

**ACT no. 40/2004  
of February 5, 2004**

**on Public Procurement**

The Parliament passed the following Act of the Czech Republic:

PART I

**GENERAL PROVISIONS**

Title I

**Scope, Scope of Application and Essential Terms**

§ 1

- The Act, in compliance with the laws of the European Communities<sup>1)</sup>, provides for
- a) range of legal and natural persons that are obligated to award their contracts under this Act,
  - b) procedure of the contracting entity for the award of public contracts,
  - c) types of award procedures,

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<sup>1)</sup> Council Directive 71/304/EEC of 26 July 1971 concerning the abolition of restrictions on freedom to provide services in respect of public works contracts and on the award of public works contracts to contractors acting through agencies and branches.  
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 on the coordination of 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.  
Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts.  
Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts.  
Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts.  
Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Council Directive 98/4/EC and Commission Directive 2001/78/EC.  
European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively.  
Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 93/38/EEC coordinating procedures of entities operating in the water, energy, transport and telecommunications sectors.  
Commission Directive 2001/78/EC of 13 September 2001 amending Annex IV to Council Directive 93/36/EEC, Annexes IV, V and VI to Council Directive 93/37/EEC, Annexes III and IV to Council Directive 92/50/EEC, as amended by Directive 97/52/EC, and Annexes XII to XV, XVII and XVIII to Council Directive 93/38/EEC, as amended by Directive 98/4/EC.

- d) public design contest,
- e) supervision of the award of public contracts.

## § 2

(1) The Act shall apply to the following contracting entities which award public contracts

- a) the public contracting entity, which is
  - 1. the Czech Republic<sup>2)</sup>,
  - 2. a State allowance organization<sup>3)</sup>,
  - 3. a self-governing territorial unit and in the case of the capital city of Prague<sup>4)</sup> and statutory cities, in addition, a city borough or a city district, and allowance organizations managed and set up thereby,
  - 4. the Fund of National Property of the Czech Republic, Land Fund of the Czech Republic, State fund, Czech National Bank, Czech Radio, Czech Television, Czech Consolidation Agency, a health insurance company, a voluntary partnership of municipalities and another legal person, provided that it was set up by law or by virtue of law for the purpose of meeting needs in the general interest and is financed, for the most part, by public contracting entities, or is subject to management supervision by public contracting entities or having an administrative, managerial or supervisory board, more than half of whose members are appointed by such public contracting entities,
- b) another legal or natural person, where it awards a supply, service or construction works contract, which is reimbursed by more than 50 % by a public contracting entity, or
- c) the entrepreneur,<sup>5)</sup> if he/she is subject to dominant influence<sup>6)</sup> of the public contracting entity, or the pursuit of business activities thereof is conditional on granting authorization<sup>7)</sup> rendering special or exclusive rights and pursues some of the activities referred to in § 3.

(2) The grouping formed jointly by a number of contracting entities referred to in paragraph 1 letter a) and b) shall be entitled to act in a capacity as a contracting entity, where they have their mutual rights and obligations and relations to third persons provided for by an agreement.

## § 3

(1) The contracting entity operating in the water, energy, transport and telecommunications sectors shall award under this Act solely the above the threshold public contracts (§ 14), where it

- a) provides or operates fixed networks intended to supply the public in connection with the production, transport and distribution of
  - 1. drinking water,

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<sup>2)</sup> § 6 and 7 of Act No. 219/2000 Coll., on Property of the Czech Republic and Acting Thereof in Legal Relations.

<sup>3)</sup> § 55 par. 1 of Act No. 219/2000 Coll., on Property of the Czech Republic and Acting Thereof in Legal Relations, as Amended by Act No. 492/2000 Coll. and Act No. 202/2002 Coll.

<sup>4)</sup> Act No. 131/2000 Coll., on the Capital City of Prague, as Subsequently Amended.

<sup>5)</sup> § 2 par. 2, § 21 and 23 of Commercial Code.

<sup>6)</sup> § 66a of Commercial Code.

<sup>7)</sup> For instance § 4 of Act No. 458/2000 Coll., on Prerequisites for the Pursuit of Business Activities and on the Exercise of State Administration in Energy Sectors and on Amendment to Certain Acts (Energy Act).

2. electricity,
  3. gas or heat,
- b) supplies the networks referred to in letter a) with drinking water, electricity, gas or heat,
  - c) pursues an activity while exploiting a geographically delimited area for the purpose of
    1. exploring for or extracting oil, natural gas, coal or other solid fuels, or
    2. the provision of airport, port and other terminal facilities to carriers by air and by inland waterways,
  - d) operates networks providing services to the public in the field of transport by railway, automated systems, tramways, trolley buses, buses or cables,
  - e) provides or operates sewerage for the public need or carries out disposal or treatment of sewage, provided that it simultaneously provides or operates fixed networks intended to supply the public in connection with the production, transport or distribution of drinking water or provided that it supplies such networks with drinking water,
  - f) provides telecommunications services or operates telecommunications networks.<sup>8)</sup>

(2) The supply to the network shall not be considered as a relevant activity within the meaning of paragraph 1 letter a) and b) in respect of the contracting entity referred to § 2 par. 1 letter b), where,

- a) in the case of drinking water or electricity,
  1. the production of drinking water or electricity takes place because it is necessary for the pursuit of activities other than those referred to in paragraph 1 and
  2. supplies to the public network depend only the own consumption of the contracting entity and has not exceeded 30 % of the contracting entity's average total production of drinking water or energy for the preceding 3 years,
- b) in the case of gas or heat,
  1. the production of gas or heat is the unavoidable consequence of the pursuit of an activity other than that referred to in paragraph 1 and
  2. supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the contracting entity's average turnover for the preceding 3 years.

(3) The operation of public bus transport shall not be considered as a relevant activity within the meaning of paragraph 1 letter d), where other persons are free to provide those services within the whole territory of the State or only in a delimited geographical area, under the same conditions.

(4) The Act shall not apply to the purchases by contracting entities which provide telecommunications services or operate telecommunications networks in case separate legal regulation<sup>8)</sup> allows for the provision of telecommunications services or the operation of telecommunications networks in effective competition.

#### § 4

(1) This Act shall not apply to the award of public contracts, if

- a) the subject thereof is declared officially secret or the execution thereof is accompanied by special security measures in accordance with separate legal regulations<sup>9)</sup> or when the protection of the basic interests of the State's security so requires,

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<sup>8)</sup> Act No. 151/2000 Coll. on Telecommunications and on Amendments to Certain Other Acts, as Subsequently Amended.

- b) they have as their subject the production, purchase or repairs of armaments, weapons systems, ammunition or procurement of other war materials to ensure defence or security of the State,
- c) the award thereof is governed by particular procedural rules and the contracts are awarded in pursuance of an international agreement relating to the stationing of foreign troops in the territory of the Czech Republic<sup>10)</sup> or to the sending of the armed forces of the Czech Republic in the territory of other States, by which the Czech Republic is bound and which was promulgated in the Collection of Laws or in the Collection of International Treaties,
- d) the rules given by particular procedures of international organizations are applicable to the award thereof,
- e) they are awarded in pursuance of an international agreement concluded between a Member State of the European Union and one or more non-member States of the European Union intended for the implementation or exploitation of a joint project by contractual parties; the conclusion of such an agreement shall be communicated to the Commission of the European Community (hereinafter referred to as “the European Commission”),
- f) they have as their subject research and development service contracts, where the benefits do not accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity,
- g) they have as their subject provision of financial services related to the issue, sale, purchase or other transfer of securities or to other financial instruments,
- h) they have as their subject services or supplies provided or received by the Czech National Bank in relation to the exercise of competence thereof,
- i) they have as their subject provision of arbitration and conciliation services,
- j) they have as their subject an activity or a work based on an employment contract, service or analogous relationship,
- k) the subject of a public contract constitutes the principal object of business activities of a State enterprise or the object of activities of an allowance organization established or set up under the Act by the contracting entity referred to in § 2 par. 1 letter a) point 1. and 3.,
- l) it concerns a public service contract awarded to a person that is the contracting entity within the meaning of § 2 par. 1 letter a) on the basis of an exclusive right granted by law or by virtue of law in compliance with the Treaty establishing the European Community,
- m) they have as their subject commissioning of an expert or an interpreter<sup>11)</sup> for the purposes of judicial, administrative, arbitration or other analogous proceedings, preparatory penal proceedings included,
- n) they are awarded pursuant to accredited procedures of individual programmes of assistance of the European Communities in the Czech Republic,
- o) a contract is awarded for supplies in the State material reserves,
- p) they have as their subject purchase, storage and sale of agricultural produce and foodstuffs, organized by the State Agricultural Intervention Fund,

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<sup>9)</sup> For instance Act No. 222/1999 Coll., on Arrangements for Defence of the Czech Republic, as Amended by Act No. 320/2002 Coll., Act No. 240/2000 Coll. on Crisis Management and on Amendment to Certain Acts (Crisis Act), as Amended by Act No. 320/2002 Coll., Act No. 241/2000 Coll., on Economic Measures for States of Crisis and on Amendment to Related Acts, as Amended by Act No. 320/2002 Coll., Act No. 153/1994 Coll., on Intelligence Services of the Czech Republic, as Amended by Act No. 118/1995 Coll.

<sup>10)</sup> Act No. 310/1999 Coll., on Stationing of Foreign Troops in the Territory of the Czech Republic.

<sup>11)</sup> Act No. 36/1967 Coll., on Experts and Interpreters.

q) the supplier of supplies or services is the Czech Republic through the Prison Service of the Czech Republic, where the Czech Republic acts in a capacity as a contracting entity.

(2) This Act shall not apply to below the threshold public contracts (§ 15)

- a) for supplies or for services directly related to the visits of high-level representatives of other States and plenipotentiaries thereof to the Czech Republic,
- b) the contracting entity of which are intelligence services.

## § 5

(1) This Act shall not apply to the contracting entities operating in the water, energy, transport and telecommunications sectors in respect of public contracts

a) awarded for the purposes of

- 1. the pursuit of activities within the meaning of § 3 abroad, unless the exploitation of networks or the geographical area in the European Communities is concerned,
- 2. resale or hire to other persons, provided that the contracting entity enjoys no special or exclusive authorization to sell or hire the subject of such a public contract and other persons are free to sell or hire the subject of the public contract under the same conditions,
- 3. the purchase of water, where the contracting entity pursues the activity referred to in § 3 par. 1 letter a) point 1.,
- 4. the purchase of energy or the purchase of fuels intended for the production of energy, where the contracting entity pursues the activity referred to in § 3 par. 1 letter a) points 2. and 3. or in § 3 par. 1 letter b),
- 5. the purchase of support services under separate legal regulation<sup>12)</sup> to ensure system services and the purchase of electricity to cover the losses in the grid, where the contracting entity pursues the activity referred to in § 3 par. 1 letter a) point 2.,

b) for services, which

- 1. the contracting entity awards to an affiliated person / (§ 17 letter h) /, or
- 2. are awarded jointly by a number of contracting entities, where they have their mutual rights and obligations and relations to third persons provided for by an agreement, for the purpose of carrying out the activities within the meaning of § 3, to one of those contracting entities or to a person that is affiliated with one of those contracting entities, provided that at least 80 % of the average turnover of that affiliated person with respect to services arising within the European Communities for the preceding 3 years derives from the provision of such services to persons with which it is affiliated. Where more than one person affiliated with the contracting entity provides the same or similar services, the total turnover deriving from the provision of services by those persons shall be taken into account.

(2) This Act shall not, in addition, apply to the contracting entities operating in the water, energy, transport and telecommunications sectors in respect of public contracts awarded for purposes other than the pursuit of activities referred to in § 3.

(3) The provision of paragraph 2 shall not apply to a public contract, which is

- a) awarded by the contracting entity referred to in § 2 par. 1 letter a),
- b) connected with projects of hydraulic engineering structures, irrigation and land drainage, provided that the volume of water intended for the supply of drinking water represents

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<sup>12)</sup> Act No. 458/2000 Coll., as Subsequently Amended.

- more than 20 % of the total volume made available by these projects or irrigation or drainage installations, or
- c) connected with the disposal or treatment of sewage.

§ 6

**Public Contract**

(1) A public contract shall mean the contract for supplies, services or construction works, the contracting entity of which shall be the person referred to in § 2 and the estimated value of the subject of the public contract shall exceed CZK 2,000,000.

(2) The public contract shall be carried out on the basis of an agreement for pecuniary interest concluded in writing with one or more selected tenderers or candidates.

(3) The contracting entity shall award supplies, services or construction works, whose estimated value is less or equal to the threshold referred to in paragraph 1, in a transparent and non-discriminatory manner at a local market price normal on the site of performance.

§ 7

**Public Supply Contract**

A public supply contract shall mean the public contract the subject of which involves the purchase of movable and immovable property (hereinafter referred to as “the products”), hire purchase of products, rental of products or lease of products with subsequent right to buy included, as well as the public contract the subject of which includes, in addition to the delivery of the products, installation and siting operations, to the exclusion of the case within the meaning of § 8 par. 2 letter a).

§ 8

**Public Service Contract**

(1) A public service contract shall mean the public contract the subject of which shall not involve the subject of a public supply contract or a public construction works contract.

(2) A public service contract shall, in addition, mean the public contract, whose subject is both provision of services and

- a) delivery of products, if the price of provided services exceeds that of the estimated value of the delivery of products, or
- b) a public construction works contract (§ 9), if the price of provided services exceeds that of the estimated value of construction works.

(3) The list of services is referred to in Annexes No. 1 and 2.

§ 9

**Public Construction Works Contract**

(1) A public construction works contract shall mean the public contract having as its subject the execution of

- a) a new structure,
- b) construction alterations of a built structure,
- c) maintenance works on a structure,
- d) dismantlement of an existing structure, or
- e) any construction works conforming to the requirements specified by the contracting entity, including construction works procured by employment of intermediary or similar services made available to the contracting entity by another person.

(2) Construction works shall, in addition, mean installation works related to the execution of structures and construction works within the meaning of paragraph 1.

(3) A public construction works contract shall equally mean the public contract having as its subject both the execution of construction works within the meaning of paragraph 1 and design and engineering activities relating to such works.

## § 10

### **Award Procedures and Methods of the Award**

(1) Award procedures shall mean the procedure that the contracting entity shall comply with for awarding public contracts until an agreement with the supplier is concluded, unless provided otherwise by this Act.

(2) The public contract may be awarded by

- a) open award procedure, whereby all interested suppliers may submit a tender (hereinafter referred to as "the open procedure"),
- b) restricted award procedure, whereby only the candidates selected by the contracting entity are entitled to submit a tender (hereinafter referred to as "the restricted procedure"),
- c) negotiated procedure with publication, whereby only selected candidates submit a tender, and are subsequently invited by the contracting entity to negotiate, or
- d) negotiated procedure without publication, whereby the contracting entity directly invites one or more suppliers of its choice to negotiate.

## § 11

### **Supplier**

The supplier shall be either a legal person or a natural person that

- a) provides services,
- b) supplies products,
- c) executes construction works.

## § 12

### **Candidate**

A candidate shall mean the supplier that

- a) has submitted a request to participate in restricted procedure or in negotiated procedure with publication within a fixed time limit, or
- b) has been invited by the contracting entity to participate in negotiated procedure without publication.

§ 13

**Tenderer**

A tenderer shall mean

- a) the supplier that has submitted a tender in open procedure within a fixed time limit, or
- b) the candidate that has submitted a tender in restricted procedure or in negotiated procedure with publication within a fixed time limit.

