

Public Procurement Act

Passed 19 October 2000

(RT1 I 2000, 84, 534; consolidated text RT I 2001, 40, 224),

entered into force 1 April 2001,

amended by the following Acts:

17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591;

19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521;

11.02.2003 entered into force 01.07.2003 - RT I 2003, 25, 153;

13.11.2002 entered into force 10.12.2002 - RT I 2002, 99, 577;

09.10.2002 entered into force 23.10.2002 - RT I 2002, 87, 505;

19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387;

19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375;

15.05.2002 entered into force 01.07.2002 - RT I 2002, 47, 297;

20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131;

09.05.2001 entered into force 01.01.2002 - RT I 2001, 50, 284.

Chapter 1

General Provisions

§ 1. Scope of application of Act

(1) This Act provides for the public procurement procedures, the rights and obligations of subjects involved in public procurement and their liability for violation of this Act, and the procedure for the exercise of state supervision with the aim of promoting competition and ensuring the transparency of public procurements and the equal treatment of the participants in tendering procedures.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) The administrative acts passed in the course of public procurement tendering procedures shall, in addition to the formal requirements arising from this Act, comply with the formal requirements provided for in the Administrative Procedure Act (RT I 2001, 58, 354; 2002, 53, 336; 61, 375; 2003, 20, 117; 78, 527).

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 2. Definition and objects of public procurement

(1) For the purposes of this Act, "public procurement" means purchasing of goods, contracting for construction work and services, granting of construction work concessions, and contracting for design solutions by contracting authorities specified in subsection 5 (1) of this Act. The provisions of this Act concerning the purchase of goods also apply to the hire purchase of and to the hiring, rental and lease of goods either with or without the option to buy the goods.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189; 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(3) The objects of public procurement are goods, services, construction work, construction work concessions and design solutions.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(4) For the purposes of this Act, “construction work” means work which is performed in any manner and is related to the construction of a structure, including work related to the erection, extension, reconstruction, restoration, repair and demolition of a structure or a part thereof, the installation or modification of utility systems, or both the execution of any of the aforementioned and the design of the construction together, and the result of which meets the requirements set by the contracting authority and fulfils an economic or technical function. Performance of geotechnical or geodetic site investigations, construction design, owner supervision, expert assessment of building designs and structures, and construction management for organising construction work are deemed to be services.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189; 15.05.2002 entered into force 01.07.2002 - RT I 2002, 47, 297; 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(5) “Construction work concession” means the exclusive right to exploit a structure, which is granted either for a charge or without charge for the performance of construction work provided for in subsection (4) of this section.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(6) For the purposes of this Act, “design solution” means a project submitted by a participant in a design contest in the field of design and meeting the requirements specified in the design contest notice (hereinafter project).

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(7) The procedure provided for in this Act applies to public procurements where the estimated value of the procurement contract net of value added tax is:

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

1) 300 000 kroons or more upon purchasing of goods or contracting for services;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

2) 2 million kroons or more upon contracting for construction works;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

3) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

4) 1 million kroons or more upon purchasing of goods or contracting for services by a contracting authority specified in clause 5 (1) 1) of this Act from a penal institution or a company founded by the state for the administration of the production units of a penal institution;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

5) 100 000 kroons or more upon contracting for a design solution, including all contest awards and other amounts payable to the participants in the design contest;

6) 2 million kroons or more upon purchasing of goods or contracting for services or design solutions by a contracting authority specified in clause 5 (1) 6) of this Act whose net turnover during the previous financial year exceeded 500 million kroons;

7) 4 million kroons or more upon contracting for construction work by a contracting authority specified in clause 5 (1) 6) of this Act whose net turnover during the previous financial year exceeded 500 million kroons.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(8) In the case of public procurements where the estimated value of the procurement contract net of value added tax is lower than the value threshold set in subsection (7) of this section, the contracting authority shall follow good public procurement practice, ensure that financial resources are used in the most rational and economic manner possible and, in the case where there are many tenderers and where it proves possible, conduct negotiations with regard to the tenders with at least three tenderers.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(9) If, in the case of public procurements specified in subsection (8) of this section, the value of the procurement contract net of value added tax is 100 000 kroons or more upon purchasing of goods or contracting for services or 500 000 kroons or more upon contracting for construction works, the contracting authority shall submit a contract award notice to the state register of public procurements (hereinafter register) within ten days after entry into the procurement contract.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 3. Public procurements consisting of several constituent elements

(1) If an intended public procurement contains several objects of public procurement as defined in § 2 of this Act, the public procurement shall be classified according to the object the value of which is expected to exceed one-half of the total value of the public procurement. If the value of any of the objects of public procurement as defined in § 2 of this Act does not exceed one-half of the total value of the public procurement, the public procurement shall be classified according to its main objective.

(2) Goods and services which are not necessary for performing particular construction work shall be purchased or contracted for separately.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(3) A contracting authority specified in subsection 5 (1) of this Act may purchase goods or contract for services in the same procedure with contracting for construction works only if the procedural requirements applied to the contracting for such construction works are as strict as those applied in the case of purchasing of goods or contracting for services in a separate procedure. If, in the case of purchasing of goods or contracting for services in a separate procedure, the value of the goods or services equals or exceeds the international value threshold, goods may be purchased and services contracted for in the same procedure with the contracting for construction works only if, as a result of such combination, the value of the public procurement equals or exceeds the international value threshold established for contracting for construction works.

§ 4. Exceptions

(1) A contracting authority is not required to apply the procedure provided for in this Act to the following:

1) public procurements which are related to guaranteeing national security or fulfilling special security requirements in accordance with legal acts in force or which are related to state secrets provided for in the State Secrets Act (RT I 1999, 16, 271; 82, 752; 2001, 7, 17; 93, 565; 100, 643; 2002, 53, 336; 57, 354; 63, 387; 2003, 13, 67; 23, 147);

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

2) contracting for water, electricity, gas, thermal energy, cable distribution and telecommunications services, if such services can be provided by only one person;

3) purchasing of weapons, ammunition, battle equipment and training equipment related thereto, and contracting for the related services;

4) contracting for arbitration or conciliation services;

5) contracting for financial services relating to the issue, purchasing, sale or assignment of securities or other financial instruments, contracting for financial services provided by the Ministry of Finance, or contracting for services provided by Eesti Pank;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

51) contracting for services and purchasing of goods on the part of Eesti Pank, if the purpose of the services or goods is to regulate currency circulation in Estonia and with

other countries, to issue currency or withdraw currency from circulation, to organise the deposit or use of the precious metal and foreign currency reserves of the state, to conduct banking transactions with Estonian and foreign currency, securities and other monetary instruments, and to compile balance of payments and collect information in order to publish monetary, financial and balance of payments statistics, or if the services or goods are related to ensuring the security of Eesti Pank or complying with the confidentiality requirements established with regard to information not subject to disclosure;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

6) contracting for studies related to research and development, within the meaning of § 2 of the Organisation of Research and Development Act (RT I 1997, 30, 471; 2001, 43, 237; 2002, 61, 375; 90, 521; 105, 611; 2003, 75, 495; 88, 594), except in the case where where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

7) purchasing of immovables, existing construction work or parts thereof as movables, or of rights relating thereto;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189; 15.05.2002 entered into force 01.07.2002 - RT I 2002, 47, 297)

8) contracting for services by broadcasting organisations for the acquisition, development, production or co-production of a programme or a part thereof, and contracting for broadcasting time;

9) entry into an employment contract;

10) services which a contracting authority specified in clause 5 (1) 6) of this Act contracts from a connected undertaking or from an undertaking which has been founded by several such contracting authorities with the aim of ensuring that the services specified in clause 5 (1) 6) are provided to those contracting authorities, or services which are provided by an undertaking founded jointly to an undertaking connected to the contracting authority, whereupon at least 80 per cent of the average turnover of the connected undertaking specified in this clause in the territory of the European Economic Community during the last three years or during its entire period of activity, if this is shorter than three years, has been created through the provision of such services to that contracting authority. If the same or a similar service is provided by more than one undertaking connected with the contracting authority, the consolidated turnover of the services provided by such undertakings shall be taken into account;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

11) purchasing of goods or contracting for construction work or services, if the procurement contract is entered into by the construction work concessionaire and the connected undertaking whom the concessionaire has entered in the list annexed to the tender which was submitted in order to obtain the construction work concession;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189; 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

12) purchasing of museum objects, records, data media or licences for the use of data media, the estimated value of which is lower than the international value threshold provided for in § 16 or this Act, if the purchaser is a museum, archives or library;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

13) contracting for the performance of audits with a cost which is lower than the international value thresholds specified in subsection 16 (1) of this Act and where the auditor is appointed by the Riigikogu², and contracting for the performance of special

auditing services for the purposes of exercising state supervision if the right of the state supervision authority to order such special audits has been provided by law;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

14) public procurements in the case of which the procurement contract is entered into according to a mandatory special procedure of an international organisation;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

15) purchasing of goods which a person specified in clause 5 (1) 6) of this Act needs only to provide such public telecommunications services as provided by the person and which other persons are free to provide in the same geographical area under the same conditions;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

16) purchasing of goods if the contracting authority specified in clause 5 (1) 6) of this Act purchases the goods in order to sell or lease them to third persons and the contracting authority enjoys no special or exclusive right for selling or leasing the goods and other persons have the right to sell or lease such goods under the same conditions as the contracting authority;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

17) purchasing, by an electricity undertaking, of electricity or fuel necessary for the production of electricity;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189; 11.02.2003 entered into force 01.07.2003 - RT I 2003, 25, 153)

18) services which a contracting authority specified in clauses 5 (1) 1)-5) or 7) of this Act contracts from a person to whom an exclusive right to provide such services has been granted pursuant to a legal act which is in conformity with the requirements of the Treaty establishing the European Community.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) For the purposes of this Act, a connected undertaking is a person whose annual accounts are consolidated with the annual accounts of the contracting authority, or a person over which the contracting authority may exercise, directly or indirectly, dominant influence or which may exercise dominant influence over the contracting authority or which, together with the contracting authority, is subject to the dominant influence of one and the same undertaking.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(3) In the event of contracting for health services and emergency medical care on the basis and within the meaning of the Health Services Organisation Act (RT I 2001, 50, 284; 2002, 57, 360; 61, 375; 62, 377; 110, 661; 2003, 26, 157 and 160) and the Health Insurance Act (RT I 2002, 62, 377; 2003, 20, 116; 88, 591), the contracting authority is not required to apply the procedure provided for in this Act, except in the case of a procurement contract concerning the technical specifications provided for in §§ 26-28 of this Act where the estimated value is equal to or exceeds the international value thresholds provided for in subsection 16 (1), and is required to submit a contract award notice to the register after entry into a procurement contract if the value of the contract is equal to or exceeds the specified value thresholds.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(4) In the event of contracting for legal services, the contracting authority is not required to apply the procedure provided for in this Act, except in the case of a procurement contract concerning the technical specifications provided for in §§ 26-28 of this Act where the estimated value is equal to or greater than the value threshold provided for in clause 2 (7) 1), and is required to submit a contract award notice to the register after

entry into a procurement contract if the value of the contract is equal to or greater than the specified value threshold.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 5. Contracting authority

(1) For the purposes of this Act, a contracting authority is:

1) a state authority, a profit-making state authority, a city or local municipality government, or a local government authority;

2) a legal person in public law or a body of a legal person in public law;

3) a foundation if all the founders thereof are persons specified in clauses 1), 2) and

4) of this subsection or in this clause or if more than one-half of the members of its supervisory board are appointed by such a person; a non-profit association if more than 50 per cent of its members are persons specified in clauses 1), 2) and 4) of this subsection;

4) another legal person in private law which is not specified in clause 3) of this subsection, which is founded or which operates in the public interest, the principle activity of which is not of an industrial or commercial nature, and where more than 50 per cent of the activities of which are financed by or where more than one-half of the members of its supervisory board or management board are appointed by persons specified in clauses 1), 2) or 3) of this subsection or in this clause;

5) an undertaking, if it has obtained a construction work concession from a person specified in clauses 1)-4) of this subsection, upon entering into a procurement contract for construction work on the basis thereof, except in the case where the undertaking enters into procurement contracts with an undertaking connected thereto;

6) an undertaking if the undertaking has special or exclusive rights in accordance with the Competition Act (RT I 2001, 56, 332; 93, 565; 2002, 61, 375; 63, 387; 82, 480; 87, 505; 102, 600; 2003, 23, 133), if the state, a local government or another legal person in public law holds, either directly or through other persons, more than one-half of the share capital or votes represented by shares of the undertaking or if the undertaking owns, possesses or operates a network or infrastructure which it is not possible or economically practical for another person to duplicate but without access to which or without the existence of which it is not possible to operate in the goods market, and if the area of activity of the undertaking is either the construction or operation of permanent networks with the intention to provide services relating to the production, transportation, transmission or distribution of water, gas, electricity or thermal energy to the public, or the use of a geographic area in order to prospect for or extract fuels or enable air or water transport undertakings to use an airport, port or other terminal structure, or the operation of networks enabling the public to use services relating to railway, tramway, trolleybus or bus transport, automatic systems or cable distribution, or the construction or operation of public telecommunications networks for ensuring one or more telecommunications services.

