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Comité des marchés publics

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NOTIFICATION DES LÉGISLATIONS NATIONALES D'APPLICATION

Communication de la Lettonie

Addendum

La Mission permanente de la République de Lettonie a fait parvenir au Secrétariat la communication ci-après, en demandant qu'elle soit distribuée aux membres du Comité des marchés publics.

En relation avec le processus d'accession de la Lettonie à l'Accord sur les marchés publics, la législation lettonne ci-après en matière de marchés publics est distribuée aux Parties à l'Accord*:

- Loi du 4 novembre 1999 sur les travaux de construction, les fournitures, les contrats de crédit-bail et les services à l'intention des entreprises de service public; et
- Règlement du Cabinet n° 376 du 31 octobre 2000 relatif à la procédure de sélection des soumissionnaires et à l'application des méthodes de sélection des offres.

* En anglais seulement.

The *Saeima*¹ has adopted and the President has proclaimed the following Law:

LAW ON CONSTRUCTION WORK, SUPPLY, LEASING AND SERVICES FOR THE NEEDS OF PUBLIC SERVICE UNDERTAKINGS²

Chapter I General Provisions

Section 1. Terms Used in this Law

The following terms are used in this Law:

- 1) **public service undertaking** – an undertaking (company) which operates on the basis of exclusive rights provided by law or other regulatory enactments, or on the basis of a licence issued by a State authority or a Local Government, which permits one or more such undertakings (companies) to operate in a specified field within a particular administrative territory or which occupies a natural monopoly position, within a particular administrative territory, in one of the following fields:
 - a) the energy supply,
 - b) the acquisition and supply of drinking water, or the acquisition or supply of drinking water to the drinking water distribution networks of public significance, its transportation through such networks to the consumer, and the management of such networks,
 - c) the construction and management of sewerage networks and purification equipment,
 - d) the administration of an airport or a seaport,
 - e) the exploration of oil or gas deposits in Latvia or its economic zone,
 - f) the maintenance and administration of public telecommunications networks and provision of telecommunications services,
 - g) the maintenance and management of the railway infrastructure for public use, and
 - h) carriage of passengers by buses, trams, and trolley buses;
- 2) **services** – transport carriage, training, and provision of consultation, design and other work, except construction work and supply; and
- 3) **tenderer** – an undertaking (company) which expresses a wish to perform construction work, supply goods, as well as to lease or provide services on the basis of a contract with the public service undertaking.

¹ The Parliament of the Republic of Latvia.

² Disclaimer: The English language text below is provided by the Translation and Terminology Centre for information only; it confers no rights and imposes no obligations separate from those conferred or imposed by the legislation formally adopted and published. Only the latter is authentic. The original Latvian text uses masculine pronouns in the singular. The Translation and Terminology Centre uses the principle of gender-neutral language in its English translations. In addition, gender-specific Latvian nouns have been translated as gender-neutral terms, e.g. *chairperson*.

Section 2. The Purpose of this Law

The purpose of this Law is:

- 1) to achieve transparency and public accessibility during the selection of the performers of construction work, suppliers of goods, lessors and providers of services;
- 2) to ensure competition among the performers of construction work, suppliers of goods, lessors and providers of services;
- 3) to achieve a rational utilisation of the resources of public service undertakings; and
- 4) to promote engagement of the performers of construction work, suppliers of goods, lessors and providers of services in construction work, supply, leasing or provision of services for the needs of public service undertakings.

Section 3. Exceptions to the Application of this Law

(1) This Law shall not apply if:

- 1) a public service undertaking enters into a contract regarding construction work, supply, leasing or services which pertain to the activity of the public service undertaking in foreign states, and if the networks of supply and infrastructure in Latvia are not utilised for such activity in foreign states;
- 2) energy supply undertaking (company) enters into a contract regarding the acquisition of energy or fuel (energy resources) in order to provide an energy supply;
- 3) a public service undertaking enters into a contract regarding construction work, supply, leasing or services which are partially or fully paid for on the basis of bilateral cooperation contracts, from donations of the European Union or loans, or the donations of international financial institutions, if the intergovernmental contract with the relevant international financial institution, or the specific loan or donation contract, provides for selection procedures of the performer of construction work, supplier of goods, lessor or provider of services;
- 4) a public service undertaking enters into a contract regarding the leasing or purchase of real property or the acquisition of other rights to real property, regarding the services provided by other public service undertakings, regarding arbitration services, regarding services related to the issuance, acquisition, sale or transfer of securities or other financial resources to other persons, regarding the services of natural persons in accordance with employment contracts or regarding scientific research (except such research which is fully paid for by the public service undertaking and the results of which are received by such public service undertaking for their own needs);
- 5) a public service undertaking enters into a contract with its branch, or an undertaking which is under its control, or a joint undertaking which has been established by several public service undertakings in order to engage in activities in one of the fields referred to in Section 1, Clause 1 of this Law, if 80 per cent on average of the services provided by such branch, or controlled undertaking, or joint undertaking during the last three years have been provided to the public service undertaking of which the provider of the services is a branch, or under the control; or

- 6) a public service undertaking enters into a contract in which there is information regarding official secrets in accordance with the Law On Official Secrets.

(2) If a public service undertaking does not apply this Law in accordance with Paragraph one of this Section, it shall preserve all the information and documents regarding the relevant contract in order that it may substantiate its decision.

Chapter II

Selection of Tenderers and Choice of Tenders

Section 4. Prevention of Discrimination against Tenderers

(1) In the selection of tenderers and the choice of tenders, a public service undertaking shall not discriminate against any performer of construction works, supplier of goods, lessor or provider of services.

(2) Any contract regarding construction work, the supply of goods, leasing or services shall be entered into by a public service undertaking so as to achieve the purposes referred to in Section 2 and in accordance with the requirements of this Law.

(3) If the estimated price without value-added tax in a contract for supply, leasing or the provision of services exceeds 250 thousand lats or the price without value-added tax in a contract for construction work exceeds three million lats, the public service undertaking shall apply the methods for the selection of tenderers and for the choice of tenders in accordance with this Law.