§ 14

**Above the Threshold Public Contract**

(1) An above the threshold public contract shall mean the contract, where the estimated value of the subject of the public contract (§ 18) is not less or exceeds the financial thresholds referred to in paragraphs 2 and 3.

(2) The financial threshold for public supply contracts and for public service contracts shall be the equivalent in the Czech currency of

- a) EUR 130,000 for the contracting entities referred to in § 2 par. 1 letter a), points 1. and 2. and for the Czech Republic - the Ministry of Defence as regards the products referred to in Annex No. 3,
- b) EUR 200,000 for the contracting entities referred to in § 2 par. 1 letter a), points 3. and 4. and for the Czech Republic - the Ministry of Defence as regards the products not referred to in Annex No. 3,
- c) EUR 400,000 for the contracting entities operating in the water, energy and transport sectors, where they pursue the activities referred to in § 3 par. 1 letters a) to e), or
- d) EUR 600,000 for the contracting entities operating in the sector of telecommunications, where they pursue the activity referred to in § 3 par. 1 letter f).

(3) The equivalent in the Czech currency of EUR 5,000,000 shall be the financial threshold for public construction works contracts.

(4) Where the Czech Republic acts in a capacity as a contracting entity, the financial thresholds referred to in paragraphs 2 and 3 shall apply to the organizational branches<sup>13)</sup> thereof, unless provided hereinafter otherwise.

(5) Where a public contract is awarded on behalf of the Czech Republic by

- a) the Ministry of Interior, the financial thresholds referred to in paragraphs 2 and 3 shall apply to the organizational units thereof and to the organizational units of the Police of the Czech Republic, which are authorized to award public contracts,
- b) the Ministry of Defence, the financial thresholds referred to in paragraphs 2 and 3 shall apply to the organizational units thereof and to the military regiments, military facilities or military rescue regiments of the Army of the Czech Republic,<sup>14)</sup> which are authorized to award public contracts by the Minister of Defence.

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<sup>13)</sup> Act No. 219/2000 Coll., on Property of the Czech Republic and Acting Thereof in Legal Relations, as Subsequently Amended.

<sup>14)</sup> § 13 of Act No. 219/1999 Coll., on Armed Forces of the Czech Republic.



(6) The rate of exchange declared by the Czech National Bank on the date of dispatch of the notice pursuant to § 42 to 44 or on the date of dispatch of the invitation to negotiate pursuant to § 45 shall be determinative for conversion of EUR into Czech currency until the date of entry of the Treaty of Accession of the Czech Republic to the European Union in force. After the date of entry of the Treaty of Accession of the Czech Republic to the European Union in force, the financial thresholds in the Czech currency equivalent to the financial thresholds established by this Act in EUR shall be declared in the Official Journal of the European Union.

(7) The provision of paragraph 6 on conversion of EUR into Czech currency shall not apply after the date of entry of the Treaty of Accession of the Czech Republic to the European Monetary Union in force.

## § 15

### **Below the Threshold Public Contract**

A below the threshold public contract shall mean the contract, where the estimated value of the subject of the public contract (§ 18) is less than the financial thresholds referred to in § 14 par. 2 and 3.

## § 16

### **Framework Agreement**

A framework agreement shall mean the agreement concluded between the contracting entity operating in the water, energy, transport and telecommunications sectors and a tenderer or, if appropriate, tenderers, on the ground of open procedure or restricted procedure, the purpose of which is to establish contractual terms with due regard, in particular, to prices or estimated quantity, governing the public contracts to be awarded during a given period of time.

## § 17

### **Certain Other Terms**

For the purposes of this Act the following meanings shall apply

- a) award conditions, the total of contracting entity's requirements contained in the notice of award procedures or, if appropriate, further specified in contract documentation, which shall be fulfilled by the tenderer in a tender,
- b) a tender, the draft agreement submitted by a tenderer in open procedure, in restricted procedure or in negotiated procedure with publication,
- c) an appropriate tender, the tender submitted by a tenderer having satisfactory qualifications, fulfilling the award conditions established by the contracting entity in respect of the content of a tender,
- d) qualifications, the skills of a supplier to execute a public contract awarded,
- e) an award of a public contract, the decision of the contracting entity on the assignment of a public contract,
- f) an awarding activity, the activity pursued under this Act for the purpose of the award of a public contract, related activities included,

- g) contract documentation, the totality of documents to be supplied under this Act, and the tenders of all tenderers,
- h) an affiliated person, the person over which the contracting entity exercises a dominant influence under separate legal regulations<sup>6)</sup> or which may exercise a dominant influence over the contracting entity under separate legal regulation<sup>6)</sup>, or which, in common with the contracting entity, is subject to management supervision by another person,
- i) special or exclusive authorization, the authorization granted by law or by virtue of law by the relevant administrative authority, which retains some of the activities referred to in § 3 par. 1 for one or more contracting entities operating in the water, energy, transport and telecommunications sectors,
- j) a central address, the site where the information designated by this Act is made public in the information system accessible to the public (Internet),
- k) extreme urgency, the event that could be neither foreseen by nor attributable to the contracting entity,
- l) a foreign person, the natural person with a place of residence or the legal person with a place of business outside the territory of the Czech Republic.

## Title II

### **Methods of Calculating Estimated value of Subject of Public Contract**

#### § 18

##### **Estimated value of Subject of Public Contract**

(1) The estimated value of the subject of a public contract, net of value added tax, shall be crucial for the procedure of a contracting entity for the award of public contracts.

(2) Where the subject of a public contract is subdivided into several lots, the aggregate of estimated values of the subjects of all lots thereof shall be decisive for calculating the estimated value of the subject.

(3) The contracting entity shall not be entitled to split up the subject of a public contract, if it results in reducing the estimated value thereof below the financial thresholds established for individual types of public contracts (§ 14) or below the financial threshold set forth in § 6 par. 1.

(4) For the purposes of calculating the estimated value of the subject of a public contract, the contracting entity shall take into account the total price of all supplies, construction works or services, provided that the right of the contracting entity to additional supplies, construction works or services (the right on option) is contained in the notice of award procedures.

#### § 19

##### **Estimated value of Subject of Public Supply Contract**

(1) The estimated value of the subject of a public supply contract shall mean the total price of the delivery of supplies.

(2) The contracting entity shall calculate the estimated value of the subject of a public contract in the case of hire purchase of products, rental of products and lease of products with subsequent right to buy on the basis of

- a) the total amount of performance during the term of an agreement, where the agreement is concluded for a fixed term; in the case of the lease of products with subsequent right to buy, the residual purchase price shall be included in the total amount of performance,
- b) the total amount of performance during 4 years, where the agreement is concluded for an indefinite period.

§ 20

**Estimated value of Subject of Public Service Contract**

(1) The estimated value of the subject of a public service contract shall mean the total price for provided services.

(2) The contracting entity shall calculate the total price thereof on the basis of

- a) the premium payable, as regards insurance services,
- b) fees, commissions, interest and other types of remuneration related to banking services and other financial services, as regards such services,
- c) the fee or commission payable, as regards design activities.

(3) The contracting entity shall calculate the estimated value of the subject of a public contract in the case of an agreement without indication of the total price, on the basis of

- a) the total price of performance for the whole term of an agreement, where the agreement is concluded for a fixed term of 4 years or less, or
- b) the total price of performance during 4 years, where the agreement is concluded for an indefinite period or the agreement is concluded for a fixed term exceeding 4 years.

§ 21

**Estimated value of Subject Of Public Construction Works Contract**

(1) The estimated value of the subject of a public construction works contract shall mean the total price of construction works.

(2) The estimated value of supplies needed to carry out construction works and made available to the supplier by the contracting entity shall be included in the estimated value of the subject of a public construction works contract.

§ 22

**Specific Methods of Calculating Estimated value of Subject of Public Supply Contract and Public Service Contract**

(1) In the case of a public supply contract or public service contract to be carried out on the basis of an agreement, the subject of which consists in the obligation of regular performances and the estimated value of the subject of a public contract cannot be established in accordance with the procedure pursuant to § 19 and 20, the estimated value of the subject of a public contract shall be calculated on the basis of

- a) the actual total price of equivalent products or services, which were awarded in the previous calendar year or in the previous 12 months, adjusted for anticipated changes in quantity or price in the subsequent 12 months, or

b) the estimated total price of products or services to be awarded during the 12 months following the first performance or during the whole term of the agreement, where this is longer than 12 months.

(2) The procedure of calculating the estimated value of the subject of a public contract within the meaning of paragraph 1 letter a) or b) shall be chosen in such a way so as to avoid an infringement of other provisions of the Act, § 25 and 26 in particular, by a variation between an actual price of the subject of a public contract and an estimated value.

### § 23

#### **Estimated value of Subject of Public Contract in Framework Agreements**

In the case of public contracts to be procured by the contracting entity operating in the water, energy, transport and telecommunications sectors through the conclusion of a framework agreement, the estimated value of the subject of the framework agreement shall be understood as the aggregate of estimated values of the subjects of all public contracts, which the contracting entity intends to award in relation to such a framework agreement in a given period of time. The contracting entity shall calculate the estimated value of the subject of contracts, which it intends to award in relation with such a framework agreement, pursuant to § 18 to 22.

### Title III

#### **Procedure of Contracting Entity for Award of Public Contracts**

### § 24

#### **Award of Lots of Public Contracts**

(1) Where it is consequential upon the nature of the performance that the subject of a public contract must be performed or supplied in several lots, the provisions of this Act related to above the threshold and below the threshold public contracts shall apply to all lots, except for the cases referred to in paragraph 2.

(2) The contracting entity shall be entitled to award lots of a public contract in accordance with the procedure established for below the threshold public contracts, provided that the aggregate of estimated values of such lots does not exceed 20 % of the total estimated value of the subject of an above the threshold public contract and where the value of a particular lot is less than the equivalent in the Czech currency of

- a) EUR 1,000,000, as regards public construction works contracts, or
- b) EUR 80,000, as regards public service contracts.

(3) The provision of paragraph 2 letter b) shall not apply to the contracting entity operating in the water, energy, transport and telecommunications sectors.

(4) § 14 par. 6 shall apply to conversion of the estimated value of the subject of a lot of an above the threshold public contract into Czech currency.

PART TWO

**CONDITIONS FOR EMPLOYMENT OF AWARD PROCEDURES, PRELIMINARY  
NOTICE AND QUALIFICATIONS OF SUPPLIERS**

Title I

**Conditions for Employment of Award Procedures**

§ 25

**Award Procedures and Types Thereof**

(1) The contracting entity shall be obligated to award both an above the threshold and a below the threshold public contract (§ 14 and 15) by the award procedures, unless provided otherwise by this Act. In the course of the award procedures, the contracting entity shall be obligated to observe the principles of equal treatment of all candidates and tenderers, with the exceptions referred to in § 87, of non-discrimination and transparency.

(2) To award a public contract, the contracting entity shall be entitled to make a choice of

- a) open procedure,
- b) restricted procedure,
- c) negotiated procedure with publication, only where the conditions referred to in § 26 are met or in respect of the contracting entity operating in the water, energy, transport and telecommunications sectors, or
- d) negotiated procedure without publication, only where the conditions referred to in § 27 or 28 are met.

§ 26

**Negotiated procedure with Publication**

(1) The contracting entity shall be entitled to employ negotiated procedure with publication, where only incomplete tenders have been submitted in response to prior open procedure or restricted procedure, insofar as the award conditions are not substantially altered thereby. Advertisement of negotiated procedure shall not be indispensable, provided that the contracting entity invites all tenderers that have submitted tenders in the prior open procedure or restricted procedure and have fulfilled qualifications required by the contracting entity.

(2) The contracting entity shall be entitled to employ negotiated procedure with publication, in addition,

- a) in exceptional cases, when the nature of construction works or services or the nature of risks attaching thereto does not permit prior overall pricing of the subject, or
- b) when the construction works are carried out purely for the purposes of research and development and are not exploited to establish commercial viability or to recover research and development costs.

§ 27

**Negotiated procedure without Publication**

(1) The contracting entity shall be entitled to employ negotiated procedure without publication

- a) in the absence of any tenders or of any tenders meeting award conditions in response to prior open procedure or restricted procedure and insofar as the award conditions are not substantially altered thereby,
- b) when, for technical or artistic reasons or for reasons of protection of rights to industrial and intellectual property<sup>15)</sup>, the public contract may be performed only by a particular supplier, or
- c) insofar as is strictly necessary to award a public contract for reasons of extreme urgency brought about by the state of crisis<sup>9)</sup>, and the contract cannot be awarded in other award procedures.

(2) The contracting entity shall be entitled to award a public supply contract by employment of negotiated procedure without publication, in addition, in the following cases

- a) the products are manufactured purely for the purpose of research and development; it shall not apply to the cases when the products are manufactured in larger series to establish commercial viability or to recover research and development costs, or
- b) for additional delivery by the supplier that the agreement was already concluded with, where the performance is intended as a partial replacement of the products, as the extension of agreed quantity or as the adjustment thereof, when a change of supplier would result in the delivery of products having different technical characteristics entailing incompatibility with the original products or disproportionate technical difficulties in operation and maintenance; the length of duration of such agreements shall not be more than 3 years.

(3) The contracting entity shall be entitled to award a public construction works contract or public service contract by employment of negotiated procedure without publication, in addition, in the following cases

- a) for additional construction works or additional services not included in the original public contract which have, through extreme urgency, become necessary, on condition that
  1. the contract is awarded to the original supplier,
  2. additional construction works or additional services cannot be technically or economically separated from the original contract without great inconvenience to the contracting entity, or such additional works or additional services, although separable, are strictly necessary for the completion of the original contract and
  3. the aggregate amount of additional construction works or additional services does not exceed 20 % of the value of the original contract; it shall not apply to the contracting entity operating in the water, energy, transport and telecommunications sectors, or
- b) for new construction works consisting of the repetition of the same type of or similar construction works awarded in the original contract, provided that
  1. the original contract was awarded by open procedure or restricted procedure,
  2. new construction works are in compliance with original design documentation of a structure,
  3. the option to award additional construction works by negotiated procedure without publication was contained in the notice of original award procedures,

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<sup>15)</sup> For instance Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendment to Certain Other Acts (Copyright Act), Act No. 527/1990 Coll., on Inventions and Innovations, as Subsequently Amended, Act No. 478/1992 Coll., on Utility Models, as Amended by Act No. 116/2000 Coll., Act No. 137/1995 Coll., on Trade Marks, as Subsequently Amended (consolidated version promulgated under No. 400/2000 Coll.).

4. new construction works are awarded to the supplier to the original contract during 3 years following the date of conclusion of the original agreement, and
  5. the value of new construction works was included in the estimated value of the subject.
- c) for new services consisting of the repetition of the same type of or similar services awarded in the original contract, provided that
1. the original contract was awarded by open procedure or restricted procedure,
  2. new services are in compliance with contractual terms of the original contract,
  3. the option to award additional services by negotiated procedure without publication was contained in the notice of original award procedures,
  4. new services are awarded to the supplier to the original contract during 3 years following the date of conclusion of the original agreement, and
  5. the value of new services was included in the estimated value of the subject.
- d) new construction works or services relating to construction or re-construction of a road<sup>16)</sup> or a part thereof, provided that
1. the estimated value of a below the threshold public contract does not exceed CZK 30 million, net of value added tax, as regards a public construction works contract, or CZK 4 million, net of value added tax, as regards a public service contract,
  2. the contracting entity invites not less than five suppliers to participate in negotiated procedure without publication.