7) an undertaking if persons specified in clause 1) of this subsection hold, either together or separately and either directly or through other persons, a majority of the votes or more than 50 per cent of the shares of the undertaking.

(2) Production, transportation, transmission or distribution of water, gas, electricity or thermal energy by an undertaking to networks servicing the public is not deemed to be an activity specified in clause (1) 6) of this section if consumption of water or electricity is necessary for activities other than those specified in clause (1) 6), or if the supply of the public network depends solely on consumption by the undertaking and does not exceed

30 per cent of the average overall production of water or electricity by the undertaking during the last three years, or if production of gas or thermal energy by the undertaking results inevitably from activities other than those specified in clause (1) 6), or if the public network is supplied with a surplus of gas or thermal energy for the purposes of the economic use thereof and such surplus does not exceed 20 per cent of the average turnover of the undertaking during the last three years.

(3) An undertaking is also deemed to have special or exclusive rights where, for the purposes of the construction of networks or the building of structures, the undertaking has or may obtain preferential rights for the use, expropriation or encumbrance of assets or the installation of network components on, beneath or above a public road.

(4) If a contracting authority specified in clauses (1) 1)-4) of this section finances, to an extent greater than 50 per cent, construction work contracted by another person on buildings of medical or educational institutions, public administrative buildings, roads, sports facilities, recreation facilities, leisure facilities, or other structures intended for public use or under construction in the public interest, that contracting authority is required to ensure that the other person adheres to the provisions applicable to the contracting authorities specified in clauses (1) 2)-5) and 7) of this section upon contracting for the construction works.

(5) Contracting authorities specified in clause (1) 6) of this section may, at their own expense, apply to an independent evaluation authority for an assessment to be made of the procedure for the performance of tendering procedures implemented by the contracting authorities with the provisions of the European Union directives on public procurements. The procedure for performing such assessments and the requirements for independent evaluation authorities shall be established by the Government of the Republic.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 6. Equal treatment of persons

A contracting authority shall treat all persons participating in a public procurement tendering procedure (hereinafter tenderers) equally.

§ 7. Procurement contracts

(1) For the purposes of this Act, "procurement contract" means a written contract for pecuniary interest which is entered into by a contracting authority and a tenderer as the result of public procurement tendering procedures (hereinafter tendering procedures).

(2) The aim of organising tendering procedures is that the financial resources of the contracting authority be used in an economic and rational manner and that a procurement contract be entered into.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 8. Commencement and termination of tendering procedure

(1) A tendering procedure commences with the submission of a contract notice, design contest notice or a notice announcing a negotiated tendering procedure without prior publication of a tender notice to the register.

(2) The bases for termination of a tendering procedure are:

- 1) entry into a procurement contract or ascertaining the winner of a design contest;
- 2) rejection of all tenders;
- 3) cancellation of the tendering procedure;

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

- 4) no tenders or applications for participation in the tendering procedure are submitted;
- 5) expiry of the term of validity of the tenders and failure to enter into a procurement contract due to reasons attributable to the tenderer.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 9. Confidentiality

- (1) Unless otherwise provided by this Act, a contracting authority shall not disclose information received from tenderers or from persons applying for participation in a tendering procedure (hereinafter applicant) concerning their business activities, nor the content of the tenders or negotiations, and tenderers and applicants shall not disclose information received from a contracting authority concerning the business activities thereof, nor the content of the tenders or negotiations.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (2) Notices, decisions and other documents which are referred to in this Act shall be prepared in a format ensuring full preservation of their content and shall be preserved by the contracting authority pursuant to law.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 10. Organisation of tendering procedure

- (1) A tendering procedure shall be organised by a contracting authority who shall designate an official responsible for the public procurement.
- (2) A contracting authority has the right to authorise other persons to perform acts relating to the tendering procedure.
- (3) The rules for organising public procurement of construction works or construction design shall be established by the Government of the Republic on the proposal of the Minister of Economic Affairs and Communications.
(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 11. Public Procurement Office

The Public Procurement Office (hereinafter Office) shall:

- 1) exercise state supervision to verify compliance of public procurements with the requirements established by legal acts;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 2) implement an information system relating to public procurement and organise the activities of the register;
(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)
- 3) provide information relating to public procurements to international organisations pursuant to international agreements entered into by the Republic of Estonia;
- 4) assess the functioning of the public procurement system and submit proposals for improving the system;
- 5) consult on issues relating to public procurement;
- 6) review protests;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 7) have the right to receive all necessary information concerning a public procurement and the originals or copies of documents relating to a public procurement from the contracting authority in the exercise of state supervision.

Chapter 2

Calculation of Value of Public Procurement

§ 12. Principles of calculation of value of public procurement

(1) If a public procurement is divided into parts, the value of each part shall be taken into account in calculating the estimated total value of the public procurement. Each part of a public procurement shall be purchased or contracted for pursuant to the tendering procedure applicable to the estimated total value of the public procurement.

(2) A contracting authority shall not divide a public procurement into parts with the intention of avoiding application of the procedures or requirements established for public procurements.

(3) If a tendering procedure is conducted for purchasing of goods or contracting for services or construction work within a specified term, the maximum estimated total value of all goods purchased and all services and construction work contracted for in such manner is deemed to be the estimated value of the public procurement.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 13. Framework contracts

(1) For the purposes of this Act, "framework contract" means a procurement contract entered into by a contracting authority specified in clause 5 (1) 6) of this Act, the aim of which is to establish conditions regulating contracts entered into over a certain period of time, primarily with regard to prices and prescribed quantities.

(2) A contracting authority may enter into a framework contract with one or more tenderers for up to four years.

(3) A contracting authority may not hinder, restrict or distort competition through a framework contract.

(4) The contracting authority shall indicate its intention to enter into a framework contract in the contract notice.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 14. Additional conditions

If according to the conditions of an intended procurement contract the contracting authority acquires the right to purchase goods or contract for construction work or services in addition to the goods, construction work or services concerning the purchasing of or contracting for which the procurement contract is entered into, the value of the goods, construction work or services purchased or contracted for additionally shall be taken into account in calculating the value of the public procurement.

§ 15. Calculation of value of public procurement

(1) In the case of contracting for services on the basis of an intended procurement contract for an unspecified term or a procurement contract with a term of more than forty-eight months, the estimated value of the public procurement shall be calculated on the basis of the value of the services to be provided during one month, multiplied by forty-eight.

(2) In the case of contracting for insurance services, the amount of insurance premiums to be paid, and in the case of contracting for banking or other financial services, the interests, service charges and other types of payment shall be taken into account in calculating the estimated value of a public procurement.

(3) If a public procurement prescribes purchasing of goods together with contracting for services, the estimated value of the public procurement shall be calculated on the basis of the total cost of purchasing the goods and contracting for the services.

(31) If goods are purchased or services contracted for on the basis of a framework contract, the estimated maximum value of the contracts prescribed during the period of time set out in the framework contract shall be taken as the basis upon calculation of the estimated value of the public procurement.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(4) If goods are purchased or services contracted for on the basis of a recurring procurement contract, the estimated value of the public procurement shall be calculated:

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

1) on the basis of the total value of similar procurement contracts entered into during the previous calendar year or the last twelve months, adjusted, if possible, by the changes expected to occur in the quantities or prices of the goods or services in the forthcoming twelve months, or

2) on the basis of the total value of all contracts entered into during the twelve months following the entry into the previous procurement contract or during the entire period of validity of the current procurement contract if such period is longer than twelve months, depending on which method yields the largest amount.

(5) In the case of contracting for construction works, the estimated value of the public procurement shall be calculated on the basis of the total value of all different types of construction work to be performed.

(6) The estimated value of the goods which are necessary for the construction work to be performed and which are to be made available to the tenderer shall be added to the estimated value of the public procurement specified in subsection (5) of this section. If a tenderer is granted the use of goods for the time during which construction work is being performed and if it is likely that those goods will not depreciate fully during that time, the average market price for the use of the goods for the time during which the tenderer is granted the use thereof shall be added to the estimated value of the construction work.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(61) If a contracting authority gives notification in a contract notice for a public procurement of construction works of the possibility of contracting for additional construction works within the meaning of clause 57 (1) 6) of this Act, the estimated value of the public procurement shall be deemed to be the estimated value of the initial public procurement and the estimated value of the additional construction works, taking account, if possible, of the provisions of subsection (6) of this section with regard to the additional construction works.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(7) The estimated value of a construction work concession shall be calculated on the basis of the amount which the contracting authority would have to pay for the construction work if, instead of granting the construction work concession, the contracting authority contracted for the performance of construction work.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 16. International value thresholds

(1) In the case of purchasing of goods or contracting for services, the international value thresholds for public procurements are as follows:

1) in the case of a state authority, 130 000 SDRs (Special Drawing Rights);

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

2) in the case of any other contracting authority, except a contracting authority specified in clause 5 (1) 6) of this Act, 200 000 SDRs;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

3) in the case of a contracting authority specified in clause 5 (1) 6) of this Act, except an undertaking providing cable distribution or telecommunications services to the public, 400 000 SDRs;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

4) in the case of an undertaking specified in clause 5 (1) 6) of this Act which provides cable distribution or telecommunications services to the public, 600 000 SDRs.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) In the case of contracting for construction works, the international value threshold is 5 million SDRs.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(3) In order to decide whether the estimated value of a public procurement reaches an international value threshold provided for in subsections (1) and (2) of this section, the estimated value of the public procurement shall be calculated net of value added tax, whereupon:

1) upon purchasing of goods, calculation of the estimated value of the public procurement shall, in the case of an intended procurement contract for a specified term, be based on the estimated total value of the procurement contract during the entire period of validity of the procurement contract, including the estimated residual value of the right to purchase the goods according to the leasing contract and, where there is an obligation to purchase, also the estimated residual value of the goods, and in the case of an intended procurement contract for an unspecified term or a procurement contract with a resolutive condition or where it is not possible to determine the exact term of a procurement contract, on the estimated total value of the procurement contract during the first forty-eight months;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

2) upon contracting for services without indicating the total value, calculation of the estimated value of the public procurement shall, in the case of an intended procurement contract for a term of up to forty-eight months, be based on the total value of the services to be provided for during the entire period of validity of the procurement contract.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 17. Division of public procurement into parts in one tendering procedure

(1) A contracting authority may divide a public procurement conducted in one tendering procedure into parts, whereas such division may be effected according to the objects or the quantity or both the objects and the quantity.

(2) If a contracting authority divides a public procurement into parts, the permissible sizes of the parts shall be clearly indicated in the contract notice or tender documents.

