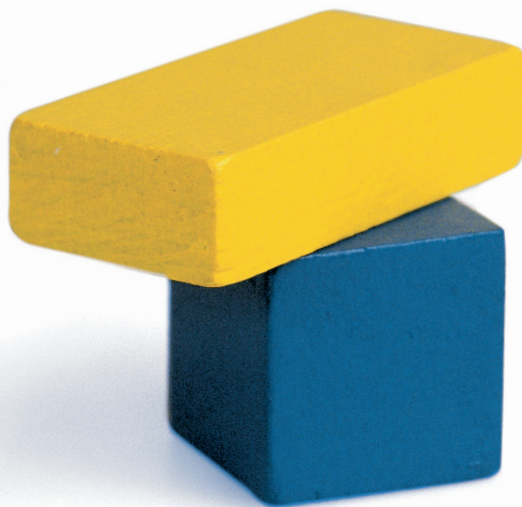


# Swedish Public Procurement Act



# The Public Procurement Act (2016:1145)

(Only the Swedish version is authentic)

## Chapter 1 The contents, scope and definitions of the Act

### The contents of the Act

#### Chapter 1 Section 1

The contents of this Act are divided into the following:

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**The Act has the following appendices:**

**Appendix 1** List of public works contracts

**Appendix 2** List of social and other specific services

**Appendix 3** Definition of certain technical specifications

## Public procurement

### Chapter 1 Section 2

This Act applies to procurements conducted by contracting authorities (public procurement). Procurement covers measures taken in order to procure supplies, services or works through contract award.

The Act also applies when a contracting authority organises a design contest. What is meant by a design contest is stated in Chapter 1 Section 19.

## Other procurement legislation

### Chapter 1 Section 3

Provisions on procurement are also found in the Act on Procurement in the Water, Energy, Transport and Postal Services Sectors (2016:1146), the Act on Procurement of Concessions (2016:1147) and the Defence and Security Procurement Act (2011:1029).

## Thresholds

### Chapter 1 Section 4

If the estimated value of a procurement or design contest exceeds the threshold in accordance with Chapter 5 Section 1 and the procurement or design contest does not pertain to a service of the types stated in Appendix 2, it shall be conducted in accordance with this Act, excepting Chapter 19.

If the estimated value of a procurement or a design contest is under the threshold or the procurement or design contest pertains to a service of the types stated in Appendix 2, it shall be conducted in accordance with Chapter 19.

## Scope in specific situations

### *Procurement of research and development services*

#### Chapter 1 Section 5

This Act applies to procurement of research and development services covered by the CPV codes 73000000-2 through 73120000-9, 73300000-5, 73420000-2 or 73430000-5, if

1. the results fall solely to the contracting authority within its own operations, and
2. the provided service is paid for in full by the contracting authority.

*Contracts that are subsidized to more than half by a contracting authority*

#### Chapter 1 **Section 6**

This Act shall apply to contracts that are procured by a party other than a contracting authority or by a contracting authority on behalf of another party, if

1. more than half of the cost of the contract is covered through direct contributions from a contracting authority,
2. the value of the contract is estimated to be no less than the thresholds given in Chapter 5 Section 2, and
3. the contract pertains to
  - a) public works involving construction of the types stated in Appendix 1,
  - b) public works involving the construction of a hospital, facilities for sports, recreation or leisure, school or university buildings or buildings used for administrative purposes, or
  - c) services that are connected to a public works contract of the type mentioned in a or b.

A contracting authority that makes such contributions shall ensure that the provisions of this Act are applied if the contract is procured by a party other than the authority.

### **Where are definitions and explanations found?**

#### Chapter 1 **Section 7**

This Chapter includes definitions of terms used in this Act. In Appendix 3, some technical specifications are defined.

There are definitions and explanations in other chapters too. The provisions on the meaning of the following concepts, terms and phrases are found in the sections stated below:

**Call for competition in Chapter 10 Section 1**

**Mixed contracts in Chapter 2 Section 1**

**The CPV nomenclature in Chapter 4 Section 19**

**Direct awards in Chapter 19 Section 4**

**Dynamic purchasing system in Chapter 8 Section 1**

**Electronic auction in Chapter 8 Section 15**

**Electronic catalogue in Chapter 8 Section 28**

**Simplified procedure in Chapter 19 Section 5**

**Procedure for establishment of an innovation partnership in Chapter 6 Sections 30–31**

**Negotiated procedure with prior publication in Chapter 6 Sections 4–6**

**Negotiated procedure without prior publication in Chapter 6 Sections 12–19**

**Public contracts between entities within the public sector in Chapter 3**

**Sections 11–16**

**Competitive dialogue in Chapter 6 Sections 20-21**

**Media service providers in Chapter 3 Section 20**

**Labels in Chapter 9 Section 12**

**Restricted procedure in Chapter 6 Section 3**

**Selective procedure in Chapter 19 Section 6**

**Open procedure in Chapter 6 Section 2**

## **Definitions**

### **Chapter 1 Section 8**

*A candidate* means any party that has sought an invitation or been invited to take part in

1. a restricted procedure,
2. a negotiated procedure with prior publication,
3. a negotiated procedure without prior publication,
4. a competitive dialogue,
5. a procedure for establishment of an innovation partnership, or
6. a selective procedure.

### **Chapter 1 Section 9**

*A public works contract* means a contract that

1. entails execution or both design and execution of work related to one of the activities within the meaning of Appendix 1,
2. entails execution or both design and execution of a work, or
3. the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.

### **Chapter 1 Section 10**

*A work* means the outcome of building or civil engineering works taken as a whole, if the result in itself fulfils an economic or technical function.

### **Chapter 1 Section 11**

*A central contracting authority* means a State authority and a contracting authority in the meaning of Annex I to Directive 2014/24/EU.

**Chapter 1 Section 12**

*Directive 2014/24/EU* means Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, in its original wording.

**Chapter 1 Section 13**

*Electronic means*, means electronic equipment for the processing and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

**Chapter 1 Section 14**

*A central purchasing body* means a contracting authority providing continuous centralised purchasing activities in the form of

1. the acquisition of supplies and/or services intended for contracting authorities, or
2. the award of contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities.

**Chapter 1 Section 15**

*A contract* means a contract for pecuniary interest concluded in writing and having as their object the execution of works, the supply of products or the provision of services

1. between one or more contracting authorities and one or more suppliers, and
2. having as its object the supply of products, the provision of services or the execution of works.

**Chapter 1 Section 16**

*A supplier* means a market operator that provides services or products or executes works.

A supplier also means groups of suppliers.

**Chapter 1 Section 17**

*Life cycle* means all stages, including research and development, that a product, service or work passes through, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation.

**Chapter 1 Section 18**

*A body governed by public law* means a legal entity that meets needs in the public interest, if these needs do not have an industrial or commercial character, and

1. are financed, for the most part, by the State, a municipality, a county council or a contracting authority,
2. the operations of which are controlled by the State, a municipality, a county council or a contracting authority, or
3. have a board or similar governing body, more than half of whose members are appointed by the State, a municipality, a county council or a contracting authority.

**Chapter 1 Section 19**

*A design contest* means a contest that is open to all and held by a contracting authority with the aim of acquiring a plan or design selected by a jury.

**Chapter 1 Section 20**

*A framework agreement* means a contract concluded between one or more contracting authorities and one or more suppliers with the aim of establishing the terms of contracts to be awarded during a certain later time period.

**Chapter 1 Section 21**

*A service contract* means a contract having as its object the provision of services other than those referred to in Section 9.

**Chapter 1 Section 22**

*A contracting authority* means a State or municipal authority.

In the application of this Act, the following are equated with authorities:

1. the decision-making assembly in a municipality or county council,
2. a body governed by public law in the meaning of Section 18, and
3. an association formed by
  - a) one or more authorities in the meaning of the first paragraph or assemblies in the meaning of item 1,
  - b) one or more bodies in the meaning of item 2.

**Chapter 1 Section 23**

*A procurement document* means each document used by a contracting authority to describe or determine elements of the procurement.

**Chapter 1 Section 24**

*A supply contract* means a contract having as its object the purchase, lease, rental or hire-purchase of a product. A supply contract may include, as an incidental matter, siting and installation operations.



## Chapter 2 Mixed procurements

### Mixed contracts

#### Chapter 2 Section 1

A mixed contract means

1. a contract that has as its subject several different types of procurement (supplies, services or works) which are all regulated by this Act, or
2. a contract that has as its subject both procurement regulated by this Act and other procurement.

Contracts in the meaning of the first paragraph item 1 are regulated in Section 2. Contracts in the meaning of the first paragraph item 2 are regulated in Sections 3–12.

### Mixed contracts that have as their subject-matter several different types of procurements all regulated by this Act

#### Chapter 2 Section 2

If a mixed contract has as its subject-matter several different types of procurements, all regulated by this Act, the procurement shall be conducted in accordance with the provisions applicable to the type of procurement that characterises the main subject-matter of the contract in question.

In the case of a mixed contract consisting of both supplies and services, the main subject-matter shall be determined based on which of the estimated values of the respective services or supplies is the highest.

In the case of a mixed contract consisting of both services in the meaning of Appendix 2 and other services, the main subject-matter shall be determined based on which of the estimated values of the respective services is highest.

### Mixed contracts regulated both by this Act and by other provisions

*Mixed contracts with elements of procurement in accordance with the Act on Procurement in the Water, Energy, Transport and Postal Services*

#### Chapter 2 Section 3

If a mixed contract has as its subject both procurement regulated by this Act and procurement regulated by the Act on Procurement in the Water, Energy, Transport and Postal Services Sector (2016:1146), Chapter 2 Sections 11–27 in the Act on Procurement in the Water, Energy, Transport and Postal Services Sector determine which provisions shall be applicable for the contract.

### *Separable and not separable mixed contracts*

#### Chapter 2 **Section 4**

A separable mixed contract is a contract with lots that can be objectively distinguished. Such contracts are the subject of Sections 5–11.

A not separable mixed contract is a contract with lots that cannot be objectively distinguished. Such contracts are the subject of Section 12.

### *Award of separable mixed contracts*

#### Chapter 2 **Section 5**

If a separable mixed contract has as its subject both procurement regulated by this Act and procurement not regulated by this Act, the contracting authority may award separate contracts for the different lots. The authority may also award a single contract.

### *Award of a separable mixed contract as separate contracts*

#### Chapter 2 **Section 6**

If the contracting authority awards a separable mixed contract as separate contracts, the provisions relevant for each separate contract shall apply for that contract.

### *Award of a separable mixed contract as a single contract*

#### Chapter 2 **Section 7**

If the contracting authority awards a separable mixed contract as a single contract, this Act shall apply to the contract, unless otherwise stipulated Sections 8–11.

### *Award of a separable mixed contract as a single contract when this includes concessions*

#### Chapter 2 **Section 8**

If the contracting authority awards a separable mixed contract as a single contract and the contract has as its subject both procurement of products, services and works regulated by the Act and procurement regulated by the Act on Procurement of Concessions (2016:1147), the contract shall be awarded in accordance with

1. the provisions on procurements above the thresholds in this Act, if the value of the part of the contract regulated by this Act is estimated to be no less than the threshold that applies according to Chapter 1 Section 4 and Chapter 5 Section 1.

2. the provisions in Chapter 19 of this Act, if the value of the part of the contract regulated by this Act is estimated to be below the threshold that applies according to Chapter 1 Section 4 and Chapter 5 Section 1 and the value of the part pertaining to concessions is estimated to be below the threshold that applies according to the Act on Procurement of Concessions.

*Award of a separable mixed contract as a single contract when this includes defence and security elements*

#### Chapter 2 **Section 9**

If the contracting authority awards a separable mixed contract as a single contract, the contract may be awarded without application of this Act, if the contract is in part subject to Article 346 of the Treaty on the Functioning of the European Union (TFEU). This applies even if the contract also pertains to procurement covered by the Defence and Security Procurement Act (2011:1029).

#### Chapter 2 **Section 10**

If the contracting authority awards a separable mixed contract as a single contract and it, in part, pertains to procurement covered by the Defence and Security Procurement Act (2011:1029), the authority can choose between awarding the contract under the provisions in the Defence and Security Procurement Act or under the provisions in this Act.

The first paragraph does not affect the application of the provisions on thresholds and exclusions in the Defence and Security Procurement Act.

#### Chapter 2 **Section 11**

The provisions in Sections 9 and 10 apply only if the decision to award a single contract is made on objective grounds and not with the aim of avoiding applicability of the provisions on procurements above the thresholds either in this Act or the Defence and Security Procurement Act (2011:1029).

*Award of not separable mixed contracts*

#### Chapter 2 **Section 12**

When not separable mixed contracts are awarded, the provisions applicable to the principal subject-matter of the contract shall apply.

If a contract of this kind is, in part, subject to Article 346 TFEU, the contracting authority may award the contract without application of this Act. If the contract instead pertains in part to procurement regulated in the Defence and Security Procurement Act (2011:1029), the authority may award the contract applying the provisions either of the Defence and Security Procurement Act or of this Act.

## Chapter 3 Exclusions from the scope of the Act

### Procurement in the Utilities Sectors

#### Chapter 3 Section 1

This Act does not apply to a procurement or a design contest that

1. is subject to the Act on Procurement in the Water, Energy, Transport and Postal Services Sectors (2016:1146), or
2. is excluded under Chapter 3 Section 4, 10 or 24 of the Act on Procurement in the Water, Energy, Transport and Postal Services Sectors.

*Certain services closely related to postal services*

#### Chapter 3 Section 2

This Act does not apply to a procurement conducted by a contracting authority that provides postal services subject to Chapter 2 Section 6 of the Act on Procurement in the Water, Energy, Transport and Postal Services Sectors (2016:1146), if the contract pertains to

1. address management services, transmission of registered electronic mail, secure electronic transmission of coded documents or similar services, if the services are related to or performed entirely by using electronic means,
2. services pertaining to postal money orders, giro transfers or financial services encompassed by the CPV codes 66100000-1 through 66720000-3, or by Chapter 3 Section 30 of the Act on Procurement in the Water, Energy, Transport and Postal Services Sectors,
3. philatelic services, or
4. services combining physical delivery and/or warehousing with other non-postal functions (logistics services).

### Procurements pertaining to defence and security

#### Chapter 3 Section 3

This Act does not apply to a procurement or a design contest that

1. is subject to the Defence and Security Procurement Act (2011:1029), or
2. is excluded in accordance with Chapter 1, Article 7, 8, 9 or 10 of the Defence and Security Procurement Act.

#### Chapter 3 Section 4

Even if a procurement or a design contest is not excluded under Section 3, this Act shall not apply to the procurement or design contest, if

1. the protection of the essential security interests of Sweden cannot be guaranteed if the procurement or design contest is conducted in accordance with this Act, or
2. application of this Act would require a contracting authority to provide information the disclosure of which it considers contrary to the essential interests of Sweden's security.

#### Chapter 3 **Section 5**

This Act does not apply when the procurement and performance of the public contract or design contest are declared to be secret or relate to the essential interests of Sweden, if the protection that is needed cannot be guaranteed in a procurement or a design contest subject to this Act.

### **Public communication networks and electronic communication services**

#### Chapter 3 **Section 6**

This Act does not apply for a procurement or a design contest for the principal purpose of permitting the contracting authority to

1. provide or exploit public communications networks, or
2. provide to the public one or more electronic communications services.

Public communication networks and electronic communication services have the same meaning as under the Electronic Communications Act (2003:389).

### **Procurement subject to certain international rules**

#### Chapter 3 **Section 7**

This Act does not apply to a procurement or design contest that relates to defence or security interests and that a contracting authority has to conduct in accordance with other provisions concerning procurement procedures, if these provisions are provided

1. through an international agreement or arrangement between any of the States within the European Economic Area (EEA) and any other State, or a part of such state, for a project that is joint for the parties to the agreement,
2. through an international agreement or arrangement regarding the stationing of military personnel and that concerns commitments of a State, or
3. by an international organisation.

### Chapter 3 **Section 8**

This Act does not apply to a procurement or a design contest that a contracting authority has to carry out in accordance with other provisions on procurement procedures, if these provisions are provided

1. through a legal instrument that entails international legal obligations and has been concluded between any of the States within the European Economic Area (EEA) and any other State, or a part of such State, for a project that is joint for the parties to the agreement, or
2. by an international organisation.

### **Procurements fully or partially financed by an international organisation or an international financing institution**

#### Chapter 3 **Section 9**

This Act does not apply to a procurement or a design contest that a contracting authority conducts in accordance with procurement regulations established by an international organisation or international financing institution when the procurement or design contest is fully financed by that organisation or institution.

If the procurement or design contest is co-financed for the most part by an international organisation or international financing institution, the parties shall agree on applicable procurement procedures.

### **Service contracts awarded on the basis of an exclusive right**

#### Chapter 3 **Section 10**

This Act does not apply to a service contract that a contracting authority awards another contracting authority that, on the basis of law or other legislation, has an exclusive right to perform such service.

### **Public contracts between entities within the public sector**

#### Chapter 3 **Section 11**

This Act does not apply when the counterparty of the contracting authority is a legal person or joint committee in the meaning of the Local Government Act (1991:900), if the procurement is an internal procurement in the meaning of Sections 12–16.

#### Chapter 3 **Section 12**

A procurement shall be seen as an internal procurement, if

1. the contracting authority exercises control over the counterparty similar to what the authority exercises over its own administration,

2. the counterparty conducts more than 80 percent of its activities, in the meaning of Section 16, on behalf of the authority or for other legal persons or bodies in the meaning of Section 11 and which the authority exercises control over, and
3. there is no direct private capital participation in the counterparty.

A contracting authority shall be seen to exercise control in the meaning of the first paragraph item 1 if it has a decisive influence on the counterparty's strategic goals and significant decisions. The control can also be exercised by another legal person or joint committee in the meaning of the Local Government Act (1991:900) that is itself controlled in the same way by the authority.

#### Chapter 3 **Section 13**

A procurement shall be seen as an internal procurement, if

1. the contracting authority together with other contracting authorities exercises control over the counterparty similar to what the authorities exercise over their own departments,
2. the counterparty conducts more than 80 percent of its activities, in the meaning of Section 16, on behalf of the authorities or for other legal persons or bodies in the meaning of Section 11 and which the authorities exercise control over, and
3. there is no direct private capital participation in the counterparty.

Contracting authorities shall be seen to exercise joint control in the meaning of the first paragraph item 1, if

1. the deciding body of the counterparty consists of representatives from all the authorities,
2. the authorities jointly have a decisive influence on the counterparty's strategic goals and significant decisions, and
3. the counterparty does not have any interests that are contrary to the interests of the authorities.

#### Chapter 3 **Section 14**

A procurement shall be seen as an internal procurement, if

1. the contracting authority is subject to control of the counterparty similar to what the counterparty exercises over its own administration,
2. the authority conducts more than 80 percent of its activities, in the meaning of Section 16, on behalf of the controlling counterparty or for other legal persons or bodies in the meaning of Section 11 and which the controlling counterparty exercises control over, and

3. there is no direct private capital participation in the counterparty.