(4) The provision of paragraph 3 letter c) shall not apply to the contracting entity operating in the water, energy, transport and telecommunications sectors.

(5) When the award of a public service contract is a part of the follow-up public design contest, where in accordance with relevant rules of the contest the public contract is to be awarded to the winning participant or to one of the winning participants, the contracting entity shall employ negotiated procedure without publication to negotiate contractual terms. If there are more winning participants, all of them shall be invited to participate in the negotiations.

(6) In the cases referred to in paragraph 1 letter a), the contracting entity awarding an above the threshold contract, except for the contracting entity operating in the water, energy, transport and telecommunications sectors, shall be obligated to communicate the report on the employment of such procedures to the European Commission.

## § 28

### **Negotiated procedure without Publication Employed by Contracting Entity Operating in Water, Energy, Transport and Telecommunications Sectors and by Contracting Entity Awarding Below the Threshold Public Contract**

(1) To the exclusion of the cases referred to in § 27, the contracting entity operating in the water, energy, transport and telecommunications sectors and the contracting entity awarding a below the threshold public contract shall be entitled to employ negotiated procedure without publication, in addition, for

- a) supplies quoted and purchased on commodity markets,

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<sup>16)</sup> § 2 par. 2 of Act No. 13/1997 Coll., on Roads, as Subsequently Amended.

- b) bargain purchases, where it is possible to procure supplies taking advantage of particularly advantageous opportunities available for a very short space of time at prices considerably lower than normal market prices, or
- c) purchases of products under particularly advantageous conditions from a supplier definitively winding up his/her business activities, who was declared bankrupt or is the subject of insolvency proceedings or has entered into arrangement with creditors.

(2) The contracting entity operating in the water, energy, transport and telecommunications sectors shall be, in addition, entitled to employ negotiated procedure without publication in the case of the award of a public contract on the basis of a framework agreement.

## Title II Indicative Notice

### § 29

(1) At the beginning of a calendar year, however, not later than within 30 days following the approval of the relevant budget that a public contract is to be reimbursed from, the contracting entity shall be obligated to make known in an indicative manner the public contracts which it intends to award in that calendar year, provided that the total estimated value of such contracts amounts in the aggregate to not less than

- a) EUR 750,000, in the case of public supply or service contracts, except for the services referred to in Annex No. 1, or
- b) EUR 5,000,000, in the case of public construction works contracts.

(2) The indicative notice shall contain, as regards

- a) public supply contracts, the overall quantity of the products in individual categories,
- b) public service contracts, the total estimated value of services in individual categories of services,
- c) public construction works contracts, the category and extent thereof and the anticipated deadline for publication of the notice of award procedures.

(3) The indicative notice pursuant to paragraph 1 shall contain identification data of the contracting entity, personal data included, viz.

- a) business name or name, place of business, legal form, identification number and tax identification number, if they were assigned, name and surname of a statutory body or the members thereof and, if appropriate, of another natural person authorized to act on behalf of the legal person, as regard legal persons,
- b) name, surname and, if appropriate, business name, personal identification number or the date of birth, place of residence and, if appropriate, point of business, where it is different from the place of residence, identification number and tax identification number, if they were assigned, as regard natural persons.

(4) The contracting entity shall be obligated to advertise the indicative notice pursuant to § 84 par. 1; to make it known it shall be obligated to make use of the form of the indicative notice, the model of which, details on procedure for filling it in and dispatch thereof shall be set out by implementing legal regulation.



Title III  
**Qualifications of Suppliers**

§ 30

(1) The fulfilment of qualifications shall be the prerequisite for the participation of a supplier in restricted procedure and the prerequisite for the evaluation of tenders in open procedure.

(2) The fulfilment of qualifications shall mean

- a) meeting general qualification criteria set out in § 31,
- b) meeting other qualification criteria set out by the contracting entity, by means of which the contracting entity shall determine the relevant level of financial, economic and technical capability of the supplier and quality assurance in compliance with the type, extent and complexity of the public contract awarded,
- c) furnishing evidence of possession of authorization to pursue business activities, including the production of an extract from the Companies Register or other registers not dated from more than 90 days, provided that the tenderer or candidate is to be enrolled therein under separate legal regulations; the tenderer or candidate shall be entitled to produce the authorization to pursue business activities either in duplicate or in an officially certified copy and
- d) demonstrating professional qualifications or membership in a given professional organization, where it is required for the performance of a public contract under separate legal regulations.

(3) The contracting entity shall indicate the requirements regarding the fulfilment of qualifications pursuant to paragraph 2, evidence required to demonstrate the fulfilment thereof included, in the notice of award procedures. The contracting entity shall not be entitled to require the fulfilment of qualifications above and beyond the scope of requirements regarding the fulfilment of qualifications established by a complete enumeration in the notice of award procedures. The contracting entity shall be obligated to confine the scope of required information concerning qualifications of suppliers only to the information immediately related to the subject of a public contract.

(4) In respect of public construction works contracts the candidates and tenderers shall be entitled to avail themselves of a certificate issued by the certification authority, which states the reference to the fulfilment of criteria of national qualification and classification system of contractors, to demonstrate the fulfilment of qualification criteria. Such a certificate shall replace the fulfilment of qualifications in full.

(5) Where a grouping of suppliers submit a tender jointly, each of them shall fulfil qualifications pursuant to paragraph 2 letter a); qualifications pursuant to paragraph 2 letter b) to d) shall be fulfilled by at least one of the suppliers.

(6) The supplier shall be entitled to demonstrate the fulfilment of qualifications pursuant to paragraph 2 letter d) by producing evidence of a third person accompanied by a binding declaration thereof on future cooperation.

(7) Where a grouping of suppliers submit a tender jointly, they shall be obligated to attach to a tender an original or a certified copy of documentary evidence attesting that all the suppliers will be liable jointly and severally to the contracting entity and any third persons for any obligations incurred in connection with the performance of the subject of a public

contract or incurred as a consequence of a delay or other breach of contractual or other duties in connection with the performance of the subject of a public contract.

(8) A foreign person shall demonstrate the fulfilment of general qualification criteria by the evidence under the law of the country of his/her place of business or, if appropriate, place of residence or by an extract from the list of qualified suppliers. The foreign person shall produce the evidence demonstrating the fulfilment of qualifications in the original language accompanied by the officially certified copy of translation into Czech language.

## § 31

### **General Qualification Criteria**

- (1) The tenderer or candidate fulfils the general qualification criteria when
- a) is not being wound up,
  - b) has not been declared bankrupt or proceedings for a declaration of bankruptcy has not been cancelled due to insolvency in the preceding 3 years,
  - c) has no outstanding arrears relating to payments of taxes in tax records,
  - d) has not been finally convicted of a criminal offence or the conviction on a criminal offence, whose subject-matter is related to the subject of business activities, has been extinguished, as regards a natural person; this condition shall be met by the statutory body or each member of such a statutory body, executive manager of the organizational branch of a foreign legal person or representative authorized by the statutory body, as regards a legal person,
  - e) has no outstanding arrears relating to payments and penalties of public health insurance, or to payments and penalties of social security insurance and contribution to the State policy of employment, except for the cases, where the payments in instalments to settle the arrears have been permitted and is not in default with payments of instalments.
- (2) The tenderer or candidate shall demonstrate the fulfilment of qualification criteria pursuant to paragraph 1 letter a) to c) and e) by declaration, the fulfilment of qualification criteria pursuant to paragraph 1 letter d) by the production of an extract from the Penal Register or other corresponding evidence not dated from more than 6 months.
- (3) The contracting entity shall be entitled to exclude a tenderer who has been found guilty in the preceding 3 years of grave professional misconduct under separate legal regulations<sup>17)</sup> governing the pursuit of a professional activity, where such an activity is related to the subject of a public contract as regards a natural person, or a responsible representative.
- (4) In the case of below the threshold public contracts, the tenderers or candidates shall be entitled to demonstrate the fulfilment of qualification criteria pursuant to paragraph 1 by declaration.

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<sup>17)</sup> For instance 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 Subsequently Amended.

§ 32

**Evidence of Financial and Economic Standing**

(1) The tenderer or candidate shall demonstrate financial and economic standing, in particular, by furnishing

- a) a statement from the bank, which keeps the tenderer's or candidate's current account, on capability of the tenderer or candidate to sustain financial obligations thereof,
- b) a fully consolidated or simplified financial statement of annual accounts, audit report included, where imposed by the law, compiled to the last day of the preceding accounting period, where such a statement is prescribed under the law of the country of place of business or place of residence of the tenderer or candidate,
- c) a statement of the tenderer's or candidate's overall turnover and the turnover achieved on executed works, deliveries of products or provided services for the 3 preceding accounting periods, or
- d) the evidence of professional risk indemnity insurance.

(2) The contracting entity shall be obligated to set out the method of demonstrating financial and economic standing pursuant to paragraph 1 in the notice within the meaning of § 42 to § 44, or in the invitation to negotiate pursuant to § 45.

(3) The tenderer or candidate shall be entitled to demonstrate his/her financial and economic standing by other evidence than that required by the contracting entity, which the contracting entity considers appropriate.

(4) In the case of a below the threshold public contract, the tenderer or candidate shall be entitled to replace the evidence of required financial and economic standing by declaration.

§ 33

**Evidence of Technical Capability**

(1) The tenderer or candidate shall demonstrate technical capability in the case of

- a) public construction works contracts, by furnishing
  1. a certificate of tenderer's educational and professional qualifications, especially those of the persons responsible for carrying out the works,
  2. a list of principal construction works carried out over the past 5 years, accompanied by certificates of satisfactory execution for the most important works, drawn up by the recipient, or, where appropriate, by a declaration of the supplier attesting the due execution of the most important structures, where it is not possible to receive such a certificate from the recipient; such certificates shall indicate the extent, time and site of the execution of equivalent works, whether the works conformed to the technical requirements and whether they were properly completed,
  3. a statement of operational and technical equipment available to the tenderer or candidate for carrying out the works,
  4. a statement of the average annual manpower and the average number of managerial staff for the last 3 years, or
  5. an indication of technicians and technical bodies involved in carrying out the works, irrespective whether or not they are employees of the tenderer or candidate,
- b) public supply contracts, by

1. a list of principal supplies executed in the past 3 years with an indication of the extent thereof and time of delivery, accompanied by the certificate issued by a public or private recipient, or, where appropriate, by a declaration of the supplier attesting to the execution of the delivery, where it is not possible to receive such a certificate from the private recipient ,
  2. a description of technical facilities, measures for quality assurance and capacities to ensure research and development,
  3. samples, descriptions and photographs of the products to be supplied, the authenticity of which must be certified, if the contracting entity so requires,
  4. certificates issued by the competent quality control bodies or institutes of recognized competence attesting conformity to certain specifications or standards of the products,
  5. a check carried out on the production capacity by the contracting entity or on its behalf and, if necessary, by a check on quality assurance measures and facilities and on research and development facilities, if the products to be supplied are complex or, exceptionally, are required for a special purpose, or
  6. an indication of technicians and technical bodies involved in deliveries of products, irrespective whether or not they are employees of the tenderer or candidate,
- c) public service contracts, by
1. a certificate of educational and professional qualifications of persons responsible for providing the services,
  2. a list of principal services provided in the past 3 years with an indication of the extent thereof, time of performance and accompanied by the certificate of proper provision of a service drawn up by the public or private recipient, or, where appropriate, only by declaration of the supplier on a service to have been effected, where it is not possible to receive such a certificate from the private supplier,
  3. a statement of technical facilities available to the tenderer for providing services,
  4. a statement of the average annual manpower and the average number of managerial staff for the past 3 years,
  5. measures for assurance of quality,
  6. a check carried out on the production capacities by the contracting entity or by a competent official body of the State of the tenderer's or candidate's place of business or place of residence, and, if necessary, by a check on measures and facilities to assure quality,
  7. an indication of the proportion of a public contract which the tenderer or candidate may intend to sub-contract to another person, or
  8. an indication of technicians or technical bodies involved in the provision of services, irrespective whether or not they are employees of the tenderer or candidate.

(2) The contracting entity shall be obligated to set out the method of demonstrating technical capability pursuant to paragraph 1 in the notice pursuant to § 42 to 44, or in the invitation to negotiate pursuant to § 45.

(3) In the case of a below the threshold public contract, the tenderer or candidate shall be entitled to replace the evidence of required technical capability by declaration.

(4) The check within the meaning of paragraph 1 letter b) point 5. and letter c) point 6. may be, in the case of a complex delivery of supplies or a service, replaced by the evidence attesting the result of such a check carried out by a competent official body of the State of the supplier's place of business or place of residence, provided that such a check was carried out by the body authorized to conduct such a check under the legislation in force of that State.

§ 34

The tenderers or candidates registered in the list of qualified suppliers (§ 76) shall be entitled to demonstrate the fulfilment of qualifications pursuant to § 30 par. 2 letter a), c) and d) by an extract from the list of qualified suppliers, which may not be presented more than 90 days after the date of issue. In such a case, the contracting entity shall not be entitled to require of the suppliers to prove the facts recorded in the list of qualified suppliers by other evidence.

§ 35

In handling the information by which the tenderer or candidate demonstrates the fulfilment of qualifications, the contracting entity shall be obligated to proceed so as not to infringe the rights and legitimate interests of suppliers in respect of the protection of their intellectual property or trade secrecy.<sup>18)</sup>

§ 36

**Furnishing Information Concerning Qualifications of Tenderer and Candidate**

(1) In open procedure, the tenderer shall produce information concerning qualifications, required evidence included, within the time limit for submission of tenders.

(2) The candidates shall furnish information concerning qualifications thereof, evidence required by the contracting entity included, within the time limit for submission of requests to participate, referred to in the notice of restricted procedure or negotiated procedure with publication. In negotiated procedure without publication, the supplier shall furnish such information and evidence within the time limit fixed by the contracting entity.

§ 37

**Attestation of Quality and Fulfilment of Requirements of Environmental Management System**

(1) The supplier shall demonstrate the quality of supplies, construction works or services by the production of

- a) the certificate of quality management system issued by an accredited person<sup>20)</sup> under the Czech technical standards,<sup>19)</sup>
- b) the certificate equivalent to the certificate under letter a) issued in a Member State of the European Union, or
- c) other evidence attesting quality, where the contracting entity recognizes it as appropriate.

(2) The supplier shall demonstrate the fulfilment of environmental management system by the production of

- a) the certificate issued by an accredited person under the Czech technical standards<sup>21)</sup>,

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<sup>18)</sup> § 17 of Commercial Code.

<sup>20)</sup> Act No. 22/1997 Coll., on Technical Requirements Regarding Products and on Amending and Supplementing Certain Other Acts, as Subsequently Amended.

<sup>19)</sup> Czech Technical Standards Series CSN EN ISO 9 000.

<sup>21)</sup> Czech Technical Standards Series CSN EN ISO 17 000.

- b) the certificate equivalent to the certificate under letter a) issued in a Member State of the European Union, or
- c) other evidence attesting the fulfilment of requirements of environmental management system, where the contracting entity recognizes it as appropriate.

#### § 38

(1) The tenderer or candidate that has not furnished data and information concerning qualifications in the scope set forth by the contracting entity, evidence required under the provisions of this Act included, or has furnished data and information concerning qualifications, evidence required by the contracting entity included, which are incomplete or incorrect, fails to fulfil qualifications.

(2) Failure to fulfil qualifications pursuant to paragraph 1 shall be proved to the candidate or tenderer by the contracting entity.

