

# CONSOLIDATED TEXT OF ACT

no. 137/2006 Coll.

## on Public Contracts

as Amended by Act no. 110/2007 Coll., Act no. 296/2007 Coll., Act no. 76/2008 Coll., Act no. 124/2008 Coll., Act no. 110/2009 Coll., Act no. 41/2009 Coll., Act no. 227/2009 Coll., Act no. 417/2009 Coll. and Act no. 179/2010 Coll.

The Parliament has adopted the following Act of the Czech Republic:

### TITLE ONE

#### GENERAL PROVISIONS

##### § 1

##### Scope

This Act incorporates the relevant legal regulations of the European Communities<sup>1)</sup> and provides for

- (a) procedures for the award of public contracts,
- (b) design contest,
- (c) supervision over compliance with this Act,
- (d) conditions for the maintenance and purpose of the list of approved economic operators and of the system of certified economic operators.

##### § 2

##### Contracting Body

(1) 'Contracting body' (hereinafter referred to as "the contracting entity") shall be understood, for the purposes of this Act, as a contracting authority, subsidised contracting entity and sector contracting entity.

(2) The contracting authority shall be

- (a) the Czech Republic<sup>2)</sup>,
- (b) a State allowance organisation,
- (c) a territorial self-governing unit or an allowance organisation in respect of which such a territorial self-governing unit exercises the function of the founder thereof,
- (d) another legal person, provided that

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<sup>1)</sup> Directive 2004/18/EC of the European Parliament and of the Council, of 31 March 2004, on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.  
Directive 2005/75/EC of the European Parliament and of the Council, of 16 November 2005 amending Directive 2004/18/EC, on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts  
Directive 2004/17/EC of the European Parliament and of the Council, of 31 March 2004, coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.  
Council Directive 89/665/EEC, of 21 December 1989, on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts  
Council Directive 92/13/EEC, of 25 February 1992, coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors  
Commission Directive 2005/51/EC, of 7 September 2005, amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement

<sup>2)</sup> Act no. 219/2000 Coll., on the Property of the Czech Republic and its Representation in Legal Relations, as amended

1. it has been established or set up for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and
2. it is financed, for the most part, by the State or by another contracting authority, or is subject to the management supervision of the State or another contracting authority, or having an administrative, managerial or supervisory board, more than half of whose members are appointed or elected by the State or another contracting authority.

(3) ‘Subsidised contracting entity’ shall be understood as a legal or a natural person that awards a public contract, which is reimbursed by more than 50 % from financial means provided by the contracting authority, even through another person, in respect of

- (a) a public works contract, the estimated value of which equals to or is greater than the financial threshold laid down in the implementing legal regulation pursuant to § 12(1) for public works contracts and the subject-matter of such a public contract is
  1. the execution of public works concerning any of the activities referred to in Annex no. 3, or
  2. the execution of public works pursuant to § 9 concerning health care facilities, sports facilities, facilities designed for recreation and leisure time, schools, and buildings intended for administrative purposes, or
- (b) a public service contract relating to public works contract pursuant to § 2(3)(a), the estimated value of which is equal to or greater than the financial threshold laid down in the implementing legal regulation pursuant to § 12(1) for public service contracts.

(4) For the purposes of concluding a contract with a sub-contractor, an economic operator that has been awarded a public contract by the contracting authority shall not be considered to be a subsidised contracting entity.

(5) In the award of a public contract, the subsidised contracting entity shall act pursuant to the provisions of this Act applicable to the contracting authority; it shall be without prejudice to the provision of § 2(7).

(6) ‘Sector contracting entity’ shall be a person that pursues any of the relevant activities pursuant to § 4, if

- (a) it pursues such a relevant activity on the basis of a special or exclusive right, or
- (b) over which the contracting authority can exert a dominant influence, whether directly or indirectly; a dominant influence on the part of a public authority is presumed in case that
  1. it holds a majority of voting rights either by itself <sup>3)</sup> or on the basis of an agreement with another person, or
  2. it appoints or elects more than a half of the members of the entity’s statutory, administrative, supervisory or controlling body.

(7) Where a contracting authority or a subsidised contracting entity pursues one or more relevant activities pursuant to § 4, the provisions of the Act relating to the sector contracting entity shall be applicable thereto, provided that such a public contract is to be awarded in the context of the pursuit of any relevant activity.

(8) For the purposes of this Act, the grouping of several contracting entities referred to in § 2(2), § 2(3) or § 2(6) shall be also considered to be a single contracting entity, where they associate or group in another way for the purposes of common action aimed at the award of a public contract (hereinafter referred to as “the association of contracting entities”). In such a case, the contracting entities, prior to initiating the award procedure, shall be obligated to conclude an agreement in writing, where they have their mutual rights and obligations related to the award procedure provided for and where they lay down the manner of action conducted for and on behalf of the members of the association of contracting entities. Where a contracting authority or a subsidised contracting entity is the participant in such an association of

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<sup>3)</sup> E.g., § 12(1), Act no. 77/2002 Coll., on the Czech Railways PLC, Organisation of the State Railway Track Authority and Amending Act no. 266/1994 Coll., on Railways, as amended, and Act no. 77/1997 Coll., on Activities of State Enterprise, as amended

contracting entities, the provisions of this Act applicable to the contracting authority shall apply to such an association of contracting entities; it shall be without prejudice to the provision of § 2(7).

(9) Any association or another grouping of the contracting entity pursuant to § 2(2), § 2(3) or § 2(6), and a natural or a legal person that is not a contracting entity for the purpose of the award of a public contract shall be also considered to be a contracting entity. The provision of § (8)(third sentence) shall apply by analogy.

### § 3

#### Central Purchasing Body

(1) ‘Central purchasing body’ shall be the contracting authority, which conducts centralised awarding consisting in

- (a) acquiring supplies or services intended for another contracting entity that constitute the subject-matter of public contracts and that are subsequently sold to other contracting entities at a price equal or lower than that at which such supplies or services were acquired, or
- (b) conducting an award procedure and awarding a public supply contract, public service contract or public works contract on account of other contracting entities.

Prior to the initiation of centralised awarding, the contracting entities and the central purchasing body shall be obligated to conclude an agreement in writing where they have their mutual rights and obligations relating to such a centralised awarding provided for. By concluding the agreement in writing, the central purchasing body shall be conferred on the authorisation to conduct the centralised awarding in relation to the contracting entities concerned.

(2) The central purchasing body shall conduct centralised awarding pursuant to § 3(1) in accordance with the provisions of this Act applicable to the contracting authority. However, if it conducts such a centralised awarding exclusively for sector contracting entities or on their account, it shall proceed in accordance with the provisions of this Act applicable to the sector contracting entity.

(3) If a breach of this Act occurs in the course of the procedure pursuant to § 3(1), the central purchasing body shall be liable for such a breach of laws, unless the breach occurred by action or negligence on the part of the contracting entity for which or on account of which the centralised awarding has been conducted.

(4) If a public contract is awarded by the central purchasing body in compliance with this Act, it shall apply that the public contract is awarded in compliance with this Act also in relation to the contracting entity for which such a centralised awarding has been conducted.

(5) In the framework of central awarding pursuant to § 3(1)(a), the central purchasing body shall be entitled to acquire supplies or services even for itself.

### § 4

#### Relevant Activity

(1) For the purposes of this Act, ‘the relevant activity’ shall be understood as

- (a) in the gas sector<sup>4)</sup>
  - 1. production of gas intended for the purpose of provision of a service to the public,
  - 2. provision or operation of transmission or distribution networks intended to provide a service to the public,
  - 3. provision or operation of mining gas pipelines, or

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<sup>4)</sup> Act no. 458/2000 Coll., on Conditions for Conducting Business Activities and on the Exercise of State Administration in the Energy Sectors, and on Amendments to Certain Other Acts (the Energy Act), as amended

4. provision or operation of underground gas storage facility supporting the operation of transmission or distribution networks intended to provide a service to the public,
  - (b) in the heat sector<sup>4)</sup>
    1. production of heat intended for the purpose of provision of a service to the public, or
    2. provision or operation of heat distribution facility intended to provide heat to consumers,
  - (c) in the electricity sector<sup>4)</sup>
    1. production of electricity intended for the purpose of provision of a service to the public, or
    2. provision or operation of transmission or distribution networks intended to provide a service to the public,
  - (d) in the water management industry<sup>5)</sup>
    1. provision of water supply system intended to provide a service to the public for the purposes of operation of such a water supply system under separate legal regulations<sup>5)</sup> in connection with the production or supply of drinking water,
    2. operation of water supply system intended to provide a service to the public under separate legal regulations<sup>5)</sup> in connection with the production or supply of drinking water, or
    3. supply of drinking water to such water supply system pursuant to points 1 and 2,
  - (e) the activity of persons pursuing relevant activity pursuant to § 4(1)(d), if such an activity
    1. relates to water management projects, irrigation or land drainage, provided that the volume of water to be used for the supplies of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations, or
    2. is connected with the disposal of sewage through sewerage system intended to provide a service to the public or with treatment of sewage,
  - (f) the activity relating to the provision or operation of transport networks providing a service to the public in the field of transport by railway, tramway, trolleybus, or cable<sup>6)</sup> and the operation of public bus transport<sup>7)</sup> (hereinafter referred to as “the transport network”); the transport network shall be considered as existing where the activity pursuant to this subparagraph is pursued under conditions set forth by the relevant administrative body, in particular, under conditions relating to the provision or operation of the transport network, transport capacity or frequency of provision of such an activity,
  - (g) the activity relating to the provision of
    1. reserved postal services, which are or may be reserved under legal regulation of the European Communities<sup>8)</sup>, or
    2. other postal services, which may not be reserved under legal regulation of the European Communities<sup>8)</sup>;

‘postal services’ shall be understood as services consisting in clearance, sorting, routing and delivery of postal items, while the postal item shall be understood as an item addressed in the final form, irrespective of its weight and, in addition to items of correspondence, such items also include, in particular, books, catalogues, newspapers, and periodicals or any other merchandise,
  - (h) activities relating to the provision of other than postal services referred to in § 4(1)(g), if such services have been provided by a person which also provides any of the postal services pursuant to § 4(1)(g) and if the provision of postal services pursuant to § 4(1)(g) has not been simultaneously excluded from the scope of this Act pursuant to § 20; ‘other services than postal services’ shall be understood as
    1. services immediately relating to postal services, such as services preceding and subsequent to clearance or delivery, in particular, mailroom management services of either the sender or the addressee,

<sup>5)</sup> Act no. 274/2001 Coll., on Water Supply and Sewerage and Draining Systems for Public Use, and on Amendments to Certain Acts (the Water Supply Systems and Sewerage Systems Act), as amended

<sup>6)</sup> Act no. 266/1994 Coll., on Railways, as amended

<sup>7)</sup> Act no. 111/1994 Coll., on Road Transport, as amended

<sup>8)</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service. Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services

2. services immediately relating to postal services and provided entirely by electronic means, including secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail,
  3. services concerning postal items not included in § 4(1)(g), such as direct mail bearing no address,
  4. financial services as defined in Annex no.1, Category 6, and in § 18(1)(e), including in particular postal money orders and postal giro transfers,
  5. philatelic services, or
  6. logistics services, such as services combining physical delivery or warehousing with other non-postal functions,
- (i) activities pursued in the exploitation of specified geographical area for the purpose of
    1. exploring for or extracting oil, gas, coal or other solid fuels, or
    2. the provision and operation of airports<sup>9)</sup>, maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterways.

(2) Unless a contracting authority is involved, the following shall not be considered as the relevant activity for the purposes of this Act:

- (a) the supply of produced heat or gas, if
  1. it is supplied to networks allowing for the provision of a service to the public,
  2. the production of heat and gas is the unavoidable consequence of carrying out an activity other than that referred to in § 4(1),
  3. the supply is aimed only at the economic exploitation of heat or gas produced, and
  4. it amounts to not more than 20 % of the average turnover of the contracting entity for the preceding three years,
- (b) the supply of produced electricity or drinking water, if
  1. it is supplied to networks allowing for the provision of a service to the public,
  2. the production electricity or drinking water is carried out for the purpose of the pursuit of the activity other than that referred to in § 4(1),
  3. the supply depends only on the contracting entity's own consumption and
  4. it does not exceed 30 % of the total average production of electricity or drinking water of the contracting entity for the preceding three years.

(3) For the purposes of this Act, the operation of public bus transport pursuant to § 4(1)(f) shall not be considered a relevant activity either, where other persons are free to provide such a service under the same conditions within the whole territory of the State or in a delimited geographical area.

## § 5

### Concurrence of Activities

(1) 'Concurrence of activities' shall be understood as the situation where the subject-matter of the public contract awarded relates to the pursuit of the relevant activity, as well as to the pursuit of another activity of the contracting entity.

(2) In the case of concurrence of activities pursuant to § 5(1)

- (a) the contracting authority shall act in accordance with the provisions of this Act applicable to sector contracting entity only when the subject-matter of the public contract relates principally to the relevant activity pursued by the contracting authority; otherwise or if it is not possible to determine objectively whether the subject-matter of the public contract relates principally to the relevant activity, the contracting authority shall act in accordance with the provisions of this Act applicable to the contracting authority,
- (b) the sector contracting entity shall not act in accordance with the provisions of this Act if the subject-matter of the public contract relates principally to an activity other than the pursuit of relevant activity; otherwise or if it is not possible to determine objectively whether the subject-matter of the

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<sup>9)</sup> Act no. 49/1997 Coll., on Civil Aviation, and on Amendment and Supplement to Act no. 455/1991 Coll., on Trade Business Activities (the Trade Licensing Act), as subsequently amended, as amended

public contract relates principally to the pursuit of another activity, the sector contracting entity shall act in accordance with the provisions of this Act applicable to sector contracting entity.

## § 6

### **Principles of Procedure by Contracting Entity**

The contracting entity shall be obligated, while acting under this Act, to comply with the principles of transparency, equal treatment and non-discrimination.

## § 7

### **Public Contract**

(1) ‘Public contract’ shall be a contract for pecuniary interest concluded between the contracting entity and one or more economic operators, having as its subject-matter supply of products or the provision of services or the execution of public works. The public contract which the contracting entity shall be obligated to award under this Act shall be carried out on the basis of a contract in writing.

(2) Public contracts according to their subject-matter shall be classified as public supply contracts, public service contracts, and public works contracts (hereinafter referred to as “the types of public contracts”).

(3) Public contracts, according to their estimated value, shall be classified as above-the-threshold public contracts, below-the-threshold public contracts, and small-scale public contracts.

## § 8

### **Public Supply Contract**

(1) ‘Public supply contract’ shall be a public contract having as its subject-matter procurement of a good (hereinafter referred to as “the products”), in particular, in the form of the purchase, hire purchase, rental or lease with subsequent option to buy (leasing), of products.

(2) Public supply contract shall, in addition, be a public contract having as its subject-matter procurement of products pursuant to § 8(1), and which also covers, as an incidental matter, the provision of services or execution of public works consisting in siting and installation operations or rendering such products operational, where they do not involve the realisation of a work, unless such activities constitute a basic purpose of the public contract, however, they are necessary for the performance of a public supply contract.

## § 9

### **Public Works Contract**

(1) ‘Public works contract’ shall be a public contract having as its subject-matter

- (a) the execution of public works relating to any of the activities referred to in Annex no. 3,
- (b) the execution of public works pursuant to § 9(1)(a) and any related design or engineering activity, or
- (c) the realisation of a work<sup>10)</sup> which is the outcome of building or installation works and, if appropriate, also related design or engineering activities, and which, taken as a whole, is sufficient of itself to fulfil an economic or technical function.

(2) Public works contract shall, in addition, be a public contract having as its subject-matter the performance pursuant to § 9(1), and which also covers the supplies of products or, where appropriate, the provision of services which are necessary for the execution of the subject-matter of the public contract by the economic operator.

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<sup>10)</sup> Act no. 50/1976 Coll., on Spatial Planning and the Building Rules (the Building Act), as amended

(3) Public works procured by employment of intermediary or similar services, made available to the contracting entity by another person, shall be also considered as a public works contract.

## § 10

### Public Service Contract

(1) 'Public service contract' shall be a public contract other than public supply contract or public works contract.

(2) Public service contract shall, in addition, be a public contract having as its subject-matter the provision of services, and which also covers:

- a) the supply of products pursuant to § 8, where the estimated value of provided services exceeds the estimated value of the supplied products, or
- b) the execution of public works pursuant to § 9 where such works are only incidental to the principal subject-matter of the contract, however, the execution thereof is necessary for the performance of a public service contract .

(3) Services shall be subdivided into categories set out in Annexes nos. 1 and 2.

(4) If the subject-matter of a public contract covers the provision of services listed in Annex no. 1 as well as in Annex no. 2, the greater estimated value of services listed in the relevant Annex, shall be conclusive to determine whether it is a public service contract under Annex no. 1 or a public service contract under Annex no. 2.

## § 11

### Framework Agreement

(1) 'Framework agreement', for the purposes of this Act, shall be understood as an agreement in writing concluded for a definite period between a contracting entity and one or more tenderers, which provides for the terms and conditions concerning individual public contracts for the acquisition of recurring supplies, services or public works with an equivalent subject-matter of performance, awarded during the term of duration of the framework agreement with regard, in particular, to the price and quantity.

(2) The notion of 'public contract' used in this Act shall be construed as the notion encompassing the framework agreement pursuant to § 11(1), save as provided otherwise by this Act. The provisions of this Act relating to the awarding of public contracts shall also apply by analogy to the awarding of framework agreements, unless stipulated otherwise in this Act.

(3) The framework agreement, for the purposes of this Act, shall be also understood as an agreement meeting the conditions referred to in § 11(1) and entered into on the basis of the award procedure carried out in compliance with the legal regulation of the European Communities<sup>11)</sup> for the benefit of a sector contracting entity with registered office in the Czech Republic by its affiliated person which is a sector contracting entity in another Member State of the European Union.

## § 12

### Threshold Amounts for Public Contracts

(1) 'Above-the-threshold public contract' shall be understood as a public contract the estimated value of which pursuant to § 13, exclusive of value added tax, is equal to or greater than the financial threshold

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<sup>11)</sup> Annex III to Regulation (EC) No. 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) as amended by Commission Regulation (EC) No 2151/2003 of 16 December 2003 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV)

laid down in the implementing legal regulation for individual categories of contracting entities and types of public contracts or, if appropriate, categories of supplies or services. The implementing legal regulation shall, in addition, set forth the list of products procured by the Czech Republic – the Ministry of Defence, to which a separate financial threshold shall apply, and the amount of such a threshold.

(2) ‘Below-the-threshold public contract’ shall be understood as a public contract the estimated value of which is equal to or greater than CZK 2,000,000 exclusive of value added tax in the case of public supply contract or public service contract, or equal to or greater than CZK 6,000,000 exclusive of value added tax in the case of public works contract, and does not exceed the financial threshold pursuant to § 12(1).

(3) ‘Small-scale public contract’ shall be understood as a public contract the estimated value of which shall be less than CZK 2,000,000 exclusive of value added tax in the case of public supply contract or public service contract, or CZK 6,000,000 exclusive of value added tax in the case of public works contract.

### § 13

#### **Estimated Value of Public Contract**

(1) ‘Estimated value of a public contract’, for the purposes of this Act, shall be understood as an amount of financial liability estimated by the contracting entity and ensuing from the performance of the public contract that the contracting entity shall be obligated to set for the purposes of the award procedure, prior to its initiation. In establishing the estimated value, the price net of value added tax, shall be always conclusive.

(2) The contracting entity shall calculate the estimated value in compliance with the rules laid down in this Act and on the basis of data and information on contracts of equal or equivalent subject-matter; where such information is not available, the contracting entity shall establish the estimated value based on data and information obtained by means of market research of required performance, or, if appropriate, on the basis of data and information gained in another suitable manner. In establishing the estimated value, the date of dispatch for publication of the contract notice or the call for competition shall be conclusive.

(3) The contracting entity shall not subdivide the subject-matter of the public contract to lower thereby the estimated value below the financial thresholds set out in this Act.

(4) If a public contract is subdivided into lots, the total estimated values of all such lots of the public contract shall be conclusive for establishing the estimated value.

(5) If the contracting entity provides for rewards, prizes or payments to participants in the design contest or to participants in the competitive dialogue, the estimated value shall, in addition, include the total amount of such rewards, prizes or payments.

(6) If the contracting entity reserved in the tender conditions the option pursuant to § 99, the estimated value shall, in addition, include the estimated value of all public supply contracts, public service contracts and public works contracts required by the contracting entity in the exercise of such an option; in that case the contracting entity shall be simultaneously obligated to establish separately the estimated value of the public supply contract, public service contract or public works contract, and the estimated value of supplies, services or public works in the exercise of such an option.

(7) In the case of framework agreements and the dynamic purchasing system, the estimated value shall be the maximum estimated value of all public contracts to be awarded during the term of duration of the framework agreement or the dynamic purchasing system.

(8) When establishing the estimated value, the contracting entity shall be obligated to sum up all estimated values of all similar mutually related supplies or services to be procured in the course of the accounting period. This provision shall not apply to supplies or services the unit prices of which vary



during the accounting period, and the contracting entity acquires such supplies or services repeatedly according to its imminent requirements; the contracting entity shall, however, be always obligated to comply with the principles pursuant to § 6.

## § 14

### **Estimated Value of Public Supply Contract**

(1) The estimated value of a public supply contract shall be calculated on the basis of

- (a) the estimated amount of the total financial liability of the contracting entity for the term of duration of the supply contract, where the contract is to be concluded for a definite period, or
- (b) the estimated amount of the total financial liability of the contracting entity for 48 months, where the contract is to be concluded for an indefinite period or for a period the duration of which is impossible to specify precisely.

(2) The contracting entity shall also include the estimated residual price<sup>12)</sup> in the estimated value of a public supply contract established pursuant to § 14(1).

(3) The calculation of the estimated value of public supply contract which is regular in nature or which is intended to be renewed shall be based on the following

- (a) the actual price paid by the contracting entity during the preceding 12 months for supplies of the same or similar type, adjusted to take account of the changes in quantity or prices that can be expected to occur in the course of the following 12 months, or
- (b) the total of estimated values of all individual supplies to be procured by the contracting entity in the course of the following 12 months.

(4) The basis established pursuant to § 14(3) shall be adjusted for the purposes of fixing the estimated value of public contracts which are regular in nature or which are intended to be renewed depending on the term of duration of the contract under the rules referred to in § 14(1) and § 14(2).

## § 15

### **Estimated Value of Public Service Contract**

(1) The provisions of § 14(1), § 14(3), and § 14(4) shall apply by analogy to the calculation of the estimated value of a public service contract.

(2) The calculation of the estimated value of the public service contract shall be based on

- (a) in respect of insurance services: the amount of the premium as well as any other remuneration related to those services,
- (b) in respect of banking and financial services: the fees, commissions, interest, as well as any other remuneration related to those services,
- (c) in respect of design services: the fees, as well as any other payments related to drawing up the design documentation.

## § 16

### **Estimated Value of Public Works Contract**

(1) The estimated value of public works contracts shall be calculated under the rules referred to in § 13. The estimated value of public works contracts shall also include the estimated value of supplies, and in the case of sector contracting entity, also the estimated value of services, which are necessary to carry out the public works contract and which are made available to the economic operator by the contracting entity.

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<sup>12)</sup> § 29(2), Act no. 586/1992 Coll., on Income Tax, as amended

(2) The contracting entity shall not include the estimated value of supplies or services in the estimated value of public works contracts unless such supplies or services are necessary to carry out the subject-matter of the public works contract and their inclusion in the estimated value of public works contract would mean that they

- (a) would not have to be awarded in the award procedure in compliance with this Act, or
- (b) would be awarded pursuant to the provisions applicable to below-the-threshold public contracts, although by virtue of their estimated value they are above-the-threshold public supply or service contracts, or they would be concluded pursuant to the provisions applicable to small-scale public contracts, although by virtue of their estimated value they are below-the-threshold public supply or service contracts.

## § 17

### Definitions of Other Terms

(1) For the purposes of this Act, the following definitions shall apply

- (a) 'economic operator' shall be understood as a natural or a legal person that supplies products, provides services or executes works, if it has its registered office, place of business or permanent residence in the territory of the Czech Republic, or a foreign economic operator,
- (b) 'dynamic purchasing system' shall be understood as a completely electronic process for making commonly used purchases of commonly and generally available products, services or works, which is limited in duration and open throughout its validity to all economic operators which satisfy the criteria for the admission in the dynamic purchasing system and submit an indicative tender,
- (c) 'electronic auction' shall be understood as a process serving the evaluation of tenders in the framework of which the contracting entity makes use of electronic tools allowing for the submission of new prices, revised downwards or, if appropriate, new values of tenders, and which simultaneously allows to establish the ranking of tenders at any moment while using automatic evaluation methods,
- (d) 'identification data' shall be understood as a business name or name, registered office, legal form, identification number of a person (hereinafter referred to as "the identification number"), if it was assigned, in the case of a legal person, and a business name, or name and surname, place of business or, if appropriate, permanent residence, identification number, if it was assigned, in the case of a natural person,
- (e) 'qualifications of economic operator' shall be understood as a suitability of an economic operators to perform public contracts,
- (f) 'qualifications documentation' shall be understood as a documentation containing detailed requirements of the contracting entity regarding qualifications to be demonstrated by the economic operator,
- (g) 'contracting entity profile' shall be understood as a detailed address of an electronic tool in the Internet network used by the contracting entity to publish information concerning public contracts and allowing for a remote access,
- (h) 'affiliated person' shall be understood as a person over which a contracting entity can exert a dominant influence or which can exert a dominant influence on the contracting entity under separate legal regulation<sup>13)</sup>, or a person which, as the contracting entity, is subject to the dominant influence of another person under separate legal regulation<sup>13)</sup>,
- (i) 'sub-contractor' shall be understood as a person through which the economic operator is to perform a certain proportion of a public contract<sup>14)</sup> or which is to render certain things or rights to the economic operator to perform the public contract,
- (j) 'tenderer' shall be understood as an economic operator that submitted a tender in the award procedure,
- (k) 'award' shall be understood as a decision taken by the contracting entity in the award procedure on the selection of the most suitable tender and on the conclusion of a contract with the selected tenderer,

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<sup>13)</sup> § 66a of the Commercial Code

<sup>14)</sup> § 331 of the Commercial Code

- (l) ‘tender conditions’ shall be understood as all requirements of the contracting entity indicated in the contract notice or in the call for competition, tender documentation or any other documents containing the delimitation of the subject-matter of the public contract,
- (m) ‘awarding’ shall be understood as a binding procedure by the contracting entity under this Act in the award procedure, the purpose of which is the award of a public contract, until the contract has been concluded or until the award procedure is set aside; awarding shall be also understood as a procedure of the contracting entity aimed at the award of a public contract in the dynamic purchasing system, and the award procedure applied by the contracting authority in awarding a public contract based on the framework agreement,
- (n) ‘candidate’ shall be understood as an economic operator that submitted, within a fixed time limit, a request to participate in restricted procedure, in negotiated procedure with publication or in competitive dialogue, or an economic operator that was invited by the contracting entity to negotiate in the negotiated procedure without publication, to submit an indicative tender in the dynamic purchasing system, to submit a tender in a simplified below-the-threshold procedure, to submit a tender in a framework agreement procedure, or to confirm an interest to participate in the award procedure initiated by the publication of a periodic indicative notice,
- (o) ‘foreign economic operator’ shall be understood as a foreign person under separate legal regulation <sup>15)</sup> that supplies products, provides services or executes public works,
- (p) ‘special or exclusive right’ shall be understood as a right granted by law or by virtue of law by the relevant administration body, under which the pursuit of a relevant activity pursuant to § 4 is restricted to the benefit of one or more persons and that substantially affect freedom of other persons to pursue the relevant activity in question; special or exclusive right shall not be understood as a right which can be acquired by any person subject to the compliance with objective and non-discriminatory conditions set forth by separate legal regulation.

(2) The award of a public contract awarded by the contracting authority pursuant to § 2(2)(a) or § 2(2)(b), the estimated value of which is equal to or greater than CZK 500 million exclusive of value added tax, shall be considered as a sensitive activity under separate legal regulation. <sup>15a)</sup>

## § 18

### General Exclusions from Scope of Application of the Act

- (1) The contracting entity shall not be obligated to award public contracts under this Act when
  - (a) their subject-matter is declared to be secret <sup>16)</sup> or the publication of tender conditions of a public contract or, if appropriate, the performance of a public contract could endanger protection of classified information,
  - (b) they involve public contracts which are accompanied by special security measures <sup>17)</sup> under separate legal regulations or when the protection of essential security interests of the State <sup>18)</sup> so requires,
  - (c) they have as their subject-matter the production or purchase of armaments, arms systems, ammunition or procurement of other war material necessary to ensure defence and security of the State; the list of such a war material shall be laid down by implementing legal regulation,
  - (d) they have as their subject-matter the research and development services <sup>19)</sup> other than those where the research and development service provided is wholly remunerated by the contracting entity and the benefits accrue exclusively to the contracting entity for its use,

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<sup>15)</sup> § 21 of the Commercial Code

<sup>15a)</sup> § 80 of Act no. 412/2005 Coll., on Protection of Classified Information and Security Clearance, as amended

<sup>16)</sup> Act no. 412/2005 Coll., on Protection of Classified Information and Security Clearance

<sup>17)</sup> E.g., Act no. 239/2000 Coll., on the Integrated Rescue System and on Amendments to Certain Other Acts, as subsequently amended, Act no. 240/2000 Coll., on Crisis Management and on Amendment to Certain Other Acts (the Crisis Act), as subsequently amended, Act no. 241/2000 Coll., on Economic Measures for States of Crisis and on Amendment to Certain Related Acts, as subsequently amended, Act no. 153/1994 Coll., on Intelligence Services of the Czech Republic, as amended

<sup>18)</sup> E.g., Constitutional Act no. 110/1998 Coll., on Security of the Czech Republic, as amended by Constitutional Act no. 300/2000 Coll., Act no. 222/1999 Coll., on Arrangements for Defence of the Czech Republic, as amended

- (e) they have as their subject-matter the issue, sale, purchase or another transfer of securities or other financial instruments<sup>20)</sup> or other transactions conducted by the contracting entity for the purpose of raising financial means or capital or, if appropriate, financial services relating to such transactions,
- (f) they have as their subject-matter the services provided by the Czech National Bank in the exercise of its competence under separate legal regulations<sup>21)</sup>,
- (g) they have as their subject-matter the acquisition or rental of any existing immovable property, flats or non-residential premises or concerning rights thereon, with the exception of public contracts which have as their subject-matter financial services relating to such an acquisition or rental, irrespective of whether such financial services are to be provided prior to or following the conclusion of a contract on the acquisition or rental of existing immovable property, flats or non-residential premises or concerning rights thereon,
- (h) they involve public contracts awarded by a contracting authority, consisting in the acquisition, development, production or co-production of programme material intended for broadcasting or distribution, and public contracts for broadcasting time,
- (i) their principal purpose is to permit contracting entities to provide or exploit public telecommunications networks or to provide to the public telecommunications services under separate legal regulation<sup>22)</sup>,
- (j) they have as their subject-matter the provision of supplies, services or works to a contracting authority by a person which pursues substantial part of its activity for the benefit of the contracting authority and in which such a contracting authority holds exclusive property rights; the contracting authority shall hold exclusive property rights in a certain person where, in particular, it controls by itself all voting rights arising from equity holding in such a person<sup>23)</sup> or if such a person is entitled to manage assets of such a contracting authority, it possesses no assets of its own, and the management of assets of such a person is exclusively controlled by the contracting authority<sup>24)</sup>,
- (k) they involve public service contracts awarded by a contracting authority to another contracting authority or to more than one contracting entities subject to the exclusive right granted under or by virtue of separate legal regulation,
- (l) they have as their subject-matter the provision of arbitration and conciliation services,
- (m) they have as their subject-matter the services provided by experts or interpreters<sup>25)</sup> designated by the relevant authority for the purposes of judiciary, administrative, arbitration or another analogous proceedings, including penal pre-trial proceedings,
- (n) their subject-matter consists in the acquisition or lease of an enterprise,
- (o) awarding thereof shall be governed by special procedural rules and shall be awarded to a particular economic operator or operators pursuant to an international agreement relating to the stationing of foreign troops in the territory of the Czech Republic or the deployment of the armed forces of the Czech Republic in the territories of other States that are binding on the Czech Republic,
- (p) they are awarded pursuant to particular procedures or rules of an international organisation,
- (q) they are awarded pursuant to particular procedures laid down by an international agreement concluded between the Czech Republic and a State other than the Member State of the European Union and include supplies, services or works intended for joint implementation or exploitation of a project by contractual parties; the conclusion of such an agreement shall be communicated to the Commission of the European Communities (hereinafter referred to as “the European Commission”).

(2) The contracting entity shall not be obligated to award below-the-threshold public contracts under this Act

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<sup>19)</sup> Act no. 130/2002 Coll., on Aid to Research, Experimental Development and Innovations from Public Funds and on Amendment to Certain Related Acts (the Research, Experimental Development and Innovations Aid Act), as amended

<sup>20)</sup> Act no. 591/1992 Coll., on Securities, as amended

<sup>21)</sup> E.g., Act no. 6/1993 Coll., on the Czech National Bank, as subsequently amended

<sup>22)</sup> Act no. 127/2005 Coll., on Electronic Communications, and on Amendments to Certain Related Acts (the Electronic Communications Act)

<sup>23)</sup> § 61 of the Commercial Code

<sup>24)</sup> E.g., Act no. 77/1997 Coll., on the State Enterprise, as subsequently amended, Act no. 250/2000 Coll., on Budgetary Rules of Territorial Budgets, as amended, Act no. 219/2000 Coll., as amended

<sup>25)</sup> Act no. 36/1967 Coll., on Experts and Interpreters

- (a) for supplies or services directly relating to visits by constitutional representatives of other States and plenipotentiaries thereof to the Czech Republic,
- (b) for supplies or services provided to the Czech Republic by the Prison Service of the Czech Republic,
- (c) for supplies or services relating to granting humanitarian aid<sup>27)</sup>,
- (d) for supplies or services relating to the organisation of referendum or the organisation of elections under separate legal regulations<sup>28)</sup>,
- (e) where it is the intelligence service under separate legal regulations<sup>29)</sup>,
- (f) where it is the embassy of the Czech Republic abroad,
- (g) where they have as their subject-matter procurement, maintenance or renovation of the property of the Czech Republic abroad,
- (h) where they have as their subject-matter the acquisition of a good or a set of goods intended for a museum collection<sup>30)</sup>,
- (i) where they have as their subject-matter the production, purchase or repairs of armaments, weapons systems, ammunition or procurement of other war material for the armed forces of the Czech Republic; the list of such a war material shall be set forth by implementing legal regulation.

(3) The contracting entity shall not be obligated to award small-scale public contracts under this Act; the contracting authority shall, however, be obligated to comply with the principles set out in § 6.

## § 19

### Exclusions from Scope of Application for Sector Contracting Entities

(1) The sector contracting entity shall act upon this Act only in the case of above-the-threshold public contracts awarded in relation to the pursuit of relevant activity.

