

Swedish Public Procurement Act



KONKURRENSVERKET
Swedish Competition Authority

The Public Procurement Act

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The Public Procurement Act (2007:1091)

(Only the Swedish version is authentic)

Chapter 1 Content and scope of the Act and general provisions

Content of the Act

Article 1

This Act contains rules regarding the content and scope of this Act together with general provisions (Chapter 1),

- definitions (Chapter 2),
- thresholds (Chapter 3),
- award procedures (Chapter 4),
- framework agreements (Chapter 5),
- electronic auction (Chapter 5 a),
- technical specifications and specific terms of contract in the contract documents/specification, etc. (Chapter 6),
- publication of contract notice (Chapter 7),
- time limits for submitting requests to participate and receipt of tenders, etc. (Chapter 8),
- communication, information and documentation (Chapter 9),
- exclusion of suppliers (Chapter 10),
- verification of suppliers' suitability and choice of participants, etc. (Chapter 11),
- award of contract (Chapter 12),
- public works concessions (Chapter 13),
- design contests in the area of services (Chapter 14),
- procurement not covered by the Directive (Chapter 15),
- standstill period, review and damages (Chapter 16),
- procurement fine (Chapter 17), and
- supervision (Chapter 18).

The Act has the following appendices:

- List of the public works contracts (Appendix 1)
- List of service contracts (A Services) (Appendix 2)
- List of service contracts (B Services) (Appendix 3)
- Definitions of certain technical specifications (Appendix 4)

Scope of the Act

Article 2

This Act applies to the award of public works contracts, public supply contracts and public service contracts and also public works concessions. The Act also applies when contracting authorities organise design contests. The meanings of 'public procurement' and 'contracting authority' are stated in Chapter 2, Article 13 and Article 19 respectively.

Only Chapter 15 and 16 apply as regards public procurement that:

1. relates to services according to Appendix 3 (B services),
2. relates to other contracts, the value of which is less than the thresholds stated in the Act,
3. is conducted in the field of defence and which relates to products or services subject to Article 346 of the Treaty on the Functioning of the European Union (TFEU), or
4. is declared to be secret or is subject to other specific restrictions, considering national security.

As regards public procurement related to services referred to in Appendix 2 (A Services) Chapter 13 and 14 does not apply.

A procurement relating to both A Services and B Services shall be deemed to be a procurement of A Services if the value of the A Services exceeds the value of the B Services. Otherwise, the procurement shall be regarded in its entirety to be a procurement of B Services.

As regards service concessions, only Chapter 1, Article 12 applies. Act (2010:571).

Exclusions from the scope of the Act

Procurement within the water, energy, transport and postal services sectors

Article 3

This Act does not apply to procurement that:

1. is subject to the Act on Procurement within the Water, Energy, Transport and Postal Services Sectors (2007:1092), or
2. is excluded under Chapter 1, Articles 12, 21, 22 or 23 of that Act.

Telecommunications services

Article 4

This Act does not apply to contracts for the principal purpose of permitting a contracting authority to provide or exploit public telecommunications networks or to provide telecommunications services to the public.

Procurement according to other international rules

Article 5

This Act does not apply to procurement subject to other provisions and conducted according to:

1. an international agreement between any of the States within the European Economic Area (EEA) and any other State for a project that is joint for the State parties to the agreement,
2. award procedures that have been agreed in an international agreement associated with the stationing of military personnel, or
3. award procedures that have been agreed in an international organisation.

Specific exclusions

Article 6

This Act does not apply to contracts regarding:

1. the acquisition of a land unit, leasehold rights, tenancy rights, tenant-owner rights, site leasehold rights, easement rights or any other right to a land unit, though the Act applies to procurement of financial services as a result of contracts referred to in this item,
2. the acquisition, development, production or co-production of programme material intended for radio and television programmes and the procurement of broadcasting time,
3. arbitration or conciliation assignments,
4. financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments,
5. employment,
6. research and development services other than those where the results belong exclusively to the contracting authority for its use in the conduct of its own affairs and are remunerated by the authority, or
7. operations that relate to the management of the public debt or relate to services from a central bank.

A land unit, as referred to in item 1 of the first paragraph, means what according to the Land Code comprises or belongs to a land unit. An existing building belonging to anyone other than the owner of the land shall also be deemed to constitute a land unit. The same also applies to fixtures and fittings of buildings as referred to in Chapter 2, Articles 2 and 3 of the Land Code, providing they belong to the owner of the building.

Service contracts awarded on the basis of exclusive rights

Article 7

This Act does not apply to service contracts that a contracting authority awards to another contracting authority, which has an exclusive right to perform the service owing to law or other legislation.

Additional public work contracts in conjunction with public works concessions

Article 8

This Act shall not apply to additional public works that were neither included in the concession project initially considered nor in the initial contract provided:

1. such works have, through unforeseen circumstances, become necessary for the performance of the work described therein, provided the contract is awarded to the original supplier,
2. the additional works cannot, without major technical or economic inconvenience to the contracting authority, be separated from the initial procurement contract, or
3. such works are absolutely necessary to be able to complete the contract.

However, the exclusion referred to in the first paragraph does not apply if the aggregate value of the contract exceeds half of the value of the original contract.

General provisions

Principles for public procurement

Article 9

Contracting authorities shall treat suppliers in an equal and non-discriminatory manner and shall conduct procurements in a transparent manner. Furthermore, the principles of mutual recognition and proportionality shall be observed in connection with procurements.

Article 9 a

Contracting authorities should take environmental and social considerations into account in connection with public procurements, if the nature of the procurement motivates this. *Act (2010:571).*

*The right to be allowed to participate in a public procurement**Article 10*

A candidate or tenderer who according to the provisions of the country in which the operation is established is entitled to supply the service for which the contract is intended, may not be excluded from participating in a public procurement only because there are requirements for the supplier to be a natural or a legal person.

As regards service and public works contracts or supply contracts that also include services or siting and installation operations, legal persons may be encouraged to state in the tender or request to participate the names and relevant professional qualifications of the staff who will perform the services.

Article 11

Groups of suppliers are entitled to apply to be allowed to submit a tender and to submit a tender. The contracting authority may not impose conditions requiring these groups to assume a specific legal form in order to be allowed to submit a request to participate or a tender. However, the authority may request that a group assumes a specific legal form when it has been awarded the contract, to the extent that this is necessary for the acceptable performance of the contract.

*Granting of special rights or exclusive rights to carry out a public service activity**Article 12*

If a contracting authority grants someone other than a contracting authority special rights or exclusive rights to conduct operations in the interest of the public, the act by which that right is granted shall contain a provision whereby the holder of the rights or exclusive rights shall comply with the principle of non-discrimination on the basis of nationality when it awards supply contracts to third parties.

Chapter 2 Definitions

General definitions

Article 1

‘Candidate’ means the party who requests to be allowed to participate in a restricted or negotiated procedure, in a competitive dialogue or in a selection procedure in accordance with Chapter 15. *Act (2010:571)*.

Article 2

A 'related undertaking' means:

1. an undertaking over which a contracting authority has a dominant influence,
2. an undertaking which can exert a dominant influence over a contracting authority, and
3. an undertaking that together with a contracting authority is subject to the dominant influence of another undertaking as a result of ownership or financial participation or as a result of the rules to which the undertaking is subject.

A dominant influence shall be deemed to exist if a contracting authority directly or indirectly, in relation to an undertaking, holds more than half of the interests in the undertaking or controls a majority of the votes owing to shareholding or the like or can appoint more than half of the members of the board of the undertaking or corresponding management body.

Article 3

'Public works contract' means a contract which:

1. relates to the execution or both the design and execution of work referable to operations within the meaning of Appendix 1, or
2. involves a construction work being realised, regardless of how the contract is formulated, in accordance with the requirements imposed by the contracting authority.

'Construction works' means the overall result of building and civil engineering works, provided the outcome can fulfil a separate technical or economic function.

Article 4

'Public works concession' means a contract of the same kind as a public works contracts but which involves consideration comprising wholly or in part the right to exploit the work.

Article 5

The 'Common Procurement Vocabulary (CPV)' nomenclature means the common terminology for public procurement as adopted by Regulation (EC) No 2195/2002 of 5 November 2002 on the Common Procurement Vocabulary (CPV), as amended by Commission Regulation (EC) No 2151/2003.

If the NACE or CPC nomenclature contained in Appendix 1 to 3 deviates from the Common Procurement Vocabulary (CPV) nomenclature, these shall take precedence.

Article 6

‘Electronic means’ refers to means that transmit signals via wire or radio waves, by optical means or via other electromagnetic transmission media.

Article 6 a

‘Electronic auction’ means a repetitive process involving an electronic device for the presentation of new prices, revised downwards, or new values concerning certain elements of tenders. *Act (2010:571)*.

Article 7

‘Recognised bodies’ means such test and calibration laboratories and inspection and certification bodies which comply with applicable European standards.

Article 8

‘Contract documents’ means such documentation for a tender that a contracting authority provides to a supplier.

Article 9

‘Negotiated procedure’ means a procedure where the contracting authority invites selected suppliers and negotiates on the terms of contract with one or several of them.

Article 9 a

A ‘central purchasing body’ means a contracting authority which:

1. concludes a framework agreement on public works, products or services that are intended for other contracting authorities, or
2. participates in a public procurement in its capacity as representative of several contracting authorities. *Act (2010:571)*.

Article 9 b

‘Competitive dialogue’ means a procedure that any supplier can ask to be allowed to participate in and where the contracting authority conducts a dialogue with the candidates that have been invited to participate in this procedure. *Act (2010:571)*.

Article 10

'Contract' means a written agreement for pecuniary interest that:

1. has been concluded between one or more contracting authorities and one or more suppliers,
2. relates to the execution of public works, the supply of products or the provision of services, and
3. is physically signed by the parties or signed by them with an electronic signature.

Article 10 a

/Ceases to apply U:1 January 2013 through Act (2010:570)./ A 'contract' under Article 10 does not include contracts concluded between:

1. a contracting authority that is:
 - a) a governmental or local authority,
 - b) a decision-making assembly at a municipality or county council, or
 - c) an association formed by one or more such authorities or assemblies, and
2. a supplier that is:
 - a) a legal person wholly or partly owned by the contracting authority or where the contracting authority is a member, or
 - b) a common committee under the Swedish Local Government Act (1991:900).

The first paragraph only applies:

1. if the contracting authority exercises control over the legal person or the common committee corresponding to the control that it exercises over its own management, and
2. in cases where the legal person or the common committee also conducts operations together with someone other than the contracting authority, such operations are only of a marginal nature. *Act (2010:570).*

Article 11

'Supplier' means the party who provides products or services or performs public works at the market.

'Supplier' also means groups of suppliers.

Article 12

‘Body governed by public law’ means such companies, associations, joint boards, specially formed joint ownership associations and foundations that satisfy needs in the public interest, provided the need is not of an industrial or commercial nature, and:

1. which is for the most part funded by the state, a municipality, a county council or a contracting authority,
2. whose operations are subject to the control of the state, a municipality, a county council or a contracting authority, or
3. where more than half of the number of members of its board or corresponding management body are appointed by the state, a municipality, a county council or a contracting authority.

Article 13

‘Public procurement’ means the measures taken by a contracting authority with the aim of awarding a contract or concluding a framework agreement regarding products, services or public works.

Article 14

‘Design contest’ means a competition that is open to everyone and which is organised by a contracting authority with the aim of acquiring a plan or design that a jury has selected as the winning submission.

Article 15

‘Framework agreement’ means an agreement concluded between one or more contracting authorities and one or more suppliers, the purpose of which is to establish the terms for a later award of contracts during a given period.

Article 16

‘Restricted procedure’ means a procedure where all suppliers can apply to be allowed to participate, but where tenders may only be submitted by candidates that are invited to participate by the contracting authority.

Article 17

‘Service concession’ means a contract of the same kind as a service contract, but which involves consideration for the services comprising wholly or in part the right to exploit the service.

Article 18

‘Service contract’ means a contract that relates to the provision of services according to Appendix 2 or 3 (A or B Services) and which does not constitute a public works contract according to Article 3 or a supply contract according to Article 21.

