

# **134/2016 Coll.**

## **ACT**

of 19 April 2016

### **on Public Procurement**

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

## **BOOK ONE**

### **GENERAL PROVISIONS**

#### **TITLE I**

#### **BASIC PROVISIONS**

##### **Section 1**

##### **Scope of regulation**

This Act implements the relevant legislation of the European Union<sup>1)</sup> and regulates

- a) the public procurement rules including specific procedures preceding the award of public contracts,
- b) the obligations of economic operators with regard to public procurement and specific procedures preceding the award of public contracts,
- c) the publication of public procurement information,
- d) the special requirements for invoicing the performance of public contracts,
- e) the special grounds for termination of contractual obligations arising from public contracts,
- f) the Information System on Public Contracts,
- g) the qualified economic operators system,
- h) the certified economic operators system,
- i) the supervision over compliance with this Act.

##### **Section 2**

##### **Award of the public contract**

(1) For the purposes of this Act, an award of the public contract means the conclusion of a contract for pecuniary interest between a contracting authority and an economic operator which establishes the economic operator's obligation to supply supplies, provide services or execute works. Conclusion of the contract, which establishes an employment or similar relationship and contracts regulating cooperation of the contracting authority when awarding public contracts pursuant to sections 7 to 12, 155, 156, 189 and 190, shall not be considered an award of a public contract.

(2) Public supply contracts pursuant to Section 14 (1), public service contracts pursuant to Section 14 (2), public works contracts pursuant to Section 14 (3), services concessions pursuant to Section 174 (3) and works concessions pursuant to Section 174 (2) are public contracts.

(3) The contracting authority shall use the procurement procedure to award a public contract, unless otherwise provided below. Such obligation shall be considered fulfilled where the public contract is awarded on the grounds of a framework agreement by the procedure laid down in Title II of Book Six, under the dynamic purchasing system pursuant to Title III of Book Six or is acquired from the central purchasing body or through it pursuant to Section 9.

##### **Section 3**

##### **Types of procurement procedures**

For the purposes of this Act, procurement procedure means

- a) simplified below-threshold procedure,
- b) open procedure,

- c) restricted procedure,
- d) negotiated procedure with prior publication,
- e) negotiated procedure without prior publication,
- f) competitive dialogue,
- g) innovation partnership,
- h) concession procedure, or
- i) procedure to award a public contract in the simplified regime.

#### Section 4

##### **Contracting authority**

(1) Contracting authority means

- a) the Czech Republic; with regard to the Czech Republic its organisational units of the state<sup>2)</sup> shall be considered independent contracting authorities,
- b) the Czech National Bank,
- c) a partially state budget-funded organisation,
- d) a territorial self-government unit or its partially budget-funded organisation,
- e) another legal person, provided that
  - 1. it was founded or established to satisfy public interest needs, which are not of industrial or commercial nature, and
  - 2. it is funded mainly by a different public authority, that may exercise its decisive influence over it or such public authority elects more than half of the members of its governing or controlling body.

(2) A contracting authority is a person that uses more than CZK 200,000,000 or more than 50 % of financial resources provided from

- a) the budget of any contracting authority,
- b) the European Union budget or public budget of a foreign state excluding cases where the public contract is performed outside the territory of the European Union.

(3) When awarding utilities public contracts pursuant to Section 151 including utilities concession contracts pursuant to Section 176 (3) the contracting authority shall be also the person referred to in Section 151 (2).

(4) Where the contracting authority defined in subsections (1) to (3) commences the procurement procedure, although it was not obliged to do so, it shall, with respect to the public contract being awarded, comply with this Act.

(5) Another person, that has commenced the procurement procedure, although it was not obliged to do so, shall be considered the contracting authority with respect to that procurement procedure and until it is terminated.

#### Section 5

##### **Economic operator**

Economic operator means any person or joint group of persons that offer supply of supplies, provision of services or execution of works. A branch of a business shall be also considered an economic operator; in such case the registered office of the branch of a business shall be considered the registered office of the economic operator.

#### Section 6

##### **Principles of procurement**

(1) When proceeding pursuant to this Act, the contracting authority shall act in a transparent and proportionate manner.

(2) The contracting authority shall treat economic operators equally and without discrimination.

(3) The contracting authority shall not restrict participation in the procurement procedure of such economic operators that have a registered office in

- a) a Member State of the European Union, European Economic Area or the Swiss Confederation (hereinafter the "Member State") or

b) another state with which the Czech Republic or European Union has concluded an international agreement on the basis of which access of economic operators from such states to the public contract being awarded is guaranteed.

## TITLE II

### COOPERATION OF THE CONTRACTING AUTHORITY DURING THE PUBLIC PROCUREMENT PROCESS

#### Section 7

##### **Joint procurement**

(1) Contracting authorities may award a public contract jointly. The contracting authority may also award a public contract jointly with a person that is not obliged to proceed pursuant to this Act.

(2) Prior to the launching of procurement procedure the persons participating in joint procurement shall conclude a written agreement which shall regulate their mutual rights and obligations relating to the procurement procedure and determine how to act in relation to third parties.

(3) Participating contracting authorities shall be jointly liable for compliance with this Act when jointly awarding public contracts except for actions that the participating contracting authority conducts in its own name and on its behalf.

#### Section 8

##### **Cross-border joint procurement between contracting authorities from different Member States**

(1) Where more contracting authorities jointly award the public contract and at least one of those persons is a contracting authority pursuant to the laws of another Member State, the governing law for public procurement and its review shall be the law of the Czech Republic or the law of that Member State. The governing law shall be determined by

a) international agreement, or

b) the agreement of persons participating in the joint procurement, unless the rule specified in paragraph a) is applied.