Section 5. Methods for Selection of Tenderers and for Choice of Tenders

(1) A public service undertaking shall apply one of the following methods for the selection of tenderers and for the choice of tenders:

- 1) an open competition – when a public service undertaking publicly invites tenderers to submit tenders;
- 2) a restricted competition – when a public service undertaking invites tenderers pursuant to its own choice on the basis of market research; and
- 3) negotiations – when a public service undertaking conducts negotiations (consultations) with one or several tenderers regarding the conditions of a contract.

(2) The Cabinet shall determine the procedures for the application of the methods for the selection of tenderers and the choice of tender.

Section 6. Selection of Tenderers at a Competition or Negotiations

(1) If a public service undertaking selects tenderers utilising the methods of competition or negotiations, it shall set equal objective requirements for all the tenderers.

(2) A public service undertaking may substantiate the requirement, on the basis of objective needs, to reduce the number of possible tenderers to a level which allows a balance between the procedures for the selection of tenderers and their nature, with the resources necessary for carrying out such procedures. The selected number of tenderers shall be enough to ensure competition.

Section 7. Qualification Assessment System

(1) To ensure that a public service undertaking always has available information regarding potential performers of specific construction work, suppliers of goods, lessors and providers of services at its disposal, it may establish and apply a qualification assessment system regarding performers of construction work, suppliers of goods, lessors and providers of services.

(2) The system, which shall include various qualification assessment stages shall be established and applied in accordance with objective requirements and regulations of the public service undertaking. If necessary, the requirements may be reviewed up to the invitation of tenderers to a qualification assessment.

(3) The qualification requirements shall be accessible to the performers of construction work, suppliers of goods, lessors and providers of services. The notice of the review requirements shall be provided in good time.

(4) A public service undertaking shall request the interested performers of construction work, suppliers of goods, lessors or providers of services to submit applications for qualification assessment in accordance with the qualification assessment system by publishing a notice regarding preliminary qualification assessment in the newspaper *Latvijas Vēstnesis*³ and in any other periodical press publication.

(5) When taking a decision regarding qualification, or reviewing the qualification requirements, a public service undertaking may not:

- 1) set different administrative, technical or financial requirements for the interested performers of construction work, suppliers of goods, lessors or providers of services; and
- 2) request generally accessible information or repeated examinations, or evidence which duplicates such information.

(6) Within a period of six months from the day of the submission of an application, a public service undertaking shall take a decision regarding the conformity of the qualifications of a tenderer and notify the tenderer in writing. If a longer time-period is necessary for the taking of the decision, the public service undertaking shall notify the tenderer, within a period of two months from the day of the submission of an application, of the reasons due to which a longer time-period is needed for the taking of a decision, as well as the term by which a relevant decision shall be taken.

(7) A public service undertaking shall inform the submitters of applications, whose qualifications has been found inadequate, regarding the reasons for their rejection on the basis of the non-compliance of the tenderer with the requirements referred to in Paragraph two of this Section.

(8) A public service undertaking shall prepare a register of the tenderers selected by qualification assessment. The register shall be accessible for all the potential performers of construction work, supplier of goods, lessors and providers of services.

(9) A tenderer shall be regarded as being in conformity with the qualification requirements for a period of 12 months from the day when the decision was taken regarding the conformity of his or her qualifications. A public service undertaking may discontinue the qualification assessment of tenderers, if they do not comply with the qualification requirements. A public service undertaking

³ The official Gazette of the Government of Latvia.

shall inform the tenderers regarding the intention to discontinue qualification assessment in writing, and specify the reasons.

Section 8. Restrictions to Participation

A performer of construction work, supplier of goods, lessor or provider of purchases shall be excluded from participation in the selection of tenderers and the entering into of a contract, if their activity is characterized by one or more of the following features:

- 1) they are insolvent;
- 2) they have not paid taxes or social insurance contributions in compliance with the requirements of the regulatory enactments of Latvia or their country of domicile; or
- 3) they have provided false or misleading information to the public service undertaking.

Chapter III Determination of the Estimated Contract Price

Section 9. Estimated Contract Price for Supply

The estimated contract price for supply shall be determined on the basis of the amount of the particular transaction. It shall not be permitted to divide the estimated contract price into parts without good reason, or to utilise special methods for determining it, in order to avoid the application of this Law.

Section 10. Estimated Contract Price for Services

(1) In determining the estimated contract price for services, a public service undertaking shall take into account all the remuneration that will be received by the provider of services, as well as the conditions referred to in this Section.

(2) In determining the estimated contract price for insurance services, the amounts of the insurance premiums to be paid shall be taken into account.

(3) In determining the estimated contract price for bank services, the charges for bank services, interest payments and other kinds of remuneration for services shall be taken into account.

(4) In determining the estimated contract price for design (except construction design) services, the total remuneration for the services shall be taken into account.

(5) If the total contract price for the services is not determined, then the estimated contract price shall be determined on the basis of the contract price for the services provided for one month, which shall be multiplied by:

- 1) the number of months within the period for which the contract shall be entered into, if the contract is entered into for a specific time-period which does not exceed 48 months; or
- 2) 48, if the contract is entered into for indefinite time or for a specific time-period which exceeds 48 months.

Section 11. Estimated Contract Price for Leasing or Instalment Purchase

If goods are leased with an option to purchase (acquired with leasing provisions) or without it, purchased or acquired on instalment, the estimated contract price shall be determined on the basis of:

- 1) the total contract price, if the contract is entered into for 12 months or a shorter time-period, or the total contract price, taking into account the planned residual value of the leased object in the case of a lease or a lease with an option to purchase, if the contract is entered into for a time-period which exceeds 12 months; or
- 2) the expected payments in the first four years, if the contract is entered into for indefinite time.

Section 12. Estimated Contract Price for Construction Work

(1) The estimated contract price for construction work shall be the total price for the relevant construction work.

(2) In determining the contract price for construction work, it shall also include all the supply of goods or services necessary for the performance of the relevant contract for construction work. If a contract for construction work also includes supply of goods or services, which are not necessary for the performance of the relevant construction work, the price for such supply of goods or services need not be taken into account when determining the contract price for construction work.

Section 13. Estimated Contract Price for Contracts with Options and for Mixed Contracts

(1) If a contract for supply of goods, leasing or services provides for options, the estimated contract price shall be determined as the highest possible price which is allowed by such options for purchase, lease, lease with an option to purchase or instalment purchase.