(2) This Act shall not apply to the awarding of above-the-threshold public contracts by the sector contracting entity, if they

- (a) are awarded for the purpose other than the pursuit of relevant activity pursuant to § 4 or for the purpose of the pursuit of relevant activity in the non-Member State of the European Union, unless the exploitation of networks or the geographical area in the European Communities is concerned; the sector contracting entity shall be obligated to notify the European Commission at its request of activities to which, in the opinion thereof, the exemptions under this subparagraph shall apply,
- b) are awarded for the purpose of resale or lease of the subject-matter of a public contract to third parties provided that such a sector contracting entity enjoys no special or exclusive right to sell or lease the subject-matter of the public contract, and other persons are free to sell or lease the subject-matter of the public contract under the same conditions as the sector contracting entity; the sector contracting entity shall be obligated to notify the European Commission at its request of categories of products or activities to which, in the opinion thereof, the exemptions under this subparagraph shall apply,
- c) involve public contracts for the purchase of water, if they are awarded by sector contracting entity pursuing relevant activity pursuant to § 4(1)(d),
- d) involve public contracts for supplies of energy or of fuels for the production of energy, if awarded by sector contracting entity pursuing the relevant activity pursuant to § 4(1)(a), § 4(1)(b) or § 4(1)(c) or pursuant to § 4(1)(i)(point 1), or
- e) involve public contracts for the purchase of support services under separate legal regulation<sup>4)</sup> to secure system services and for the purchase of electricity to cover losses incurred in the transmission

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<sup>27)</sup> Government Executive Order no. 463/2000 Coll., on setting the rules for participation in international rescue operations, granting and receiving humanitarian aid and reimbursement of expenses incurred by legal persons and natural persons pursuing business activities for protection of inhabitants, as amended

<sup>28)</sup> E.g., Act no. 247/1995 Coll., on Elections to the Parliament of the Czech Republic and Amending and Supplementing Certain Other Acts, as subsequently amended, Act no. 130/2000 Coll., on Elections to Self-Governing Regions Councils, and on Amendment to Certain Other Acts, as subsequently amended, Act no. 491/2001 Coll., on Elections to Municipal Councils and on Amendment to Certain Other Acts, as subsequently amended, Act no. 62/2003 Coll., on Elections to the European Parliament, and on Amendment to Certain Other Acts

<sup>29)</sup> Act no. 153/1994 Coll., on Intelligence Services of the Czech Republic, as amended

<sup>30)</sup> Act no. 122/2000 Coll., on Protection of Museum Collections, as amended

and distribution networks, where they are awarded by the operator of such transmission and distribution networks.

(3) Subject to the compliance with the conditions referred to in § 19(4), this Act shall not apply to the awarding of above-the-threshold public contracts by a sector contracting entity, if

- (a) they are awarded solely to an affiliated person, or
- (b) they are awarded jointly by a number of sector contracting entities for the purpose of the pursuit of relevant activity solely to a person which is an affiliated person in relation to at least one of such contracting entities.

(4) The conditions for the application of § 19(3) shall be understood as,

- (a) in the case of public supply contracts, the fact that at least 80% of the average turnover of an affiliated person with respect to supplies for the preceding 3 years derives from the provision of such supplies to persons with which it is affiliated,
- (b) in the case of public service contracts, the fact that at least 80% of the average turnover of an affiliated person with respect to services for the preceding 3 years derives from the provision of such services to persons with which it is affiliated,
- (c) in the case of public works contracts, the fact that at least 80% of the average turnover of an affiliated person with respect to works for the preceding 3 years derives from the provision of such works to persons with which it is affiliated.

(5) When, because of the later date on which the affiliated person was established or manifestly commenced activities, the average turnover is not available for the preceding 3 years, it will suffice if that person meets the conditions referred to in § 19(4) for the period of time since its establishment or, if appropriate, for the period of time since the commencement of the relevant activity, and there simultaneously exists an assumption for fulfilment of those conditions in future, particularly on the basis of business projections.

(6) Where more than one person affiliated with the sector contracting entity provide the same or similar supplies, services or works, the above percentages pursuant to § 19(4) shall be calculated taking into account the overall turnover deriving respectively from the provision of supplies, services or works by all of those affiliated persons.

(7) This Act shall not, in addition, apply to above-the-threshold public contracts awarded

- (a) jointly by a number of sector contracting entities (hereinafter referred to as “the joint sector contracting entity”) in relation to the pursuit of a relevant activity to one of these contracting entities,
- (b) by a sector contracting entity to the joint sector contracting entities, of which the sector contracting entity forms part and provided that the sector contracting entities have joined together for the purpose of the pursuit of relevant activity for the period of time of not less than 3 years; the relevant deed setting up such an association of sector contracting entities shall set forth the obligation of the sector contracting entities to maintain such an association for the period of time of not less than 3 years.

(8) The sector contracting entity, which has applied or applies any of the provisions of § 19(3) through § 19(7) shall notify the European Commission at its request of

- (a) business names, names, or names and surnames of all joint sector contracting entities,
- (b) the subject-matter and price of relevant above-the-threshold public contracts and
- (c) any means of proof that the relationship between the sector contracting entity and a person or persons that were awarded above-the-threshold public contracts complies with the provisions of § 19(3) to § 19(7).

## § 20

### Competition Relating to Pursuit of Relevant Activity

(1) This Act shall not apply to the awarding of public contracts relating to the pursuit of relevant activity by sector contracting entities, where the European Commission laid down under legal regulation

of the European Communities<sup>31)</sup> that such a relevant activity is directly exposed to competition on the market to which an access is not restricted.

(2) If there exists a justified assumption that any of the relevant activities referred to in § 4 is directly exposed to competition on the market to which access is not restricted, the competent Ministry<sup>32)</sup> through the Ministry for Regional Development (hereinafter referred to as “the Ministry”), or the relevant sector contracting entity, shall submit a request for decision on that matter to the European Commission. When submitting the request to the European Commission, the competent Ministry or the relevant sector contracting entity shall act under legal regulation of the European Communities<sup>33)</sup> and shall indicate in the submission all important facts relating, in particular, to the legal regulations or to any measures attaching to the assessment of whether such a relevant activity is directly exposed to competition on the market to which an access is not restricted.

(3) The competent Ministry shall be obligated, upon request of the sector contracting entity pursuing such a relevant activity, to assess whether there exists justified assumption pursuant to § 20(2) in relation to this activity.

(4) Where the request is submitted by the relevant sector contracting entity, a copy of the request shall be dispatched to the Ministry and to the competent Ministry.

(5) The sector contracting entity shall not be subject to this Act in awarding public contracts where they are to be awarded in relation to the pursuit of a relevant activity by the sector contracting entity, from the date of entry into effect of the decision of the European Commission pursuant to § 20(1) on the basis of which the relevant activity is exempted from the scope of application of this Act or, if appropriate, upon lapse of time laid down by the legal regulation of the European Communities<sup>31)</sup> for taking such a decision.

## **TITLE TWO**

### **AWARD PROCEDURES**

#### **CHAPTER I**

#### **TYPES AND CONDITIONS FOR USE OF AWARD PROCEDURES**

##### **§ 21**

##### **Types of Award Procedures**

(1) This Act provides for the following types of award procedures

- (a) open procedure (§ 27),
- (b) restricted procedure (§ 28),
- (c) negotiated procedure with publication (§ 29),
- (d) negotiated procedure without publication (§ 34),
- (e) competitive dialogue (§ 35),
- (f) simplified below-the-threshold procedure (§ 38).

(2) The contracting entity is entitled to award a public contract by open procedure or restricted procedure and, under the conditions laid down in § 22 and § 23, also by the negotiated procedure with publication or by negotiated procedure without publication.

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<sup>31)</sup> Art. 30 of Directive 2004/17/EC of the European Parliament and of the Council

<sup>32)</sup> Act no. 2/1969 Coll., on the Establishment of Ministries and Other Central Government Authorities, as subsequently amended

<sup>33)</sup> Commission Decision of 7 January 2005 on the detailed rules for the application of the procedure provided for in Article 30 of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

(3) The contracting authority is entitled to award a public contract, subject to the conditions laid down in § 24, by competitive dialogue and, under the conditions pursuant to § 25, by simplified below-the-threshold procedure.

## § 22

### Conditions for Use of Negotiated Procedure with Publication

(1) The contracting entity is entitled to award a public contract by negotiated procedure with publication where only incomplete or inadmissible tenders have been submitted in response to the previous open procedure, restricted procedure, simplified below-the-threshold procedure or competitive dialogue, insofar as the original tender conditions and terms have not been substantially altered and the negotiated procedure with publication is forthwith initiated following setting aside the previous award procedure. 'Incomplete tenders' shall be understood as the tenders that have not complied with the check on completeness pursuant to § 71(8). 'Inadmissible tenders' are

- (a) unsuitable tenders that have failed to meet the requirements of the contracting entity as regards the subject-matter of the public contract,
- (b) tenders that have failed to meet tender conditions in view of any requirements of the contracting entity other than as regards the subject-matter of the public contract,
- (c) tenders where the tenderer has failed to demonstrate the fulfilment of its qualifications,
- (d) tenders which are in contradiction with legal regulations in force,
- (e) tenders containing altered conditions of performance contradicting the requirements of the contracting entity or unjustified abnormally low tender price, or
- (f) tenders submitted after the expiry of the time limit for submission of tenders.

(2) The contracting entity shall not be obligated to publish a notice of negotiated procedure with publication pursuant to § 22(1), if tenders that complied with the requirements pursuant to § 69(5) were submitted in the initial award procedure within the time limit for the submission of tenders. In such a case, the contracting entity shall act pursuant to § 34(1) through § 34(3) by analogy. The contracting entity shall be obligated to dispatch the invitation to negotiate to all tenderers that have submitted tenders pursuant to § 22(2)(first sentence). In the invitation to negotiate the contracting entity shall, in addition, set a reasonable time limit to alter or supplement tenders or qualifications in a requisite extent; the tenderers shall submit altered or supplemented tenders or qualifications within such a time limit that shall simultaneously be the time limit for the submission of tenders. The provisions of § 29 through § 32 shall not be applicable.

(3) The contracting entity is, in addition, entitled to award a public contract by negotiated procedure with publication in

- a) exceptional cases, where there is a reasonable cause to believe that the tender prices of tenderers will be mutually incomparable in view of the nature of the supplies, services or works or the risks attaching thereto,
- b) the case of public service contracts, particularly in the case of insurance, banking, investment or design services, or auditing, interpreting, legal or other similar services where the nature of such services does not allow for sufficiently precise prior determination of the subject-matter of the public contract in such a way which would facilitate to award it by procedures set forth by this Act for open procedure or restricted procedure, namely in respect of the establishment of evaluation criteria as early as upon the initiation of open procedure or restricted procedure, or
- c) the case of public works contracts, in respect of public works carried out exclusively for the purpose of research or development and not for the purpose to establish commercial viability or to recover research and development costs.

(4) The sector contracting entity is entitled to award a public contract by negotiated procedure with publication also without the satisfaction of conditions referred to in § 22(1) through § 22(3).



(5) The contracting authority is entitled to award a public contract by negotiated procedure with publication even without the satisfaction of conditions referred to in § 22(1) through § 22(3), if it is a public service contract listed in Annex no. 2.

## § 23

### **Conditions for Use of Negotiated Procedure without Publication**

(1) The contracting entity is entitled to award a public contract by negotiated procedure without publication, if

- (a) no tenders have been submitted in response to the previous open procedure, restricted procedure, simplified bellow-the-threshold procedure or negotiated procedure with publication,
- (b) only unsuitable tenders pursuant to § 22(1)(a) have been submitted in the previous open procedure, restricted procedure, simplified bellow-the-threshold procedure or negotiated procedure with publication, or
- (c) no requests to participate in restricted procedure or negotiated procedure with publication have been submitted.

(2) The contracting entity, upon satisfaction of the conditions referred to in § 23(1), is entitled to award a public contract by negotiated procedure without publication provided that the tender conditions are not substantially altered and the negotiated procedure without publication is initiated forthwith following the setting aside of the previous award procedure.

(3) In the case of awarding public contracts pursuant to § 23(1), the contracting authority shall notify the European Commission of the use of this award procedure and of the grounds for the use thereof, if the European Commission so requests.

(4) The contracting entity is, in addition, entitled to award a public contract by negotiated procedure without publication, if

- (a) such a public contract, for technical or artistic reasons, for reasons connected with the protection of exclusive rights or for reasons ensuing from separate legal regulation, may be performed only by a particular economic operator, or
- (b) it is strictly necessary to award such a public contract, for reasons of extreme urgency brought about by event unforeseeable by the contracting entity and not attributable thereto, and such a public contract cannot be awarded by another type of award procedure given the lack of time.

(5) Public supply contracts may be awarded by negotiated procedure without publication

- (a) when the supplied products are manufactured purely for the purposes of research or development; this provision does not extend to quantity production to establish commercial viability for the contracting entity or to recover its research and development costs,
- (b) for additional deliveries by the original economic operator that the contract has already been concluded with, which are intended either as a partial replacement of normal supplies or as the extension of existing supplies where a change of economic operator would oblige the contracting entity to acquire material having different technical characteristics, which would result in incompatibility with the original supply or disproportionate technical difficulties in operation and maintenance of the original supply; the overall length of such an original contract as well as that of recurrent contract pursuant to this provision shall not exceed 3 years in the case of contracting authority, unless it is justified by specific circumstances,
- (c) for supplies quoted and purchased on a commodity exchange,
- (d) for the purchase of supplies on particularly advantageous terms, from an economic operator which is definitively winding up its business activities or in case that an economic operator is subject to insolvency proceedings, from a person authorised to dispose of assets, or
- (e) for products purchased at a price substantially lower than a normal market price and such a substantially lower price is offered by an economic operator only for a very short period of time; the contracting authority shall be entitled to award a public contract by negotiated procedure without publication under this subparagraph only in relation to a below-the-threshold public contract.

(6) The contracting entity is, in addition, entitled to award a public service contract by negotiated procedure without publication when such a contract follows a design contest, under the rules of which the public contract must be awarded to a selected participant or to one of selected participants in this contest. In the case of more selected participants in a design contest, the contracting entity shall be obligated to invite all selected participants to participate in the negotiated procedure without publication. The subject-matter of a public service contract following a design contest shall not be the execution itself of such a design. It shall not apply in the cases where it is justified by the nature of the subject-matter of such a design contest.

(7) The contracting entity is, in addition, entitled to a award public works contract or a public service contract by negotiated procedure without publication for

- (a) additional works or additional services not included in the original tender conditions, the need of which have arisen as a consequence of objectively unforeseen circumstances, and such additional works or additional services are necessary for the performance of the original works or for the provision of the original services, on the assumption that
  - 1. the award of the additional works or additional services is made to the economic operator performing such works or services,
  - 2. the additional works or additional services cannot be technically or economically separated from the original public contract without major inconvenience to the contracting entity or, although technically or economically separable, such additional works or additional services are strictly necessary for the completion of the subject-matter of the original public contract, and
  - 3. in the case of a contracting authority, the aggregate value of such additional public works or additional services shall not exceed 20 % of the price of the original public contract, or
- b) new public works, and in the case of a contracting authority also new services, consisting in public works or services equivalent to those contained in the original public contract and relating to the original public contract, provided that
  - 1. the award of the new works or new services is made to the economic operator performing such works or services,
  - 2. the original public contract was awarded by open procedure, restricted procedure, or simplified bellow-the-threshold procedure, and in the case of a sector contracting entity also by negotiated procedure with publication,
  - 3. the tender conditions of the original award procedure have contained the option of awarding a public contract for new public works or for new services by negotiated procedure without publication,
  - 4. the estimated value of a public contract for such new public works or for such new services was included in the estimated value of the original public contract, and
  - 5. the negotiated procedure without publication will be initiated within 3 years following the conclusion of a contract on the original public contract.

(8) The sector contracting entity is, in addition, entitled to award an above-the-threshold public contract by negotiated procedure without publication, in the case that

- (a) the public contract is awarded solely for the purposes of research or development but not for the purpose of ensuring profitability by the contracting entity or recovering costs incurred by the contracting entity relating to research or development, provided that the award of such a public contract does not prevent the award of subsequent public contracts to other economic operators; in such a case § 23(5)(a) shall not be applicable, or
- b) the public contract is awarded based on a framework agreement.

(9) In the cases referred to in § 23(4)(b), § 23(5)(d) or § 23(5)(e), § 23(7)(a) or § 23(8)(b), no framework agreement shall be awarded by negotiated procedure without publication.

### **Conditions for Use of Competitive Dialogue**

(1) The contracting authority is entitled to make use of a competitive dialogue for the award of public contracts with particularly complex subject-matter of performance, where the use of open procedure or restricted procedure is impossible in view of the nature of the subject-matter of the public contract.

(2) The public contract with particularly complex subject-matter of performance shall be understood as a public contract in respect of which the contracting authority is not objectively able to delimit precisely

- (a) technical specifications pursuant to § 46(4) and § 46(5), or
- (b) legal or financial requirements applicable to the performance of such a public contract.

### **§ 25**

#### **Conditions for Use of Simplified Below-the-Threshold Procedure**

The contracting authority is entitled to make use of a simplified below-the-threshold procedure for the award of

- a) a below-the-threshold public supply contract or below-the-threshold public service contract, or
- b) a below-the-threshold public works contract where the estimated value is equal to or less than CZK 20,000,000 net of value added tax.

## **CHAPTER II**

### **INITIATION AND COURSE OF AWARD PROCEDURE**

### **§ 26**

#### **Initiation of Award Procedure**

(1) The contracting entity shall initiate the award procedure by the dispatch of

- (a) a contract notice for publication, or
- b) a call for competition.

(2) For the purposes of this Act, ‘the contract notice’ shall mean

- (a) notice of open procedure, restricted procedure, negotiated procedure with publication or competitive dialogue published by a contracting authority,
- (b) notice of open procedure, restricted procedure or negotiated procedure with publication published by a sector contracting entity,
- (c) periodic indicative notice published by a sector contracting entity, where it is used as a manner to initiate restricted procedure or negotiated procedure with publication,
- (d) simplified notice in the case of awarding a public contract under the dynamic purchasing system.

(3) For the purposes of this Act, ‘the call for competition’ shall mean

- (a) invitation in writing to negotiate in negotiated procedure without publication,
- (b) invitation in writing to submit tenders in simplified below-the-threshold procedure,
- (c) invitation in writing to submit tenders in a procedure based on a framework agreement (§ 92).

(4) The contracting entity shall be obligated to publish the contract notice in a manner referred to in § 146 and § 147.

(5) If the contracting authority initiates the awarding of a below-the-threshold public contract by the procedure applicable to the awarding of an above-the-threshold public contract, it shall act pursuant to the provisions applicable to the awarding of an above-the-threshold public contract. If the contracting authority initiates the awarding of a small-scale public contract (§ 12(3)) by a procedure applicable to the awarding of a below-the-threshold public contract, it shall act pursuant to the provisions applicable to the awarding of a below-the-threshold public contract.

## § 27

### **Open Procedure**

The contracting entity shall make known its intention to award a public contract by open procedure to an unlimited number of economic operators by means of a notice of open procedure; the notice of open procedure shall be an invitation to submit tenders by economic operators and to demonstrate the fulfilment of qualifications.

## § 28

### **Restricted Procedure**

(1) The contracting entity shall make known its intention to award a public contract by restricted procedure to an unlimited number of economic operators by means of a notice of restricted procedure; the notice of restricted procedure shall be an invitation to submit requests to participate in such a restricted procedure and to demonstrate the fulfilment of qualifications.

(2) Candidates shall submit requests to participate in writing and demonstrate the fulfilment of qualifications within a fixed time limit. The contracting entity, after having assessed candidates' qualifications, shall invite the candidates that have demonstrated the fulfilment of qualifications to submit tenders. Where the contracting entity limited the number of candidates for participation in such a restricted procedure in the notice of restricted procedure, it shall invite to submit tenders only those candidates selected in compliance with § 61, in the case of a contracting authority, or in compliance with § 66, in the case of a sector contracting entity. The contracting entity is, in addition, entitled to indicate maximum number of candidates to be invited to submit tenders.

(3) The contracting authority shall be obligated to invite not less than 5 candidates to submit tenders. Where less than 5 requests to participate in restricted procedure or fewer requests to participate than the contracting authority indicated in the notice of restricted procedure have been submitted to the contracting authority, it is entitled to invite to submit tenders all candidates that have submitted their requests to participate and demonstrated the fulfilment of qualifications to the extent required. It shall apply even in the case when less than 5 candidates have demonstrated the fulfilment of qualifications.

(4) The sector contracting entity shall be obligated to invite not less than 3 candidates to submit tenders. Where less than 3 requests to participate in restricted procedure or fewer requests to participate than the contracting entity indicated in the notice of restricted procedure have been submitted to the sector contracting entity, it is entitled to invite to submit tenders all candidates that have submitted their requests to participate and demonstrated the fulfilment of qualifications to the extent required. It shall apply even in the case when less than 3 candidates have demonstrated the fulfilment of qualifications.

(5) The written invitation to submit tenders shall contain at least the following

- (a) tender documentation or conditions of access to or supply of the tender documentation pursuant to § 48,
- (b) information on publication of the notice of restricted procedure,
- (c) time limit for the submission of tenders; it shall not apply if the sector contracting entity fixes a time limit pursuant to § 41(4),
- (d) place for the submission of tenders,
- (e) information on the evaluation criteria pursuant to § 78, if such information is not indicated in the notice of restricted procedure or in the tender documentation, and
- (f) information on the language in which a tender may be submitted.

## § 29

### **Negotiated Procedure with Publication**

(1) The contracting entity shall make known its intention to award a public contract by negotiated procedure with publication by means of a notice of negotiated procedure with publication; the notice of negotiated procedure with publication shall be an invitation to submit a request to participate in negotiated procedure with publication and to demonstrate the fulfilment of qualifications.

(2) Candidates shall submit a written request to participate and demonstrate the fulfilment of qualifications within a fixed time limit. The contracting entity, after having assessed candidates' qualifications, shall invite the candidates that have demonstrated the fulfilment of qualifications, to submit tenders. Where the contracting entity limited the number of candidates for participation in such a negotiated procedure with publication in the notice of negotiated procedure with publication, it shall invite to submit tenders only those candidates selected in compliance with § 61, in the case of a contracting authority, or in compliance with § 66, in the case of a sector contracting entity. The contracting entity shall, in addition, be entitled to indicate a maximum number of candidates to be invited to submit tenders.

(3) The contracting entity shall be obligated to invite not less than 3 candidates to submit tenders. Where less than 3 requests to participate in the negotiated procedure with publication or fewer requests to participate than the contracting entity indicated in the notice of negotiated procedure with publication have been submitted to the contracting entity, it is entitled to invite to submit tenders all candidates that have submitted their requests to participate and demonstrated the fulfilment of qualifications to the extent required. It shall apply even in the case when less than 3 candidates have demonstrated the fulfilment of qualifications.

(4) The written invitation to submit tenders shall contain at least the following

- (a) tender documentation or conditions of access to or supply of the tender documentation pursuant to § 48,
- (b) information on publication of the notice of negotiated procedure with publication,
- (c) time limit for the submission of tenders; it shall not apply if the sector contracting entity fixes a time limit pursuant to § 41(4),
- (d) place for the submission of tenders,
- (e) information on the evaluation criteria pursuant to § 78, if such information is not indicated in the notice of negotiated procedure with publication or in the tender documentation,
- (f) number of tenderers to be invited by the contracting entity to negotiate about tenders where the contracting entity has decided to limit the number of candidates to be invited to negotiate; in such a case, the contracting entity shall indicate in the invitation whether it admits negotiations about tenders with lower number of tenderers than indicated, where insufficient number of tenders has been submitted or, after having assessed tenders submitted, lower number of tenders is to be evaluated than the number of tenders indicated,
- (g) manner and principles of negotiation about tenders with the tenderers,
- (h) manner of selection of tenderers for successive stages of negotiations if the contracting entity decides gradually to reduce the number of tenderers whose tenders are to be negotiated in individual stages, and
- (i) information on the language in which a tender may be submitted.

## § 30

### **Negotiations about Tenders in Negotiated Procedure with Publication**

(1) Following the opening of envelopes with tenders, and the assessment and evaluation of tenders pursuant to Chapter VII of this Act, the contracting entity shall notify in writing all tenderers whose tenders have been evaluated and that have not been excluded from the participation in the negotiated procedure with publication, of the preliminary outcome of the evaluation of the tenders. Simultaneously with making known the preliminary outcome of the evaluation of tenders, the contracting entity shall invite

in writing those tenderers to initial negotiations about tenders, and indicate the place, time, and language of such negotiations.

(2) If the contracting entity has indicated in the invitation to submit tenders that it will limit the number of tenderers to be invited to negotiate about their tenders, it shall invite only such a reduced number of tenderers to negotiate about their tenders. Restrictions referred to in § 29(4)(f) and § 29(4)(h) shall not be applicable simultaneously during the initial negotiations about tenders.

(3) The contracting entity shall be obligated to indicate in the notice of negotiated procedure with publication whether the negotiations about tenders are going to take place in successive stages in order gradually to reduce the number of tenderers to be invited to negotiate about their tenders. The contracting entity is entitled to conduct such negotiations in successive stages even if the number of tenderers is not going to be reduced in individual stages.

(4) The contracting entity is entitled to negotiate with tenderers about all conditions of performance contained in the tenders, in particular, about the conditions, which are the subject of evaluation. The contracting entity is not entitled to alter tender conditions in the course of negotiations about tenders.

(5) The contracting entity is entitled to entrust the evaluation committee, some of its members or any other person with negotiations about tenders. The provisions of § 74(7) and § 75(6)(first sentence) shall apply to those persons by analogy.

(6) In the course of negotiations about tenders, the contracting entity is not entitled to disclose to tenderers any information relating to the tender submitted by another tenderer without prior consent of such a tenderer, save for the current tender price.

(7) The contracting entity is entitled to negotiate about tenders with all tenderers simultaneously or separately.

(8) In the course of all negotiations about tenders, the contracting entity shall ensure compliance with the principles referred to in § 6.

## § 31

### **Negotiations about Tenders in Successive Stages of Negotiated Procedure with Publication**

(1) The tenderer shall be invited to each negotiation about tenders in writing, unless it took note of the venue and the date of the subsequent negotiations during previous session. The contracting entity shall indicate the venue, date and time of negotiations in the invitation letter.

(2) The contracting entity shall draw up a report on each negotiation about tenders, indicating all arrangements that might imply an alteration of the tender or draft contract (hereinafter referred to as “the report on negotiations”). The report on negotiations shall be signed by the contracting entity and the tenderer or tenderers participating in the negotiations about tenders.

(3) Upon signing each report on negotiations, the data and arrangements referred to in the report on negotiations shall become binding on the tenderer. Later arrangement referred to in the duly signed report on negotiations shall replace previous arrangement.

(4) The tenderer is entitled to inspect the report on negotiations, which it took part in, and make extracts from and copies thereof.

(5) Following the closure of each stage of negotiations about tenders, the contracting entity shall establish the ranking of the tenderers on the basis of the results of such negotiations. The contracting entity shall establish the ranking of the tenderers on the basis of the evaluation criteria pursuant to § 29(4)(e), invariably only by applying all evaluation criteria. The contracting entity shall be obligated to draw up a report on the establishment of such a ranking of tenderers, indicating the outcome of the evaluation of the

negotiations about tenders, the ranking of tenderers, and information on which tenderers will be invited to participate in the successive stage of negotiations (hereinafter referred to as “the report on the final outcome of evaluation”).

(6) The contracting entity shall be obligated to dispatch the report on the final outcome of evaluation to all tenderers with which the negotiations about tenders have been conducted in a given stage of negotiations, not later than within 5 working days from the closure of each stage of negotiations.

(7) The contracting entity is entitled to advise the tenderers prior to the initiation of any stage of negotiations about tenders that it is the final stage of negotiations about tenders; the contracting entity is entitled to agree any time thereon with all tenderers in writing.

(8) The provisions of § 31(2) through § 31(5) shall, in addition, apply by analogy in case that only one stage of negotiations with tenderers is carried out.

## § 32

### **Modification of Draft Contract in Negotiated Procedure with Publication**

(1) The tenderer that took the first position in the ranking based on the outcome of negotiations about tenders, shall submit its modified draft contract to the contracting entity not later than within 7 days from the delivery of the report on the final outcome of evaluation, unless agreed on otherwise with the contracting entity. The contracting entity shall be obligated to forward to such a tenderer copies of all reports on negotiations about the tender thereof, together with the report on the final outcome of evaluation.

(2) The modified draft contract pursuant to § 32(1) shall be in conformity with the outcome of negotiations about the tender submitted by such a tenderer and, besides provisions contained in the original tender that have not been prejudiced by the outcome of negotiations, it shall include all arrangements as indicated in the reports on negotiations relating to that tenderer. The modified draft contract shall replace the original draft contract contained in the tender.

(3) The contracting entity is entitled to require that in justified cases additional documents be supplemented to the modified draft contract.

(4) The contracting entity shall reject the modified draft contract, if it is not in conformity with the outcome of negotiations about the tender and if it fails to include the arrangements indicated in the reports on negotiations or if it contains provisions other than those contained in the original tender submitted by the tenderer that have not been prejudiced by the negotiations about its tender. In such a case, the contracting entity shall set out a reasonable time limit to modify or supplement the draft contract.

(5) If the selected tenderer fails to submit the modified draft contract within the time limit pursuant to § 32(1) or if it fails to modify or supplement the modified draft contract pursuant to § 32(4), the contracting entity is entitled to invite the tenderer that took – in descending order - second, or, where appropriate, third position in the ranking based on the outcome of negotiations about respective tenders, to submit its modified draft contract. In relation to these tenderers § 32(1) through § 32(4) shall apply thereto by analogy.

(6) The provisions of § 32(1) through § 32(5) shall not apply, unless the conditions in the tenderer's draft contract were altered as a result of the negotiations about tenders.

## § 33

### **Special Provisions Concerning Negotiations by Sector Contracting Entity Prior to Submission of Tenders**

(1) The sector contracting entity, in the case of a public contract with particularly complex subject-matter of performance (§ 24(2)), after having assessed qualifications of candidates and contingent reduction of the number thereof, is entitled to invite in writing the candidates to take part in negotiations for the purpose of identification and delimitation of one or more suitable solutions capable of meeting their needs and requirements.

(2) The sector contracting entity is, in addition, entitled to specify its needs, requirements as well as other facts in a special documentation.

(3) The written invitation pursuant to § 33(1) shall contain at least the special documentation pursuant to § 33(2) or any conditions for access to or supply of such a special documentation, or tender documentation or any conditions for access to or supply of the tender documentation; in such a case § 29(4)(a) shall not apply.

(4) The provisions of § 36(2) through § 36(7) shall apply by analogy to negotiations conducted between sector contracting entities and candidates invited pursuant to § 33(1).

(5) The sector contracting entity shall invite to submit their tenders all candidates that it has invited to negotiate. Besides the essentials pursuant to § 29(4), § 37(1) and § 37(2) shall be applicable to the invitation to submit tenders by analogy.

## § 34

### **Negotiated Procedure without Publication**

(1) The contracting entity shall make known its intention to award a public contract by negotiated procedure without publication to a candidate or to a limited number of candidates by means of a written invitation to negotiate in the negotiated procedure without publication.

(2) The written invitation to negotiate in negotiated procedure without publication shall contain at least the following

- (a) information on the subject-matter of a public contract,
- (b) identification data of the contracting entity,
- (c) tender documentation or conditions of access to or supply of the tender documentation pursuant to § 48; it shall not apply to cases pursuant to § 23(4)(b), § 24(5)(c) through § 24(5)(e) and § 24(8)(b),
- (d) unless the negotiations are to be conducted in writing, the venue, day and time of initial negotiations, including the language of such negotiations,
- (e) manner and principles of negotiations where the negotiations are to be conducted with more than one candidate,
- (f) deadline for last possible negotiations, in particular, with a view to the time limit for the submission of tenders,
- (g) time limit and place for the submission of tenders, if such information is not to be agreed upon only in the framework of negotiations,
- (h) requirements to demonstrate the fulfilment of qualifications, where the contracting entity is entitled to require such a demonstration of the fulfilment of qualifications, and
- (i) data on the evaluation criteria pursuant to § 78, unless they are indicated in the tender documentation and where the public contract is not awarded to a single candidate.

(3) If the negotiated procedure without publication involves negotiations with more than one candidate, the contracting entity shall not disclose any data concerning conditions or proposals forwarded by another candidate without prior consent thereof.



(4) In the framework of negotiations the contracting entity is, in addition, entitled to negotiate with the invited candidates other conditions for the performance of a public contract than those indicated in the invitation to negotiate or, if appropriate, in the tender documentation. However, any alteration of the conditions for the performance of a public contract shall continue to meet the assumptions for the use of negotiated procedure without publication (§ 23).

## **§ 35**

### **Competitive Dialogue**

(1) The contracting authority shall make known its intention to award a public contract by a competitive dialogue to an unlimited number of economic operators by means of a notice of competitive dialogue; the notice of competitive dialogue shall be an invitation to submit requests to participate in a competitive dialogue and to demonstrate the fulfilment of qualifications.

(2) The contracting authority, besides the notice pursuant to § 35(1), is, in addition, entitled to specify its needs, requirements and other facts in the competitive dialogue documentation.

(3) Candidates shall submit their requests to participate in writing and demonstrate the fulfilment of qualifications within a set time limit. The contracting authority, after having assessed candidates' qualifications, shall invite the candidates that have demonstrated the fulfilment of qualifications to participate in the competitive dialogue. If the contracting authority limited the number of candidates in competitive dialogue in the notice of competitive dialogue, it shall invite only those candidates to participate in the competitive dialogue that have been selected in compliance with § 61. The contracting authority is, in addition, entitled to set out a maximum number of candidates to be invited to participate in the competitive dialogue.

(4) The contracting authority shall be obligated to invite not less than 3 candidates to participate in the competitive dialogue. Where less than 3 requests to participate or fewer requests to participate than the contracting authority has indicated in the notice of competitive dialogue have been submitted to the contracting authority, the contracting authority is entitled to invite to participate in the competitive dialogue all candidates that have submitted requests to participate and demonstrated the fulfilment of qualifications to the extent required. It shall also apply in the case when less than 3 candidates have demonstrated the fulfilment of qualifications.

(5) The written invitation to participate in the competitive dialogue shall contain at least the following

- (a) competitive dialogue documentation or conditions for access to or supply of the competitive dialogue documentation; the provision of § 48 shall be applied by analogy,
- (b) information on publication of the notice of competitive dialogue,
- (c) data on the evaluation criteria pursuant to § 78, unless they are indicated in the notice of competitive dialogue or in the competitive dialogue documentation, and
- (d) information on the venue and time of initial negotiations in competitive dialogue and on the language of such negotiations.

(6) The contracting authority is entitled to award prizes to participants in the competitive dialogue where the solution submitted thereby was selected by the contracting authority as capable to meet its needs and requirements. The contracting authority is, in addition, entitled to award payments to participants in competitive dialogue relating to their participation in such a competitive dialogue. The contracting authority shall indicate the conditions for the award of such prizes or other payments in the notice of competitive dialogue or in the competitive dialogue documentation.

## **§ 36**

### **Course of Competitive Dialogue**

(1) The contracting authority shall conduct negotiations with selected candidates with the aim to identify and define one or more suitable solutions capable of meeting its needs and requirements.

(2) The contracting authority may discuss all aspects of the public contract with selected candidates in the course of competitive dialogue.

(3) The contracting authority shall be obligated to ensure compliance with the principles pursuant to § 6 in the course of competitive dialogue. The contracting authority shall, in addition, ensure confidentiality of proposed solutions or other confidential information communicated by the candidate in competitive dialogue. The contracting entity is entitled to reveal proposed solutions or confidential information only if it obtained a prior written consent of the candidate that has proposed such a solution or where the candidate is concerned by such information.

(4) The contracting authority shall be obligated to draw up a report on each negotiation in competitive dialogue indicating the subject and outcome of such negotiations.

(5) The contracting authority shall not be obligated to negotiate simultaneously with all selected candidates, however, it shall be obligated to maintain an analogous subject and scope of such negotiations with all candidates.

(6) The contracting authority is entitled to retain an option in the notice of competitive dialogue to conduct such a competitive dialogue in successive stages, in order gradually to reduce the number of solutions to be discussed during the competitive dialogue. The contracting authority shall be obligated to reduce the number of solutions pursuant to the previous sentence only by applying the evaluation criteria as published in the notice of competitive dialogue or in the competitive dialogue documentation, invariably following the completion of the individual stages.

(7) The contracting authority shall conduct the dialogue until it is able to select and identify one or more solutions capable of meeting its needs and requirements.

## § 37

### **Invitation to Submit Tenders in Competitive Dialogues**

(1) The contracting authority shall inform in writing all candidates that have been invited to take part in the competitive dialogue on the completion of negotiations in such a competitive dialogue, and simultaneously invite in writing those candidates to submit tenders.

(2) The contracting authorities shall duly define in the invitation to submit tenders one or more solutions for the performance of a public contract that has been selected by the contracting entity in the competitive dialogue.

(3) If the contracting authority has selected more than one solution, it shall apply that it has authorised variants of tenders.

(4) The invitation to submit tenders shall contain at least the following

- (a) time limit for the submission of tenders,
- (b) place for the submission of tenders,
- (c) information on the language or languages of tender, and
- (d) tender documentation or conditions of access to or supply of the tender documentation pursuant to § 48.