A counterparty shall be seen to exercise control in the meaning of the first paragraph item 1 if it has a decisive influence on the contracting authority's strategic goals and significant decisions. The control can also be exercised by another legal person or joint committee in the meaning of the Local Government Act (1991:900) that in itself is controlled in the same way by the counterparty.

#### Chapter 3 **Section 15**

A procurement shall be seen as an internal procurement, if

1. the contracting authority is subject to control similar to what the controlling person exercises over its own administrations and the controlling person also exercises such control over the counterparty,
2. the authority conducts more than 80 percent of its activities, in the meaning of Section 16, on behalf of the controlling person or for other legal persons or bodies in the meaning of Section 11 and which the controlling person exercises control over, and
3. there is no direct private capital participation in the counterparty.

The controlling person shall be seen to exercise control in the meaning of the first paragraph item 1 if it has a decisive influence on the contracting authority's strategic goals and significant decisions. The control can also be exercised by another legal person or joint committee in the meaning of the Local Government Act (1991:900) that in itself is controlled in the same way by the controlling person.

#### Chapter 3 **Section 16**

The percentage of the activities in the meaning of Section 12 first paragraph item 2, Section 13 first paragraph item 2, Section 14 first paragraph item 2 and Section 15 first paragraph item 2 shall be determined on the basis of the average total sales of supplies, services and works over the three years preceding the award, or on the basis of another suitable activities-based measure using data from the same time period.

If such data are no longer relevant or not available, the percentage of activities may be determined on the basis of some other suitable quantitative or qualitative operational measure.



## Procurements between contracting authorities

### Chapter 3 Section 17

This Act does not apply to procurements concluded between two or more contracting authorities, if

1. the procurement aims to establish or regulate the forms for a collaboration between the authorities to ensure that the public services to be performed by the authorities are provided to achieve the joint goal of the authorities,
2. the collaboration is governed only by considerations relating to the public interest, and
3. the authorities, on the open market, perform less than 20 percent of the activities concerned by the cooperation.

### Chapter 3 Section 18

The percentage of the activities in the meaning of Section 17 item 3 shall be determined on the basis of the average total sales of supplies, services and works over the three years preceding the award, or on the basis of another suitable activities-based measure using data from the same time period.

If such data are no longer relevant or not available, the proportion of operations may be determined on the basis of some other suitable quantitative or qualitative operational measure.

## Specific exclusions in the scope

*Acquisition of property etc.*

### Chapter 3 Section 19

This Act does not apply to contracts pertaining to acquisition of property tenancy rights, rentals, cooperative flats, leaseholder rights, easement rights or any other property rights.

Land unit means what in accordance with the Land Code constitutes or belongs to a land unit. What applies for a land unit also applies for existing buildings that belong to a party other than the land owner, as well as fixtures to the building in the meaning of Chapter 2 Sections 2 and 3 of the Land Code, if they belong to the owner of the building.

### *Radio and TV broadcasts*

#### Chapter 3 **Section 20**

This Act does not apply to procurements

1. that are conducted by a media service provider and pertain to the acquisition, development, production or co-production of programme material intended for audio-visual media services or radio media services, or
2. that pertain to broadcasting time or programmes in the radio or TV field to be provided by a media service provider.

A media service provider has the same meaning as in the Radio and Television Act (2010:696).

### *Arbitration and conciliation assignments*

#### Chapter 3 **Section 21**

This Act does not apply to procurements pertaining to arbitration or conciliation assignments.

### *Certain legal services*

#### Chapter 3 **Section 22**

This Act does not apply to procurements pertaining to legal representation of a client by a lawyer

1. in an arbitration or conciliation procedure,
2. in a judicial proceeding before a Swedish court or at a Swedish authority, or
3. in a national or international judicial proceeding before a court, tribunal or at an authority or an institution.

The exemptions also apply to legal advice given in preparation of any of these proceedings, or where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings.

#### Chapter 3 **Section 23**

This Act does not apply to procurements pertaining to

1. document certification and authentication services which must be provided by a notary,
2. legal services provided by trustees, appointed guardians or custodians,

3. legal services provided by someone who is designated by a court or who, by law, is charged with carrying out specific tasks under the supervision of a court, or
4. legal services which are connected with the exercise of official authority.

#### *Certain financial services*

##### Chapter 3 **Section 24**

This Act does not apply to procurements pertaining to

1. financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments,
2. activities relating to management of public debt or which pertain to services provided by a central bank,
3. operations conducted with the European Financial Stability Facility and the European Stability Mechanism, or
4. loans, including in connection with the issue, sale, purchase or transfer of securities or other financial instruments.

Financial instruments has the same meaning as in the Securities Market Act (2007:528).

#### *Employment contracts*

##### Chapter 3 **Section 25**

This Act does not apply to contracts pertaining to employment.

#### *Certain services in civilian defence, emergency services and harm prevention*

##### Chapter 3 **Section 26**

This Act does not apply to procurement of services relating to civilian defence, emergency services or prevention of danger, if the services

1. are provided by non-profit organisations or associations, and
2. are encompassed by the CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 or 85143000-3, excepting ambulance services for the transport of patients.

#### *Political campaigns*

##### Chapter 3 **Section 27**

This Act does not apply to procurement of services that pertain to political campaigns and are encompassed by the CPV codes 79341400-0, 92111230-3 or 92111240-6, if they are awarded by a political party in connection with an election campaign.

### *Certain public passenger transport services*

#### Chapter 3 **Section 28**

This Act does not apply to contracts pertaining to public passenger transport services by rail or metro or by water. Act (2016:1209).

## **Chapter 4 General provisions**

### **Public procurement principles**

#### Chapter 4 **Section 1**

Contracting authorities shall treat suppliers equally and without discrimination and shall conduct procurements in a transparent manner. Further, procurements shall be conducted in accordance with the principles of mutual recognition and proportionality.

#### Chapter 4 **Section 2**

The design of a procurement shall not be made with the intention of excluding it from the scope of this Act, nor shall it be made with the intention of limiting competition so that certain suppliers are unduly favoured or disadvantaged.

#### Chapter 4 **Section 3**

A contracting authority should take environmental considerations, and social and labour law considerations into account in public procurement, if the nature of the procurement so justifies.

### **The right to participate in a public procurement**

#### Chapter 4 **Section 4**

A supplier that, in accordance with the provisions in the State in which the supplier's operations are established, has the right to supply the service to which the procurement pertains, may not be excluded from participating in a procurement solely because of requirements that the supplier must be a natural or a legal person.

As regards service contracts, public works contracts or supply contracts that also encompass services or siting and installation operations, a legal person may be ordered to give the names of the people who will be performing the services, and their qualifications, in the tender or request to participate.

**Chapter 4 Section 5**

A group of suppliers may participate in a procurement. A contracting authority may not impose conditions that such a group must have a specific legal form in order to be allowed to submit a request to participate or a tender. The contracting authority may, however, require that such a group has a specific legal form when it has been awarded the contract, if this is necessary for the satisfactory contract performance.

The contracting authority may state in the procurement documents how a group of suppliers shall satisfy the requirements on economic and financial standing in the meaning of Chapter 14 Sections 3 and 4, or technical knowledge and professional experience in the meaning of Chapter 14 Section 5, if this is justified for objective reasons.

The authority may establish specific conditions regarding how a group of suppliers shall perform the contract, if this is justified for objective reasons.

*Limiting the number of candidates that may submit tenders***Chapter 4 Section 6**

When a contracting authority uses a restricted procedure, a negotiated procedure with prior publication, a competitive dialogue or a procedure for establishment of an innovation partnership, it may limit the number of candidates that can submit tenders.

The contracting authority shall in the notice or invitation to confirm interest state

1. the criteria and rules it will apply in selecting the candidates that will be allowed to submit tenders, and
2. the lowest number of candidates that will be allowed to submit tenders and, when relevant, the highest number that will be invited.

**Chapter 4 Section 7**

A contracting authority shall invite no less than the number of candidates stated in the notice or invitation to confirm interest. If the number of candidates that satisfies the stated criteria is lower than the stated lowest number, the contracting authority may continue the procedure by inviting the qualified candidates that have asked to participate.

The number invited must always be large enough that effective competition is achieved. In a restricted procedure, the number may not be lower than five. In a negotiated procedure with prior publication, a competitive dialogue or a procedure for establishment of an innovation partnership, the number may not be lower than three.

## **If a candidate or tenderer has participated in the preliminary work**

### **Chapter 4 Section 8**

If a candidate or tenderer has participated in the preparation of a procurement, the other candidates or tenderers shall be informed of which information relevant to the procurement that has been given in that context.

A candidate or tenderer that has participated in the preparation of a procurement may be excluded from the procedure only if there is no other way to ensure that the principle of equal treatment is observed. Before the candidate or tenderer is excluded from the procedure, it should be given the chance to present an investigation showing that its participation in the preparations cannot lead to distortion of competition.

## **Corrections of errors, clarifications and additional information**

### **Chapter 4 Section 9**

A contracting authority may permit or require a supplier to correct an error in writing, a miscalculation or other errors in a document presented by the supplier. The authority may also permit or require a supplier to clarify or supply additional information to such document.

An action in accordance with the first paragraph must be in accordance with the principles of equal treatment and transparency.

## **Choice of tender**

### **Chapter 4 Section 10**

A contracting authority shall award a contract subject to the provisions in Chapter 16.

The authority shall, before it awards a contract, verify

1. if the tender satisfies the requirements, conditions and criteria stated in the procurement documents,
2. if the supplier should be excluded under Chapter 13, and
3. if the supplier satisfies the criteria that the authority has stated it will apply under Section 6 and the requirements the authority has drawn up under Chapter 14 Sections 1–5.

In such examination, the authority shall apply Chapter 15.

**Chapter 4 Section 11**

When a supplier refers to the capacity of another company, in accordance with Chapter 14 Section 6, to satisfy a selection criterion, this company shall be verified in accordance with Section 10 second paragraph items 2 and 3.

**Chapter 4 Section 12**

When the authority uses an open procedure in a procurement, the authority may evaluate the tenders before verifying the supplier in accordance with Section 10 second paragraph items 2 and 3.

**Award of a contract in separate lots****Chapter 4 Section 13**

A contracting authority may decide that a contract is to be awarded in separate lots. The authority may then also determine the sizes and subjects of these lots.

*Obligation to justify that a contract is not awarded in separate lots***Chapter 4 Section 14**

If a contracting authority decides not to award a contract in separate lots, the reasons therefore are to be given. The reasons shall be given in the procurement documents or an individual report in the meaning of Chapter 12 Section 15.

*Tenders for a contract that will be awarded in lots***Chapter 4 Section 15**

A contracting authority that, in accordance with Section 13, decides that a contract will be awarded in lots, shall decide if suppliers may present tenders for one, several or all lots of the contract.

If tenders may be submitted for several or all lots of a contract, in accordance with the first paragraph, the authority may limit the number of contract lots that the authority will award to a single supplier. When the authority decides on such limitation, it shall also determine the rules that shall apply when a single supplier, following application of the award criteria, will be awarded more contract lots than this limitation permits.

### *Award of combined lots of a contract divided into lots*

#### **Chapter 4 Section 16**

A contracting authority that divides a contract into lots, in accordance with Section 13, and decides that tenders may be submitted for several or all lots of the contract, in accordance with Section 15, may decide that several or all lots can be awarded a single supplier, as combined lots.

If the authority has decided that a divided contract can be awarded in combined lots in accordance with the first paragraph, it may award several or all lots of the contract to the supplier whose tender on the whole best satisfies the award criteria. Such award is not encompassed by any limitations in the meaning of Section 15 second paragraph.

When the authority decides that a divided contract can be awarded in combined lots in accordance with the first paragraph, it shall also establish the rules that apply for assessing both which supplier or suppliers are to be awarded the contract, and if the contract is to be awarded in lots or in combined lots.

### *Notices and other publication*

#### **Chapter 4 Section 17**

A contracting authority that awards a contract in lots, in accordance with Section 13, shall in the notice or invitation to confirm interest state that tenders may be presented for one, several or all lots of the contract in the meaning of Section 15 first paragraph.

If the authority intends to limit the number of contract lots that may be awarded a supplier in accordance with Section 15 second paragraph, the authority shall

1. in the notice or invitation state the highest number of contract lots that may be awarded a single supplier, and
2. in the procurement documents state the rules that apply when a single supplier, following application of the award criteria, is to be awarded more contract lots than this limitation permits.

If the authority intends to award combined lots of a contract in the meaning of Section 16, the authority shall in the notice or invitation state

1. that a divided contract may be awarded in combined lots in accordance with Section 16 first paragraph, and
2. the rules that are to apply in accordance with Section 16 third paragraph.



## Reserved procurement

### Chapter 4 Section 18

A contracting authority may in a procurement

1. reserve participation to sheltered workshops or suppliers whose principal aim is the social and professional integration of disabled or disadvantaged persons or persons with difficulties entering the job market, or
2. provide that a contract is to be performed in the context of a programme for sheltered employment.

A condition for a supplier to participate in a procurement in accordance with the first paragraph is that no less than 30% of the employees of the sheltered workshop, supplier or programme for sheltered employment are disabled persons or persons with difficulties entering the job market.

## The CPV nomenclature

### Chapter 4 Section 19

All references to nomenclature in the context of a procurement in accordance with this Act shall be made using the terminology established in the Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV), in the wording of the Commission Regulation (EC) No 213/2008.

The Government shall, in the Swedish Code of Statutes, announce CPV codes for public works contracts in the meaning of Appendix 1.

# Chapter 5 Thresholds

## Applicable thresholds

### Chapter 5 Section 1

The thresholds to be applied under Chapter 1 Section 4 are given in Article 4 in Directive 2014/24/EU or in decisions or notices from the European Commission in accordance with Article 6 in the Directive. What is stated in the Directive regarding central government authorities applies for central contracting authorities.

The Government announces the thresholds in Euro and Swedish kronor in the Swedish Code of Statutes and provides a list of the defence products included in Annex III of Directive 2014/24/EU.

#### Chapter 5 **Section 2**

The thresholds to be applied under Chapter 1 Section 6 are given in Article 13 in Directive 2014/24/EU or in decisions or notices from the European Commission in accordance with Article 6 in the Directive.

The Government announces the thresholds in Euro and Swedish kronor in the Swedish Code of Statutes.

### **The value of a procurement**

#### Chapter 5 **Section 3**

The value of a procurement is the total amount payable, as estimated by the contracting authority, in accordance with the contracts for supplies, services or works that are a part of the procurement. When the value is determined, any clauses on options or renewals set out in the procurement documents shall be included as if they had been applied. Further, any prizes or payments the contracting authority plans to pay to candidates or tenderers are to be included in the value.

The value shall be determined net of VAT.

#### Chapter 5 **Section 4**

Where a contracting authority is comprised of separate operational units, the value of the procurement shall be estimated as the total value for all such units. The value may, however, be estimated separately for a single unit, if it is independently responsible for its procurements or certain categories of procurements.

#### *Value moment*

#### Chapter 5 **Section 5**

The estimation of the value of a procurement shall relate to the value at the moment when the call for competition is made or, if this is not required, at the moment when the contracting authority initiates the procurement procedure.

### **Prohibition on circumvention**

#### Chapter 5 **Section 6**

The method for estimating the value of a procurement may not be chosen with the aim of avoiding applicability of the provisions on procurements exceeding the thresholds.

**Chapter 5 Section 7**

A procurement may be divided so that the provisions on procurements exceeding the thresholds do not apply, only if such division is justified for objective reasons.

**Procurement of separate lots****Chapter 5 Section 8**

If planned works or purchasing of services or purchasing of similar supplies can mean that several contracts are procured in the form of separate lots, the total value of the separate lots are to be taken into account when estimating if the value of the procurement exceeds the threshold under Section 1. If the threshold is exceeded, each separate lot shall be procured in accordance with the provisions on procurements exceeding the threshold. This does not apply for a single lot the value of which is under

1. EUR 80,000 for supplies or services, or
2. EUR 1,000,000 for works.

When there are several separate lots of the type stated in the previous paragraph, each shall be procured in accordance with the provisions on procurements exceeding the threshold, if the total value of these separate lots exceeds 20 percent of the total value of all the separate lots.

For separate lots that are exempted from the provisions on procurements exceeding the threshold, in accordance with this Section, Chapter 19 applies.

**Works****Chapter 5 Section 9**

The value of a procurement of works shall include, aside from the cost of the works, the value of supplies and services that the contracting authority provides to the contractor and which are necessary for the performance of the works.

**Leasing, rental and hire-purchase of products****Chapter 5 Section 10**

The value of a procurement relating to leasing, rental or hire-purchase of supplies for a fixed term of no more than 12 months shall be estimated to the total cost during the term.

If the term is greater than 12 months, the value shall be estimated as the total cost, including the product's residual value.

If the term is not fixed or cannot be defined at the moment of value, the value shall be estimated to the monthly value multiplied by 48.

## Contracts for supplies or services that recur regularly or are intended to be renewed

### Chapter 5 Section 11

The value of a supply or service contract, which regularly recur or which are intended to be renewed within a given period of time, is to be estimated based on

1. the total actual value of the successive contracts of the same type awarded during the preceding 12 months or the preceding financial year, adjusted, where possible, to take into account foreseeable changes in quantity during the course of the 12 months following the original contract, or
2. the total estimated value of successive contracts that will be awarded during the 12 months following the first delivery, or during the financial year where that is longer than 12 months.

## Certain services

### Chapter 5 Section 12

How the value of certain procurements of services are to be estimated is presented in the following list:

<i>When the procurement pertains to</i>	<i>the value shall be estimated to</i>
1. insurance services	the premium payable and other forms of remuneration for the service
2. banking and other financial services	the fees, commissions payable, interest and other forms of remuneration for the service
3. design contracts	fees commissions payable and other forms of remuneration for the design.

### Chapter 5 Section 13

If a service is procured without the total price for the service being indicated, the value of the procurement shall be the total price for the service for the full term of the contract, if this is less than or equal to 48 months.

If the term is greater or not determined, the value shall be estimated to the monthly value multiplied by 48.

## Framework agreements and dynamic purchasing systems

### Chapter 5 Section 14

The value of a framework agreement or a dynamic purchasing system shall be estimated to the maximum total value of all the contracts envisaged for the total term of the framework agreement or dynamic purchasing system.

## Innovation partnerships

### Chapter 5 Section 15

The value of an innovation partnership shall be estimated as the maximum total value of the research and development activities to take place during all stages of the envisaged partnership, as well as of the supplies, services and works to be developed and procured at the end of the partnership.

## Design contests

### Chapter 5 Section 16

The value of a design contest shall be estimated to the sum of such payments and prizes that may be awarded the participants and the calculated value of the service contracts that may be awarded the winner or winners of the contest.

# Chapter 6 Procurement procedures

## The procurement procedures

### Chapter 6 Section 1

In public procurement, the following procurement procedures may be used, under the conditions and in the manner prescribed in this Act:

1. Open procedure,
2. Restricted procedure,
3. Negotiated procedure with prior publication,
4. Negotiated procedure without prior publication,
5. Competitive dialogue, or
6. Procedure for establishment of an innovation partnership.

## Open procedure

### Chapter 6 Section 2

In an open procedure, all suppliers may present tenders following a call for competition in accordance with Chapter 10 Section 1.