(2) If a contract provides for both supply and the provision of services, it shall be considered to be either a contract for supply of goods or a contract for provision of services – depending on which constitutes a larger amount of the estimated contract price, but the estimated contract price shall be determined on the basis of the total contract price for supply of goods and services without taking into account the contract price for supply of goods or services separately.

(3) If the supply of goods, services or construction work consist of separate supply of goods, separate services, their parts or groups, separate construction work, its parts or groups, then the estimated contract price shall be determined, in accordance with this Section, taking into account the total estimated contract price for the goods, services or construction work.

Section 14. Estimated Contract Price in Cases of Extended Contracts or Taking into Account Subcontracts

(1) If one or more suppliers utilising several contracts supply goods of one and the same designation, or if a contract is extended, the estimated contract price shall be determined on the basis of one of the following indicators:

- 1) the amount in monetary terms of the supply of goods of the one and the same designation during the previous financial year or a period of 12 months, taking into account, if possible, the estimated contract prices or changes in the amounts during the subsequent 12 months; or

- 2) the total amount in monetary terms of supply of goods of the one and the same designation in a contract which shall be entered into within 12 months after the first contract entered into, or taking into account the whole duration period of the contract, if it exceeds 12 months.

(2) If such a contract has been entered into between a public service undertaking and one or more suppliers of goods, construction contractors or providers of services, in which is included basic provisions regarding the subject-matter of the contract and, if possible, regarding the prices of one unit and the sub-contracts which will be entered into during the period specified in this contract, the contract price shall be determined as the total calculated amount of the contract prices of the anticipated subcontracts during the time-period for which such contract is entered into.

Chapter IV

Tenders for a Competition or for Negotiations

Section 15. Submission of Tenders

- (1) Applications regarding participation in the selection of tenderers, and tenders, shall be sent in writing, observing the deadlines specified in this Law.
- (2) In determining deadlines for the submission of tenders, a public service undertaking shall take into account the amount of the contract and technical specifications, and the necessity to perform a site inspection or examination.
- (3) Legal persons may be requested to indicate, in the tenders or applications submitted, information regarding the persons who will be responsible for the provision of services.
- (4) If the performance of a contract involves third persons and the entering into of sub-contracts, the tenderer shall indicate this in the tender documents. Such indication shall not affect the liability of the main party to the contract (the general contractor).

Section 16. Information Regarding Competition or Negotiations

- (1) If a tenderer requests such in writing, the public service undertaking shall, within six days from the receipt of the application, send to the potential performer of construction work, supplier of goods, lessor or provider of services, the Regulations of the competition, a draft contract and other necessary documents.
- (2) If a tenderer has in good time made a written request for additional information which pertains to the contract documentation, the public service undertaking shall provide it to the tenderer not later than six days before the specified deadline for the submission of tenders.

Section 17. Criteria for the Choice of Tenders

- (1) A public service undertaking shall choose either the most economically advantageous tender in which such factors as the term for the supply or the performance of the contract, the costs, the effectiveness, the quality of the tender, the aesthetic and functional characteristics, the technical conformity, the exploitation expenditures, the availability of spare parts, the security of supply, the price and other factors have been taken into account, or also the tender with the lowest price.

(2) If a public service undertaking chooses the most economically advantageous tender, it shall indicate in the Regulations of the competition all the criteria for the choice in descending order of importance, and the algorithm for the choice of the tender in accordance with the criteria referred to.

(3) If a public service undertaking chooses the most economically advantageous tender, the tenderers may submit different variants of the tender which meet the technical requirements set by the public service undertaking. The procedure for the submission of variants shall be specified in the Regulations of the competition. If submission of variants is not allowed, it shall be indicated in the Regulations of the competition.

Section 18. Rejection of Abnormally Low Tenders

(1) A public service undertaking may reject abnormally low tenders, if written explanations have in due time been requested regarding such parts of the tender which make the relevant tender abnormally low.

(2) A public service undertaking may reject the tenders, which are abnormally low due to the State aid received, only if it has available information that the State aid has not been approved by the State Aid Supervision Commission.

Chapter V Notices and Invitations

Section 19. Invitations to the Selection of Tenderers, Submission of Tenders, and Notices Regarding Entering into of Contract

(1) In the case of an open competition, a public service undertaking shall send to the Purchase Supervision Bureau an invitation to the selection of tenderers and submission of tenders for publication in electronic form and in the newspaper *Latvijas Vēstnesis*.

(2) In the case of a restricted competition or negotiations, the public service undertaking shall invite in writing the selected tenderers to submit tenders within a specified term and shall simultaneously send a notice to the Purchase Supervision Bureau for publication in electronic form.

(3) The invitation shall be accompanied by the Regulations of the competition and a draft contract, as well as indicate:

- 1) the name, address, telephone and telefax numbers of the public service undertaking;
- 2) the name, surname, office held and address of the contact person from whom supplementary documents may be received, as well as the date until which such may be requested, and the relevant fee, if such has been specified;
- 3) the location and date for submission of tenders;
- 4) the language in which tenders are to be submitted;
- 5) a reference to the published invitation to submit tenders, if there has been such;
- 6) an indication of the documents to be attached to the tender;

- 7) the criteria for the selection of tenderers and the choice of tenders, if such are not specified in the invitation; and
 - 8) other information.
- (4) In the case of an open or a restricted competition and of negotiations, the public service undertaking shall publish a notice thereof within 20 days from the entering into of the contract.
- (5) A notice regarding the entering into of the contract shall specify:
- 1) the name and address of the public service undertaking;
 - 2) the subject-matter of the contract entered into;
 - 3) the construction work to be performed, the supply of goods, the leasing or the services to be provided;
 - 4) the scope of the construction work, the supply of goods, the lease or the services;
 - 5) the method for the selection of tenderers;
 - 6) the undertaking (company) with whom the contract has been entered into;
 - 7) the number of the tenderers who have participated;
 - 8) the date the contract was entered into; and
 - 9) the contract price.