(2) Where the public contract is awarded by the person that was founded or established jointly by a contracting authority and a contracting authority with a registered office in a different Member State, such contracting authorities shall agree that the governing law for public procurement and its review will be the law of the Member State where the person, who founded or established in such manner,

a) has its registered office, or

b) performs its activities.

#### Section 9

##### **Central purchasing body**

(1) Central purchasing body means a contracting authority pursuant to Section 4 (1) or Section 4 (3) or a contracting authority governed by the law of a different Member State that provides centralised purchasing activities involving specific procedures pursuant to Book Six, in which

a) it acquires supplies or services that it subsequently assigns to one or more contracting authorities for the price which is not higher than the price they were acquired for, or

b) another contracting authority or contracting authorities acquire supplies, services or works.

(2) When using the centralised purchasing activities the central purchasing body shall be liable for compliance with this Act. However, the contracting authority shall be liable for compliance with this Act where it awards public contracts independently

a) under the dynamic purchasing system operated by the central purchasing body, or

b) on the grounds of a framework agreement concluded as a part of centralised purchasing activities.

(3) A group of contracting authorities, for whom the centralised purchasing activities are conducted, shall be defined in procurement documents by listing or by a different manner which enables participants to identify them; this does not apply to any procurement procedure in which the dynamic purchasing system is first set up.

(4) The central purchasing body and the contracting authority, for whom the centralised purchasing activities should be conducted, shall conclude a written agreement before the award of the contract at the latest, in which they shall regulate their mutual rights and obligations with regard to the centralised purchasing activities; without prejudice to Section 132 (2). Such agreement may also include other services related to public procurement provided by the central purchasing body.

(5) Where the central purchasing body solely conducts central purchasing activities of utilities public contracts, it shall proceed in accordance with such provisions of this Act that regulate utilities public contracts.

(6) Within the central purchasing activities the central purchasing body may acquire supplies, services or works even for itself.

(7) Where the central purchasing body is a contracting authority pursuant to the law of a different Member State, the governing law for a public contract awarded by the central purchasing body and its review shall be the law of a Member State in which it has its registered office.

## Section 10

### **Ban on cooperation or choice of law**

(1) The procedure pursuant to Section 8 or Section 9 shall not apply with regard to concession contracts referred to in Section 174. The procedure pursuant to Section 8 shall not apply with regard to public contracts in the field of defence and security referred to in Section 187. Choice of law of a different Member State pursuant to Section 8 and choice of central purchasing activity pursuant to Section 9 shall not be possible where the public contract being awarded is awarded by the procedure for the utilities public contract even though it is not a utilities public contract referred to in Book Seven.

(2) The contracting authority shall not avoid compliance with other legal regulations by way of cooperation of the contracting authority when awarding a public contract.

## Section 11

### **Vertical cooperation**

(1) A contract concluded between the contracting authority and another legal person as the economic operator shall not be considered the award of a public contract where

a) the contracting authority itself or in joint cooperation with other contracting authorities exercises over such person a control which is similar to that which it exercises over its own departments,

b) there is no capital participation of another person in the controlled person with the exception of the controlling contracting authority or controlling contracting authorities, and

c) more than 80 % of the activities of the controlled person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or controlling contracting authorities or by other legal persons controlled by that controlling contracting authority or controlling contracting authorities as its own departments.

(2) The contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. Such control may also be exercised by another legal person, which is itself controlled by the contracting authority in the same way as its own department.

(3) The contracting authorities exercise joint control over the legal person referred to in paragraph a) of subsection (1) where

a) the decision-making bodies of the controlled legal person are composed or established on the basis of the concerted activity of all participating contracting authorities,

b) controlling contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of such controlled legal person, and

c) such controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities.

(4) It shall not be regarded as the award of a public contract when the legal person controlled in accordance with paragraph a) of subsection (1) concludes a contract with an economic operator, in which there is no direct capital participation of a private person and who is

a) a contracting authority that exercises a control over such legal person, or

b) another legal person controlled by the contracting authority referred to in paragraph a).

(5) For the purposes of subsection (4), the private person shall be deemed a person different from the state, a body governed by public law, another legal person established by law or a legal person in which there is only participation of the state, a body governed by public law or another legal person established by law.

(6) Subsections (1) to (5) apply by analogy to the contracting authorities referred to in Section 4 (2).

## Section 12

### **Horizontal cooperation**

A contract concluded exclusively between contracting authorities shall not be considered an award of a public contract where

a) the contract establishes or implements cooperation between the contracting authorities with the aim of achieving their joint

- objectives in ensuring the needs in the general interest that such contracting authorities are established to ensure,
- b) the cooperation referred to in paragraph a) is governed solely by considerations relating to the public interest, and
- c) each of the participating contracting authorities performs on the market less than 20 % of the activities concerned by the cooperation referred to in paragraph a).

#### Section 13

##### **Percentage of activities**

(1) Provided that the activity which is the subject-matter of the contract is fully paid by its recipients, the average total turnover shall be taken into consideration to determine the percentage of activities referred to in Section 11 (1) c) or Section 12 c). Where such turnover may not be determined then, with regard to vertical cooperation, total costs of such a legal person shall be used as the grounds for calculation and with regard to horizontal cooperation, costs incurred with respect to activities relating to such cooperation shall be used as the grounds for calculation.