## Restricted procedure

### Chapter 6 Section 3

In a restricted procedure, all suppliers may, after a call for competition in accordance with Chapter 10 Section 1, apply to participate by presenting the information required by the contracting authority for the selection. The candidates that the authority invites may submit tenders.

## Negotiated procedure with prior publication

### Chapter 6 Section 4

In a negotiated procedure with prior publication, all suppliers may, after a call for competition in accordance with Chapter 10 Section 1, apply to participate by presenting the information required by the contracting authority for the selection. The candidates that the authority invites may submit tenders. These tenders form the basis for later negotiations.

### *When the procedure may be used*

#### Chapter 6 Section 5

A negotiated procedure with prior publication may be used if:

1. the needs of the contracting authority cannot be met without adaptation of readily available solutions,
2. the procurement includes design or innovative solutions,
3. the contract cannot be awarded without prior negotiations due to specific circumstances related to the nature, the complexity or the legal and financial make-up of what is being procured or because of the risks in conjunction to these circumstances, or
4. the contracting authority cannot with sufficient precision establish the technical specifications with reference to a standard, European Technical Assessment, common technical specification or technical reference.

#### Chapter 6 Section 6

A negotiated procedure with prior publication may also be used if the tenders presented in an open or restricted procedure are irregular or unacceptable.

### *The procurement documents*

#### Chapter 6 Section 7

The contracting authority shall in the procurement documents

1. determine the subject of the procurement by describing the authority's needs and what is required in terms of characteristics of the supplies, services or works to be procured,

2. state what in this description constitutes the minimum requirements that all tenders must satisfy, and
3. state the criteria for contract award.

The information given in the procurement documents should be sufficient for a supplier to assess the nature and extent of the procurement and thus determine if it should apply to participate in the procedure.

### *The negotiations*

#### Chapter 6 **Section 8**

The contracting authority shall negotiate with the tenderers about improvements in their tenders. The negotiations may not relate to the minimum requirements or the award criteria.

The contracting authority may, without prior negotiation, award a contract based on an original tender if it, in the contract notice in accordance with Chapter 10 Section 1 or the invitation to confirm interest in accordance with Chapter 10 Section 8 has announced that it reserves the right to do so.

#### Chapter 6 **Section 9**

If changes are made to the procurement documents during negotiations, the contracting authority shall inform all remaining tenderers about this and give them a reasonable time to change their tenders.

#### Chapter 6 **Section 10**

The negotiations may be divided into successive stages to decrease the number of tenders, if this is stated in any of the procurement documents. The contracting authority may after each stage choose the tenders that the authority wishes to continue negotiations on. The choice shall be made using the award criteria stated in the procurement documents.

The final number of tenders shall be sufficient that effective competition is achieved, given that there is a sufficient number of tenders or suitable candidates.

#### Chapter 6 **Section 11**

When the contracting authority intends to end the negotiations, the authority shall inform the tenderers still participating in the negotiations of this and give a joint time limit for them to present final tenders that may not be subject to negotiation.

## Negotiated procedure without prior publication

### *No suitable requests to participate or tenders*

#### Chapter 6 Section 12

A contracting authority may use a negotiated procedure without prior publication if an open or restricted procedure has not resulted in any suitable requests to participate or tenders and the conditions given in the original procurement documents have not changed significantly. A report on this shall be given to the European Commission if it so requires.

#### Chapter 6 Section 13

A request to participate shall be deemed unsuitable if the supplier in question shall or could be excluded under Chapter 13 or does not satisfy the selection criteria set out by the contracting authority.

A tender shall be deemed unsuitable if it is irrelevant for the contract and therefore obviously cannot, without significant changes, satisfy the requirements of the contracting authority as set out in the procurement documents.

### *Artistic performances, technical reasons or protection of exclusive rights*

#### Chapter 6 Section 14

A contracting authority may use a negotiated procedure without prior publication if the subject-matter of the procurement can be supplied only by a particular supplier because

1. the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,
2. competition is absent for technical reasons, or
3. the subject-matter of procurement is protected by exclusive rights, and therefore can only be supplied by a certain supplier.

A procurement of this type may, in cases encompassed under the first paragraph item 2 or 3, only be used if there is no reasonable alternative and the absence of competition is not the result of an artificial narrowing down of the conditions of the procurement.



*Extreme urgency***Chapter 6 Section 15**

A contracting authority may use a negotiated procedure without prior publication if it, for reasons of extreme urgency brought about by events not attributable to and unforeseeable by the contracting authority, cannot comply with the time limits for the open or restricted procedures or competitive procedures with prior negotiation, and the purchase is absolutely necessary.

*Irregular or unacceptable tenders***Chapter 6 Section 16**

A contracting authority may, in the cases encompassed by Section 6, refrain from publishing a renewed notice of the procurement if it in the procedure only includes the tenderers that

1. are not to be excluded under the provisions in Chapter 13,
2. satisfy the requirements in Chapter 14 and the criteria or rules that the authority has stated that it will apply in the selection of candidates, and
3. have presented tenders that satisfy the formal requirements for the tender procedure in the preceding open or restricted procedure.

*Procurement of supplies in certain cases***Chapter 6 Section 17**

A contracting authority may use a negotiated procedure without prior publication for procurement of supplies, if

1. the contract relates to supplies purely for the purpose of research, experimentation, study or development on condition that
  - a) the awarded contract does not include production in quantities that aim to establish commercial viability or to recover research and development costs, and
  - b) the award of the contract does not affect later competitive procurement intended particularly for such purposes,
2. the contract relates to additional deliveries by the original supplier on condition that
  - a) the delivery is intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, and

- b) a change of supplier would oblige the contracting authority to acquire supplies which would be technically incompatible with those already acquired or would result in disproportionate technical difficulties in operation and maintenance,
- 3. the contract relates to supplies quoted and purchased on a commodity market, or
- 4. it is possible to purchase supplies or services on particularly advantageous terms, in connection with a supplier winding up its business activities having gone through an insolvency procedure, been declared bankrupt, or being the object of a similar procedure.

A contract on additional deliveries in the meaning of the first paragraph item 1 may have a term exceeding three years only if there are particular reasons therefore.

#### *Repetition of services or works*

##### **Chapter 6 Section 18**

A contracting authority may use a negotiated procedure without prior publication for procurement of new services or works which are a repetition of earlier services or works, on condition that

1. the new works or services are part of a project that has formerly been the subject of a procurement procedure,
2. the works or services are awarded to the same supplier,
3. the new services or works are in conformity with the original project,
4. the extent of possible additional services or works and the conditions for award thereof were stated in the procurement documents for the original procurement,
5. the value of the new contract has been included in the estimated value of the original procurement, and
6. it was announced in connection with the original procurement that the procedure in question might be used.

A negotiated procedure without prior publication in the meaning of this section may be used only during the three years following the conclusion of the original contract.

*Procurement of a service following a design contest***Chapter 6 Section 19**

A contracting authority may use a negotiated procedure without prior publication to procure a service following a design contest, if the contract in accordance with the rules of the contest is to be awarded the winner or one of the winners of the contest.

If a contest has been concluded with more than one winner, all winners are to be invited to take part in negotiations.

**Competitive dialogue****Chapter 6 Section 20**

In a competitive dialogue, all suppliers may after a call for competition in the meaning of Chapter 10 Section 1, apply to participate by presenting the information that the contracting authority has requested for the selection. The candidates invited by the authority may participate in the dialogue.

*When the procedure may be used***Chapter 6 Section 21**

A contracting authority may use a competitive dialogue in the cases given in Sections 5 and 6.

The purpose of the dialogue shall be to identify and indicate how the needs of the contracting authority can best be satisfied.

*The procurement documents***Chapter 6 Section 22**

The contracting authority shall, in the procurement documents, state its needs and requirements, indicate the award criteria and explain their meaning, and give a preliminary timetable.

*Conducting the dialogue***Chapter 6 Section 23**

The dialogue may be divided into successive stages to limit the number of solutions, if this is stated in any of the procurement documents. The contracting authority may after each stage choose the solutions that the authority wishes to continue to discuss. The choice shall be made using the award criteria stated in the procurement documents.

The final number of solutions shall be sufficient to achieve effective competition, given that there is a sufficient number of solutions.

#### Chapter 6 **Section 24**

The contracting authority shall continue the dialogue until the authority has found the solution or solutions that satisfy the authority's needs. The dialogue shall thereafter be declared concluded and the participating candidates shall be informed of this in writing as soon as possible.

#### *Invitation to tender*

#### Chapter 6 **Section 25**

When information has been given in accordance with Section 24, the contracting authority shall invite the participating candidates to submit final tenders based on the solution or solutions presented and specified during the dialogue.

#### *Clarification, specification and optimisation of tenders*

#### Chapter 6 **Section 26**

The contracting authority may invite a participating tenderer to clarify, specify and optimise its tender.

Clarifications, specifications, optimisations and additional information may, however, not include changes to essential elements of the tender or procurement, including the need that the authority intends to satisfy through the procurement and the requirements established in the notice, if the changes risk distorting competition or leading to discrimination.

#### *Evaluation of tenders*

#### Chapter 6 **Section 27**

The only ground for evaluation of tenders shall be the best price-quality ratio in accordance with Chapter 16 Section 1 second paragraph item 1.

#### *Negotiations to confirm conditions*

#### Chapter 6 **Section 28**

The contracting authority may negotiate with the tenderer that has submitted the tender with the best price-quality ratio to confirm the financial commitments or other conditions stated in the tender and finalize the contractual terms and conditions. This is on condition that the negotiations

1. do not lead to changes in significant aspects of the tender or the procurement, and
2. do not risk distorting competition or causing discrimination.

*Compensation for participation in the dialogue***Chapter 6 Section 29**

The contracting authority may decide on prizes or other compensation for participation in the dialogue.

**Innovation partnership****Chapter 6 Section 30**

In a procedure for establishment of an innovation partnership, all suppliers may after a call for competition in accordance with Chapter 10 Section 1 apply to participate by submitting the information that the contracting authority has requested for its selection. The candidates that the authority invites may participate in the procedure.

*When the procedure may be used***Chapter 6 Section 31**

A contracting authority may use a procedure for establishment of an innovation partnership to purchase supplies, services or works in order to satisfy a need that the contracting authority assesses cannot be satisfied by solutions available on the market.

The innovation partnership shall aim at development and purchase of the supplies, services or works required by the authority. Such purchase is contingent on the supplies, services or works being equivalent to the performance levels and maximum costs agreed upon by the contracting authority and the participants.

*Requirements on candidates***Chapter 6 Section 32**

In selecting candidates, the contracting authority shall in particular apply requirements relating to the supplier's capacity in the field of research and development and their capacity to develop and realise innovative solutions.

*The procurement documents***Chapter 6 Section 33**

The contracting authority shall in the procurement documents state

1. the need for supplies, services or works that the authority cannot satisfy through solutions available on the market,
2. that parts of the description that are minimum requirements of the type that must be satisfied by all tenders, and

3. what shall apply regarding intellectual property rights.

The information given in the procurement documents shall be sufficient for a supplier to assess the nature and extent of the procurement and thus determine if it should apply to participate in the procedure.

### *Negotiations*

#### **Chapter 6 Section 34**

The contracting authority shall negotiate with tenderers about improvements in their tenders. The negotiations may not relate to minimum requirements or award criteria. The final tenders may not be the subject of negotiation.

#### **Chapter 6 Section 35**

If changes are made to the procurement documents during negotiations, the contracting authority shall inform all the remaining tenderers about this and give them reasonable time to modify their tenders.

#### **Chapter 6 Section 36**

The negotiations may be divided into successive stages to reduce the number of tenders, if this is stated in any of the procurement documents. The contracting authority may after each stage choose the tenders that the authority wishes to continue negotiations on. The choice shall be made using the award criteria stated in the procurement documents.

### *Requirements for establishing an innovation partnership*

#### **Chapter 6 Section 37**

A contracting authority may establish an innovation partnership only with suppliers that conducts separate research and development operations.

### *Evaluation of tenders*

#### **Chapter 6 Section 38**

The only ground for evaluation of tenders shall be the best price-quality ratio in accordance with Chapter 16 Section 1 second paragraph item 1.

### *The conducting of the partnership*

#### **Chapter 6 Section 39**

An innovation partnership shall be divided into phases that follow the stages of the research and innovation process. The phases may also encompass manufacturing of products, provision of services or execution of works.

**Chapter 6 Section 40**

An innovation partnership shall establish sub-goals for the partners to fulfil, and regulate compensation in suitable partial payments.

Based on the sub-goals, the contracting authority may after each phase end the innovation partnership or, if the innovation partnership encompasses several suppliers, decrease the number of suppliers by terminating individual contracts. Such measures require that the authority in the procurement documents has stated that such possibilities exist and the terms on which they can be used.

**Chapter 6 Section 41**

The contracting authority shall ensure that the structure of the innovation partnership, especially as regards its length and the value of its phases, reflects the degree of innovation of the proposed solution and the research and innovation activities required to develop a solution that is not available on the market. The estimated value of the supplies, services and works may not be disproportionate in relation to the investments needed to create them.

## **Chapter 7 Framework agreements, central purchasing bodies and other coordinated procurement**

### **Framework agreements**

#### *Applicable provisions*

**Chapter 7 Section 1**

A contracting authority may enter into a framework agreement if it uses any of the procurement procedures in this Act.

#### *The term of the framework agreement*

**Chapter 7 Section 2**

A framework agreement may have a term exceeding four years only if there are specific reasons therefore.

### *Award of contracts based on a framework agreement*

#### **Chapter 7 Section 3**

Contracts based on a framework agreement may be concluded only between a contracting authority that has been identified for this purpose either in the call for competition regarding the framework agreement or in an invitation to confirm interest and a supplier party to the framework agreement.

The terms of a contract based on a framework agreement may not deviate substantially from the terms in the framework agreement.

### *Award of contracts based on a framework agreement with a single supplier*

#### **Chapter 7 Section 4**

If a framework agreement has been concluded with a single supplier, contracts based on this framework agreement are to be awarded in accordance with the terms in the framework agreement.

Before awarding such contracts, the contracting authority may confer with the supplier in writing and, if necessary, encourage the supplier to supplement its tender.

### *Award of contracts based on a framework agreement with several suppliers*

#### **Chapter 7 Section 5**

When a framework agreement that has been concluded with several suppliers has all terms established for the provision of the supplies, services or works that the framework agreement covers, contracts based on this framework agreement are to be awarded in accordance with Section 6 or 7.

When the framework agreement does not have all terms and conditions established, awards shall be made in accordance with Section 8.

The first and second paragraphs apply also to parts of a framework agreement.

### *Award without reopening competition*

#### **Chapter 7 Section 6**

A contracting authority may award contracts based on a framework agreement in the meaning of Section 5 first paragraph without reopening competition in accordance with the terms in the framework agreement.

The authority shall apply objective conditions to determine which of the suppliers is to be awarded the contract. The objective conditions shall be stated in the procurement documents for the framework agreement.



*Award after partially reopening competition***Chapter 7 Section 7**

A contracting authority may award contracts based on a framework agreement in the meaning of Section 5 first paragraph after partially reopening competition in the manner stated in Section 9, if it has been stated in the procurement documents for the framework agreement that the contracting authority is to have this possibility.

In the procurement documents, the following must in such cases also be stated:

1. the terms for provision of the framework agreement that may be subject to a reopened competition, and
2. the objective conditions that the authority will use when determining if award will be made without or after reopening competition.

*Award after reopening competition***Chapter 7 Section 8**

A contracting authority shall award contracts based on a framework agreement in the meaning of Section 5 second paragraph after reopening competition for the suppliers who are parties to the framework agreement in the manner stated in Section 9.

*The procedure for reopening competition***Chapter 7 Section 9**

In a reopened competition, the suppliers who are parties to the framework agreement are to be invited to submit new tenders in accordance with the terms in the framework agreement. These terms may, if necessary, be specified and supplemented with other terms that have been stated in the procurement documents for the framework agreement.

In applying the first paragraph

1. the contracting authority shall, for each contract awarded, confer in writing with the suppliers that are to perform the contract,
2. the contracting authority shall state a time limit that is sufficient for submitting a tender for each particular contract, given the nature and extent of the procurement,
3. the tenders shall be submitted in writing and the contracting authority may not review the contents of the tenders until the time limit stated has passed, and

4. the contracting authority shall award the contract to the tenderer that has submitted the most economically advantageous tender under the award criteria for the framework agreement.

## Central purchasing bodies

### *Recourse to a central purchasing body*

#### Chapter 7 **Section 10**

A contracting authority may have recourse to a central purchasing body without procuring the service.

If a contracting authority has recourse to a central purchasing body in accordance with the first paragraph, the services provided by the central purchasing body may also include ancillary purchasing activities.

### *Purchasing from a central purchasing body*

#### Chapter 7 **Section 11**

A contracting authority may purchase supplies or services from a central purchasing body.

### *Purchasing through a central purchasing body*

#### Chapter 7 **Section 12**

A contracting authority may purchase supplies, services or works through

1. contracts awarded by a central purchasing body,
2. dynamic purchasing systems operated by a central purchasing body,  
or
3. framework agreements concluded by a central purchasing body.

### *The responsibilities of the contracting authority*

#### Chapter 7 **Section 13**

A contracting authority shall be seen to have fulfilled its obligations under this Act in purchasing supplies, services or works from or through a central purchasing body in accordance with Section 11 or 12.

The contracting authority is, however, responsible to fulfil its obligations under this Act for the parts of a procedure that it conducts itself.

## Joint procurement with an authority from another Member State

### Chapter 7 Section 14

A contracting authority may conduct a procurement jointly with a contracting authority from another Member State using procurement actions under Sections 15–23.

A certain procurement action may not be used with the intention of avoiding applicability of regulations compatible with EU law.

### *Central purchasing bodies in other Member States*

#### Chapter 7 Section 15

A contracting authority may use a central purchasing service offered by a central purchasing body in another Member State within the European Union.

#### Chapter 7 Section 16

In joint procurement in the meaning of Section 15, the provisions in the Member State where the central purchasing body is established are applied.

The provisions applicable under the first paragraph shall also apply if a contracting authority

1. awards a contract in the context of a dynamic purchasing system operated by a central purchasing body under the first paragraph,
2. conducts a reopened competition in accordance with a framework agreement concluded with a central purchasing body under the first paragraph, or
3. determines which supplier that will be awarded a contract, in accordance with Sections 6 and 7, under a framework agreement concluded by a central purchasing body under the first paragraph.

### *Joint procurement actions*

#### Chapter 7 Section 17

A contracting authority may, together with contracting authorities in other Member States in the European Union, take procurement actions by

1. awarding a contract,
2. concluding a framework agreement, or
3. establishing a dynamic purchasing system.

A contracting authority that has concluded a framework agreement under the first paragraph item 2 or established a dynamic purchasing system under the first paragraph item 3 may award contracts in the context of the framework agreement or purchasing system.

#### Chapter 7 **Section 18**

In joint procurement actions in the meaning of Section 17, the parts necessary for the collaboration shall be presented in an agreement.