Section 20. Contents of Invitation

- (1) The invitation published in the press shall apply only to such construction work, supply of goods, leasing or services that will be the subject-matter of the anticipated contract.
- (2) The invitation to the selection of tenderers and the submission of tenders shall specify the method for the selection of tenderers.
- (3) The invitation to the selection of tenderers shall indicate:
- 1) the name, address, telephone and telefax numbers of the public service undertaking;
 - 2) the purposes of the qualification assessment;
 - 3) the time of the qualification assessment; and
 - 4) other information.

Section 21. Informative Notices

- (1) At least once a year, when publishing informative notices in the newspaper *Latvijas Vēstnesis* and in any other periodical press publication, a public service undertaking shall inform of:
- 1) in the case of supply contracts – the estimated total contract price in respect of each type of production, if any of the contracts exceed 400,000 lats and their total

estimated contract price exceeds 600,000 lats, and such contracts are expected to be entered into within the following 12 months; or

- 2) in the case of construction work contracts – the essential elements of such construction work contracts which the public service undertaking intends to enter into over the following 12 months, if the specified contract price is not less than 4,000,000 lats.

(2) If a public service undertaking has published an informative notice, the invitation to submit tenders regarding specific construction work, supply of goods, leasing or services shall be published not later than within 12 months after the publication of such notice.

(3) When publishing additional information regarding major projects, a public service undertaking shall not repeat the information included in the informative notice.

Section 22. Form of Notice and Invitation

(1) All the notices and invitations referred to in this Law shall be published in accordance with the form prescribed by the Minister for Finance.

(2) A public service undertaking has the right to send, in parallel with the publication in the newspaper *Latvijas Vēstnesis* and other periodical press publications, direct invitations to tenderers. The term shall be calculated the day when the notice or invitation was published in the newspaper *Latvijas Vēstnesis*.

Section 23. Terms

(1) In the case of an open competition the time-period from the day when an invitation to tender is published in the newspaper *Latvijas Vēstnesis*, until the submission of tenders, may not be less than:

- 1) 40 days, if the contract price is not less than 4,000,000 lats for construction work contracts or 400,000 lats for supply, lease or services contracts;
- 2) 28 days, if the contract price is not less than 4,000,000 lats for construction work contracts, or 400,000 lats for supply, lease or services contracts, and if a relevant informative notice has been published; or
- 3) 28 days, if the contract price exceeds 50,000 lats for construction work contracts or 10,000 lats for supply, lease or services contracts, but is less than 4,000,000 lats for construction work contracts or 400,000 lats for supply, lease or services contracts.

(2) In the case of a restricted competition or negotiations the term may be specified through mutual agreement of the public service undertaking and the selected tenderers, but all tenderers shall be given equal time for the preparation and submission of offers; however, the time-period from the day when the tenderers are invited to submit their tenders may not be less than 10 days.

(3) If a public service undertaking and the tenderers cannot agree, in the case referred to in Paragraph two of this Section, regarding the term by which the tenders are to be submitted, it shall be determined by the public service undertaking. In specifying the term, the amount of the contract and the technical specifications shall be taken into account, but the specified term may not be less than 10 days.

Chapter VI **Technical Specifications**

Section 24. Technical Specifications

(1) Technical specifications are the technical requirements which are to be included in the contract and tender documentation and which characterise the construction work, the materials, products and goods to be supplied or the services to be provided.

(2) The technical specifications shall be formulated in conformity with European Standards adapted with the status of the Latvian National Standard, and registered in accordance with specified procedures.

(3) The European Standard is a standard which has been approved by the European Committee for Standardisation (CEN) or the European Committee for Electrotechnical Standardisation (CENELEC) as European Standards (EN) or Harmonisation Documents (HD) in accordance with the regulations of these organizations.

(4) A public service undertaking shall indicate, in the technical specifications regarding the subject-matter of the contract, such requirements that make a technical specification conform to the relevant standards, by giving preference to such technical specifications that are directed to the task of the subject-matter of the contract. If a public service undertaking considers that such technical specifications do not comply with the purpose of the contract, they may also establish technical specifications based on a description of the appearance of the subject-matter of the contract.

(5) The technical specifications may not refer to particular products or processes, as well as discriminate against an undertaking (company) or grouping of undertakings (companies), or give preference to any undertaking (company) or grouping of undertakings (companies), unless such specifications are determinative for the continued existence of the subject-matter of the contract. Reference to trademarks, patents and specific origin shall be prohibited. However, if it is not possible to characterize the contract subject-matter in the technical specifications in any other way, such references may be used together with the words "vai ekvivalents" ["or the equivalent"].

(6) Paragraph two of this Section shall not apply to cases when:

- 1) it is technically not possible to achieve conformity of the product with the relevant standards;
- 2) a public service undertaking, in establishing relevant standards, would have to acquire equipment that is incompatible with the equipment which is available to it and which it has intended to use together with the equipment to be acquired;
- 3) a public service undertaking, in establishing relevant standards, would experience disproportionately large costs or disproportionately great technical difficulties;
- 4) the relevant standard has not taken into account of the technical improvements that have resulted since its adoption. In such case, the public service undertaking shall inform the relevant institution which is authorised to review such standards; or
- 5) a project is of an innovative nature, therefore the existing standards cannot be applied.

(7) All invitations to tender shall include information regarding derogations of the relevant standards, if there are any.

(8) Application of this Section may not be the grounds for non-compliance with mandatory technical requirements.

(9) A public service undertaking that does not apply European Standards adapted with the status of the Latvian National Standard and registered in accordance with specified procedures, and other Latvian National Standards, shall define in writing the strategy for their introduction in their field of activity.

Section 25. Accessibility of Technical Specifications

(1) Pursuant to the request of potential performers of construction work, suppliers of goods, lessors or providers of services, a public service undertaking shall issue to them the technical specifications that they intend to utilise for the contracts.

(2) If such technical specifications are based on documents, which are accessible to the interested performers of construction work, suppliers of goods, lessors or providers of services, the technical specifications shall include references to the documents referred to.

Section 26. Ensuring the Confidentiality of Information

(1) In order to protect the confidentiality of information, a public service undertaking is entitled to set requirements for the performers of construction work, suppliers of goods, lessors or providers of services in respect of conditions for technical specifications, qualification examinations, selection of tenderers and choice of tenders.