A contract that relates to products and which also comprises A or B Services shall be treated as a service contract, if the value of the services exceeds that of the products.

A contract that relates to A or B Services and includes activities that are referable to public works according to Appendix 1, but which are incidental to the principal object of the contract, shall be treated as a service contract.

Article 19

‘Contracting authority’ means central and local government authorities.

When applying this Act, the following shall be equated with a public authority:

1. decision-making assemblies at municipalities or county councils, and
2. a body governed by public law as referred to in Article 12, and
3. associations formed by one or more authorities according to the first paragraph or assemblies according to item 1 or associations of one or more bodies according to item 2.

Article 20

‘Buyer profile’ means a compilation of details available on the Internet and which contains information about the contracting authority and its procurements

Article 21

‘Supply contract’ means a contract having as its object the purchase, lease, rental or hire purchase of products, subject to the precondition that the contract is not deemed to constitute a public works contract according to Article 3 or an service contract according to the second paragraph of Article 18.

A contract shall be treated as a supply contract even if it covers siting and installation operations relating to the products, if the value of the works is less than the value of the products.

Article 22

‘Open procedure’ means a procedure where all suppliers may submit tenders.

Article 23

‘Direct award of contract’ means a procurement without a requirement for tenders in a certain form. *Act (2010:571)*.

Article 24

‘Simplified procedure’ means a procedure where all suppliers are entitled to participate, participating suppliers are to submit tenders and the contracting authority may negotiate with one or more tenderers.

Article 25

‘Selection procedure’ means a procedure where all suppliers are entitled to apply to be allowed to submit tenders, the contracting authority invites certain suppliers to submit tenders and the contracting authority may negotiate with one or more tenderers.

Chapter 3 Thresholds

The amount of the thresholds

Article 1

This Act shall apply to contracts which have a value estimated to be equal to or greater than the amounts (the thresholds) set or notified by the European Commission from time to time, provided the contract relates to:

1. a) supplies procured by a central government authority, as regards such authorities within the field of defence, though only when the contract relates to products referred to in Annex V to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, last amended by Commission Regulation (EC) No 2083/2005,
- b) services procured by a central government authority, unless otherwise prescribed by the second paragraph,
2. products and services in cases other than as referred to in item 1, or
3. public works.

When a procurement is conducted by a central government authority, the same threshold shall apply as according to item 2 of the first paragraph, provided the procurement refers to:

1. such research and development services as are covered by Category 8 of Appendix 2,
2. such telecommunications services as are covered by Category 5 of Appendix 2, the reference numbers of which in the CPV nomenclature are equivalent to reference numbers CPC 7524, 7525 and 7526, or
3. such services as referred to in Appendix 3 (B Services).

The Government will announce in the Swedish Code of Statutes the thresholds in euro and SEK and a list of the defence products as referred to in item 1.a) of the first paragraph.

Specific provisions on the thresholds in the case of design contests are contained in Chapter 14, Articles 2 and 3.

The value of the contract shall be calculated excluding value added tax (VAT). *Act (2010:571)*.

Contract subsidised by more than half by a contracting authority

Article 2

This Act shall apply to contracts that have been procured by someone other than a contracting authority or by a contracting authority on behalf of another party, if more than half of the cost of the contract is subsidised directly by a contracting authority and the value of the contract is estimated to be equal to or greater than the amounts (the thresholds) set or notified by the European Commission from time to time, provided the contract relates to:

1. public works that involve building work for a hospital, facilities for sports, recreation and leisure, school or university buildings or buildings used for administrative purposes, or
2. services that are connected with a public works contract as referred to in item 1.

The contracting authority that provides such a subsidy shall ensure that the provisions of this Act are applied if the contract is procured by someone other than the authority.

The Government shall announce in the Swedish Code of Statutes the thresholds in euro and SEK. *Act (2010:571)*.

Calculating the value of a contract

Article 3

The value of a contract referred to in Article 1 or 2 shall be estimated to be the total amount payable according to the contract. When making this calculation, option and renewal clauses shall be taken into account as if they were exercised. Moreover, the prices and remuneration that the contracting authority plans to pay to candidates or tenderers shall be included in the value.

Article 4

The calculation of the value of a contract shall refer to the value at the date when a contract notice is, in accordance with Chapter 7, Article 1, is sent or, in cases where such notice is not required, at the date when the contracting authority invites suppliers to tender.

Prohibition in certain cases of subdivision of a procurement*Article 5*

A public works project or proposed acquisition of a certain quantity of products or services may not be subdivided with the aim of preventing it coming within the provisions on procurement exceeding the thresholds contained in this Act.

Article 6

The value of a contract that relates to both products and services shall comprise the total value of the contract. The total value of the contract shall also include the value of siting or installation operations.

Procurement of separate lots*Article 7*

Where a proposed public works or respectively acquisition of services and similar products may result in several contracts being procured at the same time in the form of separate lots, the aggregate value of the lots shall be taken into account when applying Article 1. If the threshold is then exceeded, each individual procurement of a separate lot shall be conducted in accordance with the provisions on procurements exceeding the thresholds contained in this Act.

The second sentence of the first paragraph does not need to be applied for a lot the value of which is less than 80 000 euro for services and products, and 1 000 000 euro for public works.

The second paragraph only applies if the aggregate value of such lots does not exceed 20 per cent of the aggregate value of the lots as a whole.

Chapter 15 shall apply to the procurement of such lots that are exempted pursuant to this paragraph.

Public works contracts

Article 8

When calculating the value of a public works contract, the cost of the works and the value of the products and services placed at contractor's disposal by the contracting authority in order to be able to execute the works shall be included.

The value of products and services that are not required for the completion of the works may not be included when calculating the value, if this means that the rules of the Act on procurements exceeding the thresholds would not apply to the procurement of these products and services.

Supply contracts with or without a fixed term

Article 9

The value of a contract that is intended to apply to the leasing, rental or hire purchase of products and which runs for a fixed term that is less than or equal to twelve months shall be calculated as the total cost of the contract during the term.

The value of supply contracts that relate to a longer term shall be calculated as the total cost including the estimated residual value of the product.

The value of supply contracts without a fixed term or where the term cannot be defined shall be calculated as the monthly cost multiplied by the figure 48.

Supply or service contracts which are regular in nature or are to be renewed

Article 10

The value of a supply or service contract which is regular in nature or shall be renewed within a given period shall be calculated with the guidance of:

1. the total actual value of successive contracts of the same kind that are procured during the preceding 12-month period or financial year adjusted, if possible, to take into account predictable changes in quantity or value during the 12-month period following the initial contract, or
2. the total estimated value of successive contracts that will be procured during the 12-month period following the first delivery or, if the financial year is longer than 12 months, during the financial year.

The method of calculation may not be chosen with the intention of preventing it from coming within the scope of the provisions on procurements exceeding the thresholds contained in this Act.

Certain service contracts

Article 11

The value of a service contract shall be calculated on the basis of:

1. as regards insurance services: the premium payable and other forms of remuneration,
2. as regards banking and other financial services: fees, commissions, interest and other forms of remuneration, and
3. as regards design contracts: fees or the commission payable and other forms of remuneration.

Article 12

If a service contract is procured without any total price being specified, the value of the contract shall be the estimated total value of the services during the term of the contract if the contract is less than or equal to 48 months, and by the monthly value multiplied by the figure 48 if the term is longer or in the case of a contract without a fixed term.

Framework agreement

Article 13

The value of a framework agreement shall be estimated as the maximum aggregate value of all of the contracts envisaged for the term of the framework agreement.

Chapter 4 Award procedures

Open, restricted and negotiated procedure and competitive dialogue

Article 1

When conducting public procurements, an open or restricted procedure shall be used.

However, a negotiated procedure, with or without prior publication of contract notice, may be used subject to the preconditions and in the manner prescribed by Articles 2 to 9.

Competitive dialogue may be used subject to the preconditions and in the manner stated in Articles 10 to 21. *Act (2010:571).*

Negotiated procedure with prior publication of a contract notice

Article 2

A negotiated procedure with prior publication of a contract notice may be used:

1. if the tenders submitted in an open or a restricted procedure or in a competitive dialogue are irregular or are unacceptable considering the provisions of:
 - a) Chapter 1, Article 10, second paragraph providing that legal persons in certain cases shall state the names and relevant professional qualifications of the staff to be responsible for the performance of a contract covered by the procurement,
 - b) Chapter 6, Article 9, second and fourth paragraphs providing that unauthorised variants may not be considered and respectively that only variants that satisfy specified minimum requirements may be considered,
 - c) Chapter 6, Article 11 providing that a tenderer shall indicate any share that may be subcontracted to a third party,
 - d) Chapter 6, Article 12, second paragraph providing that tenderers and candidates shall confirm that regard has been taken to the employment protection provisions and working conditions when formulating the tender,
 - e) Chapter 9, Article 8, second paragraph providing that a supplier shall clarify and supplement documents submitted,
 - f) Chapter 10 concerning the exclusion of suppliers,
 - g) Chapter 11 concerning the verification of suppliers' suitability and choice of suppliers, etc., or
 - h) Chapter 12 on the award of contracts,

2. if the object of the procurement is of such a nature or is subject to such a risk that it, due to particular circumstances does not permit prior stating of a total price,
3. for financial and intellectual services that are of such a kind that it is not possible to prepare sufficiently precise specifications in order to implement the procurement by choosing the best tender according to the provision for open or restricted procedures, or
4. for public works that are performed solely for the purpose of re-research, testing or development and which do not aim to make a profit or to recover research and development costs.

Item 1 of the first paragraph only applies if the conditions of the contract in relation to the previous procurement have not been significantly amended. *Act (2010:571).*

Article 3

In the case of a negotiated procedure with prior publication of a contract notice, a contracting authority shall negotiate with the tenderers regarding the tenders that they have submitted, in order to adapt the tenders to the requirements that the authority has stipulated in the contract notice and in the contract documents and also to produce the best tender according to Chapter 12, Article 1.

Article 4

A contracting authority may in the contract notice or in the contract documents state that a negotiated procedure with prior publication of the contract notice shall take place in successive stages in order to reduce the number of tenders that the negotiation will involve. In this connection, the award criteria stated in the contract notice, in the contract documents or in the descriptive document shall be applied. The final number of tenders shall always be as many as required to achieve effective competition, subject to the precondition that there are a sufficient number of appropriate candidates or tenderers. *Act (2010:571).*

Negotiated procedure without prior publication of a contract notice

Article 5

A contracting authority may use a negotiated procedure without prior publication of a contract notice for the award of contracts related to public works, products and services if:

1. upon an open or restricted procedure no requests are presented to participate or no tenders are submitted or no suitable tenders are submitted and the initial conditions of contract are not substantially altered,
2. the object of the procurement can only be performed by a particular supplier for technical or artistic reasons, or owing to exclusive rights, or
3. it is strictly necessary to award the contract, but extreme urgency caused by events unforeseeable by the contracting authority make it impossible to keep to the time limits for an open, restricted or negotiated procedure with prior publication of the contract notice.

If requested by the European Commission, the contracting authority shall in a report to the Commission provide details of the matters where the provisions of item 1 of the first paragraph have been applied by the authority. *Act (2010:571).*

Article 6

In the cases referred to in Article 2, item 1, a contracting authority may refrain from notifying a procurement if it in a negotiated procedure only invites tenderers that satisfy the requirements of Chapters 10 and 11 and which during the prior open or restricted procedure or in a preceding competitive dialogue have submitted tenders that satisfy the formal requirements for the procurement. No parties other than such tenderers may participate in the procedure. *Act (2010:571).*

Article 7

A contracting authority may use a negotiated procedure without prior publication of a contract notice for the award of supply contracts if

1. it relates to products that have been manufactured purely for the purpose of research, experimentation, study or development and the contract does not aim to make a profit or to cover research and development costs and subject to the precondition that it does not impair the potential for competition upon a later award of a contract that primarily has such a purpose,

2. it relates to additional deliveries of supplies from the original supplier, provided:
 - a) the supplies are intended either as a partial replacement of or supplement to previous supplies, and
 - b) a change of supplier would mean that the contracting authority was compelled to acquire supplies that would be technically incompatible with the supplies initially acquired or result in disproportionate technical difficulties regarding operation and maintenance,
3. it relates to goods that are listed and sold on a commodity market, or
4. it is possible to acquire goods on particularly beneficial conditions by buying in conjunction with a supplier ceasing its operations or entering into liquidation or being put into bankruptcy or being the subject of corresponding procedures.

