

further publication and interested parties will be invited to make their interest known in writing. The period covered by the prior information notice shall be a maximum of 36 months from the date the notice is transmitted for publication.

Notwithstanding paragraph 1 the contracting party may start negotiated procedure without prior notice in accordance with Article 39.

The contracting authority shall inform of the conclusion of the procurement proceedings by way of notice of the awarding of the contract. Notices may be gathered and then sent every quarter. Such notices shall be sent within 30 days from the end of each quarter. Notices shall be dispatched to the Publications Office of the European Union, which will carry out their publication, cf. Article 56.

Announcements and notices according to paragraphs 1 and 3 shall be published in accordance with standard forms according to Article 56. Contract notices according to sub-paragraph-a of paragraph 1 shall at the same time be announced by electronic means domestically in a joint forum which the minister lays down in regulations.

Article 94.

Main principles for the selection of tenders

When selecting tenders the contracting authority shall take into account the main principles for procurement according to Article 15. The contracting authority may at all times take into account the special characteristics of the service and then use such characteristics when selecting the tenders. For that purpose he may during the process of awarding take account of i.a. the necessary quality of the service, efficiency, innovation, special needs of different categories of users of the service, and the involvement and empowerment of the users. The contracting authority is also free to select a service provider on the basis of the tender which offers the best ratio between price and quality taking into account the quality and the sustainability criteria for social services.

Article 95.

Restrictions to involvement in procurement procedures regarding certain services

The contracting authority may restrict the right to participate in the procurement procedures for public contracts in the fields of health services, social services and cultural services according to Article 92. The minister shall lay down in regulations which services may be restricted access according to this Article.

It is only permitted to limit the right to participate according to paragraph 1, to economic operators or associations that meet all the following conditions:

- a. have as the objective to provide the public service mentioned in paragraph 1,
- b. profits are re-invested in the interest of the objectives of the economic operator; if profits are distributed or re-distributed it is on the condition that this will be based on aspects regarding participation.
- c. the organisation, or the ownership of the economic operator that executes the contract is based on the main principles of employee ownership, or participation, or that it requires the active participation of the employees, users or interesting parties, and
- d. the relevant contracting authority has not awarded a contract to the economic operator for the relevant services according to this Article during the last three years.

The maximum period of validity of the contract shall not exceed three years.
The contract notice shall refer to this Article.

IX. CHAPTER **Reports, EFTA Surveillance Authority, etc.**

Article 96.

Reporting for procurement exceeding EEA threshold amounts

For each contract or framework agreement, and every time that a dynamic purchasing system is established which exceeds the threshold amounts according to paragraph 4 of Article 23, the buyer shall prepare a written report where the following shall be included:

- a. the name and address of the contracting authority and the content and value of the contract, framework agreement, or a dynamic purchasing system,
- b. the results of a pre-selection process according to Article 78, i.e. the names of economic operators that were selected and the reasons for their being selected, and the names of economic operators that were dismissed and the reasons for their dismissal,
- c. reasons for the dismissal of tenders that turned out to be unnaturally low,
- d. the name of the tenderer who was selected, the reasons for his tender being selected, and which parts of the contract or the framework agreement the contractor who was selected intends to get third party to work as a sub-contractor, including the names of the principal contractor's sub-contractors, if it is known
- e. in a competitive procedure and in ,competitive dialogue, that the conditions of paragraph 2 of Article 33 are in place including the arguments for the use of the procurement procedures,
- f. in negotiated procedure without prior notice taking place, that the conditions laid down in Article 39 are in place including argumentation for the use of the procurement procedure,
- g. as the case may be, the reasons for contracting authority deciding not to award a contract or framework agreement, or establish a dynamic purchasing system,
- h. as the case may be, the reasons for using other communication methods than electronic for the submission of tenders,
- i. as the case may be, conflicts of interest that have been identified and measures that have been taken because of these.

The report does not need to be made regarding contracts that are based on framework agreements made in accordance with paragraph 4, or the first sentence of paragraph 5 of Article 40. To the extent that a notice concerning the awarding of a contract according to Article 84, or paragraph 3 of Article 93, contains information that is required according to this paragraph, the contracting authority may refer to that notice.

The contracting authority shall record the progression of all procurement procedures whether these are electronic or not. For that purpose the contracting authority shall make sure that sufficient documents are kept in order to substantiate any decisions that are taken during all stages of the procurement procedures, such as documents regarding relations with

economic operators and internal discussions, the preparation of the procurement documents, dialogue or negotiations, if any, the awarding and making of the contract. The documents shall be stored for at least three years from the date of a decision on awarding the contract.

