

The Act (SFS 1992:1528) on Public Procurement

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Chapter 1 General provisions
The areas in which the act shall apply etc.

1 § This act contains general provisions concerning public procurement (Chapter 1), special regulations governing the award of public supply contracts (Chapter 2), public works contracts (Chapter 3), public contracts in the water, energy, transport and telecommunications sectors (Chapter 4), public service contracts (Chapter 5) together with provisions regarding procurement in cases where the amounts involved are below the threshold values contained in Chapters 2-5 and in certain other cases (Chapter 6). The act also contains provisions regarding review, damages etc. (Chapter 7).

The act also contains provisions to fulfil the commitments entailed by Sweden's membership of the European Union (EU). Act (1995:704).

2 § This act applies to procurement carried out by the state, local authorities, county councils and such other procuring entities as determined in Articles 5 and 6.

Procurement referred to in Chapter 6 is only subject to the provisions contained in that chapter and the provisions in Chapters 1 and 5 referred to in Chapter 6 and in Articles 1-10 of Chapter 7. Act (1999:309).

3 § This act does not apply to

1. procurement arrangements that have been agreed in an international agreement between any of the states in the European Economic Area (EEA) and any other state for a project shared by the contracting states,

2. procurement procedures which have been established in agreements concerning the stationing of military personnel or

3. procurement procedures, which have been agreed in an international organisation.

The following procurements are subject only to the provisions contained in Chapter 6, viz.

1. procurement subject to secrecy or other particular restrictions with regard to the safety of the realm,

2. procurement of defence supplies and services which have no civilian application and which are subject to the provisions of Article 296 of the Treaty of Rome. Act (2002:594)

The principle of good business practice

4 § The award of public contracts should be so arranged as to take advantage of existing competition and should also in other respects accord with the conventions of good business practice. No unwarranted considerations should affect the treatment of tenderers, candidates or tenders.

Definitions

5 § In this act the following terms are used with the meaning given here:

Procurement: the purchase, leasing, rental or hire-purchase of supplies, public works or services.

Contracting entity: state, local or other authorities, decision-making bodies in local authorities and county councils, the undertakings, associations, societies, foundations set forth in Article 6, together with, insofar as procurement according to Chapters 4 and 6 is concerned, the bodies stipulated in the second paragraph of Article 1 of Chapter 4 and the third paragraph of Article 1 of Chapter 6, associations of such authorities, decision-making bodies, undertakings, associations, societies, foundations and bodies together with the parishes of the Church of Sweden and religious associations in connection with activities conducted in accordance with the Burial Act (1990:1144).

Public contract: a written agreement entered into by a contracting entity regarding procurement in the meaning of this act and that is signed by the parties or signed by them with an electronic signature. Act (2002:594)

Public works contract: the execution or both the projection and execution of an undertaking that can be considered an activity of the kind defined in Section C of the annex to this act, or a building or plant construction project in its entirety, of which the outcome can perform an autonomous technical and economic function.

Public works concession: a contract regarding public works in which consideration for the work is to consist either of the right to utilize the construction or of such a right together with payment.

Supplier: a person who provides supplies, undertakes work, or performs services even if he is not the person who in any particular case provides or performs what has been procured.

Framework agreement: an agreement entered into by a contracting entity and one or several suppliers with a view to establishing all the conditions governing suborders during a certain period of time.

Design contest: a contest of the kind referred to in Article 28 of Chapter 5 and Article 18 of Chapter 6.

Contract documents: the basic documentation for a tender provided by a contracting entity to a supplier.

Accelerated procedure: procedures as set forth in Article 15 of Chapter 2, Article 20 of Chapter 3, and Article 22 of Chapter 5.

Tenderer: anyone who submits a tender.

Candidate: anyone who applies to be allowed to submit a tender in restricted or negotiated procedures or selective procedures.

Invitation to tender: documentation in which the contracting entity invites suppliers to apply to be allowed to submit a tender in connection with selective procurement.

Open procedure (Öppen upphandling): procurement when all suppliers are permitted to submit tenders.

Restricted procedure (Selektiv upphandling): procurement when the contracting entity invites certain suppliers to submit tenders.

Negotiated procedure (Förhandlad upphandling): procurement when the contracting entity invites certain suppliers to submit tenders and then negotiates with one or several of them.

Simplified procedure (Förenklad upphandling): procurement when all suppliers are entitled to submit tenders, the participating suppliers are to submit tenders and the contracting entity may negotiate with one or several of these tenderers.

Selective procedure (Urvalsupphandling): procurement when all suppliers are permitted to apply to submit tenders, the contracting entity invites certain suppliers to submit tenders and the contracting entity may negotiate with one or several suppliers. Act (2002:594)

Direct procurement (Direktupphandling): procurement without tenders being required. Act (2000:877).

6 § The term "contracting entity" includes those undertakings, associations, societies, and foundations which have been established to meet needs in the general interest provided that these needs are not of an industrial or commercial nature and

1. their capital has in the main been supplied by the state, a local authority, a county council or some other contracting entity, or
2. their procurement is subject to the supervision of the state or a local authority, or another contracting entity, or
3. which have a board of which more than half of the members have been appointed by the state, a local authority, a county council or another contracting entity. Act (1999:309).

Advertising

7 § A contracting entity shall advertise procurements unless otherwise provided in Chapters 2 - 5.

7 a § In restricted procedures as laid down in Chapters 2, 3 or 5, a contracting entity may in its contract notice specify the number of suppliers it intends to invite to tender. In determining this number the nature of the procurement is to be taken into account and it must be large enough to ensure effective competition. It must amount to at least five and may total a maximum of 20. Act (1997:1068).

8 § A contract notice shall be sent in the fastest appropriate manner to the Office for Official Publications of the European Communities. If procurement is to take place in accordance with the provisions for accelerated procedure the notice shall be sent by telex, telegram or telefax.

This notice shall contain the date of dispatch. The contracting entity must be able to show proof of the date on which the notice was dispatched. Act (1997:1068).

9 § A contract notice of the kind set forth in Article 8 shall be written in one of the official languages of the European Communities.

In award procedures in accordance with Chapters 2, 3 or 5, this notice may not exceed one page of the Official Journal of the European Communities. Act (1997:1068).

10 § A contract notice of the kind set forth in Article 8 shall not be published before the day on which it is sent to the Office for Official Publications of the European Communities. The contract notice shall not contain any information other than that to be published in the Official Journal of the European Communities.

11 § An entity that has awarded a public contract in accordance with the provisions in Chapters 2, 3, or 5 shall within 48 days send a notice to the Office for Official Publications of the European Communities about the way in which the procurement has been concluded. The notice shall not contain information which, if published, would conflict with any public interest or be prejudicial to justifiable commercial or competitive considerations.

The entity shall also draw up a report on the completed procurement. This report shall be submitted to the European Commission should it so request. This report shall contain information about

1. the name and address of the entity and the subject and value of the procurement,
2. the names of tenderers or candidates who qualified to participate in the tendering and the reason for their selection,
3. the names of tenderers or candidates who were unsuccessful and the reason for this,
4. the name of the supplier who was awarded the contract, the reason why and, where appropriate, what proportion of the procurement the supplier intends to assign to a third party, and

5. in the case of negotiated procedure (förhandlad upphandling) the reason for the choice of this procedure. Act (197:1068).

References to technical specifications etc.

12 § If the contract documents contain technical specifications of the subject of the procurement, these specifications shall be drawn up with reference to

1. Swedish standards that correspond to European technical specifications,
2. European technical certification of the suitability of a product issued by an agency approved by the EEA countries, or
3. technical specifications laid down in accordance with a procedure approved by the EEA countries and that have been published in the Official Journal of the European Communities.

The contracting authority may refer to criteria for eco-labels if the criteria of the label have been drawn up on the basis of scientific information. Act (2002:594)

The preceding paragraph does not apply if any other statute contains different provisions and these comply with Community law. Act (1997:1068).

13 § In procurement in accordance with Chapters 2, 3, and 5 a contracting entity may formulate the technical requirements in some other way than laid down in Article 12 if

1. the European technical specifications do not describe how compliance with them can be ascertained, or it is impossible to ascertain satisfactorily whether the object of the procurement complies with European technical specifications,
2. application of European technical specifications as laid down in Article 12 would render it impossible for the contracting entity to procure equipment etc. that was technically compatible with equipment already being used by the entity or would result in unreasonable costs or unreasonable technical difficulties, this however only on condition that the contracting entity has decided as one stage of a clear, defined and recorded strategy to change over to equipment that does correspond to such specifications,
3. the object of the procurement is of such an innovative nature that current standards or European technical specifications cannot be applied, or
4. specific technical requirements have been stipulated and these comply with Community law. (1997:1068)

14 § In procurement in accordance with Chapters 2, 3, and 5, a contracting entity, which applies the provisions of Article 13 shall furnish reasons for its decision to do so in writing. If possible, this is to be included in its contract notice in the Official Journal of the European Communities or in the contract documents. In addition, the contracting entity is to submit its reasons for its decision to the EEA countries and the European Commission, if so requested. Act (1997:1068)

15 § If the European technical specifications prescribed in subsections 2 and 3 of the first paragraph of Article 12 do not exist, the following is to apply to procurements in accordance with Chapters 2, 3, and 5.

The technical specifications shall be drawn up with reference to the national technical specifications compatible with the Act (1994:847) on Technical Requirements for Construction Works etc. or otherwise with community law.

If the preceding paragraph cannot be applied, technical specifications may be drawn up through reference to

1. national technical specifications concerning construction, methods of calculation, execution of the work and use of materials, or
2. other documents, if possible to Swedish standards that agree with international standards or to other Swedish standards. Act (1997:1068).

16 § Neither in the contract documents nor in any other basis for procurement may the technical specification of the subject of the procurement refer to any particular product or service in such a way that a specific undertaking is favoured or discriminated. Such reference may, however, be made if this is justifiable with regard to the subject of the procurement.

The contracting entity may refer to a specific brand or manufacture or origin if there is no other way in which the subject of the procurement can be described with sufficient accuracy or comprehensibility. This reference shall be followed by the wording "or the equivalent". Act (1997:1068).

Invitations to tender in restricted or negotiated procedures (selektiv eller förhandlad upphandling)

16 a § In restricted or negotiated procedures (selektiv eller förhandlad upphandling), in addition to the provisions of Article 14 of Chapter 2, Article 19 of Chapter 3, Article 20 of Chapter 4 and Article 21 of Chapter 5, the invitation to tender shall contain information about

1. the address from which additional documents can be ordered, the last day on which such an order may be placed and, if a fee is payable, the amount and conditions of payment,
2. the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up,
3. the notices in which the procurement has been announced,
4. any documents that must accompany the tender,
5. the criteria for the award of the contract, if these are not given in the notice,

6. other special conditions that apply in order to be allowed to participate. Act (1997:1068).

16 b § In restricted or negotiated procedures (selektiv eller förhandlad upphandling) the contracting entity shall in selecting the suppliers that it intends to invite to tender take into account the information about the supplier that is required in Articles 17 and 18. Act (1997:1068).

16 c § In procurement according to Chapters 2 or 5, the contracting entity may only require the information about a supplier laid down in Articles 17 and 18 and that is required in view of the subject of the procurement. The entity is to consider the supplier's justified interest in ensuring the non-disclosure of business secrets or technical secrets. Act (1998:1432).

Requirements that may be made of suppliers

17 § A supplier may be excluded from participation in an award procedure if he

1. is bankrupt or is being wound up, his affairs are being administered by the court, he has entered into an arrangement with his creditors, he has suspended payments, or he is subject to an injunction against carrying on business,
2. is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or for an arrangement with creditors or similar proceedings,
3. has been convicted of an offence concerning his professional conduct by a judgement which has the force of res judicata,
4. has been guilty of grave professional misconduct and the contracting entity can furnish proof this circumstance,
5. has not fulfilled obligations relating to the payment of social insurance fees or taxes in the country in which he is established or the country in which procurement takes place, or
6. has in some material respect failed to furnish required information or furnished incorrect information requested by virtue of this Article or Article 18.