#### Chapter 7 **Section 19**

If an agreement in the meaning of Section 18 has been concluded between the participating authorities, the authorities shall in the agreement establish

1. the responsibilities of the authorities and which relevant national provisions shall apply, and
2. how the procurement procedure shall be organised, including management, division of supplies, services or works to be procured and conclusion of contracts.

When the authorities determine responsibilities and relevant national provisions that are to apply under the first paragraph item 1,

1. responsibilities may be allocated to one or more of them, or
2. the provisions of the Member State where at least one of the authorities is established may be determined as applicable.

#### Chapter 7 **Section 20**

The allocation of responsibilities between the contracting authorities and the applicable national provisions under Sections 18 and 19 are to be stated in the procurement documents.

#### Chapter 7 **Section 21**

An authority that participates in a procurement under Section 17 and purchases supplies, services or works from another participating authority shall be seen to have satisfied its obligations under this Act, if another participating authority satisfies the obligations under this Act which are to apply for an agreement in the meaning of Sections 18 and 19.

#### *Procurement with a joint entity*

#### Chapter 7 **Section 22**

A joint entity that has been instated by contracting authorities from different Member States may conduct procurements.

A European grouping of territorial cooperation under Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC), in the wording of Regulation (EU) No 1302/2013 of the European Parliament and of the Council, or another entity formed under EU law shall be seen as a joint entity.

**Chapter 7 Section 23**

In a joint procurement under Section 22, the competent bodies of the joint entity shall decide on applicable national provisions.

Applicable national provisions are the national provisions of the Member State where the joint entity has its registered office or is carrying out its operations.

Such decision may either apply for an undetermined period, if made in the constitutive act of the joint entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

## Chapter 8 Electronic methods of procurement

### Dynamic purchasing systems

#### *Scope*

**Chapter 8 Section 1**

A contracting authority may use a dynamic purchasing system for recurrent purchase of supplies, services or works that are generally available on the market and have the characteristics that satisfy the needs of the contracting authority.

A dynamic purchasing system shall be operated as an entirely electronic procedure. It should have a set period of validity and during this term be open to any supplier that satisfies the qualification criteria under Chapter 14 Sections 1–5.

**Chapter 8 Section 2**

A dynamic purchasing system may be divided into the categories of supplies, services or works. The categories are to be determined objectively, taking into account the nature of the procurement that is conducted for the category in question.

#### *Establishment of a dynamic purchasing system*

**Chapter 8 Section 3**

In procurements using a dynamic purchasing system, the contracting authority shall apply the provisions on restricted procedures. However, the number of candidates that may participate in the system may not be limited.

If the authority has divided the system into categories of supplies, services or works, the selection criteria shall be specified for each category.

#### Chapter 8 **Section 4**

A contracting authority that establishes a dynamic purchasing system shall provide information on this through a call for competition, stating that it intends to use such system. The call for competition shall include information on the period of validity of the system.

If a dynamic purchasing system is divided into categories of supplies, services or works, these categories and what characterizes each category shall be stated in the procurement notice or the invitation to confirm interest.

If the dynamic purchasing system is operated by a central purchasing body and may be used by other contracting authorities, this shall be stated in the call for competition.

#### *The procurement documents*

#### Chapter 8 **Section 5**

The procurement documents shall make clear

1. the purchases and quantities for which the system will be used, and
2. necessary information about the purchasing system, the electronic equipment used and technical arrangements and specifications for connection.

The contracting authority shall provide access to the procurement documents under Chapter 10 Section 7 first paragraph throughout the period of validity of the system.

#### *Changes to the period of validity*

#### Chapter 8 **Section 6**

The contracting authority shall report changes to the period of validity of the dynamic purchasing system to the European Commission.

#### *Application to participate in a dynamic purchasing system*

#### Chapter 8 **Section 7**

A contracting authority shall, throughout the period of validity of the dynamic purchasing system, give suppliers the opportunity to apply to participate in the system on the terms given in Section 3.

The authority shall evaluate a request to participate using the selection criteria in accordance with Chapter 14 Sections 1–5 within 10 working days from receipt. When it is justified, the time limit may be extended to 15 working days.

The authority may extend the evaluation period if no invitation to tender has yet been issued in the dynamic purchasing system. No invitation may be issued during the extended evaluation period. The authority shall in the procurement documents indicate the extended period it intends to apply.

#### *Time limits for requests to participate*

##### **Chapter 8 Section 8**

The time limit for presenting a request to participate shall be no less than 30 days from the day when the procurement notice was sent for publication or from the day when the invitation to confirm interest was sent to the candidates.

No further time limits shall apply to requests to participate once the invitation to tender for the first procurement in the dynamic purchasing system has been issued.

#### *Information on decisions on participation in a dynamic purchasing system*

##### **Chapter 8 Section 9**

A contracting authority shall, as soon as possible, inform a supplier about the decision made on the supplier's participation in the dynamic purchasing system. A decision not to approve a supplier as participant must be justified.

#### *Invitation to tender*

##### **Chapter 8 Section 10**

The contracting authority shall, for each contract to be awarded, issue an invitation to tender to all suppliers approved as participants in the dynamic purchasing system.

If the dynamic purchasing system has been divided into categories of supplies, services or works, the authority shall issue an invitation to tender to all suppliers approved as participants in the category corresponding to the procurement in question.

### *Time limits for tenders*

#### **Chapter 8 Section 11**

The time limit for submitting a tender shall be no less than 10 days from the day the invitation to tender under Section 10 was sent to concerned suppliers.

A contracting authority that is not a central contracting authority may apply the provisions in Chapter 11 Section 7 on time limits to submit a tender based on an agreement.

The provisions on shortened time limits under Chapter 11 Sections 5 and 6 may not be applied.

### *Contract award*

#### **Chapter 8 Section 12**

The contracting authority shall award the contract to the supplier the tender of which is the most economically advantageous on the basis of the award criteria given in the procurement notice or the invitation to confirm interest.

The award criteria may, if necessary, be specified in the invitation to tender.

### *Self-declaration of suppliers*

#### **Chapter 8 Section 13**

A contracting authority may, at any time during the period of validity of the dynamic purchasing system, request that suppliers approved as participants in the system, within five working days from the day the request was issued, submit a new and updated self-declaration as provided for in Chapter 15 Sections 1–2.

The provisions in Chapter 15 Sections 3–5 apply throughout the entire period of validity of the dynamic purchasing system.

### *Administrative fee*

#### **Chapter 8 Section 14**

The contracting authority may not charge any administrative fees of a supplier who participates or wants to participate in the system.



## Electronic auctions

### *Scope*

#### Chapter 8 Section 15

A contracting authority may use an electronic auction to present new lower prices or new values for certain parts of the tenders.

The authority shall design the electronic auction as a repetitive electronic process.

#### Chapter 8 Section 16

A contracting authority may conduct an electronic auction as a final step, if the contents of the procurement documents can be determined with a sufficient degree of precision. This applies for

1. open procedures,
2. restricted procedures,
3. negotiated procedures with prior publication,
4. reopened competition within a framework agreement in accordance with Chapter 7 Sections 7 and 8, and
5. invitations to tender in the context of a dynamic purchasing system.

### *The conducting of an electronic auction*

#### Chapter 8 Section 17

An electronic auction shall allow for ranking using automatic evaluation methods and shall be based on

1. prices or new values for the parts of the tenders stated in the procurement documents, when the tenders are evaluated on the basis of the best price-quality ratio or cost, or
2. prices, when the tenders are to be evaluated solely on the basis of price.

The tenders shall be ranked using a mathematical formula. When the tenders are ranked based on the best price-quality ratio, the mathematical formula shall take into account the weighting of the criteria established to determine which tender is the most economically advantageous. If the weighting of the criteria has been given in intervals, these shall be fixed to a certain value. If alternative tenders are permitted, separate formulae shall be used for each tender.

An electronic auction may be conducted in consecutive stages.

### *The procurement documents*

#### **Chapter 8 Section 18**

If an electronic auction is to be used, the contracting authority shall state this in the procurement notice or the invitation to confirm interest.

#### **Chapter 8 Section 19**

The procurement documents shall include the following information on the electronic auction:

1. the parts of the tenders that will be the object of the electronic auction,
2. any limits to the values that can be presented, based on an assessment of the specifications for what is being purchased,
3. the information that will be made available to tenderers during the electronic auction and when this will occur,
4. information necessary for conducting the electronic auction,
5. the terms under which the tenderers can submit tenders, including the minimum differences between tenders that may have been determined,
6. necessary information on the electronic equipment used and on the connection to this equipment, and
7. the specified date and time at which the electronic auction will be closed.

### *First evaluation of tenders*

#### **Chapter 8 Section 20**

Before a contracting authority initiates an electronic auction, the authority shall evaluate the tenders in accordance with the award criteria and their weighting.

### *Invitation to submit new prices or values*

#### **Chapter 8 Section 21**

A tenderer that has submitted an acceptable tender shall be invited to participate in the electronic auction from a specified date and time, using the connections methods stated in the invitation.

A tender is admissible if it meets the technical specifications and is not irregular, unacceptable or unsuitable and has been submitted by a tenderer that satisfies the selection criteria and has not been excluded from the tender procedure.

What is meant by an unsuitable tender is stated in Chapter 6 Section 13.

**Chapter 8 Section 22**

In the invitation, the contracting authority shall provide information on evaluation of the tenderer's tenders, in accordance with Section 20.

**Chapter 8 Section 23**

The invitation shall include information on the mathematical formula as provided for in Section 17 second paragraph and which will be used to determine the ranking of the tenders, taking into account the new prices or values presented during the auction.

**Chapter 8 Section 24**

The electronic auction may not be initiated earlier than two working days after the invitation has been issued.

*Information to tenderers***Chapter 8 Section 25**

During an electronic auction, the contracting authority shall provide all tenderers with sufficient information to enable them to ascertain their relative rankings at any moment.

The authority may also provide other information on prices and values, given that this has been stated in the procurement documents.

The authority may provide information on the number of participants in the electronic auction.

*Closing an electronic auction***Chapter 8 Section 26**

An electronic auction shall be closed by the contracting authority

1. at the time indicated in the procurement documents,
2. when it receives no more new prices or new values which meet the requirements concerning minimum differences, or
3. when the number of auction phases indicated in the procurement documents has been completed.

In the case provided for in the first paragraph item 2, the authority shall in the procurement documents have indicated how soon after having received the final price or value it will close the auction.

In the case provided for in the first paragraph item 3, the timetable for each auction phase shall be indicated in the invitation to participate in the auction.

#### Chapter 8 **Section 27**

When the electronic auction has been closed, the contracting authority shall award the contract based on the results of the auction.

### **Electronic catalogues**

#### *Scope*

#### Chapter 8 **Section 28**

A contracting authority may request that tenders submitted through electronic means are made in a format for presenting and structuring information that is common for all participating tenderers and lends itself to electronic treatment (electronic catalogue).

Tenders submitted in the form of an electronic catalogue may be supplemented by other documents.

#### *The procurement documents*

#### Chapter 8 **Section 29**

The procurement notice or invitation to confirm interest shall indicate if tenders shall or may

1. be submitted in the form of an electronic catalogue, or
2. contain an electronic catalogue.

Any one of the procurement documents shall also include necessary information on

1. the electronic equipment used and connection to this equipment, and
2. the format and specifications of the electronic catalogue.

#### *Creation of an electronic catalogue*

#### Chapter 8 **Section 30**

An electronic catalogue shall be created by a candidate or tenderer in accordance with the specifications and formats determined by the contracting authority. If a catalogue is to be updated as provided for in Section 31 or 34 second paragraph, its format must permit such updating.

### *Updates to an electronic catalogue*

#### **Chapter 8 Section 31**

If a framework agreement has been concluded following the submission of tenders in the form of an electronic catalogue or has contained such catalogue, the contracting authority may decide that a reopened competition in accordance with Chapter 7 Sections 7 and 8 shall be conducted using an electronic catalogue that is updated in accordance with Section 32.

#### **Chapter 8 Section 32**

In updating an electronic catalogue, the contracting authority shall either

1. request each tenderer to submit an updated catalogue that has been adapted to the requirements in the contract in question, or
2. inform each tenderer that the authority intends to gather information from the already submitted catalogue to adapt it to the requirements in the contract in question.

A catalogue may be updated under the first paragraph item 2 if this has been indicated in the procurement documents for the framework agreement.

#### **Chapter 8 Section 33**

In a notice in accordance with Section 32 first paragraph item 2, the contracting authority shall inform each tenderer as to when it intends to gather information for an updated electronic catalogue and give the tenderer the chance to refuse such information gathering. The notice shall be sent far enough in advance of the intended information gathering that the tenderer is given reasonable time to make a decision on it.

Before the authority awards a contract on the basis of information in an electronic catalogue updated by the authority, it shall give each tenderer the possibility to ensure that the tender created in this manner does not contain any errors.

### *Electronic catalogues in dynamic purchasing systems*

#### **Chapter 8 Section 34**

In a procurement using a dynamic purchasing system, a supplier shall, when requested by the contracting authority, submit a tender in the form of an electronic catalogue or containing such a catalogue.

The authority may, if it has requested suppliers to append an electronic catalogue to their request to participate in the dynamic purchasing system, decide that the procurement shall be conducted using electronic catalogues updated under the provisions in Section 32 first paragraph item 2 and second paragraph, and Section 33.

## Chapter 9 Technical requirements

### Technical specifications

*What is stated in the technical specifications?*

#### Chapter 9 Section 1

The technical characteristics of the supplies, services or works are to be stated as technical specifications. The specifications shall be included in the procurement documents. They shall be formulated in one of the manners pursuant to Sections 3–5, given that this is not contrary to mandatory technical rules.

The characteristics specified may also relate to

1. the process or method for producing or providing the supplies, services or works, or
2. a process that covers another phase in the life cycle of the supplies, services or works.

The second paragraph also applies when the characteristics in question are not characteristics of the supplies, services or works in question. The characteristics must, however, be connected to the subject-matter of the purchase.

The technical specifications may also indicate if transfer of intellectual property rights will be required.

*When the subject-matter of purchase is to be used by natural persons*

#### Chapter 9 Section 2

When the subject-matter of purchase is to be used by natural persons, the technical specifications shall be determined given the needs of all users, including accessibility for persons with disabilities.

Exceptions are permitted only for specific reasons.

If the European Union in a legislative act has adopted mandatory requirements on accessibility, the technical specifications under the first paragraph shall be determined with reference to said legislative act.

*Technical specifications in the form of performance or functional requirements*

**Chapter 9 Section 3**

A contracting authority may indicate technical specifications in the form of performance or functional requirements. The performance or functional requirements may include environmental characteristics. The requirements are to be designed so it is apparent what is being purchased.

A contracting authority may allow a supplier to refer to such standards and assessments as provided for in Section 4, to show that the requirements in the first paragraph are satisfied.

*Technical specifications in the form of references to standards and assessments*

**Chapter 9 Section 4**

If the technical specifications are not in the form of performance or functional requirements, they shall refer to standards and assessments and, in descending order of priority, to

1. Swedish standards that correspond to European standards,
2. European technical assessments,
3. common technical specifications,
4. international standards,
5. another technical reference system drawn up by a European standardisation organisation, or
6. another Swedish standard, Swedish technical approval or, in the case of works or usage of a product, a Swedish technical specification for design, calculation and execution.

Each reference in the first paragraph shall be followed by the words "or equivalent."

*Technical specifications combining performance and functional requirements with standards and assessments*

**Chapter 9 Section 5**

A contracting authority may indicate the technical specifications as performance or functional requirements pursuant to Section 3 in regards to certain characteristics and with reference to the standards or assessments under Section 4 in regard to other characteristics.

### *Data and references that may not be included in technical specifications*

#### **Chapter 9 Section 6**

If it results in certain suppliers being favoured or disadvantaged, the technical specifications may not contain reference to

1. a make, origin or process that characterises supplies or services provided by a certain supplier,
2. a brand, patent or type,
3. an origin, or
4. a manufacturing process.

Such reference may, however, be made if this is justified by what is being purchased or if it is otherwise not possible to describe the subject-matter of purchase with sufficient clarity. Any such reference shall be followed by the words "or equivalent."

### *Equivalent solutions*

#### **Chapter 9 Section 7**

A contracting authority that, in accordance with Section 3, indicates the technical specifications as performance or functional requirements may not reject a tender pertaining to supplies, services or works that corresponds to the standards or assessments given in Section 4 first paragraph items 1–5 or equivalent standards or assessments.

The first paragraph applies only if

1. the cited standard or assessment refers to the performance or functional requirements given by the authority, and
2. the tenderer shows that the supplies, services or works satisfies the given requirements.

#### **Chapter 9 Section 8**

If a contracting authority makes requirements by referring to a standard or assessment as provided for in Section 4, it may not reject a tender simply because the supplies, services or works do not correspond to this standard or assessment, if it in the tender is shown that the proposed solutions satisfy the requirements in an equivalent manner.



### *Investigation of conformity*

#### Chapter 9 Section 9

A contracting authority may, as proof of conformity with the requirements in the technical specifications, the award criteria under Chapter 16 or the contract performance conditions under Chapter 17, require that the supplier produces a test report or a certificate from a conformity assessment body. This body must be accredited for this task in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, in its original wording.

#### Chapter 9 Section 10

If a contracting authority requires that a test report or certificate is drawn up by a certain conformity assessment body, it shall also accept a test report or certificate from an equivalent body.

#### Chapter 9 Section 11

When a supplier cannot, within the time limit given, get access to a test report or certificate in the meaning of Section 9 or 10 and this is not caused by the supplier or a circumstance attributable to the supplier, the contracting authority shall accept another similar investigation. This investigation shall indicate that the supplies, services or works satisfy the requirements in the technical specifications, the award criteria or the contract performance conditions.

### **Labelling**

#### Chapter 9 Section 12

*Labelling* means any document, certificate or attestation confirming that the supplies, services, works or processes or procedures in question meet certain requirements.

#### Chapter 9 Section 13

A contracting authority may in the technical specification, the award criteria or the contract performance conditions require a certain label as proof that the supplies, services or works correspond to the required characteristics, if

1. the label requirements only concern criteria which are linked to the subject-matter of the contract,
2. the label requirements are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract,
3. the label requirements are based on objectively verifiable and non-discriminatory criteria,

4. the label is established in an open and transparent procedure in which all parties may participate,
5. the labels are available to all interested parties, and
6. the label requirements are set by a body over which the party applying for the label cannot exercise a decisive influence.

If a contracting authority does not require the subject-matter of procurement to meet all of the label requirements, it shall indicate which label requirements should be met.

Where a label fulfils the conditions given in the first paragraph items 3–6, but the label requirements also sets out requirements not linked to the subject-matter of the purchase, the contracting authority shall not require the label as such for the supplies, services or works. It may, however, define the technical specification by reference to those of the detailed specifications of that label that are linked to the subject-matter of the purchase.

#### **Chapter 9 Section 14**

A contracting authority requiring a specific label in accordance with Section 13 shall accept another label if the requirements for that label are equivalent with the requirements of the required label.

#### **Chapter 9 Section 15**

When a supplier cannot obtain the specific label required by the contracting authority or an equivalent label within the relevant time limits for reasons that are not attributable to the supplier, the contracting authority shall accept other appropriate investigation. This investigation shall show that the supplies, services or works satisfy the requirements of the indicated label or, in the cases indicated in Section 13 second paragraph, the specific requirements for the label.