The contract report, or the principal parts of the report, shall be sent to the Ministry, or as the case may be, to the EFTA Surveillance Authority, if this is requested.

Article 97.

Reports on public procurement exceeding EEA threshold amounts

The Ministry of Finance shall prepare a report in accordance with Articles 83 and 85 of the Directive and forward it to the EFTA Surveillance Authority (ESA). Further provisions may be established through regulations with respect to which parties shall send reports on their procurements to the Ministry and the information which shall be included in those reports.

Article 98.

Inquiry by the EFTA Surveillance Authority regarding procurement exceeding EEA threshold amounts

The EFTA Surveillance Authority may resort to the procedures laid down in paragraphs 2-4 if the Authority is of the opinion that, prior to the awarding of a contract exceeding threshold amounts according to paragraph 4 of Article 23, that during the implementation of procurement procedures that are subject to the Directive as it has been adopted in the EEA agreement, a serious violation was committed of the rules of the EEA agreement on public procurement. The minister shall be the representative for the Icelandic state during these procedures. For the purpose of this procedure the minister may temporarily stop a tendering process or other procurement procedures after the notice from the EFTA Surveillance Authority has been received.

The EFTA Surveillance Authority notifies the Icelandic state about the reasons why the Authority thinks that a serious violation has taken place and it requests that this be rectified in the proper way. No later than 21 days after the notice is received the Ministry shall send a confirmation to the Surveillance Authority that the violation has been remedied, a reasoned submission on the reasons why no corrections have been made or that a notice that the procurement procedures and the awarding of the contract have been suspended temporarily, whether at the behest of the minister or the Procurement Complaints Commission.

A written statement on the reasons for why no corrections have been made may be grounded in the violation already being deliberated by the Public Procurement Complaints Commission, or being processed in the courts of law, or that the administrative act by the Public Procurement Complaints Commission having been referred to the courts for judicial review. Under these circumstances the Ministry shall notify the EFTA Surveillance Authority on the conclusion in such a case as soon as it has become known.

When the temporary suspension of the procurement procedures has been announced, cf. paragraph 2, the Ministry shall notify the EFTA Surveillance Authority when the temporary suspension has been lifted, or when the procurement procedures for the same procurement, in part or in whole, commence again. This notice must indicate that remedial action has been taken, or reasons must be given for why this has not been done.

X. CHAPTER

The activities of the central administration of public procurement

Article 99.

The State Trading Centre

The State Trading Centre is a central purchasing body operated by the state and subject to the authority of the minister. The General Manager of the State Trading Centre is the head of the centre and is appointed by the minister for a term of five years. The General Manager shall prepare the budget for the Centre and shall formulate policies for the principal points of emphasis, tasks and procedures of the Centre.

The State Trading Centre shall in a transparent and efficient manner be responsible for procurements for State institutions, shall examine joint needs for supplies and services and shall arrange joint procurements for state needs and promote the development of efficient procurement systems. Moreover, the Centre shall provide assistance and instructions on tenders and procurement as necessary. In the event of a dispute between the State Trading Centre, as the co-ordinator of tenders, and a contracting authority on a decision for the selection of tenders, the dispute may be referred to the Ministry of Finance.

The State Trading Centre shall prepare framework agreements on behalf of the State, where there shall be an evaluation of the competence, price and as the case may be, the quantity of procurement, and supervise tendering processes and other procurement procedures carried out by State institutions for procurements, whether over domestic threshold amounts or threshold amounts for the European Economic Area, according to Article 23. The Minister, however, may authorise individual State institutions to handle their own procurements above the threshold amounts.

Other public bodies that are subject to this Act may at the same time make use of the services of the State Trading Centre.

The minister may commission The State Trading Centre to manage other tasks that are closely related to the activities of the Centre according to further decision.

Article 100.

Legitimacy of procurements and responsibility for procurements carried out by the State Trading Centre

A contracting authority which has obtained a work, product or service through the State Trading Centre is considered to have met its obligations pursuant to this Act insofar as the State Trading Centre has done so.

Prior to the beginning of a procurement procedure carried out by the State Trading Centre, the Centre may demand the conclusion of a contract which provides for, among other things, decision making and liability with respect to the procurement procedure.

Article 101.

Tariff of the State Trading Centre

The State Trading Centre sells its services to State institutions and other public bodies in accordance with a tariff established by the Minister pursuant to the recommendations of the General Manager of the State Trading Centre. The tariff shall be based on providing the Agency with sufficient income to cover its operations.

The Minister may enter into an agreement with The State Trading Centre on the performance and financing of projects, i.a. for joint procurements and framework agreements.

Article 102.