A contracting entity may request a supplier to show that there are no grounds for excluding him by virtue of subsections 1-3 or 5 of the preceding paragraph.

An entity may also require a supplier to show that he is registered in the country in which he is trading according to the country's regulations about company registration, registers of traders or similar registers. Act (1997:1068).

18 § A supplier can prove that he fulfils the requirements laid down on the basis of Article 17 with appropriate documents. If special grounds exist, documentary proof may be replaced by a sworn statement or some similar assurance.

In its contract notice or in invitations to tender, the contracting entity must indicate what proof is required of the supplier's financial and economic circumstances and his technical abilities and capacity.

A supplier that is registered in the official list of approved suppliers in an EEA country is to be considered as fulfilling the demands that may be made by virtue of subsections 1-3 in the first paragraph of Article 17. Act (1997:1068).

18 a § In the contract documents the contracting entity may require the tenderer to declare in his tender what sections of the public contract he intends to sub-contract. Act (1997:1068).

Special conditions

18 b § Contracting authorities may lay down special conditions relating to the performance of a contract. Such conditions shall be indicated in the contract notice. Act (2002:594)

Formal requirements for tenders and applications to participate in tendering

19 § Tenders and applications to participate in tendering shall be submitted in writing, unless otherwise provided in the second and third paragraphs below.

A contracting entity may allow a tender to be submitted by electronic transmission or in some other way provided that it can be ensured that the contents of the tender will not be disclosed before it is opened as laid down in Article 20. The entity may require that a tender of this kind be confirmed immediately. Confirmation shall be given in writing or, should the entity so allow, in some other manner.

Applications to submit a tender may be made verbally, by electronic transmission or in some other way if they are confirmed in writing. An entity may allow such confirmation to be delivered in some other manner. Confirmation is to be given immediately or, in certain cases as set forth in Chapters 2-5, within such time limits as are stipulated there

The entity shall in its contract notice or the contract documents indicate how the tender and applications to tender are to be submitted. Act (2000:877).

19 a § The tender is binding for the tenderer even though he received the information set forth in Article 28. Act (2002:594)

The receipt and opening of tenders

20 § Envelopes containing tenders are to be opened as soon as possible after the final date for receipt of tenders in the presence of at least two individuals appointed by the contracting entity. A written record of tenders shall be drawn up, and the accuracy of this record shall be confirmed by those participating in the opening. Should a tenderer so request, an individual appointed by a Chamber of Commerce shall also be present, the cost to be defrayed by the tenderer making the request.

When negotiated procedures (förhandlad upphandling) are used, the tenders may be opened and recorded without the formalities enjoined in the preceding paragraph. The tenders shall be opened simultaneously or, if there are particular grounds for doing so, one by one as they are received.

20 a § In procurement in accordance with Chapters 2, 3 or 5, before evaluating the tenders the contracting entity shall examine whether the tenderers or candidates fulfil the requirements imposed upon the suppliers. Act (1997:1068).

21 § A contracting entity may permit a tenderer or a candidate to correct an obvious typographical or arithmetical error or some other obvious error in a tender or an application to participate in tendering.

The entity may also request clarification or amplification of a tender, if this can take place without risk of preferential treatment or limitation of competition.

The entity may also request clarification or amplification of a certificate, written proof or other documentation that has been submitted as laid down in Articles 17 and 18. Act (1998:1432).

Evaluation of tenders

22 § A contracting entity shall accept either

1. the tender which is economically most advantageous, or
2. the tender which has the lowest tendered value.

In assessing which tender is the most economically advantageous, the entity is to make an overall assessment including considerations such as cost, delivery date, running costs, quality, aesthetic values, performance, technical features, service, technical support, environmental impact etc. In its contract documents or in the contract notice the entity shall state to which considerations weight will be attached. If possible, these considerations should be ranked in order of importance, with the most important first. Act (1997:1068).

23 § An entity may refuse tenders that it considers abnormally low, but not, however, before the entity has sent a written request for explanation of the low tender value without receiving a satisfactory answer. Consideration may only be paid to explanations that are acceptable on objective grounds, such as the cost of manufacture or execution, technical solutions, and the originality of the tenderer's proposal.

If in award procedures as laid down in Chapters 2, 3 or 5, a contracting entity has indicated in its contract documents that it will accept the tender with the lowest tender value but then rejects a tender on the grounds that it is assessed as being abnormally low, it shall submit a report on its decision to the European Commission. Act (1997:1068).

23 a § Groups of suppliers are entitled to submit tenders and negotiate. The contracting entity may not prescribe that such groups must adopt a specified legal form in order to be allowed to tender or to negotiate. The entity may, however, prescribe that the

designated group shall take a certain legal form when it has been awarded the contract, if this is required to enable the contract to be discharged correctly. Act (1995:704).

Variants.

23 b § If a contracting entity is to accept the economically most favourable tender, it may also evaluate a tender that involves a variant execution, if this fulfils the minimum demands made by the entity. These demands shall have been specified in the contract documents.

If the entity does not intend to evaluate tenders involving variants, this must be stated in its contract notice.

An execution that is a variant in relation to the specification of demands in the contract documents may not be rejected solely on the grounds that it is formulated according to European technical specifications or according to a Swedish standard that on the whole corresponds to accepted European technical specifications. Act (1997:1068).

Archiving documents

24 § A contracting entity shall archive tenders and applications to tender with their accompanying descriptions, models and drawings in a satisfactory manner, and also records of tenders, summaries and the like.

Special responsibilities for contracting entities

25 § If one or more contracting entities contribute more than half of the value of a public works contract concerning activities pertaining to group 502 in Section C of the Annex to this act, or concerning the construction of hospitals, sports or recreational facilities, premises for schools or universities or public administration buildings and for which the contract is to be awarded by some other body, the entity shall ensure observance of the provisions in Chapters 3 and 5 in awarding the contract. Act (1997:1068).

The provision of information for statistical purposes

26 § The requirement for commercial undertakings, local authorities and others to provide information concerning public procurement for statistical purposes is one of the provisions of the Act (1992:889) on Official Statistics. Act (1994:614).

Information

27 § In procurements according to Chapters 2, 3 or 5, a contracting entity shall inform the candidate or tenderer so requesting of the reasons for the rejection of his application or tender.

Information according to the first paragraph shall be given within 15 days from the receipt of the request. Act (2002:594)

28 § When the decision concerning supplier and tender is made the contracting authority shall inform every candidate or tenderer of the decision and the reasons for the decision. .

Such information shall be given immediately or as soon as possible to the supplier who so requests. Act (2002:594)

29 § If a contracting entity, in procurements according to Chapters 2, 3 and 5, decides not to conclude an advertised procurement or to recommence the procedure, the entity shall provide tenderers or candidates so requesting with the reasons for its decision. The entity shall inform the Office for Official Publications of the European Communities of its decision. Act (2002:594)

Chapter 2. Public supply contracts Threshold values etc.

1 § The provisions of this chapter apply to procurement of supplies by a contracting entity that are estimated to total at least the amounts, net of VAT, set forth in the following paragraph (threshold value).

For government agencies the threshold value is 130 000 special drawing rights (sdr). For other contracting entities the threshold value is € 200 000 or 200 000 sdr, whichever is lower. Act (2000:877).

2 § The provisions of this chapter shall not apply to procurement specified in Chapter 4.

3 § For public supply contracts that involve leasing, rental and hire-purchase and which have a fixed term of no more than twelve months, the value will be assessed as the value of the contract during the contract period. For public supply contracts for a longer period, the value shall be calculated as the total value with the addition of the estimated residual value of the supplies. For public supply contracts that apply for an indefinite period, the estimated contract value shall be calculated on the value of each monthly instalment multiplied by 48.

For public contracts that are awarded regularly or which are to be renewed within a specified period, the value shall be calculated either as

1. the aggregate value of similar contracts concluded during the previous fiscal year or the preceding twelve-month period, where possible adjusted with regard to the foreseeable changes in quantities or values during the twelve-month period following the original contract, or

2. the aggregate value of the public contracts that will be awarded during the twelve-month period following the first contract or, if the contract period is longer than twelve months, during the whole period of the contract. No method of calculation may be chosen in order to avoid the provisions of this chapter.

Option and extension clauses are to be treated as if they were taken up. Act (1997:1068).

4 § No contract for a given quantity of supplies may be split up with the intention of avoiding application of the threshold value.

5 § Several procurements of supplies of the same type that are to be made at the same time are to be regarded as one single procurement in the application of Article 1. If the threshold value is exceeded, each individual procurement shall be carried out in accordance with the provisions of this chapter.

Advertising

6 § A contracting entity shall as early as possible during the fiscal year publish indicative notices of the public supply contracts as laid down in Articles 1-5 of over € 750 000 planned by the entity for the fiscal year in each product area. Indicative notices are subject to the provisions of Articles 8 - 10 of Chapter 1. Act (2000:877).

7 § A contracting entity shall advertise its procurements unless otherwise provided in the second paragraph of Article 10 or Article 11.

7 a § Has been rescinded by enactment (2002:594).

Selection of award procedure

8 § Open or restricted procedures (öppen eller selektiv upphandling) shall be adopted unless otherwise provided in Articles 10 or 11. Act (1995:704).

9 § Has been rescinded by enactment (1997:1068).

10 § Negotiated procedures (förhandlad upphandling) may, provided that the contractual conditions originally laid down in the contract documents are not substantially altered, be used when the tenders submitted in either open or restricted procedures (öppen eller selektiv upphandling) do not correspond to the specifications for the subject of the procurement laid down in the contract documents.

If the negotiated procedure (förhandlad upphandling) undertaken in accordance with the preceding paragraph does not include all the correctly submitted tenders from tenderers that fulfil the requirements imposed on suppliers in the preceding award procedure, the contracting entity shall publish notification of the negotiated procedure (förhandlad upphandling). Act (1996:433).

11 § Negotiated procedure (förhandlad upphandling) may be adopted without prior publication of a contract notice if

1. in open or restricted procedures (öppen eller selektiv upphandling) no tenders or no appropriate tenders were submitted, provided that the contractual terms originally laid down in the contract documents have not been substantially altered and that a report is forwarded to the European Commission,

2. the supplies are produced solely for research, development, experiments or studies, provided that this production is not carried on for profit or in order to defray the costs of research and development,

3. the supplies, for technical or artistic reasons, or because of exclusive rights, can only be manufactured or delivered by a particular supplier,

4. it is necessary to carry out procurement with extreme urgency for reasons occasioned by unforeseeable circumstances not attributable to the contracting entity which make it impossible to meet the time limits laid down for open or restricted procedures,

5. the supplies concerned are additional deliveries from an original supplier intended either as partial replacement of or an extension of previous supplies and a change of supplier would oblige the entity to acquire materials which would be technically incompatible with those previously acquired or give rise to disproportionate technical difficulties in operation and maintenance.

Additional supplies as specified in subsection 5 of the preceding paragraph may only concern a period exceeding three years if special reasons exist. Act (1997:1068).

11 a § If a contracting entity chooses a negotiated procedure (förhandlad upphandling) with prior publication of a contract notice, the number of tenderers shall be no fewer than three, provided that an adequate number of suitable tenderers exist. Act (1995:704).

12 § Has been rescinded by enactment (1995:704).

Time limits

13 § In open procedures the date of receipt of tenders shall be at least 52 days from the date of dispatch of the contract notice.

If the contracting entity has issued an indicative notice in accordance with the provisions applying to such notices, the time set forth in the preceding paragraph may be reduced to another period which is long enough to allow those interested in doing so to submit a tender. The reduced period should be at least 36 days from the date of dispatch of the notice referred to in the preceding paragraph and may never be shorter than 22 days. The period may, however, only be reduced if

1. the indicative notice contained all the information available at the time it was issued and which is stipulated in the special regulations on notification of open procedures, and

2. at least 52 days and no more than 12 months have elapsed from the date of dispatch of the indicative notice.

