

WORLD TRADE ORGANIZATION

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Committee on Government Procurement

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NOTIFICATION OF NATIONAL LEGISLATION OF ESTONIA

Communication from Estonia

The following communication has been received from the Permanent Mission of Estonia with the request that it be circulated to the Committee on Government Procurement.¹

With reference to the accession of Estonia to the Agreement on Government Procurement, I have pleasure in submitting attached herewith an English translation of the revised Public Procurement Act of 19 October 2000 which entered into force on 1 April 2001.²

¹ In English only.

² Available for consultation on the government procurement page on the WTO web site (<http://www.wto.org/wto/govt>).

PUBLIC PROCUREMENT ACT

Passed 19 October 2000
(RT I 2000, 84, 534),
entered into force 1 April 2001,
amended by the following Act:
21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189.

Chapter 1

General Provisions

§1. Scope of application of Act

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.

§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.

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

(2) Purchasing of goods or contracting for services from state agencies, city or rural municipality governments or local government agencies by the Bank of Estonia or contracting authorities specified in clause 5 (1) 1) of this Act, purchasing of goods or contracting for services by the Bank of Estonia for the performance of the functions specified in §2 of the Bank of Estonia Act (RT I 1993, 28, 498; 30, correction notice; 1994, 30, 463; 1998, 64/65, 1006; 1999, 16, 271), and contracting for health services or health promotion or disease prevention services, except for purchasing of medicinal products or purchasing or commercial lease of medical technology and related rights, by the Estonian Health Insurance Fund is not public procurement.

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

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

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

(4) "Construction work" means any work related to construction or to demolition of structures or parts thereof. Performance of geotechnical or geodetic site investigations, construction design, construction supervision, expert assessment of building designs and structures, and construction management for organizing construction work are deemed to be services.

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

(5) "Construction work concession" means the exclusive right to exploit a structure, received as consideration for the performance of construction work provided for in subsection (4) of this section. For a construction work concession, the state agency must obtain a permission relating to the construction work concession from the Government of the Republic.

(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 the estimated value of which (the annual sum together with value added tax) is:

- 1) EEK 100,000 or more upon purchasing of goods or contracting for services;
- 2) EEK 500,000 or more upon contracting for construction work;
- 3) EEK 500,000 or more upon contracting for draft legislation;
- 4) EEK 500,000 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;
- 5) EEK 100,000 or more upon contracting for a design solution, including all contest awards and other amounts payable to the participants in the design contest;
- 6) EEK 2 million 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 EEK 500 million;
- 7) EEK 4 million 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 EEK 500 million.

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

§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 works may be purchased or contracted for separately.

(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 work only if the procedural requirements applied to the contracting for such construction work 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 work 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 work.

§4. Exceptions

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

- 1) public procurements in the case of which adherence to the procedure provided for in this Act results in the disclosure of a state secret;
- 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, sale, purchasing or assignment of securities or other financial instruments, or contracting for services provided by the Bank of Estonia; similarly, the Bank of Estonia is not required to apply the procedure provided for in this Act upon purchasing of goods or contracting for services the purpose of which is to ensure the security of the Bank or compliance with the confidentiality requirements established with regard to information not subject to disclosure;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 6) contracting for scientific research unless the results of the research are used by the contracting authority only in its own interests and for the purposes of its activities;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 7) purchasing of immovables, existing structures or parts thereof as movables, or of rights relating thereto;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 8) contracting for services by broadcasting organizations 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 an affiliated undertaking;
- 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 affiliated undertaking whom the concessionaire has entered in the list annexed to the tender submitted in order to obtain the construction work concession;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 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 special audits 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;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 14) public procurements in the case of which the procurement contract is entered into according to a mandatory special procedure of an international organization;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 15) contracting for telecommunications services provided by a person engaged in creation or operation of public telecommunications networks specified in clause 5 (1) 6) of this Act, if other persons are free to provide the same services in the same geographical area and under similar conditions;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 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 energy 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)

(2) For the purposes of this Act, an affiliated undertaking is an undertaking whose annual accounts are consolidated with the annual accounts of the contracting authority, or an undertaking 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 whereas at least 80 per cent of the average turnover of the undertaking during the last three years or during the whole period of activity in case the latter is shorter than three years has been created through the provision of the abovementioned services to the undertakings with whom the undertaking is affiliated. If the same or a similar service is provided by more than one undertaking affiliated with the contracting authority, the consolidated turnover of the services provided by such undertakings shall be taken into account.

§5. 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 the state, a local government or a person specified in clauses 2)–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 actual or all of the activities of the undertaking to the extent of more than 50 per cent, or if the state and a local government jointly or separately hold a majority of the votes or more than 50 per cent of the shares in the undertaking either directly or through other persons;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 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 work 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 than 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.

§6. Equal treatment of persons

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

§7. Intention to enter into procurement contract

A contracting authority shall organize a public procurement tendering procedure (hereinafter tendering procedure) only in order to use financial resources economically and rationally and enter into a public procurement contract (hereinafter procurement contract).