Party responsible for procurements

Ministries, institutions and concerns owned by the State shall appoint a specific employee to be the party responsible for procurements. That employee is under obligation to oversee that the procurements of the ministry, institution or concern in question are in accordance with applicable laws and regulations on public procurement and State procurement policy.

XI. CHAPTER **The Public Procurement Complaints Commission**

Article 103.

The role and composition of the Public Procurement Complaints Commission

The Public Procurement Complaints Commission consists of three persons and the same number of alternates appointed by the Minister following nominations by the Supreme Court for a term of four years. Two members of the Commission and their alternates shall fulfil the legal requirements in to hold the office of a district judge, and one of these shall be the chairman of the Commission. The third member of the Commission and his alternate member shall have extensive experience and knowledge of commerce. The members of the Commission shall be independent of the interest of the state and of other public bodies.

The role of the Public Procurement Complaints Commission is to resolve in an expedient and impartial way the complaints of economic operators for alleged violations of this Act and regulations issued on the basis of the Act, including regarding the general procurement by public bodies, procurements in the fields of defence and security, the procurement procedures of entities operating in the water, energy, transport and postal services sectors, and the awarding of concessions.

The Commission is independent in its activities. Its rulings and decisions as provided for in this Act may not be referred to other public authorities.

At the request of the Ministry, or of a specific contracting authority, the Public Procurement Complaints Commission may deliver an advisory opinion on particular procurements even in the absence of any complaint.

The Public Procurement Complaints Commission takes up for review the legality of the procurements of those public bodies that the Act covers, cf. Article 3.

Article 104.

The composition of the Public Procurement Complaints Commission in individual cases and expert advice

In cases involving significant interests, or that are otherwise considered important from the viewpoint of the public interest the chairman can decide that the commission be composed of two additional members to the permanent commission members. At least one of these shall fulfil the legal requirements for holding the office of a district judge, and they shall be commissioned to handle the case after having been appointed by the Supreme Court of Iceland.

The Chairman can decide to summon expert parties for advice and assistance. They shall work with the Commission according to a further decision by the Chairman who also determines their fees.

Article 105.

Right of referral

Complaints may be referred to the Commission by economic operators who enjoy rights as provided for by this Act and have legitimate interests in the resolution of the complaint. Also

organisations or federations of economic operators have the authority to refer cases to the commission, provided that it conforms to their purpose to guard such interests.

In the case of an alleged violation of an obligation to use statutory procurement procedures, or announce procurement, legally protected interests are however not a requirement. The minister may also lodge a complaint relating to such violations irrespective of legally protected interests.

A complainant may transfer the right to lodge a complaint to an association or organisation that safeguards his interests.

Article 106.

Time limit for lodging a complaint

A written complaint shall be referred to the Public Procurement Complaints Commission within 20 days from the time when the complainant knew or should have known of the decision, act or omission which he believes infringes his rights. A complaint about the inactivity of a contract may however be referred to the Commission within 30 days from the above mentioned time limit. However, a demand for the inactivity of a contract will not be posed when six months have passed from the awarding of that contract. At the further decision of the time limit the following shall apply:

1. When a complaint is lodged regarding a decision on the selection of a tender, or other decisions according to paragraphs 1 and 2 of Article 85 then the beginning of the deadline shall be based on the publication of the notices that are mentioned there, provided that they contain the relevant information.
2. When there is a claim regarding the inactivity of a contract that has been awarded without prior contract notice the beginning of the deadline shall be based on the following publication of a notice on the awarding of a contract in the Official Journal of the European Union provided there is the reasoning for the decision of the contracting authority not to advertise the procurement.

The complaint shall include information on the complainant, the party against which the complaint is directed, and the decision, action or failure to act which is the grounds for the complaint. A complaint must state the claims of the complainant together with a brief description of the circumstances of the case, arguments and reasoning. Claims made by the complainant shall be subjected to the Commission's remedies available according to this Act. The complainant shall notify the contracting authority of a complaint as soon as possible.

If a complaint does not fulfil the conditions of paragraph 2, the Complaints Commission shall request that the complainant remedy the deficiencies within a reasonable time limit. If the complainant fails to do so, the Complaints Commission shall dismiss the complaint.

The Complaints Commission may, as a rule, invite a complainant to submit further documentation or information to explain a complaint, if it feels the complaint is not sufficiently clear, and may grant him a certain time limit for such purpose.

For each complaint there is a complaints fee of ISK 150.000.

Article 107.