A contracting entity shall provide contract documents when requested by a supplier within six days of receipt of the request, if this has been submitted within reasonable time. Supplementary information shall be provided no later than six days before final date for submission of tenders, if this has been requested within reasonable time.

Regulations on the extension of time limits can be found in Article 16. Act (1998:1432).

14 § In restricted and negotiated procedures (selektiv och förhandlad upphandling) the time limit for receipt of applications to participate shall be at least 37 days from the date of dispatch of the contract notice. The contracting entity shall send simultaneously to all selected participants a written invitation to submit a tender together with the contract documents.

In restricted procedures the date for receipt of tenders shall be at least 40 days from the dispatch of the invitation to participants.

If the contracting entity has issued a pre-information notice in accordance with the provisions applying to such notices, the time set forth in the preceding paragraph may be reduced to 26 days from the date of dispatch of the invitation. This period may, however, only be reduced if

1. the pre-information notice contained all the information available at the time it was issued and which is stipulated in the special regulations on notification of restricted procedures, and
2. at least 52 days and no more than 12 months have elapsed from the date of dispatch of the pre-information notice.

Supplementary information shall be provided no later than six days before final date for submission of tenders, if this has been requested within reasonable time.

Regulations on the extension of time limits for restricted procedures can be found in the second paragraph of Article 16. Act (1998:1432).

15 § If the time limits laid down in Article 14 cannot be applied because of urgency, they may be shortened, the time limit laid down in the first paragraph of Article 14 to 15 days, the time limit in the second paragraph of Article 14 to 10 days, and the limit laid down in the third paragraph of Article 14 to four days (accelerated procedure). Act (1998:1432).

16 § If the contract documents are too bulky to be sent to the tenderers or candidates within the time limits set forth in the third paragraph of Article 13, the time limits laid down in the first paragraph and second sentence of the second paragraph of Article 13 are to be extended by some reasonable period.

If tendering for an open or restricted procedure must be preceded by inspection, either on site or at the contracting entity, the time limits laid down in the first paragraph and second sentence of the second paragraph of Article 13 or in the second paragraph and first sentence of the third paragraph of Article 14 are to be extended by some reasonable period.

17 § When accelerated procedure is used, both the applications from candidates and invitations to tender shall be dispatched by the fastest possible method. If an application shall be confirmed as laid down in the third paragraph of Article 19 of Chapter 1, this confirmation shall be sent before the expiry of the time limit set forth in Article 15. Act (2000:877).

18 § A contracting entity that permits variants in accordance with Article 23 b of Chapter 1 may not reject a tender on the grounds that the tender if accepted would result in a public service contract instead of a public supply contract. Act (1997:1068).

19 § If a contracting entity grants some body that is not a contracting entity special licence to carry on activities in the public interest, this licence is to specify that the principle of non-discrimination on the grounds of nationality is to be observed when the licence-holder awards a supply contract for the activities set forth in the licence. Act (1998:1432).

Chapter 3 Procurement of public works contracts

Threshold values etc.

1 § The provisions of this chapter shall apply to the award of public works contracts or public works concessions which amount to whichever is the lower of € 5 000 000 or 5 000 000 special drawing rights, net of VAT. Act (2000:877).

2 § If a public works contract is divided up into several smaller lots, each of these lots is to be included when calculating the value of the contract. For lots of less than € 1 000 000, however, the other provisions in this Chapter apart from those in this paragraph need not be applied, provided that the aggregate value of excluded lots does not exceed 20 per cent of the total value of the contract.

No procurement may be split up with the intention of avoiding application of the threshold value. Act (2000:877).

3 § Has been rescinded by enactment (1997:1068).

4 § In estimating the value of a contract, contracting entities shall include the value of any supplies or services necessary for the execution of the contracts which they make available to the contractor.

5 § The provisions of this chapter are not to be applied to award procedures set forth in chapter 4.

Public works concessions

6 § A contracting entity may in its contract documents stipulate that those applying for the public works concession shall entrust at least 30 per cent of the value of the public works concession to a third party, with an option for the applicant for the public works concession to increase this minimum proportion. The minimum proportion shall be indicated in the public contract.

If the entity did not stipulate the proportion to be entrusted to a third party as laid down in the preceding paragraph, it may require the applicant for the public works concession to state in his tender what proportion of the total value of the public works concession he intends to assign to third parties. Act (1997:1068).

7 § If the body granted the public works concession is a contracting entity, the provisions contained in this chapter are to be observed in this entity's own procurement.

If the body granted the public works concession is not a contracting entity, the contract shall contain special conditions regarding the allocation of any part of the contract to a third party for which the value exceeds the threshold value set forth in Article 1. These conditions shall involve compliance with the provisions of this act on public notification and the time limits set forth in the second paragraph of Article 23. Public notification is not, however, required for procurements that meet the conditions set forth for negotiated procedures (förhandlad upphandling) without prior publication of a contract notice.

The provisions in Article 11 of Chapter 1 on notification of the conclusion of a procurement do not apply to public works concessions. Act (1997:1068).

8 § If several undertakings form a group in order to acquire a public works concession, no single one of them shall be regarded as a third party. This is also to apply to undertakings affiliated to them.

The term "affiliated undertakings" is used to designate every undertaking over which the proprietor of the public works concession can exert dominant influence, every undertaking which can exert dominant influence over the proprietor of the public works concession, and every undertaking which together with the proprietor of the public works concession is subject to the dominant influence of some other undertaking because of ownership or financial participation or because of the regulations governing the undertaking. An undertaking shall be regarded as having dominant influence when it, either directly or indirectly, owns in relation to another undertaking a major part of the subscribed capital, or controls the majority of votes attached to shares or the equivalent, or is able to appoint more than half the number of representatives in the undertaking's administrative, managerial or supervisory bodies.

A list of undertakings shall be attached to the application for the public works concession. This list is to be updated as soon the circumstances change. Act (1997:1068).

Advertising etc.

9 § A contracting entity shall as soon as possible advertise planned procurements above the threshold value together with their essential characteristics and extent in an indicative notice. Indicative notices are subject to the provisions of Articles 8 - 10 of Chapter 1. Act (1997:1068).

10 § A contracting entity shall advertise its procurements unless otherwise provided in Articles 15 or 17.

11 § Has been rescinded by enactment (2002:594).

Selection of award procedure

12 § Open or restricted procedure (öppen eller selektiv upphandling) shall be utilised unless otherwise provided in Articles 14 or 15.

13 § Has been rescinded by enactment (1997:1068).

14 § Negotiated procedures (förhandlad upphandling) with prior publication of a contract notice may be used if

1. the project is to be undertaken solely for research, development, or experiment provided that this is not for profit or in order to defray the costs of research and development,

2. in special cases the nature of the undertaking and the risks connected with it do not permit prior estimation of costs.

15 § Negotiated procedure (förhandlad upphandling) may be used without prior publication of a contract notice if

1. the work, for technical or artistic reasons, or because of exclusive rights, can only be undertaken by a particular supplier,

2. it is strictly necessary to carry out procurement with extreme urgency for reasons occasioned by unforeseeable circumstances and that cannot be attributed to the contracting entity which make it impossible to meet the time limits for open, restricted or negotiated procedures (öppen, selektiv eller förhandlad upphandling) as laid down in Article 14,

3. the procurement concerns additional work by the original supplier which was not included in the previous project or the previous award procedures, but which because of unforeseen circumstances has become necessary for the execution of the undertaking, provided that the additional work cannot be held separate from the original public contract without technical or financial inconvenience, or that the additional work is strictly necessary for the completion of the public works contract,

4. the procurement concerns new work which consists merely of a repetition of the work which formed part of a project which has previously been the subject of open or restricted procedures (öppen eller selektiv upphandling) and the work is entrusted to the supplier previously awarded the public contract, if this new work is commissioned within three years of the date of entry into the previous contract, the value of the new work has been included in estimating the threshold value, and notification was published in connection with the original project.

The provisions in subsection 3 of the preceding paragraph are only to apply if the value of the additional work does not exceed half of the value of the original public contract. Act (1997:1068).

16 § If a contracting entity chooses negotiated procedures (förhandlad upphandling) with prior publication of a contract notice the number of tenderers shall be

no fewer than three, provided that a sufficient number of suitable tenderers exist. Act (1995:704).

17 § A contracting entity may, provided that the contractual conditions originally laid down in the contract documents are not substantially altered, use negotiated procedures (förhandlad upphandling) if

1. the tenders submitted in either open or restricted procedures (öppen eller selektiv upphandling) do not correspond to the specification of the subject of the procurement laid down in the contract documents,

2. in open or restricted procedures (öppen eller selektiv upphandling) no tenders or no suitable tenders were submitted and a report is forwarded to the European Commission if it so requests.

If the negotiated procedure (förhandlad upphandling) undertaken in accordance with subsection 1 above does not include all correctly submitted tenders from tenderers who fulfil the requirements imposed on suppliers in the previous award procedure, the contracting entity is to publish notification of the negotiated procedure (förhandlad upphandling). Act (1997:1068).

Time limits

18 § In open procedures (öppen förhandling) the date of receipt of tenders shall be at least 52 days from the date of dispatch of the contract notice.

If the contracting entity has issued an indicative notice in accordance with the provisions applying to such notices, the time set forth in the preceding paragraph may be reduced to another period which is long enough to allow those interested in doing so to submit a tender. The reduced period should be at least 36 days from the date of dispatch of the notice referred to in the preceding paragraph and may never be shorter than 22 days. The period may, however, only be reduced if

1. the indicative notice contained all the information available at the time of publication and which is stipulated in the special regulations on notification of open procedures, and

2. at least 52 days and no more than 12 months have elapsed from the date of dispatch of the indicative notice .

A contracting entity shall provide contract documents when requested by a supplier within six days of receipt of the request, if this has been submitted within reasonable time. Supplementary information shall be provided no later than six days before final date for submission of tenders, if this has been requested within reasonable time.

Regulations on the extension of time limits can be found in Article 21. Act (1998:1432).

19 § In restricted and negotiated procedures (selektiv och förhandlad upphandling) the time limit for receipt of applications to participate shall be at least 37 days from the date of dispatch of the contract notice.

In restricted procedures the date for receipt of tenders shall be at least 40 days from the dispatch of the invitation to participants.

If the contracting entity has issued a prior indicative notice in accordance with the provisions applying to such notices, the time set forth in the preceding paragraph may be reduced to 26 days from the date of dispatch of the invitation. This period may, however, only be reduced if

1. the indicative notice contained all the information available at the time it was published and which is stipulated in the special regulations on notification of restricted procedures (selektiv upphandling), and
2. at least 52 days and no more than 12 months have elapsed from the date of dispatch of the indicative notice .

Supplementary information shall be provided no later than six days before final date for submission of tenders, if this has been requested within reasonable time.

Regulations on the extension of time limits for restricted procedures (selektiv upphandling) can be found in the second paragraph of Article 21. Act (1998:1432).

20 § If the time limits laid down in Article 19 cannot be applied because of urgency, they may be shortened, the time limit laid down in the first paragraph of Article 19 to 15 days, the time limit in the second paragraph and the first sentence of the third paragraph of Article 19 to 10 days, and the limit laid down in the fourth paragraph of Article 19 to four days (accelerated procedure). Act (1998:1432).

21 § If the contract documents are too bulky to be sent to the tenderers or candidates within the time limits set forth in the third paragraph of Article 18, the time limits laid down in the first paragraph and second sentence of the second paragraph of Article 18 are to be extended by some reasonable period.