Chapter 3

Notices

§ 18. Prior notices

(1) If the estimated value of a public procurement in the case of purchasing of goods or contracting for services is 750 000 SDRs or more or, in the case of contracting for construction works, 5 million SDRs or more and if the contracting authority intends to organise the public procurement during the forthcoming twelve months, the contracting

authority shall give notification by submitting a prior notice in Estonian at the first opportunity after the budgetary year has begun or after the contracting authority has become aware of the need to perform the public procurement.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(11) The prior notice shall be sent via the register to the Office for Official Publications of the European Communities (hereinafter Office for Official Publications) for publication. After the prior notice has been sent to the Office for Official Publications, it shall be published in the register. It is not permitted to make a prior notice public before it has been published in the register.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(3) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(4) The list of mandatory information for inclusion in prior notices, the formal requirements for prior notices and the procedure for submitting prior notices to the register and the Office for Official Publications shall be established by the Government of the Republic.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 19. Notice of contract notice

(1) In the case of a public procurement by open tendering procedure, restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, the contracting authority shall submit, in Estonian, a contract notice to the register for publication.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(11) In the case of a public procurement where the estimated value is equal to or greater than the international value threshold, the contract notice specified in subsection (1) of this section shall be sent via the register to the Office for Official Publications for publication. After the contract notice has been sent to the Office for Official Publications, it shall be published in the register.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(12) It is not permitted to make a contract notice public before it has been published in the register.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(3) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(4) Contract notices and design contest notices may be amended in the case of an open tendering procedure during the first half of the term for the submission of tenders or, in the case of a restricted tendering procedure or a negotiated tendering procedure with prior publication of a tender notice, during the first half of the term for the submission of applications to participate in the tendering procedure. Any amendment of a contract notice shall not cause the identity of the contracting authority or the nature of the object of the public procurement to change.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(5) If a code of the common procurement vocabulary is allocated to an object of public procurement, such allocation shall be effected pursuant to the subdivision of the standard classification of objects of public procurements which corresponds to the object of public procurement as precisely as possible.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(6) The common procurement vocabulary shall be approved by the Minister of Finance.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189; 09.10.2002 entered into force 23.10.2002 - RT I 2002, 87, 505)

(7) The list of mandatory information for inclusion in contract notices, the formal requirements for contract notices and the procedure for submitting contract notices to the register and the Office for Official Publications shall be established by the Government of the Republic.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(8) In the case of a restricted tendering procedure or a negotiated tendering procedure with prior publication of a tender notice, a person who is interested in participating in the procedure may submit the notice concerning the person's intention to participate in the procedure by telegram, telex, fax, electronic mail or telephone.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 20. Contract award notices

(1) Within ten days after the end of a tendering procedure, the contracting authority shall submit a contract award notice to the register.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(2) Within ten days after deciding the winner of a design contest, the contracting authority shall submit the results of the design contest to the register.

(3) Contract award notices submitted by contracting authorities specified in clause 5 (1) 6) of this Act shall not contain information the disclosure of which may be contrary to the public interest or damage the lawful business interests of other persons or free competition.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(31) In the case of a public procurement where the value is equal to or greater than the international value threshold, a contract award notice specified in subsections (1) and (2) of this section shall be sent via the register to the Office for Official Publications for publication. After the contract award notice has been sent to the Office for Official Publications, it shall be published in the register. It is not permitted to make a contract award notice public before it has been published in the register.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(4) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(5) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(6) The list of mandatory information for inclusion in contract award notices, the formal requirements for contract award notices and the procedure for submitting contract award notices to the register and the Office for Official Publications shall be established by the Government of the Republic.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 21. Public procurement report

(1) Within one month after entry into a procurement contract with a value which is equal to or greater than the international value threshold, the contracting authority shall prepare a public procurement report which shall set out at least the following information:

1) the name and contact details of the contracting authority;

2) the object and value of the procurement contract;

3) the names of the qualified tenderers and the reasons for their qualification;

4) the names of the disqualified tenderers and the reasons for their disqualification;

- 5) the name of the tenderer who submitted the successful tender, the reasons for that tender having been successful, and any part of the procurement contract which the tenderer who submitted the successful tender intends to perform through a subcontractor, if this is known to the contracting authority;
 - 6) if open tendering is not used, the grounds for the selection of the tendering procedure.
 - (2) The contracting authority is required to preserve the public procurement report for seven years after performance of the procurement contract.
 - (3) On the demand of the European Commission (hereinafter the Commission), the contracting authority shall submit the public procurement report to the Commission.
- (19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 22. Register

- (1) Information concerning prior notices, notices, contract notices, design contest notices, qualification system notices, contract award notices and protests shall be entered in the register.
 - (2) The register shall be established and the statutes for the maintenance of the register shall be approved by the Government of the Republic.
 - (3) The register shall be maintained in the form of a computer database.
 - (4) Prior notices, notices, contract notices, design contest notices, qualification system notices, contract award notices and information concerning protests shall be submitted to the register in electronic form.
 - (5) The main functions of the register are:
 - 1) to make public information concerning prior notices, notices, contract notices, design contest notices, qualification system notices, contract award notices and protests which has been entered in the register and, in the cases provided by legal acts, to communicate such information to the Office for Official Publications;
 - 2) to process information concerning prior notices, notices, contract notices, design contest notices, qualification system notices, contract award notices and protests which have been entered in the register.
 - (6) Contracting authorities, except those specified in clause 5 (1) 1) of this Act, shall pay a state fee for the entry of information concerning a prior notice, a contract notice or a design contest notice in the register.
 - (7) Persons who submit information to the register shall be responsible for the correctness of register entries made thereby. The register has the right to refuse to make public prior notices, notices, contract notices, design contest notices, qualification system notices, and contract award notices if they do not meet the requirements established by legal acts.
- (19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 23. Disclosure of information entered in register

- (1) The register shall be public.
- (2) Information concerning the following items in the register shall be published on the web site of the register:
 - 1) prior notices;
 - 2) notices;
 - 3) contract notices;
 - 4) design contest notices;
 - 41) qualification system notices;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

5) contract award notices;

6) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

7) protests.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(3) The register shall ensure access to information entered in the register for five years after expiry of the corresponding tendering procedure or end of the corresponding design contest.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189; 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

Chapter 4

Tender Documents

§ 24. Tender documents

(1) Tender documents shall contain at least the following information:

1) the due date for the performance of the procurement contract;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

2) the technical specification;

3) the evaluation criteria which will be used for selecting successful tenders and which may be either the lowest price only or the economically most advantageous tender which, depending on the specific object of the public procurement, may be determined on the basis of different criteria allowing for objective evaluation, and of their relative proportion in percent or value points;

4) the terms and conditions of the procurement contract to the extent that the contracting authority is able to submit at the moment;

5) the conditions of payment;

6) the amount of tender security if the contracting authority demands submission of tender security;

7) the language or languages in which the tender is to be submitted;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

8) the currency unit or units in which the value of the tenders is to be submitted;

9) the address to which the tenders are to be sent or delivered;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

10) instructions for the marking of the envelope in which the tenders are to be submitted;

11) the due date and time for the submission of tenders;

12) the address from which additional information concerning the public procurement and the content of the tender documents can be obtained, and other details;

13) the tender validity period;

14) the place, date and time of opening the tenders;

15) in the case of open tendering, the qualification requirements for tenderers and a notation indicating the information and documents to be annexed to the tender for the purposes of evaluating the qualifications of the tenderers;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

16) if the contracting authority prescribes the possibility of rejecting all tenders, a notice concerning the conditions under which the contracting authority reserves the right to do so;

17) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

18) the structure of the tender.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(2) In tender documents, the contracting authority may require the tenderers to indicate in their tenders the share of the contract which they intend to perform themselves and the share of the contract which they intend to subcontract to third parties, whereas subcontracts shall not reduce the liability of the tenderer.

(3) A contracting authority may charge a fee for tender documents if the amount of the fee has been indicated in the contract notice. The amount of the fee shall not exceed the cost for the photocopying and delivery of the tender documents.

(4) If a contract notice prescribes a fee for the tender documents, the contracting authority shall issue the tender documents after payment of the fee indicated in the invitation.

(5) A contracting authority shall enable persons interested in participation in a tendering procedure to access tender documents at the contracting authority without charge.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(6) In the case of a negotiated tendering procedure without prior publication of a tender notice, the contracting authority shall submit the information specified in subsection (1) of this section in the tender documents to the extent it considers necessary.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 25. Amendments to tender documents

A contracting authority may make amendments to tender documents on the condition that such amendments be sent during one and the same day of the first half of the term for submission of tenders to all tenderers who received the tender documents. If a protest or appeal is filed, the contracting authority may extend the term for submission of tenders.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 26. Technical specification

(1) For the purposes of this Act, a technical specification is a list of the characteristics of goods purchased or services or construction work contracted for by way of public procurement or a description of the process affecting those characteristics or a description of the methods of production which sets out the requirements for the object of the public procurement and enables the object of the public procurement to be described in a manner which corresponds to that desired by the contracting authority. A technical specification includes, amongst other things, quality, performance and safety, procedures for assessing and attesting conformity to the requirements, tests and testing methods, packaging, marking and labelling, symbols and terminology, classification, planning, design, manufacture, production, provision, use, technical readjustment, maintenance, storage and preservation, transport, constituent parts, dimensions, volume or quantity and other technical indicators.

(2) In the case of contracting for construction works, the technical specification may be deemed to be, amongst other things, the rules for planning and calculating construction works, the test, control and acceptance conditions, the construction methods and technology, and other technical conditions which the contracting authority may prescribe for construction works completed on the basis of the rules and for material or parts used therein. More precise requirements for the technical specification of

construction work shall be established in the rules specified in subsection 10 (3) of this Act.

(3) A technical specification shall not create competitive advantages for certain tenderers or give rise to barriers to international trade.

(4) In the preparation of a technical specification, the contracting authority shall not use the advice of persons who may have business interests with regard to the public procurement.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 27. Preparation of technical specification

(1) If the estimated value of a public procurement is equal to or greater than the international value threshold, the technical specification shall be prepared on the basis of a harmonised standard, a European standard transposed into an Estonian standard, technical approval or another recognised technical description, unless this is in conflict with a technical regulation.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(11) If there is no harmonised standard, European standard transposed into an Estonian standard, technical approval or other recognised technical description specified in subsection (1) of this section in the relevant field, the technical specification may be prepared on the basis on one of the following technical regulations or standards in the order given below:

1) on the basis of a technical regulation which has been prepared on the basis of an Estonian standard which is identical to a standard of the International Organisation for Standardisation, or on the basis of standards of the International Organisation for Standardisation;

2) on the basis of an original Estonian standard;

3) on the basis of an original standard of another country which has been transposed into an Estonian standard;

4) on the basis of another standard.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) Goods of a specific make or obtainable from a specific source or through a specific process, which would favour or eliminate the participation of certain tenderers may be listed in a technical specification only if such specification is unavoidable due to the special character of the object of the public procurement.

(3) Information concerning specific origins or methods of production, types, trade marks or patents shall be listed or referred to in a technical specification only if such list or reference is accompanied by the words "or equivalent" and if the characteristics of the object of the public procurement are otherwise not sufficiently precise and intelligible to all parties.

§ 28. Standards

(1) Reference shall be made in a technical specification to the technical regulation, standard, technical approval or other recognised technical specification on which the preparation of the technical specification has been based. On the basis of a corresponding application, the contracting authority shall ensure that the tenderer has access to the document which was the basis for the technical specification if it is not freely accessible to the tenderer.

(2) Contracting authorities may derogate from the requirements provided for in subsection 27 (1) of this Act if:

- 1) the object of the public procurement does not conform, or there are no resources to ensure that it conforms sufficiently, to the harmonised standard, European standard transposed into an Estonian standard, technical approval or other recognised technical description specified in subsection 27 (1) of this Act;
- 2) upon use of the harmonised standard, European standard transposed into an Estonian standard, technical approval or other recognised technical description specified in subsection 27 (1) of this Act, it would be necessary to purchase goods which are not technically compatible with the goods already in use or which, when introduced, would cause unreasonable additional expenditure or technical problems;
- 3) the harmonised standard, European standard transposed into an Estonian standard, technical approval and other recognised technical description specified in subsection 27 (1) of this Act are not suitable for the application in question and do not take into consideration the technical innovations which have occurred after the introduction of those standards;
- 4) the object of the public procurement is of a genuinely innovative nature and therefore the application of the harmonised standard, European standard transposed into an Estonian standard, technical approval or other recognised technical description specified in subsection 27 (1) of this Act is not possible;
- 5) there is no harmonised standard, European standard transposed into an Estonian standard, technical approval or other recognised technical description specified in subsection 27 (1) of this Act in the relevant field.

(3) If a contracting authority has derogated from the requirements of subsection 27 (1) of this Act and subsection (1) of this section in accordance with subsection (2) of this section, the contracting authority is required to disclose the reason therefor in contract notice or the tender documents in the case of open tendering procedure, restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, or in the tender documents in the case of negotiated tendering procedure without prior publication of a tender notice, and to ensure, on the basis of a corresponding application, that the tenderer has access to the information which was the basis for preparation of the technical specification.

(4) If a contracting authority has derogated from the requirements of subsection 27 (1) of this Act and subsection (1) of this section in accordance with clause (2) 2) of this section, the contracting authority is required, in addition to the provisions of subsection (3) of this section, to prepare a clear plan of action concerning the future transition to a harmonised standard, a European standard transposed into an Estonian standard, technical approval or another recognised technical description.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

Chapter 5

Tenderers and Applicants

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 29. Tenderers and applicants

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(1) Legal persons in private law, legal persons in public law and natural persons may be tenderers or applicants.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(2) If several tenderers or applicants submit a joint tender or application for participation in a tendering procedure, such tenderers or applicants shall authorise a

representative from among themselves for the performance of the subsequent acts relating to the tendering procedure and entry into and performance of the procurement contract. The authorisation document shall be submitted together with the joint tender or application for participation in the tendering procedure.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 30. Verification of qualifications of tenderers and applicants

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(1) Contracting authorities are required to verify the qualifications of tenderers and applicants.