(2) This Law does not restrict the rights of the performers of construction work, suppliers of goods, lessors or providers of services to request that the public service undertaking not disclose information, insofar as it is not in contradiction with other regulatory enactments.

Chapter VII Documentation of Procedures and Reports

Section 27. Documentation of the Selection of Tenderers and the Choice of Tenders

A public service undertaking which has selected tenderers and chosen tenders pursuant to this Law shall preserve, for four years from the day of the selection, all the information and documents on the basis of which they have taken decisions regarding:

- 1) the qualification, selection of tenderers and choice of tenders;
- 2) derogations from the European Standards adapted in the status of the Latvian National Standard and registered in accordance with specified procedures, and the Latvian National Standards; or
- 3) the utilisation of the relevant method without a prior invitation of tenderers to submit tenders.

Section 28. Reports

Each year by 1 March a public service undertaking shall submit to the Purchase Supervision Bureau reports regarding the number of the contracts entered into, their amounts, performers of construction work, suppliers of goods, lessors or providers of services, and the methods utilised for the selection of tenderers and the choice of tenders.

Chapter VIII Purchase Supervision Bureau

Section 29. Status of the Purchase Supervision Bureau

(1) The Purchase Supervision Bureau (hereinafter also – the Bureau) is a State institution which is under the supervision of the Ministry of Finance and acts in accordance with this Law, the by-laws of the Bureau and other regulatory enactments.

(2) The operations of the Bureau are financed by the State budget.

Section 30. Tasks of the Purchase Supervision Bureau

The Purchase Supervision Bureau shall perform the following tasks:

- 1) supervise the conformity of the procedures for the selection of tenderers and the choice of tenders (hereinafter – the purchase procedures) with the requirements of law;
- 2) compile information regarding the number of purchase procedures, the scope of construction work, goods purchased or leased, services received and analyse such information;
- 3) as an instance for the resolution of disputes, examine complaints of tenderers regarding non-compliance of supply procedures with the requirements of law;
- 4) within the scope of its competence, prepare opinions regarding draft regulatory enactments in respect of supply procedures of public service undertakings;
- 5) provide methodological assistance and consultations;
- 6) cooperate, within the scope of its competence, with the relevant foreign authorities; and
- 7) examine and publish invitations and notices regarding supply, in the newspaper *Latvijas Vēstnesis* and in electronic form, pursuant to Section 19 of this Law.

Section 31. Rights of the Purchase Supervision Bureau

The Bureau is entitled to:

- 1) in fulfilling performing tasks prescribed by law, request and receive, without hindrance, from public service undertakings, State and Local Government institutions the information necessary for the performance of its tasks;

- 2) provide opinions regarding the conformity of the activities of public service undertakings and their officials with the regulatory enactments in force regarding purchase procedures;
- 3) take decisions on the termination of violations of this Law and related regulatory enactments, and its conditions;
- 4) within the scope of its competence, formulate draft regulatory enactments;
- 5) file actions in court, regarding the bringing of responsible officials to administrative liability;
- 6) publish decisions taken by, opinions and proposals of the Purchase Supervision Bureau;
- 7) conduct other activities permitted by regulatory enactments, in order to fulfil the tasks prescribed by this Law; and
- 8) request and receive invitations and notices regarding purchases from public service undertakings, as well as evaluate their compliance with the requirements of law.

Chapter IX

Procedures for Review of Complaints

Section 32. Right to Submit Complaints

- (1) A tenderer may submit to the Bureau a complaint regarding the activity or a public service undertaking in respect of the selection of tenderers and the choice of proposals, and the decision of the public service undertaking regarding the results of such procedures, and request the review of such activities and decision, if the referred to tenderer considers the public service undertaking to have violated the law and the interests of the tenderer to have been affected.
- (2) A tenderer may submit a complaint, in accordance with Paragraph one of this Section, before the relevant contract has been entered into.
- (3) After the termination of the choice of tenders and the entering into of the contract, the tenderer may dispute contract entered into in a court.

Section 33. Review of Complaints and Taking of Decisions

- (1) Simultaneously with the submission of the complaint, the tenderer shall inform in writing the public service undertaking regarding it.
- (2) The tenderer who has submitted a complaint, the Bureau and the public service undertaking shall review the complaint together, within five working days after its submission.
- (3) If the issue regarding which a complaint has been submitted cannot be solved by mutual agreement of the parties, the Bureau shall take a decision regarding such complaint, which shall be binding on both parties and which shall be sent, within five working days after it has been taken, to the submitter of the complaint and the public service undertaking. If a violation of law has been fully or partly rectified, the decision shall specify all activities to be performed without delay in order to prevent further violations of law.

(4) A public service undertaking shall have a duty to rectify violations of law, if such have been determined, within five working days after the receipt of the decision.

Section 34. Suspension of Procedures

(1) If a tenderer has submitted a complaint to the Bureau, the public service undertaking shall suspend the procedures for the selection of tenderers and the choice of proposals, or postpone the carrying out of a decision regarding the results of such procedures, until the receipt of a decision by the Bureau regarding the results of the review of the complaint.

(2) Suspension of the procedures referred to in Paragraph one of this Section may not be appealed.

Section 35. Liability for Failure to Observe the Norms of Law

(1) The manager of the public service undertaking, or the head of a structural unit, or another authorised person who is responsible within the undertaking for the preparation or the entering into of the relevant contracts for construction work, supply of goods, leasing or services in the public service undertaking shall be liable regarding the observance of this Law and the regulatory enactments arising from it.

(2) Decisions of the Bureau regarding the activity of public service undertaking, except decisions on the suspension of procedures, may be appealed in court in accordance with the procedures specified by law.

This Law shall come into force on 1 July 2000.

This Law has been adopted by the *Saeima* on 4 November 1999.

President

V.Vīķe-Freiberga

Riga, 24 November 1999

Regulations No.376 issued by the Cabinet of Ministers of the Republic of Latvia
Riga, 31 October 2000 (minutes no.52, 3. §)

THE PROCEDURE OF SELECTION OF TENDERERS AND APPLICATION OF METHODS FOR CHOICE OF TENDERS

Issued in accordance with the 2nd part
of Article 5 of the Law on Construction
Work, Supply, Rent and Services for the
Needs of Public Service Undertakings.