If tendering in an open or restricted procedure (öppen eller selektiv upphandling) must be preceded by inspection, either on site or at the contracting entity, the time limits laid down in the first paragraph and second sentence of the second paragraph of Article 18 or in the second paragraph and first sentence of the third paragraph of Article 19 are to be extended by some reasonable period. Act (1998:1432).

22 § When accelerated procedure is used, both the applications from candidates and invitations to tender shall be dispatched by the fastest possible method. If an application shall be confirmed as laid down in the third paragraph of Article 19 of Chapter 1, this confirmation shall be sent before the expiry of the time limit set forth in Article 20. Act (2000:877).

Special time limits for public works concessions

23 § In award procedures concerning public works concessions the date of receipt of applications to tender for the concession shall be at least 52 days from the date of dispatch of notification of the public works concession.

If a public contract is to be awarded by a concessionaire that is not a contracting entity the following is to apply. The date of receipt of application to submit a tender shall be at least 37 days from the date of dispatch of the notification of the procurement. The date of receipt of tenders shall be at least 40 days from the date of dispatch of the notification or of the dispatch of the invitation to tender to the participants. Act (1997:1068).

Information about working conditions etc.

24 § A contracting entity may in its contract documents provide information about the authorities that are able to provide tenderers with information about the conditions applying to employment protection provisions and working conditions for public works contracts. The entity may also be required by an EEA country to provide such information.

If an entity provides information as set forth in the preceding paragraph, it shall require tenderers to confirm that the conditions applying to employment protection provisions and working conditions have been taken into account in drawing up the tender. Act (1997:1068).

Chapter 4 Procurement in the water, energy, transport and telecommunication sectors.

Areas of application

1 § The provisions in this chapter are to apply to procurement by a contracting entity for activities undertaken by the entity which consist of

1. the operation or provision of a fixed network intended to provide a service to the public in connection with the production, transport, distribution or provision of drinking water, electricity, gas or heat, or the supply of such utilities to fixed networks,
2. the exploitation of areas of land or water for prospecting for or extracting oil, gas, coal or other solid fuels or for the provision of terminals, airports or harbour facilities,
3. the operation of networks in order to provide a service to the public in the field of transport by railway, tramway, underground railway, bus, trolley bus or cable,
4. the operation or provision of public telecommunications networks or the provision of one or several public telecommunications services.

In applying these provisions the term "contracting entity" shall include

1. undertakings over which the State, local authorities, county councils, or another contracting entity may exercise either directly or indirectly a dominant influence as set forth in the second paragraph of Article 8 of Chapter 3, and

2. undertakings which conduct the activities set forth in the first paragraph of this Article by virtue of a special permit granted by an authority which means the right to conduct these activities is restricted to one or several undertakings.

In applying the provisions of this chapter the term "special permit" is to include both cases in which an undertaking may in order to provide a network or some other arrangement as laid down in the first paragraph of this Article exploit the right to expropriation or the use of property or may position network equipment on, below or above a public highway, and also cases in which an undertaking conducts activities as laid down in subsection 1 of the first paragraph of this Article and supplies drinking water, electricity, gas or heat to a network managed by an undertaking that has a special permit from an authority.

For the procurement of services for the activities set forth in the first paragraph of this Article, in addition to the provisions of this chapter the provisions referred to in Article 1 of Chapter 5 also apply. Act (1999:309).

2 § A contracting entity whose operations are carried out to supply drinking water shall apply the provisions of this chapter not only in procurement for that activity but also in procurement carried out by the entity for hydraulic engineering projects, irrigation and drainage if at least 20 per cent of the volume of water made available by these projects consists of drinking water or if they are undertaken in connection with the disposal or treatment of sewage.

3 § A contracting entity is not obliged to comply with the provisions in this chapter for procurement within Sweden for operations as set forth in subsections 1 - 4 of the first paragraph of Article 1 above to be carried on in a country outside the EEA, unless fixed networks or geographical areas within the EEA are to be used in these operations.

4 § The provisions of this chapter are not to be applied by a contracting entity in the procurement of bus transport services as laid down in subsection 3 of the first paragraph of Article 1 above, if other undertakings are also free to provide such services within the same geographical area under the same conditions.

Neither shall these provisions apply to a contracting entity providing services as laid down in subsection 4 of the first paragraph of Article 1 above, if the sole purpose of the procurement is to enable the entity to provide one or more telecommunications services and other undertakings are also free to provide the same services in the same geographical area under substantially the same conditions.

Neither shall these provisions apply to procurements concerning resale or hire, if the contracting entity does not have a special permit to sell or hire the subject of the procurement and other undertakings also have the right to sell or hire on substantially the same conditions as the contracting entity. Act (1998:1432).

4 a § The provisions of this chapter shall not apply to the procurement of services

1. made by a contracting entity from an affiliated undertaking, or

2. made by a joint-venture company formed by several contracting entities in order to carry on activities as laid down in the first paragraph of Article 1 from any of these entities or from an undertaking affiliated to any one of them.

With regard to the procurement of services from an affiliated undertaking the provisions of the first paragraph are only to apply if at least 80 per cent of that portion of the undertaking's average annual turnover during the three preceding years with regard to services within the EEA derives from the provision of services to undertakings that the first mentioned undertaking is affiliated to. If several undertakings that provide the same or similar services are affiliated to the contracting entity the average annual turnover is to be calculated jointly for these undertakings.

In assessing whether an undertaking is affiliated, the second paragraph of Article 8 of Chapter 3 is to apply. By affiliated undertaking is meant an undertaking whose annual accounts are consolidated with those of the contracting entity in accordance with the seventh Council Directive 83/349/EEC of 13 June 1983 on Consolidated Accounts. Act (1997:1068).

5 § A contracting entity covered by any of the exemptions in Article 3 or the second or third paragraphs of Article 4 shall, at its request, provide the European Commission with information about the exempted activities.

A contracting entity that invokes the exemption in Article 4 a shall, at the request of the European Commission, provide information about the name of the undertakings, the nature of the services and their value together with any evidence the European Commission should consider required to show that a relationship exists between the entity and the undertakings enabling application of Article 4 a. Act (1997:1068).

6 § The value of a procurement that involves both supplies and services shall be calculated on the aggregate value of these supplies and services. In these calculations the value of assembly and installation activities is to be included.

The value of supplies and services that are not required for the execution of a public works contract shall not be included in calculating the value of the contract should such a calculation result in the provisions of this chapter not being applied to a procurement of the supplies or the services. Act (1997:1068).

7 § The provisions of this chapter shall not apply in the procurement of

1. water, if the procurement is undertaken for activity as defined in subsection 1 of the first paragraph of Article 1 regarding drinking water, or

2. energy or fuel for the production of energy, if the procurement is undertaken for activities as specified in subsections 1 and 2 of the first paragraph of Article 1 regarding electricity, gas or heating or which concerns the exploitation of areas of land or water for prospecting for or extracting oil, etc.

7 a § The provisions of this chapter shall not apply to the supply of drinking water, electricity, gas or heating to fixed networks as laid down in subsection 1 of the first

paragraph of Article 1 from an undertaking of the kind set forth in the second paragraph of Article 1, if this undertaking

1. produces drinking water or electricity that is needed because its consumption is required for the conduct of some other activity than that referred to in subsection 1 of the first paragraph of Article 1, provided that the supply to the fixed network depends only on the contracting entity's own consumption and does not exceed 30 per cent of the total production of drinking water or electricity by the entity, calculated on the basis of the average for the three preceding years, or

2. produces gas or heating that is an inevitable consequence of the conduct of some other activity than that referred to in subsection 1 of the first paragraph of Article 1, provided that the supply to the fixed network is intended only to make economic use of this production and it amounts to no more than 20 per cent of the contracting entity's turnover, calculated on the basis of the average for the three preceding years. Act (1997:1068).

Threshold values etc.

8 § The provisions of this chapter shall apply to the award of public contracts of which the value, net of VAT, amounts to at least

1. € 400 000 and which concern supplies or services for activities specified in subsections 1 - 3 of the first paragraph of Article 1,

2. € 600 00 and which concern supplies or services for activities specified in subsection 4 of the first paragraph of Article 1,

3. € 5 000 000 and which concern public works contracts.

If the procurement of services takes place in the form of a design contest, the provisions of Article 29 of Chapter 5 are to apply to the contest provided that this both forms part of the procurement of services with a value of at least one of the values set forth in subsections 1 or 2 of the preceding paragraph, and is also being arranged for the activities specified there. The provisions of Article 29 of Chapter 4 shall also apply to all contests in which the total prize money amounts to the lowest amount specified. Act (2000:877).

8 a § If the value of supplies or services being procured amounts to at least 400 000 special drawing rights (sdr) net of VAT, or the procurement of a public works contract amounts to at least 5 000 000 sdr, net of VAT, and these values are below those specified in Article 8, procurement is to take place according to the provisions of this chapter. This applies if the procurement is taking place for activities that consist of

1. the operation or supply of a fixed network intended to serve the public with regard to the production, transport, distribution or provision of drinking water or electricity or the supply of such utilities to a fixed network,

2. the exploitation of areas of land or water for prospecting for or extracting oil, gas, coal or other solid fuels or for the provision of terminals, airports or harbour facilities,

3. the operation of networks in order to provide a local transport services to the public with the use of such means of transport as those set forth in subsection 3 of the first paragraph of Article 1.

The first paragraph above does not apply to contracting entities that are privately owned, nor to the procurement of services for research and development as set forth in group 8 of Section A in the Annex. Act (1996:433).

9 § In the award of public supply contracts that concern leasing, rental or hire purchase and which have a fixed term of twelve months or less, the value shall be assessed as the value of the contract for the contract period. For public contracts for a term exceeding twelve months, the value shall be calculated as the total value of the contract with the addition of the estimated residual value of the supplies. For public contracts which apply for an indefinite period the estimated contract value shall be calculated on the value of each monthly instalment multiplied by 48.

For public contracts concerning supplies or services that recur regularly or which are to be renewed within a specified period the value is to be calculated on the basis of

1. the total value of similar contracts that have been awarded during the preceding fiscal year or the preceding twelve-month period, adjusted if possible with regard to foreseeable changes in quantities or values during the twelve-month period subsequent to the original contract, or

2. the aggregate value of the public contracts to be awarded during the twelve-month period subsequent to the first contract or, if the contract period is longer than twelve months, for the entire contract period. The choice of calculation method may not be made to avoid the provisions of this chapter.

Option and extension clauses are to be treated as if they were taken up. Act (1997:1068).

10 § Several procurements of supplies of the same type which are to be made at the same time are to be regarded as only one procurement in the application of Article 8. If the threshold value is exceeded, each individual procurement is to be carried out in accordance with the provisions of this chapter.

The value of a framework agreement shall be calculated as the highest estimated value of all the suborders that can be foreseen for the period during which the agreement will remain in force. Act (1997:1068).

11 § If a contract is divided up into several smaller lots, each of these lots is to be included when calculating the value of the procurement.

For lots of less than € 1 000 000, however, concerning public works contracts the other provisions in this Chapter apart from those in this paragraph need not be applied, provided that the aggregate value of excluded lots does not exceed 20 per cent of the total value of the procurement. Act (2000:877).

12 § In estimating the value of a public works contract, the value of the material, equipment and services needed to carry out the work which are to be supplied by the contracting entity is to be taken into account.

13 § No contract may be split up with the intention of avoiding application of the threshold value set forth in subsections 1 - 3 of Article 8.

Advertising etc.

14 § For each fiscal year a contracting entity shall publish an indicative notice of the planned award of public supply and service contracts above the value of € 750 000 within each product area or category of service set forth in Section A of the Annex to this Act. Where the procurement of public works contracts is concerned the entity shall publish indicative notices for public contracts exceeding the threshold value specified in the first paragraph of subsection 3 of Article 8 planned by the entity, indicating their essential characteristics and extent. Indicative notices are subject to the provisions of Articles 8 - 10 of Chapter 1.