A supply contract in accordance with the first paragraph, item 2 may only apply for a period longer than three years if there are special reasons.

Article 8

A contracting authority may use a negotiated procedure without prior publication of a contract notice, provided:

1. it relates to additional public works or services not included in the project initially considered or included in the original contract when:
 - a) such additional works are required to be able to perform the contract owing to unforeseen circumstances,
 - b) they shall be performed by the original supplier,
 - c) it is not possible, without great technical or financial inconvenience for the contracting authority, to separate them from the original contract, or
 - d) they can be separated and are absolutely necessary for the completion of the contract, or
2. it relates to new public works or a new service consisting in the repetition of previous works or services, subject to the precondition:
 - a) that the new works form part of a project that was previously the subject of an open or restricted procedure,
 - b) that the works are awarded to the same supplier,
 - c) that the new contract corresponds to the original project,
 - d) that the value of the new contract was included when calculating the value of the original project according to the provisions of Chapter 3, and
 - e) that it has been notified in conjunction with the original procurement that the intended procedure could be used.

The aggregate value of the contract according to item 1 of the first paragraph may not exceed half of the amount of the original contract.

The procedure referred to in item 2 of the first paragraph may be applied for at most three years following the conclusion of the original contract.

Design contest

Article 9

A contracting authority may use a negotiated procedure without prior publication of a contract notice if it involves a service contract following a design contest organised according to Chapter 14, subject to the precondition that the contract shall, in accordance with the contest rules, be awarded to the winner, or one of the winners, of the contest.

If a contest has been concluded by more than one winner being appointed, all of the winners shall be invited to participate in negotiations.

Competitive dialogue

Preconditions

Article 10

A contracting authority may make use of competitive dialogue when awarding a particularly complex contract and where the open or restricted award procedure does not allow the award of the contract. *Act (2010:571).*

Article 11

A contract is deemed to be ‘particularly complex’ if a contracting authority cannot reasonably be required to be able to:

1. define the performance or functional requirements under Chapter 6, Article 3 that are capable of meeting the needs of the authority or the means by which its objectives can be achieved, or
2. indicate the legal or financial formulation of a project. *Act (2010:571).*

Publication of a contract notice

Article 12

If a contracting authority intends to make use of competitive dialogue, the authority shall state this in the a contract notice. The authority shall state its needs and requirements in the notice or in a descriptive document.

Act (2010:571).

Opening a dialogue

Article 13

The contracting authority shall open a dialogue with the candidates that have been selected applying Chapters 10 and 11.

The purpose of the dialogue shall be to identify and determine how the needs of the contracting authority can best be satisfied. In the course the dialogue, the authority may discuss all aspects of the contract with the selected candidates in order to reach one or more solutions that may satisfy the authority's needs and form the basis of the tenders that the selected candidates are invited to submit. *Act (2010:571).*

Conducting the dialogue

Article 14

The contracting authority may decide that the dialogue will be conducted in successive stages in order to limit the number of solutions being discussed during the dialogue. In that case, this should be stated in the notice or in the descriptive document. *Act (2010:571).*

Article 15

The contracting authority shall continue the dialogue until the authority has found the solution or solutions which are capable of meeting the needs of the authority. The dialogue shall subsequently be declared concluded and the participating candidates shall be notified of this in writing as soon as possible. *Act (2010:571).*

Request for submission of final tenders

Article 16

When a notification has been provided in accordance with Article 15, the contracting authority shall ask the participating candidates to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. The tenders shall contain all the elements required and necessary for the performance of the project. *Act (2010:571).*

Clarification and specification of tenders

Article 17

The contracting authority may request a participating tenderer to clarify and specify its tender.

However, such measures or additional information may not involve changes to the basic features of the tender or the invitation to submit tenders that distort competition or lead to discrimination. *Act (2010:571).*

Valuation of tenders

Article 18

The contracting authority shall value tenders on the basis of the award criteria. The award criteria shall be stated in the contract notice or in the descriptive document. *Act (2010:571).*

Article 19

The contracting authority shall accept the tender that is the most economically advantageous. *Act (2010:571).*

Specification of tenders or confirmation of commitments

Article 20

The contracting authority may request that the tenderer whose tender has been identified as the most economically advantageous specifies certain aspects of the tender or to confirms commitments contained in the tender.

However, such specification or such a confirmation may not

1. have the effect of modifying substantial aspects of the tender or invitation
2. distort competition, or
3. cause discrimination. *Act (2010:571).*

Prices or payment to participants

Article 21

The contracting authority may specify that prices or payment shall be made to those participating in the dialogue. *Act (2010:571).*

Central purchasing bodies

Article 22

A contracting authority may acquire public works, products and services with the assistance of a central purchasing body. *Act (2010:571).*

Chapter 5 Framework agreements

Applicable provisions

Article 1

A contracting authority may conclude a framework agreement by applying the provisions on the award of public works contracts, public supply contracts and public service contracts contained in this Act.

Award of contracts

Article 2

Contracts that are based on a framework agreement shall be awarded in accordance with Article 4, 6 or 7. Such a contract may only be concluded between a contracting authority and a supplier who is a party to the framework agreement.

When awarding contracts based on a framework agreement, the parties may not significantly deviate from the conditions contained in the framework agreement.

The term of the framework agreement

Article 3

A framework agreement may only run for a period of more than four years if there are special reasons.

Framework agreement with a single supplier

Article 4

Where a framework agreement is concluded with a single supplier, the conditions of a contract that are based on the framework agreement shall correspond with the terms laid down in the framework agreement.

For the award of those contracts, the contracting authority may consult with the supplier who is a party to the framework agreement in writing, requesting the supplier supplement its tender as necessary.

Framework agreement with several suppliers

Article 5

Where a framework agreement is concluded with several suppliers in accordance with Article 6 or 7, these shall be at least three, provided there is a sufficient number of suppliers to satisfy the selection criteria and a sufficient number of admissible tenders that meet the award criteria according to the second paragraph of Chapter 12, Article 1 stated in the contract documents for the framework agreement.

Article 6

Where a framework agreement is concluded with several suppliers in accordance with Article 5, contracts based on the framework agreement may be awarded by application of the terms laid down in the framework agreement without reopening competition.

The contract shall be awarded to the supplier which has submitted the best tender on the basis of the conditions set out in the framework agreement.

Article 7

Where a framework agreement is concluded with several suppliers in accordance with Article 5 and where not all of the terms are stated in the framework agreement, competition between the parties shall be reopened in accordance with the conditions stated in the framework agreement. These conditions may, if necessary, be specified and, where appropriate, supplemented with conditions other than those stated in the contract documents of the framework agreement.

When applying the first paragraph

1. the contracting authority shall, for every contract to be awarded, consult in writing with the suppliers who are to perform the contract,
2. the contracting authority shall state a time limit that is sufficient to submit tenders for each specific contract, taking into account the nature and scope of the procurement,
3. tenders shall be submitted in writing, and the contracting authority only ascertains the content of the tenders only after the expiry of the response time stipulated, and
4. the contracting authority shall award each individual contract to the tenderer who has submitted the best tender on the basis of the award criteria stated in the contract documents of the framework agreement.

Chapter 5a Electronic auction

Scope

Article 1

If the specifications can be established with sufficient precision, a contracting authority may conduct an electronic auction as a concluding component of the award procedure for:

1. an open procedure,
2. a restricted procedure,
3. a negotiated procedure of the type used in cases referred to in Chapter 4, Article 2, item 1,
4. reopened competition within a framework contract in accordance with Chapter 5, Article 7,
5. a simplified procedure, and
6. a selective procedure. *Act (2010:571).*

Article 2

The electronic auction shall enable ranking owing to automatic evaluation methods and shall be based on:

1. prices, when the contract is awarded to the supplier who offered the lowest price, or
2. prices or the new values for those components of the tenders indicated in the specifications, when the contract is awarded to the supplier who has submitted the most economically advantageous tender. *Act (2010:571).*

Article 3

If an electronic auction will be used, the contracting authority shall state this in the contract notice. *Act (2010:571).*

Contract document

Article 4

The contract document shall indicate among other things:

1. the components of the tender, whose values can be quantified and expressed in figures or percentages, that will be the subject of the electronic auction,
2. any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract,

3. the information that will be made available to tenderers in the course of the electronic auction and when it will be made available to them,
4. relevant information concerning the electronic auction process,
5. the conditions under which the tenderers will be able to bid, including the minimum differences between tenders that may have been determined, and
6. relevant information concerning the electronic equipment used and connection to this equipment. *Act (2010:571).*

First evaluation of tenders

Article 5

Before a contracting authority proceeds with an electronic auction, the authority shall make a full initial evaluation of the tenders in accordance with the award criterion/criteria set and with the weighting fixed for them. *Act (2010:571).*

Invitation to submit new prices or values, etc.

Article 6

All tenderers who have submitted admissible tenders shall be invited by electronic means to submit new prices or values.

The invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and details about the date and time at which the electronic auction will be started, conducted and concluded. *Act (2010:571).*

Article 7

When the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the tender submitted by the relevant tenderer, carried out in accordance with the weighting of the award criteria.

Act (2010:571).

Article 8

The invitation shall state the mathematical formula to be used in the electronic auction to determine automatic rankings on the basis of the new prices and the new values submitted during the auction.

The mathematical formula shall include the weighting of all criteria set to determine the most economically advantageous tender, as indicated in the notice or in the specifications. If the weighting of criteria is stated as ranges, these shall be determined beforehand as a specified value.

Where variants are authorised, a separate formula shall be provided for each tender. *Act (2010:571).*

Article 9

The electronic auction may not start sooner than two working days after the date on which invitations are sent out. *Act (2010:571).*

Article 10

The electronic auction may take place in a number of successive phases. *Act (2010:571).*

Information to tenderers

Article 11

At each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers sufficient information to enable them to ascertain their relative ranking.

The contracting authority may also communicate other information concerning prices or values, provided this has been stated in the specifications.

The contracting authority may provide information about the number of participants in the electronic auction. *Act (2010:571).*

Closure of an electronic auction

Article 12

The contracting authority shall close an electronic auction

1. at the date and time when the auction should be closed according to the invitation to participate in the auction,
2. when no more new prices or new values corresponding to the stated requirement for minimum differences are being submitted, or
3. when the number of phases in the auction, fixed in the invitation to participate in the auction, has been completed.

In the case stated in item 2 of the first paragraph, the contracting authority shall state in the invitation to participate in the auction the time which it will allow to elapse after receiving the last submission of a new price or value before it closes the auction.

In the cases stated in item 3 of the first paragraph, the timetable for each phase shall be indicated in the invitation to participate in the auction. *Act (2010:571).*

Article 13

When the electronic auction has been closed, the contracting authority shall award the contract on the basis of the results of the electronic auction. *Act (2010:571).*

Chapter 6 Technical specifications and specific terms of contract in contract documents, etc.

Technical specifications

Article 1

Technical specifications shall be set out in the contract notice, the contract documents or the additional documents. The specifications shall be formulated in one of the manners stated in Articles 2 and 3.

When possible, these specifications should be determined taking into account accessibility criteria for people with disabilities or be designed for all users.

Technical specifications referable to a standard

Article 2

Unless Article 3 applies, the technical specifications shall be formulated with reference to the technical specifications defined in Appendix 4 and, in order of priority, shall refer to:

1. a Swedish standard that corresponds with a European standard,
2. a European technical approval,
3. a common technical specification,
4. an international standard,
5. another technical reference system established by the European standardisation bodies, or
6. another Swedish standard, Swedish technical approval or Swedish technical specification relating to the design, calculation and execution of the works and use of the products.

Each reference mentioned in the first paragraph shall be accompanied by the words 'or equivalent'.

The first paragraph does not apply if there are deviating provisions contained in any other legislation.