#### § 39

##### **Procedure of Contracting entity to Assess Qualifications**

(1) The contracting entity shall assess qualifications of tenderers and candidates in compliance with the criteria set out in the notice of the relevant award procedures.

(2) The contracting entity shall exclude from open procedure the tenderers that have failed to fulfil qualifications. The contracting entity shall reject the candidates that have submitted the request to participate in restricted procedure or in negotiated procedure with publication and have failed to fulfil qualifications. The contracting entity shall exclude from negotiations the supplier that has failed to fulfil qualifications in negotiated procedure without publication.

(3) The contracting entity shall be obligated to notify in writing without undue delay the tenderer of the exclusion from open procedure and the candidate of the rejection of his/her participation in restricted procedure or in negotiated procedure with publication, where the grounds of such exclusion or rejection consist in the failure to fulfil qualifications.

#### § 40

##### **Selection of Candidates in Case of Restriction of Number Thereof**

(1) Where the contracting entity restricted the number of candidates admitted to participate in restricted procedure or in negotiated procedure with publication, it shall carry out the selection from amongst the candidates that have fulfilled qualifications in accordance with the criteria set out in the notice of award procedures.

(2) The contracting entity shall notify in writing without undue delay the candidates whose participation in restricted procedure or in negotiated procedure with publication has been rejected on the grounds of restriction of the number thereof with reference to the reason.

**PART THREE**  
**AWARD PROCEDURES**

Title I  
**Instituting Award Procedures**

§ 41

**Method of Instituting Award Procedures**

- The contracting entity shall institute the award procedures by
- a) publication of the notice of open procedure, restricted procedure or negotiated procedure with publication, or
  - b) the invitation to negotiate in negotiated procedure without publication.

§ 42

**Notice of Open procedure**

(1) The contracting entity shall make known its intention to award a public contract by open procedure to unlimited number of suppliers by means of the notice of open procedure; the notice of open procedure shall be the invitation to submit tenders and the contracting entity shall be obligated to publish it pursuant to § 84 par. 1.

(2) The contracting entity shall be obligated to publish the notice of open procedure by means of making use of the relevant form, which contains identification data of the contracting entity, personal data included, at the extent referred to in § 29 par. 3. The form shall, in addition, contain information concerning the subject of a public contract, tender, award procedures and other facts, which are important for the supplier to take a decision on his/her participation in the award procedures, relevant criteria and time limits included.

(3) The model form pursuant to paragraph 2, procedure for filling it in and formats of dispatch thereof, shall be set out by implementing legal regulation.

§ 43

**Notice of Restricted procedure**

(1) The contracting entity shall make known its intention to award a public contract by restricted procedure to unlimited number of suppliers by means of the notice of restricted procedure; the notice of restricted procedure shall be the invitation to submit the request to participate and the contracting entity shall be obligated to publish it pursuant to § 84 par. 1.

(2) The contracting entity shall be obligated to publish the notice of restricted procedure by means of making use of the relevant form, which contains identification data of the contracting entity, personal data included, at the extent referred to in § 29 par. 3. The form shall, in addition, contain information concerning the subject of a public contract, tender, award procedures, restriction of the number of candidates and other facts, which are important for the supplier to take a decision on his/her participation in the award procedures, relevant criteria and time limits included.

(3) The number of candidates to be invited to submit a tender shall not be less than 5 and not more than 20. The time limit for the receipt of request, evidence required to demonstrate

candidates' qualifications to participate in restricted procedure included, shall not be less than 37 days, in extreme urgency not less than 15 days. The running of the time limit to submit the request to participate shall start on the day following the date of publication of the notice of restricted procedure.

(4) The model form pursuant to paragraph 2, procedure for filling it in and formats of dispatch thereof, shall be set out by implementing legal regulation.

#### § 44

##### **Notice of Negotiated procedure with Publication**

(1) The contracting entity shall make known its intention to award a public contract by negotiated procedure with publication to unlimited number of suppliers by means of the notice of negotiated procedure with publication; the notice of negotiated procedure with publication shall be the invitation to submit the request to participate and the contracting entity shall be obligated to publish it pursuant to § 84 par. 1.

(2) The contracting entity shall be obligated to publish the notice of negotiated procedure with publication by means of making use of the relevant form, which contains identification data of the contracting entity, personal data included, at the extent referred to in § 29 par. 3. The form shall, in addition, contain information concerning the subject of a public contract, tender, award procedures, restriction of the number of candidates and other facts, which are important for the supplier to take a decision on his/her participation in the award procedures, relevant criteria and time limits included.

(3) The number of candidates to be invited to negotiate shall not be less than 3. The time limit for the receipt of request, evidence required to demonstrate candidates' qualifications to participate in the negotiated procedure with publication included, shall not be less than 37 days, in extreme urgency not less than 15 days. The running of the time limit to submit the request to participate shall start on the day following the date of publication of the notice of negotiated procedure with publication.

(4) The model form pursuant to paragraph 2, procedure for filling it in and formats of dispatch thereof, shall be set out by implementing legal regulation.

#### § 45

##### **Invitation to Negotiate in Negotiated procedure without Publication**

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

(2) In the invitation to negotiate in negotiated procedure without publication the contracting entity shall be obligated to state

- a) information concerning the subject of a public contract,
- b) identification data of the contracting entity, personal data included, at the extent referred to in § 29 par. 3,
- c) indication that the contract documentation may be requested, unless it is a part of the invitation, in particular, information concerning the place, time space for collection and



- the price charged to reimburse the costs to supply contract documentation and time limits to request contract documentation and additional information thereto,
- d) date, hour and place where the negotiations are to be held.

§ 46

**Invitation to Submit Tender in Restricted procedure and in Negotiated procedure with Publication**

(1) The invitation to submit a tender in restricted procedure and in negotiated procedure with publication shall contain

- a) indication that the contract documentation may be requested, unless it is a part of the invitation, in particular, data on the place, time space for collection and the price charged to reimburse the costs to supply contract documentation, including time limits to request contract documentation and additional information thereto,
- b) the time limit for submission of tenders, including the address which the tenders are to be sent to,
- c) criteria for the award of the public contract, the relative weight thereof included,
- d) information concerning publication of the notice of restricted procedure,
- e) indication whether in compliance with the decision taken by the contracting entity the tender has to be submitted also in the other language than Czech.

(2) The contracting entity shall dispatch the invitation to submit tenders in writing simultaneously to all candidates that have not been rejected pursuant to § 39 and 40.

§ 47

**Tender Security**

(1) In the notice pursuant to § 42 to 44 or in the invitation to negotiate pursuant to § 45, the contracting entity shall be entitled to require of tenderers to provide tender security to ensure the fulfilment of their obligations consequential on their participation in award procedures. The contracting entity shall establish the amount of tender security in an absolute sum within the range of up to 3 % of the estimated value of a public contract. The form of provision of tender security shall be established by the contracting entity.

(2) The contracting entity shall release the tender security of the tenderer that has not been assigned the public contract to, within 7 days as from the date of receipt of the notice of the assignment of public contract by such a tenderer pursuant to § 65 par. 2. The contracting entity shall release the tender security of the tenderer that has been assigned the public contract to, within 7 days following the conclusion of an agreement. The contracting entity shall release without undue delay tender securities of the tenderers that have been excluded from award procedures.

(3) The tenderer, whose complaint has been complied with by the contracting entity, shall be obligated to re-deposit a tender security within 7 days following the receipt of the contracting entity's communication that it has complied with the complaint thereof. The tenderer that has submitted a proposal to initiate the review proceedings on practices of the contracting entity shall be obligated to re-deposit the released tender security.

(4) The tender security provided shall be forfeited to the contracting entity, where the tenderer, in violation of this Act or the award conditions, has withdrawn or modified the tender without consent of the contracting entity or where the selected tenderer has refused to conclude a public contract agreement. The tender security provided might be forfeited to the contracting entity in case the tenderer has not rendered cooperation requisite for the conclusion of an agreement; such a decision shall be duly substantiated by the contracting entity.

## Title II **Contract Documentation and Technical Specifications**

### § 48

#### **Contract Documentation**

(1) The contract documentation shall delimit the subject of a public contract in details indispensable for drawing up the tender, required quantity included. The contract documentation shall contain technical specifications of the subject of the public contract. The contracting entity shall be accountable for correctness and completeness of contract documentation.

(2) In delimiting the subject of a public contract, the contracting entity shall be obligated to apply classification of products, services and construction works set out by implementing legal regulation.

(3) The contract documentation shall contain commercial terms, requirement regarding the method of calculation of a tender price, terms of payment included, conditions under which the amount of a tender price may be exceeded and other requirements of the execution of a public contract.

(4) The contracting entity shall be entitled to require in the contract documentation of the tenderer to indicate in the tender thereof which proportion of the public contract it may intend to sub-contract to other persons.

(5) In the case of public construction works contract, the contracting entity shall be entitled to indicate in the contract documentation the administrative body from which the tenderers may obtain appropriate information concerning the obligations relating to the employment protection provisions and the working conditions which are in force at the locality where the construction works are to be carried out and which shall be applicable to these works; the tenderer shall take account of such information when drawing up his/her tender.

(6) Unless it is justified by the subject of a public contract, the contract documentation shall not introduce specifications of or references to business firms, designations or names and surnames, particular indication of products and services, which are distinctive for a given entrepreneur or organizational branch thereof, patents of inventions, utility models, industrial designs, trademarks or indication of origin. Where the contracting entity is unable to describe the subject of a public contract by specifications, which are sufficiently precise and fully intelligible to all suppliers, it shall allow in contract documentation for the introduction of an indication of other equivalent qualitative and technical solutions.

§ 49

**Technical Specifications**

(1) The technical specifications shall mean the technical characteristics of works, materials, products or services to be used or supplied, described objectively in a manner that ensures the use for the purposes they are intended for by the contracting entity.

(2) The technical specifications shall not be established to favour certain suppliers in competition or create obstacles to international trade.

(3) The contracting entity shall establish the technical specifications by reference to

- a) Czech technical standards<sup>22)</sup> implementing European standards,
- b) European standards,
- c) European technical approvals,<sup>23)</sup>
- d) technical specifications published in the Official Journal of the European Union,
- e) Czech technical standards,<sup>22)</sup>
- f) construction technical approvals,<sup>24)</sup>
- g) technical specifications comprised in other documents accessible to the public commonly applied in professional technical practise.

§ 50

**Contract Documentation of Structure**

(1) The design documentation of a structure<sup>25)</sup>, drawn up in details indispensable for drawing up the tender, supplemented with the statement of measurements and comprehensive inventory of works and supplies (hereinafter referred to as “the statement of measurements”), shall be a constituent element of the contract documentation of the structure; the statement of measurements shall include comprehensive description of required standards.

(2) Where non-conformity between a statement of measurements and design documentation of a structure occurs, the statement of measurements shall be conclusive to fix the tender price.

(3) The contracting entity shall be obligated to supply all tenderers with the statement of measurements of all required works and supplies in an electronic form.

(4) The comprehensive content and scope of the contract documentation of a structure shall be set out by the implementing legal regulation.

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<sup>22)</sup> § 4 of Act No. 22/1997 Coll., as Amended by Act No. 71/2000 Coll. and Act No. 205/2002 Coll.

<sup>23)</sup> § 4 of Government Executive Order No. 190/2002 Coll., laying down technical requirements regarding construction products marked CE.

<sup>24)</sup> § 3 of Government Executive Order No. 163/2002 Coll., laying down technical requirements regarding selected construction products.

<sup>25)</sup> § 18 of Decree No. 132/1998 Coll., implementing certain provisions of Building Code, as amended by Decree No. 492/2002 Coll.

§ 51

**Supply of Contract Documentation**

(1) The contract documentation may be supplied in the framework of the invitation to submit tenders in restricted procedure or to negotiate in negotiated procedure with publication or to negotiate in negotiated procedure without publication. Where the contract documentation has not been supplied pursuant to the first sentence, the contracting entity shall be obligated to supply contract documentation at an equal extent to each tenderer or candidate at the request thereof, viz. not later than within 4 working days following the receipt of their request, where such a request has been submitted within the fixed time limit.

(2) The contracting entity shall be entitled to require of tenderers and candidates solely the reimbursement of costs related to the reproduction of contract documentation at a normal local market price.

(3) The contracting entity shall not recognize the right of tenderers to reimbursement of incurred costs relating to the participation in award procedures. It shall not equally require any charges of tenderers to be allowed to tender for a public contract.

§ 52

**Additional Information Relating to Contract Documentation and Visit to Site of Performance**

(1) The tenderer or candidate shall be entitled to require of the contracting entity additional information relating to contract documentation. The application shall be in writing and be received by the contracting entity not later than within 12 days prior to the expiry of the time limit fixed for the submission of tenders.

(2) Where the application for additional information relating to contract documentation has been received within the fixed time limit, the contracting entity shall be obligated to supply the tenderer or candidate with additional information relating to contract documentation not later than within 7 days prior to the expiry of the time limit fixed for the receipt of tenders. The contracting entity shall, in addition, furnish such additional information, including the exact wording of the inquiry, to all the other tenderers or candidates that have been supplied with contract documentation.

(3) The contracting entity shall be obligated to enable the tenderers and candidates to visit the site of performance in the period of time fixed by the contracting entity. Such a visit to the site of performance shall not take place later than 12 days prior to the expiry of the time limit fixed for the submission of tenders.

Title III  
**Tenders**

§ 53

**Submission of Tender**

(1) Any supplier in open procedure or any candidate that has been invited by the contracting entity to submit a tender in restricted procedure or in negotiated procedure with

publication, shall be entitled to submit only a single tender; the tender containing variants shall be considered as a single tender. Identification data of the tenderer or candidate at the extent referred to in § 29 par. 3 shall be indicated in the tender.

(2) The grouping of suppliers or candidates shall be entitled to submit a single tender jointly.

(3) The tenders shall be submitted in writing and in sealed envelopes, marked with the title of the public contract, with the indicated address to which the tender may be returned pursuant to § 59 par. 1. The contracting entity shall maintain records of the tenders received and assign the item numbers thereto.

(4) The tenderer shall be bound to keep the tender open within the period of time set out by the contracting entity in the notice of award procedures.

(5) Where the supplier or candidate submits more than one tender separately or jointly with other suppliers or candidates, the contracting entity shall exclude all such tenders.

#### § 54

##### **Time Limit for Submission of Tender**

(1) The contracting entity shall fix the time limit for the submission of a tender in accordance with the type and nature of a public contract.

(2) The time limit for the submission of a tender in respect of an above the threshold public contract shall not be less than

- a) 52 days in open procedure,
- b) 40 days in restricted procedure and in negotiated procedure with publication.

(3) The contracting entity shall be entitled to reduce the time limit for the submission of a tender in respect of an above the threshold public contract to

- a) 22 days in open procedure,
- b) 26 days in restricted procedure or in negotiated procedure with publication, provided that the indicative notice was published not more than 12 months and not less than 52 days prior to publication of the notice of open procedure or restricted procedure or negotiated procedure with publication.

(4) The contracting entity operating in the water, energy, transport and telecommunications sectors shall fix the time limit for the submission of a tender in restricted procedure and in negotiated procedure with publication by common accord with selected candidates, however, on condition that all selected candidates are given equal time to submit tenders. Where such an agreement cannot be achieved, the contracting entity shall fix a time limit for the submission of a tender, which is not less than 10 days.

(5) The time limit for the submission of a tender in respect of a below the threshold shall not be less than

- a) 36 days in open procedure,
- b) 20 days in restricted procedure and in negotiated procedure with publication.