## § 38

### **Simplified Below-the-Threshold Procedure**

(1) In the simplified below-the-threshold procedure the contracting authority shall invite not less than 5 candidates to submit tenders and to demonstrate the fulfilment of qualifications by means of an invitation in writing.

(2) The contracting authority shall make public the written invitation pursuant to § 38(1) in a suitable manner for the entire duration of the time limit for the submission of tenders.

(3) The obligation pursuant to § 38(2) is met, if the contracting authority makes the invitation in writing known on its own contracting entity profile, which has been published in the information system pursuant to § 157. More detailed conditions relating to the manner of the advertisement of such a contracting entity profile shall be set out by implementing legal regulation.

(4) The contracting authority shall not invite the same range of candidates repeatedly, unless it is justified by the subject-matter of a public contract or by other specific circumstances.

(5) The written invitation pursuant to § 38(1) shall contain at least the following

- (a) identification data of the contracting authority,
- (b) information on the type and subject-matter of a public contract,
- (c) tender documentation or conditions of access to or supply of the tender documentation pursuant to § 48,
- (d) place and time limit for the submission of tenders,
- (e) requirements on demonstration of the fulfilment of qualifications pursuant to § 62, unless they constitute part of the tender documentation,
- (f) data on the evaluation criteria pursuant to § 78, unless they are indicated in the tender documentation.

(6) The contracting entity shall be obligated to receive and evaluate the tender of an economic operator that has not been invited in the manner pursuant to § 38(1).

## **CHAPTER III**

### **TIME LIMITS**

#### **§ 39**

##### **Time Limits in Award Procedure Applicable to Contracting Authority**

(1) All time limits established by the contracting authority shall be fixed with a view to the subject-matter of a public contract.

(2) The time limits for the submission of requests to participate in restricted procedure, negotiated procedure with publication or competitive dialogue, and of required evidence demonstrating the fulfilment of qualifications shall not be

- (a) in respect of above-the-threshold public contracts
  1. less than 37 days, or
  2. less than 15 days in restricted procedure and negotiated procedure with publication, if it is impossible to fix the time limit pursuant to item 1 for objective reasons of urgency,
- (b) in respect of below-the-threshold public contracts
  1. less than 15 days, or
  2. less than 10 days in restricted procedure and negotiated procedure with publication, if it is impossible to fix the time limit pursuant to item 1 for objective reasons of urgency.

(3) The time limits for the submission of tenders shall not be

- (a) in respect of above-the-threshold public contracts
  1. less than 52 days in open procedure,
  2. less than 40 days in restricted procedure, or
  3. less than 10 days in restricted procedure, if it is impossible to fix the time limit pursuant to item 2 for objective reasons of urgency,

- (b) in respect of below-the-threshold public contracts
  1. less than 22 days in open procedure,
  2. less than 15 days in restricted procedure and in simplified below-the-threshold procedure, or
  3. less than 7 days in restricted procedure and in simplified below-the-threshold procedure, if it is impossible to fix the time limit pursuant to item 2 for objective reasons of urgency.

(4) The time limits for the submission of tenders shall be fixed by the contracting authority in

- (a) the invitation to submit tenders in the case of competitive dialogue, negotiated procedure with publication and in simplified below-the-threshold procedure,
- (b) the invitation to negotiate in the case of negotiated procedure without publication, , if it is not agreed upon in the framework of negotiations,
- (c) the invitation to submit a tender in the case of a procedure based on a framework agreement pursuant to § 92.

(5) The time limits shall start running as from the day following the date of initiation of an award procedure.

## **§ 40**

### **Changes in Time Limits in Award Procedure Applicable to Contracting Authority**

(1) If the contracting authority has published a prior information notice pursuant to § 86, and if such a prior information notice has been sent out for publication or the notice of the publication of the prior information notice has been sent out for publication on the contracting authority profile within the time limit of not less than 52 days and not greater than 12 months prior to the dispatch of the contract notice, the contracting authority, upon compliance with the conditions for publication pursuant to § 146(3)(second sentence), is entitled to reduce the time limit for the submission of tenders in respect of above-the-threshold public contracts to 36 days in open procedure or restricted procedure, and up to 22 days in open procedure or restricted procedure, where such a time limit cannot be fixed on objective grounds.

(2) If the contract notice has been sent out by electronic means (§ 149), the contracting authority is entitled to reduce

- (a) the time limits pursuant to § 39(2)(a)(1), § 39(3)(a)(1) and the time limits referred to § 40(1) in the case of open procedure, by 7 days,
- (b) the time limit pursuant to § 39(2)(a)(2), by 5 days.

(3) If the contracting authority allows for unrestricted and full direct remote access to the tender documentation from the date of publication of the notice of open or restricted procedure, where the Internet address, at which such an access to the tender documentation can be obtained, is indicated, the contracting authority is entitled to reduce the time limit for the submission of tenders by 5 days.

(4) Reductions of time limits pursuant to § 40(1) through § 40(3) are cumulative.

(5) If, for whatever reason, the tender documentation or any additional information to the tender documentation has not been supplied within the time limit pursuant to § 48 and § 49, or if tenders may only be submitted after a visit to the site of performance, the contracting authority shall extend the time limit for the submission of tenders accordingly; the contracting authority shall make such a fact known to all economic operators pursuant to § 49(3).

(6) Where the contracting authority makes any alterations of the published notification pursuant to § 147(8) it shall be simultaneously obligated to extend accordingly the time limit for the submission of requests to participate in the award procedure or the time limit for the submission of tenders, subject to nature of the alteration made.

## § 41

### **Time Limits in Award Procedure Applicable to Sector Contracting Entity**

(1) Time limits established by sector contracting entity shall be fixed with a view to the subject-matter of the public contract.

(2) The time limit for the delivery of requests to participate in restricted procedure or in negotiated procedure with publication or the time limit for delivery of confirmation of an interest to participate pursuant to § 88(3), including all required evidence demonstrating the fulfilment of qualifications, in respect of above-the-threshold public contracts, shall not be

- (a) less than 37 days, or
- (b) less than 22 days, where the time limit cannot be fixed pursuant to § 41(2)(a) for objective reasons of urgency.

(3) The time limit for the submission of tenders in respect of an above-the-threshold public contract in open procedure shall not be less than 52 days.

(4) The time limit for the submission of tenders in restricted procedure and in negotiated procedure with publication may be fixed on the basis of an agreement between the sector contracting entity and all candidates that have been invited to submit tenders. The time limit fixed shall be identical for all invited candidates.

(5) The sector contracting entity shall fix the time limit for the submission of tenders in restricted procedure and in negotiated procedure with publication, where it took decision not to exercise the option to fix the time limit pursuant to § 41(4) or failed to reach an agreement with the candidates. In such a case, the time limit shall not be less than 24 days and in justified cases less than 10 days.

(6) The time limit for the submission of tenders in negotiated procedure without publication shall be fixed by the sector contracting entity in the invitation to negotiate.

(7) The time limits shall start running as from the day following the date of initiation of an award procedure.

## § 42

### **Changes in Time Limits in Award Procedure Applicable to Sector Contracting Entity**

(1) If the sector contracting entity has published a periodic indicative notice pursuant to § 87, and if such a periodic indicative notice has been sent out for publication or the notice of the publication of the periodic indicative notice has been sent out for publication on the sector contracting entity profile within a time limit of not less than 52 days and not greater than 12 months prior to the dispatch of the notice of open procedure, the sector contracting entity, upon compliance with the conditions for publication pursuant to § 146(3)(second sentence), is entitled to reduce the time limit for the submission of tenders in open procedure in respect of above-the-threshold public contracts to 36 days, and up to 22 days where such a time limit cannot be fixed on objective grounds.

(2) Where the information on the initiation of an award procedure has been sent out by electronic means (§ 149), the sector contracting entity is entitled to reduce the time limit by 7 days for the submission of tenders in open procedure, the time limit for the submission of requests to participate in restricted procedure or negotiated procedure with publication or the time limit for the confirmation of an interest to participate.

(3) If the sector contracting entity allows for unrestricted and full direct remote access to the tender documentation from the date of publication of the contract notice, where the Internet address at which such an access to the tender documentation can be obtained, is indicated, the sector contracting entity is entitled

to reduce the time limit for the submission of tenders by 5 days. It shall not apply when the time limit for the submission of tenders has been agreed upon pursuant to § 41(4).

(4) Reductions of time limits pursuant to § 42(1) through § 42(3) are cumulative, if the sector contracting entity complies with the minimum time limits laid down in § 42(5) through § 42(7).

(5) The time limit for the submission of tenders in open procedure shall, under no circumstances, be less than 22 days, and in the case that the notice of open procedure is delivered by electronic means (§ 149), it shall under no circumstance be less than 15 days.

(6) The time limit for the delivery of requests to participate in restricted procedure or in negotiated procedure with publication or the time limit for the delivery of confirmation of an interest to participate pursuant to § 88(3) shall, under no circumstances, be less than 15 days.

(7) The time limit for the submission of tenders in restricted procedure or negotiated procedure with publication shall under no circumstances be less than 10 days, unless it has been fixed on the basis of an agreement pursuant to § 41(4).

(8) The provisions of § 40(5) and § 40(6) shall apply to sector contracting entity by analogy.

## § 43

### Award Period

(1) 'Award period' shall be a time limit throughout which the tenderers are bound by their tenders. The award period shall be set out by the contracting entity, in particular, with a view to the type of award procedure and the subject-matter of public contract.

(2) The contracting entity shall be obligated to indicate the total award period or the expiry thereof by the date in the contract notice or in the call for competition.

(3) The award period shall start running from the date of expiry of the time limit for the submission of tenders and cease to run by the date of delivery of the notice by the contracting entity of the selection of the most suitable tender. The award period shall be extended in respect of tenderers that the contracting entity is entitled to conclude a contract with in compliance with this Act, until the conclusion of a contract pursuant to § 82(3) or until setting aside the award procedure.

(4) The award period shall be suspended where any objections have been raised. The deadline of award period set out pursuant to § 43(2) by the date shall be extended by the period of time for which the award period is suspended. The course of the award period shall continue to run starting as from the day of delivery to the economic operator of a decision on such objections taken by the contracting entity. The award period shall, in addition, be suspended for the period of time during which the contracting entity is not allowed under this Act to enter into a contract.

(5) The award period shall be suspended where a proposal to review an act of the contracting entity is lodged with the Office for Protection of Competition (hereinafter referred to as "the Office"). The deadline of award period set out pursuant to § 43(2) by the date shall be extended by the period of time for which the award period is suspended. The course of the award period shall continue to run starting as from the day following the date of entry into legal force of the ruling of the Office concerning such a proposal. It shall apply by analogy in case that the administrative procedure for the review of practices of the contracting entity has been initiated by the Office *ex officio*; in such a case the time limit shall be suspended starting as from the date of initiation of proceedings on the review of practices of a contracting entity. The award period shall, in addition, be suspended for the period of time during which the contracting entity, under the ruling of the Office, is to take a corrective measure pursuant to § 118(1); the contracting entity shall be obligated to inform the tenderers and candidates concerned.

## CHAPTER IV

### TENDER DOCUMENTATION AND TECHNICAL SPECIFICATIONS

#### § 44

##### Tender Documentation

(1) 'Tender documentation' shall be the totality of documents, data, requirements, and technical specifications of the contracting entity delimiting the subject-matter of a public contract in detail necessary for drawing up a tender. The contracting entity shall be responsible for correctness and completeness of the tender documentation.

(2) The tender documentation may contain detailed specifications of elements indicated in the contract notice or in the call for competition.

(3) The tender documentation shall contain at least the following

- (a) commercial terms and conditions, including terms of payment, or, if appropriate, objective conditions under which the tender price may be exceeded,
- (b) technical specifications (§ 45), where it is justified by the subject-matter of a public contract,
- (c) requirements to be met by the variants of tenders pursuant to § 70, where they were authorised by the contracting entity,
- (d) requirement regarding the calculation method of a tender price,
- (e) conditions and requirements regarding the drawing up of a tender,
- (f) method to be applied in the evaluation of tenders on the basis of evaluation criteria, and
- (g) other requirements of the contracting entity regarding the performance of a public contract.

(4) The tender documentation of public works contracts shall, in addition to essentials referred to in § 44(3), contain the following

- (a) relevant documentation under separate legal regulation<sup>34)</sup> or any other technical documentation drawn up in details specifying the subject-matter of a public contract to the extent necessary for crafting a tender,
- (b) inventory of public works, supplies and services together with a statement of measurements, in an electronic format equally.

(5) In the case of public works contracts pursuant to § 9(1)(b) or § 9(1)(c) the part of which is a design activity, the documents pursuant to § 44(4) may be replaced with technical specifications in terms of performance and functional requirements pursuant to § 46(4) or § 46(5).

(6) The contracting entity is entitled to require in the tender documentation that the tenderer indicate in its tender the proportion of the public contract it intends to subcontract to one or more sub-contractors, and state identification data of each sub-contractor. The contracting entity is entitled to retain a requirement in the tender documentation that a certain proportion of the subject-matter of a public contract shall not be performed by a sub-contractor; in such a case the contracting entity shall be obligated to indicate in the contract notice or in the call for competition that it intends to retain such a requirement. However, the contracting entity shall not be allowed to preclude wholly an option to perform a public contract by means of a sub-contractor.

(7) In the case of a public service contract or public works contract, the contracting entity is entitled to indicate in the tender documentation an administrative body or another entity wherefrom the economic operators may obtain information concerning the obligations arising from separate legal regulations relating to the employment protection provisions and to the working conditions, environmental protection

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<sup>34)</sup> Act no. 50/1976 Coll., as amended  
Decree no. 132/1998 Coll., implementing certain provisions of the Building Act, as amended by Decree no. 492/2002 Coll.

or taxes which are in force in the locality in which the services are to be provided or public works carried out, and which shall be applicable to such services or public works; the economic operator shall indicate in its tender that it has taken account of such information when drawing up its tender.

(8) The contracting entity is, in addition, entitled to state in tender conditions any requirements relating to special conditions as regards the performance of a public contract concerning, in particular, social, employment and environmental considerations.

(9) Unless justified by the subject-matter of the public contract, the tender documentation, and in particular, technical specifications, shall not introduce any requirements or refer to business names, designations, or names and surnames, specific indication of products and services which is distinctive for a certain person or, where appropriate, for an organisational branch thereof, to patents of inventions, utility models, industrial designs, trademarks or indication of origin, with the effect of favouring or eliminating certain economic operators or certain products. Such a reference shall be permitted on an exceptional basis where a sufficiently precise and intelligible description of the subject-matter of the public contract pursuant to § 45 and § 46 is not possible. In such a case, the contracting entity shall allow for the use of qualitatively and technically equivalent solutions for the performance of the public contract.

## **§ 45**

### **Technical Specifications**

(1) 'Technical specifications', in the case of public supply contracts or public service contracts shall be understood as a definition of characteristics and requirements regarding supplies or services, established objectively and unequivocally in a manner such that it fulfils the use, for which it is intended by the contracting entity.

(2) 'Technical specifications', in the case of public works contracts shall be understood as a totality of technical prescriptions defining required technical characteristics and requirements regarding public works and, at the same time, supplies and services relating to such public works, which permit the subject-matter of the public works contract to be described unequivocally and objectively in a manner such that it fulfils the use for which it is intended by the contracting entity.

(3) Technical specifications shall not be defined in such a manner to give certain economic operators competitive advantage or create unjustified obstacles to competition. If it is justified by the subject-matter of the public contract, the contracting entity, in defining technical specifications, shall take into account accessibility criteria for people with disabilities or design for all users.

(4) The contracting entity shall establish technical specifications by one of the manners referred to in § 46(1), § 46(2), § 46(4), and § 46(5).

(5) The sector contracting entity shall supply, at the request of an economic operator, technical specifications usually referred to in the public supply contracts, public service contracts, and public works contracts awarded thereby, or technical specifications that it intends to use in the case of the public contract referred to in the periodic indicative notice. If the technical specifications result from documents, which are available to economic operators, the sector contracting entity is entitled to refer to such documents.

## **§ 46**

### **Definition of Technical Specifications**

(1) The contracting entity shall formulate the technical specifications by reference to the following documents and in the following order



- (a) Czech technical standards <sup>35)</sup> transposing European standards or other national technical standards transposing European standards,
- (b) European technical approvals <sup>36)</sup>,
- (c) common technical specifications laid down in accordance with a procedure recognised by the Member States of the European Union which has been published in the Official Journal of the European Union,
- (d) international standards, or
- (e) various types of technical documents other than the standards adopted by European standardisation bodies.

(2) Where it is impossible to formulate technical specifications pursuant to § 46(1), the contracting entity shall define them with reference to

- (a) Czech technical standards <sup>35)</sup>,
- (b) technical engineering certificates <sup>37)</sup>, or
- (c) national technical specifications relating to design, assessment and execution of works and construction works, and use of the products.

(3) In respect of each reference pursuant to § 46(1) or § 46(2) the contracting entity shall, in addition, allow for the use of other, qualitatively and technically equivalent solutions.

(4) The contracting entity is entitled to establish technical specifications in terms of performance or functional requirements that may include environmental characteristics. Such requirements and characteristics shall be sufficiently precise to allow tenderers to determine unequivocally the subject-matter of the contract and to draw up comparable tenders.

(5) The contracting entity is entitled to establish technical specifications also in terms of performance or functional requirements pursuant to § 46(4), by making reference to the documents mentioned in § 46(1) or § 46(2) as a means of presuming conformity with such performance or functional requirements or, for certain characteristics, by referring to the documents mentioned in § 46(1) or § 46(2), and by referring to performance and functional requirements pursuant to § 46(4) for other characteristics.

(6) Where the contracting entity establishes technical specifications by using the option to make reference to the documents pursuant to § 46(1) or § 46(2), it is not entitled to reject a tender on the grounds that the tendered supplies or services do not comply with the specifications established in this way, where the economic operator proves that tendered supplies or services satisfy in an equivalent manner the requirements defined in the technical specifications. The economic operator shall prove this fact in the tender, in particular, by a technical dossier of the manufacturer or a test report issued by a recognised body.

(7) Where a contracting entity establishes technical specifications in terms of performance or functional requirements referred to in § 46(4), it is not entitled to reject tendered products, services or public works which comply with the documents referred to in § 46(1), if such documents address the performance or functional requirements established by the contracting entity. The economic operator shall prove this fact in the tender, in particular, by a technical dossier of the manufacturer of products or a test report issued by a recognised body.

(8) Where the contracting entity lays down environmental characteristics in terms of performance or functional requirements pursuant to § 46(4), it is entitled to use the detailed specifications or any parts thereof, as defined by European, or national or by other systems for the award of eco-labels <sup>38)</sup>, provided

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<sup>35)</sup> § 4 of Act no. 22/1997 Coll., on Technical Requirements Regarding Products and on Amendment and Supplement to Certain Acts, as amended by Act no. 71/2000 Coll. and Act no. 205/2002 Coll.

<sup>36)</sup> Art. 8 of Council Directive 89/106/EEC of 21 December 1998 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products

<sup>37)</sup> § 3 of Government Executive Order no. 163/2002 Coll., laying down technical requirements regarding selected construction products

<sup>38)</sup> E.g., Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme

that those specifications are appropriate to define the characteristics of products or services that constitute the subject-matter of the public contract.

(9) The contracting entity is entitled to indicate that the products and services bearing the eco-label pursuant to § 46(8) are presumed to comply with the technical specifications laid down in the tender documentation. However, the contracting entity shall accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report issued by a recognised body.

(10) 'Recognised bodies' shall be understood as test and calibration laboratories or certification or inspection bodies, which comply with applicable European standards. The contracting entity shall, in addition, be obligated to accept test reports issued by recognised bodies established in other Member States of the European Union.

## § 46a

### **Specific Technical Specifications**

In the case of public supply contracts, the subject-matter of which are constituted by the vehicles of N1, N2, N3, M1, M2 and M3 categories<sup>38a)</sup>, the contracting entity shall lay down specific technical specifications, which take account of energy and ecological operational impacts. The impact shall be understood as energy consumption, CO<sub>2</sub> emissions and NO<sub>x</sub>, NMHC and particulate matter emissions. The manner of setting out specific technical specifications shall be laid down by implementing legal regulation.

## § 47

### **Classification of Subject-Matter of Public Contract**

In defining the subject-matter of a public contract in the contract notice or in the call for competition the contracting entity shall be obligated to make use of the classification of products, services and works according to the reference classification applicable to public contracts on the basis of the directly applicable regulation of the European Communities<sup>39)</sup>.

## § 48

### **Supply of Tender Documentation to Economic Operators**

(1) If the contracting entity fails to allow for unrestricted and full direct remote access to the tender documentation in open procedure or in simplified below-the-threshold procedure, it shall furnish forthwith the tender documentation in the paper form to the economic operator at its request. The contracting entity shall forward at the request of the economic operator the tender documentation in the electronic form not later than within 6 days in open procedure and not later than within 2 working days in simplified below-the-threshold procedure from the date of delivery of such a written request by the economic operator.

(2) In addition, the economic operator that has failed to ask the contracting entity for the supply of the tender documentation or that has failed to collect the tender documentation is entitled to submit a tender.

(3) The contracting entity in restricted procedure, negotiated procedure with publication and negotiated procedure without publication, and the contracting authority in competitive dialogue, shall

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<sup>38a)</sup> Act no. 56/2001 Coll., on Conditions of Road Traffic and on Amendments to Act no. 168/1999 Coll., on Motor Third-Party Liability Insurance and on Amendments to Related Acts (the Act on Motor Third-Party Liability Insurance), as amended. Decree no. 341/2002 Coll., on Approval of Technical Eligibility and on Technical Conditions of Vehicles for Road Traffic, as amended

<sup>39)</sup> Regulation (EC) no. 2195/2002 of the European Parliament and of the Council, as amended by Commission Regulation no. 2151/2003

- (a) supply the tender documentation in the form of a supplement to the invitation to submit tenders,
- (b) indicate in the invitation to submit tenders a reference to the site of access to the tender documentation, where remote access thereto is available,
- (c) furnish or forward the tender documentation in a paper or electronic form to the economic operator not later than within 6 days from the date of delivery of a written request of the economic operator for the supply thereof, where the request has been delivered not later than 8 days prior to the expiry of the time limit for the submission of tenders, or
- (d) indicate the place from which the tender documentation may be requested, where it is available from a person other than the contracting entity; in such a case that person shall furnish or forward the tender documentation in a paper or electronic form to the economic operator not later than within 6 days from the date of delivery of a written request of the economic operator for the tender documentation, where the request has been delivered not later than 8 days prior to the expiry of the time limit for the submission of tenders.

(4) In case that the contracting entity in restricted procedure and in negotiated procedure with publication and the contracting authority in competitive dialogue fails to make the qualifications documentation public in a manner allowing for a remote access to such a qualifications documentation, it shall furnish or forward forthwith the qualifications documentation in the paper or electronic form not later than within 6 working days from the date of delivery of a written request by an economic operator. The request by the economic operator in writing for the supply of the qualifications documentation shall be delivered to the contracting entity not later than within 8 working days prior to the expiry of the time limit for the submission of requests to participate.

(5) The contracting entity is entitled to reserve the right in the tender conditions to require reimbursement of costs relating to the supply of the tender documentation. In such a case, it shall indicate in tender conditions the amount of such costs for the reproduction of the tender documentation, the postage and packing charges, as well as the payment conditions relating to the supply of the tender documentation. However, the contracting entity shall not require any reimbursement of such costs in excess of normal costs.

## **§ 49**

### **Additional Information to Tender Conditions, Visit to Site of Performance**

(1) The economic operator is entitled to require in writing from the contracting entity additional information relating to tender conditions.

(2) The contracting entity shall forward forthwith the additional information relating to tender conditions and, if appropriate, supporting documents, not later than within 5 working days from the date of delivery of the request by the economic operator pursuant to § 49(1), and in the case of award procedure where the time limits are laid down pursuant to § 39(3)(a)(item 3), § 39(3)(b)(item 2) or § 39(3)(b)(item 3) or pursuant to § 41(5), not later than within 3 working days from the date of delivery of the request pursuant to § 49(1). The contracting entity in restricted procedure, negotiated procedure with publication and in competitive dialogue shall forward the additional information relating the requirements in respect of qualifications not later than within 5 working days from the date of delivery of the request by an economic operator pursuant to § 49(1), and in the case of an award procedure where the time limits are laid down pursuant to § 39(2)(a)(item 2) or pursuant to § 39(2)(b), not later than within 3 working days following the delivery of the request pursuant to § 49(1).

(3) The additional information, including the exact wording of the request pursuant to § 49(1) shall be forwarded by the contracting entity simultaneously to all economic operators that have required for the supply of tender documentation or that have been supplied with such a tender documentation. In the case of additional information relating to the requirements in respect of qualifications in restricted procedure, negotiated procedure with publication and in competitive dialogue, the contracting entity shall be obligated to do so only in relation to the economic operators that have requested for the supply of qualifications documentation or that have been supplied with such qualifications documentation. The contracting entity shall, in addition and invariably, publish the additional information, including the exact wording of the

request, in a manner by which it has facilitated an access to the tender or qualifications documentation, allowing for a remote access.

(4) The contracting entity is entitled to supply the economic operators with additional information relating to tender conditions even without any prior request. § 49(2) and § 49(3) shall be applicable by analogy.

(5) If it is indispensable for the performance of a public contract or for drawing up a tender, the contracting entity shall allow for a visit to the site of performance at the time fixed by the contracting entity in tender conditions to economic operators interested in the submission of tenders in open procedure, in simplified bellow-the-threshold procedure or to all candidates that have been invited to submit their tenders in restricted procedure, in negotiated procedure with publication or to participate in competitive dialogue. The contracting entity shall allow for a visit to the site of performance not later than 12 days prior to the expiry of the time limit for the submission of tenders; in the case of award procedure where the time limits are laid down pursuant to § 39(3)(a)(item 3) or pursuant to § 41(5), not later than 7 days prior to the expiry of the time limit for the submission of tenders, and in the case of award procedure where the time limits are laid down pursuant to § 39(3)(b)(item 2) or § 39(3)(b)(item 3), not later than 5 days prior to the expiry of the time limit for the submission of tenders. In respect of simplified bellow-the-threshold procedure the contracting entity shall make known the necessary information on allowing for the visit to the site of performance on the contracting entity profile.

## **CHAPTER V**

### **QUALIFICATIONS**

#### **Division 1**

#### **Requirements of Contracting Authority for Qualifications**

##### **§ 50**

##### **Scope of Qualifications**

(1) Qualifications shall be satisfied by the economic operator which demonstrates the fulfilment of

- (a) basic qualifications prerequisites pursuant to § 53,
- (b) professional qualifications prerequisites pursuant to § 54,
- (c) economic and financial qualifications prerequisites pursuant to § 55 and
- (d) technical qualifications prerequisites pursuant to § 56.

(2) The contracting authority shall set out the requirements regarding demonstration of the fulfilment of qualifications in the contract notice or in the call for competition. A detailed specification of such requirements may be indicated in the qualifications or tender documentation.

(3) The contracting authority shall be obligated to confine the scope of required qualifications solely to information and evidence immediately relating to the subject-matter of the public contract.

(4) The economic and financial qualifications prerequisites and technical qualifications prerequisites shall not be the subject of evaluation criteria.

##### **§ 51**

##### **Demonstration of Fulfilment of Qualifications**

(1) The contracting authority shall be obligated to require demonstration of the fulfilment of qualifications by the economic operator, unless stipulated otherwise by this Act.

(2) Demonstration of the fulfilment of qualifications under the requirements of the contracting authority and established in compliance with this Act shall be a prerequisite for the assessment and evaluation of the tenderer's tender in open procedure, evaluation of the candidate's indicative tender in dynamic purchasing system, invitation to a candidate to submit a tender in restricted procedure or in negotiated procedure with publication, participation of a candidate in competitive dialogue, and a prerequisite for the conclusion of a contract in simplified below-the-threshold procedure.

(3) The fulfilment of qualifications shall not be demonstrated in negotiated procedure without publication in respect of cases referred to in § 23(4)(b), in § 23(5)(c) through § 23(5)(e) or in § 23(6). In the other cases of negotiated procedure without publication, the contracting authority is entitled to require demonstration of the fulfilment of qualifications by the invited candidate; in such a case, demonstration of qualifications shall be a prerequisite for the conclusion of a contract.

(4) Where the economic operator is unable to demonstrate the fulfilment of certain part of qualifications required by the contracting authority pursuant to § 50(1)(b) through § 50(1)(d) to the full extent, it is entitled to demonstrate the fulfilment of lacking qualifications by means of a sub-contractor. In such a case the economic operator shall be obligated to submit to the contracting authority

a) evidence demonstrating the fulfilment of the basic qualifications prerequisite pursuant to § 53(1)(j) and professional qualifications prerequisite pursuant to § 54(a) by a sub-contractor and

b) a contract concluded with a sub-contractor, which implies the obligation of the sub-contractor to render the performance intended for the performance of the public contract by the economic operator, or to render things or rights that the economic operator is entitled to have at its disposal in the framework of the performance of the public contract, namely to the extent which is not less than that of fulfilment of qualifications demonstrated by the sub-contractor pursuant to § 50(1)(b) through § 50(1)(d).

The economic operator is not entitled to demonstrate the fulfilment of qualifications pursuant to § 54(a) by means of a sub-contractor.

(5) If the subject-matter of the public contract is to be performed jointly by several economic operators and they submit or intend to submit a joint tender to that effect, each economic operator shall be obligated to demonstrate the fulfilment of the basic qualifications prerequisites pursuant to § 50(1)(a), and the professional qualifications prerequisite pursuant to § 54(a) to the full extent. The fulfilment of qualifications pursuant to § 50(1)(b) through § 50(1)(d), shall be demonstrated jointly by all economic operators. In the case of the demonstration of the fulfilment of lacking qualifications by means of a sub-contractor, § 51(4) shall be applied by analogy.

(6) If the subject-matter of the public contract is to be performed pursuant to § 51(5) jointly by several economic operators, they shall be obligated to submit to the contracting authority, together with evidence demonstrating the fulfilment of qualifications prerequisites, an agreement containing a commitment that all of those economic operators will be held liable jointly and severally to the contracting authority and to third parties in respect of any legal relationships established in the context of the public contract, for the entire term of performance of the public contract as well as throughout the duration of other liabilities arising from the public contract. The requirement regarding the commitment pursuant to § 51(6)(first sentence) that the economic operators be held liable jointly and severally, shall be applicable, unless stipulated otherwise by separate legal regulation or by the contracting entity. If the economic operators group together to submit a joint tender in restricted procedure, negotiated procedure with publication or competitive dialogue following demonstration of the fulfilment of qualifications, they shall submit the agreement pursuant to this paragraph not later than on the submission of such a joint tender.

(7) Unless stipulated otherwise by separate legal regulation, a foreign economic operator shall demonstrate the fulfilment of qualifications in a manner under the legal order in force in the country of registered office, place of business or place of residence thereof, invariably to the extent required by this Act and by the contracting authority. Where particular evidence is not issued under the legal order in force in the country of registered office, place of business or place of residence of a foreign economic operator,

the foreign economic operator shall be obligated to demonstrate the fulfilment of such part of qualifications by solemn declaration. Where the obligation, the meeting of which is to be demonstrated in the framework of qualifications, is not established in the country of registered office, place of business or place of residence of a foreign economic operator, it shall take solemn declaration to this effect. Evidence demonstrating the fulfilment of qualifications shall be submitted by a foreign economic operator in the original language with an officially authenticated translation into the Czech language attached, unless stipulated otherwise by the contracting entity in tender conditions or by an international agreement binding upon the Czech Republic; it shall apply even in case that the economic operator with registered office, place of business or place of permanent residence in the territory of the Czech Republic demonstrates the fulfilment of qualifications by evidence in a language other than the Czech language. The obligation to attach to the evidence the officially authenticated translation into the Czech language shall not apply to the evidence in the Slovak language.

(8) The fulfilment of qualifications prerequisites may be, in addition, demonstrated by virtue of electronic means pursuant to § 149, where it is feasible in view of the nature of relevant qualifications prerequisites.

## **§ 52**

### **Time Limits for Demonstration of Fulfilment of Qualifications**

(1) In open procedure and in simplified below-the-threshold procedure, the economic operator shall be obligated to demonstrate the fulfilment of qualifications within the time limit for the submission of tenders. In the case of open procedure involving the setting up of the dynamic purchasing system, the economic operator shall be obligated to demonstrate the fulfilment of qualification not later than by the date of submission of an indicative tender.

(2) In restricted procedure, negotiated procedure with publication and in competitive dialogue, the economic operator shall be obligated to demonstrate the fulfilment of qualifications within the time limit for the submission of a request to participate.

(3) In negotiated procedure without publication, the economic operator shall be obligated to demonstrate the fulfilment of qualifications within the time limit set out by the contracting authority in the invitation to negotiate, however, not later than by the date of conclusion of a contract.

(4) The provisions of § 52(1) through § 52(3) shall be without prejudice to § 57(1) and § 59(4).

## **§ 53**

### **Basic Qualifications Prerequisites**

(1) Basic qualifications prerequisites shall be met by the economic operator that

- (a) has not been finally convicted of a criminal offence committed for the benefit of an organized crime group, of a criminal offence of participation in an organized crime group, legalisation of proceeds of criminal activity, complicity, accepting bribes, bribery, indirect bribery, fraud, loan fraud, including the cases of preparation for and attempts of accessoryship in such a criminal offence, or if the conviction on committing such a criminal offence has been expunged; this prerequisite shall be met by the statutory body or by each member of the statutory body in the case of a legal person, and where a legal person acts as a statutory body or a member of the statutory body of an economic operator, this prerequisite shall be met by the statutory body or by each member of the statutory body of such a legal person; if a tender or request to participate is submitted by a foreign legal person by means of its organisational branch, the prerequisite pursuant to this subparagraph shall be met, besides the stated persons, also by the head of the organisational branch; such a basic qualifications prerequisite shall be met by the economic operator both in relation to the territory of the Czech Republic and to the country of registered office, place of business or residence thereof,

- (b) has not been finally convicted of a criminal offence, where the facts of the case are related to the object of business activities of the economic operator under separate legal regulations or where the conviction on committing such a criminal offence has been expunged; this condition shall be met by the statutory body or by each member of the statutory body in the case of legal person, and where a legal person acts as a statutory body or a member of the statutory body of an economic operator, this prerequisite shall be met by the statutory body or by each member of the statutory body of such a legal person; if a tender or request to participate is submitted by a foreign legal person by means of its organisational branch, the prerequisite pursuant to this subparagraph shall be met, besides the stated persons, also by the head of the organisational branch; such a basic qualifications prerequisite shall be met by the economic operator both in relation to the territory of the Czech Republic and to the country of registered office, place of business or residence thereof,
- (c) has not accomplished elements of unfair competition practices in the form of bribery under separate legal regulation<sup>40)</sup> in the preceding 3 years,
- (d) is not or has not been subject to insolvency proceedings involving its assets, in which the declaration of bankruptcy has been issued or insolvency petition has not been rejected due to lack of assets on the part of the economic operator to cover the costs of insolvency proceedings, or the declaration of bankruptcy has not been set aside because of the economic operator's insufficient property or in respect of which the receivership has been imposed on under separate legal regulation<sup>41)</sup> in the preceding 3 years,
- (e) is not being wound up,
- (f) has no outstanding tax arrears registered in tax records, both in the Czech Republic and in the country of registered office, place of business or residence of an economic operator,
- (g) has no outstanding arrears in respect of payments and penalties of public health insurance, both in the Czech Republic and in the country of registered office, place of business or residence of an economic operator,
- (h) has no outstanding arrears in respect of payments and penalties of the social security insurance and contribution to the State employment policy, both in the Czech Republic and in the country of registered office, place of business or residence of an economic operator,
- (i) has not been found guilty for grave professional misconduct in the preceding 3 years or has not been imposed a disciplinary punishment under separate legal regulations, where demonstration of professional qualifications under separate legal regulations is required pursuant to § 54(d); when the economic operator pursues such an activity through a person in authority or any other person liable for the activity of an economic operator, this prerequisite shall be applicable to those persons, (and)
- (j) is not enrolled on the black list of economic operators banned to participate in the performance of public contracts,
- (k) submits the list of all associates and members in the case of a legal person,
- (l) has submitted the list of employees or members of statutory bodies who have been working for the contracting entity in the preceding 3 years and have been in the position with decision making powers in respect of public contracts, and
- (m) has issued only registered shares and has submitted the up-to-date list of shareholders within the time limit pursuant to § 52 of this Act, if it holds the form of a joint stock company.