(2) Percentage of activities shall be calculated as the sum of the 3 years preceding the accounting period in which the contract was awarded. Where, because of the date on which the legal person commenced relevant activities or because of a reorganisation of its activities, it shall be sufficient to show that the requirements specified in subsection (1) is credible, in particular by means of business projections.

### TITLE III

## PUBLIC PROCUREMENT TYPES AND REGIMES

### **Chapter 1**

#### **Types of public contracts**

#### Section 14

(1) Public supply contract means a public contract having as its object the acquisition of things, animals or controllable forces of nature, other than those that are part of public works contracts pursuant to subsection (3). The acquisition includes but is not limited to purchase, lease and usufructuary lease.

(2) Public service contract means a public contract having as its object the provision of services other than those referred to in subsection (3).

(3) Public works contract means a public contract having as its object

a) the provision of the service defined in division 45 of the main vocabulary of the single classification system of the European Union<sup>3)</sup> (hereinafter referred to as "the main vocabulary of the single classification system"),

b) the execution of a work, or

c) the provision of related design works provided that they are awarded jointly with works referred to in paragraphs a) or b).

(4) For the purposes of this Act, work means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical functions. Notwithstanding the legal form of cooperation between the contracting authority and the economic operator, even the realisation of a work corresponding to the requirements specified by the contracting authority, meaning such work where the contracting authority exercises a decisive influence on the type or design of the work, shall be considered the public works contract.

#### Section 15

##### **Main subject of public contract**

(1) Public contracts which have as their subject two or more types of procurement shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.

(2) In the case of public contracts consisting partly of services and partly of supplies, which are not public works contracts, the main subject shall be determined in accordance with which of the estimated values of the respective services or supplies is the highest.

(3) In other cases the main subject shall be determined with respect to the main object of a public contract.

## **Chapter 2**

### **Estimated value**

#### **Section 16**

##### **Estimated value of procurement**

(1) Prior to the launching of the procurement procedure or the award of a public contract on the grounds of the exclusion pursuant to Section 30, the contracting authority shall determine the estimated value of a procurement. The estimated value of a procurement means the amount expressed in terms of money that the contracting authority estimates to pay for performance of the public contract. The estimated value of a procurement shall be the net of the value-added tax.

(2) The calculation of the estimated value of a procurement shall include the total value of the performance which may arise from the public contract unless otherwise provided below.

(3) The calculation of the estimated value of a procurement shall include the value of estimated supplements to the contract which have been reserved in the procurement documents in accordance with Section 100. Where the contracting authority reserves performance pursuant to Section 100 (3) it shall state the estimated value of a reserved performance in the procurement documents.

(4) The calculation of the estimated value of a procurement shall include estimated prizes, remuneration or other payments, that the contracting authority provides to economic operators based on their participation in the procurement procedure.

(5) The estimated value shall be valid at the moment at which the contracting authority commences the procurement procedure, or in cases where the contract is not awarded using the procurement procedure, at the moment at which the public contract is awarded.

(6) The estimated value of a procurement shall be based on data and information of public contracts with the same or similar subject-matter; where the contracting authority does not have such data or information available, then it shall be based on information gained by means of market research, preliminary market consultations or by other appropriate means.

#### **Section 17**

##### **Operational units**

(1) The contracting authority shall determine the estimated value of a procurement for all its operational units.

(2) But where a separate operational unit is independently responsible for its procurement or certain categories thereof, the estimated value of a procurement may be determined at the level of the unit in question.

#### **Section 18**

##### **Estimated value of public contracts being divided into lots**

(1) Where a public contract is divided into lots, the estimated value shall be calculated as the total of the estimated values of all such lots notwithstanding whether such public contract is awarded

a) in one or more procurement procedures, or

b) by the contracting authority independently or in cooperation with another contracting authority or another person.

(2) The total of estimated values of all lots of the public contract pursuant to subsection (1) shall include the estimated value of all performances which constitute one functional unit and are awarded in temporal connection. Except for cases referred to in subsection (3) each lot of the public contract shall be awarded by procedures corresponding to the total estimated value of the procurement.

(3) Each lot of the public contract may be awarded by procedures corresponding to the estimated value of such lot, provided that the aggregate estimated value of the lots thus awarded shall not exceed 20 % of the aggregate estimated value and that the estimated value of each lot is lower than the amount determined by the government decree.

#### **Section 19**

##### **Estimated value of public contracts which are regular in nature**

(1) The estimated value of the public contract having as its subject-matter regularly acquired or continuing supplies or services shall be determined as

a) the actual price paid by the contracting authority for supplies or services of the same type during the preceding 12 months or the preceding accounting period which is longer than 12 months adjusted to the changes in quantity or prices which would occur in the course of the following 12 months, or

b) the total estimated value of individual supplies and services which will be awarded by the contracting authority during the following 12 months or during the accounting period which is longer than 12 months in cases where the data pursuant to

paragraph a) is not available.

(2) Where the term of the contract is greater than 12 months, the estimated value of the public contract determined pursuant to subsection (1) shall be adjusted pursuant to Section 20 and Section 21.

(3) Public contracts having such subject-matter, unit price of which is changing during the accounting period and the contracting authority acquires such supplies or services repeatedly according to its current needs, shall not be considered public contracts within the meaning of subsection (1).

#### Section 20

##### **Specific rules for the estimated value of public supply contracts**

With regard to public supply contracts the value to be taken as a basis for calculating the estimated contract value shall be as follows:

- a) payment for the total term of the contract, with regard to fixed-term public contracts,
- b) the estimated value for 48 months, with regard to public contracts without a fixed term or the term of which cannot be defined.