## **Tenders with variant performance**

#### **Chapter 9 Section 16**

A contracting authority may permit or require tenderers to submit tenders with performances that vary from those stated by the authority. A tender with a variant performance may be taken into account only if the authority in the notice has stated that it permits or requires variants.

#### **Chapter 9 Section 17**

A contracting authority that permits or requires variants pursuant to Section 16 shall, in the procurement documents, indicate

1. the minimum requirements applicable for such variants,
2. the specific requirements for presentation of tenders, and

3. if a tender with a variant performance may be submitted only together with a tender based on the performance as stated by the authority.

Tenders with variant performance may be taken into account only if they satisfy the minimum requirements.

#### Chapter 9 Section 18

In the award of supply or service contracts, a contracting authority that has permitted or required variants may not reject a variant solely because it, if it is approved, would be a service contract instead of a supply contract or a supply contract instead of a service contract.

## Chapter 10 Contract notices and invitations to candidates

### Publication

#### *Call for competition*

##### Chapter 10 Section 1

A contracting authority shall, through a call for competition, announce its intention to award a contract or conclude a framework agreement.

A call for competition shall be made through a contract notice or, in the cases provided for in Section 2, a prior information notice.

Special rules on procurement without prior information notice are given in Chapter 6 Sections 12–19.

#### *Prior information notice as call for competition*

##### Chapter 10 Section 2

A contracting authority that is not a central contracting authority may use a prior information notice as a call for competition when procurement is conducted through a restricted procedure or a negotiated procedure with prior publication.

An authority that is procuring services of the types given in Appendix 2 may also use a prior information notice as a call for competition.

### *Prior information notice to inform about planned procurements*

#### Chapter 10 **Section 3**

A contracting authority may in a prior information notice provide information on planned procurements.

Provisions on shortened time limits after such prior information notice are given in Chapter 11 Section 5.

### *Contract award notice*

#### Chapter 10 **Section 4**

A contracting authority that has awarded a contract or concluded a framework agreement shall, not later than 30 days after the contract or framework agreement was concluded, issue a contract award notice. An authority that has awarded a contract using a dynamic purchasing system shall issue a contract award notice not later than 30 days after the award of each contract.

Notwithstanding the first paragraph, the authority may in awarding a contract using a dynamic purchasing system or a contract relating to services of the types stated in Appendix 2 gather contract award notices quarterly. In that case, the gathered notices shall be issued within 30 days of the end of each quarter.

The first paragraph does not apply to contract awards made on the basis of a framework agreement concluded in accordance with this Act.

### *Notice on award of contract without prior publication*

#### Chapter 10 **Section 5**

A contracting authority that intends to award a contract through a negotiated procedure without prior publication in accordance with Chapter 6 Sections 12–19 may provide information of its intention through a notice.

### *Authorization*

Chapter 10 Section 6 The Government may issue regulations on the contents and publication of notices in the meaning of this Chapter.

## Electronic availability of procurement documents

### Chapter 10 Section 7

The contracting authority shall, in a contract notice, prior information notice and notice of design contest with electronic means, offer unrestricted, direct and full access free of charge to procurement documents from the date the notice was published. The internet address where the documents are made available shall be given in the notice.

If the authority cannot give access to certain procurement documents in accordance with the first paragraph, it shall indicate how the suppliers can get access to such documents by other means.

## Invitation to candidates

### *Written invitation to confirm interest after prior information notice*

### Chapter 10 Section 8

If a prior information notice has been used as a call for competition, the contracting authority shall send a written invitation simultaneously to all candidates to confirm their interest. Only when the authority has learned which candidates are still interested may it indicate which suppliers are allowed to submit tenders or participate in negotiations.

The contracting authority shall with electronic means offer candidates unrestricted, direct and full access free of charge to the procurement documents. The internet address where documents are available shall be given in the invitation to confirm interest. If the authority cannot give access to a procurement document with electronic means and it has not been made available by other means, it shall be appended the invitation.

An invitation shall also contain

1. information on the nature and amount of the subject-matter of the procurement, options for additional contracts and, if possible, the estimated time limit for the options, as well as, in the case of contracts that may be renewed, the nature, amount and, if possible, estimated date and time for future notices of procurement of supplies, services or works,
2. information on if a restricted procedure or a negotiated procedure with prior publication will be used,
3. information on the day of supply delivery or for commencement or cessation of the services or works,
4. information on the address to the contracting authority,

5. information on economic or technical requirements, economic guarantees and information required of the suppliers,
6. information on whether a contract for supplies relates to purchase, leasing, rental, hire-purchase or a combination thereof,
7. information on award criteria and the weighting or priority order of the criteria, unless this is indicated in another procurement document, and
8. other information relevant to the procurement.

*Written invitation to tender or participate in a dialogue*

**Chapter 10 Section 9**

In a restricted procedure, a negotiated procedure with prior publication, a competitive dialogue and a procedure for establishment of an innovation partnership, the contracting authority shall simultaneously to all the selected candidates, send a written invitation to tender, or, in the case of a competitive dialogue, an invitation to participate in the dialogue.

The contracting authority shall, with electronic means, offer the selected candidates unrestricted, direct and full access free of charge to procurement documents. The internet address where the documents are made available shall be indicated in the invitation to tender or participate in a dialogue. If the authority cannot give access to a procurement document with electronic means and it has not been made available by other means, it shall be appended the invitation.

An invitation shall also contain

1. information on the time limit to require supplementary information under Chapter 12 Section 11,
2. information on the time limit for receipt of tenders and the address to which the tender shall be sent and the language or languages in which it should be written, or, in the case of a competitive dialogue, information on the date and place for commencement of the dialogue and on which language or languages will be used,
3. a reference to the contract notice or the prior information notice, if such notice has been used as a call for competition,
4. information on the documents to be appended,
5. information on award criteria and the weighting or priority order of the criteria, unless this is indicated in another procurement document, and
6. other information relevant to the procurement.

## The period of validity of the tender

### Chapter 10 Section 10

A contracting authority shall, in an open procedure, in the contract notice state the period during which the tenderer shall be bound by its tender. In a restricted procedure, a negotiated procedure with prior publication, a competitive dialogue and a procedure for establishment of an innovation partnership, the authority shall give this information in a contract notice, a prior information notice used as a call for competition, an invitation to confirm interest or an invitation to tender or to participate in a dialogue.

Information in the meaning of Chapter 12 Section 12 first paragraph or Chapter 12 Section 13 will not mean that a tender becomes invalid.

## Chapter 11 Time limits for requests to participate and tenders

### Circumstances to be taken into account in determining time limits

#### Chapter 11 Section 1

When time limits for submitting a request to participate or tender are determined by the contracting authority, special consideration shall be paid to the complexity of the procurement and how long time the suppliers can be assumed to require to draw up the request to participate or tender. If tenders cannot be submitted other than through a visit to the site, the time should be sufficient that all suppliers may be aware of all the information needed to draw up tenders.

However, in determining time limits in accordance with the first paragraph, the provisions in this Chapter shall be observed.

### Time limits in open procedures

#### Chapter 11 Section 2

In an open procedure, the time limit for submitting a tender shall be no less than 35 days from the day when the contract notice was sent.

The first paragraph does not apply if anything else follows from Sections 5–10.

## **Time limits in restricted procedures, negotiated procedures with prior publication, competitive dialogues and procedures for establishment of an innovation partnership**

### **Chapter 11 Section 3**

In restricted procedures, negotiated procedures with prior publication, competitive dialogues and procedures for establishment of an innovation partnership, the time limit for submitting a request to participate shall be no less than 30 days from the day when the contract notice was sent for publication or, when an information notice has been used as a call for tender, the day when the invitation to confirm interest was sent to the candidates. This applies if nothing else follows from Section 10.

In restricted procedures and negotiated procedures with prior publication, the time limit for submitting a tender shall be no less than 30 days from the day when the invitation to tender was sent to the selected candidates. This applies if nothing else follows from Sections 5–10.

## **Time limits in procurements using a dynamic purchasing system**

### **Chapter 11 Section 4**

Chapter 8 Sections 8 and 11 contain provisions on the time limits for requests to participate and tenders in procurements using a dynamic purchasing system.

## **Shortened time limits after prior information notice**

### **Chapter 11 Section 5**

If the contracting authority has posted a prior information notice but not used it as a call for competition, the time limit for submitting tenders may,

1. in an open procedure, be set to no less than 15 days from the day when the contract notice was sent for publication, and
2. in a restricted procedure or a negotiated procedure with prior publication, be set to no less than 10 days from the day when the invitation to tender was sent to selected candidates.

A time limit may be shortened in accordance with the first paragraph only if the prior information notice

1. contained the information given in Annex V Part B Section I of Directive 2014/24/EU, to the extent this information was available at the time the prior information notice was published, and
2. was sent for publication no less than 35 days, but no more than 12 months before the day when the contract notice was sent for publication.



## Shortened time limits for electronic tenders

### Chapter 11 Section 6

If the contracting authority permits electronic submission of tenders, the time limit

1. in an open procedure in accordance with Section 2, can be set to no less than 30 days, and
2. in a restricted procedure or a negotiated procedure with prior publication in accordance with Section 3 second paragraph, can be set to no less than 25 days.

## Time limits for tenders following an agreement

### Chapter 11 Section 7

In a restricted procedure or a negotiated procedure with prior publication a contracting authority that is not a central contracting authority may set the time limit for submitting tenders to a common time agreed upon by the selected candidates.

If no such agreement can be reached, the time limit shall be no less than 10 days from the day when the invitation to tender was sent to the candidates.

## Extended time limits for tenders

### Chapter 11 Section 8

The time limit for submitting a tender shall be extended so that all suppliers may be aware of all the information needed to create a tender, if

1. supplementary information is not given within the time limits given in Chapter 12 Section 11, or
2. significant changes are made to the procurement documents.

### Chapter 11 Section 9

The time limit for submitting a tender shall be extended by five days, if the contracting authority does not offer unrestricted, direct and full access free of charge to procurement documents using electronic means

1. from the day when a contract notice or prior information notice was published, or
2. from the day when an invitation to confirm interest was sent to the candidates.

The first paragraph does not apply if the time limit is given following an agreement as provided for in Section 7 first paragraph or is shortened in an accelerated procedure as provided for in Section 10.

## Accelerated procedures

### Chapter 11 Section 10

If it because of time constraints is not possible to apply the time limits indicated in this Chapter,

1. in a restricted procedure or a negotiated procedure with prior publication, the time limit for submitting a request to participate may be set to no less than 15 days after the day when the contract notice was sent for publication,
2. in an open procedure, the time limit for submitting a tender may be set to no less than 15 days from the day when the contract notice was sent for publication, and
3. in a restricted procedure or a negotiated procedure with prior publication, the time limit for submitting a tender be set to no less than 10 days from the day when the invitation to tender was sent to the selected candidates.

## Chapter 12 Communication, information to suppliers and documentation

### Communication

#### *Communication with generally available electronic means*

##### Chapter 12 Section 1

A contracting authority and a supplier shall use electronic means in communicating with one another during a procurement. The authority shall indicate the electronic means to be used.

Electronic means in the meaning of the first paragraph shall be non-discriminatory and generally available. The means shall be possible to use together with such hard- and software and other such equipment as is generally used.

Sections 2–5 contain provisions on exceptions from the obligation to communicate with generally available electronic means.

#### *Communication with other means*

##### Chapter 12 Section 2

A contracting authority may, if necessary, request that suppliers use a suitable electronic means of communication despite the means not satisfying the requirements in Section 1 second paragraph. The authority shall, in such cases, offer access to the electronic means free of charge.

**Chapter 12 Section 3**

If it due to the nature of the procurement is not possible to use any electronic means that satisfy the requirements in Section 1 second paragraph, a contracting authority may use or request other means of communication.

If the circumstances under the first paragraph apply to part of the procurement, the authority may use or request other means of communication only for that part.

**Chapter 12 Section 4**

A contracting authority may use or request other means of communication than such electronic means mentioned in Section 1 to the extent this is necessary due to

1. security flaws in generally available services for electronic communication,
2. flaws in information security within the authority, or
3. the particularly sensitive nature of the information to be presented.

The possibility of using other means of communication than electronic ones applies only if sufficient protection for information cannot be achieved through the use of electronic means pursuant to Section 2.

**Chapter 12 Section 5**

Oral communication may be used in a procurement, if the communication does not pertain to the significant parts of the procurement and the contracting authority documents such information within the communication that is relevant for the procurement. Oral communication may, however, not be used in procurements using a dynamic purchasing system.

*Information on use of electronic means*

Chapter 12 Section 6 A contracting authority shall ensure that information about the specifications required for electronic submission of requests to participate and tenders, including encryption and timestamps, are available to all parties involved.

*Advanced electronic signature***Chapter 12 Section 7**

A contracting authority may require that electronic requests to participate and tenders are provided with an advanced electronic signature in the meaning of Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, in its original wording.

### *Security in electronic communication*

#### Chapter 12 **Section 8**

A contracting authority shall ensure that communication with electronic means during a procurement occurs in a secure way, given the risks associated with the various stages of the procurement.

The authority shall have such equipment that it can, in a secure way, electronically receive and determine the exact receipt time of requests to participate and tenders, as well as plans and projects in design contests. The equipment shall be equipped with such security devices that it can be ensured, within reasonable limits, that

1. no one has access to the information transferred electronically before the time limits laid down,
2. only authorized persons can thereafter access the information, and
3. it is possible to trace if an unauthorised person or entity has accessed the information.

The Government may, under Chapter 8 Section 7 of the Form of Government, issue other regulations regarding security devices.

### *Handling information in a procurement matter*

#### Chapter 12 **Section 9**

Communication and storage of data in a procurement matter shall be conducted in such a way that the data is not distorted.

### *Opening requests to participate and tenders*

#### Chapter 12 **Section 10**

A contracting authority may not examine the content of requests to participate and tenders until after the time limit set for submitting them has passed.

Tenders shall be opened at the same time and as soon as possible after the end of the tender period at a function where no less than two persons appointed by the contracting authority shall participate. The tenders are to be entered on a list to be authenticated by those participating at the function. At the request of a tenderer, a person appointed by a chamber of commerce shall also be present. The costs for this shall be paid by the one that presented the request.

## Information to suppliers

### *Supplementary information*

#### Chapter 12 **Section 11**

A contracting authority shall, at the request of a supplier, present supplementary information on the procurement documents not later than six days before the stated last day for tenders, given that the information was requested in good time. The information shall be presented in writing to all suppliers that participate in the procurement procedure.

In an accelerated procedure under Chapter 11 Section 10, supplementary information should be given no later than four days before the stated last day for tenders.

### *Information on decisions*

#### Chapter 12 **Section 12**

A contracting authority shall, as soon as possible, inform the candidates and tenderers in writing about the decisions that have been made on contract award or conclusion of a framework agreement. The information should include the reasons for the decision and the period during which the contract cannot be concluded under Chapter 20 Section 1 (standstill period).

Written information shall, as soon as possible, be presented to candidates and tenderers also when the authority decides to cancel a procurement after a call for competition, and when a decision is made to recommence a procurement. The information shall include the reasons for the decision.

### *Information on demand of a supplier*

#### Chapter 12 **Section 13**

A contracting authority shall, to the candidate or tenderer that so requests, provide information on the reasons that the supplier's application or tender has been rejected.

A contracting authority shall, on demand from a tenderer that has presented an admissible tender, give information about

1. the design and relative advantages of the tender selected and the name of the tenderer awarded the contract or the parties in the framework agreement, and
2. how negotiations or dialogues with the tenderers have proceeded, where relevant.

Information in accordance with the first and second paragraphs is to be given as soon as possible and not later than within 15 days from the receipt of a written request.

## **Documentation**

### *Documentation duty*

#### **Chapter 12 Section 14**

A contracting authority shall document the conducting of a procurement. The documentation shall be sufficient to justify the authority's decisions during all stages of the procurement.

### *Individual reports*

#### **Chapter 12 Section 15**

A contract authority shall draw up an individual report for each awarded contract, concluded framework agreement and dynamic purchasing system created.

This does not apply to contracts awarded on the basis of a framework agreement in the meaning of Chapter 7 Section 4 or 6.

#### **Chapter 12 Section 16**

The following should be apparent from an individual report:

1. the reasons that a rejected tender was considered abnormally low,
2. the reasons that a contract or framework agreement was not awarded to a supplier,
3. the reasons that a supplier was not approved as a participant in a dynamic purchasing system,
4. the reasons that a negotiated procedure with prior publication, a negotiated procedure without prior publication or a competitive dialogue has been used,
5. the reason that submissions of tenders using other than electronic means have been approved, and
6. conflicts of interests and measures taken as a result thereof.

The individual report or its principal elements shall, on request, be sent to the European Commission or the supervisory authority indicated in Chapter 22 Section 1.

The Government may, under Chapter 8 Section 7 of the Instrument of Government, issue other regulations regarding what an individual report shall contain.

*Storage of documents***Chapter 12 Section 17**

The Archives Act (1990:782) contains provisions on the archives of authorities and certain other bodies. For a contracting authority not subject to the Archives Act, the second and third paragraphs apply.

When a procurement has been concluded, a contracting authority shall, in an adequate way, store requests to participate and tenders with associated descriptions, models and plans, as well as tender lists, compilations, documents referred to in Section 14, the individual report in accordance with Section 15 and similar documents. The documents are to be stored no less than four years from the day the contract was awarded.

A contracting authority shall also store the contract or framework agreement that has been concluded following a procurement subject to this Act. The contract or framework agreement shall be stored at least during its period of validity.

*Access to contracts***Chapter 12 Section 18**

In Chapter 2 of the Freedom of the Press Act there are provisions on the public nature of official documents. For a contracting authority that is not to apply those provisions, Sections 19–24 apply.

**Chapter 12 Section 19**

A contracting authority shall, at the request of a supplier affected, present a copy or printout of a contract stored in accordance with Section 17 third paragraph, which has been concluded with a value of at least

1. EUR 1,000,000 for supply and services contracts, and
2. EUR 10,000,000 for works contracts.

**Chapter 12 Section 20**

Information in a contract relating to the business or operational conditions of the supplier or contracting authority that is kept secret and disclosure of which would entail competitive damage for either of them, is not to be made public.

Information in a contract that reveals or can contribute to revealing information on a security or surveillance measure on the part of the contracting authority may not be made public, if this can be assumed to mean that the purpose of said measure is defeated.

#### Chapter 12 **Section 21**

A request to be given access to a contract shall be handled promptly.

When a contracting authority handles a matter regarding distribution of a contract, it shall apply the provisions on justification of a decision and information regarding a decision in Sections 20 and 21 of the Administrative Procedure Act (1986:223).

#### Chapter 12 **Section 22**

A contracting authority may not charge a fee for distributing a copy or a printout of a contract, if the copy or printout is less than 10 pages. For a copy or printout that is 10 pages, the authority may charge no more than SEK 50. For each additional page, the authority may charge no more than SEK 2.