(6) The time limit for the submission of a tender shall start to run on the day following the date of

- a) publication of the notice of open procedure,
- b) dispatch of the invitation to submit tenders in restricted procedure or in negotiated procedure with publication.

## § 55

### **Criteria for Award of Public Contract**

(1) The principal criterion for the award of a public contract shall be

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

(2) The contracting entity shall select the principal criterion for the award of a public contract in accordance with the type and complexity thereof, further to the extent of requirements delimiting the subject of the public contract.

(3) Where the contracting entity takes a decision to make the award of a public contract in accordance with the economic advantage of the tender, it shall apply, while considering such a tender, partial criteria. The contracting entity shall be obligated to accord a relative weight to individual partial criteria, expressed in terms of percentage. The tender price shall always be one of the partial criteria, and in addition particularly,

- a) operational costs,
- b) maintenance requirements,
- c) technical, quality, ecological or functional characteristics of the subject of a public contract.

(4) The contracting entity shall be obligated to make known the principal criterion for the award of a public contract in the notice of open or restricted procedure and, in addition, partial criteria, the relative weight thereof included, in the case of the award of a public contract on the ground of the economic advantage of the tender.

(5) In the case of negotiated procedure with publication, the contracting entity shall apply paragraphs 1 to 4 by analogy.

## § 56

### **Variants of Tender**

(1) Variants of a tender shall be authorized, where the public contract is awarded on the basis of the criterion of economic advantage of a tender and where the contracting entity has not excluded variants in advance. If the variants of a tender are admitted, the contracting entity shall be obligated to indicate in the contract documentation at least minimum requirements to be respected by the variants.

(2) Unless excluded in advance, the contracting entity shall not be entitled to reject variants in the tender on the sole grounds that they have been submitted with reference to

- a) national technical standards implementing European standards,
- b) European technical approvals, or
- c) national technical specifications.

(3) Unless excluded in advance, the contracting entity shall not be entitled to reject variants in the case of a public supply contract on the sole grounds that it would lead into a

public service contract or in the case of a public service contract on the sole grounds that it would lead into a public supply contract during the award thereof.

Title IV  
**Evaluation Commission**

§ 57

**Composition of Evaluation Commission**

(1) The contracting entity shall appoint an evaluation commission to consider and evaluate tenders in open or restricted procedure. The evaluation commission shall be composed of not less than five members and at least one third of its members shall have professional qualifications pursuant to separate legal regulations.<sup>17)</sup> The representative of the contracting entity shall always be the member of the evaluation commission. Simultaneously with the appointment of members of the evaluation commission, the contracting entity shall appoint an equal number of alternate members thereof.

(2) The relevant Minister shall appoint the evaluation commission under paragraph 1 as regards public contracts awarded by the contracting entities referred to in § 2 par. 1 letter a) and b), where the amount of future pecuniary commitment, net of value added tax, exceeds CZK 200 million. The representatives of at least two other competent Ministries shall be the members thereof. The evaluation commission shall have not less than seven members, out of whom at least 30 % have relevant professional qualifications related to the subject of a public contract.

(3) The Government shall appoint the evaluation commission upon the suggestion of the relevant Minister as regards public contracts awarded by the contracting entities referred to in § 2 par. 1 letter a) and b), where the amount of future pecuniary commitment, net of value added tax, exceeds CZK 300 million. The representatives of at least two other competent Ministries shall be the members thereof. The evaluation commission shall have not less than nine members, out of whom at least 30 % have relevant professional qualifications related to the subject of a public contract.

(4) The members of the evaluation commission and the alternate members thereof shall not be prejudiced in relation to the public contract and to tenderers; in particular, they shall not engage in drawing up a tender, they shall not have any personal interest in the award of a given public contract, they shall be connected with tenderers neither by personal nor occupational or any other relationship of that kind. The member of the evaluation commission as well as the alternate member shall take declaration in writing to the contracting entity in respect of his/her non-prejudice at the beginning of the first session of the commission.

(5) Where the grounds for prejudice of any member of the evaluation commission, or, where appropriate, of any alternate member occur, he/she shall be obligated to report such a fact to the contracting entity without undue delay. After considering the grounds for prejudice of the member of evaluation commission, or, where appropriate, of the alternate member, the contracting entity shall take a decision whether he/she will continue to serve on the evaluation commission; where the contracting entity has any doubt in respect of prejudice of any member of the evaluation commission, or, where appropriate, of any alternate member, it shall proceed by analogy. The member of the evaluation commission or, where appropriate, the alternate member who has grounds for prejudice shall not be entitled to take part in

proceedings of the evaluation commission as from the moment he/she has learned of such grounds. The chairman of evaluation commission shall invite an alternate member to take part in activities of the evaluation commission instead of a prejudiced member thereof.

(6) Setting out the number of members of the evaluation commission having professional qualifications shall not apply to intelligence services.

(7) The contracting entity operating in the water, energy, transport and telecommunications sectors, except for the public contracting entity, shall not be obligated to apply paragraphs 1 to 6 and all and every obligation imposed on the evaluation commission by this Act shall be fulfilled by the contracting entity.

## § 58

### **Proceedings of Evaluation of Commission**

(1) The evaluation commission shall elect chairman and vice-chairman from amongst its members at its first session, convened by the contracting entity. Further proceedings of the evaluation commission shall be convened and managed by the chairman, where the chairman is absent, by the vice-chairman.

(2) Each member of the evaluation commission shall be invited to proceedings not less than 7 days prior to the session; should he/she be unable to take part in proceedings, he/she shall be obligated to inform without undue delay the chairman, who shall ensure the participation of an alternate member. The evaluation commission will have quorum, if not less than two thirds of members or their alternate members, are present. The evaluation commission shall take its decisions by a majority of votes of members who are present.

(3) The proceedings of evaluation commission shall be recorded in the minutes (hereinafter referred to as “the minutes”). The minutes of proceedings shall be signed by all members of the evaluation commission. If any member of the evaluation commission supports differing position against that of a majority, he/she shall have such a differing position recorded in the minutes, accompanied by the statement of reasons.

(4) The members of evaluation commission and the alternate members shall be obligated to maintain confidentiality in respect of all issues they have learned in the context of exercise of the function thereof.

## Title V

### **Consideration and Evaluation of Tenders**

## § 59

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

(1) The evaluation commission shall not be entitled to open the envelope with a tender (hereinafter referred to as “the envelope”) until the expiry of the time limit for the submission of a tender. The envelopes shall be opened on the date referred to in the notice of award procedures, however, not later than within 30 days following the time limit fixed for the submission of a tender. The evaluation commission shall not open the tenders received after the expiry of the time limit for the submission of a tender and the contracting entity shall return them to the tenderers without undue delay.



(2) The contracting entity shall pass the envelopes with tenders on to the evaluation commission just before the commencement of the opening of envelopes, the list of tenders included. Where the evaluation commission is not appointed (§ 57 par. 7), the opening of envelopes shall be carried out by the contracting entity in the presence of not less than three natural persons selected thereby, who meet the conditions referred to in § 57 par. 1.

(3) The evaluation commission shall open the envelopes pursuant to item numbers and check on whether the tender is

- a) drawn up in a required language,
- b) signed by an authorized person, and
- c) complete in view of required content.

(4) After having carried out a check pursuant to paragraph 3, the contracting entity or the evaluation commission shall inform the tenderers present at the opening of envelopes with tenders of identification data of a tenderer, viz. business name or name and surname, place of business or address, tender price and, in addition, whether the tender complies with the requirements pursuant paragraph 3. Where the variants of a tender comprise varying tender prices, the price for each variant of the tender shall be disclosed. Further content of the tender shall be withheld from the tenderers. The contracting entity shall notify in writing tenderers or candidates of the date of the opening of envelopes not less than 5 working days in advance.

(5) Where the evaluation commission ascertains that the tender does not fulfil the requirements pursuant to paragraph 3, it shall eliminate such a tender. The contracting entity shall exclude without undue delay the tenderer, whose tender has been eliminated by the evaluation commission, from further participation in this open or restricted procedure. The contracting entity shall be obligated to notify without undue delay the tenderer in writing of the exclusion, the statement of reasons included.

## § 60

### **Protocol on Opening of Envelopes**

(1) The evaluation commission shall draw up the protocol on the opening of envelopes. The evaluation commission shall, in respect of each tender, indicate identification data of the tenderer, personal data included, viz.

- a) business name or name, place of business, identification number and tax identification number, if they were assigned, as regard legal persons,
- b) name, surname, or, where appropriate, business name, personal identification number or date of birth, place of residence or, where appropriate, point of business, where it is different from the place of residence, identification number and tax identification number, if they were assigned, as regard natural persons.

The evaluation commission shall simultaneously indicate whether the tender has complied with the requirements referred to in § 59 par. 3 and the tender price. The relevant part of the protocol on the opening of envelopes shall be read to the participants of the opening of envelopes prior to the opening of another envelope.

(2) The evaluation commission shall indicate at the end of the protocol the tenders, which have been received after the expiry of the time limit for the submission of tenders and timing data about the receipt thereof.

(3) The protocol on the opening of envelopes shall be signed by all members of the evaluation commission. After enclosing the attendance list, the protocol shall be attached to the list of tenders. The tenderers shall be entitled to look into the part of the protocol kept by the contracting entity pursuant to paragraphs 1 and 2. The contracting entity shall publish such a part in an ordinary manner.

## § 61

### **Consideration of Tenders**

(1) The evaluation commission shall consider the tenders of tenderers from the point of view of meeting the award conditions. The tenders, which do not meet award conditions, shall be eliminated; the tender shall not be deemed eliminated, unless all variants have been eliminated. The evaluation commission shall simultaneously consider the amount of tender prices in relation to the estimated value of the subject of a public contract. Where a tender contains an abnormally low tender price in relation to the subject of a public contract, the evaluation commission shall request of the tenderer written justification within the time limit pursuant to paragraph 4. The evaluation commission may take into account justification of the abnormally low tender price only where it finds the grounds of such a price to be justified by objective reasons, in particular, on the grounds of exceptional economics of the implementation or production method, originality, or, if appropriate, technical merit of solutions or favourable conditions available to the tenderer. Unless the tenderer has reasoned an abnormally low tender price within a fixed time limit or the evaluation commission has found his/her justification unsubstantiated, it shall eliminate such a tender.

(2) In case the lowest tender price is the criterion for the award of an above the threshold public contract, the contracting entity shall be obligated to communicate to the European Commission the rejection of tenders with an abnormally low tender price.

(3) The contracting entity operating in the water, energy, transport and telecommunications sectors shall be entitled to eliminate the tenders with an abnormally low tender price owing to the receipt of State aid only if it has consulted the tenderer and if the tenderer has been unable to prove that the aid has been provided in compliance with separate legal regulation.<sup>26)</sup>

(4) In the case of confusion, the evaluation commission shall be entitled to require of the tenderer the explanations of the tender in writing. In its request, the evaluation commission shall state confusing elements of the tender to be explained by the tenderer. The evaluation commission shall eliminate the tender, provided that the tenderer does not produce the explanations within the time limit of 7 days following the receipt of the request for explanations of the tender, unless the evaluation commission fixes an extended time limit. The evaluation commission shall not take into account obvious calculation mistakes in the tenders, detected during consideration thereof, which do not have any impact on the tender price.

(5) The contracting entity shall exclude without undue delay from the award procedures the tenderer, whose tender was eliminated in the course of consideration. The contracting entity shall be obligated to notify in writing and without undue delay the tenderer of the exclusion, the statement of reasons included.

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<sup>26)</sup> Act No. 59/2000 Coll., on Public Aid, as Amended by Act No. 130/2002 Coll.

§ 62

**Evaluation of Tenders**

(1) The evaluation commission shall carry out the evaluation of tenders in compliance with the criteria set out in the notice of open or restricted procedure. In the case of the award of a public contract in accordance with the economic advantage of a tender, the evaluation commission shall be obligated to take into account individual partial criteria and relative weight accorded thereto.

(2) Where the criterion of evaluation is that of the lowest tender price and such a tender price was considered pursuant to § 61 par. 1 to 3, the evaluation commission shall establish the rank-order of tenders in accordance with the amount of a tender price.

(3) The methods of the evaluation of tenders in accordance with the criterion of economic advantage of a tender shall be set out by implementing legal regulation.

(4) The contracting entity shall be entitled to take a decision on the new evaluation, where it ascertains that the evaluation commission has infringed the procedure set out by this Act. The contracting entity shall be entitled to set up another evaluation commission to carry out the new evaluation. The contracting entity shall state the grounds for the new evaluation in the form pursuant to § 67 par. 3.

§ 63

**Report on Consideration and Evaluation of Tenders**

(1) The evaluation commission shall draw up the report on consideration and evaluation of tenders, which contains a list of considered tenders, a list of tenders which have been eliminated from the award procedures by the evaluation commission accompanied by the indication of reasons, description of the evaluation of remaining tenders with the statement of reasons, outcome of evaluation and the data concerning composition of the evaluation commission.

(2) The report pursuant to paragraph 1 shall be signed by all members of the evaluation commission. After termination of its activity, the evaluation commission shall pass it on without undue delay to the contracting entity, tenders and other documents relating to the public contract included. The contracting entity shall be obligated to enable all tenderers, at their request, to look into the report, unless they have been excluded from the award procedures and to acquire an extract or a duplicate thereof. The contracting entity shall be entitled to require of the tenderers solely the reimbursement of costs related thereto at a normal local market price.

(3) To draw up the report on consideration and evaluation of tenders, the evaluation commission shall make use of the relevant form. The model form, procedure for filling it in and format of dispatch thereof shall be set out by implementing legal regulation.

§ 64

**Consideration and Evaluation of Tenders in Negotiated procedure with Publication**

The provisions of Title V shall apply to consideration and evaluation of tenders by the contracting entity in negotiated procedure with publication by analogy.

Title VI

**Termination of Award Procedures**

§ 65

**Assignment of Public Contract**

(1) In open procedure or in restricted procedure, the contracting entity shall be obligated to assign a public contract to the tenderer, whose tender was evaluated as

- a) the most economically advantageous tender in the case of the award of a public contract on the basis of the economic advantage of the tender, or
- b) the tender with the lowest tender price.

(2) The contracting entity shall dispatch forthwith the decision on the assignment of a public contract to the tenderer selected pursuant to paragraph 1 to the other tenderers, unless they have been excluded from the award procedures. The contracting entity shall indicate in the decision the identification data of the selected tenderer, personal data included, at the extent referred to in § 60 par. 1. The contracting entity shall, in addition, indicate those data from the tender, which have been the subject of the evaluation in accordance with the established criteria, the statement of reasons for the award of the public contract to this tenderer and the rejection of the other tenderers included. The evaluation of the rank-order of the other tenderers' tenders shall be a constituent element of the decision. Where the decision of a contracting entity on the assignment of a public contract does not correspond to the rank-order under the evaluation of the evaluation commission, the justification of such a procedure shall be a constituent element of the decision.

(3) The provisions of paragraphs 1 and 2 shall apply to the assignment of a public contract by negotiated procedure with publication or negotiated procedure without publication accordingly; the contracting entity shall not apply the provision of paragraph 2, where it negotiates contractual terms only with a single candidate.

(4) If the award procedures terminate by the conclusion of a framework agreement, paragraphs 1 and 2 shall apply by analogy.

§ 66

**Conclusion of Agreement**

(1) The contracting entity in open or restricted procedure shall not conclude the agreement with a selected tenderer prior to the expiry of the time limit referred to in paragraph 2.