Invitations to submit tenders may be take the form of indicative notices in accordance with the provisions of Articles 8 - 10 of Chapter 1, provided that

1. the notice refers to the supplies, public works contract or services to be procured,
2. the notice states that procurement is to take the form of a restricted or negotiated procedure (selektiv eller förhandlad upphandling) with no further notification and that those interested in participating shall apply in writing,
3. before initiating procurement the contracting entity requests written confirmation from the interested applicants on the basis of more detailed information about the procurement, and
4. the publication of the notice took place no earlier than twelve months before dispatch by the entity of the request referred to in 3.

Where major projects are concerned, prior publication of a contract notice may be made without the repetition of information already included in previous indicative notices provided that it is clearly stated that the new notification contains additional information.

Invitations to submit tenders may take the form of publication, in accordance with Article 23, by the contracting entity of a contract notice stating that it is using a special system which it has established for the selection of participants. Act (2000:877).

15 § A contracting entity shall advertise its procurements unless otherwise provided by the second paragraph of Article 16.

A contracting entity which has concluded an award procedure shall, within 60 days, inform the European Commission of the way in which the procedure has been concluded. In doing so, the entity shall state whether it has rejected a tender by virtue of the provisions of the first paragraph of Article 23 of Chapter 1 or of Article 26 of this Chapter or applied the provisions of Article 15 a. The entity should also provide the information,

which, if published, would be prejudicial to justifiable commercial or competitive considerations.

A contracting entity that carries on activities of the kind set forth in subsections 1-3 of the first paragraph of Article 8 shall, if so requested in writing by a candidate or tenderer, provide information as soon as possible about the results of a procurement and the reasons for the rejection of an application or a tender. Act (2002:594)

References to technical specifications etc.

15 a § A contracting entity may formulate the technical specifications in some other way than stipulated in Article 12 of Chapter 1, if

1 it is technically impossible to establish satisfactorily whether the subject of the procurement corresponds to European technical specifications,

2. the application of European technical specifications of the kind set forth in Article 12 of Chapter 1 would not enable the contracting entity to procure equipment etc. that is technically compatible with equipment already being used by the entity or would lead to unreasonable costs or unreasonable technical difficulties, this, however, on condition that the entity has decided as one stage of a clear, defined and recorded strategy to change over to equipment that does correspond to such specifications.

3. the subject of the procurement is of such an innovative nature that the European technical specifications are not apposite,

4. special technical requirements have been laid down and these accord with community law, or

5. the European technical specifications are not appropriate for the subject of the procurement or do not take into account technical developments that have occurred since they were adopted.

A contracting entity that applies the provisions of subsection 5 of the preceding paragraph shall inform the appropriate standardisation agency or an agency that is empowered to review the specification of the entity's reason for considering the specification inappropriate. The entity shall also request review of the specification. Act (1997:1068).

15 b § If no European technical specifications exist, the technical specifications shall, as far as possible, refer to other standards that apply within the EEA.

The contracting entity shall set forth the additional requirements needed to supplement the European technical specifications or other standards. The entity shall give priority to standards that express performance requirements, on condition that it considers such standards to be appropriate. Act (1997:1068).

15 c § A contracting entity applying the provisions of Article 15 a shall in any contract notice published in accordance with Article 14 or the first paragraph of Article 15 provide its reasons for doing so. Act (1997:1068).

15 d § If requested, a contracting entity shall provide a supplier with the technical specifications regularly used in the entity's contracts for the procurement of supplies, public works contracts or services. This is also to apply to the specifications the entity intends to employ in procurements for which a prior indicative notice has been published as laid down in Article 14.

If these specifications have already been issued in documents that are available to the supplier, reference to these documents will suffice. Act (1997:1068).

Selection of award procedure

16 § Open, restricted or negotiated procedures (öppen, selektiv eller förhandlad upphandling) shall be used.

A contracting entity may refrain from public notification if

1. either no tenders or no suitable tenders were submitted in an advertised procurement, provided that the contract conditions originally laid down in the contract documents have not been substantially altered,

2. the subject of the procurement concerns research, development, or experiment provided that the procurement does not take place for profit or in order to defray the costs of research and development or to reduce the possibilities of competition in a subsequent procurement undertaken with such an intent,

3. the subject of the procurement can, for technical or artistic reasons, or because of exclusive rights, only be provided by a particular supplier,

4. it is necessary to carry out procurement with extreme urgency for reasons occasioned by unforeseeable circumstances not attributable to the contracting entity which make it impossible to meet the time limits laid down for open or restricted procedures (öppen eller selektiv upphandling).

5. the public supply contract concerns additional deliveries from an original supplier intended either as partial replacement of or an extension of previous supplies and a change of supplier would necessitate the acquisition of materials which would be technically incompatible with those previously acquired or give rise to disproportionate technical difficulties in operation and maintenance,

6. the contract concerns a public works contract or services that involve additional work or additional services by the original supplier which were not covered by the previous project or the previous award procedures, but which because of unforeseen circumstances have become necessary for the execution of the undertaking, provided that the additional work or additional services cannot be held separate from the original public contract without technical or financial inconvenience, or that the additional work is strictly necessary for the completion of the public works contract or the additional services are strictly necessary for the completion of the original services,

7. the procurement of a public works contract concerns new work which consists solely of a repetition of the work which formed part of a project which has previously been the

subject of open or restricted procedures and the work is entrusted to the supplier previously awarded the public contract, if the value of the new work has been included in estimating the threshold value, and notification was published in connection with the original project and included information that a negotiated procedure (förhandlad upphandling) could be adopted,

8. the procurement concerns supplies which are listed and bought and sold on a commodities market,

9. the procurement is a suborder within a valid framework agreement resulting from procurement conducted according to the provisions of this act,

10. an opportunity has presented itself of making a particularly advantageous purchase of supplies either by taking advantage of a temporary offer to buy at a price substantially below market value or by purchasing in connection with the termination by a supplier of his trading, or the winding-up or bankruptcy of his business, or his becoming the subject of similar judicial proceedings.

11. the procurement is by means of contest rules relating to a design contest and is to be awarded to the winner of the contest.

If the contest referred to in subsection 11 of the preceding paragraph concludes with the assessment of a jury that several executions could be considered, the negotiations are to apply to all of these entries. Act (1997:1068).

Time limits

17 § In open procedure (öppen upphandling) the date of receipt of the tender shall be at least 52 days from the date of dispatch of the contract notice.

If the contracting entity has issued a prior indicative notice in accordance with the regulations applying to such notices, this period may be shortened to another period which is long enough to enable those interested in doing so to submit tenders. The reduced period should be at least 36 days from the date of dispatch of the notice referred to in the preceding paragraph and may never be less than 22 days. The period may however only be reduced if

1. the indicative notice contained all the information available at the time it was issued and which is stipulated in the special regulations on notification of open procedures, and

2. at least 52 days and no more than 12 months have elapsed from the date of dispatch of the indicative notice . Act (1998:1432).

18 § If in restricted and negotiated procedures (selektiv och förhandlad upphandling) prior invitation to submit tenders has been published, the following provisions are to apply.

The time limit for receipt of applications to participate or response to a request for confirmation of interest in participation is, when possible, to be at least 37 days from the

date of dispatch of the contract notice for publication and may in no case be less than ten days from the date of publication of the contract notice.

A time limit other than that laid down in the second paragraph may be agreed with the selected candidates provided that each one has the same amount of time to submit the tender. If no such agreement can be reached, the contracting entity shall stipulate a time limit that should be at least 24 days from the date of the invitation to submit a tender and which may never be less than 10 days. In all circumstances the time limit must be so calculated that those interested will be able to penetrate the contract documents satisfactorily. Act (1998:1432).

19 § A contracting entity shall provide contract documents when requested by a supplier within six days of receipt of the request. Supplementary information shall be provided no later than six days before the final date for submission of tenders, if this has been requested within reasonable time. Act (1997:1068).

20 § In restricted and negotiated procedures (selektiv och förhandlad upphandling) the contracting entity shall send simultaneously to all selected participants a written invitation to submit a tender together with the contract documents. Act (1997:1068).

21 § If the contract documents are too bulky to be sent to the tenderers or candidates, or if tendering must for some other reason be preceded by inspection, either on site or at the contracting entity, the time limits laid down in Article 19 are to be extended accordingly

22 § Both the applications from candidates and invitations to tender shall be dispatched by the fastest possible method. If an application shall be confirmed as laid down in the third paragraph of Article 19 of Chapter 1, this confirmation shall be dispatched before the expiry of the time limits set forth in Article 18. Act (2000:877).

Selection of participants

22 a § A contracting entity shall select the suppliers to be allowed to participate in a restricted or negotiated procedure (selektiv eller förhandlad upphandling) according to regulations which are to be made available to suppliers who request to inspect them. The number of suppliers selected shall be large enough to ensure that competition can be achieved. Act (1997:1068).

Special system for the selection of participants

23 § A contracting entity may draw up and use a special system for the prior selection of suppliers permitted to participate in restricted or negotiated procedures (selektiv eller förhandlad upphandling). The entity shall establish rules for such selection. These rules are to be so formed that they guarantee that the same demands will be made of each supplier and that selection takes place with no reference to unwarranted considerations. The rules may if necessary be updated.

The rules shall be made available to suppliers who request to inspect them. If the rules are updated, the suppliers concerned shall be notified. If a contracting entity considers that a system established by other contracting entities in accordance with the preceding

paragraph meets the entity's requirements, it shall inform the suppliers concerned of the names of those entities.

A written record of selected suppliers shall be kept. Act (1997:1068).

24 § A contracting entity shall assess an application by a supplier to be included on its list of those selected in accordance with Article 23 within six months. Should the entity consider that assessment will take a longer period of time, the supplier shall, within not more than two months, be informed of this with the reason and shall also be informed of the day on which the decision will be made. No application may be refused on grounds other than those set forth in the rules specified in Article 23. A supplier whose application has been refused shall be informed of the decision and the reasons for refusal.

No supplier shall be removed from the list specified in Article 23 on grounds other than those set forth in the rules referred to within that Article. An entity which is considering removal of a supplier from such a list shall provide the supplier with written notification and the reasons justifying such action, before a final decision is made. The supplier is also to be informed of the final decision. Act (1997:1068).

25 § A contracting entity which establishes a special system in accordance with Article 23 shall publish a notice containing this information. This notice shall contain information about the purpose of the system and how the rules referred to in Article 23 may be obtained.

The notice shall be sent in a suitable manner to the Office for Official Publications of the European Communities and shall be written in one of the official languages of the European Communities. If the system is to apply for a period of more than three years, the notice shall be published each year. Act (1997:1068).

Rejecting tenders

26 § A tender that is abnormally low but which can be explained by the receipt of State aid by the tenderer may be rejected, if the tenderer, although requested to do so, has not provided proof that the European Commission has been informed of these subsidies as laid down in Article 93 (3) of the Treaty of Rome or that he has received the Commission's approval.

The right of a contracting entity also to reject abnormally low tenders in other cases is laid down in the first paragraph of Article 23 of Chapter 1. Act (1997:1068).

26 a § If a tenderer or candidate is trading in another EEA country in a form of company that is permitted in that country, his tender or application to tender may not be rejected solely on the grounds that Swedish law requires some other company form for the activities concerned. Act (1995:704).

Archiving information

27 § For each procurement a contracting entity shall archive information on

1. the grounds on which the entity bases the requirements made of the suppliers and the criteria for their selection,

2. the basis on which tenders are assessed,
3. the grounds for refraining from the issue of notification in accordance with the second paragraph of Article 16 in the form of reference to the points in that paragraph,
4. the grounds for applying Article 15 a,
5. the exceptions made as laid down in Article 5 of Chapter 4.

This information is to be archived for four years. Act (1997:1068).

The assessment of tenders in certain cases

28 § In the case of tenders that comprise supplies originating from a country outside the EEA (third country) the following is to apply unless otherwise provided by Article 29.