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

§8. Commencement and termination of tendering procedure

(1) A tendering procedure commences with the submission of an invitation to tender, 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;
- 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. Organization of tendering procedure

(1) A tendering procedure shall be organized by a contracting authority who shall designate an official responsible for the public procurement.

(2) A contracting authority has the right to authorize other persons to organize a tendering procedure and perform acts relating to the tendering procedure pursuant to the provisions of this Act.

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

(3) The Government of the Republic shall approve the list of the objects of public procurement in the case of which consolidated public procurement is applied, and the bodies organizing tendering procedures for such public procurements.

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

(4) The Government of the Republic has the right to require government agencies and state agencies administered by government agencies to organize a tendering procedure through an organizer of tendering procedures specified in subsection (3) of this section if the corresponding public procurement has been entered in the list specified in subsection (3) of this section.

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

(5) State agencies and profit-making state agencies are required to organize and local governments and local government agencies may organize a tendering procedure through an organizer of tendering procedures specified in subsection (3) of this section on the basis of a contract in the case of an object of public procurement entered in the list specified in subsection (3) of this section.

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

(6) If a tendering procedure is organized in order to enter into a framework contract through an organizer of tendering procedures specified in subsection (3) of this section, such organizer of tendering procedures is deemed to be a contracting authority within the meaning of this Act. If a tendering procedure is organized in order to enter into a procurement contract which is not a framework contract through an organizer of tendering procedures specified in subsection (3) of this section, such organizer of tendering procedures is deemed to be a contracting authority within the meaning of this Act for the duration of the tendering procedure until entry into a procurement contract.

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

(7) The rules for organizing public procurement of construction work or construction design shall be established by the Minister of Economic Affairs.

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

§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 legislation;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 2) implement an information system relating to public procurement and organize the activities of the state register of public procurements (hereinafter register);
- 3) provide information relating to public procurements to international organizations 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 contract

(1) A framework contract may be entered into for a term of up to four years, except in the case specified in subsection (2) of this section.

(2) In the case of a public procurement of construction work for which there are insufficient funds upon entry into the procurement contract, a framework contract may be entered into concerning the object of the public procurement.

(3) The contracting authority shall indicate its intention to enter into a framework contract in the invitation to tender.

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

§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 48 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 48.

(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.

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

- 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 12 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 12 months, depending on which method yields the largest amount.

(5) In the case of contracting for construction work, 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) A contracting authority shall include in the estimated value of construction work the estimated value of the goods and services which are necessary and made available to the tenderer by the contracting authority.

(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 agency, €130,000;
- 2) in the case of any other contracting authority, except a contracting authority specified in clause 5 (1) 6) of this Act, €200,000;
- 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;
- 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.

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

(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, whereas:

- 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, and in the case of an intended procurement contract for an unspecified term or a procurement contract with a resolutive condition or in the case 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 48 months;
- 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 48 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 invitation to tender 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 or more or, in the case of contracting for construction work, €5 million or more, and the contracting authority intends to organize the public procurement during the forthcoming 12 months, the contracting authority shall communicate the following by means of a prior notice submitted at the beginning of the financial year:

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

- 1) in the case of purchasing of goods, the estimated value of the public procurement, broken down by the types of the goods;
- 2) in the case of contracting for services, the estimated value of the public procurement, broken down by the types of the services;

- 3) in the case of contracting for construction work, the estimated value and essential characteristics of the public procurement.
- (2) A contracting authority shall submit a prior notice to the register in Estonian and shall add a translation of the notice into English.
- (3) A prior notice shall contain the information provided for in clauses (1) 1), 2) or 3) of this section and 19 (1) 1), 2) and 3) of this Act.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (4) The formal requirements for prior notices and the procedure for submission of prior notices shall be established by the Minister of Economic Affairs.

§19. Notice of invitation to tender

(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 an invitation to tender to the register for publication and the notice shall contain at least the following information:

- 1) the name, address and other details of the contracting authority, and the registry code thereof if it has a registry code;
- 2) the name and characteristics of the object of the public procurement and the code or codes of the standard classification of objects of public procurements corresponding to the object of public procurement as precisely as possible;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 3) the type of the tendering procedure;
- 4) the name, official title and details of the person responsible for the public procurement;
- 5) the due date for the performance of the procurement contract;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 6) in the case of an open tendering procedure, the place and conditions of issuing the tender documents;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 7) in the case of an open tendering procedure, the minimum qualification requirements for the economic and technical conditions of the tenderers;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 8) whether a tender security is required and the amount thereof;
- 9) the amount to be paid for the tender documents;
- 10) in the case of an open tendering procedure, the place, due date and time for the submission of tenders;