#### Section 21

##### **Specific rules for the estimated value of public service contracts**

(1) With regard to public service contracts, where the total contract price is not determined, the basis for calculating the estimated contract value shall be the amount of estimated payment

- a) for the total term of the contract, where that term is less than or equal to 48 months
- b) for 48 months in the case of the contract without a fixed term or with a term greater than 48 months.

(2) The contracting authority shall also involve in the estimated value

- a) the premium, commission and other corresponding payments, with regard to insurance services,
- b) the fees, commissions, interest and other corresponding payments, with regard to banking and other financial services,
- c) fees, commissions and other corresponding remuneration, with regard to design contracts.

#### Section 22

##### **Specific rules for the estimated value of public works contracts**

Where the contracting authority provides the economic operator with supplies, services or works that are necessary for executing the works required by the contracting authority, it shall include their value in the total estimated value.

#### Section 23

##### **Estimated value in specific cases**

(1) With regard to framework agreements and dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value of all the public contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

(2) In the case of innovation partnerships, the contracting authority shall set the estimated value of the research and development activities to take place during all stages of the envisaged partnership as well as the total estimated value of the supplies, services or works to be developed and acquired under the innovation partnership; the estimated value of the procurement shall be the total of estimated values pursuant to the first sentence.

### **Chapter 3**

#### **Public procurement regime**

#### Section 24

Public procurement regime shall be determined on the basis of its estimated value with the exception of the light regime pursuant to Section 129. The contracting authority shall keep the regime determined when the procurement procedure is launched even when it was allowed to use a different regime.

#### Section 25

##### **Above-threshold public contract**

The above-threshold public contract means a public contract having an estimated value equal to or greater than the threshold determined in the government decree that implements the relevant European Union legislation<sup>4)</sup>. The contracting

authority shall award the above-threshold public contract under the above-threshold regime pursuant to Book Four, unless it is awarded pursuant to Book Five, Book Six or Book Seven or the contracting authority has applied an exclusion from the obligation to award it using the procurement procedure.

#### Section 26

##### **Below-threshold public contract**

(1) Below-threshold public contract means a public contract having an estimated value below the threshold specified in Section 25 and exceeding the values laid down in Section 27.

(2) The contracting authority shall award the below-threshold public contract under the below-threshold regime pursuant to Book Three, unless it is awarded under the light regime or the contracting authority has applied an exclusion from the obligation to award it using the procurement procedure.

#### Section 27

##### **Small-scale public contract**

Small-scale public contract means a public contract having an estimated value equal to, or lower than,

- a) CZK 2,000,000 in the case of a public supply contract or a public service contract, or
- b) CZK 6,000,000 in the case of a public works contract.

#### Section 28

##### **Further definitions**

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

a) 'award criteria' mean all of the following requirements, conditions, criteria and rules laid down by the contracting authority including

- 1. requirements for the conduct of the procurement procedure,
- 2. conditions for participation in the procurement procedure,
- 3. rules for reduction of the number of participants or reduction of the number of tenders and solutions,
- 4. evaluation criteria,
- 5. other requirements for awarding the public contract pursuant to Section 104,

b) 'procurement documents' mean all written documents containing award criteria that are communicated or made available to participants at the moment of launching the procurement procedure including forms pursuant to Section 212 and invitations referred to in Annex 6 to this Act,

c) 'qualification' means economic operator's capacity and ability to perform the public contract,

d) 'request to participate' means data or documents proving the economic operator's qualifications, which were submitted in writing by the economic operator on the basis of procurement documents,

e) 'indicative tender' means data or documents which were submitted in writing by the economic operator to the contracting authority on the basis of procurement documents,

f) 'tender' means data or documents, which were submitted in writing by the economic operator to the contracting authority on the basis of procurement documents,

g) 'identification data' means the corporate name or name, registered office, legal form, where a legal person is concerned and the corporate name or name or given name and surname, where a natural person is concerned,

h) 'selected economic operator' means a participant which the contracting authority selected to be awarded the contract,

i) 'electronic tool' means software or, where applicable, its parts which are connected to it by a network or electronic communication service and by means of this network or service it enables receipt of

- 1. tenders,
  - 2. indicative tenders,
  - 3. requests to participate,
  - 4. requests to be admitted to the qualification system pursuant to Section 166 (5),
  - 5. requests to participate or designs in design contests, or
  - 6. auction values in electronic auctions,
- by electronic means and the processing of such receipts using digital compression and storage of data and making records of performed tasks which form an integral part of their software,

j) 'contracting authority profile' means an electronic tool which enables unlimited remote access and in which the contracting authority publishes information and documents relating to its public contracts,

k) 'life cycle' means all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the subject-matter of the supply or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of



service or utilisation,

l) 'label' means any document, certificate or attestation confirming that the supply, service, works, process or procedures meet certain requirements,

m) 'electronic auction' means a repetitive electronic process in which participants present, by means of the electronic tool, new prices, revised downwards, or new values corresponding to different evaluation criteria, and which enables the formation of an up-to-date rank of tenders using automatic evaluation methods,

n) 'military material' means arms, munition and other material which is specifically designed, constructed or adapted for military purposes; the list of military material is referred to in Annex 1 to this Act,

o) 'abnormally low price' means tender price or costs presented by the participant which appear to be abnormally low in relation to the subject-matter of the public contract.

(2) If the request to participate, indicative tender or tender was not delivered to the contracting authority within the time limit or in the manner laid down in the procurement documents it shall not be considered as submitted and it shall not be taken into consideration during the procurement procedure.