(2) The economic operator shall prove the fulfilment of basic qualifications prerequisites pursuant to § 53(1) by furnishing

- (a) an extract from the Penal Register [§ 53(1)(a) and § 53(1)(b)],
- (b) a statement of relevant Tax Authority, and a solemn declaration as regards the excise tax [§ 53(1)(f)],
- (c) a statement of relevant authority or institution [§ 53(1)(h)],
- (d) a solemn declaration [§ 53(1)(c) through § 53(1)(e) and § 53(1)(g), §53(1)(i) through § 53(1)(l)].

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<sup>40)</sup> § 49 of the Commercial Code

<sup>41)</sup> E.g., Act no. 328/1991 Coll., on Bankruptcy and Arrangements with Creditors (the Insolvency Act), as amended

## § 54

### Professional Qualifications Prerequisites

The economic operator shall prove the fulfilment of professional qualifications prerequisites by furnishing

- (a) an extract from the Commercial Register, if it is enrolled thereon or an extract from any other analogous register <sup>42)</sup>, if it is enrolled thereon,
- (b) evidence of possession of a licence to pursue business activities under separate legal regulations to the extent corresponding to the subject-matter of the public contract, particularly, evidence proving relevant trade authorisation or licence,
- (c) evidence issued by a professional self-governing chamber or any other professional organisation proving membership thereof in such a chamber or another organisation, if such a membership is essential for the performance of a public service contract under separate legal regulations <sup>43)</sup>, and
- (d) evidence attesting professional competence of the economic operator or any other person through which the economic operator assures professional competence, where it is indispensable for the performance of the public contract under separate legal regulations <sup>44)</sup>.

## § 55

### Economic and Financial Qualifications Prerequisites

(1) The contracting authority is entitled to require production of one or more pieces of the following evidence to demonstrate the fulfilment of economic and financial qualifications prerequisites by the economic operator:

- (a) an insurance policy, the subject of which consists in a professional risk indemnity insurance, concluded by the economic operator,
- (b) the latest balance sheet drawn up under separate legal regulations <sup>45)</sup> or a certain part of such a balance sheet, or
- (c) a statement of the overall turnover of the economic operator established under separate legal regulations <sup>46)</sup> and, if appropriate, the turnover achieved by the economic operator in view of the subject-matter of the public contract, for not more than the 3 preceding accounting periods; if the economic operator was established later or manifestly commenced activities relating to the subject-matter of the public contract later, it shall suffice, if it submits the data on its turnover for all accounting periods from its establishment or from the commencement of the given activity.

(2) The contracting authority is entitled to require, besides evidence pursuant to § 55(1), also other evidence demonstrating the fulfilment of economic and financial qualifications prerequisites by the economic operator.

(3) In respect of economic and financial qualifications prerequisites, the contracting authority shall be obligated to

- (a) set out the scope of required information and evidence,
- (b) indicate the manner of demonstration of the fulfilment of qualifications prerequisites and
- (c) define the minimum level of such qualifications prerequisites corresponding to the type, extent and complexity of the subject-matter of the public contract.

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<sup>42)</sup> E.g., § 2f of Act no. 252/1997 Coll., on Agriculture, as amended by Act no. 85/2004 Coll.

<sup>43)</sup> E.g., Act no. 417/2004 Coll., on Patent Agents and on Amendment to Act on Industrial Property Protection, Act no. 254/2000 Coll., on Auditors, and on Amendment to Act no. 165/1998 Coll., as amended, Act no. 85/1996 Coll., on Advocacy, as amended

<sup>44)</sup> E.g., Act no. 360/1992 Coll., on Pursuit of Activities of Authorised Architects and on Pursuit of Activities of Authorised Engineers and Technicians Engaged in Construction, as amended

<sup>45)</sup> Act no. 563/1991 Coll., on Accounting, as amended

<sup>46)</sup> § 1(2)(e) and § 20(1)(a)(2) of Act no. 563/1991 Coll., on Accounting, as subsequently amended



(4) If the economic operator is unable to prove for objective reasons the fulfilment of economic and financial qualifications prerequisites in a manner set out in § 55(3), it is entitled to prove them also with other equivalent evidence, unless the contracting authority rejects it for objective reasons.

## § 56

### Technical Qualifications Prerequisites

(1) The contracting authority is entitled to require of the economic operator to demonstrate the fulfilment of technical qualifications prerequisites for the performance of a public supply contract by

- (a) a list of the principal deliveries effected by the economic operator in the past 3 years with indication of the extent thereof and the time of performance; this list shall be supplemented with
  1. a certificate issued or signed by a contracting authority, if the products were supplied to the contracting authority,
  2. a certificate issued by another person, if the products were supplied to a person other than a contracting authority, or
  3. a solemn declaration of the economic operator, if the products were supplied to a person other than the contracting authority and, simultaneously, if it is not possible to obtain a certificate pursuant to item 2 above from such a person for reasons on the part thereof,
- (b) a list of technicians and technical bodies to be involved in the performance of the public contract, in particular, the technicians and technical bodies responsible for quality control, irrespective whether or not they are employees of the economic operator or of a person in the other relationship to the economic operator,
- (c) a description of the technical facilities and measures used by the economic operator for ensuring quality control, and description of facilities or equipment of the economic operator designed for research,
- (d) a check carried out on the production capacities by the contracting authority or on its behalf by another person and, if necessary, a check on measures relating to assurance of quality and research, where the products to be supplied are complex or are required purely for special purposes,
- (e) samples, descriptions or photographs of the products to be supplied, or
- (f) evidence attesting conformity of a required product issued by the relevant authority<sup>47)</sup>.

(2) The contracting authority is entitled to require of the economic operator to demonstrate the fulfilment of technical qualifications prerequisites to perform a public service contract by

- (a) a list of the principal services provided by the economic operator in the past 3 years with indication of the extent and the time of provision thereof; this list shall be supplemented by
  1. a certificate issued by a contracting authority, if the services were provided to the contracting authority, or
  2. a certificate issued by another person, if the services were provided to a person other than the contracting authority, or
  3. a solemn declaration of the economic operator, if the services were provided to a person other than the contracting authority and, simultaneously, if it is not possible to obtain a certificate pursuant to item 2 above from such a person for reasons on the part thereof,
- (b) a list of technicians and technical bodies to be involved in the performance of the public contract, in particular, the technicians and technical body responsible for quality control, irrespective whether or not they are employees of the economic operator or of a person in the other relationship to the economic operator,
- (c) a description of the technical facilities and measures used by the economic operator for ensuring quality control, and description of facilities or equipment of the economic operator designed for research,
- (d) a check carried out on technical capacities by the contracting authority or on its behalf by another person and, if necessary, a check on measures relating to assurance of quality and research, where the services to be provided are complex or are required purely for special purposes,

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<sup>47)</sup> E.g., Act no. 22/1997 Coll., as amended

- (e) a certificate of education and professional qualifications of the economic operator and those of the economic operator's managerial staff<sup>48)</sup> or of persons with equal status and persons responsible for providing relevant services,
- (f) environmental management measures that the economic operator will be able to apply when performing the public contract, where it is justified by the subject-matter of the public contract,
- (g) a statement of the average annual manpower of the economic operator or of other persons engaged in the performance of contracts of similar nature, and of the number of economic operator's managerial staff<sup>48)</sup> or of persons with equal status over the past 3 years, or
- (h) a statement of tools or aids, operating and technical equipment available to the economic operator for carrying out the public contract.

(3) The contracting authority is entitled to require of the economic operator to demonstrate the fulfilment of technical qualifications prerequisites to perform a public works contract by

- (a) a list of public works carried out by the economic operator over the past 5 years and certificates issued by recipients of satisfactory execution of the most important of those works; such certificates shall indicate the value, date and site of the execution of such works, as well as an indication whether the works have been executed according to the rules and with professional competence,
- (b) a list of technicians and technical bodies to be involved in the performance of the public contract, in particular, technicians and technical bodies responsible for quality control, irrespective whether or not they are employees of the economic operator or of a person in the other relationship to the economic operator,
- (c) a certificate of education and professional qualifications of the economic operator and those of the economic operator's managerial staff<sup>48)</sup> or of persons with equal status and persons responsible for carrying out relevant public works<sup>49)</sup>,
- (d) environmental management measures that the economic operator will be able to apply when performing the public contract, where it is justified by the subject-matter of the public contract,
- (e) a statement of the average annual manpower of the economic operator or of other persons engaged in the performance of contracts of similar nature, and of the number of economic operator's managerial staff<sup>48)</sup> or of persons with equal status over the past 3 years, or
- (f) a statement of tools or aids, operating and technical equipment available to the economic operator for carrying out the public contract.

(4) Where it is justified by the subject-matter of the public contract, the contracting authority is entitled to require in the framework of demonstration of technical qualifications prerequisites production of the certificate of quality management system issued under the Czech technical standards<sup>50)</sup> by an accredited person<sup>51)</sup>. The contracting authority shall recognise equivalent evidence issued in a Member State of the European Union. The contracting authority shall, in addition, recognise other evidence of equivalent quality assurance measures.

(5) Where it is justified by the subject-matter of the public contract, the contracting authority is entitled to require in the framework of demonstration of the fulfilment of technical qualifications prerequisites production of evidence of registration in the Community Eco-Management and Audit Scheme (EMAS)<sup>52)</sup> or of the certificate of environmental management system issued under the Czech technical standards<sup>53)</sup> by an accredited person<sup>51)</sup>. The contracting authority shall recognise equivalent evidence issued in a Member State of the European Union. The contracting authority shall, in addition, recognise other evidence of equivalent environmental management measures.

(6) The contracting authority is entitled to require demonstration of the fulfilment of one or more technical qualifications prerequisites referred to in § 56(1) through § 56(5). If the public contract consists

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<sup>48)</sup> § 9(3) of the Labour Code

<sup>49)</sup> § 44(1) of Act no. 50/1976 Coll., as amended by Act no. 83/1998 Coll., and Act no. 59/2001 Coll.

<sup>50)</sup> Czech Technical Standards Series ČSN EN ISO 9000

<sup>51)</sup> § 16 Act no. 22/1997 Coll., as amended by Act no. 71/2000 Coll.

<sup>52)</sup> Regulation (EC) no. 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)

<sup>53)</sup> Czech Technical Standards Series ČSN EN ISO 14000

in the performance relevant to more than one type of public contracts pursuant to § 8 through § 10, the contracting authority is entitled to require demonstration of the fulfilment of technical qualifications prerequisites referred to in § 56(1) through § 56(5) for each type accordingly.

(7) In the contract notice or in the call for competition and in respect of technical qualifications prerequisites the contracting authority shall be obligated to

- (a) set out the scope of required information and evidence,
- (b) indicate the manner of demonstration of the fulfilment of such qualification prerequisites and
- (c) define the minimum level of such qualifications prerequisites corresponding to the type, extent and complexity of the subject-matter of the public contract.

(8) Where the economic operator is unable to demonstrate for objective reasons the fulfilment of technical prerequisites in manners set out pursuant to § 56(7), it is entitled to demonstrate them also with other equivalent evidence, unless the contracting authority rejects it for objective reasons. If the list of environmental management measures pursuant to § 56(2)(f) or pursuant to § 56(3)(d) is equivalent as to the scope of measures to be discharged for the issuance of the certificate pursuant to § 56(5), the contracting authority shall be obligated to recognise such a form of demonstration of the fulfilment of technical prerequisites pursuant to § 56(5).

(9) Where demonstration of the fulfilment of required technical qualifications prerequisites does not consist in production of evidence, the contracting authority shall be obligated to render to the economic operator appropriate cooperation and possibility to demonstrate the fulfilment of that part of technical qualifications prerequisites prior to the expiry of the time limit for demonstration of qualifications. The contracting authority shall be obligated to dispatch to the economic operator a written confirmation of successful demonstration of the fulfilment of a relevant technical qualification prerequisite that shall serve as evidence to demonstrate the fulfilment of qualifications to a respective extent.

(10) Where a candidate or a tenderer in an award procedure has furnished samples, the contracting entity shall be obligated to return forthwith such samples thereto at its written request following the conclusion of a contract or setting the award procedure aside.

## **§ 57**

### **Authenticity and Age of Evidence**

(1) Unless stipulated otherwise by this Act, the economic operator shall produce a copy of evidence demonstrating the fulfilment of qualifications. Where the contracting entity, prior to the conclusion of a contract, requires production of the evidence demonstrating the fulfilment of qualifications in original or in an officially authenticated copy, the tenderer that the contract is to be concluded with pursuant to § 82, shall be obligated to produce it.

(2) Evidence demonstrating the fulfilment of basic qualifications prerequisites and the extract from the Commercial Register shall not date more than 90 calendar days from the date at which the fulfilment of qualifications is to be demonstrated.

## **§ 58**

### **Changes in Qualifications**

(1) If any change in qualifications of the economic operator occurs before the decision on the selection of the most suitable tender is taken and such a change would otherwise entail non-fulfilment of qualifications pursuant to § 60, the economic operator shall be obligated to notify the contracting authority thereof in writing not later than within 7 days, and simultaneously furnish necessary evidence demonstrating the fulfilment of qualifications to the full extent.

(2) The obligation pursuant to § 58(1) shall apply by analogy to a tenderer that is eligible for the conclusion of the contract in compliance with the decision of the contracting authority pursuant to § 81,

namely until the date of conclusion of the contract. In such a case the tenderer that the contracting authority concludes the contract with, shall furnish necessary evidence demonstrating the fulfilment of qualifications to the full extent not later than on the conclusion of the contract.

## **§ 59**

### **Assessment of Qualifications**

(1) The contracting authority shall assess demonstration of the fulfilment of qualifications by the economic operator in view of the requirements set out in compliance with this Act (hereinafter referred to as “the assessment of qualifications”).

(2) The contracting authority is entitled to appoint a special committee for the purposes of assessment of qualifications. The provision of § 75(6) shall apply to members of such a special committee by analogy.

(3) In open procedure and in simplified below-the-threshold procedure, qualifications can be assessed by an evaluation committee if so set forth by the contracting authority.

(4) The contracting authority is entitled to require of the economic operator to clarify in writing produced information or evidence or furnish further additional information or evidence demonstrating the fulfilment of qualifications. The economic operator shall be obligated to discharge such an obligation within a reasonable period of time fixed by the contracting authority.

(5) The contracting authority shall draw up a report on the assessment of qualifications, where it indicates identification data of economic operators whose qualifications have been assessed, the list of economic operators that have demonstrated the fulfilment of qualifications, and the list of economic operators that have failed to demonstrate the fulfilment of qualifications, together with the statement of reasons. The provision of § 73(4) shall apply by analogy.

(6) In case that the assessment of qualifications has been carried out by a special committee set up by the contracting authority pursuant to § 59(2) or by the evaluation committee, the report on the assessment of qualifications shall be drawn up by such a committee. The report shall be signed by all members of the committee present. If a member of the committee holds a differing opinion as against the opinion of the majority, he/she shall have such a differing opinion recorded in the report accompanied by the statement of reasons.

(7) Following the assessment of qualifications, the contracting authority shall be obligated to allow forthwith all economic operators whose qualifications have been assessed, to inspect the report on the assessment of qualifications and to make an extract from or a copy of such a report. The provision of § 73(4) (fifth sentence) shall apply by analogy.

## **§ 60**

### **Failure to Fulfil Qualifications**

(1) The economic operator that fails to fulfil qualifications to the extent required or fails to discharge an obligation set out in § 58 shall be excluded by the contracting authority from the participation in the award procedure.

(2) The contracting authority shall notify such an economic operator without delay and in writing of its decision to exclude the operator from the participation in the award procedure, statement of reasons included.

## § 61

### **Reduction of Number of Candidates in Restricted Procedure, Negotiated Procedure with Publication and Competitive Dialogue**

(1) If the contracting authority has limited the number of candidates to participate in restricted procedure, in negotiated procedure with publication or in competitive dialogue, it shall carry out the selection from amongst the candidates that have duly demonstrated the fulfilment of qualifications, specifically under the objective criteria pursuant to § 61(2) or § 61(4) indicated in the contract notice. A detailed specification of such objective criteria may be stated in the qualifications documentation.

(2) The objective criteria for the selection pursuant to § 61(1) shall be

- (a) laid down in view of the nature, scope, and complexity of the subject- matter of the public contract,
- (b) in compliance with the principles referred to in § 6, and
- (c) in conformity with one of or more economic and financial qualifications prerequisites or technical qualifications prerequisites for the performance of the public contract, the fulfilment of which has been required by the contracting authority.

(3) The contracting authority shall carry out the selection according to the objective criteria pursuant to § 61(2) by establishing the ranking of the candidates that have demonstrated the fulfilment of qualifications, in accordance with the extent of satisfaction of a given criterion, and shall subsequently select those candidates that have met a given criterion best. If the candidates have demonstrated the fulfilment of qualifications to the completely same extent or where it is impossible to establish the ranking of qualified candidates objectively pursuant to this paragraph, the contracting authority shall make a random selection by a draw.

(4) Random selection carried out by a draw or, where appropriate, by a combination of objective criteria pursuant to § 61(2) and a random selection by a draw may, in addition, be an objective criterion for the reduction of the number of candidates pursuant to § 61(1). Such a drawing shall be conducted by the contracting authority in compliance with the principles referred to in § 6 by means of mechanical, electronic-mechanical, electronic or equivalent devices and with the notary being present and certifying the due course of drawing. The candidates concerned with the selection by a draw shall have the right to take part in a drawing. The contracting entity shall notify the candidates in writing of the date of a drawing not later than 5 days prior to such a drawing.

(5) The contracting entity shall be obligated to allow the candidates to inspect the device and means, which are of service for the drawing before proceeding with such a drawing.

(6) The number of candidates selected pursuant to § 61(3) and § 61(4) shall conform to the number indicated by the contracting authority in the contract notice. In case that the contracting authority failed to indicate the exact number of candidates to be invited to submit their tenders in the contract notice, it shall be obligated to establish such a number prior to carrying out the selection and to notify thereof in writing all candidates that have duly demonstrated the fulfilment of required qualifications.

(7) Having carried out the selection pursuant to § 61(3) through § 61(6), the contracting authority shall exclude from the award procedure without undue delay all candidates that have not been selected. The contracting authority shall notify the candidates in writing of the exclusion thereof without undue delay, statement of reasons included.

(8) The contracting authority shall be obligated to draw up a report on the procedure for the reduction of the number of candidates from which the manner and outcome of the reduction of the number of candidates shall be obvious. The candidates are entitled to inspect such a report and to make an extract from or a copy of such a report.

## § 62

### **Qualifications in Respect of Below-the-Threshold Public Contract**

(1) If the contracting authority awards a below-the-threshold public contract, it shall be obligated to require demonstration of the fulfilment of basic and professional qualifications prerequisites by the economic operator. Where the contracting authority, in addition, requires demonstration of the fulfilment of economic and financial qualifications prerequisites or technical qualifications prerequisites, § 55 and § 56 shall apply by analogy.

(2) The fulfilment of basic qualifications prerequisites in respect of below-the-threshold public contract shall be demonstrated by the submission of solemn declaration. The content of the solemn declaration shall make it obvious that the economic operator fulfils relevant basic qualifications prerequisites required by the contracting authority. The contracting authority is entitled to set out in the contract notice or in the call for competition an obligation of the economic operator to demonstrate the fulfilment of basic qualifications prerequisites with evidence referred to in § 53(2) or, where appropriate, an obligation to demonstrate with such evidence the fulfilment of certain basic qualifications prerequisites.

## **Division 2**

### **Requirements of Sector Contracting Entity for Qualifications**

## § 63

### **Scope of Qualifications**

(1) The sector contracting entity is entitled to lay down any objective requirements allowing for the objective assessment of qualifications of the economic operator.

(2) If the sector contracting entity requires demonstration of satisfaction of requirements regarding qualifications conforming to any qualifications prerequisite pursuant to § 53(1), it shall be obligated to require demonstration of the satisfaction of such requirements with evidence pursuant to § 53(2).

(3) If the contracting authority awards a public contract in conjunction with the pursuit of relevant activity, it shall be obligated to require in the award procedure demonstration of the fulfilment of basic qualifications prerequisites pursuant to § 53(1)(a) and § 53(1)(c).

(4) The sector contracting entity shall delimit the scope of information and evidence in the framework of required qualifications with a view to the type, extent, and complexity of the subject-matter of the public contract. The sector contracting entity shall indicate the requirements regarding qualifications in the contract notice, in the invitation to negotiate in negotiated procedure without publication<sup>50)</sup> or, if appropriate, in the invitation to confirm the interest to participate.

(5) Where it is justified by the subject-matter of the public contract, the sector contracting entity, in the framework of demonstration of technical qualifications, is entitled to require in respect of a public service contract or public works contract production of evidence attesting registration in the Community eco-management and audit scheme (EMAS)<sup>52)</sup> or of the certificate of environmental management system issued under the Czech technical standards<sup>53)</sup> by an accredited person<sup>51)</sup>. The sector contracting entity shall recognise equivalent evidence issued in any Member State of the European Union. The sector contracting entity shall, in addition, recognise other evidence of equivalent environmental management measures.

(6) Where it is justified by the subject-matter of the public contract, the sector contracting entity is entitled, in the framework of demonstration of technical qualifications, to require production of the certificate of quality management system issued under the Czech technical standards<sup>50)</sup> by an accredited person<sup>51)</sup>. The sector contracting entity shall recognise equivalent evidence issued in any Member State of

the European Union. The sector contracting entity shall, in addition, recognise other evidence of equivalent quality assurance measures.

(7) The data relating to economic, financial or technical qualifications of the economic operator shall not be the subject of evaluation criteria.

(8) The provisions of § 50(2)(second sentence) and § 50(3) shall apply to sector contracting entity by analogy.

## **§ 64**

### **Demonstration of Fulfilment of Qualifications**

(1) The sector contracting entity shall be obligated to require demonstration of the fulfilment of qualifications by the economic operator in restricted procedure and in negotiated procedure with publication. Demonstration of the fulfilment of qualifications by the economic operator to the extent laid down by the sector contracting entity shall be a prerequisite for the invitation of a candidate to submit a tender in restricted procedure or in negotiated procedure with publication.

(2) The sector contracting entity is entitled to require demonstration of the fulfilment of qualifications by the economic operator in open procedure and in negotiated procedure without publication; it shall be without prejudice to § 63(3). In such a case demonstration of the fulfilment of qualifications to the extent laid down by the sector contracting entity shall be a prerequisite for the assessment and evaluation of the tender of a tenderer in open procedure, and a prerequisite for the conclusion of the contract in negotiated procedure without publication.

(3) In negotiated procedure without publication the fulfilment of qualifications shall not be demonstrated in cases referred to § 23(4)(b), § 23(5)(c) through § 23(5)(e), § 23(6) or § 23(8)(b).

(4) Where the economic operator is unable to demonstrate part of qualifications relating to economic, financial or technical qualifications to the full extent for objective reasons, it is entitled to demonstrate such qualifications also with other equivalent evidence, unless the sector contracting entity rejects it for objective reasons.

(5) Where the economic operator is unable to demonstrate the fulfilment of qualifications required by the sector contracting entity relating to requirements for economic, financial or technical qualifications or, where appropriate, relating to the authorisation to pursue business activities, membership of a professional self-governing chamber or another professional body or professional competence, it is entitled to demonstrate the fulfilment of lacking qualifications by means of a sub-contractor. The economic operator is not entitled to demonstrate the fulfilment of qualifications pursuant to § 54(a) by means of a sub-contractor. The provisions of § 51(4)(second sentence) and § 51(4)(third sentence) shall apply by analogy.

(6) If the subject-matter of the public contract is to be performed jointly by several economic operators that submit or intend to submit a joint tender to that end, each economic operator shall be obligated to demonstrate the fulfilment of qualifications to the full extent; it shall not apply to the economic, financial or technical qualifications or to the authorisation to pursue business activity, membership of a professional self-governing chamber or another professional body or professional competence, in the framework of which it shall suffice to demonstrate the fulfilment of such qualifications by all economic operators jointly. The option to demonstrate the fulfilment of lacking qualifications by means of a sub-contractor pursuant to § 64(5) shall be applied by analogy.

(7) The provisions of § 51(6), § 51(7) and § 51(8), and § 58 through § 60 shall apply to sector contracting entity by analogy.

## § 65

### **Time Limit for Demonstration of Fulfilment of Qualifications**

(1) In open procedure, the economic operator shall be obligated to demonstrate the fulfilment of qualifications within the time limit for the submission of tenders. In the case of open procedure involving the setting up of the dynamic purchasing system, the economic operator shall be obligated to demonstrate the fulfilment of qualifications not later than by the end of the deadline for submission of the indicative tender.

(2) In restricted procedure and in negotiated procedure with publication, the economic operator shall be obligated to demonstrate the fulfilment of qualifications within the time limit for the submission of a request to participate or, if appropriate, within the time limit for confirmation of an interest to participate.

(3) In negotiated procedure without publication, the economic operator shall be obligated to demonstrate the fulfilment of qualifications within the time limit laid down by the sector contracting entity in the invitation to negotiate, however, not later than at the date of the conclusion of the contract.

## § 66

### **Reduction of Number of Candidates in Restricted Procedure and in Negotiated Procedure with Publication**

(1) If the sector contracting entity has reduced the number of candidates to participate in restricted procedure or negotiated procedure with publication, it shall carry out the selection from amongst candidates that have demonstrated the fulfilment of required qualifications, on the basis of one or more objective criteria pursuant to § 66(2) or § 66(4) indicated in the contract notice or in the invitation to confirm an interest to participate. A detailed specification of objective criteria may be indicated in the qualifications documentation.

(2) The objective selection criteria pursuant to § 66(1) shall

- (a) be laid down in view of the nature, extent and complexity of the subject-matter of the performance of a public contracts,
- (b) be in compliance with the principles referred to in § 6, and
- (c) conform to a requirement or to some requirements for qualifications relating to the financial, economic or technical qualifications, demonstration of which the sector contracting entity has required.

(3) The sector contracting entity shall carry out the selection of the candidates on the basis of the objective criteria pursuant to § 66(2) by establishing the ranking of candidates that have demonstrated the fulfilment of qualifications, in accordance with the extent of satisfaction of a given criterion, and shall subsequently select those candidates that have met a given criterion best. If the candidates have demonstrated the fulfilment of qualifications to the completely same extent or where it is impossible to establish the ranking of qualified candidates objectively pursuant to this paragraph, the sector contracting entity shall make a random selection by a draw.

(4) Random selection carried out by a draw or, where appropriate, a combination of the objective criteria pursuant to § 66(2) and a random selection by a draw may, in addition, be an objective criterion for the reduction of the number of candidates pursuant to § 66(1). Such a drawing shall be conducted by the sector contracting entity in compliance with the principles referred to in § 6 by means of mechanical, electronic-mechanical, electronic or equivalent devices and the notary being present and attesting the due course of drawing as a witness. The candidates concerned with a draw shall have the right to take part in a drawing. The contracting entity shall notify the candidate in writing of the date of a drawing not later than 5 days prior to such a drawing.

(5) The number of candidates selected pursuant to § 66(3) and § 66(4) shall conform to the number indicated by the sector contracting entity in the contract notice or in the invitation to confirm an interest to



participate. In case that the contracting entity failed to indicate the exact number of candidates to be invited to submit their tenders in the contract notice, it shall be obligated to establish such a number prior to carrying out the selection and to notify in writing all candidates that have duly demonstrated the fulfilment of required qualifications

(6) The provisions of § 61(5), § 61(7) and § 61(8) shall apply to the sector contracting entity by analogy.

### **Division 3**

#### **§ 67**

#### **Tender Security**

(1) In respect of a public contract the contracting entity is entitled to require in the notice of open procedure, restricted procedure, negotiated procedure with publication, simplified below-the-threshold procedure or competitive dialogue that the tenderers extend a tender security to guarantee the performance of their obligations resulting from the participation in the award procedure. Tender security shall not be required in setting up the dynamic purchasing system. The contracting entity shall establish the amount of a tender security in an absolute sum amounting up to 2 % of the estimated value of a public contract. The tender security shall be extended by the tenderer in the form of a deposit of a sum of money into the account of the contracting entity (hereinafter referred to as “the pecuniary tender security”) or in the form of a bank guarantee or insurance of a guarantee<sup>53a)</sup>.

(2) The contracting entity shall release the pecuniary tender security to the tenderer

- (a) whose tender has been selected as the most suitable or with which it was possible to conclude a contract pursuant to § 82(3), within 7 days from the date of conclusion of such a contract,
- (b) whose tender has not been selected as the most suitable and with which it was impossible to conclude a contract pursuant to § 82(3), within 7 days from the date of dispatch of the notice of the selection of the most suitable tender pursuant to § 81(3),
- (c) that has been excluded from the award procedure, within 7 days from the date of dispatch of the advice note of such an exclusion,
- (d) where the award procedure was set aside, within 7 days from the date of dispatch of the notice of setting aside the award procedure pursuant to § 84(8).

(3) The contracting entity shall be obligated to release the pecuniary tender security, including accrued interest rendered by the financial institution.

(4) If the tenderer has raised objections prior to the conclusion of a contract and the contracting entity has complied with such objections, the tenderer shall be obligated to re-deposit the pecuniary tender security that had been released by the contracting entity, within 7 days from the date of delivery of the decision of the contracting entity pursuant to § 111(1). If the tenderer fails to discharge this obligation, the contracting entity is entitled to exclude the tenderer from the award procedure. Where the tenderer has submitted a proposal to initiate procedure for the review of practices of the contracting entity, the tenderer shall re-deposit the pecuniary tender security that had been released by the contracting entity.

(5) Where the tender security is to be extended in the form of a bank guarantee or insurance of such a guarantee, the tenderer shall be obligated to arrange for the validity thereof throughout the award period pursuant to § 43. The contracting entity shall be obligated to retain a copy of a guarantee deed and to return the original of such a guarantee deed to the tenderer within the time limit pursuant to § 67(2).

(6) Where the tender security is to be extended in the form of insurance of the guarantee, the insurance policy shall be concluded in such a manner that the tenderer shall be the insured and the contracting entity shall be the person entitled to obtain an indemnification. The insurer shall issue to the insured a written

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<sup>53a)</sup> § 47 of Act no. 37/2004 Coll., on Insurance Policy, as amended

statement encompassing the obligation to pay the indemnification to the contracting entity under the conditions set out in § 67(7).

(7) If the tenderer, in violation of this Act or tender conditions, has withdrawn or altered the tender or refused to conclude the agreement pursuant to § 82(2) and § 82(3) or if the tenderer has failed to discharge the obligation to render due cooperation to the contracting entity conducive to the conclusion of the contract pursuant to § 82(3), the contracting entity shall be entitled to obtain premium from the bank guarantee or insurance benefit from the insurance of the guarantee or the tender security extended, included accrued interest rendered by the financial institution, shall forfeit thereto.

## **CHAPTER VI**

### **TENDER**

#### **§ 68**

##### **Content of Tenders**

(1) The submission of tender shall be an assumption for the award of a public contract to an economic operator, unless provided otherwise by this Act.

(2) Identification data of the tenderer shall be indicated in the tender. The tender shall contain a draft contract signed by a person authorised to act on behalf of or for the tenderer. Other documents required by this Act or contracting entity shall, in addition, be constituent element of the tender. In open procedure and in simplified below-the-threshold procedure, evidence and information demonstrating the fulfilment of qualifications shall be constituent element of the tender too, unless provided otherwise by the contracting entity; it shall be without prejudice to the provision of § 64(2)(first sentence).

(3) The indicative tender in a dynamic purchasing system shall contain elements conclusive for the assessment of whether the economic operator meets the conditions for admission in such a dynamic purchasing system.

#### **§ 69**

##### **Submission of Tender**

(1) The economic operator is entitled to submit only a single tender. The tender containing variants pursuant to § 70 shall be considered to be a single tender.

(2) The economic operator that has submitted a tender in an award procedure shall not simultaneously act as a sub-contractor by means of which another economic operator demonstrates its qualifications in the same award procedure.

(3) Where the economic operator submits more than one tender separately or jointly with other economic operators, or acts as a sub-contractor by means of which another economic operator demonstrates its qualifications in the same award procedure, the contracting entity shall reject all tenders submitted by such an economic operator. The contracting entity shall exclude forthwith the economic operator, whose tender has been rejected, from the participation in the award procedure. The contracting entity shall forthwith notify the excluded tenderer in writing of the exclusion, statement of reasons included.

(4) 'Joint tender' shall be understood as the tender submitted under the conditions laid down in § 51(6) jointly by more than one economic operator. In such a case, the economic operators submitting a joint tender shall be considered to be a single tenderer.

(5) Tenders shall be submitted in writing. The tenderer shall submit a tender within the time limit for the submission of tenders. The tenders in paper form shall be submitted in properly sealed envelope

denoted with the title of the public contract with indicated address to which the notices pursuant to § 71(6) are to be dispatched. Tenders transmitted by electronic means shall be submitted in compliance with the requirements set out in § 149.

(6) The contracting entity shall keep records of submitted tenders, including item number, date and time of delivery thereof. For the purpose of establishing the ranking of item numbers of the submitted tenders, the contracting entity shall assign registration numbers to submitted tenders in separate numerical series for tenders submitted in paper form and for tenders transmitted by electronic means. The contracting entity shall establish the item numbers of all submitted tenders in a manner where the numerical series of tenders submitted in paper form shall precede the numerical series of tenders submitted by electronic means.

## **§ 70**

### **Variants of Tender**

(1) Variants of a tender shall be authorised if a public contract is awarded on the basis of the basic evaluation criterion of the most economically advantageous tender, and where the contracting entity has authorised variants in advance in tender conditions.

(2) If the variants of a tender are admissible, the contracting entity shall indicate the requirements to be met by such variants in the tender documentation or, where applicable, together with any special requirements regarding drawing up the tenders.

(3) The variant of a tender shall not be rejected in the course of assessment of the tenders on the ground that a public supply contract would lead to a public service contract or that a public service contract would lead to a public supply contract.

## **CHAPTER VII**

### **Division 1**

#### **Opening of Envelopes with Tenders**

## **§ 71**

### **Opening of Envelopes**

(1) The contracting authority shall appoint a committee composed of not less than 3 members for the opening of envelopes with tenders (hereinafter referred to as “the envelope”). The sector contracting entity and the contracting authority awarding a public contract in the negotiated procedure without publication or a public contract based on a framework agreement shall not be obligated to appoint a committee for the opening of envelopes and any rights and obligations relating to the opening of envelopes shall be discharged by the contracting entity.

(2) The members of the committee shall be obligated to maintain confidentiality of the facts that they have learned of in conjunction with their membership of the committee.

(3) If the contracting authority so lays down, the function of the committee for the opening of envelopes with tenders shall be exercised by the evaluation committee.

(4) Neither the contracting entity nor the committee shall open an envelope prior to the expiry of the time limit for the submission of tenders. The envelopes shall be opened at the date set out by the contracting entity, however, not later than within 30 days following the expiry of the time limit for the submission of tenders.

(5) If the information on the date of the opening of envelopes has not been indicated in tender conditions, the contracting entity shall notify the tenderers in writing of the date of the opening of envelopes not less than 5 working days prior to the opening of envelopes.

(6) The committee shall not open the tenders submitted after the expiry of the time limit for the submission of tenders. The contracting entity shall forthwith notify the tenderer that the tender thereof has been submitted after the expiry of the time limit for the submission of tenders.

(7) The tenderers whose tenders have been delivered to the contracting entity within the time limit for the submission of tenders are entitled to take part in the opening of envelopes, and other persons designated by the contracting entity. The contracting entity may require of the tenderers present to confirm their participation in the opening of envelopes by signing an attendance list of present tenderers. Where the contracting entity made known in the contract notice or in the call for competition its intention to use the electronic auction as a means for the evaluation of tenders, the opening of tenders shall take place without presence of tenderers.