- 11) in the case of a restricted tendering procedure or a negotiated procedure with prior publication of a tender notice, the place, due date and time for submission of written applications for participation in the tendering procedure;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
 - 12) in the case of a restricted tendering procedure or a negotiated tendering procedure with prior publication of a tender notice, the qualification requirements for the applicants and a notation indicating the information and documents to be annexed to a written application for participation in the tendering procedure for the purposes of evaluation of the qualifications of the tenderers;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
 - 13) in the case of a restricted tendering procedure, objective selection criteria for the tenderers.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (2) Invitations to tender shall be submitted in Estonian.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (3) In the case of a public procurement the value of which equals or exceeds an international value threshold, the contracting authority shall submit a translation of the invitation to tender into English, in other cases a summary of the invitation in English may be annexed. A summary of an invitation to tender in English shall contain at least the information provided for in clauses (1) 1), 2) and 6) and 10) or 11) and 12) of this section.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (4) In the case of an open tendering procedure, restricted tendering procedure or negotiated procedure with prior publication of a tender notice, the contracting authority shall not make the invitation to tender public before the invitation has been entered in the register. If an invitation to tender is amended, the name of the object and characteristics of the public procurement and, in the case of an opening tendering procedure, the minimum qualification requirements for the economic and technical conditions of the tenderers, and the requirement of a tender security and the amount thereof shall not be changed.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (5) If a code of the standard classification of objects of public procurements 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 standard classification of objects of public procurements shall be approved by the Minister of Economic Affairs.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (7) The formal requirements for invitations to tender and the procedure for submission thereof shall be established by the Minister of Economic Affairs.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§20. Declarations

(1) Within ten days after the end of a tendering procedure, the contracting authority shall submit a public procurement declaration (hereinafter declaration) to the register.

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

(2) Within 10 days after deciding the winner of a design contest, the contracting authority shall submit a corresponding declaration to the register.

(3) Declarations 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)

(4) A declaration shall set out:

- 1) the name, address and other details of the contracting authority, and the registry code thereof if it has a registry code;
- 2) the name and characteristics of the object of the public procurement and the code or codes of the standard classification of objects of public procurements corresponding to the object of public procurement as precisely as possible;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 3) the type of the tendering procedure;
- 4) the name, official title and details of the person responsible for the public procurement;
- 5) the names, addresses and other details of the tenderers who submitted tenders, and the registry codes thereof if they have a registry code;
- 6) the names, addresses and other details of the qualified tenderers, and the registry codes thereof if they have a registry code;
- 7) the due date for entry into the procurement contract, the value of the procurement contract and other essential conditions;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 8) the values of all tenders declared to be in conformity or, in the case several evaluation criteria are applied, the values of all tenders declared to be in conformity and the value points attained according to the evaluation criteria or other evaluation results and the names and registry codes (if they exist) of the tenderers who submitted the corresponding tenders;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 9) information concerning appeals filed with a court in the course of the tendering procedure;
- 10) in the case of cancellation of the tendering procedure or rejection of all tenders, the reasons why and the basis on which this was done;

- 11) if open tendering is not used, the grounds for the selection of the tendering procedure.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (5) A declaration of a design contest shall set out:
 - 1) the name, address and other details of the contracting authority, and the registry code thereof if it has a registry code;
 - 2) the subject and characteristics of the design contest;
 - 3) the names and addresses of the participants in the design contest;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
 - 4) the name and address of the person who submitted the award-winning project;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
 - 5) information concerning the qualifications required of the participants in the design contest or confirming the lack thereof;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
 - 6) the total value of the design contest awards and other amounts payable to the participants in the contest;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
 - 7) a summary of the evaluation and comparison of the projects.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (6) The formal requirements for declarations and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

§21. Public procurement report

- (1) Within 10 days after the date of expiry of a procurement contract, the contracting authority shall prepare a written public procurement report which shall set out:
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
 - 1) the name, address and other details of the contracting authority, and the registry code thereof if it has a registry code;
 - 2) the name and characteristics of the object of the public procurement and the code or codes of the standard classification of objects of public procurements corresponding to the object of public procurement as precisely as possible, and the total value of the public procurement;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
 - 3) amendments to the essential conditions of the procurement contract;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
 - 4) complaints filed in the course of performance of the procurement contract.
- (2) A public procurement report shall be preserved until the end of the fourth year following expiry of the procurement contract.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(3) A contracting authority shall submit a public procurement report to the register promptly after completion of the report.

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

(4) The formal requirements for public procurement reports and the procedure for submission thereof shall be established by the Minister of Economic Affairs.

§22. Register

(1) Information concerning prior notices, notices, invitations to tender, design contest notices, declarations, public procurement reports and protests shall be entered in the register.

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

(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 Office is the chief and authorized processor of the register.

(4) The register shall be maintained in the form of a computer database.

(5) Prior notices, notices, invitations to tender, design contest notices, declarations, public procurement reports and information concerning protests shall be submitted to the register in electronic form.

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

(6) The main functions of the register are:

1) entry of information concerning prior notices, notices, invitations to tender, design contest notices, declarations, public procurement reports and protests in the register;

2) processing of information concerning prior notices, notices, invitations to tender, design contest notices, declarations, public procurement reports and protests entered in the register.