A contracting entity may reject a tender submitted for the procurement of supplies, if more than half of the total value comprises goods originating from a third country as laid down in the Regulation (EEC) No 802/68 of the Council of 27 June 1968 on the Common Definition of the Concept of the Origin of Goods.

If two or several tenders are equivalent in other respects when assessed in accordance with Article 22 of Chapter 1, preference is to be given to the tender that may not be rejected according to the preceding paragraph, if the difference in price does not exceed three per cent.

The preceding paragraph does not apply if the contracting entity would in consequence be obliged to acquire supplies with technical features that deviate from those previously acquired and which cannot therefore be used in existing equipment, would result in technical problems during operation and maintenance or occasion disproportionately high costs.

The term supply also refers to software for use in a public telecommunications network. Act (1997:1068).

29 § The provisions of Article 28 do not apply if, in accordance with a decision of the Council, the European Communities have concluded a multilateral or bilateral agreement with a third country that secures undertakings in the EU comparable and effective access to that country's market. The provisions of Article 28 do not apply either if anything else derives from other commitments that the EU or its Member States have made towards the country concerned. Act (1995:704).

Quality assurance etc.

30 § European standards for quality assurance shall be used when a contracting entity requires certification by an independent agency in the EEA to show that a service meets a quality assurance standard.

If no such certification can be provided within the stipulated time, the entity shall accept other proof that the service meets the standard laid down in the preceding paragraph. Act (1997:1068).

Information about working conditions etc.

31 § A contracting entity may in its contract documents provide information about the authorities that are able to provide tenderers with information about the conditions applying to employment protection provisions and working conditions for public works contracts. The entity may also be required by an EEA country to provide such information.

If an entity provides information as set forth in the preceding paragraph, it shall require tenderers to confirm that the conditions applying to employment protection provisions and working conditions have been taken into account in drawing up the tender. Act (1997:1068).

Chapter 5: Procurement of services

1 § The provisions of this chapter apply to the procurement of services of the kind set forth in Section A of the Annex to this act and which are not covered by the provisions of Chapters 2 and 3. However, in the case of procurement of services set forth in Section A of the Annex and carried out for activities referred to in the first paragraph of Article 1 of Chapter 4 only the second paragraph of this Article together with Article 2, the second paragraph of Article 3, the third paragraph of Article 4, the first paragraph of Article 5, and Articles 7, 9, 10 and 25 of this chapter are to apply. The provisions of Chapter 6 are to apply to the procurement of services set forth in Section B of the Annex to this Act.

The provisions of this chapter shall not apply to

1. the acquisition or rental in any form whatsoever of land, existing buildings, or any other immovable property, or the adjuncts of real estate or buildings or rights of the kind specified here,
2. the acquisition, development, production or co-production of material for programmes to be broadcast or of broadcasting time,
3. voice telephony, telex, radiotelephony, paging and satellite services,
4. arbitration and conciliation services,
5. financial services in connection with the issue or sale of securities or other financial instruments,
6. employment contracts,

7. research and development in cases other than those where the service is one solely concerning the conduct of the contracting entity's own affairs and is wholly remunerated by the contracting entity,

8. services relating to the administration of Sweden's national debt or services provided by the Bank of Sweden. Act (1998:1432).

2 § The provisions of this chapter shall not apply to the procurement of services from another contracting entity which by virtue of law or some other statutory provision compatible with the Treaty of Rome enjoys exclusive right to provide the service. Act (1997:1068).

3 § If a public contract is to be awarded for both supplies and services, the provisions of this chapter are to apply if the value of the services exceeds the value of the goods.

Procurement concerning services listed in both Section A and Section B of the Annex shall be regarded as consisting wholly of services listed in Section A, if the value of these services exceeds the value of services listed in Section B. If the value of services listed in Section A is less than the value of those listed in Section B, the contract shall be regarded as consisting wholly of services listed in Section B.

Threshold value etc.

4 § The provisions of this chapter shall apply to the award of public service contracts by a contracting entity of which the value is calculated as totalling at least the amount, net of VAT, set forth in the following paragraph (threshold value).

For government agencies the threshold value is 130 000 special drawing rights (sdr). For other contracting entities the threshold value is whichever is the lower of € 200 000 or 200 000 sdr.

The value of the contract shall be calculated on the basis of the total estimated remuneration to the supplier. Act (2000:877).

5 § If a public service contract is divided up into several smaller lots, the value of each lot shall be taken into account in estimating the value of the contract.

For lots below € 80 000, however, no other provisions apart from this paragraph need to be applied, provided that the sum of the excluded lots does not exceed 20 per cent of the total value of the procurement. Act (2000:877).

6 § Has been rescinded by enactment (1997:1068).

7 § For public contracts which do not specify a total value, the basis for calculating the estimated contract value shall be the total contract value for the duration of a contract, if this is for 48 months or less, and the monthly value multiplied by 48 for a contract with a term which is longer than 48 months or which is of indefinite duration.

For public contracts which are regularly offered or are to be renewed within a specified period, the value shall be calculated either on the basis of

1. the total value of corresponding contracts concerning the same category of services concluded during the previous fiscal year or the preceding twelve-month period, if possible adjusted with regard to foreseeable changes in quantity or value during the twelve-month period following the original contract, or

2. the aggregate value of the public contracts to be concluded during the twelve-month period following the first contract or, if the contract period is longer than twelve months, during the entire contract period.

The methods of calculation may not be selected with the intention of avoiding the provisions of this chapter.

Option and extension clauses are to be treated as if they were taken up. Act (1997:1068).

8 § No contract for services may be split up with the intention of avoiding application of the threshold value

9 § In estimating the value of a public contract, the value of material and equipment needed to carry out the services to be supplied by the contracting entity and which are required for the provision of the services shall be taken into account.

10 § In awarding public contracts for insurance services the value of the contract shall be calculated on the basis of the premium payable. For banking and other financial services, the corresponding calculation shall be made on the basis of the total amount payable in fees, commission, interest and other types of remuneration. For architects' services and similar services, the calculation shall be made on the basis of fees and commission payable.

Advertising

11 § A contracting entity shall as early as possible during the fiscal year publish indicative notices of the public contracts for services specified in Section A of the Annex above the value of € 750 000 planned by the entity for the fiscal year. In the notice the estimated value of each category of service shall be indicated with the provisions of Articles 3-5, 7, 8 and 10 taken into account. Indicative notices are subject to the provisions of Articles 8 - 10 of Chapter 1. Act (2000:877).

12 § A contracting entity shall advertise its procurements unless otherwise provided by Articles 17 or 19.

13 § Has been rescinded by enactment (2002:594).

Selection of award procedure

14 § Open procedure (öppen upphandling) or restricted procedure (selektiv upphandling) shall be utilised unless otherwise provided by Articles 16 or 17.

15 § Has been rescinded by enactment (1997:1068).

16 § Negotiated procedure (förhandlad upphandling) with prior publication of a contract notice may be used if

1. in special cases the nature of the services and the risks connected with them do not permit prior estimation of costs for special reasons,
2. the services for which the contract is to be awarded are of such a nature that the contract documents cannot be drawn up with sufficient precision to permit selection of the best tender according the provisions regarding open or restricted procedures.

17 § Negotiated procedure (förhandlad upphandling) may be used without prior publication of a contract notice if

1. the services, for technical or artistic reasons, or because of exclusive rights, can only be provided by a particular supplier,
2. it is strictly necessary to carry out procurement with extreme urgency for reasons occasioned by unforeseeable circumstances not attributable to the contracting entity which make it impossible to meet the time limits laid down for open or restricted procedures or negotiated procurement with prior publication of a contract notice as laid down in Article 16,
3. the procurement concerns additional services by the original supplier which were not covered by the previous project, but which because of unforeseen circumstances have become necessary for the project, provided that the additional services cannot be held separate from the original public contract without technical or financial inconvenience, or that the additional services are strictly necessary for the completion of the original public contract,
4. the procurement concerns new services which consist solely of a repetition of the services which formed part of a project which has previously been the subject of open or restricted procedures and the services are entrusted to the supplier previously awarded the public contract, if these new services are commissioned within three years of the date of entry into the original contract, the value of the new services has been included in calculating the threshold value, and notification was published in connection with the original project, in which connection it was indicated that a negotiated procedure (förhandlad upphandling) could be used.

The provisions in subsection 3 of the preceding paragraph are only to apply if the value of the additional services does not exceed half of the value of the original public contract. Act (1997:1068).

18 § If a contracting entity chooses negotiated procedures (förhandlad upphandling) with prior publication of a contract notice the number of tenderers shall be no fewer than three, provided that a sufficient number of suitable tenderers exist. Act (1995:704).

19 § Negotiated procurement may be used, provided that the contractual conditions originally laid down in the contract documents are not substantially altered, if

1. the tenders submitted in either open or restricted procedures (öppen eller selektiv upphandling) do not correspond to the requirements of the subject of the procurement laid down in the contract documents,
2. in open or restricted procedures (öppen eller selektiv upphandling) no tenders or no suitable tenders were submitted and a report is, if requested, forwarded to the of the European Commission.

If the negotiated procedure (förhandlad upphandling) undertaken in accordance with subsection 1 above does not include all correctly submitted tenders from tenderers who meet the requirements made of suppliers in the previous award procedure, the contracting entity is to publish notification of the negotiated procedure (förhandlad upphandling). Act (1997:1068).

Time limits

20 § In open procedure (öppen upphandling) the date of receipt of tenders shall be at least 52 days from the date of dispatch of the contract notice.

If the contracting entity has issued a prior indicative notice in accordance with the provisions applying to such notices, the time set forth in the preceding paragraph may be reduced to another period which is long enough to allow those interested in doing so to submit a tender. The reduced period should be at least 36 days from the date of dispatch of the notice referred to in the preceding paragraph and may never be shorter than 22 days. The period may, however, only be reduced if

1. the indicative notice contained all the information available at the time it was issued and which is stipulated in the special regulations on notification of open procedures, and
2. at least 52 days and no more than 12 months have elapsed from the date of dispatch of the indicative notice .

A contracting entity shall provide contract documents when requested by a supplier within six days of receipt of the request, if this has been submitted within reasonable time. Supplementary information shall be provided no later than six days before the final date for submission of tenders, if this has been requested within reasonable time.

Regulations on the extension of time limits can be found in Article 23. Act (1998:1432).

21 § In restricted and negotiated procedures (selektiv och förhandlad upphandling) the time limit for receipt of applications to participate shall be at least 37 days from the date of dispatch of the contract notice. The contracting entity shall send simultaneously to all selected participants a written invitation to submit a tender together with the contract documents.

In restricted procedures the date for receipt of tenders shall be at least 40 days from the dispatch of the invitation to participants.

If the contracting entity has issued a prior indicative notice in accordance with the provisions applying to such notices, the time set forth in the preceding paragraph may be reduced to 26 days from the date of dispatch of the invitation. This period may, however, only be reduced if

1. the indicative notice contained all the information available at the time it was issued and which is stipulated in the special regulations on notification of restricted procedures, and
2. at least 52 days and no more than 12 months have elapsed from the date of dispatch of the indicative notice .

Supplementary information shall be provided no later than six days before final date for submission of tenders, if this has been requested within reasonable time.

Regulations on the extension of time limits for restricted procedures can be found in the second paragraph of Article 23. Act (1998:1432).

22 § If the time limits laid down in Article 21 cannot be applied because of urgency, they may be shortened, the time limit laid down in the first paragraph of Article 21 to 15 days, the time limit in the second paragraph and the first sentence of the third paragraph of Article 21 to 10 days, and the limit laid down in the fourth paragraph of Article 21 to four days (accelerated procedure). Act (1998:1432).

23 § If the contract documents are too bulky to be sent to the tenderers or candidates within the time limits set forth in the third paragraph of Article 20, the time limits laid down in the first paragraph and second sentence of the second paragraph of Article 20 are to be extended by some reasonable period.