Technical specifications in the form of performance or functional requirements

Article 3

A contracting authority may express the technical specifications as performance or functional requirements. These requirements may include environmental characteristics. The requirements shall be formulated to clearly indicate the subject matter of the contract.

A contracting authority may refer to the technical specifications according to Article 2 as one way for the supplier to show that the specified performance or functional requirements according to the first paragraph are satisfied.

A contracting authority may state the technical specifications by reference to the specifications according to Article 2 for certain characteristics and to the performance or functional requirements according to the first paragraph for other characteristics.

Details of origin, production, etc.

Article 4

The technical specifications may not contain details of origin, production or a particular process or reference to trademarks, patents, types, origin or production, if this leads to certain undertakings being favoured or disfavoured.

Such details and references may, however, appear in the specifications if it is otherwise not possible to describe the subject matter of the contract with sufficient precision and unambiguously. Such information or reference shall be accompanied by the words 'or equivalent'.

Equivalent solutions

Article 5

Where a contracting authority chooses to refer to technical specifications under Article 2, it may not reject a tender on the sole ground that the products or the services do not comply with the specifications to which it has referred, if the tenderer in their tender can prove that the proposed solutions satisfy in an equivalent manner the requirements according to the technical specifications.

Article 6

Where a contracting authority uses the option laid down in Article 3 to prescribe in terms of performance or functional requirements, it may not reject a tender on the basis of these requirements if the tenderer can prove that the tender complies with:

1. a national standard that corresponds with a European standard,
2. a European technical approval,
3. a common technical specification,
4. an international standard, or
5. a technical reference system established by a European standardisation body.

The first paragraph applies subject to the precondition that the public works, products or services in compliance with the standard meet the performance or functional requirements imposed by the contracting authority.

Eco-label*Article 7*

Where a contracting authority specifies environmental characteristics in terms of performance or functional requirements in accordance with Article 3, it may use detailed specifications or, if necessary, parts thereof that are approved for eco-labels, provided:

1. the specifications are appropriate for defining the characteristics of the supplies or services that are to be procured,
2. the requirements for the label are drawn up on the basis of scientific information, and
3. the labels are accessible to all interested parties.

The contracting authority may indicate that the products and services that are furnished with such an eco-label shall be deemed to correspond to the technical specifications referred to in the contract documents, but shall also approve other appropriate proof of this being the case.

Recognised bodies*Article 8*

Contracting authorities shall approve certificates from bodies recognised in an EEA country.

Variants

Article 9

If a contracting authority is to accept the most economically advantageous tender, it may allow tenderers to submit variants.

A contracting authority shall state in the contract notice whether it will accept variants. If this is not stated, variants will not be allowed.

A contracting authority authorising variants shall state in the contract documents the minimum requirements to be met by such tenders and the specific requirements for how they are to be presented.

Only such tenders that satisfy the minimum requirements may be considered in the procurement.

Article 10

When awarding supply or service contracts, a contracting authority that has permitted variants in accordance with Article 9 may not reject such a tender solely on the grounds that, if it is accepted, it would be a service contract instead of a supply contract or a supply contract instead of a service contract.

Subcontracted work

Article 11

In the contract documents, a contracting authority may ask the tenderer to indicate in their tender any share of the contract they may intend to subcontract to third parties and any proposed subcontractors.

Information on taxes, environmental protection, employment protection and working conditions

Article 12

A contracting authority may provide information in the contract documents about which bodies can provide information to a candidate or tenderer on the obligations relating to taxes, environmental protection, employment protection and working conditions that will apply in connection with the services or public works that are to be covered by the contract.

If the contracting authority provides such information as regards employment protection and working conditions, it shall request that the candidates or tenderers confirm that consideration has been given to the provisions of such conditions when drawing up the tender.

The first and second paragraphs shall be without prejudice to the application of the provisions of Chapter 12, Article 3 concerning the examination of abnormally low tenders.

Special conditions for performance of contracts

Article 13

A contracting authority may lay down special social, environmental and other conditions relating to the performance of a contract. These conditions shall be stated in the contract notice or in the contract documents.

Chapter 7 Publication of contract notice

Mandatory and non-mandatory publication of a contract notice

Article 1

A contracting authority that intends to award a contract or enter into a framework agreement shall publish a contract notice, unless otherwise provided by Chapter 4, Articles 5 to 8.

Information about planned procurements (prior information notice)

Article 2

A contracting authority that wishes to apply the provision on the shortening of time limits referred to in Chapter 8, Article 4 shall provide information in a contract notice about the contracts or framework agreements that the authority intends to award or conclude respectively during the immediately following twelve months (prior information notice).

Publication of the results of a procurement (contract award notice)

Article 3

A contracting authority which has awarded a contract or concluded a framework agreement shall send a notice of the results of the award procedure to the European Commission no later than 48 days after the award of the contract or the conclusion of the framework agreement (contract award notice).

The provisions of the first paragraph do not apply to the award of contracts that are made pursuant to a framework agreement that has been concluded in accordance with this Act. *Act (2007:664).*

Publication of a contract notice in the case of *ex ante* transparency

Article 4

A contracting authority that intends to award a contract through a negotiated procedure without prior publication of a contract notice in accordance with Chapter 4, Articles 5 to 9 may send a notice about its intention to the European Commission (*ex ante* transparency). *Act (2010:571).*

Chapter 8 Time limits for submitting requests to participate and for receipt of tenders, etc.

Circumstances to be taken into account when determining the length of the time limits

Article 1

When time limits for submitting requests to participate and tenders are determined by the contracting authority, special regard shall be taken to the complexity of the contract and the time suppliers may be assumed to require for drawing up tenders. However, the time limits in this Chapter shall be observed.

Time limit for open procedure

Article 2

In the case of open procedures, the time limit for submitting a tender shall be at least 52 days from the date on which the contract notice was sent for publication, unless otherwise prescribed by Articles 4 to 8.

Time limits for restricted procedure, competitive dialogue and negotiated procedure with prior publication of a contract notice

Article 3

In the case of restricted procedure, competitive dialogue and negotiated procedure with prior publication of a contract notice, the time limit for submitting requests to participate shall be at least 37 days from the date on which the contract notice was sent for publication.

In the case of restricted procedures, the time limit for submitting a tender shall be at least 40 days from the date when an invitation in accordance with Article 10 was sent to selected candidates.

The provisions of the first and second paragraphs apply unless otherwise prescribed by Articles 4 to 8. *Act (2010:571)*.

Time limit after prior information notice

Article 4

If the contracting authority has published a prior information notice in accordance with Chapter 7, Article 2, the time limit for submitting a tender in the case of an open or restricted procedure should be at least 36 days and may not in any case be shorter than 22 days from the date on which the contract notice was sent for publication.

The time limits referred to in the first paragraph may only be used if:

1. the prior information notice contained the information mentioned in Annex VII A to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, last amended by Commission Regulation (EC) No 2083/2005, to the extent that the information was available at the time of the prior information notice, and
2. at least 52 days, but at most 12 months, have expired from the date when the prior information notice was sent for publication.

Shortened time limit when using electronic means

Article 5

If a contract notice is prepared and sent by electronic means, the time limits according to Articles 2 and 4 for submitting tenders in the case of an open procedure and the time limit according to Article 3, first paragraph for submitting requests to participate in the case of a restricted procedure, competitive dialogue or a negotiated procedure with prior publication of a contract notice may be shortened by seven days. *Act (2010:571)*.

Article 6

The time limits for submitting tenders in the case of open and restricted procedures may, in addition to the provisions of Article 5, be shortened by five days, if the contracting authority offers, by electronic means, unrestricted, direct and full access to the contract documents in their entirety from the day when the contract notice was sent to the European Commission for publication. The Internet address where the contract documents are available shall be stated in the notice. *Act (2010:571).*

Extension of time limits*Article 7*

If the contract documents and additional information are not provided in their entirety, although requested in good time, within the time limits referred to in Articles 9 and 12, the limits for submitting tenders shall be extended so that all suppliers may be aware of all the information needed to produce tenders.

The provisions of the first paragraph also apply where tenders can be made only after a visit to the site.

Shortened time limit owing to urgency in certain cases*Article 8*

If, in the case of restricted procedures or in the case of negotiated procedures with prior publication of a contract notice, where urgency renders impracticable the time limits laid down in this Chapter, a contracting authority may state that the time limit for submitting requests to participate, calculated from the date when the contract notice was sent for publication, shall be not less than 15 days or, less than 10 days if the notice was sent by electronic means.

Subject to the precondition of urgency, a contracting authority may state that the time limit for submitting tenders in the case of a restricted procedure shall be at least 10 days from the date when the invitation to tender was sent.

Provision of contract documents in the case of open procedure

Article 9

If a contracting authority in the case of an open procedure does not in accordance with Article 6 offer, by electronic means, unrestricted, direct and full access to the contract documents in their entirety, the contract documents shall be sent to a supplier no later than six days after receipt of a request to have the documents released. However, this only applies if the supplier's request has been made in good time before the expiry of the time limit for submitting tenders.

The contracting authority shall at the request of a supplier provide additional information about the contract documents no later than six days before the deadline fixed for submitting tenders, subject to the precondition that such a request has been made in good time.

Invitation to tender, negotiate or conduct a dialogue

Written invitation to tender, to negotiate or to conduct a dialogue in the case of restricted and negotiated procedures respectively or competitive

Article 10

In restricted procedures, competitive dialogues and negotiated procedures with prior publication of a contract notice, a contracting authority shall simultaneously send a written invitation to all selected candidates to submit tenders, to participate in the dialogue or to negotiate.

An invitation shall contain the contract documents or, when applicable, the descriptive document. However, if the contract documents or the descriptive document are directly available with electronic means, the invitation only needs to contain details of where the supporting documents have been made available.

An invitation shall also contain at least the details of:

1. the deadline for requesting additional documents, if this is relevant, and the sum payable and means of payment, if a charge is to be paid for the documents,
2. the deadline for the receipt of tenders and the address to which the tender is to be sent and language or languages in which it is to be drawn up,
3. a reference to the contract notice,
4. which documents are to be attached,

5. the relative weighing of criteria for the award of contracts or the descending order of importance of the criteria, if this information is not indicated by the contract notice, the descriptive document or by the specifications, and
6. other information of relevance to the procurement. *Act (2010:571).*

When someone other than the contracting authority is to provide the contract document or the descriptive document

Article 11

When someone other than the contracting authority shall on request provide all or parts of the contract documents, the descriptive document or the additional documents, the address shall be stated in the invitation. If a time limit applies for such a request and if there is a charge payable for the documents requested, information about the limit and the charge and also conditions of payment shall be stated in the invitation.

The documents requested shall be sent to the suppliers as soon as possible after receipt of a request. *Act (2010:571).*

Provision of additional documents and information in the case of restricted and negotiated procedures and competitive dialogues

Article 12

The contracting authority shall, in the case of restricted and negotiated procedures and for competitive dialogue, provide additional information about the contract documents, the descriptive document or additional documents not less than six days before the deadline fixed for submitting tenders, provided that such information is requested in good time.

In the case of an expedited procedure according to the second paragraph of Article 8, this time limit shall be four days. *Act (2010:571).*

Chapter 9 Communication, information and documentation

Rules for communication

Article 1

Requests to participate and tenders shall be submitted in writing unless other prescribed by the third paragraph.

A contracting authority may determine that requests to participate and tenders shall be submitted by electronic means or in some other way.

The authority may allow a request to participate to be made by telephone.

The authority shall state in a notice how requests to participate may be submitted and state in a notice or a contract document how tenders may be submitted. *Act (2010:571).*

Article 2

When communicating by electronic means, these must be non-discriminatory, generally available and interoperable with such hardware and software in general use.

Article 3

Information regarding the specifications necessary for the electronic submission of requests to participate and tenders, including encryption, shall be available to all interested parties.

A contracting authority may require that electronic tenders shall be furnished with an advanced electronic signature according to the Qualified Electronic Signature Act (2000:832).