The legal implications of a complaint

If a complaint regarding a decision to award a contract is lodged within the statutory standstill period, according to Article 86, then the awarding of the contract is not permitted

until the Complaints Commission has finally resolved the complaint. The automatic stop of the awarding of the contract because of a complaint becomes activated when the contracting authority should know about the complaint, whether it is because of the notice from the complainant according to paragraph 2 of Article 106, or because of the notice from the Complaints Commission according to paragraph 1 of Article 108.

The Complaints Commission can, whether according to the demand of the defendant, or by the own initiative, decide to lift the prohibition on the awarding of the contract. Under such decision the provisions of Article 110 are in effect as the case may be. The decision of the Complaints Commission to lift the prohibition on awarding the contract shall never enter into effect until the standstill period for the awarding has passed according to Article 86.

Otherwise it follows from paragraph 1 that a complaint does not entail the automatic stop of the procurement procedures.

Article 108.

Processing of the complaint and pre-trial evidence gathering

Should a complaint be acceptable for process on the merits, as provided for in Article 106, the Commission shall grant the defendant party against which the complaint is directed an opportunity to express itself on the substance of the complaint.

The complainant shall generally be allowed a short time limit to address the comments made by the defendant party and those of others who have been provided with the opportunity to make a statement.

The pleadings shall be conducted in writing, but the Commission may give the parties an opportunity to present verbal comments. In the event that a case is brought before the Public Procurement complaints Commission where it is necessary to take a position regarding clarification of the EEA agreement, its protocols, Annexes, or acts mentioned in the Annexes, then the Commission can in accordance with Article 40 of the EFTA agreement on the establishment of a Surveillance Authority and Court, pronounce a ruling declaring that an advisory opinion by the EFTA court will be asked concerning clarification of that aspect of the case before the matter is concluded. Whether or not a party to the case demands that such opinion be sought or the Commission thinks that there is a need for this, the parties must be given the opportunity to express themselves before a ruling is rendered.

The Commission can demand that the parties submit all the evidence and other information pertaining to the case. If the complainant does not act on such a demand his complaint may then be dismissed immediately. If the defendant does not act on such a demand his negligence may then be construed in his disfavour.

The number of votes from the Commission members will decide the outcome of the case. The minority vote shall accompany the Commission opinion, if applicable. The chairman or the vice chairman is in charge of the Commission's work. When the Commission members do not agree on a conclusion the majority shall decide on the conclusion of a case. If the commission is split in three in its position, or if the conclusion can not be decided by the number of votes, the vote of the chairman will decide.

The Complaints Commission shall rule on a complaint as soon as possible, and no later than one month after it has received the comments from the complainant according to paragraph 3 if that is the case.

The processing of complaints before the Commission shall otherwise be governed by the Administrative Procedures Act.

Article 109.

Defendant

The defendant in the case shall be the contracting authority or several defendants jointly, as the case may be. If the State Trading Centre or other central purchasing body in the meaning of this Act has conducted procurement then that body is also considered a defendant in a case before the Commission. The contracting authority may delegate to a central purchasing body the representation in the processing of a case before the Public Procurement Complaints Commission.

If another contracting authority, such as another tenderer in a tendering process, or a participant in a pre-selection process for restricted procedures, in competitive dialogue, or in negotiated procedure, has legitimate interests attached to the outcome of a case before the Commission, and this shall then be considered to be in the defence of that party.

Article 110.

Temporary suspension of procurement procedures or contract procedures

At the demand of the complainant the Public Procurement Complaints Commission may suspend procurement procedures temporarily until there is a final decision regarding a complaint, provided that there has been shown a significant probability of violation of this Act regarding a particular procurement that may result in the invalidation of a ruling or other actions by the defendant. The same applies to violations of rules that have been issued according to the Act. When evaluating whether or not to suspend temporarily the awarding the private and public interests involved may be taken into account, and reject the demand if these interests are not considered more than the interests of the contracting authority to have a finding in favour of the demand.

The provisions of Articles 106 and 108 apply to the demand of the complainant, as the case may be. The deadline for the defendant to express himself on the demand by the complainant shall however be short and it is permitted to waive these deadlines if there is a clear and obvious violation. A party to a case may demand that the Commission present reasoning in writing for a decision according to this Article if the reasoning has not accompanied the decision when it was pronounced.

The Complaints Commission may decide in its rules of procedure according to Article 113 that the chairman of the Commission alone will take decisions according to this Article.

A rejection of a demand to suspend temporarily will not have an effect on other demands that the complainant may present regarding procurements.

Article 111.

Remedies available to the Public Procurement Complaints Commission

The Commission may issue a ruling which repeals a decision made by the contracting authority regarding public procurement, partially or totally, declare a contract to be inoperative according to the further provisions of Articles 115 - 117, or may provide for other sanctions according to Article 118. The Commission may instruct the contracting authority to put certain procurements out to tender, re-advertise a tender or alter a tender notice, tender description or other aspect of the tender documents.