## TITLE IV

### EXCLUSIONS

#### Section 29

##### General exclusions

The contracting authority is not obliged to award the public contract using the procurement procedure

a) where the conduct of the procurement procedure would threaten protection of the basic security interests of the Czech Republic and simultaneously any measures to enable the conduct of the procurement procedure may not be adopted,

b) where confidential information would be disclosed<sup>5)</sup>

1. by publication of the contract notice,

2. by publication of the written invitation to tender in the simplified below-threshold procedure, or

3. by making available or providing procurement documents unless it is possible to adopt measures pursuant to Section 36 (8) which would enable the conduct of the procurement procedure.

c) where special security measures, in accordance with other legal regulations<sup>6)</sup>, apply with regard to the award or performance of public contracts and simultaneously any such measure to enable the conduct of the procurement procedure may not be adopted,

d) where its main purpose is to enable the contracting authority to provide or operate a public communications network or to provide to the public one or more electronic communications services<sup>7)</sup>,

e) where it is awarded pursuant to special rules laid down in an international agreement concluded between the Czech Republic and non-Member State or subdivisions thereof and covering supplies, services or works intended for the joint implementation or exploitation of a project by their signatories; the Czech Republic shall inform the European Commission of conclusion of such agreement,

f) where it is awarded according to the binding rules of an international organisation,

g) where it is awarded according to the rules of an international organisation or international financing institution and

1. is fully financed by that organisation or institution, or

2. is co-financed for the most part by that organisation or institution and the contracting authority agreed with it on application of that rules of public procurement,

h) where its subject-matter is acquisition, lease or usufructuary lease of an immovable thing or in rem rights therein,

i) where it is a public contract

1. which is awarded by audiovisual or radio media operator<sup>8)</sup> or audiovisual media service provider on request<sup>9)</sup> for the acquisition, development, production or co-production of programme material intended for broadcasting or distribution, or

2. for purchase of broadcasting time or for programme provision, which is awarded on request to audiovisual or radio media service operators or to audiovisual or radio media service providers,

j) with regard to arbitration, conciliation and similar services,

k) with regard to legal services,

1. which an attorney-at-law provides as a part of representing a client in court, arbitration, conciliation or administrative proceedings before the court, tribunal, or another public authority or in proceedings before international institutions for disputes resolution,

2. which an attorney-at-law provides in preparation of any of the proceedings referred to in subparagraph 1 or where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of proceedings referred to in subparagraph 1,

3. which shall be provided by a notary on the basis of another legal regulation<sup>10)</sup> with regard to document certification and

authentication services, or

4. at which on the basis of another legal regulation<sup>11)</sup> the contracting authority exercises, even occasionally, official authority,

l) with regard to

1. investment services<sup>12)</sup> in connection with the issue, purchase, sale or another transfer of securities including booked securities or other financial instruments<sup>12)</sup>,

2. services provided by the Czech National Bank in exercising its authority under another legal regulation<sup>13)</sup>, or

3. operations conducted with the European Financial Stability Facility and the European Stability Mechanism,

m) with regard to loan for consumption or credit contract,

n) with regard to the services referred to in Annex 2 to this Act provided by persons established for a different purpose than profit-making,

o) with regard to public passenger transport by rail<sup>14)</sup>,

p) with regard to services awarded by a political party or a political movement as a part of an election campaign having as their object advertising campaign, promotional films production or promotional videos production,

q) with regard to a public service contract awarded by a contracting authority to another contracting authority or several contracting authorities on the basis of an exclusive right which they enjoy pursuant to a legal regulation,

r) with regard to a public contract having as its subject-matter research and development services with the exemption of activities referred to in Annex 2 to this Act, if

1. the contracting authority solely pays the price for conduct of research and development and

2. the contracting authority exclusively takes advantage of the benefits of that research and development in the conduct of its own affairs,

s) with regard to a public contract having as its subject matter producing of or trading with military material and such procedure is necessary to protect the essential security interests of the Czech Republic provided that such procedure shall not adversely affect competition on the European Union's internal market with regard to products that are not designed for military purposes, or

t) with regard to a public contract, procurement of which is regulated by special rules stemming from international agreement relating to presence of armed forces of foreign states in the territory of the Czech Republic or deployment of armed forces of the Czech Republic or armed security corps of the Czech Republic (hereinafter referred to as "armed units of the Czech Republic") to the territories of foreign states, which the Czech Republic is bound by.

## Section 30

### Exclusions for below-threshold public contracts

The contracting authority is not obliged to use the procurement procedure to award a below-threshold public contract

a) for supplies or services directly related to visits of constitutional officers of foreign states and representatives authorized by them in the Czech Republic and translation services related to visits of constitutional officers of the Czech Republic and representatives authorized by them abroad,

b) for supplies, services, works provided by the Prison Service of the Czech Republic to the Czech Republic,

c) for supplies or services relating to provision of humanitarian aid<sup>15)</sup>,

d) being awarded by intelligence service pursuant to Act on Intelligence Services,

e) being awarded by a representative office of the Czech Republic abroad or a government department operating and administering abroad,

f) having as its subject-matter acquisition, maintenance or renovation of property of the Czech Republic abroad,

g) having as its subject-matter acquisition of things or a set of things intended for a museum collection<sup>16)</sup>, cultural heritage<sup>17)</sup> or another object having cultural significance<sup>18)</sup>,

h) for purchase of books and other information resources intended for library funds,

i) having as its subject-matter acquisition of an animal for purposes of farming or breeding or for the needs of performance of tasks of armed units of the Czech Republic,

j) having as its subject-matter production, purchase or repairs of military material for armed units of the Czech Republic,

k) being awarded for the purpose of securing defensibility of the Czech Republic by the Ministry of Defence to the person, in which it has exclusive ownership interest or mutually between such persons, or

l) being awarded at the time of deployment of armed units of the Czech Republic outside the territory of the European Union and for the purposes of operational needs it is required for them to be awarded to the contracting authorities situated in territories of that operations.

