

# Finland

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### **1.Does your legal system provide specific procedures for the award of contracts by contracting authorities?**

Yes. The award of contracts by contracting authorities is regulated by the new Public Procurement Act (Laki julkisista hankinnoista 30.3.2007/348) and the Act on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Postal Services Sectors (Laki vesi- ja energiahuollon, liikenteen ja postipalvelujen alalla toimivien yksiköiden hankinnoista 30.3.2007/349; hereinafter called the "Utilities Act") which have entered into force on the 1 June 2007. These two new acts implement directives 2004/18/EC (the "Public Sector Directive") and 2004/17/EC (the "Utilities Directive") and replace the old Public Procurement Act (Laki julkisista hankinnoista 23.12.1992/1505) which is, however, still applied to procurement procedures started before 1 June 2007.

This questionnaire has been completed following only the new acts currently in force.

**2. Do the procedures for the award of contracts depend on the kind of goods, services etc. which are to be procured?**

Yes. First of all there is a division pursuant to the EC directives so, that the services in the fields of water and energy supply, transport and postal services fall outside of the scope of the general Public Procurement Act and regulated by the Utilities Act (except for certain exceptions regulated in the Utilities Act).

Also, some services fall additionally outside of the scope of Public Procurement Act, namely those which are allowed by the Public Sector Directive.

**3. Do the procedures for the award of contracts and/or certain procedural regulations depend on the value of the goods, services etc. which are to be procured (thresholds) and if so, what are the thresholds?**

Yes. In Finland, there exist two sets of thresholds: national and EU thresholds. The national thresholds determine the scope of the act; i.e. procurements below the threshold fall outside of its scope. The EU thresholds in turn set additional requirements to procurements exceeding them, such as EU-wide announcement.

The national thresholds, which cover the Public Procurement Act, are:

- EUR 15.000 for supply/service contracts and design contests and service concessions
- EUR 50.000 for certain health and social services
- EUR 100.000 for public works contracts and public works concessions

The EU thresholds regarding the Public Procurement Act are the thresholds defined in the Public Sector Directive:

- EUR 125.000 for supply/service/design contracts awarded by the state's central authorities
- EUR 193.000 for public supply/service/design contracts awarded by all other procuring entities
- EUR 4.845.000 for public works contracts and public work concessions

The EU thresholds regarding the Utilities Act are:

- EUR 387.000 for supply/service contracts and design contracts
- EUR 4.845.000 for public works contracts

**4. In what way does the contracting authority have to inform the market about the intended procurement?**

A notice concerning the intended procurement is required for all procurements exceeding the national thresholds. For procurements below the thresholds, a notice may be given, but it is up to the contracting authority to decide upon this. An electronic database (HILMA) upheld by the Ministry of Trade and Industry has been created for procurement notices. Also a journal called Suomen julkiset hankinnat (The Finnish Public Procurements) is published containing the notices on procurements.

For procurements exceeding the EU thresholds, the provisions of the Directives apply. These are notified in the Supplement to the Official Journal of the European Union as well as in the TED database. These procurements were included in the HILMA database as of 1 June 2007.

**5. Does a potential bidder which is interested in the contract need to have a specific legal form, e.g., corporation, to submit a tender?**

No. No specific legal form is required to submit the tender. However, the bidding consortium

selected may be required to do so when it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

**6.Are bidders allowed to submit joint offers, e.g., as general contractor and subcontractor or as bidding consortium?**

Yes, both are possible. Certain proof of the bidder's or the consortium's abilities to complete the contract may be required. A bidding consortium needs also to keep in mind the competition rules on bidding cartels.

**7.Do potential bidders interested in the contract need to have a registered office or branch office in your country or is it possible to submit a tender for the contract directly from abroad?**

It is possible to submit a tender directly from abroad.

**8.If it is possible for foreign bidders to submit a bid for a contract to a contracting authority directly from abroad, does the foreign bidder have to consider certain additional aspects, such as having to provide certain additional supporting documents or whether domestic bidders receive preferences in the award of contracts?**

It may be required from the bidder to prove that they have the right to perform such services in their state of origin. No preferential treatment should be given to domestic bidders.

**9.Is a multinational bidding consortium allowed to submit a bid?**

Yes. The countries of origin companies participating in bidding consortiums are not limited.