(2) Upon verification of the qualifications of an applicant in the case of a restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, the qualification requirements prescribed for tenderers shall be applied to the applicant.

(3) In the case of an open tendering procedure, the contracting authority shall verify the qualifications of the tenderers before reviewing the contents of the tenders.

(4) In the case of a restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, the contracting authority shall verify the qualifications of an applicant before submission of the tender documents. A tenderer may be subsequently disqualified only if the contracting authority becomes aware of new circumstances.

(5) In the case of a negotiated tendering procedure without prior publication of a tender notice, the contracting authority shall verify the qualifications of tenderers either before or after submission of tender documents upon purchasing of goods or contracting for services and before submission of tender documents upon contracting for construction work.

(6) In the case where a joint application to participate in the tendering procedure or a joint tender is submitted, the qualifications of the applicants or tenderers shall be verified separately with regard to the total of the indicators set out in subsection 31 (1) of this Act. Numerical indicators shall be added, whereupon the indicator obtained shall meet the conditions set out in the tender documents. If one of the applicants or tenderers is disqualified, all the applicants or tenderers who submitted the joint application to participate in the tendering procedure or the joint tender shall be disqualified.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(7) In the case of contracting for construction works with a value greater than 3 million kroons and lower than the international value threshold and where a joint application to participate in the tendering procedure or a joint tender is submitted, the relevant indicators of one of the applicants or tenderers must, in addition to the provisions of subsection (6) of this section, meet at least 40 per cent of the conditions set out in the contract notice or the tender documents.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 31. Verification of qualifications of tenderers

(1) Upon verification of the qualifications of a tenderer, the contracting authority shall verify whether:

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

1) the financial status and technical competence of the tenderer comply with the specified requirements;

2) the tenderer is solvent, the tenderer's assets are not sequestered, and no liquidation proceeding has been initiated and no bankruptcy order has been issued with respect to the tenderer;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

3) the tenderer has performed all the obligations thereof with respect to state and local taxes, has submitted information to the contracting authority concerning the amount of social tax paid by the tenderer on the remuneration paid to the employees thereof during the last three calendar years or concerning the amount of social security charge applicable in the home country of the tenderer and has granted written consent to submission of a corresponding inquiry to the Tax and Customs Board or other competent institution.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

4) the tenderer has, during the last three years, performed all public procurement contracts as required.

(2) A contracting authority may require a tenderer to submit only the information necessary for verifying the qualifications of the tenderer, and shall take into consideration the legitimate interests of the tenderer relating to the protection of the business secrets thereof.

§ 32. Entry of tenderer in commercial or professional register

(1) A contracting authority may require a tenderer to prove that the tenderer is entered in a commercial or professional register according to the laws of the home country of the tenderer, or to submit confirmation that the tenderer has taken a corresponding oath of office.

(2) If a tenderer is required to hold an activity licence or be a member of a corresponding organisation in order to perform a public procurement in the home country of the tenderer or in Estonia, the contracting authority may require the tenderer to submit proof concerning such activity licence or membership.

§ 33. Financial status of tenderer

(1) In order to verify whether the financial status of a tenderer meets the requirements set by the contracting authority, the contracting authority shall, taking into account the nature, amount and purpose of the goods to be purchased or construction work or services to be contracted for, require submission of one or several of the following documents:

1) the annual report or an extract from the annual report, if publication of the annual report is required under the law of the home country of the tenderer;

2) an extract indicating the net turnover of the tenderer during the last three financial years as concerns the object of the public procurement in question;

3) in the case of contracting for services, confirmation concerning the corresponding professional liability insurance.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(2) If submission of the documents specified in subsection (1) of this section is not possible, the contracting authority may require the tenderer to submit other data and documents necessary for assessing the financial status of the tenderer.

(3) If, for good reason, a tenderer is unable to submit the documents required by the contracting authority, the tenderer may prove its financial status by any other documents accepted by the contracting authority.

§ 34. Technical competence of tenderers

(1) In order to assess the technical competence of a tenderer, the contracting authority shall, depending on the nature, amount and purpose of the goods to be purchased or construction work or services to be contracted for, require submission of one or several of the documents listed in subsections (2)–(4) of this section.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(2) In the case of purchasing of goods, the contracting authority may require a tenderer to submit:

1) a list of similar transactions for the purchase and sale of goods in which the tenderer has participated during the last three years, together with the values, due dates and indication of contracting authorities;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

2) a description of the technical capacity, measures for ensuring quality, and research and scientific capacity of the tenderer, accompanied, if necessary, by proof;

3) information concerning the technical staff or technical units whom the tenderer intends to use in the performance of the public procurement contract;

4) samples, descriptions or photographs of the goods being purchased, whereas the authenticity thereof shall be proved if the contracting authority so requires;

5) documents to prove that the goods comply with specific regulations or standards.

(21) If goods are purchased which are particularly complex or intended for specific purposes, the contracting authority itself or a competent authority authorised thereby and from the home country thereof may verify the production potential of the tenderer on site with the agreement of the tenderer and under the conditions set out in the contract notice or the tender documents.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(3) In the case of contracting for construction works, the contracting authority may require a tenderer to submit:

1) proof of the professional qualifications of the tenderer's specialists and persons responsible for performing the construction works;

2) a list of similar construction works, if any, performed during the last five years and information concerning the value, time, site and the authorities contracting for the construction works and confirmation that the construction works were performed properly and according to good building practice;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189; 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

3) a statement that the tenderer has the tools, equipment and machinery necessary to perform the construction work;

4) a statement regarding the average number of employees and the average number of members of the management board of the tenderer during the last three years;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

5) information concerning the technical staff or technical units whom the tenderer intends to use in the performance of the construction work;

6) a statement of the measures for ensuring quality, used by the tenderer;

7) data concerning the subcontractors which the tenderer intends to use in the performance of the procurement contract.

(4) In the case of contracting for services, the contracting authority may require a tenderer to submit:

- 1) proof of the professional qualifications of the members of the management board of the tenderer and of the tenderer's specialists and persons responsible for providing the services;
(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)
- 2) a list of similar services, if any, provided during the last three years, and documents indicating the value, time of provision and the authorities contracting for the services;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 3) information concerning the technical staff or technical units whom the tenderer intends to use in the provision of the services;
- 4) a statement regarding the average number of employees and the average number of members of the management board of the tenderer during the last three years;
(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)
- 5) a statement that the tenderer has the tools, equipment and machinery necessary to provide the services;
- 6) a description of the technical capacity, measures for ensuring quality, and research and scientific capacity of the tenderer, accompanied, if necessary, by proof;
- 7) data concerning the subcontractors which the tenderer intends to use in the performance of the procurement contract.

§ 35. Qualification of tenderers

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(1) A contracting authority is required to exclude a tenderer from a tender at any time if it becomes evident that the tenderer has submitted false information or other materially misleading information which is of determinative importance when a decision is being made, or that the tenderer has submitted falsified documents.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) A tenderer is disqualified if:

1) the tenderer is bankrupt or undergoing liquidation, the business activities thereof are suspended or it is in any other similar situation pursuant to the law of the home country of the tenderer;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

2) compulsory liquidation or other similar proceedings have been initiated with regard to the tenderer pursuant to the law of the home country of the tenderer;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

3) the tenderer has not performed the obligations thereof regarding payment of state or local taxes;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

4) a court judgment which has entered into force proves that the tenderer has, during the last three years, failed to perform as required a procurement contract entered into with the tenderer as a result of a tendering procedure;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

5) the tenderer has failed to submit the data or documents required by the contracting authority on the basis of this Act;

6) the tenderer does not meet the requirements prescribed by legal acts for operating in the corresponding field of activity or the financial status or technical competence of the tenderer is not in compliance with the requirements set by the contracting authority.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(3) In the cases listed in clauses (2) 1)–4) of this section, documents issued by a competent authority are considered as acceptable proof.

(4) If the home country of a tenderer does not issue the relevant documents, they may be replaced by a declaration made by the person concerned before a notary or other such competent official of the home country of the tenderer.

(5) In the cases set out clauses (2) 5) and 6) of this section, the qualifications of the tenderer may be verified if the information or documents not submitted can be accessed by the contracting authority at no significant cost through a public register or if the lack of compliance with the requirements is insignificant when a decision is being made.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(6) A contracting authority may not disqualify a tenderer solely due to the absence of previous procurement contracts.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(7) A written notice concerning verification of the qualifications of a tenderer, disqualification of a tenderer or the removal of a tenderer from a tender and the reasons therefor shall be delivered to the tenderer within three working days as of the corresponding decision being made.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 36. Official list of recognised tenderers

(1) A tenderer whose seat is in Estonia or a Member State of the European Union which maintains an official list of recognised tenderers may, in order to prove the qualifications of the tenderer according to the requirements provided for in clauses 31 (1) 1) and 2) and § 32 of this Act, provide the contracting authority with a registration certificate issued by an authorised body of the home country of the tenderer concerning the entry of the tenderer in the official list of tenderers. A registration certificate shall contain references to the basis for registration and the classification of the tenderer in that list.

(2) The registration of a tenderer in an official list of recognised tenderers is the basis for the contracting authority to verify the qualifications of the tenderer in respect of the indicators which were the basis for the registration of the tenderer in that list. The contracting authority does not have the right to ask a tenderer which has presented a registration certificate for additional information regarding the basis on which the tenderer was entered in the official list of recognised tenderers or regarding the basis on which the qualifications of the tenderer were verified in that list or for information which is contained in the registration certificate, with the exception of additional confirmation concerning the payment of statutory social insurance tax or payments.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 361. Official list of recognised tenderers for public procurements of construction work

(1) The requirements for persons entered in the official list of recognised tenderers for public procurements of construction work, the requirements and procedure for drawing up the list and the procedure for giving notification regarding the list shall be established by the Government of the Republic on the proposal of the Minister of Economic Affairs and Communications.

(2) The requirements for making entries in the official list of recognised tenderers for public procurements of construction work shall be the same for all persons who wish to be entered in the list and whose seat is in a Member State of the European Union, and the

requirements and the documents and information proving that the requirements have been met shall be in accordance with the provisions of §§ 31-35 of this Act.

(3) The right of a person to operate as the person maintaining the list shall be prescribed in a contract under public law entered into by the Ministry of Economic Affairs and Communications and the person concerned.

(4) Responsibility for compensating for damage caused by a violation of the requirements for preparation of the list and for giving notification shall be borne by the person maintaining the list. The person maintaining the list shall have a valid liability insurance contract with a minimum amount of insurance coverage of 5 million kroons.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 37. System for qualifying tenderers

(1) Contracting authorities specified in clause 5 (1) 6) of this Act may use a qualifying system for tenderers both in the case of public procurements the estimated value of which is lower than an international threshold and public procurements the value of which equals or exceeds an international value threshold. Contracting authorities specified in clauses 5 (1) 1)–5) and 7) of this Act may use a qualifying system for tenderers in the case of a negotiated tendering procedure without prior publication of a tender notice and in the case of a public procurement the estimated value of which is lower than an international value threshold.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) A contracting authority may establish a system for qualifying tenderers, based on objective criteria and the provisions of this Act.

(3) Contracting authorities who establish a system for qualifying tenderers based on qualification criteria and rules shall ensure that it is possible, at all times, for interested persons to:

1) access the criteria and rules for qualifying tenderers, whereas interested persons shall be notified of amendments to such criteria or rules;

2) apply for qualification.

(4) A contracting authority may use lists of qualified tenderers compiled by other persons on the condition that the qualification systems used are in accordance with the requirements of the contracting authority and the provisions of this Act. In such case, the contracting authority shall notify interested persons of the names of the persons who compiled the lists of qualified tenderers.

(5) A contracting authority shall inform applicants of the decision concerning qualification. If the decision concerning qualification cannot be made within two months, the contracting authority shall inform applicants of the reasons for the delay and notify them of the date on which the decision is to be made within two weeks after submission of the applications.

(6) Applicants who are disqualified shall be informed of the corresponding decision and grounds for disqualification. The grounds for disqualification shall be based on the criteria for qualifying tenderers, specified in subsection (2) of this section.

(7) A contracting authority shall not require tenderers to submit documents which duplicate documents already submitted to such contracting authority by the corresponding tenderer.