## Section 31

### **Exclusions for small-scale public contracts**

The contracting authority is not obliged to use the procurement procedure to award the small-scale public contract. However, when awarding a small-scale public contract, the contracting authority shall comply with principles laid down in Section 6.

## TITLE V

### **MIXED PROCUREMENT**

## Section 32

(1) For the purposes of this Act, mixed contract means a contract which is partly a public contract that the contracting authority shall award using the procurement procedure and partly a contract to which such obligation does not apply.

(2) In the case of a mixed contract which parts are objectively separable, the contracting authority may award separate contracts for its separate parts or award it as a single public contract.

(3) Where the contracting authority awards a mixed contract as a single contract and it is not the case covered by subsection 4, it shall use the procurement procedure to award it. The contracting authority shall determine the estimated value of a mixed contract according to the value of the part which it is obliged to award using the procurement procedure.

(4) The contracting authority is not obliged to use the procurement procedure to award a mixed contract where its parts are objectively not separable and

a) exclusion pursuant to Section 29 a) b) c) or s) applies to one of its parts, or

b) the contracting authority is not obliged to award the part of the public contract using the procurement procedure and the remaining part constitutes a public contract in the fields of defence and security.

## **BOOK TWO**

### **BASIC PROVISIONS GOVERNING PUBLIC PROCUREMENT PROCEDURES**

## Section 33

### **Preliminary market consultations**

The contracting authority may conduct market consultations with experts or economic operators with a view to preparing procurement documents and informing economic operators of its plans and requirements, provided that it does not distort competition; provisions of Section 211 (1) apply by analogy.

## Section 34

### **Prior information notice**

The contracting authority is entitled to publish its intention to commence a procurement procedure through publication of a prior information notice. In that case, the contracting authority shall send the prior information notice for publication in the manner described in Section 212.

## Section 35

### **Public contracts divided into lots**

The contracting authority may divide a public contract into several lots, provided that it will not thus circumvent its duties laid down by this Act. Where the contracting authority awards several lots of a public contract within one procurement procedure, it shall determine the extent of these lots and set the rules for the participation of economic operators in the individual lots and for the awarding of these lots.

## Section 36

### **Award criteria**

(1) The award criteria shall not be determined so as to give, directly or indirectly, certain economic operators undue competitive advantage, or so as to create unjust obstacles to competition.

(2) The contracting authority shall specify the award criteria in the procurement documents or communicate them to participants during the negotiations.

(3) The contracting authority shall lay down the award criteria and provide them to economic operators in such detail that is necessary for the participation of economic operators in the procurement procedure. The contracting authority may not transfer its responsibility for the accuracy and completeness of the award criteria to the economic operators.

(4) Where any part of the procurement documents has been drafted by a person other than the contracting authority, with the exception of an attorney-at-law or a tax adviser, the contracting authority shall mark this part, along with identifying the person who drafted it. Provided that the procurement documents contain information that has resulted from a preliminary market consultation, the contracting authority shall mark such information in the procurement documents, identify the persons who have taken part in the preliminary market consultation and provide all essential information that was the subject of the preliminary market consultation.

(5) The contracting authority is entitled to set time limits necessary for the conduct of the procurement procedure. The length of the time limits shall be set so as to ensure reasonable time to complete the actions requested from the economic operators.

(6) Where appropriate, the contracting authority may enable a visit to the site of performance.

(7) After the commencement of the procurement procedure, the award criteria may be amended or supplemented only where provided for in this Act.

(8) The contracting authority may require the economic operator to adopt reasonable measures to protect the confidential nature of the information that the contracting authority provides or makes available in the conduct of the procurement procedure.

(9) The contracting authority may award prizes or payments to all or some of the participants provided that it lays down the rules for their award in the procurement documents.

#### Section 37

##### **Conditions for participation in procurement procedure**

(1) The contracting authority may lay down the conditions for participation in the procurement procedure as

- a) qualification conditions,
- b) technical specifications defining the subject-matter of the public contract, including conditions for the treatment of industrial or intellectual property rights created in connection with the performance of the public contract,
- c) business terms or other contractual conditions relating to the subject-matter of the public contract, or
- d) special conditions for the performance of the public contract, including, but not limited to, conditions regarding the environmental impact of the subject-matter of the public contract, social consequences resulting from the subject-matter of the public contract, the economic sphere or innovations.

(2) The contracting authority may lay down conditions for the content, form or means of submitting requests to participate, indicative tenders or tenders.

(3) The contracting authority shall not require an economic operator to have a specific legal form as a condition for participation in the procurement procedure.

(4) Economic operators offering to perform a public contract jointly shall not be required by the contracting authority to have a specific form of cooperation as a condition for participation in the procurement procedure. Where necessary for due performance of a public contract, the contracting authority may allow or require in the procurement documents that selected economic operators offering to perform the public contract jointly adopt a specific form of cooperation in order to perform the public contract.