If the authority may charge for a copy or printout under the first paragraph, the authority may also charge a fee for

1. postage costs, if the item of mail weighs more than 50 grams, and
2. cash-on-delivery fees or other costs for the conveyance of the copy or printout to the recipient using postal services, messenger services or similar.

#### Chapter 12 **Section 23**

A decision not to distribute a contract or information from a contract may be appealed to the Administrative Court of the court district in which the contracting authority is established.

A review permit is required when appealing to the Administrative Court of Appeal.

#### Chapter 12 **Section 24**

If a decision not to distribute a contract or information in a contract is appealed, the contracting authority shall be the opponent of the individual once the documents pertaining to the matter have been handed over to the court.



## Chapter 13 Exclusion of suppliers

### Criminal offences

#### Chapter 13 Section 1

A contracting authority shall exclude a supplier from participation in a procurement if the authority through a check in the meaning of Chapter 15 or in some other manner learns that the supplier through a judgment that has entered into legal force has been found guilty of one of the following crimes:

1. criminal activity in the meaning of Article 2 in the Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime,
2. corruption as defined in Article 3 in 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, corruption in accordance with Article 2.1 in the Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, or corruption in accordance with national provisions,
3. fraud within the meaning of Article 1 of the Convention drawn up on the basis of Article K.3 in the Treaty on European Union, on the protection of the European Communities' financial interests,
4. money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, in the wording of the Directive 2010/78/EU of the European Parliament and of the Council,
5. terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3, respectively, of the Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism, or inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision, or
6. trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, in its original wording.

If the supplier is a legal entity, the supplier shall be excluded if a person included in the administrative, management or supervisory body of that supplier has been found guilty of such crime. The same applies if the person found guilty of such crime has powers of representation, decision or control therein.

## **Unpaid taxes and social security contributions**

### **Chapter 13 Section 2**

A contracting authority shall exclude a supplier from participation in a procurement if the authority through a review in the meaning of Chapter 15 or in some other manner learns that the suppliers in breach of its obligations relating to the payment of taxes or social security contributions in the country in which it is established or the country where the procurement occurs and this has been determined by a judicial or administrative decision that has entered into legal force.

A contracting authority may exclude a supplier from participation in a procurement if the authority can demonstrate by any appropriate means that the obligations referred to in the first paragraph have not been observed.

## **Other misconduct in regard to a supplier's operations**

### **Chapter 13 Section 3**

A contracting authority may exclude a supplier from participation in procurement, if

1. the authority can show that the supplier is in breach of applicable environmental, social or labour law obligations,
2. the supplier
  - a) is bankrupt or is the subject of insolvency or liquidation proceedings,
  - b) has its assets being administered by a liquidator or by the court,
  - c) is in an arrangement with creditors, or
  - d) has suspended its business activities or is in any analogous situation arising from a similar procedure under national laws and regulations corresponding to those in items a–c,
3. the authority can show that the supplier is guilty of grave professional misconduct which renders its integrity questionable,
4. the authority has sufficiently plausible indications to conclude that the supplier has entered into agreements with other economic operators aimed at distorting competition,

5. the supplier has shown significant or persistent deficiencies in the performance of a substantive requirement within a prior contract under this Act, Act on Procurement in the Water, Energy, Transport and Postal Services (2016:1146), the Act on Procurement of Concessions (2016:1147) and the Defence and Security Procurement Act (2011:1029), which led to early termination of that prior contract, damages or other comparable sanctions,
6. the authority cannot avoid distortion of competition or cannot guarantee equal treatment of the suppliers for reasons of disqualification and this cannot be remedied by other, less intrusive measures than exclusion of the supplier,
7. the authority cannot by other, less intrusive measures than exclusion of the supplier remedy a distortion of competition from the prior involvement of the supplier in the preparation of the procurement procedure, as referred to in Chapter 4 Section 8,
8. the supplier to a significant extent
  - a) has been guilty of misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion from the procurement under this Chapter or of the fulfilment of the selection criteria under Chapter 14 Sections 1–5,
  - b) has withheld such information, or
  - c) has not submitted the supporting documents required by the authority pursuant to Chapter 15 Sections 3–5, or
9. the supplier has undertaken to unduly influence the decision-making process of the contracting authority, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion of suppliers, selection of suppliers that may be awarded the contract or contract award.

## Investigation

### Chapter 13 Section 4

A contracting authority shall, before it decides to exclude a supplier, give the supplier an opportunity to, within a certain time, make a statement on the circumstances which, according to the authority, are grounds for exclusion.

## Exceptions from exclusion in certain cases

### Chapter 13 Section 5

A supplier encompassed by any of the grounds for exclusion under Section 1 or 3 shall not be excluded if the supplier can demonstrate its reliability by showing that it has

1. paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct,
2. clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities, and
3. taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the suppliers shall be evaluated taking into account the gravity and circumstances of the criminal offence or misconduct.

A supplier that has fulfilled its obligations regarding payment of taxes and social security contributions, including any interest accrued and fines, or has entered into a binding agreement on payment or similar, shall not be excluded under Section 2.

### Chapter 13 Section 6

A contracting authority may refrain from observing an obligation to exclude a supplier, if this is motivated by overriding reasons relating to the public interest.

## Decisions on exclusion

### Chapter 13 Section 7

A contracting authority may at any point during a procurement exclude a supplier from participating in the procurement, if there are grounds for exclusion.

A contracting authority shall promptly and in writing inform the supplier of this decision and the reasons therefore.

## Chapter 14 Qualification

### Selection criteria

#### Chapter 14 Section 1

A contracting authority may in a procurement include criteria on the qualifications of suppliers in certain aspects. The criteria may only pertain to

1. suitability to pursue professional activity in accordance with Section 2,
2. economic and financial standing in accordance with Sections 3 and 4,  
or
3. technical and professional capacity in accordance with Section 5.

The criteria given by the authority should be suited for ensuring that the supplier has the legal and financial ability and the technical and professional capacity needed to perform the contract awarded. All criteria should be related to the subject-matter that is to be procured and be proportional thereto. The criteria may be given as minimum capacity criteria.

The authority shall in the notice or an invitation to confirm interest indicate which selection criteria shall apply in the procurement and what investigation the suppliers should present.

#### *Suitability to pursue professional activity*

#### Chapter 14 Section 2

A requirement under Section 1 first paragraph may entail that the supplier

1. is registered in a register of limited companies, partnerships, associations or similar in the State where the supplier conducts its operations,  
or
2. has a permit or is a member of such organisation that is required, when the procurement pertains to a service, in order for the supplier to be permitted to provide the service in the State where the supplier conducts its operations.

#### *Economic and financial standing*

#### Chapter 14 Section 3

A requirement under Section 1 first paragraph item 2 may entail that the supplier shall have

1. a certain minimum yearly turnover or a certain minimum turnover in the area covered by the contract,
2. a certain ratio between assets and liabilities, or
3. a suitable professional risk indemnity insurance.

#### Chapter 14 **Section 4**

A requirement on a certain minimum turnover under Section 3 second paragraph item 1 may not be set to a total that is more than twice as high as the estimated value of the procurement. If there are specific reasons given the nature of the works, services or supplies, the turnover requirement may be set higher. The contracting authority shall in the procurement documents or an individual report under Chapter 12 Sections 15 and 16 state what the circumstances are or have been that give rise to such specific reasons.

A requirement under Section 3 second paragraph item 2 on a certain ratio between assets and liabilities may be required only if the methods and criteria for calculating the ratio are given in the procurement documents.

When a contract is awarded in lots, the first paragraph applies to each lot. If the authority may award a single supplier multiple lots in a divided contract, and these are to be performed simultaneously, the requirement under the first paragraph on a minimum turnover may be set to a total corresponding to the total amount for the lots that may be included.

If a contract based on a framework agreement is to be awarded after re-opened competition, the estimated value under the first paragraph is to be calculated based on the expected largest size of the contracts to be performed simultaneously, or, if this is unknown, on the basis of the estimated value of the framework agreement.

If a contract is to be awarded using a dynamic purchasing system, the estimated value under the first paragraph is to be calculated based on the expected largest size of the contracts that will be awarded within the context of that system.

#### *Technical and professional capacity*

#### Chapter 14 **Section 5**

A criterion under Section 1 first paragraph item 3 may entail that the supplier shall have at its disposal the necessary staff and technical resources, and have the experience needed for contract performance in accordance with a suitable quality standard.

## **A supplier's reliance on the capacity of other companies**

### **Chapter 14 Section 6**

A supplier may for a certain contract rely on the capacity of other companies to satisfy requirements relating to economic and financial standing or technical and professional capacity under Section 1 first paragraph items 2 and 3. When the capacity relates to academic or professional qualifications in the meaning of Chapter 15 Section 11 item 7, the supplier may only rely on the capacity of another company if that company will also perform the services or works for which this capacity is needed.

The first paragraph applies irrespective of the type of legal connection between the supplier and the companies. It is the supplier that must show that it will dispose of the resources necessary when the contract is to be performed.

### **Chapter 14 Section 7**

A contracting authority that, through a verification under Chapter 4 Section 11, finds that a company relied upon by a supplier does not meet the criteria for which the company is relied upon or if the company's circumstances are grounds for exclusion under Chapter 13 Section 1 or 2 first paragraph, shall request that the supplier replaces this company with another.

The authority may require a replacement if there are grounds for exclusion under Chapter 13 Section 2 second paragraph or Section 3.

### **Chapter 14 Section 8**

The contracting authority may request that the company the capacity of which is relied upon by the supplier takes on joint liability for the supplier's contract performance, if the capacity referred to pertains to economic or financial standing in the meaning of Section 1 first paragraph item 2.

The authority may request that certain tasks crucial to the purchase are performed by the supplier itself, if the contract relates to services, works or siting or installation works within the context of a procurement of supplies.

## Chapter 15 Self-declaration and investigation of suppliers

### Self-declaration

#### Chapter 15 Section 1

A supplier that submits a tender or a request to participate may also submit a self-declaration that

1. there are no grounds under Chapter 13 Sections 1–3 for exclusion of the supplier from participating in the procurement,
2. the supplier meets the requirements made by the contracting authority in accordance with Chapter 14 Sections 1–5, and
3. where relevant, the supplier meets the criteria the authority has set in accordance with Chapter 4 Section 6.

If the supplier relies on the capacity of other companies in accordance with Chapter 14 Section 6, the supplier's declaration shall be accompanied by a specific declaration from each of the companies the capacity of which is relied upon.

A declaration in accordance with the first or second paragraph shall be submitted using the standard form that the European Commission has determined under Article 59.2 in Directive 2014/24/EU.

#### Chapter 15 Section 2

The contracting authority shall accept a declaration in accordance with Section 1 as preliminary evidence that the supplier shall not be excluded and satisfies the requirements and criteria indicated by the authority.

A declaration that has been submitted for a prior procurement shall be accepted if the supplier confirms that it is still correct.

### Supplementary documents

#### Chapter 15 Section 3

A supplier that has submitted a declaration in the meaning of Section 1 shall, on request from a contracting authority, supplement its declaration with one or more of the certificates encompassed therein. Such request can be made at any time during a procurement procedure if the authority finds its necessary in order for the procurement to be conducted correctly.



**Chapter 15 Section 4**

On request from the contracting authority, the supplier that the authority intends to award the contract shall submit supplementary documents in the meaning of Sections 6–13, and where relevant in the meaning of Sections 14 and 15, showing current conditions. Such request shall be made before the authority decides to award a contract.

This does not apply to contracts based on framework agreements concluded under Chapter 7 Sections 4 and 6.

The supplier shall, on request from the authority, supplement or clarify the documents that the authority has requested.

**Chapter 15 Section 5**

A supplier is not obliged to submit supplementary documents or other written evidence if the contracting authority

1. already has access to the materials, or
2. can itself get access to certificates or relevant information free of cost and directly using electronic means.

**Investigations that can be requested of a supplier****Chapter 15 Section 6**

The investigation that a contracting authority may require supplier to submit to the authority is detailed in Sections 7–15 and serves to show

1. that there are no grounds under Chapter 13 Sections 1–3 for exclusion of the supplier from participating in the procurement,
2. that the supplier meets the selection criteria applicable in accordance with Chapter 14 Sections 1–5, and
3. that companies the capacity of which the supplier relies on in accordance with Chapter 14 Section 6 are not encompassed by any grounds for exclusion and meet applicable selection criteria.

*Investigations into reasons for exclusion of a supplier from participation in a procurement*

**Chapter 15 Section 7**

A contracting authority may request judicial records or similar documents drawn up by a competent authority in the country of origin or the country where the supplier is established showing that there are no circumstances that, in accordance with Chapter 13 Section 1, constitute grounds for excluding the supplier from participating in the procurement.

If the requested investigation does not show that the supplier has, in a judgment that has entered into legal force, been found guilty of any criminal activity in the meaning of Chapter 13 Section 1, the supplier shall not on the basis of said provision be excluded from participating in the procurement, unless the investigation shows otherwise.

#### Chapter 15 **Section 8**

A contracting authority may request a certificate drawn up by a competent authority in the country in question, showing that there are no circumstances that, in accordance with Chapter 13 Section 2 or Section 3 item 2 are grounds for excluding the supplier from participating in the procurement.

If the requested investigation does not show that the supplier has been in breach of its obligations regarding payment of taxes or social security contributions, as provided for in Chapter 13 Section 2, or is in any of the situations given in Chapter 13 Section 3 item 2, the supplier shall not on the basis of said provisions be excluded from participating in the procurement, unless the investigation shows otherwise

#### Chapter 15 **Section 9**

If documents in the meaning of Section 7 or 8 cannot be drawn up in the country in question, or if they do not cover all the situations in Chapter 13 Sections 1, 2 and 3 item 2, the documents may be replaced by a solemn declaration given by the supplier before a competent body, or a similar statement.

### *Investigations into the economic and financial standing of a supplier*

#### Chapter 15 **Section 10**

A contracting authority may request an investigation of a supplier's economic and financial standing, primarily in the form of

1. appropriate bank certificates or, where relevant proof of a suitable risk indemnity insurance,
2. annual reports or excerpts thereof, if publication of annual reports is required by legislation in the country where the supplier is established, or
3. statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, if information on such turnover is available.

If a supplier has acceptable grounds for not presenting such investigation as requested by the contracting authority, the supplier may instead refer to another investigation found suitable by the authority.

*Investigations into the technical and professional capacity of a supplier***Chapter 15 Section 11**

A contracting authority may request an investigation of a supplier's technical capacity in the form of

1. a list of the works carried out over at the most the past five years, accompanied by certificates of satisfactory execution for the most important works,
2. a list of the principal supply deliveries or services provided over at the most the past three years, stating the value, dates and recipients, whether public or private,
3. an indication of the technicians or technical bodies involved, whether or not belonging directly to the supplier's undertaking, especially those responsible for quality control and, in the case of public works contracts, those upon whom the contractor can call in order to carry out the work,
4. description of the technical facilities and measures used by the supplier for ensuring quality and the supplier's study and research facilities,
5. an indication of the supply chain management and tracking systems that the supplier will be able to apply when performing the contract,
6. a statement of such review as will be performed by the contracting authority itself or on its behalf by a competent body of the country in which the supplier or service provider is established, subject to that body's consent, and which is required because the products or services in question are complex or, exceptionally, are intended for a special purpose,
7. information regarding the educational and professional qualifications of the service provider or contractor or corresponding information regarding the undertaking's managerial staff, provided that they are not evaluated as an award criterion,
8. an indication of the environmental management measures that the supplier will be able to apply when performing the contract,
9. a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years,
10. a statement of the tools, machines and technical equipment available to the service provider or contractor for carrying out the contract,
11. Information regarding the proportion of the contract which the economic operator intends possibly to subcontract, or

12. documents, with regard to the products to be supplied, including samples, descriptions or photographs, the authenticity of which must be certified where the contracting authority so requests, and certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to technical specifications or standards.

#### Chapter 15 **Section 12**

If it is necessary to ensure effective competition, a contracting authority may request a supplier to present an investigation to the authority covering relevant supply deliveries, services or works that have been performed earlier than the timeframe given in Section 11 items 1 and 2.

#### Chapter 15 **Section 13**

An investigation in the meaning of Section 11 item 6 shall cover the production capacities of the supplier or the technical capacity of the service provider and, where necessary, the means of study and research which are available to it and the quality control measures it will operate.

## **Quality assurance standards and environmental management standards**

### *Quality assurance standards*

#### Chapter 15 **Section 14**

If a contracting authority requires that the suppliers produces a certificate drawn up by independent bodies attesting that the supplier complies with certain quality assurance standards, including on accessibility for disabled persons, the authority shall specify its requirements by referring to quality assurance systems based on the relevant European standards series certified by accredited bodies.

The authority shall recognise equivalent certificates from bodies established within the European Economic Area (EEA).

Where a supplier cannot get access to such certificates within the given time limits and this is not caused by the supplier or by a circumstance attributable to the supplier, the contracting authority shall also accept other evidence that the supplier has taken measures that lead to equivalent quality assurance, provided that the supplier proves that the quality assurance measures comply with the quality assurance standards required by the authority.

### *Environmental management standards*

#### Chapter 15 **Section 15**

If the contracting authority requires that suppliers produce certificates drawn up by independent bodies attesting that the supplier complies with certain environmental management systems or standards, the authority shall specify the requirements by referring to

1. Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), in the wording of the Council Regulation (EU) No 517/2013,
2. other environmental management systems as recognised in accordance with Article 45 of that Regulation, or
3. other environmental management standards based on the relevant European or international standards and certified by accredited bodies.

The authority shall recognise equivalent certificates from other bodies established within the European Economic Area (EEA).

Where a supplier cannot get access to such certificates within the relevant time limits for reasons that are not attributable to the supplier, the contracting authority shall also accept other evidence that the supplier has taken environmental management measures, provided that the supplier proves that these measures are equivalent to those required under the environmental management system or standard requested by the authority.

### **Official lists and certification by certification bodies**

#### Chapter 15 **Section 16**

When a supplier is registered in an official list of approved suppliers in a country within the European Economic Area (EEA) or is certified by a certification body that satisfies European certification standards, the suppliers shall be seen, with regard to the requirements covered by the list or certificate, to satisfy the requirements or criteria given in Chapter 13 Sections 1–3 and Chapter 14 Section 1.

## Chapter 16 Evaluation of tenders and contract award

### Evaluation and award

#### *Contract award and grounds for evaluation*

##### Chapter 16 **Section 1**

A contracting authority shall award a contract to the supplier with the tender that is most economically advantageous for the authority.

Which tender is most economically advantageous shall be assessed based on one of the following grounds:

1. best price-quality ratio,
2. cost, or
3. price.

The authority shall in the procurement documents indicate which grounds for evaluation of tenders it intends to use.

#### *Award criteria*

##### Chapter 16 **Section 2**

When a contracting authority evaluates a tender on the basis of best price-quality ratio, it shall evaluate the tender based on criteria connected to the subject-matter to be purchased.

An award criterion is considered to be connected to the supplies, services or works to be purchased if the criterion in some way relates to the supplies, services or works at any time during their life cycle.

The award criteria shall ensure effective competition and must not give the contracting authority unlimited freedom of choice. They should be presented so that it, based on the supplier's information, is possible to review how well a tender satisfies the criteria. If there is cause, the authority shall review that the supplier's information is correct.

