenced before 15 July 2018 are completed in accordance with the requirements provided by the version of this Act in force until 15 July 2018.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

§ 219². Completion of procurement proceedings that have been commenced

(1) Procurement proceedings commenced before 1 June 2022 are completed in accordance with the requirements provided by the version of this Act in force until 31 May 2022.
[RT I, 05.05.2022, 2 – entry into force 01.06.2022]

(2) Public procurements that were commenced before the entry into force of this subsection are completed in accordance with the version of this Act that enters into force at the time of entry into force of this subsection.
[RT I, 04.08.2022, 2 – entry into force 14.08.2022]

§ 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 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 by this Act.

§ 220¹. Requirements for electronic communication and exchange of information regarding public procurements commenced before 15 July 2020

The version of subsection 9 of § 30, subsections 1 and 1¹ of § 45 and subsection 7¹ of § 45 of this Act, which entered into force on 15 July 2020 is also applied to public procurements that have been commenced, to the awarding of public contracts under framework agreements and to public contracts that have been awarded under framework agreements before that date.
[RT I, 08.07.2020, 2 – entry into force 15.07.2020]

§ 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, following the provisions of this section.

(2) In the case of public works contracts and public service contracts by which services are provided on site under the direct supervision of the authority or entity, the authority or entity requires in the procurement documents, in a public procurement whose estimated value equals or exceeds the international threshold, that the tenderer to whom the public contract was awarded would, not later than at the time of commencement of performance of the contract, submit to the authority or entity the names, contact particulars and information on the legal representatives of the subcontractors known by the time. The authority or entity requires such a tenderer to submit the same information for all further subcontractors who will participate in performing the contract, and to submit information concerning replacement of a subcontractor named at the time of commencement of performance of the contract.

§ 222. Subdivision of costs of contestation proceedings until 31 December 2018

(1) Until 31 December 2018, the Review Committee divides the costs of contestation proceedings, in addition to subsections 4, 5 and 7 of § 198 of this Act, also following the provisions of this section.

(2) On conclusion of contestation proceedings under clause 3 or 7 of subsection 1 of § 197 of this Act or where a contestation notice mentioned in clause 5 of that section or an application for compensation for harm mentioned in clause 6 of the same is granted in full, the Review Committee makes a decision ordering the contracting authority or entity to pay, to the contesting party, the entire statutory fee paid by the contesting party in the proceedings as well as, within necessary and reasonable limits, any fees that have been paid or are payable by that party to an expert.

(3) When it grants a contestation notice or an application for compensation for harm in part, the Review Committee makes a decision by which it orders the contracting authority or entity to pay the statutory fee and any fees that have been paid or are payable to an expert in proportion to the granting of the notice or application.

(4) Where contestation proceedings are terminated under clause 2 or 4 of subsection 1 of § 197 of this Act, the Review Committee makes a decision ordering the contesting party to pay, to the contracting authority or entity or to the third party, within necessary and reasonable limits, any fees that, in the proceedings, have been paid or are payable by them to an expert. The contesting party bears the costs of the case that have been paid or are payable by that party.

(5) Where contestation proceedings are concluded under subsection 9 of § 197 of this Act, the Review Committee makes a decision by which it orders the parties to proceedings, having regard to subsections 1–4 of this section with respect to each ground for conclusion of the proceedings, to pay the statutory fee that has been paid, and any fees that have been paid or are payable to an expert.

§ 223.–§ 233.[Provisions amending other Acts have been omitted from this translation.]

§ 234. Repealing the Public Procurement Act

The Public Procurement Act (RT I 2007, 15, 76) is hereby repealed.

§ 235.–§ 237.[Provisions amending other Acts have been omitted from this translation.]

§ 238. Entry into force of this 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.

(2¹) Subsections 2, 3, 5 and 6 of § 122 of this Act enter into force on 15 July 2018.
[RT I, 29.06.2018, 4 – entry into force 15.07.2018]

(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 8–10 of § 122 of this Act enter into force on 1 January 2019.
[RT I, 29.06.2018, 4 – entry into force 15.07.2018]

¹Directive 2007/66/EC of the European Parliament and of the Council amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ L 335, 20.12.2007, pp 31–46); Directive 2009/81/EC of the European Parliament and of the Council on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.08.2009, pp 76–136); Directive 2014/23/EU of the European Parliament and of the Council on the award of concession contracts (OJ L 94, 28.03.2014, pp 1–64); 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); 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).