I. General Provisions

1. The present regulations establish the procedure of selection of tenderers and application of methods for choice of tenders in case of concluding contracts on construction work, supply, rent and services for the needs of public service undertakings.
2. The main method for selection of tenderers and choice of tenders applied is an open competition any performer of construction work, supplier of goods, renter or service provider can submit his tender to.
3. A public service undertaking applies a restricted competition method, if it is planned:
 - 3.1 to invite to submit the tenders by those performers of construction works, suppliers of goods, renters or service providers, which have information on them available in the qualification assessment system (if any) set by public service undertaking, and if their qualification complies with the execution of the planned contract;
 - 3.2 to arrange qualification test for tenderers prior to the tender submission.
4. A negotiation method can be applied in case:
 - 4.1 no tenders have been submitted for an open or restricted competition preliminary announced or the submitted tenders do not comply with the requirements of the regulations of the competition;
 - 4.2 no applications for qualification test have been submitted for a restricted competition preliminary announced (in case of qualification test being arranged in order to chose the tenderers);
 - 4.3 it is possible to purchase goods or receive services solely from one tenderer and there is no other appropriate substitute of goods or services;
 - 4.4 time restriction due *force majeure* circumstances (fire, nature disaster, war, epidemic, crash and other emergency cases unpredictable and not related to the contract) does not allow to arrange an open or restricted competition;
 - 4.5 it is possible to purchase goods in the stock-exchange.

II. An Open Competition

5. Before the announcement of an open competition is published in the press, the public service undertaking issues the regulations of an open competition on the basis of which a tenderer prepares and submits the tender. On behalf of the public service undertaking the regulations of the open competition can be issued by another person.

6. The following information has to be indicated in the regulations of an open competition:

- 6.1 the name of the public service undertaking, its registration number by the Enterprise Registry, address, telephone and fax numbers;
- 6.2 the name, surname, position, telephone number and address of the authorised person who is entitled by the company to provide information on the competition;
- 6.3 requirements of tenderer qualification and documentation to be submitted, proving the qualification;
- 6.4 information on the subject of the planned contract:
 - 6.4.1 the title of the goods to be supplied, services to be provided, object rented or construction work to be performed;
 - 6.4.2 the quantity description;
 - 6.4.3 the quality description;
- 6.5 the location of the planned contract to be performed;
- 6.6 the deadlines of the planned contract to be performed;
- 6.7 whether the tender has to be submitted for the whole subject of the contract or it is allowed to submit it for one or several parts of the contract subject (in that case the parts of the contract subject, their contents and volume have to be indicated);
- 6.8 whether it is allowed to submit alternative tenders;
- 6.9 the procedure the tenderer calculates the price for the tender;
- 6.10 the procedure how the tenderer can obtain the necessary information on an open competition, as well as the indication of the time of tenderer meeting, its length and maximum number of tenderer representatives present, in case the public service undertaking has planned to arrange tenderer meeting before the tender is opened. If the subject of the planned contract is construction project or construction work - indication on visiting possibilities of the construction area, visiting time, length and maximum number of tenderer representatives present;
- 6.11 tender collateral (if applicable) and its amount;
- 6.12 tender submission procedure, form, place and deadline (day, hour);

- 6.13 the language the tender has to be submitted in, if it is applicable to submit tenders in other languages than Latvian;
 - 6.14 requested validity of the tender;
 - 6.15 the procedure of the opening of the tender, place, data and time as well as the possibilities for the tenderer representative to participate in it;
 - 6.16 the tender selection criteria (economically the most beneficial tender or the tender with the lowest price);
 - 6.17 the procedure of amending arithmetic mistakes;
 - 6.18 the assessment of tender criteria and their weight in order to choose the most beneficial tender as well as the procedure or algorithm defining the most beneficial tender if the selection criteria for tenders is economically the most beneficial one;
 - 6.19 description of alternative tenders to be compared and evaluated in case the submission of alternative tenders is applicable according to Article 6.8 of these regulations;
 - 6.20 contract collateral (if applicable) and its amount;
 - 6.21 deadline for the public service undertaking to take a decision on the choice of tenders;
 - 6.22 note that the public service undertaking has rights to end the competition without choosing any tender;
 - 6.23 note that the tenderer has rights to submit complaint on the activities or decision of the public service undertaking concerning the procedure of the selection of tenderers and choice of tenders.
7. The necessary technical documentation and other materials, which are inseparable part of the regulations of an open competition, are attached to it.
8. There is an indication made on each copy of the regulation confirming that it corresponds to the original.
9. The public service undertaking prepares an open competition invitation which indicates:
- 9.1 name, address, telephone and fax numbers of the public service undertaking;
 - 9.2 the subject of the planned contract;
 - 9.3 the volume of the planned contract to be performed;
 - 9.4 the place of the planned contract to be performed;
 - 9.5 deadline of the planned contract to be performed;
 - 9.6 main criteria for the selection of tenderers;
 - 9.7 the tender selection criteria (economically the most beneficial tender or the tender with the lowest price);