(8) Written records shall be kept of qualified tenderers. The corresponding list may be subdivided into categories according to the object of public procurement to which the qualification applies.

(9) Contracting authorities may disqualify of a tenderer only on grounds arising from criteria for qualification specified in subsection (2) of this section. A tenderer shall be notified of disqualification and the reason therefor shall be indicated.

(10) A contracting authority shall submit a qualification system notice in Estonian.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(101) If a contracting authority establishes a system for qualifying tenderers which could be used upon entry into procurement contracts the estimated value of which is equal to or greater than the international value threshold, a qualification system notice specified in the subsection (10) of this section shall be sent via the register to the Office for Official Publications for publication. After the qualification system notice has been sent to the Office for Official Publications, it shall be published in the register. It is not permitted to make a qualification system notice public before it has been published in the register.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(11) The list of mandatory information for inclusion in qualification system notices, the formal requirements for such notices and the procedure for submitting such notices to the register and the Office for Official Publications shall be established by the Government of the Republic.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 38. Security

(1) A contracting authority may demand security from a tenderer in order to ensure compensation for damage in full or in part in the case the tenderer fails to perform the obligations thereof.

(2) The existence of security shall be certified by a guarantee document issued by a credit or financial institution or an insurer or by depositing a sum of money in the bank account of the contracting authority.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(3) In the case of purchasing of goods or contracting for construction work or services, the security demanded shall not exceed one per cent of the estimated value of the public procurement according to the assessment of the contracting authority.

(4) The same amount of tender security shall be demanded from all tenderers.

(5) A contracting authority is not required to return tender security to a tenderer if:

1) the tenderer withdraws the tender within the tender validity period;

2) the tenderer refuses to enter into a procurement contract in accordance with the tender submitted by the tenderer.

(6) Tender security shall be returned to a tenderer within three working days:

1) after expiry of the tender validity period or after entry into force of the procurement contract specified in clause 2) of this subsection if the entry into force precedes the expiry of the tender validity period, except in the case specified in clause (5) 2) of this section;

2) after the entry into force of the procurement contract, in the case of the tenderer who submitted the successful tender;

3) in the case of cancellation of the tendering procedure;

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

4) upon disqualification of the tenderer;

5) upon withdrawal of the tender before the due date for submission of tenders;

6) if tenders are rejected on the grounds provided for in subsection 43 (4) or 44 (1) of this Act.

(7) The security for the performance period of a public procurement of construction work with a value lower than the international value threshold shall be 10 per cent and the

security for warranty period shall be 2 per cent of the value of the tender. The duration of the security for the warranty period of such construction work shall be the same as the duration of the guarantee period of construction work.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

Chapter 6

Submission, Amendment, Withdrawal, Opening, Declaration of Suitability and Rejection of Tenders

§ 39. Submission, amendment and withdrawal of tenders

(1) A tender shall comply with the requirements set out in the tender documents and shall be in no way misleading.

(2) A tender shall be submitted in writing and in a sealed envelope.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(3) The contracting authority shall provide a tenderer with a certificate concerning receipt of a tender and the date and time of receipt of the tender shall be indicated in the certificate.

(4) Tenderers may submit a joint tender.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(5) A tenderer may amend a tender by submitting a new tender or withdraw a tender, whereas the corresponding written notice shall be submitted to the contracting authority before the due date for submission of tenders.

§ 40. Term for submission of tenders and applications for participation in tendering procedure

(1) In open tendering procedures, the period of time between the publication of a contract notice and the due date for submission of tenders shall be, in the case of procurement contracts the value of which:

1) is lower than an international value threshold, not less than fourteen days upon purchasing of goods or contracting for services, and not less than thirty days upon contracting for construction works;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

2) equals or exceeds an international value threshold, generally not less than fifty-two days or not less than thirty-six days, whereas due to time constraints or in simpler cases not less than twenty-two days, if the contracting authority has, in the prior notice, indicated all necessary information concerning the open tendering procedure which is known at the time, on the condition that the prior notice was published at least fifty-two days but not more than twelve months before publication of the contract notice.

(2) In restricted tendering procedures, the period of time between the publication of the contract notice and the due date for submission of applications for participation in the tendering procedure shall be, in the case of procurement contracts the value of which:

1) is lower than an international value threshold, not less than fourteen days;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

2) equals or exceeds an international value threshold, generally not less than thirty-seven days or not less than fifteen days in cases where time constraints render compliance with the requirement of thirty-seven days impossible.

(3) In negotiated tendering procedures with prior publication of a tender notice, the period of time between the publication of the contract notice and the due date for

submission of applications for participation in the tendering procedure shall be, in the case of procurement contracts the estimated value of which:

1) is lower than an international value threshold, not less than fourteen days;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

2) equals or exceeds an international value threshold, generally not less than thirty-seven days or not less than fifteen days in cases where time constraints render compliance with the requirement of thirty-seven days impossible, or not less than fifty-two days if the procurement contract to be negotiated is a construction work concession contract.

(4) In restricted tendering procedures, the period of time between the issue of the tender documents and the due date for submission of tenders shall be, in the case of procurement contracts the estimated value of which:

1) is lower than an international value threshold, not less than fourteen days upon purchasing of goods or contracting for services, and not less than thirty days upon contracting for construction works;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

2) equals or exceeds an international value threshold, not less than forty days, or not less than twenty-six days if the contracting authority has, in the prior notice, indicated all information necessary for the restricted tendering procedure which is known at the time, on the condition that the prior notice was published at least fifty-two days but not more than twelve months before the notice of the restricted tendering procedure, or not less than ten days in cases where time constraints render compliance with the requirement of forty or twenty-six days impossible, or not less than twenty-four days in the case of contracting authorities specified in clause 5 (1) 6) of this Act if the contracting authority does not reach an agreement with the selected tenderers concerning a shorter time limit, on the condition that all tenderers are afforded the same amount of time for the preparation and submission of tenders.

(5) In negotiated tendering procedures with prior publication of a tender notice, the period of time between the issue of the tender documents and the due date for the submission of tenders shall be not less than fourteen days upon purchasing of goods or contracting for services, and not less than thirty days upon contracting for construction works.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(6) A contracting authority may extend the time limit for submission of applications for participation in a tendering procedure and the time limit for submission of tenders. Upon extension of the time limit for submission of applications for participation in a restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, the contracting authority shall amend the contract notice. Upon extension of the time limit for submission of tenders in the case of an open tendering procedure, the contracting authority shall amend the contract notice and the tender documents, and upon extension of the time limit for submission of tenders in the case of a restricted tendering procedure or a negotiated tendering procedure with prior publication of a tender notice, the contracting authority shall amend the tender documents. Upon amendment of the contract notice and the tender documents, the contracting authority shall take into account the provisions of subsection 19 (4) and § 25 of this Act.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(7) A contracting authority may extend the time limit for submission of applications for participation in a tendering procedure. Upon extension of the time limit for submission of applications for participation in a restricted tendering procedure or negotiated tendering

procedure with prior publication of a tender notice, the contracting authority shall amend the contract notice. Upon amendment of a contract notice, the contracting authority shall notify the register of extension of the time limit.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 41. Tender validity period

(1) A tender shall be valid during the term indicated in the tender documents. The tender validity period commences on the due date for submission of tenders and shall not exceed ninety days.

(2) Suspension of a tendering procedure does not extend tender validity periods.

(3) A contracting authority may make a reasoned proposal for extending a tender validity period to the tenderers not later than ten days before expiry of the tender validity period. If a tenderer refuses to extend the tender validity period, the validity shall terminate on the predetermined date.

(4) A contracting authority shall not require a tenderer to extend the validity of tender security.

§ 42. Opening of tenders

(1) Tenders shall be opened at the place and time specified in the tender documents or, in the case of extension of the tender validity period, at the time specified by the contracting authority.

(2) All tenderers have the right to participate in the opening of tenders personally or through their authorised representatives.

(3) At the opening of tenders, the names and registry codes of the tenderers and the values of the tenders submitted by the tenderers shall be made known and the conformity of the submitted documents with the requirements set out in the tender documents shall be verified. A report on the opening of the tenders shall be prepared.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(4) A copy of a report on the opening of tenders shall be sent to the tenderers within three working days after the date of opening the tenders.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(5) (Repealed - 15.05.2002 entered into force 01.07.2002 - RT I 2002, 47, 297)

(6) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 43. Declaration of conformity of tenders and rejection of tenders

(1) Contracting authorities shall verify the compliance of submitted tenders with the requirements set out in the tender documents.

(2) A tender shall be declared to be in conformity if it complies with all the requirements set out in the tender documents.

(3) A tender may be declared to be in conformity if it contains no substantive deviations from the conditions set out in the tender documents.

(4) A contracting authority shall reject a tender if:

1) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

2) the tender does not comply with the requirements set out in the tender documents.

(5) A written notice concerning declaration of tenders as being in conformity or concerning rejection of tenders and the reasons therefor shall be delivered to the tenderer within three working days as of the corresponding decision being made.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375; 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 44. Rejection of all tenders

(1) A contracting authority may reject all tenders before entry into a procurement contract if the tender documents prescribe such possibility and the grounds therefor.

(2) A contracting authority shall immediately deliver a written notice concerning rejection of all tenders to all tenderers to whom tender documents were issued.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(3) At the request of a tenderer, the contracting authority shall notify the tenderer of the grounds for rejection of all tenders.

(4) Upon rejection of all tenders, the contracting authority shall refund the fee charged from tenderers for the tender documents.

Chapter 7

Comparison, Evaluation and Acceptance of Tenders

§ 45. Comparison and evaluation of tenders

(1) A contracting authority shall compare and evaluate all tenders which have not been rejected. In the comparison and evaluation of tenders, only the criteria set out in the tender documents shall be considered.

(2) The successful tender is a tender which, in terms of the evaluation criteria set out in the tender documents, is the most advantageous among the tenders declared suitable, whereas the the advantage of the tender shall be objectively justifiable.

(3) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(31) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(4) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(5) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(6) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(7) A contracting authority which has divided a public procurement into parts shall evaluate tenders according to the parts.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(8) Persons who are or have been in a relationship with a tenderer which may give rise to justified doubts as to the persons' objectivity shall not participate in the evaluation of tenders.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 46. Acceptance of tenders

(1) A successful tender is deemed to be accepted after fourteen days as of declaration of the tender as successful.

(2) A written notice concerning the declaration of a tender as successful shall be delivered to all tenderers within three working days after the corresponding decision is made. The notice sent to the tenderers shall set out the name of the tenderer who submitted the successful tender and an explanation concerning the advantages of the successful tender over the other tenders.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 47. Alternative tenders

(1) Contracting authorities shall evaluate alternative tenders submitted by the tenderers only if:

1) the criterion for a tender to be declared successful is determination of the economically most advantageous tender;

2) the criteria set out in the tender documents do not preclude submission of alternative tenders.

(2) Contracting authorities who do not preclude submission of alternative tenders in tender documents shall not reject an alternative tender on the grounds that in the case the tender were declared successful it would concern contracting for services instead of purchasing of goods, or vice versa.

§ 48. Tenders of unreasonably low value

(1) If the value of a tender is unreasonably low in comparison with the estimated value of the public procurement, the contracting authority is required to demand that the tenderer submit additional explanations concerning the tender and the constituent elements thereof which the contracting authority considers relevant and to specify a reasonable term for the tenderer to submit the information. The demand and the response thereto shall be prepared in writing.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) A contracting authority shall take into account the circumstances which are justified on objective grounds in the explanation of the tenderer and arise from the economy of a method of construction or production, the technical solutions chosen, exceptionally favourable conditions available to the tenderer in the performance of the procurement contract or the originality of the goods, services or construction work proposed by the tenderer.

(3) If the contracting authority has received a response to the demand specified in subsection (1) of this section and reviewed the explanation provided by the tenderer in accordance with subsection (2) but still finds that the value of the tender is unreasonably low in comparison with the estimated value of the public procurement, or if the tenderer has not submitted a response to the contracting authority's demand specified in subsection (1), the contracting authority may reject the tender. Rejection shall be based on the opinion of an independent expert. A contracting authority shall not reject a tender of low value if the tenderer submits a 100% guarantee for the value difference between the price of the tender submitted and the estimated value of the public procurement.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(4) If the value of a public procurement is equal to or greater than the international value threshold and if the tender documents prescribe that a procurement contract is to be awarded at the lowest price tendered, the contracting authority shall, in the event of rejecting an abnormally low tender, communicate to the Commission its corresponding decision in writing via the Office.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 49. Notification of tenderers

(1) A contracting authority shall, within three working days after making the corresponding decision, inform each applicant who was disqualified from participation in a tendering procedure in writing of the grounds for disqualification.

