

Language of the contract notice or invitation to tender

The Language Act lays down provisions concerning, among other subjects, the responsibility of bilingual authorities and municipalities to provide information in both national languages. These provisions concern information given to the public.

However, according to the Act on Public Contracts, the competitive tendering process targets companies and organisations, rather than the public. Therefore, the Ministry of Justice is of the understanding that the provisions of the Language Act governing the provision of information from the authorities to the public do not directly apply to the competitive tendering for public contracts.

Furthermore, the Act on Public Contracts does not include provisions on the language of the contract notice or the invitation to tender. However, the preparatory work for the Act states that the invitation to tender may be written in Finnish or Swedish or in any other official European Union language (Government Proposal 50/2006 vp, p. 87). The Ministry of Justice is therefore of the opinion that the contracting authority may, in the light of the Language Act and the Act on Public Contracts, generally decide the language(s) of the contract notice or the invitation to tender.

Section 35 of the Language Act prescribes that, in accordance with the Constitution, the Government shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking population of the country on an equal basis. In their activity, the authorities shall also promote the use of both national languages. According to the Act on Public Contracts, the contracting authority shall ensure equality and non-discriminatory treatment among all participants in the procurement procedure.

The linguistic rights prescribed in the Language Act are mainly understood as rights of private individuals. However, according to section 11 of the Act, in cases such as this with companies participating in competitive tendering, legal persons retain the same right as private individuals to use their own language, where applicable.

Consequently, a procedure whereby the contract notices of bilingual Government authorities or bilingual municipalities are regularly drawn up only in the majority language of the authority or the municipality and published only in a majority-language newspaper cannot be seen to pursue the objectives of the Language Act in the Ministry of Justice's opinion.

Authorities shall therefore consider which languages they should use to publish contract notices and invitations to tender so as to take account of the Language Act provisions mentioned above. For example, in order to secure non-discriminatory participation of small private businesses or self-employed persons, it might be essential to publish the contract notice or invitation to tender in both national languages.

Language of tenders

In accordance with section 41 of the Act on Public Contracts, the language(s) in which the tenders are to be drawn up shall be indicated in the invitation to tender. It follows that the contracting authority may primarily decide on the language(s) in which it will receive the tenders. However, where a bilingual Government authority or a bilingual municipality indicates the languages of the tender, it shall take account of the opportunities for the Finnish-speaking and Swedish-speaking population to participate in the competitive tendering.

Importance of the object of the contract (section 25 of the Language Act)

The Ministry of Justice pays particular attention to the importance of the object of the contract, endeavouring to secure the citizens' linguistic rights also in the delivery of the public contract.

Section 25 of the Language Act prescribes that, if a public administrative task has been assigned to a private provider, the service shall remain the same as if the authority were maintaining the service. The level of service may not diminish due to the fact that the service is delivered by a private body. Therefore, when a bilingual authority opens up its services to competitive tender, it shall ensure during the procurement procedure that the contract, i.e. the service purchased from a private provider, can be delivered both in Finnish and Swedish in Government authorities and in bilingual municipalities.

It is therefore essential to ensure, already during the procurement procedure, that the service will be available in both national languages. This means that the requirement of service provision in both languages should be clearly indicated in the invitation to tender or the contract notice, either as a requirement relating to the candidates' or tenderers' professional ability as defined in section 41, subsection 1, paragraph 6 of the Act on Public Contracts, or as some other requirement. Consequently, service provision in the national languages cannot only be set as a comparison or quality criterion. The tenderer must be able to prove, as laid down in section 46 of the Act on Public Contracts, that the offered service can be delivered in the national languages in line with the requirements set in the invitation to tender.

Separate invitations to tender may be issued for services in Finnish and Swedish. If the service is required in other languages, these can also be subject to separate tenders. Service in languages other than the national languages may be set as one of the comparison criteria for the tender.

It is the Ministry of Justice's view that, when invitations to tender or contract notices are drawn up for service contracts, it must be ensured that the notices are drawn up in both national languages and published both in Finnish- and Swedish-language newspapers.