

The Act on Public Contracts, EU state aid rules, and funding granted by Business Finland

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1 Scope of application of the guide

This guide is designed to help beneficiaries of funding by Business Finland to adhere to the Finnish Act on Public Contracts, but it does not contain details of how competitive tendering is carried out in practice. This guide takes into account the effects of EU state aid rules.

Instructions for procuring goods and services are available on the website www.hankinnat.fi, which is maintained by the Finnish Ministry of Economic Affairs and Employment and the Association of Local and Regional Authorities.

Contracting authorities whose funding by Business Finland or other public funding towards a purchase includes **more than 50 per cent of public aid** must put the contract out to tender pursuant to the Finnish Act on Public Contracts and Concessions (1397/2016), i.e. the [Act on Public Contracts](#).

The Act on Public Contracts governs the **procurement of goods and services, public works contracts as well as concession contracts**. – Please note that recruitment does not constitute public procurement, and the Act of Public Contracts therefore does not apply to employment contracts.

All aid elements included in funding by Business Finland are public aid, while for loans, only the interest subsidies specified in the funding decision constitute public aid.

Contracting authorities, which include, among others, local authorities, universities, government agencies and public institutions, must always adhere to the Act on Public Contracts, regardless of what percentage of their funding comes from Business Finland or another public source of funding.

2 The Act on Public Contracts in projects funded by Business Finland

The objective of public procurement regulation is to ensure the efficient use of public funds, to make use of competition in the market, and to guarantee the fair and equal treatment of candidates and tenderers, transparency and proportionality.

Any purchase with a total value of EUR 60,000 or above, excluding VAT, must be subjected to competitive tendering pursuant to the Act on Public Contracts. As a rule, **all purchases of at least EUR 60,000 must be subjected to competitive tendering pursuant to the Act on Public Contracts**.

The Public Contracts Act lays down the principles and procedures to be followed in procurement. The Public Contracts Act does not regulate what can be purchased and on what terms. Decisions on the goods or services to be procured – the scope, nature and terms of the purchase – always rest on the purchaser alone.

In order for it to be possible to verify compliance with the Act on Public Contracts and/or the organization's own procurement guidelines, the **various stages of the procurement process must be documented** in the manner stipulated by the Act on Public Contracts, the organization's own guidelines and this guide.

3 Calculating the value of contracts

In order to be able to select the correct procurement category (low-value contract, national contract or EU contract) and comply with the relevant provisions, the estimated value of the contract must be calculated before the procurement process is initiated. The value of the contract must be calculated on the basis of the best information available at the time.

The estimated value of an individual contract is the total estimated value of the contract, excluding value-added tax, or the total fee payable, including any options and extension terms.

With regard to continuing contracts or fixed-term contracts of more than 48 months, the estimated value is the estimated monthly value of the contract, excluding value-added tax, multiplied by 48.

Section 31 of the Act on Public Contracts lays down an express prohibition against splitting contracts into instalments or lowering their value artificially in order to avoid applying the provisions of the Act on Public Contracts.

However, a purchase can be split into multiple contracts, provided that the split is based on genuine financial or technical reasons and the contracting authority is able to prove the legitimacy of the arrangement upon request.

Any goods and/or services procured for a project are, as a rule, considered to constitute a single purchase (logical contract entity). **If a purchase consists of several separate contracts, the beneficiary must provide reasons for this in the contract award decision or a similar document for each purchase before making the purchase.**

If a beneficiary needs to make several, small purchases on a recurring basis, a framework contract needs to be put out to tender.

4 Choice of the procurement procedure

The following thresholds apply to goods and services	
Value of the contract	Procedure
Less than EUR 60,000 (excluding VAT)	The contract is a so-called low-value contract. The beneficiary can choose whichever procurement procedure suits them best (see documentation requirements).
EUR 60,000 – EUR 213,999 (excluding VAT)	The contract must be put out to tender according to the national rules and a public contracts notice published in the HILMA portal.
EUR 214,000 or more (excluding VAT)	The value of the contract exceeds the EU threshold and a public contracts notice must be published in the HILMA portal according to EU rules.

4.1 Low-value contracts (less than EUR 60,000 (excluding VAT))

Business Finland expects beneficiaries to follow their own organization's procurement rules and procedures. However, the procurement process must be documented. In practice, this means archiving all documents relating to the order. Typical evidence of purchases, such as the order confirmation, the terms and conditions and the delivery invoice, is sufficient.