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

(7) Contracting authorities, except for those specified in clause 5 (1) 1) of this Act, shall pay a state fee for entry of information concerning a prior notice, invitation to tender or design contest notice in the register.

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

(8) Persons who submit information to the register shall be responsible for the correctness of such information.

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

§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) invitations to tender;
- 4) design contest notices;
- 5) declarations;
- 6) public procurements reports;
- 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 procurement contract or end of the corresponding design contest.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

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) the possibility of and the procedure for submitting a joint tender if the contracting authority prescribes such possibility;
- 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 invitation to tender. The amount of the fee shall not exceed the cost for the photocopying and delivery of the tender documents.

(4) If an invitation to tender 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 with prior publication of a tender notice or 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.

§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) A technical specification is a list of characteristics or a description of the process affecting the characteristics of goods purchased or construction work or services contracted for by way of public procurement. In the case of contracting for construction work, the technical specification consists in building design documentation containing corresponding drawings, explanations, qualification requirements and other necessary documents to the extent permitting contracting for construction work.

(2) A technical specification shall not create advantages to certain tenderers over their competitors and give rise to barriers to international trade.

(3) 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.

§27. Preparation of technical specification

(1) A technical specification may be prepared on the basis of a technical regulation or standard.

(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, trademarks 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" or if the characteristics of the object of the public procurement are otherwise not sufficiently precise and intelligible to all parties.

§28. Standards

(1) A technical specification may refer to international standards if these have not been introduced as Estonian standards.

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

- 1) the object of the public procurement does not conform to the specified standards;
- 2) the use of such standards would oblige the contracting authority to purchase goods which are not compatible with the goods already in use or would entail disproportionate additional costs or technical difficulties;

- 3) such standards are not suitable for the application in question and do not take into consideration the technical innovations which have occurred after the introduction of the standards;
- 4) the object of the public procurement is of a genuinely innovative nature and therefore the application of existing standards is not possible;
- 5) the technical regulations or standards contradict each other.

(3) On the basis of a corresponding request, a contracting authority shall provide tenderers with the opportunity to access the technical regulations or standards which are referred to in the tender documents or which the contracting authority intends to use for the public procurement referred to in the prior notice. If a technical specification is based on documents accessible to the tenderers, a reference to such documents is sufficient.

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 authorize 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 authorization 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. Qualification of tenderers or applicants

(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) The qualifications of tenderers who submit a joint tender shall be verified separately, whereas:

- 1) the indicators resulting from adding the corresponding indicators of the tenderers shall comply with the requirements set out in the tender documents;
- 2) in the case of a joint tender submitted upon contracting for construction work with the estimated value of more than EEK 3 million, the corresponding indicators of one tenderer shall, in addition to the provisions of clause 1) of this subsection, comply with at least 40 per cent of the requirements specified in the tender documents.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§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 Board or other competent institution.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 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 organization 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.

(3) In the case of contracting for construction work, 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 work;
- 2) a list of similar construction work, if any, performed during the last three years and information concerning the value, time, site and the authorities contracting for the construction work and confirmation that the construction work was performed properly and according to good building practice;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 3) a statement that the tenderer has the tools, equipment and machinery necessary to perform the construction work;
- 4) a statement of the average number of employees of the tenderer during the last three years;
- 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 tenderer's specialists and persons responsible for providing the services;
- 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 of the average number of employees of the tenderer during the last three years;
- 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. Removal of tenderer from tender

(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 falsified documents.

(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 legislation 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.

§36. Registration of tenderers

(1) A tenderer whose seat is within a State Party to the European Economic Area Agreement, 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 a competent 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.

(2) A contracting authority may require all tenderers registered in an official list to submit additional confirmation concerning payment of social tax in addition to the registration certificate specified in subsection (1) of this section.

§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) 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.

(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 notice concerning the establishment of a system for qualifying tenderers to the register and the notice shall contain at least the following information:

- 1) the name, address and other details of the contracting authority, and the registry code thereof if it has a registry code;
- 2) the time of establishing the criteria and rules for qualifying tenderers;
- 3) the place and time for accessing the criteria and rules for qualifying tenderers.

(11) The formal requirements for the notice specified in subsection (10) of this section and the procedure for submission thereof shall be established by the Minister of Economic Affairs.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§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 insurance agency or by depositing a sum of money in the bank account of the contracting authority or organizer of tendering procedures specified in subsection 10 (3) of this Act.

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

(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;
- 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) In the case of a public procurement of construction work, the security for the performance period shall be 10 per cent and the security for warranty period two per cent of the value of the tender.

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 containing a separate sealed and marked envelope with the value of the tender.

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

(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 if such opportunity is prescribed in the tender documents.

(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 an invitation to tender 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 14 days upon purchasing of goods or contracting for services, and not less than 30 days upon contracting for construction work;

(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 52 days or not less than 36 days, whereas due to time constraints or in simpler cases not less than 22 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 52 days but not more than 12 months before publication of the invitation to tender.