(8) The committee shall open the envelopes consecutively pursuant to item numbers, and shall check on the completeness of the tender, i.e. whether

- (a) the tender is drawn up in the required language,
- (b) the draft contract is signed by a person authorised to act on behalf of or for the tenderer, and
- (c) the tender contains all constituent elements required by the law or by the contracting entity in tender conditions

(9) Following the check on the completeness of each tender pursuant to § 71(8), the committee shall disclose to the tenderers present the identification data of the tenderer, and information whether the tender satisfies the requirements pursuant to 71(8); the committee shall, in addition, disclose to the tenderers present the information on the tender price.

(10) Where the committee ascertains that a tender is not complete, it shall reject such a tender. The contracting entity shall forthwith exclude the tenderer, whose tender has been rejected, from the participation in the award procedure. The contracting entity shall forthwith notify the excluded tenderer in writing of the exclusion, statement of reasons included.

(11) If a public contract is divided into lots pursuant to § 98, the provisions of § 71(8) through § 71(10) shall apply by analogy to separate lots of the public contract.

## **§ 72**

### **Opening of Tenders Transmitted by Electronic Means**

(1) 'Opening of the tender transmitted by electronic means' shall be understood as granting access to the content thereof for the committee. The tenders, transmitted by electronic means, shall be opened by the committee at the period of time from the expiry of the time limit for the submission of tenders to the deadline for opening envelopes pursuant to § 71(4).

(2) In awarding public contracts under the dynamic purchasing system pursuant to § 95, the opening of tenders shall be carried out by the contracting entity and the committee for the opening of envelopes shall not be appointed.

(3) Where both the envelopes with tenders in paper form and tenders transmitted by electronic means are delivered to the contracting entity within the time limit for the submission of tenders, the committee shall notify present participants at the beginning of the opening of envelopes of the data pursuant to § 71(9) on tenders transmitted by electronic means, and then it continues with the opening of envelopes submitted in paper form.

(4) Where only tenders transmitted by electronic means are delivered to the contracting entity within the time limit for the submission of tenders, the opening of envelopes pursuant to § 71(7) need not be held. The contracting entity shall forthwith notify the tenderers of that fact.

(5) In the framework of the opening of tenders transmitted by electronic means the committee shall check, in addition and apart from essentials referred to in § 71(8), whether the tender is authentic and whether the data message containing the tender has not been manipulated before the opening thereof.

(6) The provisions of § 71(1) through § 71(3), § 71(4)(first sentence), and § 71(6), § 71(9) through § 71(11), shall be applied by analogy.

## **§ 73**

### **Report on Opening of Envelopes**

(1) The committee shall draw up a report on the opening of envelopes or tenders transmitted by electronic means. The committee shall, in respect of each tender, indicate the data, which have been disclosed to the tenderers present pursuant to § 71(9).

(2) If the committee opens tenders transmitted by electronic means, it shall indicate in the report on the opening of envelopes, in addition and apart from essentials pursuant to previous paragraph, the information on the procedure applied in the opening of tenders transmitted by electronic means and the data pursuant to § 72(5).

(3) Where the contracting entity made known in the contract notice or in the call for competition its intention to use the electronic auction, it shall be obligated to indicate in the report on the opening of envelopes identification data of tenderers separately from the other data and information, so as to ensure confidentiality of the identity of participants in such an electronic auction.

(4) The report on the opening of envelopes shall be signed by all members of the committee present. On enclosing the attendance list of tenderers, the report on the opening of envelopes shall be attached to the list of tenders. The contracting entity shall allow the tenderers at the request thereof to inspect the report on the opening of envelopes and to make an extract from or a copy of such a report. When the opening of envelopes pursuant to § 72(4) is not held, the contracting entity shall be obligated to make forthwith the report on the opening of envelopes accessible to the tenderers by electronic means. Where the contracting entity made known in the contract notice or in the call for competition its intention to use the electronic auction, it is not entitled to grant access to or, if appropriate, to allow for possibility to inspect those parts of the report, which contain identification data of the tenderers.

## **Division 2**

### **Evaluation Committee**

## **§ 74**

### **Composition of Evaluation Committee**

(1) The contracting authority shall appoint an evaluation committee to assess and evaluate the tenders in open procedure, restricted procedure, and competitive dialogue and in simplified below-the-threshold procedure, as well as for the indicative evaluation of tenders in negotiated procedure with publication. If the evaluation committee enters into acts in relation to the economic operators under this Act, it applies that such acts are entered into on behalf of the contracting entity.

(2) The obligation of the contracting authority to appoint an evaluation committee pursuant to § 74(1) shall not apply in awarding public contracts under the dynamic purchasing system pursuant to § 95. In such a case, the evaluation shall be carried out by the contracting entity by the automated evaluation method.

(3) The evaluation committee shall have not less than 5 members. If it is justified by the subject-matter of the public contract, at least one third of the members of the evaluation committee shall possess relevant professional qualifications related to the subject-matter of the public contract.

(4) The representative of the contracting authority shall always be a member of the evaluation committee. Simultaneously with the appointment of the members of the evaluation committee, the contracting authority shall appoint an alternate member for each member of the evaluation committee. The provisions of this Act relating to the member of the evaluation committee shall apply by analogy to the alternate member.

(5) In respect of public contracts awarded by the contracting authority pursuant to § 2(2)(a) and § 2(2)(b), where the estimated value exceeds the amount of CZK 200 million net of value added tax, the evaluation committee shall have not less than 7 members. If it is justified by the subject-matter of the public contract, at least two thirds of the members of the evaluation committee shall possess relevant professional qualifications related to the subject-matter of the public contract. The evaluation committee shall be appointed by

- (a) the Minister<sup>32)</sup> or another person acting in public on behalf of the contracting authority pursuant to § 2(2)(a)<sup>54)</sup>,
- (b) the Minister as a superior authority to the contracting authority pursuant to § 2(2)(b).

(6) In respect of public contracts awarded by the contracting authority pursuant to § 2(2)(a) and § 2(2)(b), where the estimated value exceeds the amount of CZK 500 million net of value added tax, the evaluation committee shall have not less than 9 members. If it is justified by the subject-matter of the public contract, at least two thirds of the members of the evaluation committee shall possess relevant professional qualifications related to the subject-matter of the public contract. The evaluation committee shall be appointed by the Government not later than by the end of the deadline for the submission of tenders, upon the nomination by

- (a) the person referred to in § 74(5)(a), in the case of the contracting authority pursuant to § 2(2)(a),
- (b) the person referred to in § 74(5)(b), in the case of the contracting authority pursuant to § 2(2)(b).

(7) Members of the evaluation committee shall not be biased in relation to the public contract and the tenderers, they shall not engage in drawing up a tender, they shall have no personal interest in the award of the public contract, and they shall have neither personal nor occupational or any other relationship of that kind with the tenderers. The member of the evaluation committee shall make a written declaration to the contracting authority in respect of his/her impartiality at the beginning of the initial session of the evaluation committee or at the beginning of the session of the evaluation committee at which such a member is present for the first time. To this end, the contracting authority shall inform the members of the evaluation committee, prior to its first session, of the identification data of the tenderers that have submitted tenders.

(8) Where the grounds for bias of any member of the evaluation committee occur, he/she shall be obligated to report forthwith such a fact to the contracting authority. In such a case, the contracting authority shall exclude such a member from further participation in the evaluation committee. Where the contracting authority has any doubts in respect of impartiality of any member of the evaluation committee, it shall proceed by analogy. In such a case, the chairman of the evaluation committee shall invite the alternate member to take up activities in the evaluation committee instead of the excluded member.

(9) The contracting authority awarding a public contract based on a framework agreement, and the sector contracting entity shall not be obligated to appoint the evaluation committee and all rights and obligations relating to the assessment and evaluation of tenders shall be performed by the contracting entity.

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<sup>54)</sup> § 7(1) of Act no. 219/2000 Coll.

## § 75

### **Sessions of Evaluation Committee**

(1) The evaluation committee shall elect its chairman and vice chairman from amongst its members at its initial session, convened by the contracting authority. Each member of the evaluation committee shall be invited to attend the initial session not less than 7 days before the session. Further sessions of the evaluation committee shall be convened and chaired by its chairman, where the chairman is absent, by the vice chairman.

(2) If a member of the evaluation committee is unable to take part in the session, he/she shall be obligated to inform forthwith of that fact the chairman, or if it is not possible, the vice chairman of the evaluation committee, or the contracting authority in the case of the initial session of the evaluation committee that ensures the participation of an alternate member.

(3) The evaluation committee is entitled to debate and decide by resolutions, where at least two thirds of its members or alternates thereof are present. The evaluation committee shall take decisions by the majority of votes of all members or alternates present.

(4) Other persons designated by the contracting authority or the evaluation committee are entitled to take part in the session of the evaluation committee.

(5) The sessions of the evaluation committee shall be recorded in minutes (hereinafter referred to as “the minutes of the session”). The minutes of the session shall be signed by all members of the evaluation committee present. If a member of the evaluation committee holds a differing opinion as against the opinion of the majority, he/she shall have such a differing opinion recorded in the minutes of the session, accompanied by the statement of reasons.

(6) The members of the evaluation committee shall be obligated to maintain confidentiality of any facts that they have learned in conjunction with their participation in the evaluation committee. It shall, in addition, apply by analogy to other persons invited by the contracting authority or the evaluation committee to attend such sessions.

## **Division 3**

### **Assessment and Evaluation of Tenders**

## § 76

### **Assessment of Tenders**

(1) The evaluation committee shall assess the tenders submitted by tenderers from the point of view of the fulfilment of statutory requirements and of requirements of the contracting entity indicated in tender conditions, and, in addition, whether the tender submitted by the tenderer is admissible pursuant to § 22(1)(d). The tenders that fail to meet such requirements shall be rejected. Unless all variants of a tender have been rejected, the tender shall not be considered as rejected. The evaluation committee shall not take account of any obvious calculations mistakes in the tender detected during the assessment of tenders, which have no impact on the tender price.

(2) The evaluation committee is entitled to employ services of invited advisors to assist it in the assessment of tenders who shall not be biased in relation to the public contract or to the tenderers; the invited advisor shall be obligated to make a declaration pursuant to § 74(7). The provisions of § 74(8) and § 75(6) shall apply by analogy.

(3) In the case of confusion, the evaluation committee is entitled to require of the tenderer the explanations to the tender in writing. In its request, the evaluation committee shall indicate confusing elements of the tender to be explained by the tenderer. The evaluation committee shall reject such a tender,

if the tenderer fails to produce the explanations within the time limit of 3 working days from the date of delivery of the request for explanation of the tender, unless the evaluation committee fixes an extended time limit.

(4) The evaluation committee, following a written explanatory statement clarifying confusing elements of the tender, is entitled to invite the tenderer to attend a session of the evaluation committee to offer explanations of the tender thereof. The evaluation committee shall deliver the invitation to such a session not later than 5 working days before it is to be held.

(5) Upon request by the contracting authority, the economic operator in competitive dialogue shall furnish to the contracting authority additional information to clarify, specify or explain the submitted tender. The contracting entity, in its request for additional information, shall state which elements from the tender it requires to be clarified, specified or explained, and shall set out a reasonable time limit for that purpose, however, of not less than 5 days. Additional information provided by the tenderer shall not include any alteration of the tender or contradict the invitation to submit tenders.

(6) The tenderer, whose tender has been rejected by the evaluation committee in the course of the assessment of tenders, shall be forthwith excluded by the contracting authority from the award procedure. The contracting authority shall notify the tenderer without any delay and in writing of such exclusion, statement of reasons included.

## § 77

### **Abnormally Low Tender Price**

(1) During the assessment of tenders submitted by the tenderers from the point of view of the fulfilment of tender conditions, the evaluation committee shall also assess the amount of the tender prices in relation to the subject-matter of a public contract. If the tender contains an abnormally low tender price in relation to the subject-matter of a public contract, the evaluation committee shall request justification from the tenderer in respect of those constituent elements of the tender that are relevant for the amount of the tender price; the explanatory statement shall be delivered by the tenderer within the time limit of 3 working days from the delivery of the request to the tenderer, unless the evaluation committee fixes an extended time limit.

(2) The evaluation committee is entitled to take into account justification of an abnormally low tender price, if it is justified by objective reasons, in particular by

- (a) the economics of the construction method or technology, the manufacturing process or the services provided,
- b) the innovative technical solution or any exceptionally favourable conditions available to the tenderer for the execution of works or for the supply of products or services,
- c) the originality of the work, supplies or services,
- d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed, or
- e) the possibility of the tenderer to obtain State aid <sup>55)</sup>.

(3) The evaluation committee, following the written explanatory statement as regards the abnormally low tender price, is entitled to invite the tenderer to attend a session of the evaluation committee to offer explanations of the furnished explanatory statement. The evaluation committee shall dispatch the invitation to attend such a session to the tenderer not less than 5 working days before it is to be held.

(4) When assessing such an abnormally low tender price, the evaluation committee shall take into consideration the written explanatory statement produced by the tenderer, and the explanations thereof.

(5) Where the evaluation committee establishes that a tender price is abnormally low because the tenderer has obtained State aid, the tender can be rejected on that ground alone only after consultation with

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<sup>55)</sup> Article 87 et seq. of the Treaty Establishing the European Community



the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the evaluation committee, that the State aid has been granted in compliance with legal acts of the European Communities<sup>55</sup>). Where the evaluation committee rejects the tender on that ground in the case of above-the-threshold public contract, the contracting entity shall inform the European Commission of that fact.

(6) If the tenderer has failed to justify in writing the abnormally low tender price within a fixed time limit, if it has failed to turn up to offer explanations or if the evaluation committee has found the justification thereof to be insufficient, the tender shall be rejected. The provisions of § 76(6) shall be applied by analogy.

## **§ 78**

### **Evaluation Criteria**

(1) The basic evaluation criterion for the award of a public contract (hereinafter referred to as “the basic evaluation criterion”) shall be

- (a) economic advantageousness of the tender, or
- (b) the lowest tender price.

(2) The basic evaluation criterion in competitive dialogue shall be the economic advantageousness of the tender only.

(3) The contracting entity shall select the basic evaluation criterion according to the type and complexity of the public contract and indicate it in the contract notice or in the call for competition.

(4) If the contracting entity decides to award a public contract according to the basic evaluation criterion of the most economically advantageous tender, it shall always establish partial evaluation criteria, so as to express the relationship between the use value and the price. Such partial evaluation criteria shall be linked to the performance of the public contract offered. They may, in particular, involve a tender price, quality, technical merit of the performance offered, aesthetical and functional characteristics, environmental characteristics, impact on the employment of people with disabilities, operational costs, cost-effectiveness, sales and after-sales service, technical assistance, delivery period or period of completion.

(5) If the basic evaluation criterion of the most economically advantageous tender is applied, the contracting entity shall accord relative weightings expressed in percentages to the individual partial evaluation criteria or establish another mathematical interrelationship between partial criteria. The established relative weighting accorded to individual partial evaluation criteria may be identical.

(6) The contracting entity shall indicate the partial evaluation criteria and the weightings thereof in the contract notice or in the call for competition or in the tender documentation or, where appropriate, in the invitation to submit tenders in restricted procedure or in negotiated procedure with publication or in the invitation for negotiations in negotiated procedure without publication or, if appropriate, in the invitation to confirm an interest to participate or in the competitive dialogue documentation.

(7) If the contracting entity is not objectively able to establish the relative weightings of partial evaluation criteria, it shall indicate the partial evaluation criteria in the descending order of importance attributed thereto by the contracting entity.

## **§ 79**

### **Evaluation of Tenders**

(1) The evaluation committee shall carry out the evaluation of tenders according to the evaluation criteria indicated in the documents pursuant to § 78(6). If the basic contract award criterion of the most economically advantageous tender is applied, the evaluation committee shall evaluate the tenders and

establish the ranking thereof in accordance with the individual partial evaluation criteria and the relative weightings thereof.

(2) In evaluating the tender price, the amount thereof net of value added tax for the payers of value added tax, and the amount thereof inclusive of value added tax for the non-payers of value added tax, shall be decisive, unless stipulated otherwise by the contracting entity.

(3) If the contracting entity has established partial evaluation criteria pursuant to § 78(7) in the descending order of importance, the evaluation committee shall be obligated to evaluate the tenders in accordance with the partial evaluation criteria, and justify the assignment of specific values in respect of every partial evaluation criterion of a particular tender in the report on the assessment and evaluation of tenders.

(4) If the basic evaluation criterion of the lowest tender price is applied, the evaluation committee shall establish the ranking of tenders in accordance with tender price. Before establishing the ranking of successful tenders, the evaluation committee shall assess the tender prices pursuant to § 77.

(5) The contracting entity shall take decision on a new assessment and evaluation of tenders, if it ascertains that the evaluation committee infringed a procedure provided by this Act. The contracting entity shall appoint a new evaluation committee to carry out a new assessment and evaluation of tenders, or, if appropriate, it shall carry out such a new assessment and evaluation of tenders itself. The contracting entity shall attach statement of reasons for such a new assessment and evaluation of tenders to the original report on the assessment and evaluation of tenders. Where the new assessment and evaluation of tenders pursuant to this paragraph is conducted by the contracting entity itself, it shall draw up a report on the assessment and evaluation of tenders pursuant to § 80(1) by analogy.

(6) The evaluation committee shall not carry out the evaluation of tenders, if it were to evaluate a tender submitted only by a single tenderer.

## **§ 80**

### **Report on Assessment and Evaluation of Tenders**

(1) The evaluation committee shall draw up a written report on the assessment and evaluation of tenders, which contains a list of the tenders assessed, a list of tenders rejected in the award procedure by the evaluation committee with justification, a description of the manner of evaluation of the remaining tenders, statement of reasons included, the outcome of the evaluation of tenders, the description of evaluation of individual tenders in the framework of all evaluation criteria, and information on the composition of the evaluation committee. Unless the evaluation committee carried out the evaluation of tenders pursuant to § 79(6), the report on the assessment and evaluation of tenders shall not contain data relating to the evaluation of tenders.

(2) The report pursuant to § 80(1) shall be signed by all members of the evaluation committee who have attended a session of the evaluation committee, where the evaluation of tenders was carried out. After winding up its activity, the evaluation committee shall pass the report pursuant to § 80(1), together with the tenders and any other documentation relating to its activity, on to the contracting entity without undue delay.

(3) The contracting entity shall be obligated to allow all tenderers, whose tenders have been subject to evaluation, upon their request, to inspect the report on the assessment and evaluation of tenders and to make an extract from or a copy of such a report, until the agreement has been concluded.

(4) The report on the assessment and evaluation of tenders shall not be drawn up in the case of public contracts awarded under the dynamic purchasing system or based on a framework agreement pursuant to § 92(1) and § 92(2).

## CHAPTER VIII

### TERMINATION OF AWARD PROCEDURE

#### § 81

##### Selection of the Most Suitable Tender

(1) The contracting entity shall take decision on the selection of the most suitable tender of that tenderer, whose tender, in accordance with the evaluation criteria, has been evaluated as

- (a) the most economically advantageous tender, or
- (b) the tender with the lowest tender price.

(2) The contracting entity shall take decision on the selection of this tender, unless such a tender has been evaluated pursuant to § 79(6). It shall be without prejudice to the provision of § 84(3)(b).

(3) The contracting entity shall send out the notice of the selection of the most suitable tender not later than within 5 working days following the decision pursuant to § 81(1) to all candidates concerned and to all tenderers concerned. Tenderers shall be deemed to be concerned if they have not yet been definitively excluded. The exclusion shall be definitive where the tenderer has been notified thereof and such a tenderer has failed to lodge any objections within the time limit pursuant to § 110(4), or to file a proposal within the time limit pursuant to § 114(4) and § 114(5) or where the proceedings on such a proposal have been terminated. Candidates concerned shall be understood as the candidates, to which the contracting authority has failed to deliver the advice note of their exclusion prior to sending out the notice of the decision on the selection of the most suitable tender.

(4) In the notice of the selection of the most suitable tender the contracting entity shall indicate

- (a) identification data of the tenderers, whose tenders have been evaluated,
- (b) outcome of the evaluation of tenders clearly indicating the ranking of tenders,
- (c) justification of the selection of the most suitable tender, where the contracting entity itself has conducted a new assessment and evaluation of tenders pursuant to § 79(5); in such a case the contracting entity shall indicate the list of the tenders assessed, the list of tenders that have been rejected in the award procedure by the contracting entity, statement of reasons included, the outcome of the evaluation of tenders, description of evaluation of individual tenders in the framework of all evaluation criteria and what the contracting entity considers to be an infringement of the procedure set forth by this Act by the evaluation committee,
- (d) number and ranking of the tenders evaluated in negotiated procedure with publication on the basis of negotiations about tenders, as well as the elements from the tender, which have been evaluated by the contracting entity otherwise on the basis of negotiations and the evaluation of tenders in accordance with individual evaluation criteria,
- (e) guidance on the time limit for lodging objections pursuant to § 110(4) and the ban to conclude a contract pursuant to § 82(1).

(5) If a public contract is awarded following negotiations with a single invited economic operator in negotiated procedure without publication or based on a framework agreement concluded with a single tenderer, the provision of § 81(4) shall not apply. In the other cases of negotiated procedure without publication or of a public contract awarded based on a framework agreement, the notice of the selection of the most suitable tender shall contain the facts pursuant to § 81(4)(a) and § 81(4)(b).

#### § 82

##### Conclusion of Contract

(1) The contracting entity shall not conclude a contract with the tenderer whose tender has been selected as the most suitable pursuant to § 81 (hereinafter referred to as “the selected tenderer”) prior to the expiry of the time limit for lodging objections against the decision on the selection of the most suitable tender pursuant to § 110(4).

(2) If no objections pursuant to § 110(4) have been lodged within a fixed time limit, the contracting entity shall conclude the contract with the selected tenderer within 15 days from the expiry of the time limits to submit objections. The contracting entity shall conclude the contract in compliance with the draft contract included in the tender of the selected tenderer or, where appropriate, modified pursuant to § 32.

(3) The selected tenderer shall be obligated to render due cooperation to the contracting entity necessary to conclude the contract, so that the contract can be concluded within a time limit pursuant to § 82(2). If the selected tenderer refuses to conclude the contract with the contracting entity or if it fails to render due cooperation so that the contract can be concluded within a time limit pursuant to § 82(2), the contracting entity is entitled to conclude the contract with the tenderer that has placed second in the ranking. If the tenderer that has placed second in the ranking refuses to conclude the contract with the contracting entity or if it fails to render due cooperation for the conclusion thereof, the contracting entity is entitled to conclude the contract with the tenderer that placed third in the ranking. The tenderers that placed second or third in the ranking shall render to the contracting entity cooperation necessary to conclude the contract within the time limit of 15 days from the date of delivery of the invitation to conclude the contract.

(4) Where the framework agreement is to be concluded with more than one tenderer and any of the selected tenderers refuses to conclude the agreement or fails to render due cooperation to conclude the framework agreement within the time limit referred to in 82(2), the contracting entity, in order to accomplish the established number of participants to the framework agreement, is entitled to conclude the framework agreement with another tenderer, whose tender has been evaluated. Unless the contracting entity proceeds pursuant to first sentence, or if it cannot conclude the framework agreement with the established number of tenderers under the procedure pursuant to first sentence, it is entitled to conclude the framework agreement with a lower number of tenderers; the provision of § 89(2)(first sentence) shall apply by analogy.

(5) The contracting entity shall inform without undue delay and in writing those tenderers that were eligible to conclude the contract pursuant to § 82(3) with of the conclusion of the contract.

## **§ 83**

### **Contract Award Notice**

(1) The contracting authority shall be obligated to send out for publication the contract award notice no later than 48 days after the conclusion of the contract. In respect of the sector contracting entity, the time limit shall be 2 months. In the cases referred to in § 83(4) and § 83(5), the information not intended for publication, shall be forwarded to the operator of the Public Procurement Information System (hereinafter referred to as “the information system”) or, if appropriate, to the Office for Official Publications of the European Communities (hereinafter referred to as “the Publication Office”) for statistical purposes.

(2) Where the contracting entity - in the case of the dynamic purchasing system and in the case of a contract based on a framework agreement - fails to send out for publication the contract award notice under the procedure pursuant to § 83(1), it shall be obligated to send it out grouped for the preceding quarter of a year; the contracting entity shall send out the grouped notices not later than within 30 days from the end of the relevant calendar quarter of a year.

(3) Where the subject-matter of the concluded contract consists in the provision of any service listed in Annex No. 2, the contracting entity shall indicate in the notice pursuant to § 83(1) upon its dispatch whether it agrees to its publication.

(4) The contracting entity, upon the dispatch of the notice pursuant to § 83(1), is entitled to provide that certain information forwarded is to be withheld from publication, if the publication of such information could lead to a breach of separate legal regulation or be otherwise contrary to the public interest or could harm legitimate commercial interests of the economic operator or might prejudice fair

competition. Upon dispatch of the notice pursuant to § 83(1), the sector contracting entity is entitled to provide that the information concerning the number of tenders received, and the identity of the economic operator or prices, is to be withheld from publication,

(5) Where the sector contracting entity concludes the contract by way of the procedure pursuant to § 23(8)(a), it is entitled to limit the information concerning the nature and quantity of provided services in the notice pursuant to § 83(1) to the general reference “research and development services”. Unless a research-and-development service contract is concluded by way of the procedure pursuant to § 23(8)(a), the sector contracting entity is entitled, on grounds of commercial confidentiality, to limit the information concerning the nature and quantity of provided services in the notice pursuant to § 83(1). The sector contracting entity shall, however, be always bound to ensure that any information published under this paragraph shall not be more detailed than that indicated in the contract notice or in the call for competition.

## § 84

### Setting Aside Award Procedure

(1) The contracting entity shall set aside the award procedure without undue delay, if

- (a) no tenders, requests to participate or confirmations of an interest to participate have been submitted within a fixed time limit,
- (b) all economic operators have been excluded from the participation in the award procedure,
- (c) as a consequence of circumstances envisaged in § 82(3), the contract or the framework agreement has not been concluded with the last tenderer in the ranking eligible to conclude such a contract or an agreement with, or
- (d) in negotiated procedure with publication, even the last tenderer in the ranking eligible to conclude such a contract with, has failed to submit its modified draft contract pursuant to § 32(5) or the contracting entity has failed to invite further tenderer in the ranking to submit its modified draft contract pursuant to § 32(5) or an insufficient number of tenders has been submitted or following the assessment of the tenders submitted a lower number of tenders ought to be evaluated than that set out by the contracting entity, unless the contracting entity in the invitation to submit a tender pursuant to § 29(4)(f) admitted the negotiations about tenders even with a lower number of tenderers than it indicated in the invitation to submit a tender.

(2) The contracting entity is entitled to set aside the award procedure without undue delay only if

- (a) it has laid down a minimum number of candidates that are to submit requests to participate, or confirmation of an interest to participate in restricted procedure, negotiated procedure with publication or competitive dialogue, and such a prescribed number has not been accomplished or, where appropriate, it has not been accomplished following the assessment of qualifications,
- (b) the number of candidates invited by the contracting entity to submit a tender in restricted procedure, negotiated procedure with publication or competitive dialogue was lower or equal to the minimum statutory number and tenders have been submitted by a lower number of candidates than that invited to do so by the contracting entity,
- (c) the selected tenderer or, if appropriate, the tenderer second in the ranking, has refused to conclude the contract or failed to render due cooperation to the contracting entity towards the conclusion thereof pursuant to § 82(3),
- (d) the grounds to continue with the award procedure have ceased to exist as a consequence of a substantial change in circumstances that have arisen in the period of time after the initiation of the award procedure and that were, taking into account all circumstances, neither foreseeable by nor attributable to the contracting entity,
- (e) the grounds which merit particular consideration have occurred in the course of the award procedure for which the contracting entity cannot be reasonably required to continue with the award procedure.

(3) The contracting entity is entitled to set aside the award procedure

- (a) until the moment of conclusion of the contract in the case envisaged in § 90(2) or, if it is not possible to conclude a framework agreement with all selected tenderers, or

(b) until the moment of the decision on the selection of the most suitable tender when only one tender has been submitted or when all tenders except one have been rejected.

(4) The contracting entity is entitled to set aside negotiated procedure without publication or procedure based on a framework agreement until the moment of conclusion of the contract.

(5) The sector contracting entity is, in addition, entitled to set aside the award procedure, if it has retained such an option in the contract notice.

(6) The contracting entity is not entitled to initiate the award procedure that has been preceded by an award procedure with a similar subject-matter prior to setting aside such a preceding award procedure.

(7) The contracting entity shall send out the notice of setting aside the award procedure for publication in the information system pursuant to § 157 within 3 days from the date of taking such a decision; this obligation shall not apply only to the negotiated procedure without publication and to procedure based on a framework agreement.

(8) The contracting entity shall be obligated to send out the written notice of setting aside the award procedure not later than within 2 working\_days from the date of taking such a decision to all known candidates or tenderers, statement of reasons included.

(9) Where the Office sets aside an award procedure, § 84(7) and § 84(8) shall apply by analogy. The time limits shall start running as from the date when the contracting entity learned\_of entry of the ruling of the Office into legal force.

## **§ 85**

### **Written Report by Contracting Entity**

(1) The contracting entity shall draw up a written report on each above-the-threshold public contract.

(2) The written report shall contain at least the following

- (a) identification data of the contracting entity, the subject-matter of the public contract, and the price agreed in the contract,
- (b) identification data of the selected tenderer or, if appropriate, of tenderers if the contract is concluded with more persons on the part of the tenderer, justification of the selection of the most suitable tender and indication what proportion of the public contract is to be performed by means of a sub-contractor,
- (c) identification data of the candidates or tenderers that have been excluded from the award procedure, statement of reasons for their exclusion included or, if appropriate, identification data of candidates that have not been invited to submit a tender, to negotiate or to participate in competitive dialogue, statement of reasons thereof included,
- (d) justification of the exclusion of the tenderer, whose tender contained an abnormally low tender price, if such an exclusion has occurred,
- (e) the ground for the use of competitive dialogue, negotiated procedure with publication or negotiated procedure without publication, where such an option has been made use of, and
- (f) the ground for setting aside the award procedure, where such an award procedure has been set aside.

**TITLE THREE**  
**SPECIAL PROCEDURES IN AWARD PROCEDURE**

**CHAPTER I**

**PRIOR INFORMATION NOTICE AND PERIODIC INDICATIVE NOTICE**

**§ 86**

**Prior Information Notice Published by Contracting Authority**

(1) The contracting authority shall make known all above-the-threshold public contracts, which it intends to award over the following 12 months and where it intends to take the option of shortening the time limit for the submission of tenders by means of a prior information notice.

(2) In the case of above-the-threshold public supply contracts and above-the-threshold public service contracts, the contracting authority shall send out the prior information notice pursuant to § 86(1) for publication as a rule at the beginning of each accounting period. In the prior information notice pursuant to § 86(1) the contracting authority shall indicate all

- (a) product areas of supplies under the directly applicable regulation of the European Communities<sup>56)</sup>, where the estimated value is at least equal to or greater than the equivalent of EUR 750,000, or
- (b) categories of services, with the exception of services listed in Annex no. 2, where the estimated value is at least equal to or greater than the equivalent of EUR 750,000.

(3) In the case of above-the-threshold public works contracts, the contracting authority shall send out the prior information notice pursuant to § 86(1) for publication as a rule without undue delay after the decision approving the intention to award such an above-the-threshold public works contract. In the prior information notice pursuant to § 86(1), the contracting entity shall delimit the subject-matter of the above-the-threshold public works contract.

(4) The contracting entity is entitled to replace the publication of the prior information notice pursuant to § 146 and § 147, by publication of such a prior information notice on its “contracting entity profile” In such a case, the contracting authority shall be obligated to dispatch for publication the notice of the publication of the prior information notice on the contracting entity profile pursuant to § 146 and § 147 by electronic means. The contracting authority is not entitled to publish the prior information notice on its contracting entity profile prior to the dispatch of the notice for publication pursuant to the second sentence of this paragraph. The date of dispatch of the notice for publication shall be indicated on the contracting entity profile.

(5) The contracting authority is entitled to make known by means of a prior information notice also other above-the-threshold public contracts, to which the provision of § 86(2) is not applicable.

(6) The provisions of this section shall not apply to public contracts awarded by negotiated procedure without publication.

**§ 87**

**Periodic Indicative Notice Published by Sector Contracting Entity**

(1) The sector contracting entity shall make known all above-the-threshold public contracts, which it intends to award over the following 12 months and where it intends to take the option of shortening the time limit for the submission of tenders by means of a periodic indicative notice.

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<sup>56)</sup> Annex no. 1 of Regulation (EC) No 2195/2002 of the European Parliament and of the Council, as amended by Commission Regulation (EC) No 2151/2003

(2) If the sector contracting entity points out in the periodic indicative notice that it is an additional periodic indicative notice, it shall not be obligated to repeat the information already included in the previous periodic indicative notice.

(3) The provisions of § 86(2) through § 86(6) shall apply to the sector contracting entity by analogy.

## § 88

### **Periodic Indicative Notice as Way of Initiating Restricted Procedure or Negotiated Procedure with Publication**

(1) The sector contracting entity is entitled to initiate restricted procedure or negotiated procedure with publication by a periodic indicative notice pursuant to § 87.

(2) The periodic indicative notice pursuant to § 88(1) shall contain at least the following

- (a) nature and quantity of supplies, services or public works, which are the subject-matter of the public contract,
- (b) information that the public contract will be awarded by restricted procedure or by negotiated procedure with publication, without subsequent publication of the contract notice, and
- (c) invitation to the economic operators to express in writing their interest to participate in restricted procedure or in negotiated procedure with publication within a fixed time limit.

(3) The sector contracting entity shall invite in writing all candidates that, on the basis of the invitation by means of the periodic indicative notice pursuant to § 88(2)(c), have expressed in writing their interest to participate in restricted procedure or in negotiated procedure with publication, to confirm in writing their interest to participate within a fixed time limit and simultaneously to demonstrate the fulfilment of required qualifications within the same time limit. The sector contracting entity is entitled to send out such a written invitation to confirm an interest to participate pursuant to the first sentence of this paragraph not later than 12 months after the publication of the periodic indicative notice.

(4) The written invitation to confirm an interest to participate pursuant to § 88(3) shall contain at least the following

- (a) quantity and nature of the subject-matter of supplies, services or works,
- (b) quantity and nature of the subject-matter of all options concerning complementary or subsequent public contracts and, if possible, the estimated time available for exercising these options for renewable public contracts,
- (c) type of procedure: restricted procedure or negotiated procedure with publication,
- (d) where appropriate, the date on which the performance of the public contract is to commence and terminate,
- (e) tender documentation or conditions for access to or supply of the tender documentation pursuant to § 48,
- (f) identification data of the sector contracting entity,
- (g) economic and financial requirements of the sector contracting entity concerning qualifications of the economic operator and other information and evidence required by the sector contracting entity,
- (h) in the case of a public supply contract, indication of the form of the contract: purchase, lease with subsequent right to buy (leasing), rental of products or hire-purchase of products, or any combination of these, and
- (i) data on the evaluation criteria pursuant to § 78, if they are not mentioned in the periodic indicative notice, tender documentation or invitation to submit tenders.

(5) The sector contracting entity shall invite in writing to submit tenders all candidates that, on the basis of the invitation pursuant to § 88(4), have confirmed their interest to participate and fulfilled qualifications to the required extent.



(6) The written invitation pursuant to § 88(5) shall contain the essentials pursuant to § 28(5) or § 29(4), unless any of the information has already been supplied to the economic operators in the invitation to confirm an interest to participate.

(7) The provisions providing for the procedure in a relevant award procedure shall be applicable to the procedure in restricted procedure and negotiated procedure with publication, unless provided otherwise in this section.

## **CHAPTER II**

### **FRAMEWORK AGREEMENTS**

#### **§ 89**

##### **General Provisions on Framework Agreement**

(1) The contracting entity shall be obligated to indicate in the contract notice or in the call for competition, whether it intends to conclude the framework agreement with one or more tenderers.

(2) If the contracting entity intends to conclude the framework agreement with more than one tenderer, the number of tenderers shall be at least 3 in number; in such a case the contracting entity shall be bound to indicate in the tender conditions the objective manner for establishing a particular number of tenderers, which the framework agreement is going to be concluded with. The contracting entity is entitled to indicate in the contract notice or in the call for competition the maximum number of tenderers with which the framework agreement may be concluded.

(3) The contracting entity shall conclude a single framework agreement regardless of whether it is concluded with one or more tenderers. In justified cases the contracting entity is entitled to provide for the conditions of performance offered by individual tenderers in separate supplements to the framework agreement, if it is, in particular, justified by the nature of the conditions of performance, protection of commercial secrecy or the necessity to maintain competitive environment in the award of public contracts based on a framework agreement.