(2) Unless the contracting entity receives any complaint pursuant to § 88 within 15 days as from the date of receipt of the notice of the assignment of a public contract, it shall conclude the agreement in writing with a selected tenderer without undue delay, viz. in

compliance with the terms of reference and selected tender. The contracting entity shall notify all tenderers referred to in § 65 par. 2 of the conclusion of such an agreement.

(3) Where the contractual terms have been negotiated in negotiated procedure without publication or in negotiated procedure with publication with more candidates and the contracting entity does not receive any complaint pursuant to § 88 within 15 days as from the date of receipt of the notice of the assignment of a public contract, it shall conclude the agreement in writing with a selected candidate without undue delay, viz. in compliance with the terms of reference and selected tender.

(4) The contracting entity operating in the water, energy, transport and telecommunications sectors shall conclude the framework agreement without undue delay, unless it receives any complaint pursuant to § 88 within 15 days as from the date of receipt of the notice of the assignment of a public contract pursuant to § 65 par. 2.

(5) The selected tenderer shall be obligated to render to the contracting entity cooperation needed for concluding an agreement, so that the agreement can be concluded within 30 days as from the date of receipt of the notice of the assignment of a public contract. If the selected tenderer refuses to conclude an agreement with the contracting entity or unless he/she renders requisite cooperation, so that the agreement can be concluded within a given time limit, the contracting entity will conclude such an agreement with the tenderer that has taken the following place in the rank-order.

## § 67

### **Advertisement of Outcome of Award Procedures**

(1) The contracting entity shall be obligated to make known the information concerning the conclusion of the agreement, on the basis of which a public contract shall be carried out, as regards

- a) an above the threshold public contract, within 48 days, or
  - b) a below the threshold public contract, within 30 days
- following the conclusion of the agreement.

(2) Should the case referred to in paragraph 1 letter b) occur, the contracting entity shall make known only the identification data of the supplier that was awarded the public contract, personal data at the extent referred to in § 60 par. 1 and the tender price included. In respect of the framework agreement, the contracting entity operating in the water, energy, transport and telecommunications sectors shall make known the identification data of the participants of such a framework agreement, personal data at the extent referred to in § 60 par. 1 included.

(3) To make the outcome of the award procedures known, the contracting entity shall be obligated to make use of the relevant form, the model of which and procedure for filling it in and format of dispatch thereof, shall be set out by implementing legal regulation.

## § 68

### **Setting Aside of Award Procedures**

(1) The contracting entity shall be entitled to set aside negotiated procedure without publication at any time without indication of reasons.

(2) The contracting entity shall be entitled to set aside open procedure, restricted procedure or negotiated procedure without publication, where it has retained such an option in the notice of award procedures, however, not later than until the agreement has been concluded.

(3) The contracting entity shall set aside open procedure, restricted procedure or negotiated procedure with publication, if

- a) no tender has been submitted,
- b) all tenderers have been excluded,
- c) the grounds to continue with the award procedures have ceased to exist as a consequence of substantial change in circumstances unforeseeable by the contracting entity nor attributable thereto, or
- d) the tenderer that has taken the third place in the rank-order refuses to conclude an agreement or does not conclude such an agreement within the period of time during which it is bound by the tender thereof.

(4) The contracting entity shall be obligated to make the decision to set aside the award procedures known, to the exclusion of the award procedures without publication, with indication of reasons within 15 days as from the date it has taken a decision on the rejection of the received tenders or the setting aside of the award procedures.

(5) To make the decision to set aside the award procedures known, the contracting entity shall be obligated to make use of the relevant form, the model of which and details on procedure for filling it in and dispatch thereof, shall be set out by implementing legal regulation.

## § 69

### **Written Report of Contracting entity**

(1) The contracting entity shall draw up a written report in respect of any public contract, for which an agreement with a selected tenderer or candidate has been concluded with; it shall, in particular, contain

- a) subject and total price of a public contract,
- b) identification data, personal data included, at the extent referred to in § 60 par. 1, of the tenderers or candidates, whose tenders have been evaluated or that have been consulted, together with the rank-order in which their tenders have been evaluated,
- c) identification data, personal data included, at the extent referred to in § 60 par. 1, of the tenderers or candidates that have been rejected or excluded together with indication of reasons,
- d) identification data, personal data included, at the extent referred to in § 60 par. 1, of the tenderer or candidate that the agreement has been concluded with, and if and what proportion of the public contract the tenderer or candidate may intend to sub-contract to other persons with indication of their identification data,
- e) conditions for employment of negotiated procedure with publication or negotiated procedure without publication, where such a type of award procedures has been employed to award a public contract,
- f) justification why the agreement has been concluded with a selected tenderer or candidate,
- g) justification why selected tenderers or candidates have been invited to submit a tender in the case of restricted procedure and to negotiate in the case of negotiated procedure.

(2) The contracting entity shall be obligated to communicate the report to the European Commission or to the supervisory body at its request.

§ 70

**Return of Specimens and Samples**

Where a tenderer or a candidate during the award procedures has produced specimens and samples, the contracting entity shall be obligated to return such specimens and samples thereto without undue delay, following the conclusion of an agreement or the setting of the award procedures aside.

§ 71

**Keeping Documentation on Award of Public Contract**

The contracting entity shall be obligated to keep contract documentation for the period of 5 years as from the conclusion of an agreement, its change or as from the setting of the award procedures aside.

PART FOUR

**PUBLIC DESIGN CONTEST**

§ 72

(1) The contracting entity shall be obligated to employ a public design contest, where

- a) such a contest is organized, in accordance with the decision taken by the contracting entity, as a part of award procedures leading to the award of a public service contract within the meaning of § 27 par. 5 , or
- b) contest prizes and payments are awarded to the winning participant or, where applicable, to participants of a public design contest,

in case the estimated value of a public service contract awarded on the basis of the outcome of public design contest or the total amount of contest prizes and payments is not less than the equivalent in the Czech currency of EUR 200,000.

(2) § 14 par. 6 shall apply to conversion of the estimated value of a public service contract or the total amount of contest prizes and payments into Czech currency.

(3) The contracting entity shall be obligated to state in the notice of a public design contest, in particular, description of the design, time limit for the receipt of the design and evaluation criteria.

(4) To call for the public design contest, the contracting entity shall be obligated to make use of the relevant form, the model of which and details on procedure for filling it in and dispatch thereof shall be set out by implementing legal regulation.

§ 73

The public design contest shall not limit the admission of participants by reference to the territory or part of the territory of a State. In view of the nature of a contest, the contracting entity shall be entitled to restrict the number of participants; in doing so, it shall lay down

clear non-discriminatory criteria for the selection thereof. The number of participants shall, however, be sufficient to ensure genuine competition.

§ 74

The participants of a public design contest shall submit the projects anonymously. The contracting entity shall be obligated to set up a competition jury composed exclusively of independent natural persons to evaluate such anonymous projects. Where the participants of a public design contest are required to have special professional qualifications, at least a third of the members of the competition jury shall have the same qualifications or its equivalent. The requirements established for a member of the evaluation commission within the meaning of § 57 shall apply to a member of the competition jury by analogy.

§ 75

(1) The competition jury shall evaluate only the projects submitted anonymously, viz. on the basis of criteria indicated in the call for public design contest. The estimated value of proposed solutions shall be always one of the criteria.

(2) The contracting entity shall be obligated to make the outcome of a public design contest known.

PART FIVE

**LIST OF QUALIFIED SUPPLIERS**

§ 76

**Maintenance of List of Qualified Suppliers**

(1) The Ministry for Regional Development (hereinafter referred to as “the Ministry”) shall hold the list of qualified suppliers (hereinafter referred to as “the list”), where it enrolls the suppliers that have fulfilled qualifications pursuant to § 30 par. 2 letter a), c) and d) and have demonstrated the fulfilment of qualifications by relevant evidence.

(2) The list shall be the information system of public administration,<sup>27)</sup> accessible to the public and, in addition, maintained in the mode to allow for a remote access; everyone shall be entitled to look into it and make extracts thereof.

(3) For the purposes of registration of a supplier from another Member State of the European Union in the list, no further evidence shall be required thereof than that requested of a domestic supplier.

(4) The Ministry shall communicate to other Member States of the European Union the address of the body to which requests for registration in the list may be made.

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<sup>27)</sup> Act No. 365/2000 Coll., on Information Systems of Public Administration and on Amendment to Certain Other Acts, as Amended by Act No. 517/2002 Coll.



§ 77

**Data in the List**

The following data shall be recorded in the list:

- a) business name or name and place of business of the supplier as regards a legal person,
- b) name, surname or, where applicable, business name and place of residence and, where appropriate, point of business, where it is different from the place of residence, as regards a natural person,
- c) legal form of a legal person,
- d) date of submission of the application,
- e) identification number, if it was assigned,
- f) tax identification number, if it was assigned,
- g) name and surname of a statutory body or the members thereof, or, where applicable, of another natural person authorized to act on behalf of the supplier,
- h) branch of business activities of the supplier,
- i) general qualification criteria.

§ 78

**Enrolment in the List**

At the request of a supplier, the Ministry shall enrol in the list the supplier that has demonstrated the fulfilment of qualifications pursuant to § 30 par. 2 and supplemented the evidence pursuant to § 31 par. 2 to the application, otherwise the request will be turned down.

§ 79

**Change in Registration**

The supplier shall be obligated to notify in writing the Ministry of any change in recorded data not later than within 15 days as from the date when such a change occurred and furnish relevant evidence not dated from more than 1 month. Where the notified change is properly evidenced, the Ministry shall update the relevant records in the list.

§ 80

**Extract from the List**

(1) The extract from list shall contain all data recorded in the list. The Ministry shall issue an officially certified extract to everyone who applies for it; this act shall be subject to the payment of a charge under separate legal regulation.

(2) The extract provided electronically, signed by a secure electronic signature, shall be also understood as the officially certified extract pursuant to paragraph 1.

§ 81

**Withdrawal from the List**

(1) The Ministry shall take a decision on the withdrawal of a supplier from the list, where it ascertains that the supplier

- a) has ceased to fulfil qualifications,
- b) has not fulfilled the obligation to notify of the change in recorded data, or
- c) has employed for registration the evidence, which proved to be incomplete or incorrect.

(2) The Ministry shall, in addition, take a decision on the withdrawal of a supplier from the list, in case the supplier applies for the withdrawal in writing.

## § 82

Unless provided otherwise by this Act, Administrative Code<sup>28)</sup> shall apply to the registration, change in registration and withdrawal from the list.

## PART SIX

### COMMON PROVISIONS

#### Title I

#### **Information System on Award of Public Contracts and Release of Data and Information Concerning Public Contracts**

## § 83

### **Information System on Award of Public Contracts**

(1) The information system on the award of public contracts (hereinafter referred to as “the information system”) shall be the information system of public administration.<sup>28)</sup> The Ministry shall be the administrator of the information system and establish the data structure and information content thereof.

(2) By means of the information system the Ministry shall assure

- a) release of information concerning public contracts on the central address,
- b) statistical outputs concerning public contracts for the European Commission.

(3) The information system shall contain information concerning public contracts furnished to the Ministry pursuant to § 84 or 85.

(4) Contracting entities shall be obligated to furnish to the Ministry data concerning public contracts and identification data, personal data concerning contracting entities, candidates and tenderers included, at the extent referred to in § 29 par. 3.

(5) Comprehensive information concerning functions of the information system and links with other information systems shall be set out by implementing legal regulation.

## § 84

### **Release of Data and Information Concerning Public Contracts**

(1) Where this Act lays down the obligation to release data and information concerning public contracts, it shall mean publication

- a) on the central address by means of the information system, and

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<sup>28)</sup> Act No. 71/1967 Coll. on Administrative Proceedings (Administrative Code), as Subsequently Amended.

b) in the Official Journal of the European Union through the Office for Official Publications of the European Communities in the case of an above the threshold public contract, to the exclusion of public service contracts referred to in Annex 1.

(2) The contracting entity shall be entitled to publish data and information concerning below the threshold public contracts in any other way, provided that such publication does not occur before the publication pursuant to paragraph 1 letter a). The data and information published under the first sentence shall contain at least the data and information at the extent published on the central address.

(3) The contracting entity shall be entitled to publish data and information concerning above the threshold public contracts in any other way, provided that such publication does not occur before the date of dispatch of the data and information to the Office for Official Publications of the European Communities and shall not contain data and information other than those published pursuant to paragraph 1 letter b). In the case of publication of data and information pursuant to this paragraph, the contracting entity shall be able to supply proof of the date of dispatch to the Office for Official Publications of the European Communities.

(4) Comprehensive terms and methods of furnishing data and information in the information system pursuant to paragraph 1 shall be set out by implementing legal regulation.

## § 85

### **Information Sheet of Public Contract**

(1) The contracting entity shall be obligated to supply the Ministry with the data and information concerning a public contract within 15 days as from the date of conclusion of the agreement or as from the date of setting aside of the award procedures.

(2) The contracting entity shall furnish the data and information pursuant paragraph 1 to the Ministry by means of the information sheet of a public contract, whose model forms, essentials to be filled in and methods of dispatch thereof shall be set out by implementing legal regulation.

## § 86

Unless provided otherwise by this Act, separate Act<sup>29)</sup> shall apply to gathering, forwarding, holding, publishing and other processing of personal data.

## Title II

### **Preference of Certain Tenderers or Candidates in Award Procedures**

## § 87

Where a supplier employing more than 50 % of handicapped persons out of the total manpower thereof takes part in open or restricted procedure in respect of a below the threshold public supply contract or below the threshold public service contract, the tender price submitted by this supplier shall be evaluated as the lowest one, unless it exceeds by

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<sup>29)</sup> Act No. 101/2000 Coll., on Protection of Personal Data and on Amendment to Certain Other Acts, as Subsequently Amended.

more than 20 % the lowest tender price submitted by the other tenderers. The fact that the supplier employs more than 50 % of handicapped citizens shall be evidenced in the tender of such a tenderer by the certificate issued by the relevant local labour office.

### Title III

#### **Complaints and Review Thereof by Contracting entity**

##### § 88

(1) Any supplier in the case of above the threshold public contracts and any tenderer or candidate in the case of below the threshold public contracts that has or has had an interest in obtaining a particular public contract and has been harmed or risks being harmed as a consequence of alleged infringement of the Act by an action of the contracting entity (hereinafter referred to as “the complainant”), shall be entitled to submit the reasoned complaints in writing to the contracting entity. The submission of complaints shall be the condition for, where applicable, filing a proposal to review the practises of the contracting entity.

(2) The complaints shall be delivered to the contracting entity not later than within 15 days as from the date of receipt of the notice of the assignment of a public contract pursuant to § 65 par. 2. The complaint shall not be submitted after the conclusion of an agreement. The contracting entity shall return the complaints submitted late to the complainant with justification.

(3) Within 10 days following the receipt of the complaints, the contracting entity shall be obligated to dispatch to the complainant the notice in writing whether it complies with the complaints or not, and indicate the manner of settling them with justification.

(4) Where the contracting entity has not complied with the complaints within the time limit pursuant to paragraph 3, it shall not be entitled to conclude the agreement within 60 days following the receipt thereof, otherwise such an agreement shall be invalid. The time limit may be extended by means of an interim measure of the supervisory body for the period of time indispensable for it to award a ruling pursuant to § 101.

### Title IV

#### **Certain Consequences of Infringement of the Act**

##### § 89

#### **Obligation of Contracting entity to Award Damages**

The contracting entity shall be liable for damage brought about by an infringement of the Act under relevant provisions of Commercial Code.