(2) In restricted tendering procedures, the period of time between the publication of the invitation to tender 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 14 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 37 days or not less than 15 days in cases where time constraints render compliance with the requirement of 37 days impossible.
- (3) In negotiated tendering procedures with prior publication of a tender notice, the period of time between the publication of the invitation to tender 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 14 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 37 days or not less than 15 days in cases where time constraints render compliance with the requirement of 37 days impossible, or not less than 52 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 14 days upon purchasing of goods or contracting for services, and not less than thirty days upon contracting for construction work;
(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 40 days, or not less than 26 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 52 days but not more than 12 months before the notice of the restricted tendering procedure, or not less than 10 days in cases where time constraints render compliance with the requirement of 40 or 26 days impossible, or not less than 24 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 14 days upon purchasing of goods or contracting for services, and not less than 30 days upon contracting for construction work.
(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 tenders. Upon extension of the time-limit for submission of tenders in the case of an open tendering procedure, the contracting authority shall amend the invitation to tender and the tender documents. Upon extension of the time limit for submission of tenders in the case of a restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice, the contracting authority shall amend the tender documents. Upon amendment of an invitation to tender, the contracting authority shall notify the register of extension of the time-limit. Upon amendment of tender documents, the contracting authority shall take into account the provisions of §25 of this Act.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(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 invitation to tender. Upon amendment of an invitation to tender, 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 90 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 10 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 authorized representatives.

(3) At the opening of tenders, the names and registry codes of 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. Envelopes containing the values of the tenders shall not be opened and the contracting authority shall ensure that the envelopes remain sealed until opening of the values of tenders. A report on the opening of the tenders shall be prepared.

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

(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) In the case of rejection of a tender pursuant to subsection 43 (4) or 44 (1) of this Act, the envelope containing the value of the tender shall not be opened and shall be returned to the tenderer on the date following the expiry of the tender validity period.

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

(6) The contracting authority shall notify tenderers of the place, date and time of opening the values of the tenders at the opening of the tenders or together with the notice announcing the declaration of conformity or rejection of the tenders.

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

§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) the tenderer is not qualified pursuant to the provisions of this Act;
 - 2) the tender does not comply with the requirements set out in the tender documents.
- (5) A notice concerning declaration of tenders as being in conformity or rejection of tenders, and the reasons therefore shall be sent to the tenderers in writing within three working days after the making of the corresponding decision.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§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 send a notice concerning rejection of all tenders to all tenderers to whom tender documents were issued.
- (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 success of the tender shall be objectively justifiable.

(3) The economically most advantageous tender shall be determined on the basis of the value points or other evaluation results ascribed according to the evaluation criteria to tenders declared to be in conformity. Value points or other evaluation results shall be ascribed according to the evaluation criteria as follows:

- 1) before opening the values of the tenders, the tenders shall be ranked according to the evaluation criteria, except for the value, set out in the tender documents or on the basis of the value points or other evaluation results ascribed to the tenders;
- 2) immediately after opening the values of the tenders, the value points or other evaluation results ascribed according to the value of a tender shall be added to the value points or other evaluation results ascribed to the tender according to clause 1) of this subsection.

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

(4) All tenderers have the right to attend, either personally or through an authorized representative, the opening of the values of the tenders and performance of the act specified in clause (3) 2) of this section.

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

(5) Upon opening the values of tenders, the intactness of the seals of the envelopes with the values of the tenders shall be verified and thereafter the names and registry codes of the tenderers and the values of the tenders submitted by the tenderers shall be announced. A corresponding report on the opening of the values of the tenders shall be prepared.

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

(6) A report on the opening of the values of tenders shall be sent to the tenderers within three working days after the opening of the values of the tenders.

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

(7) A contracting authority which has divided a public procurement into parts shall evaluate tenders according to the parts and as a whole if at least one of the tenders declared suitable concerns the entire object of the public procurement. The contracting authority shall declare the most advantageous tender for each part as the successful tender if declaring one tender as successful for all of the parts is not in compliance with the conditions specified in subsection (1) of this section.

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

(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 14 days as of declaration of the tender as successful.

(2) A written notice concerning the declaration of a tender as successful shall be sent 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.

§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 obviously unreasonably low, the contracting authority may request the tenderer to submit such information concerning the constituent elements of the tender which the contracting authority considers relevant. The contracting authority shall set a term for the tenderer for the submission of the information. Such request and the response thereto shall be prepared in writing.
- (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) A contracting authority may reject a tender of an unreasonably low value. 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 per cent guarantee for the value difference between the price of the tender submitted and the estimated value of the public procurement.

§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 an invitation to tender 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 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)

§50. Explanations

(1) Applicants and tenderers have the right to obtain explanations concerning the contents of invitations to tender and tender documents. The contracting authority shall provide explanations within three working days after receipt of the corresponding request and shall send the explanations concurrently also to other applicants or tenderers.

(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 within three working days the explanations requested from the tenderer by the contracting authority on justified grounds, the tender may be rejected.

§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 14 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.

§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 an invitation to tender.