(4) If a framework agreement is to be concluded with several tenderers the contracting entity shall be obligated to include a draft framework agreement in the tender conditions.

(5) The contracting entity shall be bound to indicate in the contract notice or in the call for competition the term of a framework agreement. The term of such a framework agreement concluded by the contracting authority shall not exceed 4 years, save in exceptional cases, where a longer term is justified by objective reasons relating, in particular, to the subject-matter of the framework agreement.

(6) Public contracts based on a framework agreement shall be awarded either

- (a) by application of the procedure pursuant to § 92, if a contracting authority is involved, or
- (b) in negotiated procedure without publication, if a sector contracting entity is involved; ; in this case the provisions of § 34(2)(c), § 34(2)(d), § 34(2)(e), § 34(2)(f), § 34(2)(h) and § 34(2)(i) shall not be applicable; in case that all conditions of performance are specifically defined in the framework agreement, the sector contracting entity is entitled to use procedures pursuant to § 92(1)(a) or § 92(2) by analogy.

(7) If the number of candidates capable to perform a public contract based on a framework agreement reduces to less than 3 during the term of a framework agreement concluded with more than 3 tenderers, the contracting entity is not entitled to award a public contract based on such a framework agreement. It shall also apply in the case of a framework agreement concluded pursuant to § 90(2) with 2 tenderers, if both tenderers are not capable to perform the public contracts based on a framework agreement.

(8) When awarding public contracts based on a framework agreement, the parties to the framework agreement shall not be empowered to negotiate any substantial amendments to the terms and conditions laid down in the framework agreement.

(9) If the framework agreement is concluded in negotiated procedure with publication, the provision of § 32 shall not apply. Where an amendment to the draft framework agreement has been agreed upon in the framework of negotiations with all tenderers that the framework agreement is to be concluded with, the contracting entity shall submit the amended draft framework agreement after the decision on the selection of the most suitable tender is taken.

(10) Tenderers that are the parties to the framework agreement are not entitled to submit a joint tender for the performance of the public contract awarded under a framework agreement. The tenderer that is the party to a framework agreement is not entitled to submit a joint tender with an economic operator that is not the party to such a framework agreement. In awarding a public contract based on a framework agreement the tenderer that is the party to a framework agreement is not entitled to be a sub-contractor to another tenderer that is the party to such a framework agreement.

(11) In awarding a public contract based on a framework agreement, the contracting entity shall not require demonstration of the fulfilment of qualifications by the tenderer, except for the case referred to in § 89(12).

(12) Where a framework agreement is concluded for a term exceeding 1 year, the contracting entity is entitled, following the expiry of each year of the effectiveness of such a framework agreement, to require of the tenderers that are the parties to such a framework agreement, demonstration of the fulfilment of qualifications, or part thereof to the extent not larger than that required in the award procedure for a framework agreement. For the purposes of demonstration of the fulfilment of qualifications the contracting entity shall be obligated to allow for the time limit to the extent not shorter than that set forth for demonstration of the fulfilment of qualifications in the award procedure for such a framework agreement. The contracting entity is not entitled to invite the tenderer that has not demonstrated the fulfilment of required qualifications to render performance or to submit a tender until required qualifications have been demonstrated.

## **§ 90**

### **Selection of Parties to Framework Agreement**

(1) For the purpose of selection of several tenderers that the framework agreement is to be concluded with, the rules of procedure for the selection of the most suitable tenderer to be awarded a public contract, shall be applicable, and the contracting entity shall select such a number of tenderers, which was indicated in the tender conditions.

(2) If the contracting entity is unable to choose the number of candidates indicated pursuant to § 90(1) on the grounds that insufficient number of tenders have been submitted or the tenders have not satisfied the requirements set out by the law or by the contracting entity or an insufficient number of candidates have demonstrated the fulfilment of qualifications to the extent required, the contracting entity is entitled to conclude the framework agreement only with those tenderers that have satisfied those requirements. The provision of § 89(2) shall not apply.

## **§ 91**

### **Evaluation Criteria for Awarding Public Contract Based on Framework Agreement**

(1) In case that the contracting entity, when awarding a public contract based on a framework agreement, opts for the same evaluation criteria as those applied in the award procedure for such a framework agreement, the tenderer shall be obligated to offer the contracting entity at least such

conditions for the performance of the public contract as those under which the framework agreement was concluded with such a tenderer.

(2) The contracting entity, when awarding a public contract based on a framework agreement, is entitled to modify the basic evaluation criterion of economic advantage into the basic evaluation criterion of the lowest tender price, to reduce the extent of or apply different weightings of partial evaluation criteria than those chosen on concluding the framework agreement.

(3) The contracting entity is entitled to modify the evaluation criteria pursuant to § 92(2) only in case that the other evaluation criteria for the award of public contracts based on a framework agreement are defined at least in general manner in the tender documentation.

## § 92

### **Awarding Public Contract by Contracting Authority Based on Framework Agreement**

(1) If a framework agreement is concluded with a single tenderer

- (a) and all terms and conditions of the performance are specifically fixed in the framework agreement, the contracting authority shall conclude with the tenderer an agreement on the performance of the public contract on the basis of a written invitation to perform, which is the proposal to conclude such an agreement, and a written confirmation of such an invitation by the tenderer that is the acceptance of the draft agreement, or
- (b) all terms and conditions of the performance are not specifically fixed in the framework agreement, the contracting authority shall award the public contract on the basis of a written invitation to submit a tender.

(2) If a framework agreement is concluded with more than one tenderer and all terms and conditions are specifically fixed in such a framework agreement, the contracting authority shall conclude the contract on the performance of the public contract in such a way that

(a) it always invites in writing the tenderer that placed first in the ranking in concluding a framework agreement to submit a draft contract; where such a tenderer refuses to submit the draft contract, the contracting authority shall invite the tenderer that ranked next in the order of rating in concluding the framework agreement; the contracting authority shall proceed by analogy until the agreement has been concluded or until the tenderer that placed last in the ranking in concluding such a framework agreement has refused to submit such a draft, or

(b) it invites successively in writing the tenderers to submit a draft contract for each particular public contract according to the ranking established in concluding a framework agreement; the contracting authority is entitled to use such a manner of selection only in duly justified cases having regard to the nature of the subject-matter of the framework agreement, in particular, where the performance is laid down in whole or in part under separate legal regulation.

The contracting authority shall be obligated to indicate one of the manners for the selection of a tenderer to perform awarded public contracts based on a framework agreement referred to in § 92(2)(a) and § 92(2)(b) in the draft framework agreement pursuant to § 89(4). The contracting authority shall conclude the contract with the selected tenderer by accepting a draft contract submitted by the selected tenderer. The contracting authority shall not be obligated to invite the tenderer, which should be invited under the chosen manner of selection pursuant to § 92(2)(a) and § 92(2)(b), to submit such a draft contract, where it is clear that the selected tenderer is not able for objective reasons to render performance of the public contract to the contracting authority.

(3) If a framework agreement is concluded with more than one tenderer and not all terms and conditions are fixed in such a framework agreement, the contracting authority shall award a public contract to a selected tenderer following a prior invitation in writing to submit tenders based on the evaluation criteria laid down in compliance with § 91.

(4) The written invitation to submit tenders shall contain, besides a general description of the required performance, the essentials pursuant to § 34(2)(a), § 34(2)(b), § 34(2)(g) and § 34(2)(i). In the case of a framework agreement pursuant to § 92(1) and § 92(2), the provision of § 34(2)(i) shall not apply.

(5) In awarding contracts based on a framework agreement, the parties shall under no circumstances make any substantial changes in terms and conditions of such a framework agreement.

### **CHAPTER III**

#### **DYNAMIC PURCHASING SYSTEM**

##### **§ 93**

##### **Setting Up of Dynamic Purchasing System**

(1) For the purposes of awarding public contracts having as their subject-matter acquisition of common and generally available products, services or public works, the contracting entity is entitled to set up a dynamic purchasing system in open procedure.

(2) When setting up the dynamic purchasing system and admitting economic operators into dynamic purchasing system, the contracting entity shall proceed in compliance with the rules applicable to open procedure until the moment of the award of the public contract under such a dynamic purchasing system.

(3) Making it clear that a dynamic purchasing system is involved by means of the notice of open procedure shall be an assumption for setting up a dynamic purchasing system. Such a contract notice shall be an invitation to submit indicative tenders. In the contract notice the contracting entity shall, in addition, publish the Internet address, at which the tender documentation is available.

(4) The dynamic purchasing system shall not be set up for the purposes of concluding framework agreements.

(5) The dynamic purchasing system shall not last for more than 4 years, except in exceptional cases duly justified by the contracting entity.

(6) The contracting entity shall allow for unrestricted, full, and direct remote access to the tender documentation, from the publication of the contract notice until the termination of the dynamic purchasing system.

(7) The contracting entity shall specify at least the following in the contract notice and in tender documentation:

- (a) type and subject-matter of the public contracts, which are to be awarded under the dynamic purchasing system,
- (b) conditions for admission to the dynamic purchasing system which shall, in addition, contain requirements regarding qualifications of an economic operator; it shall apply to the sector contracting entity only where it requires demonstration of the fulfilment of qualifications,
- (c) evaluation criteria for awarding public contracts under a dynamic purchasing system, if it is suitable in view of the time interval until the awarding of public contracts under a dynamic purchasing system,
- (d) information concerning the dynamic purchasing system and electronic equipment used, and
- (e) information concerning the submission of indicative tenders.

(8) When setting up a dynamic purchasing system and awarding public contracts under such a dynamic purchasing system, the contracting entity as well as the economic operator shall exclusively use the electronic means pursuant to § 149.

## § 94

### **Admission to Dynamic Purchasing System**

(1) The contracting entity shall give any economic operator, throughout the entire term of the dynamic purchasing system, the possibility of submitting an indicative tender.

(2) The contracting entity shall admit to the dynamic purchasing system the economic operator that has met the conditions for admission to the dynamic purchasing system and that has submitted an indicative tender in compliance with the requirements of the contracting entity.

(3) The contracting entity shall assess an indicative tender within 15 days from the date of delivery thereof. The contracting entity is entitled to extend reasonably this time limit, provided that no invitation to submit tenders has been issued in the meantime.

(4) The contracting entity shall send to the economic operator the decision on the admission to the dynamic purchasing system or the rejection thereof within the time limit pursuant to § 94(3). The decision on the rejection of an indicative tender of the economic operator shall be duly justified by the contracting entity.

(5) The contracting entity shall allow the economic operator, throughout the entire term of the dynamic purchasing system, to improve an indicative tender, provided that it continues to comply with the conditions for the admission to the dynamic purchasing system.

## § 95

### **Awarding of Public Contract in Dynamic Purchasing System**

(1) The public contract shall be awarded under a dynamic purchasing system on the basis of an invitation to submit tenders.

(2) Prior to the dispatch of the invitation to submit tenders under a dynamic purchasing system, the contracting entity shall publish a simplified contract notice; it shall not apply, if the public contract is awarded on the basis of a notice pursuant to § 93(3).

(3) The contracting entity shall invite the economic operators to submit their indicative tenders by means of a simplified contract notice. The time limit for the submission of such indicative tenders shall not be less than 15 days from the date of publication of the simplified contract notice. The provisions of § 94(2) through § 94(4) shall be applied by analogy.

(4) The contracting entity shall make known its intention to award a public contract under the dynamic purchasing system by means of an invitation to submit a tender to all candidates admitted to the system.

(5) The written invitation to submit tenders shall contain at least the following

- (a) data on the access to tender documentation,
- (b) information on publication of a simplified contract notice,
- (c) time limit for the submission of tenders,
- (d) place where tenders may be submitted,
- (e) data on the evaluation criteria pursuant to § 78, and
- (f) information on the language in which the tenders must be submitted.

(6) The contracting entity shall send the invitation to submit tenders to the candidates admitted to the dynamic purchasing system only after all indicative tenders submitted within the time limit for the submission of indicative tenders pursuant to the simplified contract notice have been assessed.

(7) In the invitation to submit tenders, the contracting entity shall fix the time limit for the submission of tenders, which shall not be less than 7 days. The contracting entity is entitled to formulate the evaluation criteria more precisely in the invitation to submit tenders.

## **CHAPTER IV**

### **ELECTRONIC AUCTION**

#### **§ 96**

##### **Conditions and Extent of Use of Electronic Auction**

(1) In open procedure, restricted procedure, and negotiated procedure with publication or in simplified below-the-threshold procedure, the contracting entity is entitled to use electronic auction as an instrument for the evaluation of tenders. In negotiated procedure with publication, the contracting authority is entitled to use electronic auction as an instrument for the evaluation of tenders only in the case referred to in § 22(1). The electronic auction shall not be used in the case of public works contract or public service contract having as its subject-matter intellectual performances.

(2) The contracting entity is, in addition, entitled to use the electronic auction for the evaluation of tenders in the case of public contracts awarded under a dynamic purchasing system or based on a framework agreement.

(3) Making this fact known by means of the contract notice or the call of competition shall be the assumption for the holding of an electronic auction.

(4) When using the electronic auction the contracting entity shall state in the tender conditions at least the following

- (a) evaluation criteria that can be expressed in figures and the values of which will be the subject of an electronic auction,
- (b) any limits on the new values of tenders submitted by tenderers in compliance with the evaluation criteria pursuant to § 96(4)(a) to be submitted in the course of electronic auction (hereinafter referred to as “the auction value”),
- (c) information, which will be made available to tenderers in the course of the electronic auction and, where appropriate, indication when such information will be made available to them,
- (d) information concerning the process of electronic auction,
- (e) conditions under which the tenderers will be entitled to bid in the framework of an electronic auction, in particular, indication of the minimum differences for individual submissions of auction values, where appropriate in view of their nature, and
- (f) information concerning the electronic means used and other technical information indispensable for electronic communication.

#### **§ 97**

##### **Course of Electronic Auction**

(1) Before proceeding with an electronic auction, the contracting entity shall be obligated to make assessment and evaluation of tenders and draw up a report on assessment and evaluation of tenders pursuant to § 80 (hereinafter referred to as “the initial evaluation”).

(2) Following the initial evaluation, the contracting entity shall invite all tenderers that have not been excluded in the framework of initial evaluation, to submit new auction values for electronic auction. The invitation shall be sent to the tenderers by electronic means.

(3) The invitation sent by the contracting entity pursuant to § 97(2) shall contain all relevant information concerning individual connection to the electronic equipment being used for the holding of an electronic auction, the date and time of the start of the electronic auction. Where the information pursuant

to the first sentence has already been indicated in the tender conditions, it will suffice to mention in the invitation the reference to tender conditions.

(4) If the basic contract award criterion of the most economically advantageous tender is applied, the invitation pursuant to § 97(2) shall, in addition, contain the following

- (a) the outcome of the initial evaluation of a tender submitted by the relevant tenderer and
- (b) the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new auction values submitted and which shall incorporate all partial evaluation criteria published in the contract notice or in the call for competition.

(5) The electronic auction shall not start sooner than 2 working days after the dispatch of all invitations pursuant to § 97(2). The outcomes pursuant to § 97(1) shall be the starting point for such an electronic auction.

(6) The electronic auction may consist of successive phases (hereinafter referred to as “the auction rounds”). The contracting entity shall inform tenderers of the timetable for individual auction rounds and other particulars relating to the individual auction rounds in the invitation pursuant to § 97(2).

(7) Throughout an electronic auction, the contracting entity shall be obligated to communicate to the tenderer the information on the ranking thereof or on the best auction values at any moment. The contracting entity may also communicate other information concerning prices or values in question in a manner indicated in the invitation pursuant to § 97(2), provided that it retained such an option in the tender conditions. The contracting entity is entitled to announce any time in the course of electronic auction the number of participants in a given auction round. However, the contracting entity shall not disclose the identity of the participants in electronic auction to the tenderers during any phase of the electronic auction.

(8) The tenderer is entitled to require of the contracting entity the information concerning auction values submitted by other tenderers, if the contracting entity has allowed for such a right in the tender conditions or in the invitation pursuant to § 97(2).

(9) The contracting entity is entitled to close an electronic auction

- (a) on the date and time fixed in advance,
- (b) if it receives no new auction values, which would meet the requirements concerning minimum differences for each submission; in that event, the contracting entity is entitled to state in the invitation pursuant to § 97(2) the time which will have to elapse after receiving the last submission with a new auction value before it closes the electronic auction, or
- (c) if the number of the auction rounds fixed in the invitation pursuant to § 97(2) has been completed.

(10) The contracting entity shall indicate the manner of closure of an electronic auction in the invitation pursuant to § 97(2). Where the contracting entity decided to close an electronic auction in accordance with § 97(9)(c), possibly in combination with § 97(9)(b), it shall, in addition, indicate in the invitation to take part in the electronic auction the timetable for each round of the auction.

## **CHAPTER V**

### **OTHER INSTITUTES**

#### **§ 98**

##### **Awarding Lots of Public Contracts**

(1) The contracting entity is entitled to subdivide a public contract into several separate lots, if it is admitted by the nature of the subject- matter of such a public contract.

(2) If a public contract is subdivided into lots, the contracting entity shall state this fact in the contract notice or in the call for competition and shall indicate the subject-matter of separate lots of such a public contract as well as other requirements related to the subdivision of the public contract into lots.

(3) Where the contracting entity has subdivided a public contract into lots, it shall mention in the contract notice or in the call for competition, whether the economic operator is authorised to tender for all or several lots of such a public contract or only for one lot of that public contract.

(4) If a public contract is subdivided into several lots, the provisions of this Act relating to procedures of the contracting entity in the award procedure or to the rights and obligations of the economic operator, shall apply to each separate lot, unless stipulated otherwise by this Act. It shall be without prejudice to the provision of § 13(4).

(5) Where the nature of performance implies that it is possible to subdivide the subject-matter of an above-the-threshold public supply contract, public service contract or public works contract into separate lots, the contracting entity is entitled to award such lots of supplies, services or public works by procedure laid down for below-the-threshold public contracts, provided that the estimated value of the relevant lot, in the case of supplies and services, is less than the equivalent of EUR 80,000, and in the case of public works, less than the equivalent of EUR 1,000,000, and, in addition, provided that the aggregate estimated value of all lots awarded in this way does not exceed 20 % of the estimated value of the subject-matter of the public contract as a whole. It shall be without prejudice to the provision of § 19(1).

## **§ 99**

### **Options**

(1) 'Option' shall be understood as the right of the contracting entity to be provided with supplementary supplies, services or works the award of which has been reserved by the contracting entity in tender conditions of the original public contract awarded in open procedure, restricted procedure or simplified below-the-threshold procedure. The contracting entity is entitled to exercise the option only in respect of the economic operator that has been awarded the original public contract.

(2) The contracting entity is entitled to award a public contract based on the exercise of an option only in negotiated procedure without publication; no public supply contracts may, however, be awarded by way of such a procedure. Where the exercise of an option by the contracting authority relating to a framework agreement concluded with a single tenderer is involved, the public contract may, in addition, be awarded based on the exercise of an option by way of the procedure pursuant to § 91(1), provided that the statutory conditions are met.

(3) The contracting entity is not entitled to exercise an option, where

- (a) the price net of value added tax that the contracting entity would be bound to pay for the performance of the subject-matter of a public contract or a lot thereof while exercising an option, exceeds by more than 30 % the estimated value of a performance corresponding to such an option indicated in tender conditions prior to the initiation of the original award procedure, or
- b) the price of performance corresponding to an option net of value added tax amounts to more than 30 % of the price of the original public contract.

(4) If the contracting entity, in awarding a public contract, retains an option, the economic operator shall quote in the tender only the amount of tender prices in relation to those parts of performance of the public contract, which do not concern such an option, unless stipulated otherwise by the contracting entity in tender conditions.

(5) The contracting entity, upon initiating the award procedure, shall be obligated to indicate the provisional timetable for recourse to an option and delimit the basic subject-matter of the performance of the public contract concerning such an option.



## § 100

### **Tenders Comprising Products Originating in Third Countries**

(1) This provision shall apply to tenders covering products originating in countries with which the European Community has not concluded international agreement ensuring comparable and effective access for economic operators with registered office or place of residence in the territory of any Member State of the European Union to the markets of those third countries. It shall be without prejudice to the obligations of the Czech Republic in respect of such countries.

(2) In the case of public supply contract the sector contracting is entitled to reject any tender, where the value of proportion of products originating in countries as determined in accordance with the directly applicable regulation of the European Communities<sup>57)</sup> exceeds 50 % of the total value of supplies constituting the tender.

(3) Where two or more tenders are equivalent in the light of evaluation criteria, the sector contracting entity shall give preference to such a tender that cannot be rejected pursuant to § 100(2). The tender price of such a tender shall be considered equivalent for the purposes of this provision, if the price difference does not exceed 3 %.

(4) The sector contracting entity shall not be obligated to prefer the tenders pursuant to § 100(3), where the acceptance of such a tender would oblige the contracting entity to acquire equipment having technical parameters different from those of its existing equipment, resulting in incompatibility or technical difficulties in operation and maintenance or disproportionate costs.

(5) The products originating from those countries determined in accordance with the provision of § 100(2) to which the benefit of the provisions of the legal regulation of the European Community has been extended by the decision of the Council of the European Union shall not be taken into account for determining the proportion of products originating in third countries.

## § 101

### **Preference for Economic Operators Employing Handicapped People**

(1) If so indicated by the contracting entity in the contract notice or in the call for competition, only the economic operator operating a sheltered workshop or the one being involved in an employment programme under which the economic operator employs more than 50 % of handicapped people under separate legal regulation<sup>58)</sup> out of the total number of the employees of such an economic operator.

(2) The fact that the economic operator employs more than 50 % of handicapped people pursuant to § 101(1) shall be mentioned by the economic operator in the tender accompanied by certificates or rulings of social security authority in respect to handicapped people. In the case of a sheltered workshop, the economic operator shall submit, together with the tender, a certificate of or an arrangement with the labour office under separate legal regulation<sup>59)</sup>.

(3) If this provision is applied, the option of proving facts pursuant to § 101(2) through other persons shall be excluded.

(4) If the economic operator employing more than 25 employees, out of whom more than 50 % are handicapped people<sup>58)</sup>, takes part in open procedure, restricted procedure or simplified below-the-threshold procedure for awarding below-the-threshold public supply contract or below-the-threshold public

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<sup>57)</sup> Council Regulation (EEC) no. 2913/92 of 12 October 1992, establishing the Community Customs Code, as subsequently amended

<sup>58)</sup> § 67 of Act no. 435/2004 Coll., on Employment

<sup>59)</sup> § 76 of Act no. 435/2004 Coll.

<sup>60)</sup> § 11 of Decree no. 518/2004 Coll., implementing Act no. 435/2004 Coll., on Employment

service contract, the tender price of such an economic operator reduced by 15 % shall be decisive for the evaluation of tenders. It shall be without prejudice to the provisions of § 82(3).

(5) The facts pursuant to § 101(5) shall be proven by the economic operator in respect of each of the four preceding calendar quarters of a year prior to the date of initiation of the award procedure. The average quarterly number of employees adjusted under separate legal regulation<sup>60)</sup> shall be conclusive to establish the total number of employees of an economic operator and of employees who are persons with disabilities.

(6) The tender price of an economic operator may be evaluated pursuant to § 101(5) only when the facts pursuant to § 101(5) are proven in the tender by producing a certificate issued by the relevant local labour office.

## **TITLE FOUR DESIGN CONTEST**

### **§ 102**

#### **Use of Design Contest**

(1) This Title of the Act shall apply to the contracting entity, where the estimated value of a design contest is equal to or greater than the financial threshold set out in implementing legal regulation pursuant to § 12(1) for public service contracts. The contracting authority is entitled to proceed pursuant to this Title of the Act even if the estimated value of a design contest is less than such a financial threshold.

(2) This Title of the Act shall not apply to the organisation of a design contest

- (a) in the cases when this Act shall not apply to awarding public contracts pursuant to § 18(1)(a) through § 18(1)(c), and § 18(1)(o) through § 18(1)(q),
- (b) in the cases when this Act shall not apply to awarding public contracts pursuant to § 18(1)(i), where a contracting authority is involved,
- (c) in the cases when this Act shall not apply to awarding public contracts pursuant to § 19(2)(a), where a sector contracting is involved,
- (d) by a sector contracting entity in the context of the pursuit of the other than relevant activity pursuant to § 4 or in the context of the pursuit of relevant activity, where the application of this Act has been excluded in relation to such a relevant activity in compliance with § 20.

### **§ 103**

#### **Design Contest**

(1) ‘Design contest’ shall be understood as the procedure, which enables the contracting entity to acquire a design, project or plan (hereinafter referred to as “the design”). The design shall be understood as the outcome of one’s own creative activity pursued by a candidate interested to participate or a participant in the design contest, depicted in writing or graphically.

(2) This Act shall provide for the following types of design contest

- a) open design contest and
- b) restricted design contest.

(3) The contracting entity shall employ the design contest mainly in the fields of spatial planning, architecture, construction engineering and data processing.

(4) The contracting entity shall employ the design contest, if

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(a) such a contest is organised as part of a procedure leading to the award of a public service contract, or  
(b) it is a contest with prizes or payments to be awarded to a selected participant or participants in the contest.

(5) The estimated value of a design contest shall be established

(a) pursuant to § 103(4)(a), based on the estimated value of the public service contract awarded subsequently upon this contest, including the estimated value of prizes or payments awarded to participants in the design contest,

(b) pursuant to § 103(4)(b), based on the total estimated value of prizes and payments, the estimated value of a public service contract, which might be awarded by the contracting authority pursuant to § 23(6) included, if the contracting entity has not excluded such an option in the design contest notice.

(6) The contracting entity is not entitled to restrict participation in the design contest to a limited number of candidates with reference to the territory or part of the territory of a Member State of the European Union.

(7) Detailed rules for the procedure in a design contest may be laid down by the rules of contest issued in compliance with separate legal regulation<sup>60a)</sup>. The rules of contest shall be in conformity with the conditions set out by this Act.

## § 104

### Design Contest Notice and Manner of Communication

(1) The design contest shall be initiated by publication of a design contest notice pursuant to § 146 and § 147. The contracting entity shall use a standard form according to the directly applicable regulation of the European Communities<sup>61)</sup> to make the design contest notice known.

(2) In the design contest notice, the contracting entity shall indicate a time limit for the submission of designs in the case of open design contest and a time limit within which the candidates interested to participate in a design contest (hereinafter referred to as “the candidates interested to participate”) are entitled to submit their requests to participate in the case of restricted design contest.

(3) The contracting entity is entitled to set forth in the design contest notice or in the contest conditions requirements for demonstration of the fulfilment of qualifications by candidates interested to participate or participants in such a design contest. Chapter V of Title Two of this Act shall apply by analogy to set forth the requirements for demonstration of the fulfilment of qualifications and assessment of qualifications.

(4) The contracting entity is entitled to restrict the number of the candidates interested to participate, which are to be invited thereby in writing to submit a design by establishing a minimum or a maximum number of participants in a design contest; § 61, and in the case of sector contracting entity § 66, shall apply to the reduction of the number of candidates interested to participate by analogy. The number of candidates interested to participate, invited to submit a design, shall be indicated in the design contest notice and be sufficient to ensure genuine competition, unless it is excluded by objective facts. § 28(5) shall apply to the content of a written invitation to submit designs by analogy.

(5) The contracting entity shall ensure communication, exchanges and the storage of such documents or information, so that the protection of all such documents and information shall be preserved.

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<sup>60a)</sup> Act no. 360/1992 Coll., on Pursuit of Activities of Authorized Architects and on pursuit of Activities of Authorized Engineers and Technicians Engaged in Construction, as amended.

<sup>61)</sup> Commission Regulation (EC) no. 1564/2005 of 7 September 2005, establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council

## **§ 105**

### **Course of Design Contest**

(1) The contracting entity, not later than on the date of publication of the design contest notice, shall be obligated to make the contest conditions accessible and/or enable all candidates interested to participate to collect them. § 48 and § 49 shall apply by analogy to the supply of contest conditions, additional enquiries thereto and the visit to the site of performance in addition to the application of the provisions in force relating to the open procedure where time limits have not been modified pursuant to § 40 and § 42. The contest conditions may, in addition, be supplemented to the invitation to submit designs in the case of restricted design contest.

(2) The designs shall be submitted in writing within the time limit fixed for the submission of designs. The design shall be submitted in a properly sealed envelope denoted in a manner set forth in the contest conditions. The provisions of § 69(1), § 69(3) and § 69(4) shall apply by analogy.

(3) The contracting entity shall, throughout the duration of the design contest and until the moment of publication of the results of the evaluation of designs, ensure anonymity of the submitted designs to at least such an extent that the jury in evaluating the designs shall be unable to match a design with a participant in the design contest that has submitted it. The contracting entity shall indicate the manner of ensuring such anonymity in the contest conditions. If a participant in a design contest fails to comply with the requirements of the contracting entity relating to such anonymity, the contracting entity shall exclude such a participant from the design contest and shall notify the excluded participant in the design contest thereof in writing and invite it to take over the design thereof.

(4) The contracting entity shall also ensure that members of the jury ascertain the content of the designs, however, not earlier than after the expiry of the time limit for the submission of designs.

(5) The contracting entity shall reject any requests to participate or designs submitted after the expiry of the time limit for the submission of requests to participate or the time limit for the submission of designs and shall invite the candidates interested to participate or the participants in the design contest to take over the designs thereof.

## **§ 106**

### **Composition and Decisions of Jury**

(1) The assessment and evaluation of designs shall be conducted by a jury. The contracting entity shall appoint members of the jury for the evaluation of the designs and their alternates and make their names known not later than on the date of publication of the design contest notice and of contest conditions. § 76(1), § 76(2) and § 76(6) shall apply to the assessment of designs by a jury by analogy. The jury shall, in addition, reject a design, unless it satisfies the requirements to maintain anonymity. In the advice note of the exclusion, the contracting entity shall invite the participant in a design contest to take over the design thereof.

(2) The jury shall be composed exclusively of natural persons who shall be unbiased in relation to the participants in a design contest. Most members of the jury shall be independent in relation to the contracting entity. The members of the jury shall be considered independent, where they are not in permanent commercial relationships with the contracting entity or, where appropriate, in occupational, service or any other relationship of that kind. The members of the jury shall make a written declaration in respect of his/her impartiality and independence prior to the commencement of his/her activity.

(3) Where the participants in a design contest are required to fulfil certain professional qualifications, at least one half of the members of the jury shall also have analogous or equivalent qualifications. All designs shall be evaluated by the same members of the jury or their alternates, unless it is impossible in duly justified exceptional cases.

(4) The jury shall evaluate the submitted designs on the basis of evaluation criteria, which were indicated in the design contest notice and, if appropriate, specified in detail in the contest conditions, namely in the manner set forth by the contest conditions.

(5) The jury shall draw up a report on the manner of evaluation of the designs and their ranking, to be undersigned by all members of the jury or their alternates that have been involved in the evaluation of the designs.

(6) The jury is entitled to record additional enquiries and suggestions concerning certain aspects of some designs in the report on the evaluation of the designs pursuant to § 106(5).

(7) The jury shall refer the report on the evaluation of the designs to the contracting entity. Following such a referral of the report pursuant to the first sentence, the contracting entity, no less than 5 working days in advance, shall invite the participants in the design contest to take part in making the results of the evaluation of the designs public. In the course of making the results of the evaluation public, the members of the jury are entitled to examine additional enquiries pursuant to § 106(6) with the participants in the design contest. Where it is justified by the nature of the subject-matter of the contest, the contracting entity is entitled in purely exceptional cases, upon the examination of the additional questions pursuant to the second sentence, to fix a reasonable time limit for a participant in the design contest to furnish an additional rejoinder or document. The jury is entitled to change the ranking of the designs referred to in the report on the evaluation of the designs solely in case that supply of the additional rejoinder or document invokes a substantial change in the evaluation of the designs on the basis of evaluation criteria indicated in the design contest notice.

(8) The contracting entity shall draw up written minutes of the course of making the results of the evaluation of the designs public, evaluation of designs and, where appropriate, of examination of additional enquiries pursuant to § 106(7) with indication of terms for publication of designs. The designs shall be put on display, if it is afforded by the nature thereof.

(9) The contracting entity shall be bound by the evaluation of the jury referred to in the report on the evaluation of the designs. The contracting entity shall take decision on a new assessment and evaluation of designs, where it has found out that the jury had infringed the procedure set forth by this Act or by the design conditions; it is entitled to appoint a new jury to that end. It shall attach the statement of reasons for such a new assessment and evaluation of designs to the original report on the assessment and evaluation of designs.

## **§ 107**

### **Decision on Selection of the Most Suitable Design**

(1) The decision on the selection of the most suitable design or designs shall be taken by the contracting entity. The contracting entity shall dispatch the notice of the results of a design contest to all participants in such a design contest within 5 working days as from the date of taking such a decision, unless they were excluded from the design contest. § 110 and § 111 shall, if applicable, apply to lodging objections by analogy.

(2) In the notice of the results of a design contest, the contracting entity shall invite the participants in a design contest whose designs have not been selected to take over the designs thereof.

(3) The contracting entity shall dispatch the results of a design contest for publication in the manner referred to in § 146 and § 147 within the time limit of 48 days as from the date of the decision on the selection of the most suitable design. The contracting entity shall make the results of the design contest known by means of a standard form under the directly applicable regulation of the European Communities<sup>61</sup>.

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(4) The contracting authority is entitled to require that the result of the design contest should not be made known, if the publication entails the breach of separate legal regulation or is contrary to the public interest or where it may violate the right of a participant in the design contest in respect of trade secrecy of the contest or distort competition. The sector contracting entity is, in addition, entitled to provide that the information concerning the number of received designs, identity of participants in the design contest or prizes, shall be withheld from publication.

## **§ 108**

### **Setting Aside Design Contest**

The contracting entity is entitled to set aside a design contest any time, until the decision on the most suitable design has been taken by the jury, if it has retained such an option in the design contest notice or in the contest conditions and where it has simultaneously fixed the conditions for compensation of the participants in the contest. In such a case it shall dispatch the notice of setting aside the design contest within 3 days as from the date of taking such a decision to all known candidates interested to participate or to the participants in such a design contest, statement of reasons included, and shall invite them to take over the designs thereof. It shall send out the notice of setting aside the design contest for publication in the information system not later than within 3 days from the date of taking such a decision. To make the notice of setting aside the design contest known the contracting entity shall make use of the standard form set out by implementing legal regulation.

## **§ 109**

### **Separate Provision Concerning Keeping Design Contest Documentation**

Where the contracting entity returns their designs to the participants in the design contest pursuant to § 105(3), § 105(5), § 106(1), § 107(2) or § 108, it shall be obligated to draw up an appropriate documentation in respect of such designs to be subsequently kept on records pursuant to § 155.

## **TITLE FIVE**

### **PROTECTION AGAINST IRREGULAR PRACTISES OF CONTRACTING ENTITY**

#### **CHAPTER I**

#### **OBJECTIONS**

## **§ 110**

### **Extent and Manner of Lodging Objections**

(1) In awarding above-the-threshold and below-the-threshold public contracts or in a design contest, any economic operator having or having had an interest in obtaining a particular public contract and its rights have been harmed or risk being harmed as a consequence of an alleged infringement of the law by an action of the contracting entity (hereinafter referred to as “the complainant”) is entitled to lodge reasoned objections with the contracting entity.

(2) Objections may be lodged against all actions of a contracting entity and the complainant shall deliver them to the contracting entity within 15 days from the date when the complainant learned of the alleged infringement of this act by an action of the contracting entity, however, not later than by the date of the conclusion of the contract.

(3) The complainant shall deliver the objections against tender conditions not later than within 5 days following the expiry of the limit for the submission of tenders.

(4) Objections against the decision on the selection of the most suitable tender or against the decision of the contracting entity on the exclusion from the participation in the award procedure shall be delivered by the complainant to the contracting entity within 15 days from the date of delivery of the notice of the selection of the most suitable tender for the public contract pursuant to § 81 or the decision of the exclusion from the participation on the award procedure.

(5) In case that the contracting entity has published a voluntary notice expressing its intention to conclude a contract pursuant to § 146(2), the objections against the intention to conclude a contract without publication of the contract notice may be lodged within 15 days from the date of publication of such a notice expressing the intention to conclude a contract.

