

Public Procurement Act

(1505/1992; amendments up to 1530/2001 included)

Chapter 1 - General Provisions

Section 1 - Scope of application and objectives

The State authorities, local authorities and other contracting entities referred to in this Act shall, with a view to promoting competition and ensuring equal and non-discriminatory treatment of those who participate in a tendering procedure, observe this Act in their contracts.

This Act shall not apply to:

- (1) contracts which are declared secret or contracts where the protection of the basic interests of the State's security requires a different procedure or where special safety regulations shall be observed in accordance with the laws, regulations or administrative provisions;
- (2) supply contracts which are principally suited to military use;
- (3) contracts awarded pursuant to the particular procedure of an international organisation;
- (4) contracts awarded in pursuance of an international cooperation agreement entered into by Finland. (1247/1997)

The European Commission shall be notified of the international cooperation agreements referred to in section 1(2)(4) above. (1247/1997)

Section 2 - Contracting entities

For the purposes of this Act, 'contracting entities' mean

- (1) the State authorities, local authorities and joint municipal authorities, and also the Evangelical-Lutheran Church and the orthodox religious community and their parishes;
- (2) legal persons regarded as part of the public administration;
- (3) entities operating in the water supply, energy supply, transport or telecommunications sectors to the extent that is provided by Decree. (1523/1994)
- (4) State enterprises in accordance with the State Enterprise Act (627/87), unless otherwise provided by Decree;
- (5) any contractor, when the aid granted by the entities referred to in subsections (1), (2) or (4) for the procurement exceeds half of the value of the procurement. (1247/1997)

A legal person shall be regarded as belonging to the public administration in accordance with subsection 1(2), when established for the purpose of meeting needs in the general interest, not having an industrial or a commercial character, and if that person:

- (1) is mainly financed by entities referred to in subsection 1(1), (2) or (4);
- (2) is subject to management supervision of an entity referred to in subsection 1(1), (2) or (4);
- (3) has an administrative or a management or supervisory body, over half of whose members have been appointed by entities referred to in subsection 1(1), (2) or (4).

Section 3 - *Contracts exceeding a threshold* (1247/1997)

The procedures and other issues pertaining to contracts equalling a certain minimum amount of Finnish marks, a threshold, and to contracts exceeding the threshold, are provided by Decree subject to the legislation of the European Community.

Section 4 - *Definitions*

For the purposes of this Act:

- (1) *procurement* means purchase, rental or corresponding transactions in respect of goods and services and works;
- (2) *candidates* mean those who have submitted a request for participation in an invitation to tender;
- (3) *tenderers* mean those who submit a tender;
- (4) *contractors* mean those who sell, rent, or with some other similar means supply goods or carry out services or works in accordance with a procurement contract. (1247/1997)

Chapter 2 - **The award of contracts**

Section 5 - *Contract procedures* (1247/1997)

Advantage shall be taken, in contract procedures, of existing possibilities of competition. Regardless of the value of the procurement, a tender notice must be published or a sufficient number of tenders, which is in proportion to the size and quality of the procurement, shall be otherwise invited. If in a procurement that is lower than the threshold, a supplier other than those who have been invited to tender wishes to submit a tender, he shall be entitled to receive a tender. The procurement must not, however, be delayed on account of this.

A contract may be awarded without an invitation to tender only for special reasons. Such reasons may be, among others, small value of the procurement or conditions set for the use of a direct negotiated procedure laid down in Decrees issued on contracts exceeding a threshold.

An invitation to tender needs not, however, be organised in the case of a collective supply contract if the procurement is undertaken by a contracting entity, which has already complied with the provisions of this Act regarding the award of contracts. A contracting entity, which entrusts a procurement to another entity, shall make it a condition that the party that undertakes the procurement shall comply with this Act.

A work shall not be carried out as own work without arranging an invitation to tender, if contract-specific State aid is granted for the implementation of the work and if the cost estimate, which is the basis for granting State aid, totals, including VAT, at least FIM 5,000,000. An invitation to tender needs not to be arranged for the reasons defined in subsection 2 above or by decision of a State Aid Authority, if the purpose of the aid so requires.

Section 6 - *Criteria for the selection of a candidate or a tenderer* (1247/1997)

Candidates or tenderers who cannot be regarded as fulfilling technical, economic or other conditions for performance of the contract or who have failed to pay taxes or social security contributions in Finland or in the country where the contractor has established his head office (*country of establishment*) may be excluded from an invitation to tender. Such a candidate or tenderer shall be informed of the reasons for his rejection, if he so requests.