(2) A contracting authority may decide that the advantages specified in subsection 46 (2) of this Act of a tender declared to be successful shall not be disclosed if this may:

1) be contrary to the public interests;

- 2) prejudice the legitimate business interests of the tenderers;
- 3) prejudice free competition between tenderers.
- (3) If a contract notice or tender documents are revoked or a decision made by the contracting authority with regard to a tendering procedure is annulled or the tendering procedure is cancelled, the contracting authority shall, within three working days, notify the tenderers who received tender documents or persons who were previously qualified by the contracting authority of the corresponding decision in writing.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189; 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 50. Explanations

- (1) Applicants and tenderers have the right to obtain explanations concerning the contract notices and tender documents. The contracting authority shall provide explanations within three working days as of receiving the corresponding request and shall also send the explanations concurrently to all the tenderers or to the tenderers of which the authority is aware.
(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)
- (2) In open or restricted tendering procedures, contracting authorities may request tenderers to submit reasoned and relevant explanations concerning inaccuracies or ambiguities contained in tenders. Requests and explanations shall be prepared in writing.
- (3) If a tenderer fails to submit the explanations justifiably demanded from the tenderer by the contracting authority within five working days as of receiving the corresponding demand, the tender may be rejected.
(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 51. Negotiations

- (1) In negotiated tendering procedures with prior publication of a tender notice or negotiated tendering procedures without prior publication of a tender notice, the contracting authority has the right to decide whether and to which extent to negotiate with the tenderers.
- (2) Negotiations are prohibited in open tendering procedures and restricted tendering procedures.
- (3) If negotiations are held, the contracting authority shall notify tenderers of the procedure for the negotiations before the commencement of the negotiations.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (4) Contracting authorities shall not forward information received during negotiations to other tenderers.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 52. Entry into and entry into force of procurement contracts

- (1) A written procurement contract shall be entered into not earlier than fourteen days after dispatch of a notice provided for in subsection 46 (2) of this Act to the tenderer who submitted the successful tender, but not before acceptance of the tender. If a protest is filed against a decision on declaration of a tender as successful, the procurement contract shall not be entered into before the suspended tendering procedure may be resumed.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (2) The conditions of a procurement contract shall comply with the requirements set out in the tender documents and in the successful tender.

(3) A procurement contract which is entered into before expiry of the term specified in subsection (1) of this section or is contrary to the provisions of subsection (2) of this section is void.

(4) If the tenderer which submitted the successful tender does not wish to enter into a procurement contract under the conditions set out in the tender or does not wish to enter into a procurement contract for other reasons, the contracting authority shall reject the tender.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(5) After a successful tender has been rejected in accordance with subsection (4) of this section, the contracting authority shall reassess all the tenders declared to be in conformity pursuant to the procedure provided for in this Act for the comparison, evaluation and acceptance of tenders.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 53. Tender serving as procurement contract

If tender documents prescribe that an accepted tender is equivalent to a procurement contract, the accepted tender shall enter into force as a procurement contract not earlier than fourteen days after dispatch of a notice provided for in subsection 46 (2) of this Act to the tenderer who submitted the successful tender. If a protest is filed against a decision on declaration of a tender as successful, the procurement contract shall not enter into force before the suspended tendering procedure may be resumed.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

Chapter 8

Tendering Procedures

§ 54. Open tendering procedure

(1) Contracting authorities shall use open tendering procedures. The use of other tendering procedures is permitted only in the cases provided for in this Act.

(2) A contracting authority shall invite all interested persons to participate in an open tendering procedure by publishing a contract notice.

(3) In determining the due date for submission of tenders, the contracting authority shall take into account the value and complexity of the public procurement, the volume of tender documents and the tenderer's need to contact the contracting authority in order to access the supporting documents or the construction site.

(4) A contracting authority shall issue tender documents to persons interested in participating in an open tendering procedure during the period between publication of the contract notice and the first due date for submission of tenders, within three working days after receipt of the corresponding application.

§ 55. Restricted tendering procedure

(1) A contracting authority may use a restricted tendering procedure if:

1) the contracting authority has approved objective selection criteria for the tenderers, and

2) it is economically expedient to verify the qualifications of applicants before submission of the tender documents.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(2) In a restricted tendering procedure, the contracting authority shall, on the basis of the financial status and technical capacity of the applicants, select the persons to whom tender documents shall be submitted concurrently.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(3) A contracting authority may predetermine the number of tenderers participating in a restricted tendering procedure on the condition that:

1) in the case of procurement contracts the value of which equals or exceeds an international value threshold, the minimum number of tenderers is not less than five and the maximum not more than twenty;

2) the number of tenderers is determined on the basis of the nature of the goods to be purchased or construction work or services to be contracted for;

3) the number of tenderers participating in the tendering procedure is determined in the contract notice;

4) in the case of procurement contracts the value of which is lower than an international value threshold, the minimum number of tenderers is not less than three.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(4) In determining the due date for submission of tenders, the contracting authority shall take into account the value and complexity of the public procurement, the volume of tender documents and the tenderers' need to access the supporting documents or the construction site.

§ 56. Negotiated tendering procedure with prior publication of tender notice

(1) A contracting authority may use a negotiated tendering procedure with prior publication of a tender notice if:

1) all tenders were rejected in an open tendering procedure or restricted tendering procedure on the grounds provided for in subsection 43 (4) or 44 (1) of this Act or if such tendering procedure was terminated pursuant to clause 8 (2) 4) or 5) of this Act and the initial terms and conditions of the public procurement were not substantially altered;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

2) due to the nature of the construction work or services or the possible risks involved in contracting for construction work or services, it is not possible to estimate the value of the public procurement in advance;

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

3) due to the nature of the services to be contracted, especially services concerning intellectual property and insurance or banking and investment services, it is not possible to determine the specific terms and conditions of the public procurement with sufficient accuracy in order to find a successful tender in an open tendering procedure or restricted tendering procedure;

4) the construction work contracted for is necessary only for the purposes of research and development and not for generating income or covering costs related to research and development;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

5) the object of the public procurement is a construction work concession.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(2) In a negotiated tendering procedure with prior publication of a tender notice, the contracting authority shall, on the basis of the financial status and technical capacity of the applicants, select the persons to whom tender documents shall be submitted concurrently.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(3) A contracting authority may predetermine the number of tenderers participating in a negotiated tendering procedure with prior publication of a tender notice on the condition that:

- 1) in the case of procurement contracts the value of which equals or exceeds an international value threshold, the minimum number of tenderers is not less than three;
- 2) the number of tenderers participating in the tendering procedure is sufficient for ensuring competition.

§ 57. Negotiated tendering procedure without prior publication of tender notice

(1) Contracting authorities may use a negotiated tendering procedure without prior publication of a tender notice if:

1) rapid completion of the public procurement is necessary due to unforeseeable events in order to save the life or health of a person or property of substantial value or prevent damaging human life or health or property of substantial value or spread of environmental damage, or it is necessary due to national defence reasons, and the use of other tendering procedures is not possible due to time constraints;

2) additional goods are purchased from the initial tenderer which are intended either to partially replace or supplement the goods purchased previously on the basis of a procurement contract entered into as a result of an open or restricted tendering procedure and if a change of tenderer would entail the purchasing of goods which are technically incompatible with the goods purchased previously and currently in use or the use of which would cause unreasonable additional costs or technical problems, in which case the duration of the procurement contract for the purchasing of additional goods shall not exceed three years;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

3) the construction work or services to be additionally contracted for were not included in the initial public procurement but have, due to unforeseen circumstances, become necessary, on the condition that the additional procurement contract is entered into with the same tenderer and due to technical or financial reasons such additional construction work or services cannot be separated from the initial procurement without causing disproportionate costs to the parties to the procurement contract and the additional construction work or services are directly necessary for performing the procurement contract and the total value of the contracts for additional construction work or services equals or exceeds an international value threshold and does not exceed 50 per cent of the total value of the initial public procurement;

4) the construction work or services to be additionally contracted for were not included in the initial public procurement but have, due to unforeseen circumstances, become necessary, on the condition that the additional procurement contract is entered into with the same tenderer and due to technical or financial reasons such additional construction work or services cannot be separated from the initial procurement without causing disproportionate costs to the parties to the procurement contract and the additional construction work or services are directly necessary for performing the procurement contract and the total value of the contracts for additional construction work or services is lower than an international value threshold and does not exceed 20 per cent of the total value of the initial public procurement;

5) in the absence of a suitable alternative or substitute, goods can be purchased or services or construction work contracted for only from one particular tenderer due to artistic reasons or reasons connected with the protection of exclusive rights like patents or copyrights or, in the absence of competition, due to technical reasons;

6) construction work is contracted for which is similar in nature to construction work contracted for on the basis of a procurement contract previously entered into by the same contracting parties as a result of an open or restricted tendering procedure conducted earlier and which complies with the initial building design documentation, if the contract notice in the tendering procedure used to enter into the procurement contract previously entered into contained notification of the possibility to enter into a recurring procurement contract and if the tender documents contained the conditions for entry into such a contract, and if not more than three years have passed since the procurement contract previously entered into was entered into;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

7) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

8) the contracting authority is a contracting authority specified in clause 5 (1) 6) of this Act and if the goods are purchased for a price which is considerably lower than the normal market price by taking advantage of especially favourable conditions which are available only for a very limited period of time or if the goods are purchased under especially favourable conditions from a person with regard to whom liquidation proceedings have been initiated or from a trustee in bankruptcy on the basis of an agreement entered into with the obligees;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

9) the contracting authority is a contracting authority specified in clause 5 (1) 6) of this Act and the goods are purchased on the commodity exchange;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

10) the procurement contract is entered into with the winner of a design contest conducted pursuant to the provisions concerning open tendering procedure or restricted tendering procedure provided for in this Act;

11) no tenders were submitted in an open tendering procedure or a restricted tendering procedure or if all the tenders submitted were by nature different from the object described in the tender documents and the initial tendering conditions have not been substantially altered;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

12) goods are purchased only in order to conduct investigations or experiments or for research or development purposes and not for generating income or for covering the corresponding expenses, on the condition that such purchasing of goods does not prejudice competition upon the conclusion of subsequent contracts for similar purposes;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

13) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

14) the contracting authority is a contracting authority specified in clauses 5 (1) 1)-5) or 7) of this Act and services are contracted for which repeat services contracted for on the basis of a procurement contract entered into by the same contracting parties as a result of an open or restricted tendering procedure conducted earlier, if the contract notice in the tendering procedure used to enter into the procurement contract previously entered into contained notification of the possibility to enter into a recurring procurement contract and if the tender documents contained the conditions for entry into such a contract, and if not more than three years have passed since the procurement contract previously entered into was concluded.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) In a negotiated tendering procedure without prior publication of a tender notice, the contracting authority may negotiate with as many tenderers as the contracting authority considers necessary.

(3) In the case of a negotiated tendering procedure without prior publication of a tender notice, the contracting authority shall select the persons to whom tender documents shall be submitted concurrently.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(4) In the case of a negotiated tendering procedure without prior publication of a tender notice, contracting authorities are not required to comply with the requirements provided for in §§ 18, 19, 25 and 38, subsections 39 (2)–(5), §§ 40 and 42, subsections 43 (2)–(5) and §§ 44–46, 48–50, 52 and 53 of this Act.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(5) In a negotiated tendering procedure without prior publication of a tender notice, the contracting authority shall submit a notice concerning the negotiated tendering procedure without prior publication of a tender notice to the register. The contracting authority does not have the right to initiate negotiations with tenderers before the notice has been published on the website of the register, except in the cases provided for in clauses (1) 8) and 9) of this section.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(6) The list of mandatory information for inclusion in notices concerning negotiated tendering procedures without prior publication of a tender notice, the formal requirements for notices concerning negotiated tendering procedures without prior publication of a tender notice and the procedure for submission thereof shall be established by the Government of the Republic.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 58. Special rules

(1) Contracting authorities specified in clause 5 (1) 6) of this Act may use a negotiated tendering procedure with prior publication of a tender notice instead of an open tendering procedure or restricted tendering procedure.