Documentation requirements for low-value contracts (less than EUR 60,000 (excluding VAT))

- All documents (the full invitation to tender, including any emails, receipts, etc. sent to the supplier; the quote; the order confirmation; and the contract) must be kept until the final report on the project has been approved.
- A statement of reasons must be drawn up if the funding is used to purchase goods or services in excess of EUR 60,000 (excluding VAT) but the purchase is split into multiple contracts that individually do not exceed the national threshold.

Tips for putting low-value contracts out to tender can be found [here](#) (tips only in Finnish).

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4.2 National contracts

The threshold for national contracts is EUR 60,000, and a public contracts notice in the HILMA portal is required for any purchases exceeding this threshold. The Act on Public Contracts does not specify a procedure for national contracts, but the chosen procedure must ensure the fair and equal treatment of the participants of the procurement procedure and other suppliers. The procedure must also be transparent and take the requirements of proportionality into account.

4.3 Purchases above the EU threshold

The EU threshold is EUR 135,000 for central government authorities and EUR 209,000 for other contracting authorities. Contracts in excess of the EU threshold can be put out to tender in the form of an open, restricted or negotiated procedure, competitive dialogue, innovation partnership, direct contract award, framework contract, electronic auction, dynamic procurement system, electronic catalogue or design contest.

5 Contracts awarded directly

The rule of thumb for public contracts is that all contracts must be put out to tender. **Awarding contracts directly is an exception** to this rule. Reasons for awarding contracts directly must always be **given in advance in the contract award decision**, and the justification for direct award must be one of the ones mentioned in the Act on Public Contracts (Section 40 of the Act). Contracts for additional supplies may also be awarded directly (Section 41 of the Act on Public Contracts), provided that the additional supplies are related to a contract put out to tender previously. **Please note that improper and / or improperly justified direct contract is a ground for claw-back of funding.**

When awarding contracts directly, the contracting authority must negotiate the terms of the contract with their chosen suppliers without publishing a contract notice beforehand.

Contracting authorities may choose to award a contract directly if:

- 1) no requests to participate or no tenders, or no suitable requests to participate or no suitable tenders, have been received in an open or restricted procedure, provided that the original terms of the invitation to tender are not substantially altered;
- 2) when, for technical reasons or for reasons relating to the protection of exclusive rights, the contract can only be awarded to a particular supplier, provided that there are no practical alternative solutions and the lack of competition is not due to artificially restrictive terms of the contract;
- 3) when the contract is for creating or procuring a unique piece of art or artistic performance;
- 4) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by, and independent of, the contracting authority, the provided time limits cannot be complied with;
- 5) when the products involved are manufactured purely for the purpose of a study, an experiment, product development or scientific reasons and the provision does not extend to mass production to establish commercial viability or to recover research and development costs;
- 6) for supplies quoted and purchased on a commodity market;
- 7) for the purchase of supplies on particularly advantageous terms, from either a supplier which is winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure;
- 8) for public service contracts, when the contract concerned follows a design contest and must, under the applicable rules, be awarded to the successful candidate or to one of the successful candidates; in the latter case, all successful candidates must be invited to participate in the negotiations.

Contracts may not be awarded directly for reasons such as the costs of competitive tendering or the fact that there is only one possible supplier, to ensure continuity and long-term cooperation, lower than industry-standard prices or good value for money represented by a previous tenderer, even if these circumstances were true. Contracting authorities should strive to prepare for the need for additional supplies in advance by including options for the same in the contract notice.

PLEASE NOTE: Courts have interpreted the rules on acceptable reasons for direct contract awards extremely narrowly. In a typical case, the contracting authority has tried to justify having awarded a contract directly by claiming that there is only one supplier capable of delivering the goods or services in question. This argument is only valid if the direct contract award is based on technical reasons or reasons relating to the protection of

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exclusive rights. Acceptable technical reasons or reasons relating to the protection of exclusive rights are discussed in more detail in the rationale given in the government bill underlying the Act on Public Contracts (108/2016) for Section 40(2)(2) (pp. 134–135).

6 Stages of competitive tendering

Aid applicants must take the potential need to use competitive tendering into account also when services are procured before Business Finland has made a decision on the granting of aid.

All public procurement must comply with the public procurement process. The most important stages of the process are as follows:

- Establishing the need for supplies and planning the purchase
- Choosing the procurement procedure (only for contracts exceeding the EU threshold)
- Drawing up the invitation to tender
- **Publishing a contract notice in the HILMA portal**
- Sending invitations to tender to potential tenderers/candidates, where applicable
- Receiving tenders
- Opening tenders
- Reviewing tenders
 1. Evaluating the eligibility of tenderers
 2. Checking the compliance of tenders with the invitation to tender
 3. Comparing tenders
- Deciding on the award of contract
- Notifying tenderers of the contract award decision and supplying instructions for challenging the decision
- Signing the contract

The **fair and equal treatment of tenderers** must be taken into consideration in all stages of the procurement process.

