This model document is for procurements within the scope of application of the Act on Procurements and Concession Contracts of Entities Operating in the Water and Energy Supply, Transport and Postal Services Sector (1398/2016).

Please read the model document carefully. For each case, delete those parts not applicable to the decision being made, especially relating to the means of notification, direct procurement and contractual amendments. Choose either paragraph A or B and delete the other. Paragraphs marked with an X may be deleted if not applicable.

INSTRUCTIONS FOR RECTIFICATION AND APPEAL

Review of a public procurement decision or some other resolution made during the procurement procedure may be sought by requesting rectification from the contracting entity (from here on rectification of procurement) in accordance with the Act on Procurements and Concession Contracts of Entities Operating in the Water and Energy Supply, Transport and Postal Services Sector (1398/2016, from here on the Act on public contracts in special sectors). The case may also be referred on appeal to the Market Court.

According to section 123 of the Act on public contracts in special sectors, an annulment of a contracting entity’s decision, a cancellation of some other resolution made in a procurement procedure and making a new decision on the matter are governed by sections 132 to 135 of the Act on Public Procurement and Concession Contracts (1397/2016, from here on the Procurement Act) concerning rectification of procurement. Under section 128 of the Act on public contracts in special sectors, appeal on resolutions as referred to in the Act on public contracts in special sectors and the sanctions ordered for an unlawful procedure are governed by Chapter 16 (sections 145 to 169) of the Procurement Act.

A request for rectification to the contracting entity or appeal to the Market Court may be submitted by a concerned party (from here on a party). A party’s right, obligation or interest is directly influenced by the decision.

# I Instructions for rectification of procurement

## Subject of request for rectification

A person who is dissatisfied with a decision of the contracting entity or with some other resolution made in a procurement procedure may request rectification of procurement under sections 132 to 135 of the Procurement Act. The request may be made in writing by a tenderer, a candidate who has submitted a request to participate, or by some other concerned party.

## Time limit for submitting a request for rectification

A party must request rectification of procurement within 14 days of receiving notice of the decision of the contracting entity (together with instructions for appeal) or of some other resolution made in the procurement procedure. The claim must be submitted by the date when the time limit for submitting a request expires, within office hours.

The day of notice is not included in the calculation of the time limit. If the last day for submitting a request is a bank holiday, Independence Day (6 December), the First of May, Christmas Eve, Midsummer Eve or a Saturday, the request for rectification may be submitted on the first weekday following that day, within office hours.

## A Electronic notification CHOOSE EITHER A OR B. DELETE EXCESS TEXT

The procurement decision has been communicated electronically. A party is deemed to have received notice of a decision and its attachments on the date when the electronic message containing them became available to the recipient on his/her reception device in a form in which the message can be processed. A party is deemed to have received notice of the decision on the day of dispatching the message, unless the party gives a reliable explanation of an electronic communications failure or of some other corresponding factor that caused the electronic message to reach the recipient later.

## B Notification by letter

The procurement decision has been communicated by a letter sent by post. A party is deemed to have received notice of the matter on the seventh day following the dispatch, unless the party shows that notification was received later.

OR

The procurement decision has been served in a verifiable manner. A party is deemed to have received notice of the decision on the date shown in the advice of delivery or in a separate certificate of service.

## Content of the request for rectification

A request for rectification must state the claims and the grounds for them. The request must also indicate the name of the person requesting correction and the necessary contact details for dealing with the matter.

The request must be accompanied by the documents invoked by the person requesting rectification unless they are already in the possession of the contracting entity.

## Address for submission of a request

A request for rectification of procurement is submitted to the contracting entity.

The contracting entity’s contact details:

contracting entity: authority/xxx oy(person)P.O. Box 555, postal codestreet addresse-mail

The office is open from xx to xx from Monday to Friday. FILL IN THE OPENING HOURS

The initiation and processing of a request for rectification do not affect the time limit within which a party is entitled under the Procurement Act to seek review by appealing to the Market Court.