A contracting authority shall have such devices as enable the electronic receipt by it of requests to participate, tenders, plans and projects in a secure manner. This equipment shall have such security devices to enable the retrieval of certain information, to ensure that only authorised persons can gain access to the information and to make it possible to detect whether any unauthorised person has gained access to the information.

The Government will issue more detailed regulations on security devices.

Obligation to submit certificates, etc.

Article 4

When using electronic means in accordance with Article 1, candidates and tenderers shall, prior to the expiry of the time limit for the submission of requests to participate or tenders in other form, submit such documents as are referred to in Chapter 10, Article 3, Chapter 11, Articles 6, 7, 9, 11, 12 and 14 to 16, unless these are available in electronic form.

Confirmation of request seeking an invitation to submit tenders

Article 5

A contracting authority may request that a request to participate that has been made by telefax shall be confirmed by another electronic means according to the second paragraph of Article 3 or by a personally signed document made available to the authority before the expiry of the time limit stipulated by the authority.

If a request to participate has been made by telephone, a confirmation should be sent before the expiry of application period.

The contracting authority shall state in the contract notice such conditions as are referred to in the first and second paragraphs.

Information from suppliers shall be stored securely

Article 6

Communications, information exchange and stored information relating to a procurement matter shall be stored securely.

Opening of tenders

Article 7

The contracting authority may ascertain the content of the requests to participate and the tenders only after the expiry of the time limit for the submission of requests to participate and tenders.

Dispatches with tenders shall, simultaneously and as soon as possible after the end of the tender period, be opened at an administrative meeting where at least two persons appointed by the contracting authority shall participate. The tenders shall be entered into a list, which shall be certified by those participating in the administrative meeting. If requested by a tenderer, a person appointed by a chamber of commerce shall also attend. The costs for this shall be paid by the party who made the request.

Correction of errors, clarification and supplementation

Article 8

A contracting authority may allow a candidate or tenderer to correct a manifest written error or erroneous calculation or some other manifest error in the request to participate or the tender.

The authority may request that a request to participate or a tender is clarified or supplemented, provided this can be done without risk of special treatment or restraining competition. The authority may also request that a supplier clarifies or supplements documents submitted and as referred to in Chapters 10 and 11.

Information to suppliers

Notification of decision

Article 9

A contracting authority shall as soon as possible inform the candidates and the tenderers in writing of the decisions reached concerning concluding a framework agreement or awarding a contract and of the grounds for the decisions. In the notification the authority shall state the period during which an agreement under Chapter 16, Article 6 may not be concluded (standstill period).

Written notification shall be given as soon as possible to candidates and tenderers also when a contracting authority decides to discontinue a procurement for which invitations have been made to submit tenders and in the case of a decision to recommence the procurement. This notification shall state the reasons for the decision. *Act (2010:571).*

Information at the request of a supplier

Article 10

A contracting authority shall provide information about the reasons for a supplier's application having been rejected or for a tender having been rejected to a candidate or tenderer who requests such information.

A contracting authority shall, at the request of a tenderer who has submitted an admissible tender, provide information concerning the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement.

Information according to the first and second paragraphs shall be provided as soon as possible and no later than 15 days from receipt of a written request.

Tenderers must maintain their tenders

Article 11

A contracting authority shall state in the contract documents the time frame during which the tenderer must maintain their tender. In the case of an open procedure, this shall be stated in the contract notice.

A tenderer must maintain their tender even if the tenderer has been received notification according to Article 9, first paragraph or information according to Article 10.

Reports

Article 12

A contracting authority shall draw up a report for each procurement, where among other things the reasons are to be provided for:

1. the rejection of a tender that was considered to be abnormally low,
2. a contract or framework agreement not being awarded to a supplier, and
3. a negotiated procedure being applied according to the provisions of Chapter 4, Articles 2 to 8.

A contracting authority is liable to send the report or the main features of the report to the European Commission at the request of the Commission.

The Government will issue more detailed regulations on what a record must contain. *Act (2010:571).*

Storage of documents

Article 13

When a procurement has been concluded, a contracting authority that is not subject to the Archives Act (1990:782) shall store in a secure way requests to participate and tenders with associated descriptions, models and drawings and also the lists, summaries, records and the like for the tenders.

The documents shall be stored for at least four years from the date when the contract was awarded.

Chapter 10 Exclusion of suppliers

Circumstances that will result in the exclusion of a supplier

Article 1

A contracting authority shall exclude a supplier from participating in a public procurement if the authority is aware that the supplier has, in accordance with a judgment that has entered into final legal force, been sentenced for a crime that includes:

1. such crime as referred to in Article 2.1 of the Joint Action of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union (1) (98/733/JHA).
2. corruption as defined in Article 3 of the Council Act of 26 May 1997 drawing up, on the basis of Article K.3 (2) (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 3.1 of the Joint Action of 22 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on corruption in the private sector (98/742/JHA),
3. fraud within the meaning of Article 1 of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, or
4. money laundering as defined in Article 1 of the Council Directive of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering 91/308/EEC, amended by Directive 2001/97/EC of the European Parliament and of the Council.

If the supplier is a legal person, the supplier shall be excluded if a representative of the legal person has been sentenced for the offence.

If there is justified cause to assume that a supplier is to be excluded pursuant to the first paragraph, the authority may request that the supplier proves that there are no grounds for exclusion.

If there are special reasons, a contracting authority may refrain from excluding a supplier who has been sentenced for a crime according to the first paragraph.

Circumstances that may result in the exclusion of a supplier

Article 2

A supplier may be excluded from participating in a procurement if the supplier:

1. is bankrupt or is being wound up, is under compulsory administration or is the subject of a composition or has indefinitely stopped their payments or is subject to a prohibition on conducting business,
2. is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or composition or any other similar proceedings,
3. has been convicted by a judgment which has the force of res judicata for an offence relating to professional practice,
4. has been guilty of grave professional misconduct and the contracting authority can prove this,
5. has not fulfilled their obligations relating to social insurance charges or tax in their own country or in the country where the procurement is being conducted, or
6. in some essential respect has failed to provide information requested or has provided incorrect information required pursuant to the provisions of Chapter 10 or 11.

If the supplier is a legal person, the supplier may be excluded if a representative for the legal person has been sentenced for an offence referred to in item 3 of the first paragraph or committed such an error as referred to in item 4 of the first paragraph.

The authority may, except in those cases referred to in Article 4, request that a supplier proves that there are no grounds for excluding the supplier pursuant to item 1, 2, 3 or 5 of the first paragraph. *Act (2010:571).*

Certificates and evidence regarding suppliers

Article 3

The contracting authority shall, as evidence for there not being grounds for excluding a supplier, accept an extract from an official register or other equivalent document as regards a circumstance as referred to in Article 1 or item 1, 2 or 3 of the first paragraph of Article 2 and a certificate from a competent authority as regards a circumstance as referred to in item 5 of the first paragraph of Article 2.

If such documents or certificates as referred to in the first paragraph are not issued in the supplier's country of origin or the country whence they come or do not cover all of the cases referred to in Article 1 or items 1 to 3 of the first paragraph of Article 2, they may be replaced by a statement provided under honour and faith or with a similar assurance .

If a supplier is registered in an official list of approved suppliers in a country within the EEA, it may be assumed that the supplier satisfies the preconditions referred to in Article 1 or in items 1 to 5 of the first paragraph of Article 2.

Article 4

When verifying whether a supplier has fulfilled his obligations relating to social insurance charges or tax in Sweden in accordance with item 5 of the first paragraph of Article 2, the contracting authority shall obtain information about this from a competent authority. *Act (2010:571).*

Chapter 11 Verification of suppliers' suitability and choice of participants, etc.

Introductory provisions

Article 1

Before a contract is awarded in accordance with Chapter 12, the contracting authority shall check the suitability of those suppliers who have not been excluded according to Chapter 10, Articles 1 and 2.

Article 2

A contracting authority may impose requirements on a minimum level for the financial and technical and professional ability of the candidate and tenderer. This shall correspond to the provisions contained in Articles 7 to 15. The extent of the information referred to in Articles 6 to 15 and the minimum levels of ability required for a specific contract must be related and proportionate to the subject matter of the contract.

The requirements imposed for ability shall be indicated in the contract notice.

Limitation of the number of candidates in award procedures

Article 3

In the case of restricted procedures, negotiated procedures with prior publication of a contract notice and competitive dialogue, the contracting authority may limit the number of candidates that it will invite to submit tenders, negotiate with or open a dialogue with.

The contracting authority shall state in the notice:

1. which criteria or rules it will apply when choosing the candidates, and
2. the minimum number of candidates that will be invited and, if a maximum number will be invited, this number. *Act (2010:571).*

Article 4

The number of candidates that are invited to participate in a restricted procedure, in a negotiated procedure with prior publication of a contract notice or in competitive dialogue shall be sufficient to ensure effective competition. The number of candidates that are invited to participate in a restricted procedure may not be less than five, and in a negotiated procedure with prior publication of a contract notice or competitive dialogue not less than three. *Act (2010:571).*

Article 5

A contracting authority shall invite at least the number of candidates referred to in item 2 of the second paragraph of Article 3.

Where the number of candidates meeting the requirements and the award criteria stated in the notice (the qualified candidates) is below the minimum number that the notice states will be invited, the contracting authority may continue the procedure by inviting qualified candidates who have requested to be allowed to participate.

Requirement for registration

Article 6

The contracting authority may request that a candidate and tenderer show that they are registered in a register of companies or register of partnerships or corresponding register kept in the country where the supplier's operation is established.

Instead of that stated in the first paragraph, a candidate and tenderer may make a statement on honour and faith or take other similar measure or produce a certificate.

In conjunction with a procedure for the award of service contracts, the contracting authority may request that a candidate or tenderer prove that they have a special permit or the like in their country of origin, if this is required to provide the services in question.

Suppliers' economic standing

Proof of economic standing

Article 7

Proof of a supplier's economic capacity may constitute:

1. a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for the last three financial years or such shorter period during which the operation has been conducted,
2. balance sheets or extracts from the balance sheets, or
3. statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance for the operation.

Article 8

The contracting authority shall specify in the contract notice or in the invitation to tender which of document(s) and information mentioned in Article 7 shall be produced and which other documents must be produced. A balance sheet or extracts from the balance sheet only needs to be produced if it is to be made public according to law in the country where the supplier is domiciled.

Article 9

If, for any valid reason, the supplier is unable to produce the documents and information requested by the contracting authority, the supplier may prove their economic capacity by some other document which the contracting authority considers appropriate.

Technical and professional ability

Article 10

Where the contracting authority has imposed requirements on a supplier's technical and professional abilities, this shall be verified and assessed in accordance with Articles 11 and 12.

*Proof of technical ability**Article 11*

The contracting authority shall state in the contract notice or in the invitation to tender the means by which, from those mentioned in the second paragraph, a supplier is to prove their technical ability.

Technical ability may only be verified in one or more of the following ways:

1. by a list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works with information about the value, date and site of the works and shall specify whether they were carried out according to the rules of the trade and properly completed,
2. by a list of the principal deliveries effected or main services provided over the past three years with information about the sums and dates and shall specify whether these involved private or public recipients
3. by an indication of the technicians and technical bodies responsible for quality control or which are involved in some other way, whether or not belonging to the supplier's undertaking and, in the case of works, an indication of the technicians and technical bodies upon whom the contractor can call in order to carry out the work,
4. by a description of the technical facilities and methods used by the supplier or service provider for ensuring quality and the undertaking's study and research facilities,
5. where it involves complex products or services or, if there are special reasons, products or services required for a special purpose, by a check carried out by the contracting authority or on their behalf by a competent official body of the country in which the supplier is established, subject to that body's agreement,
6. by the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff and, in particular, those of the person or persons responsible for providing the services or managing the works,
7. where it involves works or services, by an indication of the environmental management measures that the supplier will apply when carrying out the contract, if it is considered that such information is necessary with regard to what the contract relates to,
8. by a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years,

9. by a statement of which tools, plant and technical equipment are available to the service provider or contractor for carrying out the contract,
10. by an indication of the proportion of the contract which the service provider may possibly subcontract, or
11. where it involves products to be supplied: by samples, descriptions or photographs, the authenticity of which must be certified if the contracting authority so requests; or by certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.