In contracts whose value remains below a threshold, economic and technical performance of the candidates and tenderers can be assessed on the basis of the Decrees issued on contracts exceeding a threshold can be applied, where appropriate.

The candidates and tenderers shall be treated on equal and impartial bases at all stages of the award procedure. If the candidate or tenderer is a community or an institution owned by the contracting entity, it shall be treated in the same way as the other candidates or tenderers.

Section 7 - *Awarding of contracts* (1247/1997)

The procurement shall be effected as economically as possible. The contract shall be awarded to the tender with the lowest price or to the one that is most economically advantageous as a whole.

In below threshold procurements, Decrees issued on contracts exceeding a threshold can be applied, where appropriate, in the definition of the selection criteria for the tenders.

Chapter 3 - **Legal remedies**

Section 8 - *Compensation* (1247/1997)

One who has occasioned harm to a candidate, tenderer or contractor by a procedure contrary to this Act or to provisions or regulations issued in pursuance hereof or to the legislation of the European Community or the Agreement on Government Procurement of the World Trade Organisation shall be obliged to pay damages for the harm caused.

Where a claim is made for damages representing the costs of participating in an award procedure, the candidate or tenderer shall, in order to be awarded damages, be required only to prove an incorrect procedure as referred to in subsection 1 and that he would have had an actual chance of winning the contract if the procedure had been correct.

Section 9 - *Sanctions imposed by the Market Court* (1247/1997; 1530/2001)

If the procurement has been undertaken contrary to this Act or to provisions or regulations issued in pursuance hereof or to the legislation of the European Community or the Agreement on Government Procurement of the World Trade Organisation, the Market Court may, upon petition:

- (1) wholly or partly set aside a decision of a contracting entity;
- (2) forbid the contracting entity to apply a section in a document relating to the contract or otherwise to pursue an incorrect procedure;
- (3) require the contracting entity to correct its incorrect procedure; or
- (4) order the contracting entity to pay a compensation payment to a party who would have had an actual chance of winning the contract if the procedure had been correct. (1530/2001)

A compensation payment can be ordered to be paid if the measures defined in subsection (1), (2) and (3) above could occasion injury in the way as referred to in section 10(3), below, or when the petition has been submitted after the signing of the supply contract. When determining the amount of the compensation payment, the nature of the error or neglect of the contracting entity, the total value of the contract, and the costs and injury incurred by the claimant shall be taken into consideration.

Section 9a - *Concerned parties and the competence of the Market Court* (1530/2001)

Relating to the matter referred to in section 9 above, the right of action lies with, and proceedings may be initiated by, the party concerned, the Ministry of Trade and Industry and the Ministry of Finance in matters relating to contracted work or in matters referred to in section 5(4), the public authority that has granted contract-specific aid for the implementation of the works contract in question.

The Market Court shall not consider the petition concerning the contract award procedure of the entity referred to in section 2(1)(3) if the procurement is connected with the utilities activity defined in the Decree, and the estimated value is lower than the threshold laid down in the Decree.

A matter falling within the scope of the competence of the Market Court may not be appealed subject to the Local Government Act (365/1995) and Administrative Judicial Procedure Act (586/1996) on the grounds that the decision is against this Act.

Unless otherwise provided in this Act, the Administrative Judicial Procedure Act shall otherwise apply to handling of the matter before the Market Court.

Section 9b - *Referral to the Market Court* (1009/2001; 1530/2001)

The petition shall be made in writing. The petitioner shall, before submitting a petition to the Market Court, inform the contracting entity in writing of his intention to bring the matter before the Market Court. (1530/2001)

The petition must be submitted within 14 days from the date on which the candidate or tenderer has been notified in writing of his or her exclusion from the competition and the criteria for exclusion or the award of the contract and the award criteria and has received written instructions for referral to the Market Court (*petition instructions*). The provisions on appeal instructions in Chapter 3 of the Administrative Judicial Procedure Act shall apply, as appropriate, to petition instructions. The handling process of the petition shall not be hindered by the supply contract. (1530/2001)

The communications referred to in subsection 2 above including petition instructions may be effected by means of letter. The candidate or tenderer shall be considered as having received notification and petition instructions within seven days from the dispatch of the documents, unless otherwise shown.

Section 10 - *Conditional fines and interim measures* (1530/2001)

The Market Court may, in order to emphasise the importance of complying with the prohibition referred to in section 9(1)(2), and with the obligation referred to in section 9(1)(3), impose a conditional fine, in compliance with the Act on Conditional Fines (1113/1990).