- 9.8 the place and time the regulations for an open competition can be received and their fee;
 - 9.9 the name, surname, position, telephone number and address of the authorised person who is entitled by the company to provide information on the procedure of the competition;
 - 9.10 the place and deadline for tender to be submitted;
 - 9.11 the language the tenders are submitted;
 - 9.12 the requested validity of the tenders;
 - 9.13 deadline for the public service undertaking to choose the tender;
 - 9.14 reference to the preliminary published announcement, if any.
10. Having the competition announcement been published in the newspaper *Latvijas Vēstnesis*, all the interested persons can get acquainted with the regulations on an open competition.
11. To all the interested persons, which have paid for the regulations of an open competition (if the fee is applicable), the public service undertaking presents the copies of the mentioned regulations and the draft of planned contract. The fee for these regulations cannot exceed 100 Lats, if the subject of the current contract is construction work - 200 Lats.
12. The public service undertaking presents the copies of regulations of an opened competition and the draft of planned contract at the place and time indicated in the announcement.
13. Having the competition announcement been published in the newspaper *Latvijas Vēstnesis*, no amendments can be made to the regulations of an open competition.
14. Prior to the specified deadline for tender submission the information flow between public service undertaking and the tenderers is carried out as the submission of replies to the written tenderer inquiries.
15. The public service undertaking prepares a written reply and sends it to all the tenderers alongside with the inquiry submitted, without indicating the tenderer who has submitted it.
16. The public service undertaking can arrange tenderer meeting during which the representative of the public service undertaking answers (orally) to the written tenderer inquiries or the ones asked (orally) during the meeting. In case the public service undertaking has planned to arrange the tenderer meeting, it has to be indicated in the regulations of an open competition.
17. After the tenderer meeting the public service undertaking prepares the minutes of the meeting. The minutes are sent to all the tenderers whether present or not at the meeting.
18. If the subject of the planned contract is construction project or construction work and if at least one tenderer so requests, the public service undertaking arranges the visit to the construction area. It is arranged for all the tenderers at the same time not later than 14 days before the deadline of tender submission.
19. After visiting the construction area the public service undertaking arranges the tenderer meeting if least one of the tenderers so requests.

20. The opening of the tender is arranged at the place and time according to the regulations of an open competition not later than two hours after the deadline of tender submission. The opening of the tenders before the specified time is not allowed.
21. After the deadline for tenders to be submitted, no tenders are accepted for submission and no amendments to the tenders submitted are made.
22. The tenderer representative is allowed to participate in the opening of the tenders.
23. At the opening of the tenders, the tenderer representative being present announces the name, address, registration number of the tenderer represented as well as his surname, position and telephone number.
24. The representative of the public service undertaking opens the tenders in the presence of tender representatives and reads the main data as well as the price of each tender. The representative of the public service undertaking signs each of the tenders. The tender representatives do not participate in the following procedure of the competition.
25. The representative of the public service undertaking checks if the tenderer has submitted the documents necessary for qualification test and if the submitted tender has been prepared in compliance with the regulations of an open competition.
26. The qualification test for tenderers is carried out before the assessment of tenders to be compliant. In case the subject of the planned contract is provision of services, the qualification test and the assessment of compliance of the tender are carried out at the same time.
27. The tenders, that do not comply with the requirements of the qualification tests or the tenders that have not been prepared according to the requirements of the regulations of an open competition, do not participate in the following procedure of the competition.
28. The public service undertaking has rights to request additional information from the tenderers on tenders submitted, in case it is necessary for evaluation and comparison of the tenders.
29. The public service undertaking has rights to amend arithmetic mistakes that are identified during the review of tenders. The tender submitter is informed on all the amendments made. In case the submitter of the tender does not accept the amendments of the arithmetic mistakes made, the public service undertaking has rights to deny this tender.
30. In case the price of one unit sum of the submitted tender differs from the total price of the separately indicated units, the public service undertaking amends:
 - 30.1 the price of one unit if, according to the regulations of an open competition, the total price of the units should have been indicated;
 - 30.2 total price of the units:
 - 30.2.1 if, according to the regulations of the open competition, the price of one unit should have been indicated;
 - 30.2.2 if there is no reference to the procedure of calculating the price in the regulations of an open competition or if, according to the mentioned regulations both the one unit price and total price of the units should have been indicated.

31. The public service undertaking selects one or several tenders, in case the subject of the planned contract is divided in parts.

32. In case only one tender is submitted, the public service undertaking decides if the tender complies with the regulations of an open competition and if it is beneficial and whether it is possible to conclude an agreement with the only tenderer.

III. A Restricted Competition

33. The selection of tenderers for a restricted competition and choice of the tenders is carried out according to Article 3 of these regulations.

34. Before the publishing of the invitation to the qualification test, the public service undertaking issues the regulations of a qualification test (hereinafter - qualification test) and the regulations of a restricted competition, on the basis of which the tenderer prepares and submits his tender. On behalf of the public service undertaking the regulations of a qualification test and regulations of a restricted competition can be issued by another person.

35. The following information has to be indicated in the regulations of a qualification test:

- 35.1 the name, registration number, address, telephone and fax numbers of the public service undertaking;
- 35.2 the name, surname, position, telephone number and address of the authorised person who is entitled by the public service undertaking to provide information on the competition;
- 35.3 short information on the subject of the planned contract:
 - 35.3.1 the title of the goods to be supplied, services to be provided, object rented or construction work to be performed;
 - 35.3.2 the quantity description;
 - 35.3.3 the quality description;
- 35.4 the location of the planned contract to be performed;
- 35.5 the deadlines of the planned contract to be performed;
- 35.6 requirements for qualification of tenderers and documentation that has to be submitted proving the qualification;
- 35.7 the submission procedure of the qualification tests, form, place and deadline (day, hour);
- 35.8 the language the qualification test has to be submitted in, in case it is applicable to submit tenders in other languages than Latvian;

- 35.9 the procedure of the opening the qualification tests, place, data and time as well as the possibilities for the tenderer representative to participate in the qualification test opening;
 - 35.10 deadline for the public service undertaking to arrange the qualification test;
 - 35.11 note that the tenderer has rights to submit complaint on the activities or decision of the public service undertaking concerning the procedure of the selection of tenderers;
 - 35.12 other information.
36. The qualification test is announced as follows:
- 36.1 the public service undertaking sends the invitation to qualification test to Purchase Supervising Bureau in order to publish it in the Internet and the newspaper *Latvijas Vēstnesis*;
 - 36.2 the public service undertaking publishes an advertisement in the newspaper *Latvijas Vēstnesis* at least 10 days before the deadline for submission of qualification documents.
37. The opening of the qualification test applications is arranged at the place and time specified in the regulations of a qualification test not later than two hours after the deadline of submission of the applications.
38. The tender representative is allowed to participate in the opening of the qualification test.
39. At the opening of the qualification test the tenderer representative being present announces the name, address, registration number of the tenderer represented as well as his name, surname, position and telephone number.
40. The representative of the public service undertaking opens the qualification test applications in the presence of tenderers and signs each of the applications. The tender representatives do not participate in the following procedure of the competition.
41. The public service undertaking evaluates the tenderers taking into consideration the assessment criteria mentioned in the regulations of a qualification test.
42. Within a month after the deadline of submitting the applications for qualification test, the public service undertaking announces the results of the qualification test to all the tenderers and sends the invitation to submit the tenders for a restricted competition to those tenderers, which have passed the qualification test as well to those possible tenderers which have information available on them in the enterprise qualification assessment system (if any) and the qualification of which comply with the execution of the planned contract.
43. At the same time the public service undertaking sends the notification to the Purchase Supervising Bureau about the invitation of tenderers selected by the qualification test for participation in the restricted competition.
44. Supplementary to the invitation of submitting the tenders, the public service undertaking sends the tenderers the regulations of a restricted competition with the following information:
- 44.1 name, registration number by the Enterprise Registry, address, telephone and fax numbers of the public service undertaking;