##### Chapter 16 **Section 3**

When a contracting authority evaluates a tender on the basis of cost, the authority shall assess the effects of the tender in regard to cost-efficiency, for instance through analysing the costs throughout the life cycle of the supplies, services or works.

*Life cycle costs***Chapter 16 Section 4**

When a contracting authority evaluates a tender in the meaning of Sections 2 and 3, the evaluation may include an analysis of the life cycle costs for the supplies, services or works to be purchased.

Life cycle costs may include the costs for external environmental effects connected to the subject-matter to be purchased, if the environmental effects can be determined in a monetary sum that can be verified.

If the authority intends to take life cycle costs into account in its evaluation, it shall in the procurement documents indicate which information the suppliers shall present for this purpose and the method that the authority will apply in determining the life cycle costs.

**Chapter 16 Section 5**

The contracting authority's method for assessing costs for external environmental effects under Section 4 second paragraph shall be based on objectively verifiable and non-discriminatory criteria. They may not unduly favour or disadvantage certain suppliers. The method shall be made available to the suppliers.

The method should be designed so that the required information can be provided by a normally diligent supplier following reasonable efforts.

*Weighting of award criteria***Chapter 16 Section 6**

When the basis for evaluation of a tender is the best price-quality ratio or cost, the award criteria shall be weighted relative to each other. They may be weighted within intervals, with a suitable largest allowed range.

If the criteria cannot be weighted, the authority shall take them into account in order of priority.

The authority shall in the procurement documents indicate how the criteria are weighted or what order of priority will apply.

## **Abnormally low tenders**

### **Chapter 16 Section 7**

If a tender appears abnormally low, the contracting authority shall first request that the supplier explains the low price or cost. Such request may pertain to:

1. if the supplier can use particularly cost-effective methods to perform the contract,
2. if the supplier can use technical solutions or exceptionally favourable conditions to perform the contract,
3. the originality of the supplies, services or works proposed by the supplier,
4. how the supplier intends to perform the contract in relation to applicable environmental, social or labour law obligations,
5. the possibility of the tenderer obtaining State aid, or
6. the obligations mentioned in Chapter 17 Section 6 or 7.

The authority shall reject the tender if the supplier has not in a satisfactory way explained the low price or cost.

A contracting authority shall also reject a supplier's tender if it finds that the abnormally low price is due to the tender not satisfying applicable environmental, social or labour law obligations.

### **Chapter 16 Section 8**

If a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the authority shall give the supplier a chance to, within a reasonable time limit, show that the aid in question is compatible with the Treaty of the Functioning of the European Union (TFEU).

If the supplier after a measure in the meaning of the first paragraph cannot show that the aid is compatible with TFEU, the tender shall be rejected.

A contracting authority that rejects a tender on the basis of the second paragraph shall inform the European Commission thereof.

## **Decision not to award a contract in certain cases**

### **Chapter 16 Section 9**

If a supplier's tender does not match the applicable environmental, social or labour law obligations, the authority may decide that the supplier shall not be awarded the contract.



## Chapter 17 Contract performance

### Specific requirements for contract performance

#### Chapter 17 Section 1

A contracting authority may instate specific environmental, social, labour law or other conditions for contract performance.

Specific conditions for contract performance shall be connected to the subject-matter of procurement in the meaning of Chapter 16 Section 2 second paragraph, and be indicated in the procurement documents.

#### *Specific labour law requirements*

#### Chapter 17 Section 2

A contracting authority shall, if necessary, require that the supplier performs the contract in accordance with stated requirements on wages, holidays and working hours that the employees who will be performing work under the contract shall, as a minimum, be guaranteed.

The authority shall also require that the supplier can ensure that its subcontractors that directly contribute to the performance of the contract satisfy the requirements made under the first paragraph. Act (2017:347).

#### Chapter 17 Section 3

The levels of the requirements under Section 2 shall be stated as the lowest levels in accordance with a central collective agreement which applies throughout Sweden for equivalent employees in the industry field in question. The requirements shall, however, at least correspond to the levels pursuant to legal acts.

When a contracting authority shall state the level of the requirements, the authority shall give an opportunity to make a statement to the central employer and employee organizations that have concluded the central collective agreement which the requirements are to correspond to under Section 2, unless this is unnecessary.

If the conditions for the authority to state the level of the requirement under Section 2 are not at hand, the authority is not obliged to enforce the requirement. Act (2017:347).

### *Labour law requirements when the work is not performed in accordance with Swedish labour law*

#### Chapter 17 **Section 4**

A contracting authority shall, if it is necessary, require that the supplier performs the contract according to stated requirements under the core conventions of the ILO, if the performance is made under such conditions that Swedish labour law is not applicable.

The authority shall also require that the supplier shall ensure that its subcontractors that directly contribute to the performance of the contract satisfy the requirements made under the first paragraph.

The requirements may entail that the provisions that apply where the work is to be performed are observed. Act (2017:347).

### *How the supplier satisfies the labour law requirements*

#### Chapter 17 **Section 5**

Even if the specific labour law requirements are not satisfied, a supplier shall be considered to satisfy the requirements, if it applies equivalent requirements in the same central collective agreement that is applied throughout Sweden to equivalent employees in the industry field in question.

The supplier shall also be considered to satisfy the labour law requirements if it is an employer that is encompassed by the scope of the Foreign Posting of Employees Act (1999:678) and the supplier applies equivalent requirements on work and employment conditions under the same act. Act (2017:347).

## **When a supplier uses subcontractors for contract performance**

### *Information on planned subcontractors*

#### Chapter 17 **Section 6**

A contracting authority may request a supplier to provide information on

1. if the supplier may come to perform part of the contract by use of a third party, and, if so, the share of the contract that may be so performed, and
2. which subcontractors the supplier intends to use to perform the contract in this part.

The authority shall in the procurement documents indicate what information the supplier shall provide.

*Information to be given before contract performance commences***Chapter 17 Section 7**

A contracting authority shall require that the r that has been awarded a works contract or a contract for services to be provided in a facility under the authority's direct oversight shall provide the name, contact details and legal representatives of its subcontractors. The information shall be presented before the supplier commences contract performance.

The authority shall also require that the supplier shall inform the authority about each change of names or contact details which occurs during the term of the contract.

The first and second paragraph do not apply if the subcontractor is a supplier of supplies.

**Modifications to contracts and framework agreements***Modifications not requiring a new procurement***Chapter 17 Section 8**

A contract or framework agreement may be modified without a new procurement, if the modification is made on the basis of the provisions in Sections 9–14.

*Modifications of lesser value***Chapter 17 Section 9**

A contract or framework agreement may be modified without a new procurement, if the overall nature of the contract or framework agreement is not modified and the increase or decrease in the value of the contract or framework agreement is less than

1. the threshold given in Chapter 5 Section 1, and
2. ten percent of the value of the contract or framework agreement, in the case of a procurement of supplies or services, or 15 percent of the value of the contract or framework agreement, in the case of a procurement of works.

When the value of the modifications is estimated, the same principles shall apply as when estimating the value of a procurement pursuant to Chapter 5.

If several successive modifications are made one after the other, the total net value of these modifications shall be compared with the values given in the first paragraph.

### *Review or option clauses*

#### Chapter 17 **Section 10**

A contract or framework agreement may be modified in accordance with a review or option clause without a new procurement, if the overall nature of the contract or framework agreement is not modified and the clause

1. was mentioned in the procurement documents of the original procurement,
2. clearly, precisely and unequivocally describes the conditions under which it may apply, and
3. states the extent and nature of the modifications that can be made.

### *Supplementary orders*

#### Chapter 17 **Section 11**

A supplementary order of supplies, services or works may be made from the supplier that was awarded the contract, without a new procurement, if the order does not mean that the value of the contract increases by more than 50 percent and on condition that

1. the order has become necessary,
2. the supplier cannot be replaced for economic or technical reasons, and
3. a replacement of supplier would entail significant inconvenience or substantial duplication of costs for the contracting authority.

Where several successive supplementary orders are made, the limitation on increase of value shall apply to the value of each individual order.

### *Unforeseeable circumstances*

#### Chapter 17 **Section 12**

A contract or framework agreement may be modified without a new procurement, if the modification is needed because of circumstances that the contracting authority did not and should not have foreseen when the decision to award the contract or conclude the framework agreement was made. However, such modification may not

1. lead to a modification of the overall nature of the contract or framework agreement, or
2. mean that the value of the contract or framework agreement increases by more than 50 percent.

Where several successive modifications are made, the limitation on increase of value shall apply to the value of each individual modification.

*Replacement of supplier***Chapter 17 Section 13**

A contract or framework agreement may be modified with one supplier being replaced by another, without a new procurement, if

1. the new supplier, universally or partially succeeds into the position of the original supplier, following corporate restructuring, including takeover, mergers, acquisitions or insolvency, and
2. the circumstance that a new supplier universally or partially succeeds into the position of the original supplier does not entail other substantial modifications to the contract or framework agreement.

A replacement of a supplier under the first paragraph requires that the new supplier cannot be excluded pursuant to Chapter 13 Section 1 or Section 2 first paragraph and that it satisfies the criteria for qualitative selection of the original procurement pursuant to Chapter 14 Sections 1–5.

A subcontractor of the supplier may, without a new procurement, also succeed into the position of the supplier as a result of an agreement between the supplier, the authority and the subcontractor.

*Modifications that are not substantial***Chapter 17 Section 14**

A contract or framework agreement may be modified despite the modification not being encompassed by the provisions in Sections 9–13, if the modification is not substantial.

A modification shall be seen as substantial, i.a., where it

1. introduces new conditions which, had they been part of the original procurement procedure, would have led to other candidates being invited to tender, that other tenders would have been included in the evaluation or that additional suppliers would have participated in the procurement procedure,
2. modifies the economic balance of the contract or the framework agreement in favour of the supplier that has been awarded the contract or is a party to the framework agreement,
3. extends the scope of the contract or framework agreement considerably, or
4. entails a replacement of a supplier.

### *Calculation of the value of the contract or framework agreement ahead of a modification*

#### Chapter 17 **Section 15**

In application of Sections 9, 11 and 12, the value of the contract or framework agreement shall be calculated based on an indexation clause, if any such clause is included in the contract or framework agreement.

### *Notices on modifications to a contract or framework agreement*

#### Chapter 17 **Section 16**

A contracting authority that has modified a contract or framework agreement pursuant to Section 11 or 12 shall publish a notice providing information on this.

The Government may issue regulations on the content of and publication of said notice.

## **Termination of contracts or framework agreements**

#### Chapter 17 **Section 17**

A contracting authority shall ensure that a contract or framework agreement concluded under this Act contains conditions making it possible to terminate the contract or framework agreement, if

1. it has been subject to a modification that is not permitted under Sections 9–14,
2. the supplier at the time of the decision to award the contract or conclude the framework agreement was in any of the situations provided for in Chapter 13 Section 1 and should have been excluded from the procurement pursuant to that provision, or
3. the Court of Justice of the European Union in a procedure pursuant to Article 258 in the Treaty on the Functioning of the European Union (TFEU) finds that Sweden, by permitting the contracting authority to conclude the contract or framework agreement, has infringed upon its obligations under the Treaty on the European Union, TFEU or Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

The conditions for terminating the contract or framework agreement shall be given in the procurement documents.

## Chapter 18 Design contests

### Scope

#### Chapter 18 Section 1

This Chapter applies to design contests that

1. are part of the procurement of a service, or
2. include compensation to participants or prizes.

### Notices

#### Chapter 18 Section 2

A contracting authority that intends to carry out a design contest shall make known its intention by means of a contest notice. If the authority intends to conduct a procurement under the provisions on negotiated procurement without prior publication, this shall be indicated in the contest notice. The authority shall in the notice state the criteria it intends to use for assessment of contest entries.

The authority shall issue a contract award notice of the result of the design contest not more than 30 days after the conclusion of the contest.

The Government may issue regulations on the content and publication of notices pursuant to this Chapter.

### Selection of participants

#### Chapter 18 Section 3

A design contest may be limited to a certain number of participants. The contracting authority shall in the notice indicate the criteria for selection of participants. The number of candidates invited to participate shall be sufficient to ensure effective competition.

The right to participate in a design contest may not be limited to only natural or legal persons with reference to a requirement thereof in the legislation of the Member State in which the design contest is held.

### The jury and its composition

#### Chapter 18 Section 4

A jury shall select the winning entries in a design contest. The jury shall be composed of natural persons who are independent of the participants in the contest. Where particular professional qualifications are required to participate in a design contest, at least a third of the members of the jury shall have equivalent qualifications.

## The jury procedure

### Chapter 18 Section 5

When a contest entry is presented to the jury, the anonymity of the participant shall be guaranteed. Anonymity shall be observed until the jury has reached its opinion or decision.

In examination, the jury shall take into account solely the criteria indicated in the contest notice.

Candidates may be invited, if need be, to answer questions in order to clarify any aspects of the project. Complete minutes shall be drawn up of the dialogue between jury members and candidates.

## Decision of the jury

### Chapter 18 Section 6

The jury shall be autonomous in its decisions or opinions. It shall record its ranking of contest entries in a report signed by all its members. The report shall contain a justification of the ranking and any remarks or points that may need clarification.

# Chapter 19 Procurement under the thresholds and procurement of services under Appendix 2

## Scope

### Chapter 19 Section 1

This Chapter applies to

1. a procurement or design contest the value of which is estimated to be under the threshold given in Chapter 5 Section 1 or 2, and
2. a procurement of services of the kinds stated in Appendix 2.

## Applicable provisions

### Chapter 19 Section 2

In procurements pursuant to this Chapter, the following apply

- Chapter 1 (The contents, scope and definitions of the Act),
- Chapter 2 (Mixed procurements),
- Chapter 3 (Exclusions from the scope of the Act),



- Chapter 4 (General provisions), excepting Sections 6 and 7 on limiting the number of candidates that may submit tenders, Sections 10–12 on choice of tender and Sections 13–17 on award of a contract in separate lots,
- Chapter 7 (Framework agreements, central purchasing bodies and other coordinated procurement), excepting Sections 14–23 on joint procurement with an authority from another Member State,
- Chapter 8 Sections 1–14 (Dynamic purchasing systems), excepting Section 6 on changes to the period of validity, Sections 8 and 11 on time limits, and Sections 12 and 13 on contract award and self-declaration of suppliers,
- Chapter 9 Section 6 (Data and references that may not be included in technical specifications),
- Chapter 9 Sections 12–15 (Labels),
- Chapter 14 Section 2 (Suitability to pursue professional activity),
- Chapter 17 Section 1 (Specific requirements for contract performance),
- Chapter 20 (Standstill period, review procedure and damages),
- Chapter 21 (Procurement fine), and
- Chapter 22 (Supervision).

#### Chapter 19 Section 3

In procurements pursuant to this Chapter, the provisions on competitive dialogues in Chapter 4 Sections 6 and 7, Chapter 6 Section 1 item 5 and Sections 20–29, Chapter 10 Sections 9 and 10 and Chapter 11 Sections 3 shall also apply.

In procurement of services of the types stated in Appendix 2, the value of which is at least equal to the threshold given in Chapter 5 Section 1, the provisions on technical specifications in Chapter 9 Sections 1–5 and 7–11, on notices in Chapter 10 Sections 1, 2 and 4 and on individual reports in Chapter 12 Sections 15 and 16 shall also apply.

### Definitions applicable to this Chapter

#### Chapter 19 Section 4

*A direct award* is a procurement without requirements on tenders in a certain form.

#### Chapter 19 Section 5

*A simplified procedure* is a procedure where all suppliers have a right to participate, participating suppliers shall submit tenders and the contracting authority may negotiate with one or more tenderers.

#### Chapter 19 **Section 6**

A *selective procedure* is a procedure where all suppliers have the right to apply to submit tenders, the contracting authority invites certain suppliers to submit tenders and the contracting authority may negotiate with one or more tenderers.

### **Procurement procedures**

#### Chapter 19 **Section 7**

A procurement pursuant to this Chapter shall be made through a simplified procedure, a selective procedure or, when a dynamic purchasing system is used, through a restricted procedure in accordance with Chapter 6 Section 3. In a simplified procedure or a selective procedure, an electronic auction may be used pursuant to Chapter 8 Sections 15–27.

A competitive dialogue may, in accordance with Section 3, may be used if a simplified procedure or selective procedure does not permit to contract award.

A contract may be awarded directly if the value of the procurement is at the most 28 percent of the threshold given in Chapter 5 Section 1 and applies to a contracting authority that is not a central contracting authority in procurements of supplies and services. Further, direct awards of contract may be used to an applicable extent in the case where the conditions for a negotiated procedure without prior notice pursuant to Chapter 6 Sections 12–19 are satisfied, or if there are exceptional reasons therefore. The contracting authority shall set guidelines for the usage of direct awards of contract.

### **Calculating the value of a procurement**

#### Chapter 19 **Section 8**

The value of a procurement shall be estimated to the total amount payable in the procurement. A procurement may not be divided with the aim of avoiding applicability of the provisions in this Act.

In the calculation, option and renewal clauses shall be taken into account as if fully used.

In the calculation, the contracting authority shall take into account direct awards of contract of the same type, awarded by the authority during the financial year adjusted.

## Notices

### Chapter 19 Section 9

In a simplified procedure, the contracting authority shall request tenders through a notice in an electronic database that is publicly available.

In a selective procedure, the contracting authority shall publish an invitation to participate through a notice in an electronic database that is publicly available. The authority may in its invitation indicate the number of suppliers it intends to invite. The number shall be determined with account taken of the nature of the subject-matter being procured and shall be sufficient to ensure effective competition.

A contracting authority that establishes a dynamic purchasing system shall publish an invitation to apply through a notice in an electronic database that is publicly available. The notice shall be available in the database throughout the period of validity of the dynamic purchasing system.

### Chapter 19 Section 10

A contracting authority may publish notices about procurements in the manner that applies for procurements in accordance with Chapter 10.

## The contents of a notice

### Chapter 19 Section 11

A notice of procurement pursuant to Section 9 shall contain information on the subject-matter of the procurement and contact details to the contracting authority.

An authority that intends to reserve participation in a procurement in accordance with Chapter 4 Section 18 shall, in the notice pursuant to Section 9, indicate that the procurement shall be conducted under the provisions on reserved procurement.

### Chapter 19 Section 12

In a simplified procedure, the contract notice shall contain information on

1. how tenders may be submitted,
2. the last day on which tenders can be submitted, and
3. the last day on which tenders shall be binding.

In a selective procedure, the notice with invitation to participate shall contain information on

1. how a tender application may be submitted,
2. the last day on which applications can be submitted, and
3. the last day on which tenders shall be binding.

## **Notices on contract awards through direct awards of contract**

### **Chapter 19 Section 13**

A contracting authority that intends to award a contract directly may inform of its intention through a notice in an electronic database that is generally available.

The Government may, under Chapter 8 Section 7 of the Instrument of Government, issue other regulations regarding the content of a notice in the meaning of this Section.

## **Electronic access to procurement documents**

### **Chapter 19 Section 14**

The contracting authority shall, in a notice pursuant to Section 9, through electronic means, offer unrestricted, direct and full access free of charge to procurement documents from the date the notice was published. The internet address where the documents are available shall be indicated in the notice.