(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 invitation to tender 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 20;
- 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 invitation to tender;
- 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 or services contracted for are necessary only for the purposes of scientific research, development or testing and the expenses of the research and development work are not covered from the costs of the construction work or services;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 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 in order to either partially replace or supplement the goods purchased previously and a change of tenderer would entail the purchasing of goods which are technically incompatible with the goods purchased previously or the use of which would cause disproportionate additional costs, whereas such additional goods may be purchased during three years after the end of the initial open tendering procedure or restricted tendering procedure;
- 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) new construction work is contracted for which repeats similar construction work performed on the basis of a procurement contract entered into by the same contracting parties as a result of an open tendering procedure conducted earlier, on the condition that such construction work complies with the initial building design on the basis of which the procurement contract was entered into and the total value of the construction work is equal to or exceeds an international value threshold;
 - 7) new construction work is contracted for which repeats similar construction work performed on the basis of a procurement contract entered into by the same contracting parties as a result of an open tendering procedure conducted earlier, on the condition that such construction work complies with the initial building design on the basis of which the procurement contract was entered into and the total value of the construction work is lower than an international value threshold and not more than one year has passed from the expiry of the initial procurement contract;
 - 8) goods are purchased under especially favourable conditions if such conditions are available only for a very limited period of time, e.g. in the case of a liquidation or bankruptcy proceeding, and such conditions allow for purchasing the goods for a price which is at least 50 per cent lower than the usual market price;
 - 9) goods are purchased on the commodity exchange;
 - 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 in compliance with the requirements were submitted in an opening tendering procedure, restricted tendering procedure or negotiated tendering procedure with prior publication of a tender notice and on the condition that the initial tendering conditions have not been substantially altered;
 - 12) goods are purchased or services contracted for only for conducting investigations or experiments or for scientific or development purposes and not in order to receive benefits therefrom, or for covering the corresponding expenses, on the condition that such purchasing of goods or contracting for services does not prejudice competition in the conclusion of subsequent contracts for similar purposes;
 - 13) the estimated value of the public procurement together with value added tax is up to EEK 200,000 per year in the case of purchasing of goods or contracting for services or up to EEK 2 million per year in the case of contracting for construction work.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (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 send a notice concerning the negotiated tendering procedure without prior publication of a tender notice to the register before the commencement of the negotiations and the notice shall set out at least the following information:

- 1) the name, address and other details of the contracting authority, and the registry code thereof if it has a registry code;
- 2) the name and characteristics of the object of the public procurement and the code or codes of the standard classification of objects of public procurements corresponding to the object of public procurement as precisely as possible;
- 3) the name, position and details of the person responsible for the public procurement;
- 4) the estimated value of the public procurement;
- 5) the due date for the performance of the procurement contract;
- 6) the names, addresses and other details of the tenderers selected by the contracting authority, and the registry codes of the tenderers if they have a registry code;
- 7) the grounds for the selection of the tendering procedure on the basis of subsection (1) of this section.

(6) 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 Minister of Economic Affairs.

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

§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) of this Act 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; and

- 2) has published an invitation to tender in an open tendering procedure, restricted tendering procedure or 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.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§59. Design contest

- (1) Contracting authorities shall organize design contests pursuant to the provisions concerning open tendering procedure or restricted tendering procedure provided for in this Act.
- (2) A contracting authority shall authorize the committee of a design contest to organize 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) A notice announcing a design contest shall contain at least the following information:
 - 1) the name, address and other details of the contracting authority, and the registry code thereof it has a registry code;
 - 2) the names of the members of the committee;
 - 3) the subject and characteristics of the design contest;
 - 4) the requirements for participants in the design contest;
 - 5) the awards of the design contest;
 - 6) requirements for the projects;
 - 7) the evaluation criteria for the projects;
 - 8) the place, due date and time for the submission of projects.
- (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 formal requirements for notices announcing a design contest and the procedure for submission thereof shall be established by the Minister of Economic Affairs.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§60. Electronic public procurement