If tendering in an open or restricted procedure must be preceded by inspection, either on site or at the contracting entity, the time limits laid down in the first paragraph and second sentence of the second paragraph of Article 20 or in the second paragraph and first sentence of the third paragraph of Article 21 are to be extended by some reasonable period. Act (1998:1432).

24 § When accelerated procedure is used, both the applications from candidates and invitations to tender shall be dispatched by the fastest possible method. If an application shall be confirmed as laid down in the third paragraph of Article 19 of Chapter 1, this confirmation shall be sent before the expiry of the time limit set forth in Article 22. Act (2000:877).

24 a § A contracting entity that permits variant executions in accordance with Article 23 b of Chapter 1 may not reject a tender on the grounds that the tender if accepted would result in a public supply contract instead of a public service contract. Act (1998:1432).

Quality assurance etc.

25 § European standards for quality assurance shall be used when a contracting entity requires certification by an independent agency in the EEA to make it clear that a service meets a quality assurance standard.

If no such certification can be provided within the stipulated time, the entity shall accept other proof that the service meets the standard laid down in the preceding paragraph. Act (1997:1068).

26 § If a tenderer or candidate is trading in another EEA country in a form of company that is permitted in that country, his tender or application to tender may not be rejected solely on the grounds that Swedish law requires some other company form for the activities concerned.

Information about working conditions etc.

27 § A contracting entity may in its contract documents provide information about the authorities that are able to provide tenderers with information about the conditions applying to employment protection provisions and working conditions for public works contracts. The entity may also be required by an EEA country to provide such information.

If an entity provides information as set forth in the preceding paragraph, it shall require tenderers to confirm that the conditions applying to employment protection provisions and working conditions have been taken into account in drawing up the tender. Act (1997:1068).

Design contests

28 § The term design contest refers to a contest for the services of architects or other services as set forth in Section A 12 of the Annex and which is arranged in order to allow its organisers the possibility of acquiring a drawing or some similar contest entry on which to base the execution of determined task.

The contest shall be concluded by the selection of the winning entry by a jury. The jury is to consist of natural persons who are independent of the entrants. If specific professional qualifications are required of the entrants, at least one third of the members of the jury shall possess the same or equivalent qualifications. Act (1997:1068).

29 § Procurement that takes place in the form of a design contest is not subject to the provisions set forth in Articles 19-25 of Chapter 1. Furthermore, the provisions of Articles 30-33 are to apply solely to design contests that form part a procurement of services with a value of at least € 200 000, net of VAT or where the total amount awarded in prizes amounts to at least the amount specified. Act (2000:877).

30 § The organiser is to lay down rules for each contest. These rules are to be so devised that they constitute a guarantee that the same demands will be made of each competitor.

A design contest may be restricted to a specific number of competitors. The number shall be large enough to ensure effective competition. The competitors are to be selected without any undue considerations being taken into account. The selection may in no case be made on the basis of a specific geographical area. Act (1997:1068).

31 § A contracting entity that arranges a design contest shall advertise the contest. The entity shall send the rules for the contest to those interested in participating at their request.

32 § The jury shall select the winning entry on the basis of the rules that have been laid down for the contest and on the information given in the notification of the contest. Entries may only be presented to the jury in a way that does not reveal who has submitted any individual entry.

33 § A procurement that according the rules of the contest is linked to the contest and is to be awarded to the winner may be preceded by a negotiated procedure (förhandlad upphandling) without prior publication of a contract notice. If the contest concludes with the assessment by the jury that more executions than one can be considered, the negotiations are to comprise all of the entries.

Chapter 6. Procurements that are below the threshold values laid down in Chapters 2-5 etc.

Area of application

1 § The provisions of this chapter apply to

1. procurements as laid down in Chapters 2, 3 and 4 and which are below the threshold values set forth there,
2. procurement of services as laid down in Section A of the Annex and which are below the threshold value set forth in Chapter 5,
3. procurement of services as set forth in Section B of the Annex, irrespective of value,
4. procurement as laid down in the second paragraph of Article 3 of Chapter 1, irrespective of value, and
5. procurement of voice telephony, telex, radiotelephony, paging or satellite services as laid down in subsection 3 of the second paragraph of Article 1 of Chapter 5, irrespective of value.

In the procurement set forth in this chapter the provisions of Articles 1-6 and the second paragraph of Article 12 of Chapter 1 apply. Articles 27 and 28 do also apply in simplified procedures and selective procedures (förenklad och urvalsupphandling). Act (2002:594)

In procurements for activities as laid down in Chapter 4, the term “contracting entity” includes the undertakings set forth in the second paragraph of Article 1 of Chapter 4.

In the procurement of services in accordance with this chapter for activities as laid down in Chapter 4, the provisions of Article 4 a of Chapter 4 apply. Act (2000:877).

Selection of award procedure

2 § Procurement shall take place by means of simplified procedures or selective procedures (förenklad eller urvalsupphandling).

Direct procurement (direktupphandling) may be used, however, if the value of the procurement is low or when there are exceptional reasons. The entity shall, when necessary, establish guidelines for the use of direct procurement (direktupphandling). Act (2002:594)

2 a § In simplified procedure (förenklad upphandling) the contracting entity shall request tenders by means of a notice in an electronic database that is open to the public or some other form of notification that can ensure effective competition, unless otherwise provided in Article 2 b. Act (2000:877).

2 b § A contracting entity may request a tender without prior publication of a contract notice by sending a written request to only one supplier if

1. either no tenders or no suitable tenders were submitted in an advertised simplified procedure (förenklad upphandling), provided that the contract conditions originally laid down in the contract documents have not been substantially altered,
2. the supplies are produced solely for research, development, or experiment or study, provided that the production does not take place for profit or in order to defray the costs of research and development,
3. the subject of the procurement can, for technical or artistic reasons, or because of exclusive rights, only be provided by a particular supplier, or
4. the supplies are additional deliveries from the original supplier intended either as partial replacement of or an extension of previous supplies and a change of supplier would give rise to disproportionate technical or economic inconvenience. Act (2000:877).

2 c § In selective procedures (urvalsupphandling) the contracting entity shall publish an invitation to apply to tender by advertising in an electronic database that is open to the public. Act (2002:594)

This invitation shall state clearly

1. how an application to be allowed to tender may be submitted, and
2. the latest date for submission of an application.

In its invitation the entity may indicate the number of suppliers it intends to invite to tender. This number is to be determined with reference to the nature of the subject of the procurement and shall be large enough to ensure effective competition. Act (2000:877).

Contract documents

3 § Neither in the contract documents nor in any other basis for procurement may the contracting entity describe the object of the procurement in any way that can refer to only one certain product or one specific process.

The entity may refer to a specific brand or manufacture if there are special reasons for doing so. A reference of this kind shall be worded so that it can include equivalent products or processes.

In addition it shall be made clear in the contract documents whether a tender can be accepted without preceding negotiations. Act (2000:877).

4 § A supplier who has not received a specific invitation is entitled, on request, to receive the contract documents on the same terms as other suppliers. Act (2000:877).

Methods and time limits for the submission of tenders and requests to tender

5 § Tenders and request to tender shall, unless otherwise provided in the two following paragraphs, be submitted in writing.

A contracting entity may allow a tender to be submitted by electronic transmission or in some other manner provided that it ensures that the contents of the tender shall not be disclosed before it is opened as prescribed in Article 7. The entity may require such a tender to be confirmed immediately. This confirmation shall be submitted in writing or, should the entity so permit, in some other way.

Applications to tender may be submitted verbally, by means of electronic transmission or some other way. The entity may require such an application to be confirmed immediately. This confirmation shall be submitted in writing or, should the entity so permit, in some other way. Act (2000:877).

5 a § Tenderers and candidates shall be given a reasonable period of time to submit their tenders or their applications. The period allowed for the submission of applications to tender may, however, never be less than ten days from the date of publication of the invitation to tender as set forth in Article 2 c. Act (2000:877).

5 b § The tender is binding for the tenderer even though he received the information set forth in Article 28. Act (2002:594)

6 § The notice in accordance with Article 2 a, the document set forth in Article 2 b or the contract documents in accordance with Article 3 shall make it clear

1. how the tender may be submitted,
2. the latest date for submission of the tender, and
3. up to which date the tender shall be binding. Act (2000:877).

The receipt and opening of tenders

7 § Envelopes containing tenders are to be opened as soon as possible after the final date for receipt of tenders in the presence of at least two individuals appointed by the contracting entity. A written record of tenders shall be drawn up, and the accuracy of this record shall be confirmed by those participating in the opening. Should a tenderer so request, an individual appointed by a Chamber of Commerce shall also be present, the cost to be defrayed by the tenderer making the request.

In simplified procedures (förenklad upphandling) and selective procedures (urvalsupphandling) in which it has been announced that negotiation will be involved, the tenders may be opened and recorded without the formalities enjoined in the above paragraph. The tenders shall be opened simultaneously or, if there are special grounds for doing so, one by one as they are received. Act (2002:594)

8 § A contracting entity may permit a tenderer or a candidate to correct an obvious typographical or arithmetical error or some other obvious error in a tender or an application to participate in tendering.

The entity may also request clarification or amplification of a tender, if this can take place without risk of preferential treatment or limitation of competition. Act (2000:877).

Requirements that may be made of suppliers

9 § A supplier may be excluded from participation in tendering if he

1. is bankrupt or is being wound up, his affairs are being administered by the court, he has entered into an arrangement with his creditors, he has suspended payments, or he is subject to an injunction against carrying on business,
2. is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or for an arrangement with creditors or similar proceedings,
3. has been convicted of an offence concerning his professional conduct by a judgement which has the force of res judicata,
4. has been guilty of grave professional misconduct and the contracting entity can furnish proof this circumstance,
5. has not fulfilled obligations relating to the payment of social insurance charges or taxes in the country in which he is established or in Sweden, or
6. has in some material respect failed to furnish required information or furnished incorrect information requested by virtue of this Article.

A contracting entity may request information from a supplier concerning subsections 1-3 or 5 of the paragraph above.

Before accepting a written tender the contracting entity shall, unless unnecessary, confirm that the supplier is

1. registered in the register of limited companies, partnerships or associations,
2. registered for the submission of returns and payment of VAT, preliminary income-tax deductions for employees and employers' contributions, and
3. has no outstanding debts with regard to Swedish tax or social insurance charges.

A contracting entity that requires information from suppliers about the circumstances set forth in the first and third paragraph of this Article shall indicate in the contract documents, the notice or the written invitation how the supplier may submit the information. Act (2000:877).

10 § A contracting entity may not accept a tender if the supplier is not registered in the registers laid down in the third paragraph of Article 9, provided that such registration is obligatory.

Special conditions

10 a § Contracting authorities may lay down special conditions relating to the performance of a contract. Such conditions shall be indicated in the contract documents if not indicated in the invitation to tender or in the invitation to apply to tender. Act (2002:594) Evaluation of tenders and applications

11 § A contracting entity shall evaluate all the tenders and applications to tender submitted in due time, unless otherwise provided in the following paragraph or Article 10.

The entity may reject a tender or an application if the circumstances set forth in the first paragraph of Article 9 exist. Act (2000:877).

12 § A contracting entity shall accept either

1. the tender which is economically most advantageous, or
2. the tender which has the lowest tendered value.

In assessing which tender is the most economically advantageous, the entity is to make an overall assessment including considerations such as cost, delivery date, running costs, quality, aesthetic values, performance, technical features, service, technical support, environmental impact etc. In its contract documents or in the contract notice the entity shall state to which considerations weight will be attached. If possible, these considerations should be ranked in order of importance, with the most important first.

In cases where the contracting entity shall accept the tender with the lowest tendered value, the entity may reject a tender that it considers abnormally low, however only after the entity has requested a written explanation of the low tender without receiving a satisfactory response. This explanation is to be requested in writing. Act (1997:1068).

