

Public Procurement Act

c.f. EEA Agreement Art. 65 and Annex XVI item 1 (Dir. 71/304), item 2 (Dir. 93/37), item 3 (Dir. 93/36), item 4 (Dir. 93/38), item 4a Kvedtak 93/327/EEC, item 5 (Dir. 89/665), item 5b (Dir. 92/50) and item 6 (Rfo nr. 1182/71) c.f. EEA Committee resolution no. 7/94 with respect to items 2, 4, 4a and 5a c.f. also WTO Agreement 15 April 1994 on Government Procurement.

§ 1 Purpose

This Act and the appurtenant regulations are to contribute to an increase in the creation of wealth in society by ensuring the most effective use of resources possible during public procurement based on commercial practices and equal treatment.

§ 2 Procuring entities that are governed by the Act

This Act governs the following procuring entities:

a.

Central, municipal and county-government authorities

b.

Legal persons that are controlled by a public entity and that serve the general public and are not of an industrial or business character. Public control will be deemed to exist where the public authority

1.

covers the greater part of the entity's or activity's finance, or

2.

has a deciding influence over the entity or activity, or

3.

appoints more than one-half of the total number of members of the entity's or activity's managing bodies.

c.

Legal persons that run enterprises in the water-supply, energy, transport or telecommunications sectors to the extent that they engage in procurement connected to these areas of activity. However, this applies only to the extent that such a legal person

1.

is given special or exclusive rights by public authorities to run the enterprise or

2.
is controlled by the public authorities

d.
Other legal persons in cases involving building and construction contracts where the contribution from public authorities amounts to more than 50 per cent of the value of the contract in question.

The King may prescribe further provisions regarding which procuring entities are covered by the Act.

The King will prescribe regulations regarding the Act's applicability on Svalbard and may lay down special rules to cover local conditions.

§ 3 The types of procurement that are covered by the Act

This Act applies to procurement of goods, services and building and construction work carried out by such entities as are mentioned in section 2. This Act does not apply to procurement that may be exempt under Article 123 of the EEA Agreement.

§ 4 Holders of rights

Rights under this Act are held solely by those enterprises which are established in accordance with the laws of an EEA member country and which have their registered place of business, headquarters or conduct their main business activity in a member country. This also applies to enterprises granted such rights under the WTO Agreement on government procurement or under other international agreements with which Norway has an obligation to comply.

§ 5 Basic requirements

Procuring entities shall operate in accordance with good business practice, ensure that a high business ethical standard is maintained in internal operations and ensure that there is no unequal treatment of suppliers.

Procurement shall insofar as is possible be based on competition.

Procuring entities shall ensure that due consideration is given to predictability, transparency and retrospective scrutiny throughout the procurement process.

The selection of qualified tenderers and award of contracts shall be based on objective and non-discriminatory criteria.

Procuring entities shall not

a.
discriminate between suppliers on the basis of nationality,

b. use standards and technical specifications as a means of impeding competition, or

c. divide a planned procurement into segments in order to avoid application of any provisions included in or made pursuant to, this Act.

§ 6 Resource and environment-conscious procurement

Central, municipal and county-municipal authorities and legal persons mentioned in section 2, first paragraph, letter (b) shall when planning each procurement have regard to the resource implications and environmental consequences of the procurement.

§ 7 Legal action

Legal proceedings regarding any contravention of this Act or of regulations issued pursuant thereto may be brought before the district or the city court without first being the subject of conciliation proceedings.

Until such time as a contract has been entered into, the court may set aside a decision arrived at during the procurement procedure where such a decision conflicts with the provisions of this Act or regulations issued pursuant thereto. This does not, however, apply to decisions arrived at during the procurement procedure within the water-supply, energy, transport and telecommunications sectors.

§ 7a Dispute Resolution Authority

The King may establish an advisory authority for the resolution of disputes regarding the rights and duties ensuing from this Act and regulations issued pursuant thereto.

The King may issue regulations imposing on the procuring entities subject to this Act a duty to participate in the dispute resolution authority's proceedings.

The King may issue regulations regarding the proceedings to be followed by the authority including provisions relating to the parties' right of access to case documents.

The Act of 19 June 1970, No. 69 relating to public access to documents in the public administration shall apply to the activities carried out by the dispute resolution authority.

§ 8 Decisions regarding interim measures and payment of a fixed sum

No decision regarding interim measures against breaches of this Act or regulations issued pursuant thereto may be made after a contract has been entered into.

Nor may a decision be made before a contract is entered into, to grant the interim measures referred to in the Enforcement Act section 15-8, first paragraph, on application for an interim measure against breaches occurring during the procurement procedure in the water-supply, energy, transport and telecommunications sectors. In cases where it is probable that provisions in this Act or regulations pursuant to it will be or have already

been breached, the court shall order a fixed sum to be paid by the defendant to the public treasury if the breach is not remedied or prevented and the contract is not entered into. The amount of the fixed sum should be so large as to be likely to prevent the defendant from committing or maintaining the breach in question. The defendant is only obliged to pay the fixed sum if a court ruling confirms that the criteria for payment of the fixed sum have been fulfilled.

§ 9 Duty of the courts to provide notification

The court shall notify the Ministry [of Trade and Industry] of rulings made in cases pursuant to section 7 and of measures and orders to pay a fixed sum pursuant to section 8. On making an order to pay a fixed sum pursuant to section 8, the court shall also notify the tax authority responsible for the collection of the fixed sum.

§ 10 Compensation

Any party bringing an action for breach of this Act or regulations issued pursuant thereto is entitled to compensation for any loss he has suffered as a result of the breach.

§ 11 Regulations and decisions

The King may issue regulations containing supplementary provisions and provisions relating to the implementation of this Act. The King may impose the necessary orders on procuring entities for ensuring compliance with this Act or the regulations issued pursuant thereto. With respect to procuring entities other than central, municipal and county-municipal authorities and legal persons mentioned in section 2, first paragraph, letter (b) such orders may only be made to the extent necessary to ensure the fulfilment of Norway's obligations towards foreign states or international organisations regarding public procurement.

The King may issue regulations that provide for a mandatory venue for such legal proceedings as are mentioned in section 7 for such applications for interim measures as mentioned in section 8.

§ 12 Entry into force

This Act shall enter into force on the date decided by the King. The Act of 27 November 1992 No. 116 regarding public procurement etc. is repealed with effect from the said date.