- (1) Contracting authorities have the right to conduct public procurements through corresponding web sites which are in compliance with the established requirements.
- (2) An undertaking is allowed to operate as the administrator of a web site specified in subsection (1) of this section if the undertaking has been entered in the commercial register and the state register of undertakings operating in areas of activity subject to special requirements and has entered into a liability insurance contract in compliance with the requirements.
- (3) A committee formed by the Minister of Economic Affairs (hereinafter committee) shall, on the basis of a registration application by an undertaking wishing to operate as the administrator of a web site specified in subsection (1) of this section, make a decision concerning entry of the undertaking in the state register of undertakings operating in areas of activity subject to special requirements if the undertaking has been entered in the commercial register and has entered into a liability insurance contract with the minimum amount of insurance coverage of EEK 5 million to ensure compensation for the potential damage caused by the undertaking in the administration of such web site, and the web application of the web site the undertaking wishes to administer complies with the requirements.
- (4) The committee shall decide to refuse to enter an undertaking in the state register of undertakings operating in areas of activity subject to special requirements if the undertaking has not been entered in the commercial register or has not entered into a liability insurance contract in compliance with the requirements or the web application of the web site the undertaking wishes to administer does not meet the established requirements.
- (5) The committee shall decide to delete the data concerning an undertaking operating as the administrator of a web site specified in subsection (1) of this section from the state register of undertakings operating in areas of activity subject to special requirements on the basis of an application by the undertaking, or if the data concerning the undertaking have been deleted from the commercial register or the undertaking does not hold a liability insurance contract in compliance with the requirements or the web application of the web site administered by the undertaking no longer meets the established requirements.
- (6) The membership and rules of procedure of the committee shall be approved by the Minister of Economic Affairs.
- (7) A registration application shall set out at least the following information:
 - 1) the name, registry code, address and other details of the undertaking;
 - 2) the amount and term of validity of the liability insurance coverage and the name, registry code, address and other details of the undertaking which issued the document certifying the existence of the liability insurance;
 - 3) a description of the web application of the web site;
 - 4) the address of the web site;
 - 5) the name, official title and details of the person who signed the registration application.

(8) The following data shall be entered in the state register of undertakings operating in areas of activity subject to special requirements:

- 1) the name, registry code, address and other details of the undertaking;
- 2) the amount and term of validity of the liability insurance coverage and the name, registry code, address and other details of the undertaking which issued the document certifying the existence of the liability insurance;
- 3) a description of the web application of the web site;
- 4) the address of the web site;
- 5) the name, official title and details of the person who signed the registration application;
- 6) data concerning the decisions of the committee.

(9) The registration data specified in subsection (8) of this section shall be published on the web site of the state register of undertakings operating in areas of activity subject to special requirements.

(10) The administrator of a web site specified in subsection (1) of this section shall be responsible for compensation for damage caused by violation of the requirements established for the web applications of web sites specified in subsection (1) of this section.

(11) The requirements for the web applications of web sites specified in subsection (1) of this section and the procedure for the assessment of the conformity of such web applications to the established requirements shall be established by the Minister of Economic Affairs.

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

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 invitations to tender, tender documents or decisions of contracting authorities concerning qualification of applicants, 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.

(2) Protests shall be filed within seven working days after the date 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 the contracting authority has accepted the successful tender. A protest concerning tender documents shall be filed before the contracting authority opens the tenders.

(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 invitation to tender, 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) The 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, and a document certifying payment of the state fee.

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

§63. Organization 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 invitation to tender, 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 fails to comply with the requirements provided for in subsection 62 (3) of this Act or a document certifying payment of the state fee has not been annexed to the protest;
- 3) the protest is not filed against an invitation to tender, 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 a document certifying payment of the state fee has not been annexed to the protest, it shall return the protest to the person who filed it and 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.

(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) of this Act. The amount of expenses relating to the submission of a protest shall be determined by a decision of the Office.

(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 10 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 organize 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)–6) 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 invitation to tender or the tender documents into conformity with the requirements prescribed by legislation;
- 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 an invitation to tender 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 invitation to tender or the tender documents, or
- 4) 10 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)

Chapter 10

Supervision and Liability

§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)–6) of this Act 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;
- 2) has not notified all tenderers of amendment of the tender documents, declaration of tenders to be in conformity, rejection of a tender or declaration of a tender as successful;
- 3) violates the procedure for opening tenders or the values of tenders;
- 4) 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;
- 5) conducts negotiations with one or several tenderers in an open or restricted tendering procedure.

(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.

(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.

(4) A decision or precept of the Office shall contain at least the following information:

- 1) the date and place of making the decision or issuing the precept;
- 2) the content of the decision or precept;
- 3) the given name, surname and official title of the official who made the decision or issued the precept.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§71. Liability for violation of public procurement procedure

(1) Civil, disciplinary, administrative or criminal liability is applied for violation of this Act or legislation established on the basis thereof. Administrative liability applied to a legal person shall not preclude application of administrative or criminal liability to a relevant natural person.

(2) 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 an administrative offence provided for in §74 of this Act, the Office shall notify a police authority or a prosecutor of the facts known to the Office.

(3) 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 legislation established on the basis thereof.

(4) The following cases are considered to be violations of the public procurement procedure:

- 1) a person specified in subsection 5 (1) of this Act who is required to purchase goods or contract for construction work or services pursuant to the procedure provided for in this Act, conducts the public procurement in disregard of such procedure;
- 2) the contracting authority has conducted a tendering procedure without a firm intention to enter into a procurement contract;
- 3) the contracting authority does not find the successful tender pursuant to the procedure prescribed by this Act or rejects a tender on grounds not provided for in subsection 43 (4) of this Act or refuses to enter into a procurement contract with the tenderer who submitted the successful tender or refuses to recognize an accepted tender as a procurement contract in accordance with §53 of this Act;
- 4) an act or omission of the contracting authority involves circumstances provided for in subsection 70 (1) of this Act;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 5) the contracting authority fails to comply with the provisions of subsection 52 (1) of this Act;
- 6) the contracting authority fails to comply with the provisions of subsection 65 (3) of this Act;
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- 7) the contracting authority fails to comply with a decision or precept of the Office specified in clause 65 (6) 4) or subsection 70 (1) of this Act.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

§72. Compensation for costs of tenderer

A tenderer has the right to require a contracting authority to pay compensation for the costs relating to the submission of a tender, including the costs relating to the preparation of the tender if the tenderer proves that the procurement contract would probably have been entered into with the tenderer if the contracting authority had not violated this Act.