The Commission may express its opinion on the liability of the defendant for damages towards the complainant, but shall not express itself concerning the amount of damages.

The Commission may decide that the defendant shall pay the complainant the cost of lodging the complaint. If a complaint is clearly unjustified or lodged for the purpose of delaying the progress of public procurements, the Commission may rule that the complainant shall pay the legal costs of the case, which shall accrue to the Treasury.

If a ruling of the Commission, as provided for in the first paragraph, is not complied with, the Commission may levy per diem fines on the party at which the ruling is directed. Fines may amount to up to ISK 500,000 for each day which elapses without compliance with the Committee's ruling. If a ruling is referred to a court, the per diem fines shall not commence until final judgement is pronounced.

Per Diem fines pursuant to paragraph 4 shall accrue to the Treasury. Per diem fines and rulings on legal costs, are enforceable by execution without prior court judgement as provided for in paragraph 3 of

The provisions of paragraph 2 of Article 24 of the Act on Attachment of Property, Restraining Orders etc. shall not prevent that a restraining order is granted to forbid an action that would violate the ruling of the Public Procurement Complaints Commission.

Article 112.

Legal action for the invalidation of the rulings of the Public Procurement Complaints Commission

In the event that a complainant, a defendant or another party with legitimate interests to protect is dissatisfied with the ruling of the Public Procurement Complaints Commission, such party may initiate proceedings to invalidate such a ruling before a court of law. Such proceedings shall be initiated within six months from the date that the party obtained, or could obtain, knowledge of the Commission's ruling.

In the event that proceedings are initiated for the invalidation of a ruling of the Public Procurement Complaints Commission, the Commission shall not be summoned for defence. In other respects, defence involvement in such cases shall be governed by general rules of law.

Article 113.

Rules of procedure for the Public Procurement Complaints Commission, etc.

The Public Procurement Complaints Commission may establish further rules, which must be approved by the Minister, on the submission of documents, procedures before the Commission and publication of its rulings.

XII. CHAPTER

Contract validity, inactivity, other sanctions and damages.

Article 114.

Contract validity

After a binding contract according to this Act has been concluded, it shall not be invalidated or altered, even though the decision by the contracting authority on the tendering or awarding of the contract may have been contrary to law.

In other respects, the validity of contracts awarded under this Act shall be subject to general principles of commercial law.

The provisions of this chapter on the inactivity of contracts will be applied irrespective of the validity, according to paragraph 2 of

Article 115.

Inactivity of contracts

11. The contents of an offer to submit a tender, to participate in dialogue, or to confirm interest, cf. Article 61.
12. Opening of tenders by electronic means, cf. Article 65.
13. A relevant certificate for the business licences of economic operators from other states of the EEA, cf. Article 70.
14. Requirements that are made regarding proof of financial standing and technical capacity of an economic operator, cf. Article 74.
15. Information concerning the format and contents of notices of awarded contract exceeding the threshold amounts of the EEA, cf. Article 84.
16. Information that must be included in notices concerning amendments to a contract during its period of validity, cf. Article 90.
17. Service that comes under social services and other specialised services, cf. Article 92.
18. Information that must be included in the pre-advertising, the contract notification, advertisement for the awarding of a contract for social services and other special services, cf. Article 93.

Article 123.

Entry into force and conflict of laws

This Act shall enter into effect immediately.

Upon the entry into force of this Act, [the Act on public procurement No. 84/2007](#), as amended, is repealed.

Notwithstanding paragraph 1, the provisions of paragraphs 1 and 2 of Article 22 shall enter into force on April 18 2017 for centralised procurement agencies, and on 18 October 2018 for other contracting authorities.

Notwithstanding paragraph 1, the provisions of paragraph 1 of Article 23 shall enter into force on 31 May 2019 with respect to procurements made by local authorities, their institutions and other contracting authorities on their behalf.

Procurements made by local authorities, their institutions and other contracting authorities on their behalf that exceed threshold amounts according to paragraph 1 of Article 23 shall be advertised publicly in accordance with the provisions of Article 55 from 1 January 2017 until the general obligation to call for tenders enters into force on 31 May 2019.

Procurements already advertised prior to the entry into force of this Act shall be governed by [the Act on public procurement No. 84/2007](#). Account shall be taken of the official publication of the contract notice, or the estimated receipt by participants of the notice, in the event of procurement procedures where contract notices are not publicly published.

This Act applies to the Public Procurement Complaints Commission's processing of complaints submitted to the Commission after the entry into effect of this Act.