7 Contract notices

A contract notice must be published in the HILMA public contracts portal at www.hankintailmoitukset.fi for all contracts that exceed the national threshold of EUR 60,000.

HILMA is a free-of-charge electronic portal where contracting authorities advertise their public contracts. **After the publication** of the HILMA notice, contracting authorities can also request tenders from their chosen candidates directly. Advice for publishing contract notices in the HILMA portal is available from Edita Publishing Oy / Public Procurement (tel. +358 20 450 2283, email: julkiset.hankinnat@edita.fi).

8 Contract award decisions

Pursuant to Section 123 of the Act on Public Contracts, contracting authorities must draw up a written decision on the outcome of the tendering process. The decision must be made before the contract is signed.

The contract award decision must be forwarded in writing to all the participants of the competition, accompanied by instructions for challenging the decision and appealing it to the Market Court.

A decision must also be drawn up of any contracts awarded directly, stating reasons for the direct award.

9 Signing contracts

A **written contract** must be drawn up of all purchases. Contracts must always be based on tenders approved in the course of the competition. The goods or services purchased must correspond to the invitation to tender.

However, costs attributable to projects funded by Business Finland that are based on orders placed before the beginning of the project period can only be approved if the order is subject to a cancellation option in the event that the project does not go ahead.

10 Exemptions to the application of the Act on Public Contracts

Section 9 of the Act on Public Contracts contains an exhaustive list of services that are not subject to the Act. The Public Contracts Act must be complied with when procuring research and development services that will only

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benefit the contracting authority in its operations and that the contracting authority will pay for in full (Section 9(1)(13)). The rules governing Business Finland funding stipulate that Business Finland cannot fund operations that involve purchases of research or development services the outcomes of which are only publicly exploitable; rights to the outcomes of purchases must be under the exclusive control of the beneficiary of the Business Finland funding and/or their contractual partners.

Although the exemption provided in Section 9(1)(13) of the Act on Public Contracts could, in theory, also apply to situations where the outcomes of purchases are exploited on a wider scale, this is not, as a rule, a valid argument in the case of purchases for projects funded by Business Finland. Business Finland also always examines purchases from the perspective of State aid rules. Consequently, the exemption generally only applies to Business Finland funding in cases where a purchase relates to research cooperation involving, on the one hand, a beneficiary of the Business Finland funding and their contractual partner, i.e. the contracting authority. The criteria for these kinds of arrangements are as follows:

- The parties contribute to funding the research and development contract in question;
- The parties share the risk of the contract being unsuccessful;
- The parties contribute to determining the scope of the purchase within the research and development project; and
- The parties get access to the outcomes of the purchase and are able to make use of the same in proportion to their respective workloads, benefits and outputs.

The exemption does not apply to situations where the outcomes of the research and development services are only shared in theory or where a contribution to the fees paid to the service provider is purely symbolic. Another thing to take into account is the fact that contracting authorities' normal purchases of goods and services, such as expert, development and consultancy services, are subject to the competitive tendering provisions of the Act on Public Contracts. In the case of subcontracted research, i.e. tangible services, such as laboratory, measurement and testing services as well as standard consultancy services that can be procured from multiple different suppliers, normal competitive tendering rules apply.

PLEASE NOTE: Reasons for the applicability of the exemption provided in the Act on Public Contracts for research and development services must be given in either

- 1) the contract award decision drawn up prior to signing the contract, including reasons for why the Public Contracts Act does not apply in the case in question, or
- 2) a contract that specifies the purchase and reasons for the non-applicability of the Act on Public Contracts.

11 More information about public procurement

The Public Procurement Helpdesk of the Ministry of Economic Affairs and Employment and the Association of Finnish Local and Regional Authorities **provides advice for contracting authorities** concerning public procurement (tel. +358 9 7711 and email: hankinnat@kuntaliitto.fi).

The Public Procurement Helpdesk (www.hankinnat.fi) does not provide services for businesses, but it does provide advice for companies that receive funding or other public aid towards more than 50% of the value of their purchases and are therefore considered to be contracting authorities in such circumstances.

Companies that receive funding from Business Finland and contact the Public Procurement Helpdesk (by telephone or email) **should first state that they receive funding from Business Finland**. This is to ensure their access to the service.