§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)

§74. Administrative liability of legal persons for violation of public procurement procedure

(1) A fine of EEK 10,000 to 500,000 shall be imposed on a legal person who is a tenderer and wrongfully submits false information or falsified documents in a tendering procedure.

(2) A fine of EEK 10,000 to 500,000 shall be imposed on a contracting authority specified in clauses 5 (1) 2)–6) of this Act who commits a material violation of the public procurement procedure.

(3) A fine of EEK 5,000 to 100,000 shall be imposed on a contracting authority specified in clauses 5 (1) 2)–6) of this Act who violates the provisions of clause 69 2) of this Act.

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

(4) A fine of EEK 5,000 to 50,000 shall be imposed on a contracting authority specified in clauses 5 (1) 2)–6) of this Act who violates the provisions of subsection 18 (1), (2) or (3), 19 (1), (2) or (4), 20 (1) or (2), 21 (3), 57 (5) or 59 (3) of this Act.

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

§75. Administrative offence proceedings concerning legal persons

(1) The Director General of the Office, the deputy Director General and an official of the same agency authorized by the Director General have the right to issue administrative offence reports to legal persons concerning administrative offences specified in §74 of this Act.

(2) A report on an administrative offence shall set out:

- 1) the time and place of preparation of the report;
- 2) the name and address of the agency in whose name the report is prepared;
- 3) the given name, surname and official title of the person who prepares the report;
- 4) the name and address of the administrative offender;
- 5) the given name, surname and official title of the representative of the administrative offender;
- 6) the place, time and description of the administrative offence;
- 7) a reference to the provision of law which prescribes liability for the administrative offence;
- 8) explanation of the representative of the administrative offender;
- 9) a notation that the representative of the administrative offender has been advised of the right to use legal counselling;
- 10) other information necessary for the just adjudication of the administrative offence matter.

(3) A report concerning an administrative offence shall be signed by the official who prepares the report and the representative of the administrative offender.

(4) If the representative of an administrative offender refuses to sign the report or give statements concerning the administrative offence, the person who prepared the report shall make a corresponding entry in the report. Written notations made by the representative of an administrative offender concerning a report and the grounds for refusal to sign the report or give statements shall be annexed to the administrative offence report.

(5) County or city court judges hear matters concerning administrative offences by legal persons.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

(6) Administrative offence proceedings concerning legal persons shall be conducted pursuant to the procedure provided for in the Code of Administrative Offences.

(7) An administrative penalty may be imposed not later than within three years as of the date of the administrative offence.

Chapter 11

Implementing Provisions

§76. Specifications concerning public procurements conducted by the Bank of Estonia

Public procurements conducted by the Bank of Estonia 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)

§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; 2000, 5, 32; 10, 58; 19, 117; 26, 150; 29, 168 and 169; 39, 237; 49, 300; 54, 346 and 349; 55, 365; 57, 372 and 373; 59, 379; 60, correction notice; 78, 498; 84, 534; 92, 597 and 598; 95, 607 and 611; 2001, 2, 2; 3, 4; 16, 69 and 72; 27, 151).

(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; 2000, 5, 32; 10, 58; 19, 117; 26, 150; 29, 168 and 169; 39, 237; 49, 300; 54, 346 and 349; 55, 365; 57, 372 and 373; 59, 379; 60, correction notice; 78, 498) 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 EEK 10 and not more than EEK 5,000;
- 2) in the absence of a tender submitted by the person filing the appeal, EEK 100";
- 3) Division 203 shall be added to the State Fees Act worded as follows:

"203. Division 3

Acts Performed Pursuant to Public Procurement Act

§1905. Acts with state register of public procurements

A state fee of EEK 300 shall be paid for entry of information concerning a prior notice, notice or invitation to tender 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; 2000, 45, 279; 55, 365; 84, 533) 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 1995, 54, 883; 1997, 9, 79; 1998, 38, 561; 1999, 16, 271; 92, 824; 97, 859; 2000, 57, 374) 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 work 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 than 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 legislation

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) Subsections 10 (5), 19 (3) and clause 57 (1) 3) of this Act enter into force on 1 January 2003.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)
- (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*.³
- (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 Bülletään*⁴ 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 legislation established on the basis thereof.
(21.03.2001 entered into force 01.04.2001 - RT I 2001, 34, 189)

³ RT = *Riigi Teataja* = the State Gazette.

⁴ *Riigihangete Bülletään* = Public Procurement Bulletin.