Where appropriate, the competent authority shall submit certificates according to item 1 of the second paragraph directly to the contracting authority.

Where the recipient is a contracting authority according to item 2 of the second paragraph, certificates issued or countersigned by the authority shall be given. Where the recipient is not a contracting authority, a certificate from the purchaser or, failing this, a declaration by the supplier shall be given.

A check according to item 5 of the second paragraph shall relate to the production capacity of the supplier or the technical capacity of the service provider and, if necessary, the supplier's means of study and research available and quality control measures.

Access to the capacity of other undertakings

Article 12

A supplier may, where appropriate and for a particular contract, rely on the economic, technical and professional abilities of other undertakings. The supplier shall prove that the supplier will have at its disposal the resources necessary for the execution of the contract by producing a commitment from the undertakings in question or in some other way.

Suppliers' skills

Article 13

When assessing the ability of a supplier to execute a supply contract involving siting and installation operations, services or works, particular weight may be attached to skills, efficiency, experience and reliability.

Quality assurance standards

Article 14

Should a contracting authority require that the supplier produce a certificate drawn up by an independent body attesting the compliance of the supplier with certain quality assurance standards, the authority shall refer to quality assurance systems based on the relevant European standards series for the sector and which quality assurance systems are certified by bodies conforming to the European standards series concerning certification.

The authority shall recognise equivalent certificates from other bodies established within the EEA. It shall also accept other evidence of equivalent quality assurance measures from suppliers.

Environmental management standards

Article 15

Should a contracting authority, in the cases referred to in Article 11, second paragraph, item 7 require access to a certificate drawn up by an independent body attesting the compliance of the supplier with certain environmental management standards, the authority shall refer to Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) or to environmental management standards based on the relevant European or international standards. The environmental management standards shall be certified by bodies conforming to EU law or international standards concerning certification.

The authority shall recognise equivalent certificates from other bodies established within the EEA. It shall also accept other evidence of equivalent environmental management measures from suppliers. *Act (2010:571).*

Official lists

Article 16

If a supplier is registered in an official list of approved suppliers in a country within the EEA or holds a certificate issued by a certification body conforming to European standards series concerning certification, it may be assumed that the supplier satisfies the preconditions referred to in:

1. Chapter 10, Article 1, Article 2, first paragraph, items 1 to 4 and 6, and in this chapter Article 6, Article 7, first paragraph, items 1 and 2 and also Article 11, second paragraph items 1, 3, 6, 8 and 9 as regards contractors,
2. Article 11, items 2 to 5 and 11 as regards suppliers, or
3. Article 11, item 2 and items 4 to 10 as regards service providers.

Limited checks

Article 17

A contracting authority may limit its checks of such documents that involve the suitability of suppliers to the candidates and tenderers referred to in the second and third paragraphs. The supplier shall be afforded reasonable time to submit the documents requested.

In an open procedure, information under the first paragraph shall be requested and checked as regards the or those tenderers to whom the authority intends to award the contract or framework agreement. This check shall be conducted before the tenderers are notified of the award decision under the first paragraph of Chapter 9, Article 9.

In a restricted or negotiated procedure or for a competitive dialogue, information under the first paragraph shall be requested and checked as regards the candidates that the authority intends to invite to submit tenders or to negotiate respectively. *Act (2010:571).*

Chapter 12 Award of contracts

Alternative grounds for the award of contracts

Article 1

A contracting authority shall accept either:

1. the tender that is the most economically advantageous for the contracting authority, or
2. the tender that has the lowest price.

When determining the most economically advantageous tender, the authority shall take into account the various criteria linked to the subject matter of the contract, such as price, delivery period or period of completion, environmental characteristics, running costs, cost-effectiveness, quality, aesthetic, function and technical characteristics, service and technical support.

A contracting authority shall in the contract notice or in the contract documents indicate which ground for the award of the contract will be applied.

Weighting of criteria

Article 2

The contracting authority shall specify the relative weighting which it gives to each of such criteria as referred to in the second paragraph of Article 1 when determining the most economically advantageous tender. Those weightings can be expressed by providing for a range with an appropriate maximum spread.

Where, in the opinion of the contracting authority, it is not possible to specify the weighting of the various criteria, the criteria shall be indicated in descending order of importance.

The weighting of the criteria or the order of priority of the criteria shall be specified in:

1. the contract notice,
2. the contract documents,
3. an invitation to submit tenders or to participate in negotiations, or in
4. the descriptive document. *Act (2007:664).*

Abnormally low tenders

Article 3

A contracting authority may reject a tender if it considers the price to be abnormally low. However, the tender may only be rejected after the authority requested in writing a reasoned submission for the low tender and has not received a satisfactory answer.

A request for a reasoned submission may relate to:

1. whether the tenderer may have recourse to particularly cost-effective methods to perform the contract,
2. whether the tenderer can exploit technical solutions or exceptionally favourable conditions to perform the contract,
3. the originality of the products, services or works proposed by the tenderer,
4. whether the tenderer complies with the provisions relating to employment protection and working conditions applicable at the place where the contract shall be performed, and
5. whether the tenderer has the possibility of obtaining State aid.

The contracting authority shall give the tenderer the opportunity to express their views on the authority's reason for rejecting the tender taking into account the reasoned submission provided.

Article 4

Where a contracting authority considers that a tender is abnormally low because the tenderer has obtained State aid, the authority may request a reasoned submission from the tenderer. If the tenderer cannot after such a request and within a reasonable time limit indicated by the contracting authority prove that aid that is compatible with the Treaty on the Functioning of the European Union (TFEU) is involved, the tender may be rejected.

A contracting authority that rejects a tender in accordance with the first paragraph shall inform the European Commission thereof. *Act (2010:571).*

Chapter 13 Public works concession

Scope

Article 1

Unless otherwise provided by Chapter 1, the provisions contained in this Chapter shall apply to the procurement of a public works concession, where the contract has a value equal to or greater than the amount (threshold) set or notified by the European Commission from time to time. The value shall be calculated in accordance with the rules applicable to public works contracts according to Chapter 3, Articles 3 to 5, 7 and 8.

The Government shall announce in the Swedish Code of Statutes the thresholds in euro and Swedish kronor. *Act (2010:571)*.

Publication of a contract notice

Article 2

A contracting authority shall publish a procurement of public works concessions.

Time limits for application to be awarded a public works concession

Article 3

The time limit for submitting an application to be awarded a public works concession shall be at least 52 days from the date when the contract notice was sent for publication.

Time limits may be shortened in accordance with Chapter 8, Article 5 and extended in accordance with Chapter 8, Article 7.

Subcontracting

Article 4

A contracting authority may specify as a condition in the contract documents:

1. that a party applying for the award of a concession shall assign at least 30 per cent of the value of the contract to third parties, at the same time providing the option for applicants to increase this percentage, or
2. that the applicants specify in their tenders how great a percentage of the total value of the concession they intend to assign to third parties.

The minimum percentage of the value of the concession that shall be assigned to third parties under item 1 of the first paragraph shall be specified in the concession contract.

Obligations of the concessionaire

Publication of a contract notice

Article 5

Where the party that is awarded a public works concession is not a contracting authority, the contract shall contain conditions that the concessionaire, if they intend to assign to third parties a works contract of a value (threshold) set or notified by the European Commission from time to time, shall publish such procurement and indicate time limits according to the second and third paragraphs.

The contract notice shall be published in accordance the regulations contained in Chapter 7, Article 1. However, publication of a contract notice is not required in such cases when a contracting authority, in accordance with Chapter 4, Article 5 or 8, has been allowed to use a negotiated procedure without prior publication of a contract notice .

Time limits for submitting requests to participate and tenders shall be indicated according to Chapter 8, Article 3. Time limits may be shortened in accordance with Chapter 8, Articles 5 and 6 and extended in accordance with Chapter 8, Article 7.

The Government shall announce in the Swedish Code of Statutes the thresholds in euro and Swedish kronor. *Act (2010:571)*.

Groups of undertakings formed and undertakings related to them

Article 6

Where groups of undertakings have been formed to obtain a public works concession, none of them shall be considered third parties. The same applies to a related undertaking.

An exhaustive list of undertakings as referred to in the first paragraph shall be included in the application to be awarded a public works concession.

Chapter 14 Design contests in the area of services

Scope

Article 1

This chapter shall apply to design contests that:

1. are a part a procedure leading to the award of a service contract, or
2. include prizes or payments to participants.

The first paragraph only applies where the threshold has a value equal to or greater than the amount referred to in Article 2.

Thresholds for design contests

Article 2

The threshold in the case of design contests are the amounts set or notified by the European Commission from time to time, where the contest:

1. shall be organised by central government authority,
2. a) shall be organised by another contracting authority, or
b) shall be organised by all the contracting authorities and refers to such research and development services as are covered by Category 8 of Appendix 2 (A Services), telecommunications services in Category 5 of the Appendix, the positions of which in the CPV nomenclature corresponds to the reference numbers CPC 7524, 7525 and 7526 or such services referred to in Appendix 3 (B Services).

The Government shall announce in the Swedish Code of Statutes the thresholds in euro and Swedish kronor. *Act (2010:571)*.

Article 3

The threshold in the case of design contests that are included in a contract for procurement of services shall be calculated as the value of the service contract including, where appropriate, a supplement for the value of any service contract which might subsequently be awarded to the winner or one of the winners of the contest. The value shall also include the prizes and payments payable to the participants.

Selection of participants

Article 4

A design contest may be restricted to a certain number of candidates. The contracting authority shall indicate the criteria for the selection of participants.

The number of candidates invited to participate shall be sufficient to achieve effective competition.

Publication of a contract notice

Article 5

A contracting authority that intends to organise a design contest shall publish a notice of the contest and the result of the contest (contract award notice).

Communication and information

Article 6

As regards communication and information, the provisions of Chapter 9, Articles 1 to 6 and the first paragraph of Article 7 shall be applied to design contracts in a corresponding way.

The jury and its composition

Article 7

A jury shall select the winning plan or design in a design contest. The members of the jury shall be natural persons who are independent of the participants in the design contest. Where a particular professional qualification is required from participants in a contest, at least a third of the members of the jury shall have corresponding qualifications.

Decisions of the jury

Article 8

The jury shall be autonomous in its opinions and decisions.

Competing plans or designs may only be presented to the jury in a way that does not reveal who has submitted a particular plan or design. Anonymity must apply until the jury has reached its opinion or decision.

During the review, only the criteria specified in the notice of the design contest may be taken into account.

Article 9

The jury shall provide a report, signed by its members, ranking the competing plans or designs. The report shall contain reasons for the ranking and also such comments and clarifications that may be necessary.

Candidates may be invited by the jury, if need be, to answer questions which the jury has recorded in the minutes to clarify any aspects of the projects.

Complete minutes shall be drawn up of the dialogue between jury members and candidates.

Service contracts following a design contest

Article 10

It is provided by Chapter 4, Article 9 that a negotiated procedure without prior publication of a contract notice may be used in the case of design contests in certain cases.

Chapter 15 Procurements not covered by the Directive

Scope

Article 1

This chapter applies to such procurement as referred to in Chapter 1, Article 2, second paragraph.

Applicable provisions

Article 2

In the case of public procurement according to this chapter, the following provisions apply:

- Chapter 1 (content and scope of the Act and general provisions),
- Chapter 2 (definitions),
- Chapter 4, Article 22 (central purchasing bodies),
- Chapter 5 (framework agreement), except as regards Chapter 5, Article 5 concerning the requirement for at least three suppliers for such framework agreements as are covered by Chapter 5, Article 6,
- Chapter 6, Article 4 (details of origin, production, etc.),
- Chapter 6, Article 7 (eco-labels),
- Chapter 6, Article 13 (special conditions for performance of contract),
- Chapter 8, Article 11 (if someone other than the contracting authority is to issue the contract documents or the descriptive document),
- Chapter 8, Article 12 (provision of additional documents and information in the case of restricted and negotiated procedures and competitive dialogue),
- Chapter 11, Article 6 (requirement for registration),
- Chapter 13 (public works concessions),
- Chapter 16 (standstill period, review and damages),
- Chapter 17 (procurement fine), and
- Chapter 18 (supervision), also apply.