(2) In addition to the cases provided for in § 57 of this Act, a contracting authority specified in clause 5 (1) 6) may use a negotiated tendering procedure with prior publication of a tender notice if the contracting authority:

1) selects the tenderers from among tenderers qualified pursuant to the qualification system provided for in § 37 of this Act or

2) has published a contract notice in an open tendering procedure, a restricted tendering procedure or a negotiated tendering procedure with prior publication of a tender notice but there are no tenderers or applicants or no qualified tenderers or applicants and the initial tendering conditions have not been substantially altered or

3) enters into a procurement contract on the basis of a framework contract.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 59. Design contest

(1) Contracting authorities shall organise design contests pursuant to the provisions concerning open tendering procedure or restricted tendering procedure provided for in this Act.

(11) In the case of a design contest public procurement where the expected total value of the awards and other amounts payable to the participants in the contest is equal to or greater than the international value threshold set out in subsection 16 (1) of this Act in the event of contracting for services, the design contest notice specified in subsection (1) of this section shall be sent via the register to the Office for Official Publications for publication. After the design contest notice has been sent to the Office for Official

Publications, it shall be published in the register. It is not permitted to make a design contest notice public before it has been published in the register.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) A contracting authority shall authorise the committee of a design contest to organise the contest and ascertain the winners.

(3) Legal persons in private law, legal persons in public law and natural persons may participate in a design contest.

(4) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(5) A contracting authority may restrict the number of participants in a design contest on the basis of explicit and non-discriminatory criteria. A contracting authority shall determine the number of participants in a design contest pursuant to the requirement of sufficient competition.

(6) The committee of a design contest shall consist of persons independent of the participants in the contest. If certain professional qualifications are required from participants in a design contest, at least one-third of the members of the committee of the contest must have the same or similar qualifications.

(7) The committee of a design contest shall be independent in its decisions and opinions. Decisions and opinions concerning anonymous projects shall be made only on the basis of the criteria set out in the notice announcing the design contest.

(8) The list of mandatory information for inclusion in design contest notices, the formal requirements for design contest notices and the procedure for submission thereof to the register and the Office for Official Publications shall be established by the Government of the Republic.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 60. (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

Chapter 9

Submission and Review of Protests

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 61. Contestation of activities of contracting authorities

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

A tenderer or a person interested in participating in a tendering procedure who finds that the contracting authority has violated the tenderer's rights or damaged the tenderer's interests by violating the provisions of this Act in the course of the tendering procedure may file a protest against the activities of the contracting authority.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 62. Submission of protests

(1) Protests concerning contract notices, tender documents or decisions specified in this Act and made during the course of the tendering procedure by contracting authorities, including decisions concerning the qualification of applicants or refusal to qualify applicants, qualification of tenderers or refusal to qualify tenderers, declaration of a tender to be in conformity, rejection of a tender, rejection of all tenders or declaration of a tender as successful, shall be filed with the Office.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) Protests shall be filed within ten working days as of the date on which the person filing the protest becomes or should have become aware of the violation of the rights or

damage to the interests of the person, but not after a procurement contract has been entered into. A protest concerning tender documents shall be filed before the contracting authority opens the tenders.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(3) A protest shall be filed in writing and shall set out:

- 1) the name, address and other details of the person filing the protest;
- 2) the name, address and other details of the contracting authority;
- 3) the content of the contract notice, tender documents or decision against which the protest is filed and the reasons why the person filing the protest considers this to be a violation of the rights or damage to the interests of the person;
- 4) the clearly expressed request of the person filing the protest;
- 5) a list of the documents annexed to the protest.

(4) A person filing a protest shall annex to the protest information at his or her disposal concerning the tendering procedure which is the subject of the protest. Before filing the protest, the person filing the protest shall pay a state fee.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 63. Organisation of review of protests

(1) The Office has the right to require a contracting authority to submit all documents necessary for the review of a protest.

(2) The contracting authority shall submit the required documents to the Office within two working days after the receipt of the corresponding request from the Office.

(3) Before the review of a protest, the Office has the right to require the contracting authority to submit a written statement concerning the content of the protested contract notice, tender documents or decision and the contracting authority shall submit the statement to the Office within two working days after the receipt of the corresponding request from the Office.

(4) The Office shall refuse to review a protest and shall make a corresponding decision if:

- 1) the protest is not filed within the specified term;
- 2) the protest does not comply with the requirements provided for in § 61 or subsection 62 (3) of this Act or the person filing the protest has not paid the state fee;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

3) the protest is not filed against a contract notice, tender documents or a decision specified in subsection 62 (1) of this Act;

4) a decision or precept specified in subsection 70 (1) of this Act has been made or issued.

(5) If the Office finds that a protest filed does not comply with the requirements provided for in subsection 62 (3) of this Act or that the person filing the protest has not paid the state fee, the Office shall return the protest to the person who filed it and shall set a term of two working days for eliminating the deficiencies. If the person who filed the protest fails to eliminate the deficiencies within the specified term, the Office shall refuse to review the protest.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(6) The Office has the right to involve experts in the review of a protest. An expert may submit his or her opinion in writing or at a public session. The expenses relating to the submission of a protest, consisting of the state fee and the certified expenses relating to the involvement of experts, including expert's fees, shall be borne by the person submitting the protest if the review of the protest terminates on the basis of clause 65 (6)

1) or 3) of this Act or by the contracting authority if the review of the protest terminates on the basis of clause 65 (6) 2), 4) or 5).

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(7) Expert's fees shall be determined on the basis of the amount equalling three times the hourly wage corresponding to the salary rate at the highest level of the salary scale for state public servants.

(8) Information concerning protests shall be entered in the register.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 64. Suspension of tendering procedure

(1) Upon receiving a protest concerning which there are no grounds provided for in subsection 63 (4) for refusing to review the protest, the Office is required to notify the contracting authority of submission of a protest against the activities of the contracting authority in the tendering procedure and send a copy of the protest to the contracting authority.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(2) If the Office sets a term for elimination of deficiencies contained in a protest, the Office shall notify the contracting authority of submission of a protest against the activities of the contracting authority in the tendering procedure and send a copy of the protest received by the Office after elimination of the deficiencies to the contracting authority. If the person filing the protest fails to eliminate the deficiencies within the specified term, the Office shall immediately notify the contracting authority of such failure.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(3) Upon receiving a notice from the Office concerning submission of a protest, the contracting authority is required to suspend the tendering procedure.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(4) If a contracting authority continues a tendering procedure after receiving a notice concerning submission of a protest from the Office, all subsequent acts performed in the course of the tendering procedure are void. Procurement contracts entered into after receiving a notice concerning submission of a protest from the Office are also void.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 65. Review of protests

(1) The Office shall review a protest within ten working days as of the date of submission of the protest to the Office. The contracting authority shall decide to review a protest either by a written proceeding on the basis of the documents submitted or shall organise the review of the protest at a public session (hereinafter public session) where at least the representative of the Office, the person who submitted the protest and the contracting authority shall participate.

(2) A public session shall be held if a protest is reviewed with the participation of the representative of the Office, the person who submitted the protest, the contracting authority or, in the case the protest is filed against a decision of the contracting authority concerning declaration of a tender as successful, the person who submitted the successful tender. If necessary, the Office has the right to decide to hold an additional session. Notice of an additional session shall be given either at the previous session or pursuant to the procedure prescribed in subsection (3) of this section.

(3) The Office shall notify the person who submitted the protest, the contracting authority and, in the case the protest is filed against a decision of the contracting authority concerning declaration of a tender as successful, the person who submitted the

successful tender of the time of the public session. The contracting authority shall notify all other tenderers or applicants of the time of the public session. The failure of a contracting authority to inform tenderers or applicants of the opportunity to participate in the public session or the failure of the tenderers or applicants to appear at the session shall not hinder the review of the protest.

(4) Participants in a proceeding for the review of a protest are the person who submitted the protest, the contracting authority and, in the case the protest is filed against a decision of the contracting authority concerning declaration of a tender as successful, the person who submitted the successful tender. Parties to a proceeding for the review of a protest are the person who submitted the protest and the contracting authority.

(5) If one or both of the parties to a proceeding for the review of a protest fail to appear at the public session, the Office shall review the protest in accordance with subsection (2) of this section by a written proceeding on the basis of the documents submitted.

(6) The review of a protest is terminated if:

- 1) the person who submitted the protest withdraws the protest;
- 2) the contracting authority declares the protest to be justified;
- 3) the Office decides to dismiss the protest;

4) the Office decides to satisfy the protest and annul the decision relating to a tendering procedure made by a contracting authority specified in subsection 5 (1) 1) of this Act which was in violation of this Act or issue a precept to a contracting authority specified in clauses 5 (1) 2)–7) of this Act to annul a decision relating to a tendering procedure made in violation of this Act or require the contracting authority to bring the contract notice or the tender documents into conformity with the requirements prescribed by legal acts;

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

5) the Office makes a decision or issues a precept specified in subsection 70 (1) of this Act.

(7) Termination of the review of a protest pursuant to the provisions of clause (6) 1) or 2) of this section shall be documented in a written report signed by the representative of the Office, the person who submitted the protest and the contracting authority.

(8) Termination of the review of a protest pursuant to the provisions of clause (6) 3) or 4) of this section shall be documented in a reasoned decision of the Office.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 66. Filing of appeals with administrative court

In order to resolve a protest concerning which a decision specified in subsection 63 (4) or clause 65 (6) 3) of this Act has been made, an appeal may be filed with an administrative court against a decision made by a contracting authority in relation to a tendering procedure, against a contract notice or tender documents or against a decision or precept of the Office specified in clause 65 (6) 4).

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 67. Resumption of tendering procedure

(1) A contracting authority may resume a suspended tendering procedure after:

- 1) receiving a notice provided for in subsection 64 (2) of this Act from the Office, or
- 2) the person who submitted the protest has withdrawn the protest;
- 3) receiving a written notice from the person who filed the protest that the person will not file an appeal pursuant to the procedure provided for in § 66 of this Act against

decisions made by the contracting authority in relation to the tendering procedure or against the contract notice or the tender documents, or

4) ten days have passed from the making of a decision of the Office specified in clause 65 (6) 3) of this Act, or

5) expiry of the term for suspension of the tendering procedure specified by an administrative court.

(2) If a protest is declared to be justified pursuant to clause 65 (6) 2) of this Act or if the Office makes a decision pursuant to clause 65 (6) 4) of this Act, the tendering procedure shall be resumed after annulment of the protested decision relating to the tendering procedure or after the contracting authority has complied with the precept.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189; 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 671. Conciliation

(1) Any tenderer or applicant who finds that the contracting authority specified in clause 5 (1) 6) of this Act has damaged or may damage the lawful interests of the tenderer or applicant by violating, when conducting tendering procedures, the provisions of the European Union legal acts in the field of public procurements or the provisions of domestic legal acts implementing such legal acts, if the expected value of the public procurement is equal to or greater than the international value threshold, has the right to turn to the Commission and apply for conciliation proceedings.

(2) A tenderer or applicant who has applied for conciliation proceedings and the contracting authority with whom the conciliation proceedings are applied for has the right at any time to waive the conciliation proceedings or to demand that the conciliation proceedings be suspended.

(3) The results of the conciliation proceedings are not legally binding.

(4) The precise procedure for submitting an application for conciliation proceedings and for participating in conciliation proceedings shall be established by the Government of the Republic.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

Chapter 10

Supervision and Compensation for Damage

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 68. State supervisory authority

State supervision over public procurements shall be exercised by the Office.

§ 69. Competence of supervisory authority

The supervisory authority exercising state supervision over public procurements is competent to:

1) monitor compliance with this Act without hindrances and without giving prior notice, including inspection of the contracting authority;

2) receive all information necessary for exercising state supervision over public procurements from contracting authorities and originals or copies of documents relating to public procurements;

3) make a decision or issue a precept if a contracting authority has violated the provisions of this Act in the course of a tendering procedure.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 70. Decision or precept of Office

(1) At any time before entry into a procurement contract, the Office shall, by a decision, either cancel the tendering procedure of a contracting authority specified in clause 5 (1) 1) of this Act or issue a precept requiring a contracting authority specified in clauses 5 (1) 2)–7) to cancel a tendering procedure if the contracting authority:

- 1) fails to present the evaluation criteria to be used to decide on the success of the tenders or the relative importance of the criteria in the tender documents and if the contracting authority has opened the tenders;
- 2) has not notified all the tenderers who received tender documents of the amendment of the tender documents;
- 3) has not notified all the tenderers who submitted tenders of the declaration of tenders as being in conformity or of the rejection of tenders and the reasons therefor or of the declaration of a tender as being successful;
- 4) has violated the procedure for providing explanations set out in subsection 50 (1) of this Act;
- 5) has not, when opening tenders, verified that the documents submitted correspond to the list required in the tender documents;
- 6) has not sent a copy of the report on the opening of the tenders to all the tenderers to whom the contracting authority has issued tender documents;
- 7) in the comparison and evaluation of tenders, uses, as a representative or expert, a person whose relationship with a tenderer may give rise to justified doubts as to the person's objectivity;
- 8) conducts negotiations with one or several tenderers in an open or restricted tendering procedure.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

(2) If a tendering procedure is cancelled, all decisions and acts relating to the tendering procedure are void regardless of whether they were performed before or after the decision concerning cancellation was made. Procurement contracts entered into after the making of a decision concerning cancellation of a tendering procedure or annulment of a decision made by the contracting authority in relation to the tendering procedure are also void.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(3) Before making a decision concerning cancellation of a tendering procedure or issue of a precept, the Office shall grant an opportunity to the contracting authority to submit objections within the term specified by the Office which shall not exceed three working days.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(4) (Repealed - 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 71. Action of office in event of offences

(1) If the Office receives information concerning an offence relating to public procurement or it discovers such offence in the course of supervisory activities relating to public procurement and the offence cannot be regarded as a misdemeanour provided for in § 731–733 of this Act, the Office shall notify a police authority or a prosecutor of the facts known to the Office.