(6) The contracting entity shall not conclude a contract prior to the expiry of the time limit for lodging objections pursuant to § 110(3) through § 110(5) and until the date of delivery of the decision of the contracting entity on such objections.

(7) Objections shall be lodged in writing. The complainant shall state in the objections who lodges them, against which action of the contracting entity they are intended and what action is considered to be an infringement of the law. In the objections pursuant to § 110(2), § 110(3) and § 110(5) it shall be stated what harm the complainant risks to sustain or has sustained as a consequence of the alleged infringement of the law and what the complainant claims. In the case of the objections pursuant to § 110(2), the complainant shall state in the objections the facts conclusive for the determination of the moment when it learned of such an alleged infringement of the law by an action of the contracting entity. The contracting entity shall reject the objections that fail to contain the essentials pursuant to this paragraph and shall inform the complainant in writing of this fact without delay. Lodging the objections in due course and in good time shall be conditional for filing a proposal to review practices of the contracting entity in the same matter. The complainant is entitled to file a proposal to ban the performance of the contract pursuant to § 114(2) without prior lodging objections.

(8) The candidate or the tenderer is entitled to waive in writing the right to lodge objections against the decision on the selection of the most suitable tender or against the decision of the contracting entity on the exclusion thereof from the participation in an award procedure; the right to lodge objections can be waived by the candidate or the tenderer only following the establishment of the right to lodge objections. Where the candidate or the tenderer has waived the right to lodge objections, it applies that the time limit for lodging objections in relation to such a candidate or tenderer has expired.

## **§ 111**

### **Procedure of Contracting Entity to Review Objections**

(1) The contracting entity shall review the lodged objections in their entirety and send to the complainant a written decision on whether or not it complies with the objections, statement of reasons included, not later than within 10 days following the receipt of the objections. If the contracting entity complies with the objections, it shall indicate the manner of corrections to be made in the decision.

(2) Unless the contracting entity complies with the objections, it shall notify the complainant by a written decision of the possibility to file a proposal with the Office to initiate procedure for the review of practices of the contracting entity within the time limit pursuant to § 114(4).

(3) The contracting entity shall inform, without delay and in writing, all tenderers, and if the time limit for the submission of tenders has not expired at the time of the settlement of the objections, all candidates, of the objections lodged and of the decision thereon.

(4) The contracting entity shall not take decision on the objections that have been lodged with delay or that have been withdrawn by the complainant. The contracting entity shall notify the complainant in writing of such a fact. If the complainant withdraws the objections, it shall not be entitled to file a proposal to initiate procedure for the review of practices of the contracting entity with the Office in the same matter.

(5) Unless the contracting entity has complied with the objections lodged within the time limit pursuant to § 111(1), the contracting entity, prior to the expiry of the time limit for filing a proposal to initiate procedure for the review of practices of the contracting entity, and subject to filing such a proposal in good time, shall not conclude the contract within the time limit of 45 days from the date of delivery of the objections. If the contracting entity has not taken decision on the objections within the time limit pursuant to § 111(1), it shall apply that it has not complied with the objections. Where the procedure for the review of practices of the contracting entity has been terminated prior to the expiry of the time limit pursuant to § 111(5)(first sentence), the ban to conclude the contract shall be repealed as from the day of termination of the procedure.

(6) If the contracting entity detects in the course of the award procedure that it has infringed the law by its action, it shall take corrective measures, even in case that it has received no objections against such an action.

## **CHAPTER II**

### **SUPERVISION OVER COMPLIANCE WITH THE ACT**

#### **Division 1**

#### **Supervision over Awarding of Public Contracts**

#### **§ 112**

#### **Exercise of Supervision over Awarding of Public Contracts**

(1) The Office shall exercise supervision over compliance with this Act.

(2) In exercising supervision over compliance with this Act the Office shall

- (a) grant interim measures,
- (b) take decisions on whether the contracting entity has proceeded in awarding a public contract and design contest in compliance with this Act,
- (c) order corrective measures, and inflict sanctions,
- (d) examine administrative delicts,
- (e) conduct a check on practices of the contracting entity in awarding public contracts under separate legal regulation<sup>62)</sup>. It shall be without prejudice to competence of other bodies conducting such checks under separate legal regulations<sup>63)</sup>,
- (f) discharge other tasks, where separate legal regulation so lays down.

#### **Division 2**

#### **Proceedings on Review of Practices of Contracting Entity**

#### **§ 113**

#### **Initiation of Proceedings**

Proceedings on the review of practices of the contracting entity shall be initiated upon a written proposal by the complainant (hereinafter referred to as “the petitioner”) or *ex officio*.

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<sup>62)</sup> Act no. 552/1991 Coll., on State Control, as amended

<sup>63)</sup> E.g., Act no. 166/1993 Coll., on the Supreme Audit Office, as amended



## § 114

### Proposal

(1) The proposal may be filed against all practices of the contracting entity that preclude or could preclude the principles pursuant to § 6 and as a consequence of which the rights of the petitioner risk being harmed or have been harmed, and in particular, against:

- (a) tender conditions,
- (b) content of the contract notice or call for competition,
- (c) exclusion of a tenderer from the award procedure,
- (d) decision on the selection of the most suitable tender,
- (e) use of a certain type of the award procedure.

(2) Following the conclusion of a contract, only the proposal against the conclusion of a contract without prior publication of a contract notice or against the breach of a ban to conclude such a contract set forth by this Act, may be filed. The petitioner is entitled to seek solely the imposition of a ban on the performance of the contract.

(3) The proposal shall, besides general essentials applicable to the submission<sup>64)</sup>, contain identification of the contracting entity, what action is considered to be an alleged infringement of the law as a consequence of which the rights of the petitioner have been harmed or risk to be harmed, production of evidence, and what the petitioner claims. In addition to the evidence of payment of the deposit pursuant to § 115, and in the case of a proposal sent out to the Office prior to the conclusion of a contract, the evidence of the delivery of objections to the contracting entity and the evidence of the re-deposit of a pecuniary tender security pursuant to § 67(4), shall be supplemented to the proposal.

(4) The proposal shall be delivered to the Office and in duplicate to the contracting entity within 10 calendar days from the date of delivery to the petitioner of the decision under which the contracting entity has not complied with the objections. The proposal to impose a ban on the performance of the contract pursuant to § 114(2) shall be delivered solely to the Office within 30 calendar days from the date when the contracting entity made known the contract award notice in a manner referred to in § 147, including the statement of the reasons for the award of a public contract without publication of the contract notice, however, not later than within 6 months following the conclusion of such a contract.

(5) Where the contracting entity has failed to settle the objections pursuant to § 111(1), the proposal to order corrective measures may be delivered to the Office and the contracting entity not later than within 25 calendar days from the date of dispatch of the objections by the petitioner.

(6) The contracting entity shall be obligated to forward to the Office its representation to the received proposal within 7 days from the delivery thereof. It shall forward such a representation accompanied by the relevant documentation of a public contract or a design contest. In the case of the proposal to ban the performance of a contract, the contracting entity shall be obligated to send simultaneously the copy of such a contract to the Office and indicate, if applicable, the contingent grounds to carry on with the performance of the contract within the meaning of § 118(3).

## § 115

### Deposit

(1) On filing the proposal, the petitioner shall pay to the bank account of the Office a deposit amounting to 1 % of the petitioner's tender price, however, not less than CZK 50,000 and not more than CZK 2,000,000. Where it is impossible to fix the petitioner's tender price or the tender price, which is the subject of evaluation, is fixed only as a price for the unit of performance while concluding a framework agreement or in the case of the proposal to impose a ban on the performance of a contract, the petitioner

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<sup>64)</sup> § 37(2) of the Rules of Administrative Procedure

shall be obligated to deposit CZK 100,000. The Office shall make known its bank account details at its Internet address.

(2) The deposit shall be the revenue of the State budget, if the Office rejects the proposal pursuant to § 118(4)(a) by its final ruling; otherwise, the Office shall refund the deposit to the petitioner, together with interest accrued, not later than within 15 days from the date of entry of the ruling into legal force. The deposit shall, in addition, be refunded to the petitioner in case that the Office, together with the rejection of the proposal pursuant to § 118(4)(a), takes decision on committing an administrative delict pursuant to § 120(1) by the contracting entity.

## **§ 116**

### **Parties to Proceedings**

The contracting entity shall be the party to the proceedings, and in the proceedings initiated upon a proposal, the petitioner shall be another party to the proceedings; where the subject of the proceedings consists in the review of the decision taken on the selection of the most suitable tender or the decision on the selection of the most suitable design, the selected tenderer or the selected participant in the design contest shall be the party to the proceedings as well.

## **§ 117**

### **Interim Measure**

(1) Prior to the award of the ruling in the administrative proceedings initiated pursuant to § 113, to the indispensable extent and upon a proposal by a party to the proceedings or *ex officio*, to maintain the purpose of the proceedings, the Office is entitled to grant the following interim measure:

- (a) to impose a ban on the contracting entity to conclude a contract in the award procedure, or
- (b) to impose suspension of the award procedure or the design contest, on the contracting entity.

(2) The proposal to grant interim measure, apart from general essentials of the submission<sup>64)</sup>, shall contain precise identification of the contracting entity, what action is considered to be an infringement of the law, as a consequence of which the rights of the petitioner are at immediate risk of being harmed, relevant evidence, and what the petitioner by means of the interim measure claims. Where the proposal lacks prescribed essentials, the Office shall not grant any interim measure.

(3) The Office shall set aside the interim measure as soon as the grounds, for which it was granted, have passed; otherwise, it shall cease to apply on the date of entry of the ruling pursuant to § 118 into legal force.

(4) The appeal against the ruling on the interim measure shall not have any suspensive effect.

## **§ 117a**

### **Suspension of Proceedings**

The Office shall suspend the initiated proceedings, unless

- a) the proposal contains prescribed essentials pursuant to § 114(3) and unless the petitioner completes them within the time limit set forth by the Office,
- b) the submission of a proposal is accompanied by the payment of the deposit at a rate set forth pursuant to § 115(1) and the petitioner fails to make the deposit even within the additional period of time fixed by the Office,
- c) the proposal is delivered to the Office and the contracting entity within the time limits set forth pursuant to § 114(4), or

- d) in the proceedings initiated *ex officio*, the grounds to impose a corrective measure pursuant to § 118 or to inflict a sanction pursuant to § 120 or § 120a have been established.

## § 118

### Corrective Measures and Ineffectiveness of Contracts

(1) If the contracting entity fails to comply with the procedure laid down for the award of a public contract or for a design contest, and where such a procedure substantially affected or could have affected the selection of the most suitable tender or design, and the contract has not been concluded yet, the Office shall set aside such an award procedure or a design contest or only a particular action taken by the contracting entity.

(2) The Office by its ruling based on the proposal pursuant to § 114(2) shall impose a ban to perform the contract, where the contracting entity commits an administrative delict pursuant to

- a) § 120(1)(c), except for the cases where the contracting entity has published a voluntary notice expressing its intention to conclude a contract pursuant to § 146(2) and has proceeded in compliance with § 82(1), § 110(6) and § 111(5),
- b) § 120(1)(a) and simultaneously an administrative delict pursuant to § 120(1)(d), or
- c) § 120(1)(a) and simultaneously proceeds pursuant to § 82(3).

(3) The Office shall not impose a ban on the performance of a contract pursuant to § 118(2) where it finds out that the grounds which merit particular consideration relating to a general interest require that the effects of the contract should be maintained. The economic interest in the performance of the contract may be only considered as such a ground, if in exceptional circumstances ineffectiveness would lead to disproportionate consequences. Economic interests directly linked to the contract concerned, in particular the costs resulting from the delay in the execution of the contract, the costs resulting from the launching of a new award procedure, the costs resulting from the change of the economic operator performing the contract and the costs of the legal obligations resulting from the ban on the performance of the contract, shall not constitute the grounds which merit particular consideration requiring that the effects of the contract should be maintained.

(4) The Office shall reject the proposal, if

- a) it fails to establish the grounds to impose a corrective measure pursuant to § 118(1) or § 118(2),
- b) the grounds to impose a corrective measure pursuant to § 118(2) have been established, however, the contracting entity proves the accomplishment of the grounds which merit particular consideration requiring that the effects of the contract should be maintained pursuant to § 118(3),
- c) the proposal has not been filed by an authorised person, or
- d) the proposal has not been filed against the procedure that the contracting entity is obligated to comply with under this Act in an award procedure or a design contest.

(5) The contract shall be ineffective by the reason of failure to comply with the procedure under this Act only in the cases, where the Office imposes a ban on the performance thereof pursuant to § 118(2). Ineffectiveness on other grounds shall not be prejudiced thereby.

## § 119

## **Costs of Proceedings**

(1) Unless stipulated otherwise by this Act, the Office and the parties to the proceedings shall bear their own costs of the proceedings.

(2) The ruling of the Office pursuant to § 118(1) shall, in addition, contain a decision concerning the obligation of the contracting entity to pay the costs of administrative proceedings (hereinafter referred to as “the costs of proceedings”). The costs of proceedings shall be paid out by a lump sum set out by implementing legal regulation.

(3) For the reasons, which merit particular consideration, the obligation to pay the costs of proceedings pursuant to § 119(2) may be waived in full or in part.

## **Division 3**

### **Administrative Delicts**

#### **§ 120**

#### **Administrative Delicts Committed by Contracting Entities**

(1) The contracting entity commits an administrative delict by

(a) failing to comply with the procedure laid down by this Act for the award of a public contract, where such a procedure has substantially affected or could have affected the selection of the most suitable tender, and concluding the contract,

(b) failing to discharge the obligation for publication laid down by this Act or discharging it in contradiction with § 146 or § 147,

(c) concluding the contract without publishing the contract notice pursuant to § 146(1) despite being obligated under this Act to make such a notice known,

(d) concluding the contract in contradiction with § 82(1), § 110(6) or § 111(5) or contrary to an interim measure pursuant to § 117(1),

(e) setting aside the award procedure at variance with § 84,

(f) failing to produce or keep documentation pursuant to § 109 or § 155, or

(g) rejecting objections in contradiction with § 110 and/or proceeding contrary to § 111 in settling such objections.

(2) For committing an administrative delict, the fine

(a) up to 5 % of the tender price or equal to or less than CZK 10,000,000, where the tender price cannot be established, as regards an administrative delict pursuant to § 120(1)(a), § 120(c) or § 120(d),

(b) up to CZK 10,000,000, as regards an administrative delict pursuant to § 120(b), § 120(e), § 120(f) or § 120(g),

shall be imposed.

(3) The tariff rate of the fine pursuant to § 120(2) shall be doubled, if the contracting entity commits repeatedly any of the administrative delicts pursuant to § 120(1). The administrative delict shall be committed repeatedly, where less than 5 years have elapsed from the date when the ruling to

impose a fine for such an administrative delict came into legal force and the same administrative delict has been committed again.

## § 120a

### **Administrative Delicts Committed by Economic Operators**

(1) The economic operator commits an administrative delict by

(a) producing information or evidence to demonstrate the fulfilment of qualifications thereof, which fails to be in conformity with the facts and has had or could have had impact on the assessment of qualifications of such an economic operator in an award procedure, in the procedure in respect of the application for enrolment on the list pursuant to § 129 or in respect of the application for a change in the records pursuant to § 130(2) or for the purposes of the issuance of the certificate pursuant to § 138, or

(b) failing to submit the application for a change in the records pursuant to § 130(2).

(2) The fine equal to or less than CZK 10,000,000 and a ban on the performance of public contracts for the period of 3 years shall be imposed for committing an administrative delict pursuant to § 120a(1)(a), and the fine equal to or less than CZK 1,000,000 shall be imposed for committing an administrative delict pursuant to § 120a(1)(b).

(3) A ban on the performance of public contracts shall be understood as the ban to participate in an award procedure and the ban to execute small-scale public contracts. The period of 3 years for which the ban to execute public contracts shall be imposed, shall start running as from the date when the ruling pursuant to § 120a(2) by way of which the ban to execute public contracts has been imposed, came into legal force.

## § 121

### **Common Provisions on Administrative Delicts**

(1) The legal person shall not be liable for an administrative delict where it proves that it has deployed all efforts that could be reasonably required to avert a breach of a legal obligation.

(2) In establishing fine assessment on the legal person, gravity of the administrative delict shall be taken into account, in particular, the manner how it was committed, consequences thereof and circumstances under which it was committed. Where the ban to execute the contract pursuant to § 118(2) has been imposed, the extent of the hitherto performance of such a contract shall be taken into account, too.

(3) Liability of a legal person for an administrative delict shall expire where the Office fails to institute the relevant proceedings within 5 years from the date when it learned of it, however, not later than within 10 years from the date of committing it.

(4) The administrative delicts under this Act shall be examined in the first instance by the Office.

(5) The provisions of this Act on liability and recourse of the legal person shall be applicable to liability for practices, which occurred in the course of the pursuit of business activities by a natural person<sup>65)</sup> or in direct relation thereto.

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<sup>65)</sup> § 2(2) of the Commercial Code

## **Division 4**

### **Common Provisions on Exercise of Supervision**

#### **§ 122**

##### **Duty of Confidentiality and Protection of Trade Secrecy**

(1) The staff of the Office as well as those who have been entrusted with discharging tasks pertaining to competence thereof shall be obligated to maintain confidentiality of all facts that they have learned while fulfilling their occupational duties. The duty of confidentiality shall not apply, if the persons concerned give testimony of such facts to law enforcement authorities or in the proceedings before the court or, where appropriate, if they are invited by such authorities or the court to submit a written representation<sup>66)</sup>. The duty of confidentiality on the part of the staff of the Office shall be without prejudice to the disclosure of data and information by the Office under separate legal regulation<sup>67)</sup>.

(2) Where the Office learns of the fact that constitutes the subject of trade secrecy, it shall be obligated to take measures to avoid a breach of trade secrecy.

#### **§ 123**

##### **Publication of Final Rulings of Office**

The Office shall continuously publish its final rulings under this Act at its Internet address.

#### **§ 124**

Repealed

### **TITLE SIX**

#### **LIST OF APPROVED ECONOMIC OPERATORS, SYSTEM OF CERTIFIED ECONOMIC OPERATORS, FOREIGN LIST OF ECONOMIC OPERATORS, BLACK LIST OF PERSONS BANNED TO PERFORM PUBLIC CONTRACTS**

##### **CHAPTER I**

##### **LIST OF APPROVED ECONOMIC OPERATORS**

#### **§ 125**

##### **Maintenance of List of Approved Economic Operators**

(1) The list of approved economic operators (hereinafter referred to as “the list”) shall be part of the information system.

(2) The economic operators that have requested for enrolment on the list and have demonstrated the fulfilment of basic qualifications prerequisites pursuant to § 53(1) and professional qualifications prerequisites pursuant to § 54 shall be enrolled on the list.

(3) The list shall be accessible to the general public, namely in the manner allowing for a remote access, too.

(4) The remote access to the list shall be free of charge.

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<sup>66)</sup> Act no. 141/1961 Coll., on Penal Court Proceedings (the Penal Code), as amended

<sup>67)</sup> E.g., Act no. 337/1992 Coll., on the Administration of Taxes, Fees and Charges, as amended, Act no. 106/1999 Coll., on Free Access to Information, as amended

(5) The Ministry shall communicate to the European Commission and other Member States of the European Union the address of the body to which the requests for enrolment on the list may be made.

## **§ 126**

### **Data Recorded in List**

The following data on an economic operator shall be recorded in the list:

- a) business name or name and registered office of the economic operator, as regards a legal person,
- b) name and surname or, if appropriate, business name and place of business and, if appropriate, permanent residence, as regards a natural person,
- c) legal form of a legal person,
- d) identification number, if it was assigned,
- e) name and surname of the statutory body or of all of its members or name and surname of the statutory body or all members of the statutory body of the person that acts as the statutory body or a member of the statutory body of the economic operator and, in addition and where appropriate, name and surname of any other person, if the economic operator so requests, and the manner of their acting on behalf of or for the economic operator,
- f) object of business activity or another activity, which the registration on the list is applicable to,
- g) list of evidence by which the economic operator has demonstrated the fulfilment of basic and professional qualifications prerequisites, and where
  1. business licence is involved, the list shall contain the enumeration of relevant licences,
  2. evidence pursuant to § 54(c) is involved, the list shall contain the name of the professional self-governing chamber or another professional organisation that has issued the evidence,
  3. evidence pursuant to § 54(d) is involved, the list shall contain indication of the type of professional competence,
- h) date of submission of the request for enrolment on the list,
- i) date of enrolment on the list,
- j) date of the latest update of the data in the list and
- k) where applicable, information pursuant to § 130(8).

## **§ 127**

### **Proving Fulfilment of Qualifications by Extract from List**

(1) Where the economic operator furnishes to the contracting authority an extract from the list within a time limit for demonstration of the fulfilment of qualifications, the extract shall replace demonstration of the fulfilment of

- a) basic qualifications prerequisites pursuant to § 53(1), and
- b) professional qualifications prerequisites pursuant to § 54 to such an extent, to which evidence proving the fulfilment of these professional qualifications prerequisites cover the requirements of the contracting authority for demonstration of the professional qualifications prerequisites for the performance of public contracts.

(2) The sector contracting entity shall be obligated to recognise the extract from the list as a means of proving the fulfilment of qualifications, provided that the data indicated in the extract cover the requirements set out thereby to prove the fulfilment of qualifications set forth the by sector contracting entity or, where appropriate, part thereof.

(3) The contracting entity is entitled to require, in addition to the extract, production of evidence proving the fulfilment of qualifications pursuant to § 53(1)(f) through § 53(1)(h), if it has reserved such a right in the contract notice or in the call for competition,

(4) The contracting entity shall be obligated to accept the extract from the list where such an extract is not dated more than 3 months from the last day of the time limit fixed to prove the fulfilment of qualifications.

## § 128

### Issuance of Extract from List

(1) The operator of the list (§ 132) shall issue an extract from the list concerning any economic operator enrolled on the list to anyone that applies for such an extract, and pays an administrative fee under separate legal regulation<sup>69)</sup>.

(2) The operator of the list shall issue the extract from the list not later than within 5 calendar days from the date of delivery of such an application.

(3) The extract may be issued in paper form or in electronic format with advanced electronic signature based on a qualified certificate or electronic mark based on a qualified system certificate.

(4) The extract from the list shall contain the data referred to in § 126.

(5) The extract from the list shall be issued in the Czech language.

## § 129

### Enrolment on List

(1) The economic operator that intends to be enrolled on the list shall be obligated to submit an application for an enrolment and to prove the fulfilment of qualifications pre-requisites pursuant to § 125(2); to prove the fulfilment of basic qualifications prerequisites pursuant to § 53(1)(a) and § 53(1)(b), the operator of the list shall request under separate legal regulation<sup>69a)</sup> an extract from the Penal Register. The request for the issuance of an extract from the Penal Register and the extract from the Penal Register shall be forwarded in electronic format, namely in the manner allowing for a remote access. The enrolment on the list shall be subject to the administrative fee under separate legal regulation<sup>69)</sup>. For the purposes of enrolment on the list, the economic operator shall be obligated to indicate personal data, which are necessary to obtain an electronic extract from the Penal Register.

(2) The evidence proving the fulfilment of basic qualifications prerequisites and evidence proving the fulfilment of professional qualifications prerequisites pursuant to § 54(a) shall not be dated more than 90 days from the date of submission of the application.

(3) All evidence shall be produced in original or in officially authenticated copy.

(4) The operator of the list shall register in the list the economic operator that has satisfied terms and conditions set out by this Act.

(5) The operator of the list shall enrol on the list a foreign economic operator that has requested for such an enrolment and has proven the fulfilment of qualifications pursuant to § 125(2) to the equivalent extent. To prove the fulfilment of qualifications by a foreign economic operator, the provisions of § 51(7) shall apply by analogy. The operator of the list is not entitled to require of a foreign economic operator any evidence proving the fulfilment of qualifications other than that required of a Czech economic operator.

(6) The application for enrolment shall be submitted in the Czech language. The provisions of § 51(7) shall apply by analogy.

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<sup>69)</sup> Act no. 634/2004 Coll., on Administrative Fees

<sup>69a)</sup> Act no. 269/1994 Coll., on Penal Register, as amended



## **§ 130**

### **Changes to List**

(1) The economic operator shall not be obligated to prove the fulfilment of basic qualifications prerequisites and professional qualifications prerequisites repeatedly, unless provided otherwise in § 130(2), § 130(4), § 130(5) or § 130(6).

(2) Where on the part of the economic operator a change occurs in the data recorded in the list which would otherwise imply the failure to prove the fulfilment of basic qualifications prerequisites or professional qualifications prerequisites, the economic operator shall be obligated to submit an application for a change in the records not later than within 15 days from the date when such a change occurred; the economic operator shall be obligated to attach to the application relevant evidence attesting the fulfilment of basic qualifications prerequisites or professional qualifications prerequisites, in respect of which such a change occurred. In case that the economic operator fails to meet such an obligation pursuant to this paragraph, it shall apply that it is no longer enrolled on the list from the date when such a change occurred; it shall also apply in the case when an extract from the list has been issued to the economic operator following such a change.

(3) If the operator of the list learns that the economic operator has failed to notify of a change in the data recorded in the list pursuant to § 130(2), it shall invoke a procedure for the withdrawal of the economic operator from the list.

(4) The economic operator enrolled on the list shall be obligated to notify the operator of the list in writing at the beginning of the relevant calendar year, not later than by 31 March, that no data recorded in the list have changed. If the economic operator fails to meet such an obligation, it shall apply that it is not enrolled on the list starting as from 1 April of that year.

(5) The economic operator shall be obligated to furnish evidence proving the fulfilment of the basic qualifications prerequisites pursuant to § 53(1)(f) through § 53(1)(h) within the time limit pursuant to § 130(4). If the economic operator fails to meet such an obligation, it shall apply that it is not enrolled on the list starting as from 1 April of that year.

(6) The economic operator enrolled on the list is entitled to submit any time an application for the change in the data referred to in the list, which is to be recorded. In such a case, the procedure applicable to the submission of an application for the enrolment shall apply by analogy; the data recorded in the list shall not be prejudiced thereby, unless the economic operator submitted an application for a change in the relevant datum.

(7) Recording of a change in the data maintained in the list shall be subject to the administrative fee under separate legal regulation<sup>69)</sup>.

(8) The operator of the list, at the date of delivery of an application for the change in the data referred to in the list, which is to be recorded or at the date of initiation of the procedure for withdrawal of an economic operator from the list, shall indicate such a fact in the list.

## **§ 131**

### **Withdrawal from List**

(1) The operator of the list shall withdraw an economic operator from the list if

- a) it ascertains that the economic operator fails to fulfil the conditions for enrolment on the list,

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<sup>70)</sup> § 2(d) of Act no. 365/2000 Coll., on Information Systems of Public Administration and on Amendments to Certain Other Acts

- b) it ascertains that the economic operator has employed as supporting documents for enrolment the evidence or information, which proved to be incorrect or incomplete, or
- c) the economic operator has applied for the withdrawal from the list.

(2) The operator of the list shall withdraw the economic operator from the list where the facts referred to in § 130(2), § 130(4) or § 130(5) have emerged.

## **§ 132**

### **Operator of List**

(1) The Ministry or another legal person entrusted by the Ministry under separate legal regulation<sup>70)</sup> shall be the operator of the list.

(2) The operator of the list shall be obligated to maintain confidentiality of all data and information furnished thereto in the context of holding the list, save for the data and information that it is obligated to disclose on the basis of this Act.

## **CHAPTER II**

### **SYSTEM OF CERTIFIED ECONOMIC OPERATORS**

## **§ 133**

### **System of Certified Economic Operators**

(1) The system of certified economic operators shall enable the economic operator, under the conditions set out in § 134, to replace a proof of the fulfilment of qualifications or, if appropriate, part thereof, with a certificate issued by an accredited person<sup>51)</sup> (hereinafter referred to as “the certification body”).

(2) The Ministry shall notify the European Commission and other Member States of the European Union of the names and identification data of administrators of approved systems of certified economic operators.

## **§ 134**

### **Proving Qualifications by Certificate**

(1) If an economic operator furnishes to the contracting authority a certificate issued in the framework of the system of certified economic operators, which contains the essentials set out in § 139 within the time limit for demonstration of the fulfilment of qualifications, and the data in the certificate are valid at no less than the last day of the time limit for demonstration of the fulfilment of qualifications (§ 52), such a certificate shall replace, to the extent of the data referred therein, the proof of the fulfilment of qualifications.

(2) The sector contracting entity shall be obligated to recognise a certificate as a means to prove the fulfilment of qualifications to the relevant extent, provided that the data referred to in the certificate cover the requirements regarding such a proof of the fulfilment of qualifications laid down by the sector contracting entity or, where appropriate, part thereof.

## § 135

### Approval of System of Certified Economic Operators

(1) The system of certified economic operators shall be approved by the Ministry on the basis of the request of a legal person, which intends to administer the system of certified economic operators (hereinafter referred to as “the system administrator”). The approval procedure shall be subject to the administrative fee under separate legal regulation<sup>69</sup>.

(2) The request of system administrator shall be supplemented by the documents describing the system of certified economic operators and setting the rules of its operation (hereinafter referred to as “the system rules”).

(3) The Ministry shall approve the system of certified economic operators where the system meets the conditions prescribed under the law and the system rules satisfy the terms laid down in § 136.

(4) The system administrator shall be obligated to ensure that the system of certified economic operators meet the conditions prescribed under the law continuously.

(5) The Ministry shall maintain the list of approved systems of certified economic operators in the framework of the information system.

## § 136

### System Rules

The system rules shall contain at least the following

- a) name of the system of certified economic operators,
- b) identification data of the system administrator,
- c) organisational structure of the system of certified economic operators,
- d) delimitation of the type and, if appropriate, categories of the public contracts to which the system of certified economic operators applies,
- e) delimitation of the professional qualifications prerequisites, economic and financial qualifications prerequisites, and technical qualifications prerequisites, the fulfilment of which will be assessed in the system of certified economic operators,
- f) indication of evidence to be required to prove the fulfilment of qualifications prerequisites pursuant to § 136(e), and basic qualifications prerequisites,
- g) procedure used in the assessment of qualifications by the certification body,
- h) rules governing the issuance, change to and withdrawal of the certificate and
- i) Internet address of the register of certified economic operators.

## § 137

### Changes to and Cancellation of System of Certified Economic Operators

(1) For the procedure in the case of a change to the system of certified economic operators, § 135(1) though § 135(4) shall apply by analogy.

(2) If the Ministry establishes that the system of certified economic operators fails to meet conditions prescribed under the law or that the conditions under which it was approved have changed, it shall invite the system administrator to correct detected irregularities and to furnish evidence thereof to the Ministry. Unless the system administrator corrects the irregularities within a fixed time limit, the Ministry shall take without delay decision on the cancellation of such a system of certified economic operators.

(3) Where the system administrator takes decision to cancel the system of certified economic operators, it shall be obligated to notify thereof the Ministry in writing. In such a case, the system of

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certified economic operators shall be cancelled as from the date of delivery of such a notice to the Ministry, unless the system administrator fixes a later date.

(4) In the case of cancellation of the system of certified economic operators, the relevant certificate shall not cease to have effect prior to the expiry of the term of validity indicated in the certificate, unless the facts, on the basis of which the certificate was issued, have changed.

## **§ 138**

### **Conditions for Issuance of Certificate**

(1) The issuance of the certificate shall be conditional on proving the fulfilment of basic qualifications prerequisites to the full extent with evidence pursuant to § 53(2), and on proving a professional qualifications prerequisite, economic and financial qualifications prerequisites or technical qualifications prerequisites to the extent laid down in the system rules with evidence pursuant to § 54, § 55(1) and § 55(2) or § 56(1) through § 56(5).

(2) Evidence proving the fulfilment of basic qualifications prerequisites by the economic operator and evidence proving the fulfilment of the professional qualifications prerequisites pursuant to § 54(a) shall not date more than 90 days from the date of submission of the request for the certificate.

(3) All evidence shall be submitted to the certification body in original or officially authenticated copy.

(4) The system administrator is entitled to provide that the economic operator shall not be obligated to furnish evidence of the facts, which have not changed since the last certification, in the course of repetitive certification. The economic operator shall, however, be always obligated to furnish at least solemn declaration on such facts.

(5) The provisions of § 129(5)(last sentence) and § 129(6) shall apply by analogy.

## **§ 139**

### **Certificate**

(1) The certificates shall contain at least the following data:

- a) identification data of the certification body that has issued the certificate,
- b) name of the system of certified economic operators,
- c) identification data of the administrator of the system of certified economic operators,
- d) business name or name and registered office of the economic operator, as regards a legal person,
- e) name and surname or, if applicable, business name, and place of business and, where appropriate, permanent residence, as regards a natural person,
- f) legal form of a legal person,
- g) identification number, if it was assigned,
- h) name and surname of the statutory body or all of its members or name and surname of the statutory body or all members of the statutory body, of the person that acts as the statutory body or a member of the statutory body of the economic operator and, in addition and where appropriate, name and surname of another person, if the economic operator so requests, and the manner of their acting on behalf of or for the economic operator,
- i) object or branch of business or another activity for which the certificate was issued,
- j) type or, if appropriate, category of public contracts for which the certificate was issued,
- k) list of evidence by which the economic operator has proven the fulfilment of basic and professional qualifications prerequisites and where
  1. business licences is involved, the list shall contain an enumeration of all relevant business licences,

2. evidence pursuant to § 54(c) is involved, the list shall contain the name of the professional self-governing chamber or, if appropriate, another professional organisation that has issued such evidence,
  3. evidence pursuant to § 54(d) is involved, the list shall contain indication of the type of professional competence,
- l) indication of which qualifications prerequisites pursuant to § 55 and § 56 have been proven, including the information on the level of proven qualifications attained in respect of individual qualifications prerequisites,
  - m) date of issue of the certificate,
  - n) date of validity of the certificate, and
  - o) signature of the person authorised to act for and on behalf of the certification body.

(2) The certificate may be issued in paper form or in electronic format with advanced electronic signature based on a qualified certificate.

(3) The certificate shall be issued in the Czech language.

## **§ 140**

### **Validity of Certificate**

(1) The validity of the certificate shall be 1 year from the date of its issuance.

(2) Where on the part of an economic operator a change occurs in the facts on the basis of which the certificate has been issued which would otherwise imply failure to prove the fulfilment of qualifications to the established extent, the economic operator shall, not later than within 15 days from the date when such a change occurred, notify the certification body of such a fact and simultaneously submit necessary evidence attesting the fulfilment of relevant qualifications prerequisites; otherwise, the certification body shall take decision on the withdrawal of the certificate or, if applicable, on the change therein, if such a change in the facts, on the basis of which the certificate has been issued, occurred only in respect of certain qualifications prerequisites, the fulfilment of which has been proven by the economic operator.

(3) The certification body shall, in addition, take decision on the withdrawal of the certificate where it ascertains that the economic operator

- a) fails to meet the conditions for the issuance of the certificate, or
- b) has employed as supporting documents for the issuance of the certificate the evidence or information which proved to be incorrect or incomplete.

(4) The economic operator is entitled to submit an application for a change to the certificate any time. In such a case, the procedure applicable to the submission of the application for repetitive certification shall apply by analogy.

## **§ 141**

### **Obligations of Certification Bodies for Qualifications**

The certification body shall be obligated to,

- a) notify the system administrator, prior to commencing its activity, of obtaining relevant accreditation and demonstrate it by a valid certificate of accreditation,
- b) notify without undue delay of any changes in its accreditation, its suspension or withdrawal,
- c) forward the issued certificate to the system administrator within the time limit and in the manner set out by the system rules of system of certified economic operators,
- d) notify the system administrator without undue delay of the withdrawal of the certificate from the economic operator.

## § 142

### Register of Certified Economic Operators

(1) In the register of certified economic operators (hereinafter referred to as “the register”), the system administrator shall keep records of

- a) certification bodies,
- b) certified economic operators and
- c) issued certificates.

(2) The system administrator shall publish the authentic text of the system rules in the register.

(3) The register shall be accessible to the general public in the manner allowing for a remote access.

(4) Remote access to the register shall be free of charge.

(5) The system administrator is entitled to publish issued certificates or parts thereof in the register.

(6) The Ministry shall make known the link to the register in the information system.