Records, notification of acceptance, archiving documents

13 § A contracting entity shall maintain a written record of the reasons for the acceptance of a tender and anything else of significance that may have occurred in connection with an award procedure.

This provision does not apply to procurements of low value. Act (2000:877).

14 § In case Article 28 of Chapter 1 is not applicable, the contracting entity shall, when the decision concerning supplier and tender is made, inform the tenderers of the decision as soon as possible. Act (2002:594) 15 § A contracting entity shall archive tenders and applications to tender with their accompanying descriptions, models and drawings in a satisfactory manner, and also records of tenders, summaries and the like. Act (2000:877).

Special provisions for procurement as set forth in Section B of the Annex

16 § If the procurement of services as set forth in Section B of the Annex exceeds the threshold values laid down in Chapters 4 and 5, the contracting entity shall

1. apply the provisions in Articles 12-16 of Chapter 1, Articles 2-4, 6, 8-10 and 13 in Chapter 4 and Articles 1-10 in chapter 5, and also
2. with regard to procurements as laid down in Chapter 5, within 48 days of the conclusion of the procurement, send notification to the Office for Official Publications of the European Communities. This notification shall also state that the contracting entity approves publication of the notification.

With regard to procurements as laid down in Chapter 4 that exceed the threshold values stipulated there, the entity shall within 60 days of the conclusion of the procurement send notification to the European Commission. In this notification the entity shall declare

1. whether it has applied the provisions of Article 13 of Chapter 1,
2. the information which if published would be prejudicial to justifiable business or competitive considerations, and
3. whether it approves of the publication of the notification. Act (2000:877).

Procurements that affect the safety of the realm etc.

17 § In procurements as set forth in the second paragraph of Article 3 of Chapter 2, the government may ordain or in specific cases decide on

1. exemption from the provisions concerning notification in this chapter, and
2. such other exemptions from the provisions in this chapter that may be required with regard to the interests of defence and national security.

The government may in regulations or in specific cases empower a contracting entity to decide itself on exemption of the kind set forth in the preceding paragraph. Act (2000:877).

Design contests

18 § A contracting entity may arrange a design contest. If the procurement does not concern a contract of low value the provisions of Articles 28 and Articles 30-33 in Chapter 5 are to apply to the contest. Act (2000:877).

Chapter 7. Review, damages, etc
Review

1 § A supplier who considers that he has been or risks being harmed in accordance with Article 2 may apply to the Administrative Court for measures to be taken in accordance with the said Article.

An application concerning direct procurement (direktupphandling) may not, according to the first paragraph, be reviewed after the moment an agreement concerning the procurement has been reached.

An application concerning other procurements than direct procurement (direktupphandling) may not, according to the first paragraph, be reviewed after the moment when there is a procurement contract.

It may, however, be reviewed until ten days have past from

1. the contracting entity giving information of the kind set forth in the first paragraph of Article

28 in Chapter 1, or

2. the Court, if it has made an interlocutory ruling, has cancelled that ruling.

The second sentence of the third paragraph is not applicable to procurements set forth in the second paragraph of Article 3 in Chapter 1, if the Government has prescribed an exception to the provision or if the Government or a contracting entity empowered by the Government has decided an exclusion from the provision in a single case. The second sentence of the third paragraph does not apply in case of procurements that are necessary to perform with extreme urgency for reasons occasioned by unforeseeable circumstances and that cannot be attributed to the contracting entity.

Act (2002:594).

2 § If the contracting entity has infringed the provisions of Article 4 of Chapter 1 or any other provision in this act and this has occasioned injury or the risk of injury to the supplier, the Court shall order that the award procedure be recommenced or that it may be concluded only when rectification has been made. In cases concerning procurement as set forth in Chapter 4, the Court may prohibit the contracting entity under penalty of fine from continuing with the award procedure until it has rectified the infringement.

The Court may immediately issue a ruling prohibiting conclusion of the procurement until some further ruling has been made. The Court may, however, refrain from issuing such an interlocutory ruling if the damage or negative consequences that the measure would involve are deemed to be greater than the injury to the supplier. Act (2002:594)

3 § No final decision may be made in a case involving measures specified in Article 2 while conciliation procedures as set forth in Articles 12 and 13 are taking place. Act (1995:704).

4 § Application for remedy in accordance with Article 1 shall be made to the County Administrative Court of the district in which the contracting entity is registered.

An order of certiorari is required for judicial review in the Administrative Court of Appeal. Act (2002:594)

Prohibition of appeal

5 § Appeal may not be made against decisions to which this act is applicable by virtue of the provisions of Chapter 10 of the Local Authorities Act (1991:900).

Damages

6 § A contracting entity which has failed to observe the provisions of this act shall pay compensation for injury this may have occasioned a supplier.

7 § A tenderer or candidate who has participated in an award procedure as set forth in Chapter 4 is entitled to remuneration for the costs of preparing the tender or for otherwise participating in the procedure, if failure to observe the provisions of this act has had a detrimental effect on his chance of being awarded the contract.

8 § Actions for damages are to be brought before a general court within twelve months from the moment that is stated in the second to fourth paragraphs of Article 1. If this period is exceeded, the right to damages will be forfeit. Act (2002:594)

Supervision

9 § A special board, the National Board for Public Procurement, is empowered to supervise public procurement in accordance with this Act.

In the execution of its supervision the Board may obtain all the information required from the contracting entities.

The information shall primarily be obtained in writing. If it proves more suitable, because of the extent of the material, urgency or some other circumstance, the information may be obtained through a visit to the contracting entity. Act (1994:614).

10 A contracting entity is obliged to provide the information requested by the National Board for Public Procurement for the exercise of its supervisory powers. Act (1994:614).

Attestation

11 § A contracting entity may submit the entity's procurement routines as set forth in Chapter 4 to an independent assessor for assessment as to whether these routines comply with the procurement regulations of the European Communities and this Act.

The assessor shall make his assessment in accordance with European standards and, once he has satisfied himself that any irregularities have been remedied, issue an attestation that the routines comply with this Act.

Assessors are to be accredited by the Swedish Board for Accreditation and Conformity Assessment. This accreditation is subject to the provisions of the Act (1992:1119) on Technical Conformity Assessment.

The costs of assessment are to be borne by the contracting entity. Act (1996:433).

Conciliation

12 § Without prejudice to any application made in accordance with Article 1, a tenderer or a candidate who considers that he has been or risks being harmed because a contracting entity has failed to observe the provisions of Chapter 4 in the course of an award procedure may request the application of conciliation procedures from the European Commission. A request for the application of conciliation procedures may also be addressed to the National Board for Public Procurement, which shall forward the request immediately to the European Commission. Act (1997:1068).

13 § The contracting entity shall inform the European Commission if it is willing to participate in the conciliation procedure and also if any application has been made in accordance with Article 1 or if any action for damages has been brought.

Each and every one of the parties involved in a conciliation procedure shall approve of the arbitrator appointed by the European Commission and also each appoints one additional arbitrator.

The arbitrators may avail themselves of a maximum of two experts. The European Commission and the parties to the arbitration are entitled to refuse to accept the experts employed by the arbitrators.

The party that has requested conciliation, the contracting entity, candidates or tenderers who have participated in the procurement shall be given the opportunity to take part in the conciliation verbally or in writing. Act (1997:1068).

14 § Unless otherwise agreed, the participants in a conciliation procedure shall be responsible for their own costs and shall in addition each bear half of the remaining costs of the conciliation procedure.

The participants have the right to request at any time that the conciliation procedure be terminated. Act (1997:1068).

Regulations for implementation

15 § The government or the agency appointed by the government may issue the additional regulations needed to fulfil Sweden's international obligations with regard to public procurement concerning

1. what a notice shall contain,

2. technical specifications.
3. written proof as set forth in Article 18 of Chapter 1, and
4. products in the defence sector. Act (1998:1432).

Annex

List of services (Section A and B) and of building, construction or installation works as laid down in Article 5 of Chapter 1 (Section C).

Section A

- 1 Maintenance and repair of motor vehicles, household appliances and mechanical equipment
- 2 Land transport services, including armoured car and courier services, taxi services, except transport of mail
- 3 Air transport services, except transport of mail
- 4 Transport of mail by land and by air, except those services specified in Section B 18
- 5 Telecommunications*
- 6 Financial services
 - a) Insurance services
 - b) Banking and investment services, for fees, commission, interest and other forms of remuneration**
- 7 Computer and related services
- 8 Research and development services relating exclusively to the contracting entity's own operations and wholly financed by the entity
- 9 Accounting, auditing and bookkeeping services
- 10 Market research and public polling services
- 11 Management consultant services and related services
- 12 Architectural services, engineering and integrated engineering services, urban planning and landscape architectural services, related scientific and technical consulting services and services concerning technical tests and analysis
- 13 Services concerning public notification (advertising)

- 14 Property management, including cleaning and routine maintenance
- 15 Publishing and printing services carried out for remuneration
- 16 Sewage cleaning services, refuse disposal, sanitation and similar services

Section B

- 17 Hotel and restaurant services
- 18 Rail transport services
- 19 Transport by sea and other water transport services
- 20 Stevedore services, and cargo handling in terminals, at airports, or in ports
- 21 Legal services***
- 22 Personnel placement and services related to staff welfare
- 23 Investigation and security services, except armoured car services
- 24 Education, including vocational training services
- 25 Health and medical care and social services
- 26 Cultural, recreational and sporting services
- 27 Other services

* Except voice telephony, telex, radiotelephony, paging and satellite services

** Except services in conjunction with the issue or sale of securities or other financial instruments, management of the national debt and those services discharged by the Bank of Sweden

*** Except arbitration and conciliation services. Act (1998:1432).

Annex

Section C

List of professional activities as set out in the general industrial classification of economic activities within the European Communities (NACE)

Class	Groups	Subgroups and items	Description
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50	BUILDING AND CIVIL ENGINEERING		
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- 500 General building and civil engineering work (without any particular specification) and demolition work
 - 500.1 General building and civil engineering work (without any particular specification)
 - 500.2 Demolition work
- 501 Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential
 - 501.1 General building contractors
 - 501.2 Roofings
 - 501.3 Construction of chimneys, kilns and furnaces
 - 501.4 Waterproofing and damp proofing
 - 501.5 Restoration and maintenance of outside walls (repainting, cleaning, etc.)
 - 501.6 Erection and dismantlement of scaffolding
 - 501.7 Other specialized activities relating to construction work (including carpentry)
- 502 Civil engineering: construction of roads, bridges, railways, etc.
 - 502.1 General civil engineering work
 - 502.2 Earth-moving (navvying)
 - 502.3 Construction of bridges, tunnels and shafts; drillings
 - 502.4 Hydraulic engineering (rivers, canals, harbours, flows, lochs and dams)
 - 502.5 Road-building (including specialized construction of airports and runways)
 - 502.6 Specialized construction work relating to water (i.e. to irrigation, land drainage, water supply, sewage disposal, sewerage, etc.)
 - 502.7 Specialized activities in other areas of civil engineering
- 503 Installation (fittings and fixtures)
 - 503.1 General installation work
 - 503.2 Gas fitting and plumbing, and the installation of sanitary equipment

- 503.3 Installation of heating and ventilating apparatus (central heating, air-conditioning, ventilation)
- 503.4 Sound and heat insulation; insulation against vibration
- 503.5 Electrical fittings
- 503.6 Installation of aerials, lightning conductors, telephones, etc.
- 504 Building completion work
 - 504.1 General building completion work
 - 504.2 Plastering
 - 504.3 Joinery, primarily engaged in the after assembly and/or installation (including the laying of parquet flooring)
 - 504.4 Painting, glazing and paper-hanging
 - 504.5 Tiling and otherwise covering floors and walls
 - 504.6 Other building completion work (putting in fireplaces, etc.)