(2) The Office has the right to make proposals concerning disciplinary proceedings to be brought against a person or persons who have violated this Act or legal acts established on the basis thereof.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 711. Co-operation with European Commission

If the Commission informs a contracting authority in writing of a clear violation, when conducting tendering procedures, of the provisions of the European Union legal acts in the field of public procurements or the provisions of domestic legal acts implementing such legal acts, the contracting authority is required to communicate all the relevant information concerning the corresponding tendering procedures to the Office within three working days as of receiving the notice. The procedure for treating the specified information and communicating it to the Commission shall be established by the Government of the Republic.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 72. Compensation for costs of tenderer

A tenderer has the right to demand that a contracting authority pay compensation for the costs relating to the submission of a tender, including the costs relating to the preparation of the tender and participation in the tender, if the tenderer proves that the contracting authority violated the provisions regulating the conduct of a public procurement, without which it is likely that the procurement contract would have been entered into with the tenderer.

(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

§ 73. Compensation for damage by tenderers

If a tenderer submits false information or falsifies documents in the course of a tendering procedure or review of a protest, the tenderer shall pay compensation for the damage caused to the contracting authority or other persons through the submission of such information or documents.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

Chapter 101

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

Liability

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 731. Violation of requirements for public procurement

(1) Violation of the requirements for public procurement is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 732. Conduct of tendering procedure or submission of tender without firm intention to enter into procurement contract

(1) The conduct of a tendering procedure or submission of a tender without a firm intention to enter into a procurement contract is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 30 000 kroons.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 733. Submission of false information in tendering procedure

(1) A tenderer who submits false information in a tendering procedure shall be punished by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 30 000 kroons.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 734. Proceedings

(1) The provisions of the General Part of the Penal Code (RT I 2001, 61, 364; 2002, 86, 504; 105, 612; 2003, 4, 22; 83, 557; 90, 601) and of the Code of Misdemeanour Procedure (RT I 2002, 50, 313; 110, 654; 2003, 26, 156; 83, 557; 88, 590; 593) apply to the misdemeanours provided for in §§ 731-733 of this Act.

(2) Extra-judicial proceedings concerning the misdemeanours provided for in §§ 731-733 of this Act shall be conducted by the Public Procurement Office.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 74. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 75. (Repealed - 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

Chapter 11

Implementing Provisions

§ 76. Specifications concerning public procurements conducted by Eesti Pank.

Public procurements conducted by Eesti Pank are not subject to the provisions of §§ 61–67, clause 69 3) and § 70 and of this Act.

§ 761. Specifications concerning public procurements for contracting for cutting services in state forests

Until 1 January 2003 contracting authorities are not required to apply the procedure provided for in this Act to contracting for cutting services in state forests.

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 762. Specifications concerning public procurement of goods and services purchased or contracted for maintaining pension accounts

Until 31 December 2002, the registrar of the Estonian Central Register of Securities is not required to apply the procedure provided for in this Act upon the purchase of or upon contracting for goods or services relating to the information systems, software programs or the safeguard measures for register information which are used for maintaining pension accounts.

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

§ 77. State fees

State fees are charged for the performance of acts prescribed in this Act according to the rates provided for in the State Fees Act (RT I 1997, 80, 1344; 2001, 55, 331; 56, 332; 64, 367; 65, 377; 85, 512; 88, 531; 91, 543; 93, 565; 2002, 1, 1; 9, 45; 13, 78; 79; 81; 18, 97; 23, 131; 24, 135; 27, 151; 153; 30, 178; 35, 214; 44, 281; 47, 297; 51, 316; 57, 358; 58, 361; 61, 375; 62, 377; 82, 477; 90, 519; 102, 599; 105, 610; 2003, 4, 20; 13, 68; 15, 84;

85; 20, 118; 21, 128; 23, 146; 25, 153; 154; 26, 156; 160; 51, 352; 66, 449; 68, 461; 71, 471; 78, 527; 79, 530; 81, 545; 88, 589; 591).

(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§ 78. Amendment of State Fees Act

The State Fees Act (RT I 1997, 80, 1344; 2001, 55, 331; 56, 332; 64, 367; 65, 377; 85, 512; 88, 531; 91, 543; 93, 565; 2002, 1, 1; 9, 45; 13, 78; 79; 81; 18, 97; 23, 131; 24, 135; 27, 151; 153; 30, 178; 35, 214; 44, 281; 47, 297; 51, 316; 57, 358; 58, 361; 61, 375; 62, 377; 82, 477; 90, 519; 102, 599; 105, 610; 2003, 4, 20; 13, 68; 15, 84; 85; 20, 118; 21, 128; 23, 146; 25, 153; 154; 26, 156; 160; 51, 352; 66, 449; 68, 461; 71, 471; 78, 527; 79, 530; 81, 545; 88, 589; 591) is amended as follows:

1) the words “except in the cases provided for in subsections (10)–(12) of this section” in subsection 37 (9) shall be replaced by the words “except in the cases provided for in subsections (10)–(12) or 18 of this section”;

2) subsection (18) is added to § 37 in the following wording:

«(18) A state fee shall be paid in the following amount upon filing an appeal against an act or decision made by a person specified in subsection 5 (1) of the Public Procurement Act in the course of a public procurement tendering procedure:

1) in the case of a tender submitted by the person filing the appeal, 3 per cent of the estimated value of the public procurement specified in the tender, but not less than 10 kroons and not more than 5000 kroons;

2) in the absence of a tender submitted by the person filing the appeal, 100 kroons”;

3) Division 203 shall be added to the State Fees Act worded as follows:

“Division 203

Acts Performed Pursuant to Public Procurement Act

§ 1905. Acts with state register of public procurements

A state fee of 300 kroons shall be paid for entry of information concerning a prior notice, notice or contract notice in the state register of public procurements.”

§ 79. Amendment of Taxation Act

Clause 11 (4) 9) of the Taxation Act (RT I 1994, 1, 5; RT I 2000, 45, 279; 55, 365; 84, 533 and 534; 2001, 17, 76; 43, 242; 48, 266; 56, 335; 59, 360; 65, 378; 88, 531) is amended by adding the words “and the Public Procurement Office” after the words “the Statistical Office”.

§ 80. Amendment of Public Procurement Act

Public Procurement Act (RT I 2000, 84, 534; 2001, 40, 224; 50, 284; 2002, 23, 131; 47, 297; 61, 375; 63, 387; 87, 505; 99, 577; 2003, 25, 153; 78, 521; 88, 591) is amended as follows:

1) subsection 3 is amended and worded as follows:

«§ 3. Definition of public procurement

For the purposes of this Act, public procurement is purchasing of goods or contracting for construction work and services.”;

2) section 61 is added to the Act worded as follows:

«§ 61. Contracting authority

(1) For the purposes of this Act, a contracting authority is:

1) a state agency, city or local government, or a local government agency;

2) a legal person in public law or a body of a legal person in public law;

3) a legal person in private law which is not a company and all the founders or members of which are jointly or separately the state, a local government and/or a legal person in public law;

4) a legal person in private law which is not a company and which, to the extent of more than 50 per cent, is financed or more than one-half of the members of the supervisory board or management board of which are appointed jointly or separately by the state, a local government and/or a legal person in public law;

5) an undertaking if it has received a construction work concession from a person specified in clauses 1)–4) of this subsection and enters into procurement contracts for construction work on the basis of such concession or if the state, a local government or persons specified in clauses 2)–4) of this subsection jointly or separately finance the activities of the undertaking to the extent of more than 50 per cent, whereas holdings in the company are not deemed to be financing;

6) an undertaking if the state or a local government has granted a special or exclusive right to the undertaking pursuant to the Competition Act (RT I 1998, 30, 410; 1999, 89, 813; 2000, 53, 343; RT III 21, 232) and if the purchasing of goods or contracting for services or construction works is necessary for the exercise of the special or exclusive right, or if the state, a local government or persons specified in clauses 2)–4) of this subsection jointly or separately hold a majority of votes or more than 50 per cent of the shares in the undertaking directly or through other persons and if the area of activity of the undertaking is either the construction or operation of permanent networks with the intention to provide services relating to the production, transportation, transmission or distribution of water, gas, electricity or thermal energy to the public, or the use of a geographic area in order to prospect for or extract fuels or enable air or water transport undertakings to use an airport, port or other terminal structure, or the operation of networks enabling the public to use services relating to railway, tramway, trolleybus or bus transport, automatic systems or cable distribution, or the construction or operation of public telecommunications networks for ensuring one or more telecommunications services.

(2) Production, transportation, transmission or distribution of water, gas, electricity or thermal energy by an undertaking to networks servicing the public is not deemed to be an activity specified in clause (1) 6) of this section if consumption of water or electricity is necessary for activities other than those specified in clause (1) 6) of this section, or if the supply of the public network depends solely on consumption by the undertaking and does not exceed 30 per cent of the average overall production of water or electricity by the undertaking during the last three years, or if production of gas or thermal energy by the undertaking results inevitably from activities other those specified in clause (1) 6) of this section, or if the public network is supplied with a surplus of gas or thermal energy for the purposes of the economic use thereof and such surplus does not exceed 20 per cent of the average turnover of the undertaking during the last three years.”

3) clause 7 2) is repealed.

§ 81. Repeal of earlier legal acts

The Public Procurement Act (RT I 1995, 54, 883; 1997, 9, 79; 1998, 38, 561; 1999, 16, 271; 92, 824; 97, 859; 2000, 57, 374) currently in force is repealed as of the date of entry into force of this Act.

§ 82. Entry into force of Act

(1) This Act enters into force on 1 April 2001.

- (2) Clause 57 (1) 3) of this Act enters into force on 1 January 2003.
(13.11.2002 entered into force 10.12.2002 - RT I 2002, 99, 577)
- (21) (Repealed - 19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)
- (3) Section 60 of this Act enters into force on 1 July 2001.
- (4) Section 80 of this Act enters into force on the date following the date of publication of this Act in the Riigi Teataja.
- (5) The protests filed with the Office and appeals filed with an arbitral tribunal before entry into force of this Act shall be reviewed and the tendering procedures announced in the Riigihangete Bülletään³ or communicated to the Office before entry into force of this Act shall be conducted pursuant to the provisions of the Public Procurement Act (RT I 1995, 54, 883; 1997, 9, 79; 1998, 38, 561; 1999, 16, 271; 92, 824; 97, 859; 2000, 57, 374; 84, 534; 2001, 7, 17) in force until the entry into force of this Act, and of the legal acts established on the basis thereof.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (6) Subsections 5 (5), 18 (11), 19 (11), 20 (31), 37 (101), 48 (4) and 59 (11) and §§ 671 and 711 of this Act enter into force upon Estonia's accession to the European Union.
(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)
- (7) The provisions of this Act as at 31 December 2003, with the exception of § 21 of this Act, apply to tendering procedures which commenced before 1 January 2004 and which end on that date or later.
(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)
- (8) The computer database of the register maintained on the basis of this Act before 1 January 2004 shall be added to the computer database of the register formed as of that date on the basis of this Act on 1 April 2004.
(19.11.2003 entered into force 01.01.2004 - RT I 2003, 78, 521)

1 RT = Riigi Teataja = the State Gazette

2 Riigikogu = the parliament of Estonia

3 Riigihangete Bülletään = Public Procurement Bulletin