## CHAPTER III

### FOREIGN LIST OF ECONOMIC OPERATORS

## § 143

### Use of Extracts from Foreign List of Economic Operators

(1) The contracting entity, subject to the conditions referred to in § 143(2), shall accept extracts from foreign lists of qualified economic operators (hereinafter referred to as “the foreign list”) or, if applicable, relevant foreign certificate issued in the State which is part of the European Economic Area or another State, if it is laid down by an international agreement concluded by the European Community or the Czech Republic. The provisions of § 51(7)(fourth sentence) shall apply by analogy.

(2) The contracting entity is entitled to accept an extract from a foreign list or a foreign certificate from a foreign economic operator only in case that such a foreign economic operator has its registered office or place of business or, where appropriate, place of residence, in the State which has issued the extract from the foreign list or the foreign certificate.

(3) Where, under an extract from a foreign list or a foreign certificate, a foreign economic operator has proven the fulfilment of

- a) basic qualifications prerequisites, which are in the relevant State equivalent to the qualifications prerequisites pursuant to § 53(1),
- b) professional qualifications prerequisites, which are in the relevant State equivalent to the qualifications prerequisites pursuant to § 54,
- c) economic and financial qualifications prerequisites, which are in the relevant State equivalent to the qualifications prerequisites pursuant to § 55(1)(b) and § 55(1)(c), or
- d) technical qualifications prerequisites, which are in the relevant State equivalent to the qualifications prerequisites pursuant to § 56(1) in the case of supplies, pursuant to § 56(2)(a), § 56(2)(c) through § 56(2)(h) in the case of services, and pursuant to § 56(3)(a) through 56(3)(c) and 56(3)(e) and 56(3)(f) in the case of public works,

the extracts from the foreign list or the foreign certificate shall replace, under the conditions set out in § 143(4), the fulfilment of qualifications pursuant to the provisions of this paragraph mentioned above or, if applicable, the fulfilment of relevant part thereof. The contracting entity is entitled to require, apart from and in addition to the extract from a foreign list or the foreign certificate, production of evidence proving

the fulfilment of qualifications pursuant to § 53(1)(f) through § 53(1)(h), if it has reserved such a right in the contract notice or in the call for competition.

(4) The extract from a foreign list shall not be dated from more than 3 months. The foreign certificate shall be valid at the last day of the time limit for proving the fulfilment of qualifications.

(5) The extract from a foreign list or the foreign certificate shall be used neither as evidence for the enrolment on the list of approved economic operators nor for the issuance of a certificate in the framework of the system of certified economic operators.

## **CHAPTER IV**

### **BLACK LIST OF ECONOMIC OPERATORS BANNED TO EXECUTE PUBLIC CONTRACTS**

#### **§ 144**

##### **Maintenance of Black List of Persons Banned to Execute Public Contracts**

(1) Legal persons or self-employed entrepreneurs that have been imposed a ban to execute public contracts on pursuant to § 120a(2), shall be enrolled on the list of persons banned to perform public contracts (hereinafter referred to as “the black list”). The black list shall be maintained by the Ministry and constitute part of the information system.

(2) The Office shall notify without delay the Ministry of the entry into force of the ruling by way of which a ban to perform public contracts has been imposed on pursuant to § 120a(2), indicate identification data of a legal person or a self-employed entrepreneur that is to be enrolled on the black list based on this ruling, and state the date on which the exercise of the ban to execute public contracts starts to run and the date on which it ceases to run. The Ministry shall record such data into the black list not later than within 5 working days from the date of delivery of the Office communication.

(3) The Office shall notify the Ministry of contingent setting aside the ruling by which the ban to execute public contracts pursuant to § 120a(2) has been imposed on. The Ministry shall withdraw the data recorded pursuant to § 143a(2) from the black list not later than within 5 working days as from date of delivery of the Office communication.

(4) The black list shall be accessible to the general public, namely in the manner allowing for a remote access, too.

#### **§ 145**

Repealed

## **TITLE SEVEN**

### **COMMON PROVISIONS**

#### **§ 146**

##### **Publication**

(1) The obligation set out under this Act to make known the contract notice, prior information notice, periodic indicative notice, design contest notice, contract award notice, notice of setting aside the award procedure or design contest or, where appropriate, any other data (hereinafter referred to as “the notification”), shall be understood as the publication in

a) the information system pursuant to § 157, as regards a below-the-threshold public contract,

- b) the information system pursuant to § 157 and in the Official Journal of the European Union (hereinafter referred to as “the Official Journal”), as regards an above-the-threshold public contract; however, in the case of public service contract under Annex no. 2, only the contract award notice or the notice relating to a design contest shall be published in the Official Journal.

The publication of all data from the notification delivered by the contracting entity shall be considered as making the notification known.

(2) The contracting entity is entitled to publish a notice expressing its intention to conclude the contract in the cases where it has not been obligated to publish a contract notice.

(3) To make the notification known the contracting entity shall make use of the standard form under directly applicable regulation of the European Communities<sup>61)</sup>, and as regards the notice of setting aside the award procedure or the design contest, the standard form set out by implementing legal regulation. In the case of prior information notice and periodic indicative notice, the contracting entity shall indicate in the notification only the data, which are known thereto at the moment of dispatch of the notification for publication.

(4) The contracting entity shall be able to prove the date of dispatch of such a notification for publication in the information system and, if appropriate, in the Official Journal. The information system operator shall give the contracting entity confirmation of the date of publication of the notification in the information system. Where the information system operator, based upon the request from the contracting entity, has dispatched the notification for publication in the Official Journal, the confirmation shall, in addition, contain the date of dispatch of the notification to the Publication Office.

(5) The operator of the sub-system of the information system, which ensures publication of notifications in the information system, shall be designated by the Ministry on the basis of commissioning. The Ministry shall approve the rules of operation of such an operator of the sub-system of the information system pursuant to this paragraph, as well as the prices to be paid by the contracting entity to the operator for publication of their notifications. The decision on commissioning the operator of the sub-system of the information system shall be published by the Ministry in form of a communication in the Collection of Laws.

(6) The list of data subject to the mandatory publication in standard forms to be used for making the notifications known, the manner of publication of notifications relating to below-the-threshold public contracts, model form of the notice of setting aside the award procedure or design contest, types of standard forms, procedure in modification of data in published notifications, access to the published notifications, manners of delivery of such notifications and procedure in rectifying defects of notifications and defects of performance on the part of the operator of the sub-system of the information system pursuant to § 146(5) shall be laid down by implementing legal regulation.

## § 147

### **Manners of Publication**

(1) The contracting entity is entitled to publish the notification in the Official Journal

- a) directly through the Publication Office, or
- b) by means of the information system operator upon request by the contracting entity.

(2) If the contracting entity makes use of the option under § 147(1)(a), the contracting entity shall simultaneously send out the notification for publication in the information system.

(3) If the contracting entity sends out the notification for publication in the Official Journal by means of the information system operator, the information system operator shall ensure, besides publication of

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the notification in the information system, that the Publication Office be provided with all data contained in the notification to be published at the national level.

(4) The information system operator shall publish the notification at the national level not later than within 12 days, and where the notification is sent by the contracting entity by electronic means pursuant to § 149, not later than within 5 days from the date of dispatch. In the case of above-the-threshold public contract, the information system operator shall send the notification to the Publication Office for publication in the Official Journal within the same time limit, namely by electronic means or by fax, where the notification has been delivered to the contracting entity by fax.

(5) Where the contracting authority initiates restricted procedure or negotiated procedure with publication by applying § 39(2)(a)(2), the contract notice shall be sent out by fax or by electronic means; in such a case the time limit pursuant to § 147(4) shall make 5 days. If the sector contracting entity initiates an award procedure by applying § 41(2)(b), the contract notice shall be sent out by fax or by electronic means; in such a case the time limit pursuant to § 147(4) shall make 5 days as well.

(6) In the case of above-the-threshold public contracts, the notifications shall not be published in the information system prior to the dispatch thereof for publication in the Official Journal. In addition, no information other than that published in the information system shall be contained in the notifications sent out for publication in the Official Journal or published on the contracting entity profile. Notifications published in the information system or on the contracting entity profile shall mention the date of the dispatch thereof for publication in the Official Journal or the date of the publication thereof on the contracting entity profile.

(7) The contracting entity is entitled to publish in the Official Journal any notifications pursuant to § 146(1) in the manner pursuant to § 147(1) through § 147(3) even if the law establishes no obligation to publish them. The contracting entity is entitled to publish the notifications in another manner following the publication thereof in the information system. The provisions of § 147(6)(second sentence) shall apply by analogy.

(8) The contracting entity is entitled, subject to the respect of the principles referred to in § 6, to carry out modifications of a published notification; in such a case, it shall be obligated to publish the modifications made pursuant to § 147(1) through § 147(3) and notify all candidates or tenderers of making such a modification not later than within 5 days from the date of dispatch thereof for publication, statement of reasons included.

## **§ 148**

### **Communication between Contracting Entity and Economic Operator**

(1) In the course of communication between the contracting entity and economic operators, confidentiality of tenders and requests to participate and integrity of data contained therein shall not be distorted. The contracting entity shall not be enabled to examine the content of tenders and requests to participate prior to the expiry of the time limit fixed for the submission thereof.

(2) The documents under this Act may be delivered in person, through a person, which carries out transport of postal items (courier service), through a holder of a postal licence under separate legal regulation, by electronic means through a data box or in any other manner. Where the nature of documents allows for that, the documents under this Act shall be delivered by means of a data box under another legal regulation.<sup>76)</sup>

(3) The contracting entity shall be obligated to keep written records of all actions taken in the context of the award procedure by the economic operator towards the contracting entity and by the contracting entity towards economic operators, the Office or the European Commission. The written records shall

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<sup>76)</sup> Act no. 300/2008 Coll., on Electronic Acts and Authorized Conversion of Documents, as amended

contain the item number of an action, designation thereof, date and identification data of the economic operator.

(4) The request to participate in restricted procedure, negotiated procedure with publication or competitive dialogue may be, in addition, made by an economic operator by telephone; in such a case the economic operator shall be obligated to confirm the request to participate in writing, and such a written request to participate shall be sent to the contracting entity not later than on the date of expiry of the time limit for the submission of request to participate.

(5) The contracting entity is entitled to require the confirmation of a request to participate submitted by fax in the manner pursuant to § 148(4)(first sentence), where the requirement and the time limit for the delivery of such a confirmation have been indicated in the contract notice or in the tender documentation.

(6) Tenders and other documents under this Act may always be submitted in the Czech language and, if applicable, in the language set out by the contracting entity in tender conditions.

(7) The provisions of this section shall apply to Title Four of this Act by analogy.

## **§ 149**

### **Electronic Means and Electronic Tools**

(1) 'Electronic means', for the purposes of this Act, shall be understood as a network and services of electronic communications<sup>22)</sup>. Fax shall not be considered to be an electronic means for the purposes of this Act.

(2) 'Electronic tools', for the purposes of this Act, shall be understood as a software and, where appropriate, parts thereof, linked to the electronic communication networks or services and facilitating the performance of acts in electronic format under this Act through such electronic communication networks or services, including processing, which comprises digital compression, and data storage. The contracting entity is entitled to use electronic tools solely provided that the use of such electronic tools is non-discriminatory, such electronic tools are in view of the subject-matter of the public contract generally available and interoperable with information and communication technologies in general use.

(3) The contracting entity, in the course of electronic communication relating to an award procedure or a design contest, shall make available to economic operators that may be interested in taking part in such a procedure or contest, all and every information of technical nature, including encoding and encryption, which is necessary for communication by electronic means, in particular, for electronic submission of tenders and requests to participate.

(4) Where an economic operator submits a tender, request to participate, objections against practices of the contracting entity or where it demonstrates the fulfilment of qualifications by electronic means, or in the case of a request to participate or a project in design contest or where the contracting entity transmits by electronic means the contract notice or the call for competition, invitation to negotiate or to submit a tender in an award procedure or to take part in competitive dialogue, contract award notice, advice note of the manner of settling objections or decision on the most suitable project in a design contest, the data message<sup>71)</sup> shall bear valid advanced electronic signature based on a qualified certificate. The contracting entity is entitled to require that such a data message bear electronic signature based on a qualified certificate or electronic mark based on a qualified system certificate, in respect of any data messages transmitted by electronic means.

(5) In the absence of evidence demonstrating qualifications in electronic format, the economic operator shall furnish to the contracting entity such evidence in paper form within the time limit pursuant to § 52 or § 65.

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<sup>71)</sup> § 2(d) of Act no. 227/2000 Coll., on Electronic Signature, and on Amendments to Certain Other Acts (the Electronic Signature Act), as amended by Act no. 440/2004 Coll.

(6) The contracting entity shall be obligated to ensure that in respect of electronic tools by means of which electronic communication is carried out, in particular, electronic transmission and receipt of tenders and, if applicable, electronic receipt of requests to participate and projects in design contests, be guaranteed that

- a) requirements on electronic signatures relating to tenders, requests to participate and to forwarding of plans and projects referred to in separate legal regulation<sup>72)</sup> be sustained,
- b) exact time and date of delivery of tenders, requests to participate and production of plans and projects can be fixed precisely,
- c) it may be reasonably ensured that, before the time limits fixed, no one can have access to data transmitted in compliance with these requirements,
- d) if that access prohibition is infringed pursuant to § 149(6)(c), it may be reasonably ensured that the infringement is clearly detectable,
- e) only authorised persons may fix or change dates for opening the data received,
- f) during the different stages of the contract award procedure or of the design contest access to all data submitted, or to part thereof, must be possible only upon prior decision of authorised persons,
- g) decisions of authorised persons pursuant to § 149(6)(f) must give access to data submitted only after the prescribed date,
- h) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith,
- i) they are properly protected against unauthorised access by third parties,
- j) technical support and servicing thereof in the case of a breakdown is secured.

(7) The economic operator is entitled to furnish to the contracting entity data necessary for the evaluation of tender also in the form of an electronic catalogue, particularly, in the case of public contracts awarded by the contracting entity under a framework agreement or based on the dynamic purchasing system. 'Electronic catalogue', for the purposes of this Act, shall be understood as a set of information containing prices relating to individual items of the subject-matter of a public contract, description of such items and, if applicable, other elements attaching thereto. The electronic catalogue shall satisfy all requirements set out for electronic tools used for communication by electronic means pursuant to this section.

(8) Any detailed requirements relating to the tools and acts performed electronically in the course of awarding public contracts shall be laid down by implementing legal regulation.

(9) The contracting entity shall be able to prove that the electronic tools, by means of which the acts in awarding public contracts are performed, manifestly satisfy the requirements laid down by this Act and implementing legal regulations. The satisfaction of such requirements shall be always proved by the certificate of conformity, issued by the entity for the assessment of conformity accredited by the national accreditation body based on separate legal regulation.<sup>51)</sup> Particulars relating to the conditions for the issuance of the certificate of conformity, data in the certificate of conformity and validity of the certificate of conformity shall be set out by implementing legal regulation.

## § 150

Repealed

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<sup>72)</sup> Act no. 227/2000 Coll., as amended

## **§ 151**

### **Representation of Contracting Entity in Proceedings**

(1) The contracting entity may be represented by another person in the exercise of its rights and duties under this Act, relating to an award procedure or a design contest. Such a person shall fulfil the requirement of impartiality pursuant to § 74(7) and shall not be a party to the relevant award procedure.

(2) The person representing the contracting entity pursuant to § 151(1) shall not be granted any authorisation to award a public contract, exclude an economic operator from participation in a procedure, set aside a procedure, decide on the selection of the most suitable project, set aside design contest or decide on the manner of settling objections.

(3) The provisions of § 151(1) shall be without prejudice to the liability on the part of a contracting entity for observance of this Act.

## **§ 152**

### **Confidentiality of Information**

(1) The contracting entity shall be obligated to maintain duty of confidentiality of all information or evidence furnished by an economic operator, if they have been designated as confidential when being made available; it shall be without prejudice to the protection of data under other legal regulations. The contracting entity is entitled to avail itself of any information or evidence furnished by an economic operator, if it is necessary to act under this Act or if it ensues from the purpose of this Act or if it has reserved the right to make use of certain information or evidence in tender conditions. The contracting entity, in handling any information or evidence belonging to an economic operator, shall be always obligated to observe the rights of the economic operator.

(2) The contracting entity is entitled to impose requirements and conditions relating to the protection of confidentiality of certain information or evidence furnished to the economic operator in tender conditions.

## **§ 153**

### **Costs and Charges**

Unless stipulated otherwise by this Act, the contracting entity is neither entitled to recognise the right of an economic operator to reimbursement of costs relating to the participation in the award procedure or design contest, nor require any charges of economic operators to be allowed to take part in such an award procedure.

## **§ 154**

### **Conversion of Financial Amounts into Czech Currency**

Conversion to the Czech currency of the financial amounts, established in EUR by this Act, shall be set out by implementing legal regulation.

## **§ 155**

### **Storage of Documentation**

(1) The contracting entity shall store the documentation of a public contract and all records of acts performed electronically pursuant to § 149 for the period of 5 years following the conclusion of a contract, alteration thereof or following setting aside the award procedure, unless stipulated otherwise by separate

legal regulation<sup>73)</sup>; ‘documentation of a public contract’ shall be understood as the totality of all documents in paper or electronic form, production of which in the course of an award procedure or, if applicable, following termination thereof, is required by this Act, including the full text of the originals of tenders of all economic operators, and of concluded contracts. It shall be without prejudice to the provision of § 67(5).

(2) The provisions of § 155(1) shall, in addition, apply by analogy to the documentation of a design contest, even in the case when such a contest has not been followed by an award procedure.

(3) The contracting entity shall adopt suitable measures to document progress of award procedures or design contests, including parts thereof carried out by electronic means.

(4) The sector contracting entity shall be obligated to store for the period of 5 years all necessary information that, in the case of above-the-threshold public contract relating to the pursuit of relevant activity, justify recourse to the exclusion set forth in § 4(2), § 18 or § 19.

## § 156

### **Economic and Financial Assessment of Subject-Matter of Public Contract**

(1) Where the estimated value of the public contract is equal to or greater than CZK 500 million and the contract is to be concluded for the period of no less than 5 years or for an indefinite period, the contracting authority shall be obligated to invite the Ministry of Finance to submit the prior opinion (hereinafter referred to as “the opinion”). The invitation to submit such an opinion shall be conditional for the effectiveness of a contract.

(2) Besides general essentials of the submission<sup>64)</sup>, the request for opinion shall contain the analysis of impacts of a public contract upon economic standing of the applicant, including the data on the current debt thereof, which are necessary for the assessment of its capabilities to sustain the obligations resulting from such a public contract; the essentials of the content of the request shall be set out by implementing legal regulation. The Ministry of Finance is not entitled to assess any other facts than those which are conclusive pursuant to § 156(3) for the assessment of the request.

(3) The Ministry of Finance shall assess the request for opinion from the point of view of potential impacts of the adopted obligations included in the public contract and their influence on the economic standing of the applicant or international obligations of the Czech Republic.

(4) Unless the Ministry of Finance delivers its opinion within the period of 60 days as from the date of delivery the request it shall apply that the Ministry does not raise any objections.

## § 157

### **Information System**

(1) ‘Information system’ shall be an information system of public administration<sup>75)</sup>. The Ministry shall be the administrator of the information system.

(2) The information system shall ensure

- a) publication of information on public contracts,
- b) maintenance of the list of approved economic operators,
- c) maintenance of the list of systems of certified economic operators,
- d) statistical outputs on public contracts.

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<sup>73)</sup> Act no. 499/2004 Coll., on Archiving and Filing Service, and on Amendments to Certain Other Acts

<sup>75)</sup> Act no. 365/2000 Coll.

**TITLE EIGHT**  
**TRANSITIONAL AND FINAL PROVISIONS**

**§ 158**

**Transitional Provisions**

(1) Awarding of public contracts, public design contests, proceedings on the review of practices of the contracting entity by the Office and proceedings on inflicting a sanction instituted before the date of entry of this Act into effect shall be concluded under legal regulations then in force.

(2) Proceedings on the review of practices of the contracting entity and proceedings on inflicting a sanction instituted after the entry of this Act into effect and that follow the awarding of public contracts or public design contest pursuant to § 158(1), shall proceed under legal regulations then in force. The proposal to institute proceedings pursuant to the first sentence shall be subject to the payment of a fee under legal regulations then in force.

(3) The list of approved economic operators pursuant to § 76 of Act no. 40/2004 Coll. shall be considered to be a list under this Act. The procedure for the enrolment on the list, for a change in the records and for the withdrawal from the list of approved economic operators initiated before the date of entry of this Act into effect, shall be concluded under legal regulations then in force.

(4) The economic operator is entitled to replace the proof of the fulfilment of basic qualifications criteria to the full extent and of professional qualifications criteria to the extent referred to in the extract, by an extract from the list of approved economic operators issued pursuant to § 80 of Act no. 40/2004 Coll., not later than within 3 months from the date of entry of this Act into effect, unless the facts, under which the extract has been issued, have changed.

(5) The economic operator registered in the list of approved economic operators pursuant to § 76 of Act no. 40/2004 Coll., shall be obligated, prior to the submission of an application for the issuance of an extract from the list pursuant to § 128(1) of this Act, to prove the fulfilment of lacking qualifications, any relevant evidence included, by a procedure pursuant to § 130(2) of this Act; the extract from the list shall be issued to the economic operator only after the change in the records pursuant to § 130 of this Act is made. The economic operator shall be obligated to produce evidence of the fulfilment of lacking qualifications pursuant to the previous sentence not later than within 3 months from the entry into effect of this Act, otherwise it shall apply that it is not enrolled on the list starting as from the first day of the fourth month from the entry of this Act into effect.

(6) The economic operator is entitled to replace the proof of the fulfilment of qualifications pursuant to § 134 of this Act, by a certificate issued by the certification body on the satisfaction of criteria of the national qualifications and classification system of economic operators pursuant to § 30(4) of Act no. 40/2004 Coll., to the extent of data referred to in the certificate, not later than within 3 months from the entry into effect of this Act, unless the facts, under which the certificate has been issued, have changed.

(7) The information system on awarding public contracts pursuant to § 83 of Act no. 40/2004 Coll. shall be considered to be the information system under this Act. Information contained in the information system on awarding public contracts pursuant to § 83 of Act no. 40/2004 Coll. shall be the content of the information system.

(8) Publication of data and information on public contracts pursuant to § 84 of Act no. 40/2004 Coll. relating to the award procedure, concession procedure or public design contest, which have been initiated under Act no. 40/2004 Coll. prior to the date of entry into effect of this Act, shall be conducted under this Act.

## § 159

### **Authorising Provisions**

- (1) The Government shall issue Executive Order to implement § 12(1) and § 154.
- (2) The Ministry of Defence shall issue Decree to implement § 18(1)(c) and § 18(2)(i).
- (3) The Ministry shall issue Decree to implement § 38(3), § 46a, § 108, § 119(2), § 146(3) and § 146(6), § 149(8) and § 149(9).
- (4) The Ministry of Finance shall issue Decree to implement § 156(2).

## 160

### **Repealing Provisions**

1. Act no. 40/2004 Coll., on Public Contracts,
2. Decree no. 239/2004 Coll., laying down detailed content and extent of the tender documentation of a work,
3. Decree no. 240/2004 Coll., on the information system on awarding public contracts and methods of evaluation of tenders under their economic advantageousness,
4. Decree no. 137/2005 Coll., amending Decree no. 240/2004 Coll., on the information system on awarding public contracts and methods of evaluation of tenders under their economic advantageousness,

shall be repealed.

## **TITLE NINE**

### **ENTRY INTO EFFECT**

## § 161

This Act shall enter into effect on the first day of the third calendar month following the date of its promulgation.

**Zaorálek, autograph**

**Klaus, autograph**

**Paroubek, autograph**

**Annex No. 1 to Act** **List of services subject to publication in the Official Journal of the European Union**

Category No	Subject	CPC reference No <sup>(1)</sup>	CPV reference No
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000-6 to 50884000-5 (except for 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0), and from 51000000-9 to 51900000-1
2	Land transport services <sup>(2)</sup> , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	From 60100000-9 to 60183000-4 (except 60160000-7, 60161000-4, 60220000-6), and from 64120000-3 to 64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5), and 60500000-3, and from 60440000-4 to 60445000-9
4	Transport of mail by land <sup>(2)</sup> and by air	71235, 7321	60160000-7, 60161000-4 60411000-2, 60421000-5
5	Telecommunications services	752	From 64200000-8 to 64228200-2 72318000-7, and from 72700000-7 to 72720000-3
6	Financial services: (a) Insurance services (b) Banking and investment services <sup>(3)</sup>	ex 81, 812, 814	From 66100000-1 to 66720000-3 <sup>(3)</sup>
7	Computer and related services	84	From 50310000-1 to 50324200-4 from 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3), 79342410-4
8	Research and development services <sup>(4)</sup>	85	From 73000000-2 to 73436000-7 (except 73200000-4, 73210000-7, 73220000-0)
9	Accounting, auditing and book-keeping services	862	From 79210000-9 to 79223000-3
10	Market research and public opinion polling services	864	From 79300000-7 to 79330000-6, and 79342310-9, 79342311-6
11	Management consulting services <sup>(5)</sup> and related services	865, 866	From 73200000-4 to 73220000-0 from 79400000-8 to 79421200-3 and 79342000-3, 79342100-4 79342300-6, 79342320-2 79342321-9, 79910000-6, 79991000-7 98362000-8
12	Architectural services; engineering services and integrate engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	867	From 71000000-8 to 71900000-7 (except 71550000-8) and 79994000-8

<sup>(1)</sup> In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature will apply.



Category No	Subject	CPC reference No <sup>(1)</sup>	CPV reference No
13	Advertising services	871	From 79341000-6 to 79342200-5 (except 79342000-3 and 79342100-4)
14	Building-cleaning services and property management services	874, 82201 to 82206	From 70300000-4 to 70340000-6, and from 90900000-6 to 90924000-0
15	Publishing and printing services on a fee or contract basis	88442	From 79800000-2 to 79824000-6, and from 79970000-6 to 79980000-7
16	Sewage and refuse disposal services; sanitation and similar services	94	From 90400000-1 to 90743200-9 (except 90712200-3), from 90910000-9 to 90920000-2 and 50190000-3, 50229000-6 50243000-0

<sup>(1)</sup> CPC Nomenclature (provisional version), used to define the scope of Directive 92/50/EEC.

<sup>(2)</sup> Except for rail transport services covered by category 18.

<sup>(3)</sup> Except financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services. Also excluded: services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial services supplied at the same time as, before or after the contract of acquisition or rental in whatever form shall be subject to this Directive.

<sup>(4)</sup> Except research and development services other than those where the benefits accrue exclusively to the contracting authority and/or contracting entity for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority and/or contracting entity.

<sup>(5)</sup> Except arbitration and conciliation services.

**List of services not subject to publication in the Official Journal of the European Union**

Category No	Subject	CPC reference No <sup>(1)</sup>	CPV reference No
17	Hotel and restaurant services	64	From 55100000-1 to 55524000-9, and from 98340000-8 to 98341100-6
18	Rail transport services	711	From 60200000-0 to 60220000-6
19	Water transport services	72	From 60600000-4 to 60653000-0, and from 63727000-1 to 63727200-3
20	Supporting and auxiliary transport services	74	From 63000000-9 to 63734000-3 (except 63711200-8, 63712700-0, 63712710-3, and from 63727000-1 to 63727200-3), and 98361000-1
21	Legal services	861	From 79100000-5 to 79140000-7
22	Personnel placement and supply services <sup>(2)</sup>	872	From 79600000-0 to 79635000-4 (except 79611000-0, 79632000-3, 79633000-0), and from 98500000-8 to 98514000-9
23	Investigation and security services, except armoured car services	873 (except 87304)	From 79700000-1 to 79723000-8
24	Education and vocational education services	92	From 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1
25	Health and social services	93	79611000-0, and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2
26	Recreational, cultural and sporting services <sup>(3)</sup> .	96	From 79995000-5 to 79995200-7, and from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6
27	Other services		

<sup>(1)</sup> CPC Nomenclature (provisional. version), used to define the scope of Directive 92/50/EEC.

<sup>(2)</sup> Except employment contracts.

<sup>(3)</sup> Except contracts for the acquisition, development, production or co-production of programmes by broadcasting organisations and contracts for broadcasting time

<sup>(1)</sup> In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature will apply.

**Public Works pursuant to § 9(1)(a)**

NACE <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes:  construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wreck- ing of buildings; earth moving	This class includes:  - demolition of buildings and other structures, - clearing of building sites, - earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. - site preparation for mining: - overburden removal and other development and preparation of mineral properties and sites.  This class also includes:  - building site drainage.  - drainage of agricultural or forestry land.	45110000
		45.12	Test drilling and boring	This class includes:  - test drilling, test boring and core sampling or construction, geophysical, geological or similar purposes.  This class excludes:  - drilling of production oil or gas wells, see 11.20. - water well drilling, see 45.25, - shaft sinking, see 45.25, - oil and gas field exploration,  geophysical, geological and seismic surveying, see 74.20.	45120000

<sup>(1)</sup> In the event of any difference of interpretation between CPV and NACE, the NACE nomenclature will apply

NACE <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> <li>- construction of all types of buildings construction of civil engineering constructions,</li> <li>- bridges, including those for elevated highways, viaducts, tunnels and subways,</li> <li>- long-distance pipelines, communication and power lines,</li> <li>- urban pipelines, urban communication and powerlines,</li> <li>- ancillary urban works,</li> <li>- assembly and erection of prefabricated constructions on the site.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>- service activities incidental to oil and gas extraction, see 11.20,</li> <li>- erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28,</li> <li>- construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23,</li> <li>- building installation, see 45.3,</li> <li>- building completion, see 45.4,</li> <li>- architectural and engineering activities, see 74.20,</li> <li>- project management for construction, see 74.20.</li> </ul>	<p>45210000</p> <p>Except:</p> <p>-45213316</p> <p>45220000</p> <p>45231000</p> <p>45232000</p>
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> <li>- erection of roofs,</li> <li>- roof covering,</li> <li>- waterproofing.</li> </ul>	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>- construction of highways, streets, roads, other vehicular and pedestrian ways,</li> <li>- construction of railways,</li> <li>- construction of airfield runways,</li> </ul>	<p>45212212 and</p> <p>DA03</p> <p>45230000</p> <p>except:</p> <p>-45231000</p> <p>-45232000</p> <p>-45234115</p>

NACE <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				<ul style="list-style-type: none"> <li>- construction work, other than buildings, for stadium, swimming pools, gymnasium, tennis courts, golf courses and other sports installations,</li> <li>- painting of markings on road surfaces and car parks.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>- preliminary earth moving, see 45.11.</li> </ul>	
		45.24	Construction of water projects	<p>This class includes</p> <ul style="list-style-type: none"> <li>- construction of:                             <ul style="list-style-type: none"> <li>- waterways, harbour and river works, pleasure ports (marinas), locks, etc.,</li> <li>- dams and dykes,</li> <li>- dredging,</li> <li>- subsurface work.</li> </ul> </li> </ul>	45240000
		45.25	Other construction work involving special trades	<p>This class includes:</p> <ul style="list-style-type: none"> <li>- construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment,</li> <li>- construction of foundations, including pile driving,</li> <li>- water well drilling and construction, shaft sinking,</li> <li>- erection of non-self-manufactured steel elements,</li> <li>- steel bending,</li> <li>- bricklaying and stone setting,</li> <li>- scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms,</li> <li>- erection of chimneys and industrial ovens.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>- renting of scaffolds without erection and dismantling, see 71.32</li> </ul>	45250000 45262000

NACE <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCCION		
Division	Group	Class	Subject	Notes	
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	<p>This class includes:</p> <p>installation in building or other construction projects of :</p> <ul style="list-style-type: none"> <li>- electrical wiring and fittings,</li> <li>- telecommunications systems,</li> <li>- electrical heating systems,</li> <li>- residential antennas and aerials,</li> <li>- fire alarms,</li> <li>- burglar alarm systems,</li> <li>- lifts and escalators,</li> <li>- lightning conductors, etc.</li> </ul>	<p>45213316</p> <p>45310000</p> <p>Except: -45316000</p>
		45.32	Insulation work activities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>- installation in buildings or other construction projects of thermal, sound or vibration insulation.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>- waterproofing, see 45.22.</li> </ul>	45320000
		45.33	Plumbing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>- installation in buildings or other construction projects of: <ul style="list-style-type: none"> <li>- plumbing and sanitary equipment,</li> <li>- gas fittings,</li> <li>- heating, ventilation, refrigeration or air-conditioning equipment and ducts,</li> <li>- sprinkler systems.</li> </ul> </li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>- installation of electrical heating systems, see 45.31.</li> </ul>	45330000

SECTION F		NACE(1)			CPV code
Division	Group	Class	Subject	Notes	
		45.34	Other building installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>- installation of illumination and signalling systems for roads, railways, airports and harbours,</li> <li>- installation in buildings or other construction projects of fittings and fixtures n.e.c.</li> </ul>	<p>45234115</p> <p>45316000</p> <p>45340000</p>
	45.4		Building completion		45400000
		45.41	Plastering	<p>This class includes:</p> <ul style="list-style-type: none"> <li>- application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.</li> </ul>	45410000
		45.42	Joinery installation	<p>This class includes:</p> <ul style="list-style-type: none"> <li>- installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials,</li> <li>- interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>- laying of parquet and other wood floor coverings, see 45.43.</li> </ul>	45420000
		45.43	Floor and wall covering	<p>This class includes:</p> <ul style="list-style-type: none"> <li>- laying, tiling, hanging or fitting in buildings or other construction projects of: <ul style="list-style-type: none"> <li>- ceramic, concrete or cut stone wall or floor tiles,</li> <li>- parquet and other wood floor coverings carpets and linoleum floor coverings,</li> <li>- including of rubber or plastic,</li> <li>- terrazzo, marble, granite or slate floor or wall coverings,</li> <li>- wallpaper.</li> </ul> </li> </ul>	45430000

NACE <sup>(1)</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.44	Painting and glazing	<p>This class includes:</p> <ul style="list-style-type: none"> <li>- interior and exterior painting of buildings,</li> <li>- painting of civil engineering structures,</li> <li>- installation of glass, mirrors, etc.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>- installation of windows, see 45.42,</li> </ul>	45440000
		45.45	Other building completion	<p>This class includes:</p> <ul style="list-style-type: none"> <li>- installation of private swimming pools,</li> <li>- steam cleaning, sand blasting and similar activities for building exteriors,</li> <li>- other building completion and finishing work n.e.c.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>- interior cleaning of buildings and other structures, see 74.70.</li> </ul>	45212212 and DA04 45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	<p>This class excludes:</p> <ul style="list-style-type: none"> <li>- renting of construction or demolition machinery and equipment without operators, see 71.32.</li> </ul>	45500000

<sup>(1)</sup> Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (*OJ L 293*, 24.10.1990, p. 1). Regulation as amended by Commission Regulation (EEC) No 761/93 (*OJ L 83*, 3.4.1993, p. 1).



## **Selected Provisions of Amendments**

Article II of Act no. 76/2008 Coll.

### **Transitional Provisions**

Award procedures initiated before the date of entry of this Act into effect shall be concluded under Act no. 137/2006 Coll., on Public Contracts in the wording effective by the date of the entry of this Act into effect.

Article II Act no. 417/2009 Coll.

### **Transitional Provisions**

1. Awarding of public contracts, design contests and proceedings on the review of practices of a contracting entity by the Office initiated before the date of entry of this Act into effect, shall be completed under hitherto legal regulations.
2. In proceedings on the review of practices of a contracting entity, which have been initiated after the date of entry of this Act into effect and which follow up awarding of public contracts or design contests according to Article II(1) shall be conducted under hitherto legal regulations.

Art. II of Act no. 179/2010 Coll.

### **Transitional Provisions**

1. Awarding public contracts, design contests and proceedings on the review of practices of a contracting entity by the Office for Protection of Competition initiated before the date of entry of this Act into effect, shall be completed under hitherto legal regulations.
2. In proceedings on the review of practices of a contracting entity, which have been initiated after the date of entry of this Act into effect and which follow up awarding or design contests according to Article II(1) shall be conducted under hitherto legal regulations.
3. Contracting entities are entitled to make use of electronic tools attested under hitherto regulations by 30<sup>th</sup> June 2011.