After a claim has been brought before it, the Market Court may, as an interim measure, forbid or suspend the implementation of a decision or otherwise order that the contract award procedure be suspended for the period during which the matter is being dealt with at the Market Court, in which connection, in the latter case, the provisions of subsection 1 shall be complied with accordingly. The prohibition referred to above in section 9(1)(2), and the obligation referred to in section 9(1)(3) may also be imposed as an interim measure for the period during which the matter is being dealt with at the Market Court, in which connection the provisions of subsection 1 shall be complied with accordingly.

When a decision has been taken to adopt a measure referred to in subsection 2, the Market Court shall ensure that the measure does not occasion injury to the opposing party or the rights of other parties, or to the public interest, greater than the advantages which it brings.

The Chief Judge of the Market Court or a Judge of the Market Court may, in urgent cases, decide upon an interim measure referred to in subsection 2.

Section 11 - *Hearings and other procedures*

A measure referred to in section 9(1) and section 10 above may not be imposed without the contracting entity or other parties involved in the matter being given the opportunity of being heard. If, however, the purpose of a measure referred to in section 10(2), may otherwise be prejudiced, the measure may, nevertheless, be imposed without such an opportunity being given.

The Market Court may invite a party to attend a court session and order it to produce documents which clarify the matter at issue. (1530/2001)

If the obligation to produce the documents referred to in subsection 2 is not fulfilled or if the party fails, without due cause, to attend a session of the Market Court, the party may be required, under penalty of a conditional fine, to furnish the documents or attend a session. (1530/2001)

Section 11a - *Conciliation procedure* (1247/1997)

Where the contract is awarded by the procurement entity referred to in section 2(1)(3), the candidate, tenderer or contractor who deems the contracting entity to be guilty of a procedure contrary to this Act or to provisions or regulations issued in pursuance hereof or to the legislation of the European Community, and whose interests are violated by the erroneous action, can request the European Commission, in addition to the requirements referred to in section 8 or section 9(1)(1-4), to use the conciliation procedure.

The request concerning the conciliation procedure shall be addressed to the Ministry of Trade and Industry within 14 days from the date on which the tenderers have been informed of the judgement or decision relating to the invitation to tender. The Ministry of Trade and Industry will, where appropriate, issue further provisions on the conciliation procedure.

Section 12 - *Appeal of the judgement of the Market Court* (1530/2001)

A judgement of the Market Court as referred to in sections 9 and 10 above may be appealed to the Supreme Administrative Court as provided for in the Administrative Judicial Procedure Act. The judgement of the Market Court shall be complied with despite the appeal, unless otherwise ruled by the Supreme Administrative Court.

The decision on the payment of a conditionally imposed fine made by the Market Court subject to section 10 (1) or (2) may not be appealed.

Chapter 4 - **Miscellaneous provisions**

Section 13 - *Obligation to provide information* (1523/1994)

For the supervision of the contracts and exchange of information, the contracting entities shall provide the authorities in Finland and in the European Community, to the extent determined by the Ministry of Trade and Industry, with statistical and other information on the different stages of the contract award procedure.

Section 14 - *Right of access to information and non-disclosure obligation* (1247/1997)

In regard to the right of a candidate who has participated in an invitation to tender to obtain information on documents concerning the handling of the tenders, the provisions of the Act on the Openness of Government Activities (621/1999) shall apply, where appropriate. (633/1999)

One who, in the performance of functions referred to in this Act, has gained knowledge of a trader's trade or professional secrets or other corresponding facts which might cause economic damage to the trader's profession, may not disclose them or use them without legal right, unless the party in whose interest the secrecy obligation applies has given his consent.

Section 15 - *Penal provision* (725/1995)

A penalty on the contravention of the obligation to observe secrecy laid down in section 14 shall be sentenced in accordance with chapter 38, sections 1 or 2, of the Criminal Law, unless the offence is against the provisions of chapter 40, section 5, of the Penal Code, or unless a more severe penalty is provided elsewhere in the Code.

Section 16 has been repealed by 1523/1994.

Section 17 - *Further provisions and instructions*

Further provisions on the implementation of the present Act may be given by Decree. The Ministry of Trade and Industry and the Ministry of Finance may issue instructions concerning the application of this Act and of the Decrees issued pursuant hereto.

Section 18 - *Entry into force and transitional provision*

This Act will enter into force on a date to be defined by Decree.

Measures necessary for the implementation of this Act may be undertaken before the Act's entry into force.

This Act shall not apply to a contract awarded before the entry into force of this Act.