**10.In which language do the tenders have to/can be submitted and which form is required, e.g., written form, fax, e-mail or digital?**

Written form is required by law. The tenders need to be submitted in strict obedience of the invitation to submit tenders (i.e. a direct invitation to possible bidders and the public notice). The use of electronic means shall be regulated in a future decree, which has not yet been enacted.

The two official languages in Finland are Finnish and Swedish. A tender can always be submitted in either one of these languages. If other languages (presumably this could be English) are permitted in the invitation, a tender may be submitted in such languages.

**11.Are there any legal regulations governing the time within which bids have to/can be submitted to the contracting authority?**

The tenders must be submitted by the exact time required in the invitation to tender. Any tender submitted later than the set time is left unopened.

The legal provisions governing the time limits correspond to article 38 of the Public Sector Directive. In the case of open procedures and concession works, the minimum time limit for the receipt of tenders is 52 days from the date on which the contract notice was sent. In the case of restricted procedures, negotiated procedures and the competitive dialogue the minimum time limit for receipt of requests to participate is 37 days from the date on which the contract notice is sent; and in the case of restricted procedures, the minimum time limit is 40 days. Under certain conditions, an expedited procedure may be used. There are also rules which allow to shorten or lengthen the time limits.

**12.Can the bidders claim their costs for preparing their bid? If so what are the conditions**

**for, and the maximum amount of, reimbursement?**

The bidders bear their own costs for preparing their bid. The invitation to tender may allow costs to be compensated especially for the competitive dialogue procedure.

**13. Are there any selection criteria set by law that bidders have to satisfy to in order to receive the award of a contract and can the contracting authority establish its own additional selection criteria?**

There are formal reasons set in Public Procurement Act for which a bidder are to be excluded (the compulsory grounds for exclusion). These reasons concern the general reliability of the bidder (for example if the bidder has committed certain crimes) and its capabilities to complete the contract. A bidder which does not fulfill these requirements is not allowed to participate in the evaluation of the tenders.

Additional requirements (voluntary grounds for exclusion) may be set by the contracting authority as long as they relate closely to the capabilities of the bidder to complete the contract. These requirements need to be objective and non-discriminatory.

**14. Does your legal system provide legal protection against the proposed award of a contract to a competing bidder even before the contract with the competitor is actually awarded (primary legal protection)? If so please generally explain the proceedings. Is such a primary legal protection available to foreign bidders without any restriction?**

Yes. A petition may be lodged at the Market Court for all decisions pertaining to the status of a bidder in the procurement procedure. The Court may upon this petition forbid the contracting authority to pursue the incorrect procedure.

**15. If primary legal protection exists in your country, does it depend on certain conditions, i.e., certain thresholds or the kind of goods, services etc. to be procured? If so, what are the conditions?**

If the procurement is in the scope of the relevant act, no additional thresholds exist. Only the decision, for which the petition is lodged, needs to be such that it influences the status of the bidder in the procurement procedure.

**16. If there is no primary legal protection, is there legal protection granted after the contract has been awarded, e.g. through damage claims etc. (secondary legal protection)? If so, what are the principal conditions which have to be presented to a court in order to receive a damage award?**

The decision awarding the contract may be appealed to the Market Court. The Market Court may:

- 1) wholly or partly set aside a decision of a contracting entity;
- 2) forbid the contracting entity to apply a section in a document relating to the contract or otherwise to pursue an incorrect procedure;
- 3) require the contracting entity to correct its incorrect procedure; or
- 4) order the contracting entity to pay a compensation payment to a party who would have had an actual chance of winning the contract if the procedure had been correct.

Additionally, a claim for damages may be lodged in a general civil court. Damages will be awarded to a party who would have had an actual chance of winning the contract if the procedure had been correct.

**17. Can your office**

**– give legal advice to foreign clients concerning the relevant formal conditions for preparing a proper bid, etc. and assist in the procurement procedure in your country?**

Yes, we can.

**–represent foreign clients seeking primary and secondary legal protection before all public offices/courts in your country?**

Yes, we can.

**–Please name a contact person within your office for questions of public procurement law!**

The contact persons in our office for questions of public procurement law are:

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