If the authority cannot offer access to a procurement document in the meaning of the first paragraph, the notice shall inform suppliers how they can access the document in another way.

The first and second paragraphs apply also when the contracting authority publishes a procurement notice in accordance with Chapter 10.

## **Time limits for requests for participation and tenders**

### **Chapter 19 Section 15**

Candidates and tenderers shall be given reasonable time to submit requests for participation and tenders, respectively. The time limit for submitting a request for participation shall not be shorter than 10 days from the day on which the invitation to participate was made public in accordance with Section 9 second or third paragraph.

In a dynamic purchasing system, there shall be no time limits for requests for participation once an invitation to submit tenders for the first specific procurement has been sent.

## **Communication**

### **Chapter 19 Section 16**

The provisions in Chapter 12 Sections 1 and Section 10 first paragraph apply to procurements in the meaning of this Chapter. However, the provisions in Chapter 12 Sections 1–5 do not apply to direct awards of contract.

## Opening tenders

### Chapter 19 Section 17

Tenders shall be opened at the same time and as soon as possible after the end of the tender period at a function where no less than two persons appointed by the contracting authority shall participate. The tenders are to be entered on a list to be verified by those participating at the function. At the request of a tenderer, a person appointed by a chamber of commerce shall also be present. The costs for this shall be paid by the entity that presented the request.

## Review and exclusion of suppliers

### Chapter 19 Section 18

A supplier shall be excluded from participating in a procurement in accordance with what is prescribed under Chapter 13 Section 1.

A supplier may be excluded pursuant to Chapter 13 Sections 3 and 4.

In investigating a matter relating to exclusion, Chapter 15 Sections 7–9 shall apply.

A contracting authority that requests information from the supplier regarding circumstances in the meaning of the first and second paragraphs shall in the procurement documents or upon request for information indicate in which manner the supplier shall present information.

### Chapter 19 Section 19

In checking if a supplier has fulfilled its obligations regarding payment of taxes or social security contributions in Sweden pursuant to Chapter 13 Section 2, the contracting authority shall gather information on this from a competent authority.

## Limited review

### Chapter 19 Section 20

A contracting authority may limit the review of such documents that relate to the suitability of a supplier. The supplier shall be given reasonable time to present the requested documents.

In a simplified procedure, the documents shall be requested and reviewed when the tenderer or tenderers that the authority intends to invite to negotiations or, if no negotiations will be conducted, the tenderer or tenderers that the authority intends to award the contract or framework agreement. The review shall be conducted before the tenderers are invited to negotiations or notified of the award decision under Section 29.

In a selective procedure or a competitive dialogue, documents shall be requested and reviewed in regard to the candidates that the authority intends to invite to submit tenders or negotiate, respectively.

## **Self-declaration and review of suppliers in dynamic purchasing systems**

### **Chapter 19 Section 21**

A supplier that applies to participate in a dynamic purchasing system may also present a self-declaration that there are no grounds under Section 18 to exclude the supplier and that the supplier satisfies the requirements made by the contracting authority.

The contracting authority may, at any time during the period of validity of the dynamic purchasing system, request that suppliers approved as participants in the system submit a new self-declaration in the meaning of the first paragraph. Before the contracting authority awards a contract under the dynamic purchasing system, the authority shall from the supplier it intends to award the contract request information that forms the basis of a self-declaration in the meaning of the first paragraph, and review this information. The supplier shall be given reasonable time to submit the requested document.

## **Examination of requests for participation and tenders**

### **Chapter 19 Section 22**

A contracting authority shall examine all the requests to participate and tenders that have been submitted in due time, unless otherwise stipulated by Section 18.

## **Access to the capacity of other companies**

### **Chapter 19 Section 23**

A supplier may, if necessary for a certain contract, rely on the capacity of other companies. The supplier shall, by providing a commitment from the other companies or in some other way, show that the supplier will dispose of the necessary resources during contract performance.

## **Contract award**

### **Chapter 19 Section 24**

A contracting authority shall award a contract to the supplier with the tender that is most economically advantageous for the authority.

Which tender is most economically advantageous shall be assessed based on one of the following grounds:

1. best price-quality ratio,
2. cost, or
3. price.

The authority shall in the procurement documents indicate which grounds for evaluation of tenders it intends to use.

**Chapter 19 Section 25**

When a contracting authority evaluates a tender on the basis of best price-quality ratio, it shall evaluate the tender based on criteria connected to the subject-matter to be purchased.

When a contracting authority evaluates a tender on the basis of cost, the authority shall assess the effects of the tender in regard to cost-efficiency, for instance through analysing the costs throughout the life cycle of the supplies, services or works.

**Chapter 19 Section 26**

When the basis for evaluation of a tender is the best price-quality ratio or cost, the award criteria shall be weighted relative to each other. They may be weighted within intervals, with a suitable largest allowed range.

If the criteria cannot be weighted, the authority shall take them into account in order of priority.

The authority shall in the procurement documents indicate how the criteria are weighted or what order of priority will apply.

## **Abnormally low tenders**

**Chapter 19 Section 27**

If a tender appears abnormally low, the contracting authority shall request that the supplier explains the low price or cost.

The authority shall reject the tender if the supplier has not in a satisfactory way explained the low price or cost.

The authority shall also reject a supplier's tender if it finds that the abnormally low price is due to the tender not satisfying applicable environmental, social or labour law obligations.

## Information to suppliers

### Chapter 19 Section 28

A contracting authority shall, on request from a supplier, present supplementary information about the procurement documents, not later than six days before the time limit for tenders, given that the information has been requested in good time. The information shall be presented in writing to all suppliers participating in the procurement procedure.

### Chapter 19 Section 29

In simplified procedures, selective procedures, competitive dialogues and dynamic purchasing systems, the contracting authority shall, as soon as possible, notify the candidates and tenderers in writing about decisions made pursuant to Chapter 12 Section 12 and present any information in the meaning of Chapter 12 Section 13.

In direct awards of contract, the contracting authority shall, when a decision on supplier and tender has been made, notify the tenderers of the decision as soon as possible.

A notification or information in the meaning of the first paragraph does not mean that a tender becomes invalid.

## Documentation

### Chapter 19 Section 30

A contracting authority shall document the conducting of a procurement. The documentation shall be sufficient to justify the authority's decisions during all stages of the procurement.

The first paragraph does not apply if the value of the procurement is less than SEK 100,000.

### Chapter 19 Section 31

The Archives Act (1990:782) contains provisions on the archives of authorities and certain other bodies. For a contracting authority not subject to the Archives Act, the second and third paragraphs apply.

When a procurement has been concluded, a contracting authority shall, in an adequate way, store requests to participate and tenders with associated descriptions, models and plans, as well as tender lists, compilations, an individual report in accordance with Chapter 12 Section 15, documents referred to in Section 30, and similar documents. The documents are to be stored no less than four years from the day the contract was awarded.



A contracting authority shall also store the contract or framework agreement that has been concluded following a procurement subject to this Act. The contract or framework agreement shall be stored at least during its period of validity.

### **Access to contracts**

#### **Chapter 19 Section 32**

In Chapter 2 of the Freedom of the Press Act there are provisions on the public nature of official documents. For a contracting authority that is not to apply those provisions, Section 33 applies.

#### **Chapter 19 Section 33**

A contracting authority shall, at the request of a supplier affected, present a copy or printout of a contract relating to services of the types stated in Appendix 2, which are stored in accordance with Section 31 third paragraph, if the contract has been concluded with a value of at least EUR 1,000,000.

As regards presentation of a contract, Chapter 12 Sections 20–24 apply.

### **Design contents**

#### **Chapter 19 Section 34**

The provisions in Chapter 18 Sections 1 and 3–6 apply also to design contests, the value of which is less than the threshold given in Chapter 5 Section 1, if the value of the contest exceeds the value given in Section 7 third paragraph.

In holding design contests, Section 7 shall apply. A design contest shall be made public pursuant to Sections 9, 11 and 12.

If a contract in accordance with contest rules is to be awarded the winner or one of the winners, the winner or winners shall be invited to participate in negotiations.

## Chapter 20 Standstill period, review procedure and damages

### Standstill period

#### *General provisions on the standstill period*

##### Chapter 20 **Section 1**

If a contracting authority is liable to send an award notice pursuant to Chapter 12 Section 12 first paragraph or Chapter 19 Section 29 and the notice has been sent through electronic means, the contracting authority may not conclude a contract (standstill period) until 10 days have passed since the notice was sent.

If the notice is sent by other than electronic means to any candidate or tenderer, a contract may not be concluded until 15 days have passed since the notice was sent.

If a contracting authority in the notice has indicated a longer standstill period than the required minimum, a contract may not be concluded until the end of the stated period.

#### *Derogations from the standstill period*

##### Chapter 20 **Section 2**

A standstill period does not apply

1. in award of contracts following a procurement without prior publication pursuant to Chapter 6 Sections 12–19,
2. in award of contracts with reopened competition within a framework agreement pursuant to Chapter 7 Sections 7 and 8,
3. in award of contracts under a dynamic purchasing system, or
4. in direct awards of contract pursuant to Chapter 19 Section 7 third paragraph.

#### *Standstill period for publication on the intention to award a contract without prior publication*

##### Chapter 20 **Section 3**

In notices pursuant to Chapter 10 Section 5 or Chapter 19 Section 3, the contracting authority may not conclude a contract until 10 days have passed from the publication of the notice.

## Review procedure

### *General provisions on review*

#### Chapter 20 **Section 4**

Following an application for review from a supplier that consider itself to have been harmed or risks being harmed, an administrative court may review

1. a procurement, and
2. the effectiveness of a contract concluded between a contracting authority and a supplier.

### *Competent courts*

#### Chapter 20 **Section 5**

An application for review shall be made to the Administrative Court of the court district in which the contracting authority is established.

A review permit is required when appealing to the Administrative Court of Appeal.

### *Review of a procurement*

#### Chapter 20 **Section 6**

If the contracting authority is in breach of any of the basic principles in Chapter 4 Section 1 or any other provision in this Act and this has caused or may cause the supplier harm, the court shall decide that the procurement shall be recommenced or that it may be concluded only once corrections have been made.

A procurement may not be reviewed after a contract has been concluded between the contracting authority and a supplier.

#### Chapter 20 **Section 7**

If the contracting authority during an ongoing review of a procurement concludes a contract in breach of Section 1, 3, 8, 9 or 10, the court shall, if requested by the supplier, review the effectiveness of the contract in accordance with Sections 13–15.

### *Extended standstill period*

#### Chapter 20 **Section 8**

If an application for review of a procurement has been made, the standstill period pursuant to Section 1 or 3 is extended during the Administrative Court's handling of the review (extended standstill period).

The court may decide that no extended standstill period shall apply.

### *Interim decision in review of a procurement*

#### **Chapter 20 Section 9**

When a standstill period pursuant to Section 1, 3 or 8 does not apply, the court may decide that the contracting authority may not conclude a contract until further notice.

The court shall refrain from making such decision if the damages or inconvenience the decision might entail is greater than the harm that might affect the supplier.

The court shall in its assessment take into account interests of users, the public interest and other stakeholders' interests.

### *Ten-day limit*

#### **Chapter 20 Section 10**

When an extended standstill period applies pursuant to Section 8, the contracting authority may not conclude a contract until 10 days have passed following the adjudication of the Administrative Court.

When an administrative court or administrative court of appeal has made a decision pursuant to Section 9, a contract may not be concluded until 10 days have passed since the court adjudicated the case or repealed the decision. When the Supreme Administrative Court has made a decision pursuant to Section 9 and decided to remand the case to a lower court, a contract may not be concluded until 10 days have passed since the decision on remanding.

The court may decide that no ten-day limit shall apply.

### *Time limits for application for review of a procurement*

#### **Chapter 20 Section 11**

An application for review of a procurement shall have been received by the Administrative Court before the end of a standstill period in the meaning of Section 1 or 3.

#### **Chapter 20 Section 12**

An application for appeal of a decision to cancel a procurement shall have been received by the Administrative Court before 10 days have passed since the contracting authority by an electronic means has sent out a notice of the decision and stated the reasons for the decision.

If the notice has been sent in other ways than electronic means to one or more candidates or tenderers, an application for review shall have been submitted to the Administrative Court before 15 days have passed since the notice was sent.

### *Review of the effectiveness of a contract*

#### **Chapter 20 Section 13**

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

1. without prior publication pursuant to Chapter 10 Section 1, 2 or 3, Chapter 18 Section 2 or Chapter 19 Section 9, when it has not been permitted to award a contract directly in accordance with Chapter 19,
2. after a reopened competition within a framework agreement pursuant to Chapter 7 Section 7 or 8 and Section 9, without observing the conditions that are stated in those sections or the framework agreement that is the basis for the competition, and this has caused or may cause the supplier harm,
3. under a dynamic purchasing system without observance of the conditions stated in Chapter 8 Section 10 or 12 and this has caused or may cause the supplier harm.

A contract shall also be considered ineffective if it has been concluded in breach of the provisions on a standstill period under Section 1, 3 or 8, an interim decision under Section 9 or the ten-day limit under Section 10, or if the contract has been concluded before a contract award notice has been published in accordance with Chapter 12 Section 12 first paragraph or Chapter 19 Section 29 first paragraph. Ineffectiveness in such cases also requires that one of the basic principles in Chapter 4 Section 1 or another provision of this Act has been transgressed and this has caused or may cause the supplier harm.

#### **Chapter 20 Section 14**

If it is justified for overriding reasons relating to the public interest, the court shall decide that the contract may stand, despite conditions for ineffectiveness under Section 13 being satisfied.

#### **Chapter 20 Section 15**

The provisions on ineffectiveness in Section 13 shall not apply

1. to contracts concluded by a contracting authority following reopened competition within a framework agreement pursuant to Chapter 7 Section 7 or 8, if the contracting authority has sent a contract award notice in accordance with Chapter 12 Section 12 first paragraph and observed a standstill period in accordance with Section 1,
2. to contracts concluded by a contracting authority under a dynamic purchasing system, if the contracting authority has sent a contract award notice in accordance with Chapter 12 Section 12 first paragraph and observed a standstill period in accordance with Section 1,

3. if a contracting authority through a notice, as provided for in Chapter 10 Section 5 or Chapter 19 Section 13, has announced its intention to procure and has observed the standstill period in accordance with Section 3.

### *Interim decision in review of the effectiveness of a contract*

#### **Chapter 20 Section 16**

The court may decide that a contract shall not be performed subject to further decisions.

The court shall refrain from making such decision if the harm or inconvenience the decision might entail are greater than the harm that might affect the supplier. The court shall in its assessment take into account interests of user, the public interest and other stakeholders' interests.

### *Time limits for application for review of the effectiveness of a contract*

#### **Chapter 20 Section 17**

An application for review of the effectiveness of a contract shall, subject to the second paragraph, have been received by the Administrative Court within six months from conclusion of the contract.

The application must have been received by administrative court before 30 days have passed since

1. the European Commission published a notice in accordance with Chapter 10 Section 4, or
2. the contracting authority has notified the candidates and tenderers in writing that the agreement has been concluded and has issued a summary of information in the meaning of Chapter 12 Section 13.

## **Calculation of certain periods**

#### **Chapter 20 Section 18**

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 apply.

## **Prohibition on appeals**

#### **Chapter 20 Section 19**

A decision for which this Act is applicable may not be appealed based on Chapter 10 of the Municipal Act (1991:900).

## Damages

### Chapter 20 Section 20

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

The right to damages includes compensation to a supplier that has participated in a procurement and 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 the supplier's chances of being awarded the contract.

### Chapter 20 Section 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 13 through a ruling that has entered into legal force. If an action is not brought in time, the right to damages is lost.

## Chapter 21 Procurement fines

### General provisions on procurement fines

#### Chapter 21 Section 1

An administrative court may decide that a contracting authority shall pay a specific fine (a 'procurement fine') if

1. an administrative court has determined by a ruling that has entered into legal force that a contract may remain in force, despite having been concluded in contravention of the provisions on standstill periods in Chapter 20 Section 1, 3 or 8.
2. an administrative court has determined by a ruling that has entered into legal force that a contract may remain in force for overriding reasons relating to the public interest in accordance with Chapter 20 Section 14, or
3. the authority has concluded a contract with a supplier without prior publication in accordance with Chapter 10 Section 1, 2 or 3, Chapter 18 Section 2 or Chapter 19 Section 9.

#### Chapter 21 Section 2

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

The supervisory authority may apply to an administrative court for a contracting authority to pay a procurement fine in those cases referred to in Article 1 item 3.

### **Competent courts**

#### **Chapter 21 Section 3**

An application for a contracting authority to pay a procurement fine shall be made to the Administrative Court of the court district in which the contracting authority is established.

Leave to appeal is required to make an appeal to the Administrative Court of Appeal.

### **The amount of the fine**

#### **Chapter 21 Section 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 percent of the contract value in the meaning of Chapter 5 or Chapter 19 Section 8.

#### **Chapter 21 Section 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.

### **Time limits of applications for a fine**

#### **Chapter 21 Section 6**

An administrative court must have received an application for a procurement fine in accordance with Section 1 items 1 or 2 within six months from the time when the ruling on which the application is based has entered into legal force.

#### **Chapter 21 Section 7**

When an application for a procurement fine is based on Section 1 item 3 and one or more suppliers have applied for a review of the effectiveness of the agreement within the time limits referred to in Chapter 20 Section 17, the application may not be made before the limit has passed and all decisions resulting from the review have entered 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 legal force.



When no supplier has applied for a review of the effectiveness of an agreement within the time limits referred to in Chapter 20 Section 17, an administrative court must have received an application within one year from when the agreement was concluded.

### **Payment of a fine**

#### **Chapter 21 Section 8**

The proceeds of the procurement fine shall pass to the State.

#### **Chapter 21 Section 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 legal force or within the longer time referred to in the ruling.

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

#### **Chapter 21 Section 10**

A procurement fine on which a decision has been made lapses if it has not been possible to enforce the ruling relating to the fine within five years from when the ruling entered into legal force.

## **Chapter 22 Supervision**

### **General provisions on supervision**

#### **Chapter 22 Section 1**

An authority shall exercise supervision of procurements under this Act.

#### **Chapter 22 Section 2**

The supervisory authority may collect all necessary information for its supervisory activities from a contracting authority or such party as the supervisory authority considers to be a contracting authority. If it is required owing to urgency, the scope of the material, or some other circumstance, the information may be collected by visiting the contracting authority.

#### **Chapter 22 Section 3**

A contracting authority is liable to provide the information requested by the supervisory authority for its supervision. This also applies to such party as the supervisory authority considers to be a contracting authority.

## **Injunctions**

### **Chapter 22 Section 4**

If it is 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 the supervisory authority considers to be a contracting authority to provide information, produce a document or hand over a copy of the document.

### **Chapter 22 Section 5**

An injunction made by a supervisory authority may be appealed to the Administrative Court of the court district in which the party which the injunction encompasses is established. When an injunction is appealed, the supervisory authority is the opponent.

Leave to appeal is required to make an appeal to the Administrative Court of Appeal.



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