(5) The contracting authority shall allow natural as well as legal persons to participate in a procurement procedure even where the service to be provided under the public contract may, in accordance with Czech law, be provided solely by a natural person or solely by a legal person, provided that the economic operator is entitled to provide such a service pursuant to the law of the Member State where it has its registered office.

(6) The contracting authority may reserve the right to participate in procurement procedure to certain economic operators pursuant to Section 38.

(7) The government may lay down by a decree

- a) some binding conditions for participation in procurement procedure in certain categories of public contracts as well as the extent of their application, or
- b) more detailed conditions for the assessment of the reasonableness of some of the conditions for participation in procurement procedure as well as the extent of their application.

#### Section 38

##### **Reserved public contracts**

(1) If so stipulated by the contracting authority in the contract notice or in the invitation to tender in a simplified below-threshold procedure, only an economic operator operating a sheltered workshop where at least 50 % of its total number of employees are disabled workers under the employment law may participate in the procurement procedure.

(2) The fact that the economic operator employs at least 50 % of disabled persons out of the total number of its employees in a sheltered workshop under Section 38 (1) shall be indicated in its tender along with a certificate from the Employment Office of the Czech Republic; the average adjusted number of employees for the calendar quarter preceding the commencement of the procurement procedure shall be conclusive.

(3) The fulfilment of conditions set out in Section 38 (1) may not be proven by other persons. In the event of joint participation in a procurement procedure each participant shall prove the fulfilment of the conditions set out in subsection (1) separately.

#### Section 39

##### **Conduct of procurement procedure**

1) When conducting the procurement procedure, the contracting authority shall act pursuant to the provisions of this Act, while simultaneously observing the defined award criteria. Where rules for the conduct of the procurement procedure are not laid down by this Act, they shall be determined by the contracting authority pursuant to the principles set out in Section 6.

(2) When conducting a procurement procedure, the contracting authority shall select the economic operator from among the participants on the basis of

- a) an assessment of the fulfilment of the conditions for participation in the procurement procedure,
- b) a reduction of the number of participants or a reduction of the number of indicative tenders or solutions provided that it is allowed by this Act for the specific type of procurement procedure and reserved by the contracting authority,
- c) an evaluation of tenders.

(3) The contracting authority shall define the criteria for a reduction of the number of participants or reduction of the number of indicative tenders or solutions or evaluation of tenders, where such criteria express objective and verifiable facts relating to

- a) the subject-matter of the public contract, including the environmental impact of the subject-matter of the public contract and social consequences resulting from the subject-matter of the public contract, or
- b) the qualifications of the economic operator.

4) Unless otherwise stipulated by this Act, the contracting authority may assess the fulfilment of the conditions for participation in the procurement procedure before or after the evaluation of tenders. In respect of the selected economic operator, the contracting authority shall carry out an evaluation of its fulfilment of the conditions for participation in the procurement procedure and an evaluation of its tender in any case.

(5) The contracting authority shall assess the fulfilment of the conditions for participation or evaluate the criteria pursuant to subsection (3) on the basis of data, documents, samples or models provided by the participant. The contracting authority may verify the credibility of the data, documents, samples or models provided and it may also acquire them itself. The contracting authority may subject the samples to tests and rely on the outcomes of such tests.

(6) If the participant has submitted samples, the contracting authority shall return or pay the value of these samples without undue delay, upon the participant's written request and after the completion of the procurement procedure. In the procurement documents, the contracting authority may reserve to the economic operator the duty to take over the submitted samples after the completion of the procurement procedure.

#### Section 40

##### **Award period**

(1) The contracting authority may lay down an award period, which shall be understood as a time limit throughout which the participants may not withdraw from the procedure. The award period shall run from the expiry of the time limit for the submission of tenders. The award period shall be set out reasonably with regard to the type of the procurement procedure and the subject-matter of the public contract.

(2) The award period shall be suspended for the period of time during which the contracting authority shall not enter into a contract pursuant to Section 246.

(3) The contracting authority shall send notice of the selection of the economic operator within the award period, unless

- a) it agrees otherwise with the participants, or
- b) the procurement procedure was terminated before the expiry of the award period.

(4) If the contracting authority, contrary to subsection (3), does not send the notice of the selection of an economic operator within the award period, the procurement procedure is conclusively presumed to be terminated. In that case, the contracting authority shall reimburse the participants for the costs reasonably incurred in connection with their participation in the procurement procedure.

## Section 41

### Security

(1) If the contracting authority sets an award period, it may require in the procurement documents the participant to provide a security within the time limit for the submission of tenders.

(2) The contracting authority shall establish the amount of the security in the procurement documents as an absolute sum amounting up to 2 % of the estimated value of the public contract, or up to 5 % of the estimated value of the public contract in the case that an electronic auction is used.

(3) The participant shall provide the security in the form of

- a) a deposit of a sum of money into the account of the contracting authority (hereinafter referred to as 'the pecuniary security').
- b) a bank guarantee to the benefit of the contracting authority, or
- c) a suretyship insurance to the benefit of the contracting authority.

(4) The participant shall demonstrate in its tender that it has provided the security

- a) by communicating to the contracting authority the data of the payment made, where a pecuniary security is concerned,
- b) by submitting the original of a guarantee certificate containing the obligation to pay a security to the contracting authority under the conditions laid down in subsection (8), where a bank guarantee is concerned, or
- c) by submitting a written declaration of the insurer containing the obligation to pay a security to the contracting authority under the conditions laid down in subsection (8), where suretyship insurance is concerned.

(5) If the security is provided in the form of a bank guarantee or suretyship insurance, the participant shall ensure that it stays in force throughout the entire award period.