# II Instructions for appeal to the Market Court

## Subject of review and restrictions

A tenderer, a candidate who has submitted a request to participate or some other party may bring the case to the Market Court by filing an appeal.

An appeal may be submitted to the Market Court concerning the decision of a contracting entity or of some other resolution made by a contracting entity in a procurement procedure that affects the status of a candidate or a tenderer.

No appeal may be submitted to the Market Court in respect of a decision or some other resolution of a contracting entity that concerns:

1. solely the preparation of a procurement procedure;
2. failure to divide a procurement agreement into parts under section 79 of the Act on public contracts in special sectors; or
3. use of the lowest price or costs as the sole criterion for determining the most economically advantageous tender referred to in section 91 of the Act on public contracts in special sectors.

CHOOSE THE FOLLOWING TEXT IN THE CASE OF A PROCUREMENT BASED ON A FRAMEWORK AGREEMENT (for example a mini-competition) OR A RESOLUTION CONCERNING APPROVAL FOR A DYNAMIC PURCHASING SYSTEM. DELETE EXCESS TEXT(S).

## X Procurement based on a framework agreement

Under section 146 of the Procurement Act, a procurement based on a framework agreement is not open to review by appeal unless the Market Court grants leave to hear the case. A leave must be granted if a hearing of the case is important for application of the law in other similar cases or if there is a pressing reason for doing so, related to the procedure of the contracting entity.

## X Resolution concerning approval for a dynamic purchasing system

Under section 146 of the Procurement Act, a resolution of a contracting entity concerning approval for a dynamic purchasing system is not open to review by appeal unless the Market Court grants leave to hear the case. A leave must be granted if a hearing of the case is important for application of the law in other similar cases or if there is a pressing reason for doing so, related to the procedure of the contracting entity.

## A Electronic notification CHOOSE EITHER A OR B. DELETE EXCESS TEXT

The procurement decision has been communicated electronically. A party is deemed to have received notice of a decision and its attachments on the date when the electronic message containing them became available to the recipient on his/her reception device in a form in which the message can be processed. A party is deemed to have received notice of the decision on the day of dispatching the message, unless the party gives a reliable explanation of an electronic communications failure or of some other corresponding factor that caused the electronic message to reach the recipient later.

## B Notification by letter

The procurement decision has been communicated by a letter sent by post. A party is deemed to have received notice of the matter on the seventh day following the dispatch, unless the party shows that notification was received later.

OR

The procurement decision has been served in a verifiable manner. A party is deemed to have received notice of the decision on the date shown in the advice of delivery or in a separate certificate of service.

## Time limit for seeking review

An appeal must be filed in writing within 14 days of the date on which the party received notice of the procurement decision together with instructions for appeal. The day of notice is not included in the calculation of the time limit.

The Market Court must receive the appeal by the date when the time limit for submitting the appeal expires, within its opening hours.

## X Time limit for seeking review of direct procurement DELETE IF NOT APPLICABLE TO THE DECISION

A contracting entity has submitted a notice for publication in the Official Journal of the European Union concerning a direct procurement referred to in section 122 of the Act on public contracts in special sectors. An appeal must be filed within 14 days of the date of publishing the notice.

OR

A contracting entity has published a contract award notice concerning a direct procurement, but not a direct procurement notice. An appeal concerning a direct procurement must be filed within 30 days of the date when a contract award notice concerning the direct procurement was published in the Official Journal of the European Union.

OR

A contracting entity has not published a notice or a contract award notice concerning the direct procurement. An appeal concerning a direct procurement must be filed within six months of the date of concluding the procurement agreement.

## X Notice concerning a contractual amendment DELETE IF NOT APPLICABLE TO THE DECISION

A contracting entity has submitted a notice for publication in the Official Journal of the European Union concerning a contractual amendment referred to in section 62, subsection 1, paragraph 10 of the Act on public contracts in special sectors. An appeal must be filed within 14 days of the date of publishing the notice.