##### § 90

#### **Invalidity of Action of Contracting entity and the Right to Withdraw from Agreement**

(1) The contracting entity shall not take any action, which runs counter to this Act by its nature or purpose or circumvents it or is contrary to good manners. Such an action shall be invalid from the very beginning.

(2) The contracting entity shall have the right to withdraw from the agreement concluded with the supplier that has received unjustified preference, where such a preference occurred for reasons on the part of such a supplier or a person authorized thereby.

Title V  
**Legal Acts in Award Procedures**

§ 91

**Form of Legal Acts in Award Procedures**

(1) In cases when a written form of a legal act is required by this Act, a written legal act shall be understood as the legal action taken, among others, by telegraph, telex or electronic means, if it fulfils the requirements established for such a written form by Civil Code, unless provided hereinafter otherwise.

(2) The tender in open procedure, request to participate in restricted procedure, in negotiated procedure with publication and in negotiated procedure without publication shall be made solely by a document with the original of signature of a person authorized to act on behalf of a tenderer or candidate or electronically with a secure electronic signature based on a qualification certificate.

(3) Tenders and other evidence required under this Act shall be submitted in Czech language. The contracting entity shall be entitled to require in the notice of award procedures the submission of a tender also in another language.

(4) The evidence by means of which a foreign person demonstrates the fulfilment of qualifications shall be submitted in the original language accompanied by the officially certified translation into Czech language; it shall not apply, where the evidence is drawn up in Slovak language. Should a disparity in the content be detected, the translation in Czech language shall be authentic.

§ 92

**Delivery of Mail**

(1) In delivering mail to a contracting entity, delivery shall be understood as the moment of the receipt of an article of mail by the filing office of the contracting entity, unless indicated otherwise by the contracting entity in the notice of award procedures. The contracting entity shall be obligated to keep records of all delivered mail consignments relating to the award procedures, which contain an item number of the mail consignment, date and exact time of delivery and identification number of the sender.

(2) The contracting entity shall deliver articles of mail to tenderers or candidates as a registered mail consignment with an advice of delivery by means of the holder of postal licence to the address referred to in the request to participate or in the tender. Where it is impossible to deliver the mail consignment to the addressee, the postman shall deposit the article of mail with the relevant local premises of the holder of postal licence and notify the addressee in an appropriate way. The article of mail shall be deposited for the period of 10 days. The beginning of the period of deposition shall be marked on the article of mail. Where the article of mail is not collected by the addressee within a given period of time, the holder of postal licence shall return it to the sender as non-deliverable. Where the addressee rejects to

receive the article of mail, the holder of postal licence shall indicate that fact thereon and return the article of mail to sending contracting entity. The article of mail shall be considered as delivered at the moment of receipt, refusal to receive it or futile expiry of the period of deposition of the article of mail with relevant local premises of the holder of postal licence.

§ 93

**Electronic Submission of Tender**

(1) The contracting entity shall be entitled to take a decision that the legal actions referred to in § 91 par. 1 may be equally taken electronically, signed by a secure electronic signature based on a qualified certificate, if

- a) it has in place such a technical equipment which enables thereto to comply with all and every condition set forth by this Act for the written form of legal acts and the course of award procedures, while making use of the electronic form,
- b) such a fact is referred to in the notice of open procedure, restricted procedure or negotiated procedure with publication or in the invitation to negotiate in negotiated procedure without publication and
- c) the requirement to secure the tenders and the structure of the tender in the manner guaranteeing compliance with the procedure referred to in Part Three Title III of this Act is set out in the notice of open procedure, restricted procedure or negotiated procedure with publication.

(2) The tenderer participating in the award procedures within the meaning of paragraph 1 shall be obligated to secure the tender pursuant to paragraph 1 letter c) in the manner equivalent to a sealed envelope with a tender submitted in writing, in particular, to secure the tender in such a way that modifications of the content would be detectable and early disclosure of the content could be avoided.

**PART SEVEN**

**SUPERVISION OF AWARD OF PUBLIC CONTRACTS**

**Title I**

**Exercise of Supervision of Award of Public Contracts**

§ 94

(1) Supervision of compliance with this Act, consisting in review of legality of practises of the contracting entity, with the aim to assure transparency of the award of public contracts and observance of the principles of equal treatment and non-discrimination of candidates and tenderers interested in public contracts, shall be exercised by the Office for Protection of Economic Competition (hereinafter referred to as “the supervisory body”).

(2) The supervisory body shall

- a) grant interim measures,
- b) take decisions whether the contracting entity has proceeded in the award of a public contract in compliance with this Act,
- c) order corrective measures and inflict sanctions,

- d) conduct a check on practises of the contracting entity in the award of public contracts under separate legal regulation.<sup>30)</sup> Competence of other bodies exercising such control under separate legal regulations<sup>31)</sup> shall not be prejudiced thereby,
- e) discharge other tasks, where separate legal regulation so lays down.

## Title II

### **Conciliation Procedure and Review Proceedings on Practises of Contracting entity**

#### § 95

##### **Conciliation Procedure**

(1) Any supplier having or having had an interest in obtaining a particular above the threshold public contract and who has been or risks being harmed (hereinafter referred to as “the claimant”) as a consequence of an alleged infringement of this Act by an action of the contracting entity operating in the water, energy, transport and telecommunications sectors shall be entitled to submit an application in writing for conciliation procedure to the European Commission or to the supervisory body. The supervisory body shall forward forthwith the application submitted thereto to the European Commission.

(2) In the conciliation procedure before the European Commission, which is initiated only with the consent of the contracting entity,

- a) each party shall designate an additional conciliator after having accepted conciliators proposed by the European Commission,
- b) each party shall have the right to terminate the conciliation procedure at any time,
- c) each party shall bear the costs incurred in connection with the conciliation procedure, unless the parties agree upon otherwise, to the exception of the costs of the procedure that shall be borne by each party in equal shares.

The relevant Directive of the Council of the European Communities<sup>32)</sup> shall be applicable to the other matters related to the conciliation procedure at the level of the European Commission..

#### § 96

##### **Initiating Proceedings on Review of Practises of Contracting entity**

(1) The review proceedings on practises of the contracting entity (hereinafter referred to as “the proceedings”) shall be initiated upon the proposal in writing (hereinafter referred to as “the proposal”) of the complainant (hereinafter referred to as “the petitioner”) or at the supervisory body’s own instigation. The supervisory body shall be entitled to initiate the proceedings at its own instigation within 3 years as from the date when, through the action of the contracting entity, the infringement of this Act occurred.

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<sup>30)</sup> Act No. 552/1991 Coll., on State Control, as Subsequently Amended.

<sup>31)</sup> For instance Act No. 166/1993 Coll., on Supreme Control Office, as Subsequently Amended, Act No. 320/2001 Coll., on Financial Control in Public Administration and on Amendments to Certain Other Acts (Financial Control Act), as Subsequently Amended.

<sup>32)</sup> 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.

(2) The proceedings shall be initiated on the date when the proposal is received by the supervisory body. Where the proceedings are initiated at the instigation of the supervisory body, the proceedings shall be initiated on the date when the supervisory body takes a first action against the party to the proceedings.

(3) The proposal shall be delivered to the supervisory body within 10 days following the date when the complainant received a written communication that the contracting entity did not comply with the complaints or that it complied, but the complainant does not agree to the manner of settlement. Unless the contracting entity settled the complaints within the meaning of § 88 par. 3, the proposal may be delivered to the supervisory body not later than within 25 calendar days following the date of dispatch of the complaints by the complainant. The supervisory body shall notify without undue delay the contracting entity of the initiation of the proceedings.

## § 97

### **Proposal**

(1) The proposal shall clearly state who submits it, which subject matter it relates to, what infringement has allegedly occurred and what the petitioner claims. In addition, the proposal shall contain a precise identification of the contracting entity; it shall be signed and dated. The evidence of the receipt of complaints by the contracting entity shall be supplemented to the proposal sent to the supervisory body. The proposal is subject to the payment of a charge under separate legal regulation.<sup>33)</sup>

(2) Where the proposal lacks the essentials prescribed pursuant to paragraph 1 and the petitioner does not complete it within the time limit fixed by the supervisory body, unless it was received within the time limit pursuant to § 96 par. 3 or submitted by an authorized person, or where the supervisory body has no relevant competence to take a ruling in respect of the proposal, the supervisory body shall terminate the initiated proceedings; where the supervisory body has reasonable cause to believe that an infringement of this Act has occurred, it shall be obligated to carry on with the proceedings on its own initiative.

(3) The proposal can be filed against all practises of the contracting entity, which preclude or could preclude transparency or non-discriminatory procedure for the award of public contracts, in particular, against

- a) award conditions,
- b) content of the notice of award procedures or the content of the invitation to submit tenders,
- c) exclusion of the tenderer from open procedure or restricted procedure,
- d) award of the public contract,
- e) employment of a particular type of award procedures.

(4) The contracting entity shall be obligated to forward to the supervisory body its representation to the received proposal within 7 days as from the receipt thereof. It shall forward such a representation accompanied by relevant documentation of the public contract related to the contested infringement of this Act.

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<sup>33)</sup> Act No. 368/1992 Coll., on Administrative Charges, as Subsequently Amended.



§ 98

**Deposit**

(1) While filing the proposal to apply review proceedings against practices of the contracting entity, the petitioner shall be obligated to provide a deposit lodged into the supervisory body's account, amounting to 1 % of the petitioner's tender price, however, not more than CZK 1,000,000. The deposit shall be credited to the supervisory body's account not later than on the last day of the time limit for filing the proposal to apply review proceedings against practices of the contracting entity.

(2) Suppose the supervisory body by its ruling

- a) complies with the proposal of the petitioner, or
- b) ascertains that the contracting entity, through its action taken in the course of the award of a public contract, has not fulfilled an obligation or breached a ban set out by this Act and such an action substantially affected or could affect establishment of the rank-order of tenders' rating,

it shall refund the deposit to the petitioner not later than within 7 days as from the date of entry of such a ruling into force.

(3) The deposit shall be an income of the State budget

- a) on the date of entry in force of the supervisory body's ruling by which the proposal of the petitioner has not been complied with,
- b) on the date of entry in force of the ruling by which the supervisory body does not ascertain that the contracting entity by an action taken in the course of the award of a public contract has not fulfilled an obligation or breached a ban imposed by this Act.

(4) The supervisory body shall refund to the petitioner the deposit together with interest accrued in the case of procedure pursuant to paragraph 2.

§ 99

**Parties to Proceedings**

The contracting entity shall be always the party to the proceedings; in the proceedings initiated upon the proposal, the petitioner shall be another party to the proceedings. Where the subject of the review proceedings consists in the decision taken by the contracting entity on the assignment of a public contract pursuant to § 65, the tenderer that was awarded the contract shall be the party to the proceedings as well.

§ 100

**Interim Measure**

(1) To prevent further damage or to avert immediate risk to the interests of the tenderer or candidate, the supervisory body shall be entitled to grant an interim measure upon the proposal of the petitioner or at its own instigation prior to the termination of proceedings and at the extent indispensable to maintain the purpose thereof, by means of which it shall, in particular, impose

- a) ban on the contracting entity to conclude an agreement in the award procedures,

- b) suspension of award procedures on the contracting entity, or
  - c) ban on the performance of a concluded agreement,
- viz. for the period of time referred to in the interim measure, however, not longer than until the ruling on the subject matter itself is awarded.

(2) The petitioner shall precisely indicate what the suggested interim measure should apply to, state the alleged infringement of the law, specify immediate risk to its interests and supplement relevant evidence.

(3) The appeal against the ruling on the interim measure shall not have a suspensive effect.

Title III  
**Ruling of Supervisory Body**

§ 101

**Ruling of Supervisory Body**

(1) Where the supervisory body ascertains prior to the agreement being concluded (§ 66) that the contracting entity, by an action taken in the course of the award of a public contract, has not fulfilled an obligation or breached a ban set out by this Act, it shall state this fact in writing in the ruling. It shall simultaneously impose a corrective measure on the contracting entity, in particular, the setting aside of the decision taken by the contracting entity on the assignment of a contract, where such an action substantially affected or could affect the establishment of the rank-order of tenders' rating.

(2) Where the supervisory body ascertains following the conclusion of the agreement that the contracting entity, by an action taken in the course of the award of a public contract, has not fulfilled an obligation or breached a ban set out by this Act and such an action substantially affected or could affect the establishment of the rank-order of tenders' rating, the supervisory body shall be entitled to impose a ban on the performance of such an agreement by the ruling in writing and inflict on the contracting entity a penalty in joint proceedings for an offence pursuant to § 102.

(3) Infliction of a sanction pursuant to § 102 shall be a constituent element of the supervisory body's ruling pursuant to paragraphs 1 and 2.

(4) The supervisory body shall award a ruling within 30 days as from the date it obtained supporting documents required of the contracting entity. The contracting entity shall deliver the total of supporting documents to the supervisory body within 14 days following the receipt of its invitation.

(5) Where the supervisory body ascertains no infringement of this Act, it shall terminate the proceedings by its ruling.

Title IV  
**Violations of Administrative Rules**

§ 102

(1) The legal or a natural person that acts in a capacity as the contracting entity violates administrative rules, where it

- a) does not comply with the procedure set out by this Act for the award of a public contract and such a procedure substantially affected or could affect the evaluation of tenders,
- b) concludes an agreement (§ 65 and 66) with the tenderer selected by the procedure pursuant to letter a),
- c) sets aside the award procedures, without having retained such an option in the notice of award procedures (§ 68)
- d) does not keep contract documentation (§ 71),
- e) does not fulfil obligations to release data and information concerning public contracts (§ 84).

(2) The legal person which acts in a capacity as the contracting entity shall be imposed a fine pursuant to paragraph 1 for violations of administrative rules up to the amount of

- a) 5 % of the tender price, as regards a violation of administrative rules pursuant letter a), b) and d),
- b) CZK 10,000,000, as regards a violation of administrative rules pursuant to letter c) and e).

(3) Where the legal person that acts in a capacity as the contracting entity repeatedly violates administrative rules pursuant to paragraph 1 during the period of 5 years, the rate of fines pursuant to paragraph 2 shall be doubled.

§ 103

(1) The legal person violates administrative rules, where it

- a) states incorrect data to demonstrate qualifications (§ 30),
- b) states incorrect data to be registered in the list of qualified suppliers, or
- c) does not notify the Ministry within a fixed time limit of a change in data recorded in the list of qualified suppliers.

(2) The legal person shall be imposed a fine pursuant to paragraph 1 for violations of administrative rules up to the amount of CZK 10,000,000.

(3) Where the legal person repeatedly violates administrative rules pursuant to paragraph 1 during the period of 5 years, the rate of fines pursuant to paragraph 2 shall be doubled.

§ 104

**Disciplinary Measures**

(1) The administrative body shall impose a fine up to the amount of CZK 100,000 on

- a) a legal person which has not furnished to the supervisory body supporting documents and correct information needed for the review of practices of the contracting entity within a fixed time limit,

- b) a natural person who obstructs the progress of proceedings by, in particular, not appearing without compelling reasons before the supervisory body when summoned, refusing to provide witness's testimony without justification or to produce supporting documents needed for the review of practices of the contracting entity.

(2) The fine pursuant to paragraph 1 may be imposed repeatedly.

## § 105

### **Common Provision on Violations of Administrative Rules**

(1) In fixing the amount of a fine, gravity of a violation of administrative rules shall be taken into account, in particular, the manner how it has been committed, consequences thereof and circumstances under which it has been committed.