The provisions concerning competitive dialogue contained in Chapter 4, Article 1, third paragraph, Articles 4, 6 and 10 to 21, Chapter 8, Article 3, first paragraph, Articles 5 and 10 together with Chapter 11, Articles 3 and 4 also apply.

In the case of public procurement referring to services mentioned in Appendix 3 (B Services), Chapter 6, Articles 1 to 3, 5, 6 and 8 also apply, if the value of the contract is equal to or greater than the applicable threshold contained in Chapter 3.

A contracting authority may publish contract notices in the manner applicable to procurements according to Chapter 7. *Act (2010:571).*

Award procedures

Article 3

A public procurement according to this chapter shall be conducted through a simplified procedure or a selection procedure.

However, a direct award of contract may be used if the value of the contract is equal to or less than 15 per cent of the threshold referred to in Chapter 3, Article 1, first paragraph, item 2 and second paragraph. Furthermore, a direct award of contract may be used to an applicable extent in cases where the preconditions for negotiated procedure without prior publication of a contract notice as referred to in Chapter 4, Articles 5 to 9 are satisfied or if there are exceptional reasons.

Competitive dialogue may be used in accordance with Article 2 if a simplified procedure or a selective procedure does not allow the award of contracts. *Act (2010:571).*

Calculation of the value of contract

Article 3 a

The value of a contract shall be calculated as the total amount to be paid under the contract. A procurement may not be subdivided with the aim of circumventing the provisions of this Act.

When making the calculation, option and renewal clauses shall be taken into account as if they were exercised.

When making the calculation, the contracting authority shall take into account direct awards of contract of the same kind that the authority has made during the financial year. *Act (2010:571).*

Publication of a contract notice

Article 4

In the case of simplified procedures, the contracting authority shall request tenders through a notice in an electronic database, which is generally available, or through another form of notice that facilitates effective competition.

In the case of a selective procedure, the contracting authority shall publish an invitation to apply through a notice in an electronic database that is generally available. In its invitation, the authority may indicate the number of suppliers that it intends to invite. This number shall be determined considering the nature of the object of the procurement and be sufficient to ensure effective competition. *Act (2010:571).*

Content of contract notices, etc.

Article 5

A contract notice under Article 4 shall contain details about the object of the procurement and contact details of the contracting authority.

The following shall also be stated for a simplified procedure:

1. how a tender may be submitted,
2. the deadline for the receipt of the tender, and
3. the date up to and including which the tender is to be binding.

The following details shall be included in the notice with an invitation to apply for a selective procedure:

1. how a request to participate may be submitted, and
2. the deadline for the receipt of the application. *Act (2010:571).*

Publication of a contract notice in the case of voluntarily *ex ante* transparency

Article 5 a

A contracting authority that intends to award a contract through the direct award of a contract under the second paragraph of Article 3 may notify its intention in an electronic database that is generally available (*ex ante* transparency).

The Government will issue regulations regarding the content of a notice concerning *ex ante* transparency. *Act (2010:571).*

Articles 6-7 have ceased through Act (2010:571)

Means of communication in the case of public procurement

Article 8

The provisions of Chapter 9, Articles 1 to 6 and the first paragraph of Article 7 apply to requests to participate and tenders in the case of public procurements as referred to in this chapter.

Time limits for submitting requests to participate and tenders

Article 9

Candidates and tenderers shall be given a reasonable time to submit applications and tenders. However, the period for submitting requests to participate may never be less than ten days from the date on which the invitation to apply was published in accordance with the second paragraph of Article 4. *Act (2010:571).*

Article 10 has ceased through Act (2010:571).

Receipt and opening of tenders

Article 11

Dispatches with tenders shall, as soon as possible after the end of the tender period, be opened at an administrative meeting where at least two persons appointed by the contracting authority shall participate. The tenders shall be entered into a list, which is to be certified by those participating in the administrative meeting. If requested by a tenderer, a person appointed by a chamber of commerce shall also attend. The costs for this shall be paid by the party who made the request.

Tenders shall be opened simultaneously.

Correction of errors, clarification and supplementation

Article 12

A contracting authority may allow a candidate or tenderer to correct a manifest written error or erroneous calculation or some other manifest error in the request to participate or the tender.

The authority may request that an application or a tender is clarified or supplemented, provided this can be done without risk of special treatment or restraining competition.

Verification and exclusion of suppliers

Article 13

A candidate or tenderer shall be excluded from participating in a procurement in accordance with the provisions of Chapter 10, Article 1.

A candidate or tenderer may be excluded from participating in a procurement in accordance with Chapter 10, Articles 2 and 3.

A contracting authority that requests information from the supplier about circumstances referred to in the first and second paragraphs shall state in the contract documents, notice or written communication the manner in which the supplier may submit the information.

Article 13 a

When verifying whether a supplier has fulfilled its obligations relating to social insurance charges or tax in Sweden under Article 2, first paragraph, item 5, the contracting authority shall obtain information about this from the competent authority. *Act (2010:571).*

Restricted checks

Article 13 b

A contracting authority may restrict checks of such documents that involve the suitability of suppliers to the candidates and tenderers referred to in the second and third paragraphs. The supplier shall be afforded reasonable time to submit the documents requested.

In a simplified procedure, information under the first paragraph shall be requested and checked as regards the or those tenderers that the authority intends to invite to negotiate or, if no negotiations take place, the or those tenderers to whom the authority intends to award the contract or framework agreement. This check shall be conducted before the tenderers are invited to negotiate or are notified of the award decision under Article 19 respectively.

In a selective procedure or for competitive dialogue, information according to first paragraph shall be requested and checked as regards the candidates that the authority intends to invite to submit tenders or negotiate respectively. *Act (2010:571).*

Article 14 has ceased through Act (2010:571).

Consideration of requests to participate and tenders

Article 15

A contracting authority shall consider all of the requests to participate and tenders that have been received in good time, unless otherwise prescribed by the Article 13. *Act (2010:571)*.

Access to the capacity of other undertakings

Article 15 a

A supplier may rely on the capacity of another undertaking where appropriate and for a particular contract. The supplier shall prove that the supplier will have at its disposal the resources necessary for the execution of the contract by producing a commitment from the other undertakings or in some other way. *Act (2010:571)*.

Alternative grounds for the award of contracts

Article 16

A contracting authority shall accept either:

1. the tender that is the most economically advantageous for the contracting authority, or
2. the tender that has the lowest price.

The determination of the most economically advantageous tender shall be made in accordance with the second paragraph of Chapter 12, Article 1.

The contracting authority shall either state how the various criteria referred to in the second paragraph of Chapter 12, Article 1 are weighted when determining which tender is the most economically advantageous or state the criteria in descending order of importance. Those weightings can be expressed by providing for a range with an appropriate maximum spread.

The relative weighting of criteria or the descending order of importance shall be specified in the contract notice, in the invitation to apply or in the contract documents.

Abnormally low tenders

Article 17

A contracting authority may reject a tender if it considers that the price is abnormally low. However, the tender may only be rejected after the authority requested in writing a reasoned submission for the low tender and has not received a satisfactory answer. *Act (2010:571).*

Documentation, notification and storage of documents

Article 18

A contracting authority shall note the reasons for its decisions and other information of relevance to the procurement. However, this does not apply in the case of the award of contracts, the value of which is equal to or less than the value indicated in the second paragraph of Article 3. *Act (2010:571).*

Article 19

In the case of simplified procedures and selection procedures, the contracting authority shall notify the candidates and tenderers in writing of the decisions referred to in Chapter 9, Article 9 as soon as possible and provide such information as referred to in Chapter 9, Article 10.

In the case of a direct award of a contract and in the case of the award of contracts referred to in Chapter 1, Article 2, second paragraph, items 3 and 4, the contracting authority shall, when decisions concerning a supplier and tenders are reached, notify the tenderers of the decision as soon as possible.

A tenderer is bound by their tender even if the tenderer has received such notification or such information as referred to in the first paragraph. *Act (2010:571).*

Article 20

When a procurement has been concluded, a contracting authority that is not subject to the Archives Act (1990:782) shall store in a secure way tenders and requests to participate with associated descriptions, models and drawings and also the lists, summaries, records and the like for the tenders.

The documents shall be stored for at least four years from the date when the contract was awarded.

Notice to the Commission regarding the results of procurement of B-Services

Article 21

Where a contract relating to services according to Appendix 3 (B Services) is equal to or greater than the applicable threshold referred to in Chapter 3, the contracting authority shall send notice of this to the European Commission no later than 48 days after the award of the contract.

Act (2010:571).

Exclusions in the case of procurement relating to national security, etc.

Article 22

As regards procurement as referred to in Chapter 1, Article 2, second paragraph, items 3 and 4, the Government may in individual cases decide on:

1. exceptions from the provisions regarding publication of a contract notice in this chapter, and
2. the other exceptions from the provisions contained in this chapter that are necessary considering the interests of defence and security policy.

The Swedish Defence Materiel Administration (FMV) may decide on such exceptions that are referred to in the first paragraph where the procurement:

1. relates to supplements to a procurement where the Government has previously made a decision on exceptions pursuant to the first paragraph,
2. relates to products, services or works within the framework an international agreement concluded by Sweden on international cooperation relating to the supply of products, services or works, or
3. has a value of less than SEK 25 000 000.

The Swedish Armed Forces, the National Defence Radio Establishment (FRA) and the Swedish Security Service (SÄPO) may decide on such exceptions as referred to in the first paragraph if the value of the procurement is less than SEK 5 000 000. *Act (2010:571).*

Design contests

Article 23

The provisions contained in Chapter 14, Article 1, first paragraph, Articles 4 and 6 to 9 also apply to design contests that are under than the threshold referred to in Chapter 14, Article 2, unless the value of the contest is equal to or less than the value indicated in the second paragraph of Article 3.

When organising design contests, Article 3 shall apply. A design contest shall be notified in accordance with Article 4 or 6.

Where a contract shall be awarded to the winner or one of the winners according to the rules of the contest, the winner or winners shall be invited to participate in negotiations. *Act (2010:571).*

Chapter 16 Standstill period, review and damages

Application for a review

Article 1

A supplier who considers that they have suffered or that they may possibly suffer damage may, by an application to a general administrative court, apply for a remedy under Article 5 or 15 (application for a review). *Act (2010:571).*

Competent court

Article 2

An application for a review shall be made to the administrative court in whose judicial district the contracting authority is based.

Leave to appeal is required to make an appeal to the Administrative Court of Appeal. *Act (2010:571).*

Prohibition of appeal

Article 3

A decision to which this Act is applicable may not be appealed against pursuant to Chapter 10 of the Local Government Act (1991:900). *Act (2010:571).*

Interim decisions

Article 4

In cases where a standstill period under Articles 6, 8 or 9 does not apply, the court may decide that the contracting authority may not conclude a contract until otherwise determined. The court may also decide that an agreement may not be performed until otherwise determined.

The court may refrain from making interim decisions in accordance with the first paragraph if the damage or inconvenience that the measure could result in may be assessed as being greater than the damage for the supplier.

Article 9 contains rules on an interim decision in the case of an extended standstill period. *Act (2010:571)*.

Review of a procurement

Article 5

If the contracting authority has breached the fundamental principles of Chapter 1, Article 9 or any other provision of this Act and this has meant that a supplier has suffered or may possibly suffer damage, the court shall decide that the procurement shall be recommenced or that it may only be concluded only after rectification has been made. *Act (2010:571)*.

Standstill period

Article 6

If a contracting authority is liable to send notification of an award decision in accordance with Chapter 9, Article 9, first paragraph or Chapter 15, Article 19 and the notification has been sent by electronic means, the contracting authority may not conclude a contract (standstill period) before 10 days have elapsed from when the notification was sent.

If the notification has been sent to one or more candidates or tenderers in a way other than by electronic means, an agreement may not be concluded before 15 days have elapsed from dispatch.

If a contracting authority stated a standstill period in the notification that is longer than the minimum limit prescribed, an agreement may not be concluded until after the expiry of the period specified. *Act (2010:571)*.