## Exceptions to the regular period of appeal

If, following the procurement decision, a contracting entity has made a procurement agreement or concession contract under paragraph 1 or 3 of section 121 of the Act on public contracts in special sectors without observing the standstill period, then the appeal must be filed within 30 days of notice of the decision. No standstill period need be observed if the agreement concerns a procurement to be made on the basis of a framework agreement, or if the agreement concerns a procurement made within a dynamic purchasing system.

An appeal to the Market Court must be submitted no later than six months after making the procurement decision in the event that the candidate or tenderer has received notice of the procurement decision together with instructions for appeal and the procurement decision or the instructions for appeal were essentially defective.

## Content of the appeal

An appeal must state:

1) the decision which is appealed against (*the decision subject to appeal*);

2) which aspect of the decision the appeal concerns and what changes the appellant is calling for (*claims*);

3) the grounds for the claims;

4) what the right of appeal is based on, if the decision appealed against is not addressed to the appellant.

With respect to a procurement based on a framework agreement or a resolution concerning approval for a dynamic purchasing system, the appeal document must indicate the grounds for which leave to hear the case should be granted.

The appeal must also state the appellant’s name and contact details. Where the appellant is represented by a legal representative or a counsel, the document must also give the legal representative’s or the counsel’s contact details. While the appeal is pending, any changes to contact details must be immediately notified to the Market Court.

The appeal must also state a postal address and a possible other address for delivery of legal documents related to the proceedings (*address for service*). In situations where an appellant has given more than one address for service, the Market Court may choose the address to which it delivers legal documents related to the proceedings.

The person who submitted the request for rectification may present new grounds when filing an appeal against the decision. A new claim may only be put forward, if it is based on a change in circumstances or a fact that has become known to the appellant after the expiration of the time limit for submitting a request for rectification.

The following documents must be appended to the appeal:

1) the decision subject to appeal together with instructions for appeal;

2) evidence on the date that the appellant has been informed of the decision or some other evidence on the date from which the time limit for appeal is calculated;

3) the documents invoked by the appellant in support of the claim, unless they have already earlier been delivered to the authority.

An attorney must append his/her power of attorney to the appeal document as provided for in section 32 of the act on legal action in administrative matters (808/2019).

## Court fee

A person who has filed an appeal is charged a court fee as provided in the act on court fees (1455/2015).

## Prohibition of review based on appeal grounds

According to section 163 of the Procurement Act, a case falling within the jurisdiction of the Market Court is not open to review under the Local Government Act (410/2015) or the act on legal action in administrative matters.

## Notification of review to the contracting entity

Under section 148 of the Procurement Act, the person seeking review of a procurement case must notify the contracting entity in writing of the referral of the case to the Market Court. The notification must be submitted to the contracting entity no later than the time of submitting the appeal to the Market Court. The notification must be submitted to the address of the contracting entity given in Part I above.

## Submission of appeal, the Market Court’s address and other contact details

The appeal must be submitted to the Market Court. The appeal document may be delivered to the registry of the Market Court in person, by an attorney or by a messenger or sent by post, by fax, or by e-mail as provided for in the Act on Electronic Services and Communication in the Public Sector (13/2003). An appeal may also be filed using the e-service provided by the administrative courts and special courts at <https://asiointi2.oikeus.fi/hallintotuomioistuimet>.The languages of the service are Finnish and Swedish.

If the last day for filing an appeal is a bank holiday, Independence Day (6 December), the First of May, Christmas Eve, Midsummer Eve or a Saturday, the documents may be delivered to the Market Court on the first weekday following that day.

Address of the Market Court:

Market Court
Sörnäistenkatu 1
00580 Helsinki
Tel.: +358 (0)29 56 43300
Fax: +358 (0)29 56 43314
markkinaoikeus(at)oikeus.fi