- 44.2 the name, surname, position, telephone number and address of the authorized person who is entitled by the company to provide information on the competition;
- 44.3 information on the subject of the planned contract:
 - 44.3.1 the title of the goods to be supplied, services to be provided, objects to be rented or construction work to be performed;
 - 44.3.2 the quantity description;
 - 44.3.3 the quality description;
- 44.4 the place of the planned contract to be performed;
- 44.5 deadline of the planned contract;
- 44.6 whether the tender has to be submitted for the whole contract subject or it is allowed to submit the tender for one or several parts of the contract subject (in that case the parts of the contract subject, their contents and volume, have to be indicated);
- 44.7 is it allowed to submit alternative tenders;
- 44.8 the procedure the tenderer calculates the price for the tender;
- 44.9 the procedure how the tenderer can obtain the necessary comments for an open competition, as well as the indication of the time of the tenderer meeting, its length and maximum number of tenderer representatives being present in case the public service undertaking has planned to arrange tenderer meeting before the tender is opened. If the subject of the planned contract is construction planning or construction planning - indication on visiting possibilities of the construction area, visiting time, length and maximum number of tenderer representatives being present;
- 44.10 tender collateral (if applicable) and its amount;
- 44.11 the procedure of tender submission, form, place and deadline (day, hour);
- 44.12 the language the tender has to be submitted in, in case it is applicable to submit tenders in other languages than Latvian;
- 44.13 requested validity of the tender;
- 44.14 the procedure of the opening of the tender, place, date and time as well as the possibilities for the tenderer representative to participate in the tender opening;
- 44.15 the tender selection criteria (economically the most beneficial tender or the tender with the lowest price);
- 44.16 the procedure of amending the arithmetic mistakes;
- 44.17 assessment of tender criteria and their weight for choosing the most beneficial tender as well as the procedure or algorithm for identifying the most beneficial tender if the choice criteria for tenders is economically most beneficial tender;

- 44.18 description of comparison and evaluation of alternative tenders in case the submission of alternative tenders is applicable according to Article 44.7 of these regulations;
 - 44.19 contract collateral (if applicable) and its amount;
 - 44.20 deadline for the public service undertaking to take a decision on the choice of tenders;
 - 44.21 note that the public service undertaking has rights to end the competition without choosing any tender;
 - 44.22 note that the tenderer has rights to submit complaint on the activities or decision of the public service undertaking concerning the procedure of the selection of tenderers and choice of tenders.
45. Having the invitation been sent to the tenderers no amendments can be made to the regulations of a restricted competition.
46. Prior to the stated deadline of tender submission the information flow between the public service undertaking and the tenderer is carried out according to the conditions of Articles 14, 15, 16, 17, 18 and 19 of these regulations.
47. The opening of tenders is carried out according to the conditions of Articles 20, 21, 22, 23 and 24 of these regulations.
48. The submitted tenders are evaluated and selection made according to the conditions of Articles 25, 26, 27, 28, 29, 30, 31 and 32 of these regulations.

IV. Negotiations

49. In case the selection of the tenderers and choice of the tenders is carried by negotiations method, the announcement on the selection of negotiation method has to contain the following information:
- 49.1 the name, registration number, address, telephone and fax numbers of the public service undertaking;
 - 49.2 the name, surname, position, telephone number and address of the authorized person who is entitled by the public service undertaking to provide information on negotiations;
 - 49.3 the description and volume of the subject of the planned contract;
 - 49.4 the location and time of the planned contract to be performed;
 - 49.5 the place and time for tenders to be submitted;
 - 49.6 the possible tenderers;
 - 49.7 indication to the preliminary announcement, if any.

50. In case the negotiation method is applied according to Article 4.1 of these regulations, the conditions of the planned contract cannot differ from the preliminary published conditions of on open and restricted competition.

51. The public service undertaking conducts the negotiations with the tenderers who have submitted tenders and chooses the most appropriate one.

V. Closing Provisions

52. The public service undertaking takes minutes of the procedure of the competition and negotiations.

53. The public service undertaking uses the tender solely for stating the results of the competition or negotiations. The use of tenders for other aims is possible only with the permission of the tender submitters.

54. Information on the price indicated in the tender, the results of tender assessment and comparison as well as the information on the competition or negotiations to be ended, without choosing any tender, is public.

55. The public service undertaking does not announce the contents of the tenders submitted till the moment there is a motivated decision made on the conclusion of the contract or the competition or the negotiations to be ended, without choosing any tender.

56. The decision on concluding the contract or the competition or negotiations to be ended without choosing any tender is to be taken within a month since the last day of the submission of tenders. If necessary, the public service undertaking can prolong this deadline up to two months since the last day of submission of the tenders.

57. The public service undertaking announces the decision on concluding the contract or the competition or the negotiations to be ended without choosing any tender to all the tenderers who have participated in the competition or the negotiations in writing within five days as well as sends it to purchase Supervising Bureau for publishing it in the Internet.

58. The public service undertaking concludes the written contract with the tender selected by competition or negotiations not earlier than 15 days since the decision made and not later than the expiry of validity of the tender.

59. Within twenty days after the concluding the contract, the public service undertaking publishes the announcement on the results of competition or negotiations in the newspaper *Latvijas Vēstnesis* as well in other press publications where the announcement on the competition has been published.

President of Ministers
Minister of Finance

A. Bērziņš
G. Bērziņš

The regulations come into effect as of 4 November 2000.