Exclusions from standstill period

Article 7

A standstill period shall not apply

1. when awarding a contract as referred to in Chapter 1, Article 2, second paragraph, item 3 or 4, if an exception has been determined pursuant to Chapter 15, Article 22,
2. when awarding a contract following a procurement without prior publication of a contract notice pursuant to Chapter 4, Articles 5 to 9,
3. when awarding a contract as a result of framework agreement in accordance with Chapter 5, Article 7, or
4. when awarding a direct contract in accordance with first paragraph of Chapter 15, Article 3. *Act (2010:571).*

Standstill period in the case of voluntarily ex ante transparency

Article 8

In the case of ex ante transparency according to Chapter 7, Article 4 or Chapter 15, Article 5 a, the contracting authority may not conclude an agreement before ten days have elapsed from the notice regarding ex ante transparency being published. *Act (2010:571).*

Extended standstill period

Article 9

If an application has been made to review a procurement, a standstill period in accordance with Article 6 or 8 shall continue to apply while an administrative court is processing the matter (extended standstill period).

The court may decide that a standstill period shall not apply.

Act (2010:571).

Ten day time limit

Article 10

When an extended standstill period applies in accordance with Article 9, the contracting authority may not conclude an agreement before ten days have elapsed from when the administrative court ruled on the case.

When an administrative court or an administrative court of appeal has made a decision under Article 4, an agreement may not be concluded before ten days have elapsed from when the court ruled on the case or revoked the decision.

When the Supreme Administrative Court has made a decision under Article 4 and has decided to remit the case back to a lower court, an agreement may not be concluded before ten days have elapsed from the decision to remit the case back.

The court may decide that a ten day time limit shall not apply.
Act (2010:571).

Time limits for applying for a review of a procurement

Article 11

An administrative court must have received an application for the review of a procurement before the expiry of such standstill period as referred to in Article 6 or 8. *Act (2010:571).*

Article 12

An administrative court must have received an application to review a decision to discontinue a procurement before ten days have elapsed from when the contracting authority issued notification of a decision by electronic means and stated the grounds for this decision.

If the notification has been sent to one or more candidates or tenderers in some way other than by electronic means, the administrative court must have received an application for a review before 15 days have elapsed from dispatch. *Act (2010:571).*

When the review of a procurement may no longer take place

Article 13

A review of a procurement may not take place after an agreement has been concluded between the contracting authority and a supplier.
Act (2010:571).

Article 14

If the contracting authority in the course of reviewing a procurement concludes an agreement in contravention of Articles 4, 6, 8, 9 or 10, the court, following a motion by the supplier, shall review the effectiveness of the agreement in accordance with Articles 15 to 17. *Act (2010:571).*

Review of the effectiveness of an agreement

Article 15

The court shall decide that an agreement concluded between a contracting authority and a supplier is ineffective, if the agreement has been concluded:

1. without prior publication of a contract notice in accordance with Chapter 7, Article 1 or 2, Chapter 13, Article 2 or 5, Chapter 14, Article 5 or Chapter 15, Article 4 or 6, or
2. in accordance with the procedure contained in Chapter 5, Article 7 without complying with the conditions stated in that Article or in the framework agreement on which the new tender procedure is based and this has meant that the supplier has suffered or may suffer damage.

An agreement shall also be declared ineffective if it has been concluded in contravention of an interim decision under Article 4, the provisions on standstill periods contained in Articles 6, 8 or 9, the ten day time limit contained in Article 10 or if the agreement has been concluded before an award decision has been notified in accordance with Chapter 9, Article 9, first paragraph or Chapter 15, Article 9. Ineffectiveness in such cases also requires a breach of the fundamental principles contained in Chapter 1, Article 9 or some other provision of this Act and that this has meant that the supplier has suffered or may suffer damage. *Act (2010:571).*

When an agreement may not be declared ineffective

Article 16

If there are overriding reasons relating to the public interest, the court shall decide that the agreement may continue to apply despite the agreement satisfying the preconditions for ineffectiveness according to Article 15. *Act (2010:571).*

Article 17

The provisions on ineffectiveness contained in Article 15 shall not be applied:

1. to agreements concluded by a contracting authority pursuant to a framework contract in accordance with Chapter 5, Article 7, if the contracting authority has issued a notification concerning an award decision in accordance with Chapter 9, Article 9, first paragraph and has also observed a standstill period in accordance with Article 6, or
2. if a contracting authority through ex ante transparency according to Chapter 7, Article 4 or Chapter 15, Article 5 a has notified its intention to procure and has observed the standstill period in the case of ex ante transparency according to Article 8. *Act (2010:571).*

Time limits for applying for review of the effectiveness of an agreement

Article 18

An administrative court must have received an application to review the effectiveness of an agreement, subject to the provisions of the second paragraph, within six months from concluding the agreement.

However, an administrative court must have received the application before 30 days have elapsed from:

1. the European Commission publishing a notice in accordance with Chapter 7, Article 3 or a notification in accordance with Chapter 15, Article 21, or
2. the contracting authority notifying the candidates and tenderers in writing that the agreement has been concluded and issuing a summary of the information referred to in Chapter 9, Article 10. *Act (2010:571).*

Calculation of certain periods

Article 19

When calculating the length of standstill periods and ten day time limits according to Article 10 and the time limits for applying for a review, Section 2 of the Act on the calculation of statutory time limits (1930:173) shall be applied. *Act (2010:571).*

Damages

Article 20

A contracting authority that has not complied with the provisions of this Act shall compensate the damage thereby caused to a supplier.

The right to damages includes compensation for a candidate or tenderer who has participated in a public procurement and who has incurred costs for preparing a tender and otherwise participating in the procurement, provided the infringement of the provisions of this Act has had a detrimental effect on his or her chances of being awarded the contract.

Act (2010:571).

Article 21

A claim for damages shall be instituted at a general court within one year from the date when an agreement was concluded between the contracting authority and a supplier or was declared ineffective in accordance with Article 15 through a ruling that has entered into final legal force. If an action is not brought in time, the right to damages is lost. *Act (2010:571).*

Chapter 17 Procurement fines

General provisions on procurement fines

Article 1

A general administrative court may decide that a contracting authority should pay a special fine (a 'procurement fine') if:

1. the general administrative court has determined by a ruling that has entered into final legal force that an agreement may remain in force, despite having been concluded in contravention of the provisions on standstill periods contained in Chapter 16, Articles 6, 8 or 9,
2. the general administrative court has determined by a ruling that has entered into final legal force that an agreement may remain in force for overriding reasons relating to the public interest in accordance with Chapter 16, Article 16, or
3. the authority has concluded an agreement with a supplier without prior publication of a contract notice in accordance with Chapter 7, Article 1 or 2, Chapter 13, Article 2 or 5, Chapter 14, Article 5 or Chapter 15, Article 4 or 6. *Act (2010:571).*

Article 2

The supervisory authority shall apply to a general administrative court for a contracting authority to pay a procurement fine in those cases referred to in Article 1, items 1 and 2.

The supervisory authority may apply to a general administrative court for a contracting authority to pay a procurement fine in those cases referred to in Article 1, item 3. *Act (2010:571).*

Competent court*Article 3*

An application for a contracting authority to pay a procurement fine shall be made to the administrative court in whose judicial district the contracting authority is based.

Leave to appeal is required to make an appeal to the Administrative Court of Appeal. *Act (2010:571).*

Amount of the fine*Article 4*

A procurement fine shall amount to at least SEK 10 000 and at most SEK 10 000 000. The fine may not exceed ten per cent of the contract value.

The contract value shall be calculated in accordance with Chapter 3, Articles 3 and 4 or Chapter 15, Article 3 a. *Act (2010:571).*

Article 5

When determining the amount of the procurement fine, special consideration shall be taken of the gravity of the breach.

No fine shall be determined in minor cases. The fine may be waived in exceptional circumstances. *Act (2010:571).*

Time limits for applying for the fine*Article 6*

An administrative court must have received an application for a procurement fine in accordance with items 1 or 2 of Article 1 within six months from the time when the ruling on which the application is based has entered into final legal force. *Act (2010:571).*

Article 7

When an application for a procurement fine is based on Article 1, item 3 and one or more suppliers have applied for a review of the validity of the agreement within the time limits referred to in Chapter 16, Article 18, the application may not be made before the limit has expired and all decisions resulting from the review have entered into final legal force. An administrative court must have received an application within six months from the time when all decisions resulting from the review have entered into final legal force.

When no suppliers have applied for a review of the validity of an agreement within the time limits referred to in Chapter 16, Article 18, an administrative court must have received an application within one year from when the agreement was made. *Act (2010:571).*

Payment of the fine, etc.*Article 8*

The proceeds of the procurement fine shall pass to the State.
Act (2010:571).

Article 9

The procurement fine shall be paid to the supervisory authority within 30 days from when the ruling relating to the fine has entered into final legal force or within the longer time referred to in the ruling.

If the fine is not paid within the right period of time, the supervisory authority shall refer the unpaid charge for collection. Provisions on collection are set out in the Act on the Collection of Debts to the State, etc. (1993:891).
Act (2010:571).

Article 10

A procurement fine on which a decision has been made shall lapse if it has not been possible to enforce the ruling relating to the fine within five years from when the ruling entered into final legal force. *Act (2010:571).*

Chapter 18 Supervision

General provisions on supervision

Article 1

The Government will issue regulations regarding the authority that will exercise supervision of public procurement under this Act.

Act (2010:571).

Article 2

When exercising its supervision, such authority may collect all necessary information for its supervisory activities from contracting authorities or such party as may be deemed to be a contracting authority. The information shall in the first instance be collected through written procedure. The information may be collected by visiting the contracting authority if this is more appropriate owing to the scope of the material, urgency or some other circumstance. *Act (2010:571).*

Article 3

A contracting authority and such party as may be deemed to be a contracting authority are liable to provide the information requested by the supervisory authority its supervision. *Act (2010:571).*

Orders

Article 4

If required to enable the supervisory authority to exercise its supervision in accordance with this Act, the authority may order a contracting authority or the party that may be deemed to be a contracting authority to provide information, to produce a document or to hand over a copy of the document.

An appeal may be made to a general administrative court against a decision relating to an order under the first paragraph.

When making an appeal against an order, the supervisory authority shall be the respondent at the general administrative court. *Act (2010:571).*

Competent court

Article 5

An appeal against an order made by a supervisory authority in accordance with Article 4 shall be made at the administrative court in whose judicial district the party, to whom the order is directed, is resident.

Leave to appeal is required to make an appeal to the Administrative Court of Appeal. *Act (2010:571).*

Transitional provisions

2007:1091

1. This Act enters into force on 1 January 2008.
2. The provisions of the Public Procurement Act (1992:1528) shall be applied to procurements that have been commenced prior to the entry into force.

2010:569

This Act enters into force on 15 July 2010 and shall also be applied in cases where an agreement has been concluded prior to entry into force.

2010:570

1. This Act enters into force on 1 January 2013.
2. However, the articles repealed shall still apply in cases where an agreement has been concluded prior to 1 January 2013.

2010:571

1. This Act enters into force on 15 July 2010.
2. Older provisions apply to procurements that have been commenced prior to the entry into force.

Appendix 1-3 is not included

For the Swedish version of Appendix 1-3, see the Swedish version.

Appendix 4

Definitions of certain technical specifications

The following terms are used in the Act with the meaning specified here.

1. a) technical specification: in the case of works contracts, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These characteristics shall include levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling and production processes and methods. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, according to law or other legislation, in relation to the finished works and to the materials or parts which they involve.
- b) technical specification: in the case of supply or service contracts, means a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures.

2. standard: means a technical specification approved by a recognised standardising body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:
 - international standard: a standard adopted by an international standards organisation and made available to the general public.
 - European standard: a standard adopted by a European standards organisation and made available to the general public.
 - national standard: a standard adopted by a national standards organisation and made available to the general public.
3. European technical approval: means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State.
4. common technical specification: means a technical specification laid down in accordance with a procedure recognised by the Member States which has been published in the Official Journal of the European Union.
5. technical reference: any product produced by European standardisation bodies, other than official standards, according to procedures adopted for the development of market needs.



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