(2) The legal person shall not be liable for a violation of administrative rules, if it proves to have exercised all efforts, which could be reasonably required to avert an infringement of an obligation.

(3) The proceeding on imposing a fine for unlawful practices may be initiated within 5 years as from the date they were committed.

(4) The provisions of the law on liability and recourse of a legal person shall apply to liability for practises, which occurred in the course of pursuit of business activities of a natural person or in direct relation thereto.

(5) Violations of administrative rules under this Act shall be dealt with in the first instance by the supervisory body.

(6) Fines shall be levied and recovered by the body, which imposed them. Revenues from fines shall be the income of the State budget. Levy and recovery of imposed fines shall be governed by separate legal regulation.

## Title V

### **Common Provisions on Exercise of Supervision**

## § 106

### **Protection of Trade Secrecy**

(1) The staff of supervisory body, as well as those who have been entrusted with discharging the tasks pertaining to competence of this body, shall be obligated to maintain confidentiality on all issues, which they have learned while fulfilling occupational duties. It shall not apply, where the persons in question give testimony to such issues to the law enforcement authorities or in the proceedings before the court, or, where applicable, if they submit written representation under separate legal regulation<sup>34)</sup> at the invitation of such authorities or the court.

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<sup>34)</sup> Penal Code.

(2) Where the supervisory body learns of the fact, which constitutes the subject of trade secrecy, it shall be obligated to take measures to avoid breach of trade secrecy.

§ 107

**Application of Administrative Code**

Unless provided otherwise by this Act, Administrative Code shall apply to the proceedings before the supervisory body.

§ 108

**Publication of Final Ruling of Supervisory Body**

The supervisory body shall make known its final rulings awarded in the past calendar year in the Collection of Rulings of the Supervisory Body in the field of the award of public contracts and on Internet site of the supervisory body.

PART EIGHT

**TRANSITIONAL AND FINAL PROVISIONS**

§ 109

The award of public contracts, review proceedings on practices of the contracting entity by the supervisory body and proceedings on inflicting a sanction initiated before the date of entry into effect of this Act, shall be concluded under current legal regulations. The applicability thereof shall extend by analogy to review proceedings on practises of the contracting entity by the supervisory body or to proceedings on inflicting a sanction that follow up the award of public contracts pursuant to the first sentence.

§ 110

**Authorizing Provisions**

(1) The Ministry shall issue legal regulation to implement § 29 par. 4, § 42 par. 3, § 43 par. 4, § 44 par. 4, § 48 par. 2, § 50 par. 4, § 62 par. 3, § 63 par. 3, § 67 par. 3, § 68 par. 5, § 72 par. 4, § 83 par. 5 and § 84 par. 4.

§ 111

**Repealing Provisions**

1. Act No. 199/1994 Coll., on the Award of Public Contracts,
2. Act No. 148/1996 Coll., Amending and Supplementing Act No. 199/1994 Coll., on the Award of Public Contracts,
3. Act No. 28/2000 Coll., Amending Act No. 199/1994 Coll., on the Award of Public Contracts, as Subsequently Amended,
4. Act No. 142/2001 Coll., Amending Act No. 199/1994 Coll., on the Award of Public Contracts, as Subsequently Amended,

5. Act No. 278/2002 Coll., Amending Act No. 199/1994 Coll., on the Award of Public Contracts, as Subsequently Amended,
6. Act No. 424/2002 Coll., Amending Act No. 199/1994 Coll., on the Award of Public Contracts, as Subsequently Amended,

shall be repealed.

## PART NINE

### ENTRY INTO EFFECT

#### § 112

(1) This Act shall enter into effect on the first day of the third calendar month following the promulgation thereof, except for the provisions of § 3 par. 1 letter f), § 4 par. 1 letter e), § 27 par. 6, § 31 par. 4, § 49 par. 3 letter b), c) and d), § 56 par. 2 letter b), § 61 par. 2, § 69 par. 2 letter b), § 83 par. 2 letter b), § 84 par. 1 letter b), § 84 par. 3 and § 95, which shall enter into effect on the date of entry of the Treaty of Accession of the Czech Republic to the European Union in force.

(2) The provisions of § 4 par. 1 letter o) and p) and § 49 par. 3 letter f) and g) shall cease to have force on the date of entry of the Treaty of Accession of the Czech Republic to the European Union in force.

(3) The provision of § 4 par. 1 letter n) shall cease to have force 12 months following the entry of the Treaty of Accession of the Czech Republic to the European Union in force.

**List of Services, Which Do Not Entail the Obligation to Publish the Award Procedures  
in the Official Journal of the European Communities**

<b>Service Number</b>	<b>Subject</b>
1	Hotel and restaurant services
2	Transport services by rail
3	Water transport services
4	Supporting and auxiliary transport services
5	Legal Services
6	Personnel placement and supply services
7	Investigation and security services
8	Educational and vocational education services
9	Health and social services
10	Recreational, cultural and sporting activities (services)
11	Other services not referred to in Annex No. 2

**Annex No. 2 to Act No.../2003 Coll.**

**List of Services Entailing the Obligation to Publish the Award Procedures in the Official  
Journal of the European Communities**

<b>Service Number</b>	<b>Subject</b>
1	Maintenance and repair services
2	Land transport services of passengers and freight, except transport of mail
3	Air transport services of passengers and freight, except transport of mail
4	Transport of mail
5	Telecommunications services
6	Financial Services a) Insurance Services b) Banking and investment services
7	Computer and related services
8	Research and development services
9	Accounting, auditing and book -keeping services
10	Market research and public opinion polling services
11	Management consulting services and related services
12	Architectural Services, Engineering services and integrated engineering services, Urban planning and landscape architectural services, Related scientific and technical consulting services, Technical testing and analysis services
13	Advertising services
14	Building-cleaning services and property management services
15	Publishing and printing services on a fee or contract basis
16	Sewage and refuse disposal services, Sanitation and similar services



**Annex No. 3 to Act No..../2003 Coll.**

**Supplies of Products for Contracting entities in the Sector of Ministry of Defence,  
Classified under Nomenclature of Harmonized Commodity Description and Coding  
System (HS)**

- Chapter 25: Salt; sulphur; earths and stone; plastering materials, lime and cement.
- Chapter 26: Metallic ores, slag and ash.
- Chapter 27: Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes.
- Except: HS Heading 2710: petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 % or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils.
- Chapter 28: Inorganic chemicals; organic and inorganic compounds of precious metals, radioactive elements and of isotopes.
- Except: HS Heading 2809: Diphosphorus pentoxide; phosphoric acid; polyphosphoric acids, whether or not chemically defined.
- Except: HS Heading 2813: Sulphides of non- metals; commercial phosphorus trisulphide.
- Except: HS Heading 2814: Ammonia, anhydrous or in aqueous solution.
- Except: HS Heading 2828: Hypochlorites; commercial calcium hypochlorite; chlorites; hypobromites.
- Except: HS Heading 2832: Sulphites; thiosulphates.
- Except: HS Heading 2839: Silicates; commercial alkali metal silicates.
- Except: HS Heading 2850: Hydrides, nitrides, azides, silicides and borides, whether or not chemically defined, other than compounds which are also carbides of heading 2849.
- Except: HS Heading 2851: Other inorganic compounds (including distilled or conductivity water and water of similar purity; liquid air (whether or not rare gases have been removed); compressed air; amalgams, other than amalgams of precious metals.
- Chapter 29: Organic chemicals.
- Except: HS Heading 2903: Halogenated derivatives hydrocarbons.
- Except: HS Heading 2904: Sulphonated, nitrated or nitrosated derivatives of Hydrocarbons, whether or not halogenated.

- Except: HS Heading 2907: Phenols, phenol-alcohols.  
Except: HS Heading 2908: Halogenated, sulphonated, nitrated or nitrosated derivatives of phenols or phenol-alcohols.  
Except: HS Heading 2911: Acetals and hemiacetals, whether or not with other oxygen function, and their halogenated, sulphonated, nitrated or nitrosated derivatives.  
Except: HS Heading 2912: Aldehydes, whether or not with other oxygen function; cyclic polymers of aldehydes; paraformaldehyde.  
Except: HS Heading 2913: Halogenated, sulphonated, nitrated or nitrosated derivatives of products of heading 2912.  
Except: HS Heading 2914: Ketones and quinines, whether or not with other oxygen function, and their halogenated, sulphonated, nitrated or nitrosated derivatives.  
Except: HS Heading 2915: Saturated acyclic monocarboxylic acids and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulphonated, nitrated and nitrosated derivatives.  
Except: HS Heading 2921: Amine-function compounds.  
Except: HS Heading 2922: Oxygen-function amino-compounds.  
Except: HS Heading 2923: Quaternary ammonium salts and hydroxides; lecithins and other phosphoaminolipids, whether or not chemically defined.  
Except: HS Heading 2926: Nitrile-function compounds.  
Except: HS Heading 2927: Diazo-, azo- or azoxy-compounds.  
Except: HS Heading 2929: Compounds with other nitrogen function.

Chapter 30: Pharmaceutical products.

Chapter 31: Fertilizers.

Chapter 32: Tanning and dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter, paints and varnishes, putty and other mastics; inks.

Chapter 33: Essential oils and resinoids; perfumery, cosmetic and toilet preparations.

Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes, "dental waxes" and dental preparations with a basis of plaster.

Chapter 35: Casein, caseinates and other casein derivatives, casein glues.

Chapter 37: Photographic and cinematographic goods.

Chapter 38: Miscellaneous chemical products.

- Except: HS Heading 3819: Hydraulic brake fluids and other prepared liquids for hydraulic transmission, not containing less

than 70 % by weight of petroleum oils or oils obtained from bituminous minerals.

Chapter 39: Plastics and articles thereof.

Except: HS Heading 3903: Polymers of styrene, in primary forms.

Chapter 40: Rubber and articles thereof.

Except: HS Heading 4011: New pneumatic tyres, of rubber.

Chapter 41: Raw hides and skins (other than furskins) and leather.

Chapter 42: Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut).

Chapter 43: Furskins and artificial fur; manufactures thereof.

Chapter 44: Wood and articles of wood; wood charcoal.

Chapter 45: Cork and articles of cork.

Chapter 46: Manufactures of straw, of esparto and of other plaiting materials; basketware and wickerwork.

Chapter 47: Pulp of wood or of other fibrous cellulosic material, recovered (waste and scrap) paper or paperboard.

Chapter 48: Paper and paperboard; articles of paper pulp, of paper or of paperboard.

Chapter 49: Printed books; newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans.

Chapter 65: Headgear and parts thereof.

Chapter 66: Umbrellas, sun umbrellas, walking-sticks, seat-sticks whips, riding-crops and parts thereof.

Chapter 67: Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair.

Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials.

Chapter 69: Ceramic products.

Chapter 70: Glass and glassware.

Chapter 71: Natural or cultured pearls, precious and semi-precious stones, precious metals, rolled precious metals and articles thereof; imitation jewellery; coin.

- Chapter 73: Articles of iron or steel.
- Chapter 74: Copper and articles thereof.
- Chapter 75: Nickel and articles thereof.
- Chapter 76: Aluminium and articles thereof.
- Chapter 77: Reserved for possible future use in the Harmonized System.
- Chapter 78: Lead and articles thereof.
- Chapter 79: Zinc and articles thereof.
- Chapter 80: Tin and articles thereof.
- Chapter 81: Other base metals, cements, articles thereof.
- Chapter 82: Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal.
- Except: HS Heading 8205: Hand tools (including glaziers' diamonds), not elsewhere specified or included; blow lamps; vices, clamps and the like, other than accessories and parts of, machine tools; anvils; portable forges; hand or pedal-operated grinding wheels with frameworks.
- Except: HS Heading 8207: Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools.
- Chapter 83: Miscellaneous articles of base metals.
- Chapter 84: Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.
- Except: HS Heading 8406: Steam turbines and other vapour turbines.
- Except: HS Heading 8408: Compression-ignition internal combustion piston engines (diesel or semi-diesel engines).
- Except: HS Heading 8445: Machines for preparing textile fibres; spinning, doubling or twisting machines and other machinery for producing textile yarns; textile reeling or winding including weft-winding) machines and machines for preparing textile yarns for use on the machines of heading 8446 or 8447.

Except: HS Heading 8453: Machinery for preparing, tanning or working hides, skins or leather or for making or repairing footwear or other articles of hides, skins or leather, other than sewing machines.

Except: HS Heading 8455: Metal-rolling mills and rolls therefore.

Except: HS Heading 8459: Machine-tools (including way-type unit head machines) for drilling, boring, milling, threading or tapping by removing metal, other than lathes (including turning centres) of heading 8458.

Chapter 85: Electrical machinery and equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers and parts and accessories of such articles.

Except: HS Heading 8513: Portable electric lamps designed to function by their own source of energy (for example, dry batteries, accumulators, magnetos), other than lighting equipment of heading 8512.

Except: HS Heading 8515: Electric (including electrically heated gas), laser or other light or photon beam, ultrasonic, electron beam, magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus, whether or not capable of cutting; electric machines and apparatus for hot spraying of metals or cermets.

Chapter 86: Railway and tramway locomotives, rolling-stock and parts thereof; railway and tramway tracks fixtures and fittings and parts thereof; traffic signalling equipment of all kinds (not electrically powered).

Except: HS Heading 8602: Other rail locomotives; locomotive tenders.

Except: HS Heading 8603: Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604.

Except: HS Heading 8605: Railway or tramway passenger coaches, not self-propelled; luggage vans post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604).

Except: HS Heading 8606: Railway or tramway goods vans and wagons, not self-propelled.

Except: HS Heading 8607: Parts of railway or tramway locomotives or rolling stock.

Chapter 87: Vehicles, other than railway or tramway rolling-stock, and parts and accessories thereof.

Except: HS Heading 8701: Tractors (other than tractors of heading 8709).

Except: HS Heading 8702: Motor vehicles for the transport of ten or more persons, including the driver.

Except: HS Heading 8703: Motor cars and other motor vehicles principally for the transport of persons (other than those of heading 8702), including station wagons and racing cars.

Except: HS Heading 8708: Parts and accessories of the motor vehicles of headings 8701 to 8705.

Except: HS Heading 8709: Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles.

Except: HS Heading 8714: Parts and accessories of vehicles of headings 8711 to 8713.

Chapter 89: Ships, boats and floating structures

Except: HS Heading 8901: Cruise ships, excursion boats, ferry-boats, cargo ships, barges and similar vessels for the transport of persons and goods.

Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus; parts and accessories thereof.

Except: HS Heading 9005: Binoculars, monoculars, other optical telescopes, and mountings therefore; other astronomical instruments and mountings therefore, but not including instruments for radio-astronomy.

Except: HS Heading 9011: Compound optical microscopes, including those for photomicrography, cinephotomicrography or microprojection.

Except: HS Heading 9013: Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this Chapter.

Except: HS Heading 9014: Direction finding compasses; other navigational instruments and appliances.

Except: HS Heading 9017: Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, callipers), not specified or included elsewhere in this Chapter).

Except: HS Heading 9018: Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments.

Except: HS Heading 9019: Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus.

Except: HS Heading 9020: Other breathing appliances and gas masks, excluding protective masks having neither mechanical parts nor replaceable filters.

Chapter 91: Clocks and watches and parts and accessories thereof.

Chapter 92: Musical instruments; parts and accessories of such articles.

Chapter 94: Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings.

Except: HS Heading 9401: Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof.

Chapter 95: Toys, games and sports requisites; parts and accessories thereof.

Chapter 96: Miscellaneous manufactured articles.