(6) The contracting authority shall return without undue delay the pecuniary security, including interest accounted by the relevant financial institution, the original of the guarantee certificate or the written declaration made by the insurer

- a) after the expiry of the award period, or
- b) after the participation of the participant in the procurement procedure terminates before the end of the award period.

(7) The contracting authority is obliged to keep a copy of the guarantee certificate or the written declaration of the insurer in the procurement documents.

(8) The contracting authority is entitled to payment from the security, including interest accounted by the relevant financial institution, provided that the participant's participation in the procurement procedure terminated after its exclusion pursuant to Section 122 (5) or Section 124 (2).

## Section 42

### Committee and invited experts

(1) The contracting authority may entrust a committee to carry out actions pursuant to this Act; without prejudice to the other legal regulations governing the method of decision-making by the contracting authority and to the responsibility of the contracting authority for complying with the provisions set out by this Act. For the purposes of this Act, the actions made by the committee shall be regarded as acts made by the contracting authority.

(2) In respect of public contracts with an estimated value exceeding CZK 300,000,000, the contracting authority shall ensure that the evaluation of tenders is carried out by a committee having at least 5 members, with a majority of them possessing relevant professional qualifications related to the subject-matter of the public contract.

(3) The contracting authority may also use the opinions of invited experts for its decision-making; this does not affect the responsibility of the contracting authority for complying with the provisions set out by this Act.

## Section 43

### Contractual representation of the contracting authority

(1) When carrying out actions under this Act related to a procurement procedure, the contracting authority may have another person to represent it on the grounds of the contract. This does not affect the responsibility of the contracting authority for complying with the provisions set out by this Act.

(2) The representative shall not carry out a selection of an economic operator, exclude a participant from the procurement procedure, cancel the procurement procedure or make a decision on objections; this does not apply to a corporate agent or a founder representing a partially budget-funded organisation the founder of which is the representative.

## Section 44

### Conflict of interest

(1) The contracting authority shall act so as no conflict of interest occurs. In the case of the procedure under Section 42 or Section 43, the contracting authority shall request a written declaration from all committee members, invited experts or persons representing the contracting authority confirming that they have no conflict of interest. If the contracting authority finds out that a conflict of interest has occurred, it will adopt corrective measures to remove it.

(2) A conflict of interest means a situation where the interests of the persons that

a) are involved in the conduct of the procurement procedure, or

b) have or could have an influence on the result of the procurement procedure, endanger their impartiality or independence in relation to the procurement procedure.

(3) For the purposes of this Act, a conflict of the persons stated under subsection (2) shall be understood as an interest in acquiring a personal advantage or reducing the property or other benefit of the contracting authority.

## Section 45

### Submission of documents

(1) Where this Act or the contracting authority requires a document to be submitted, the economic operator shall submit a copy of the document, unless this Act stipulates otherwise. When proceeding under Section 46 (1), the contracting authority may require the submission of the original or certified copy of the document.

(2) Where the contracting authority requires a document to be submitted and the economic operator is not able to submit the requested document for reasons that cannot be attributed to it, the economic operator is entitled to submit an equivalent document.

(3) Where this Act or the contracting authority requires a document to be submitted pursuant to the legal order of the Czech Republic, the economic operator may submit a similar document in accordance with the legal order of the state where this document is issued; this document shall be submitted along with its translation into the Czech language. Where the contracting authority has doubts regarding the correctness of the translation, it may require the submission of a certified translation of the document into the Czech language made by a court appointed interpreter/translator registered in the list of court appointed experts and interpreters/translators<sup>19)</sup>. A document in the Slovak language and a certificate of education in the Latin language shall be submitted without a translation. Where pursuant to the relevant legal order the required document is not issued, it may be substituted by an affirmation.

(4) The economic operator may comply with the duty to submit a document by making a reference to relevant information kept in the public administration information system<sup>20)</sup> or in a similar system kept in another Member State that enables unlimited long-distance access. Such a reference shall contain the internet address, credentials and data for the lookup of the requested information, where such data is necessary.

## Section 46

### Explanation or supplementing of data, documents, samples or models

(1) In order to ensure the proper conduct of the procurement procedure, the contracting authority may require a participant to explain the data, documents, samples or models submitted or to supplement other or missing data, documents, samples and models within a reasonable time limit. The contracting authority may make such a request repeatedly and may even extend the prescribed time limit or waive a lapsed time limit.

(2) After the expiry of the time limit for the submission of tenders, the tender cannot be altered, unless this Act stipulates otherwise; however, upon request made under subsection (1), the tender may be supplemented with data, documents, samples or models that will not be evaluated according to the evaluation criteria. In that case, a supplementation of the data providing a proof of the fulfilment of the conditions for participation shall not be considered an alteration of the tender, whereas the facts conclusive for assessing the fulfilment of the conditions for participation may occur even after the expiry of the time limit for the submission of tenders.

(3) An amendment of an itemized budget shall also be considered an explanation, provided that the total tender price or another criterion for evaluating tenders is not affected.

## Section 47

### Participant

(1) An economic operator becomes a participant at the moment when

a) it expresses a preliminary interest pursuant to Section 58 (5) or Section 129 (4),

b) it submits a request to participate or a tender, or

c) it commences negotiations with the contracting authority within the procurement procedure.

(2) The participation of a participant excluded from the procurement procedure terminates at the moment when

- a) the time limit for the submission of objections against exclusion expires, provided that the participant has not filed any objections,
- b) in the event that the participant files such objections, the time limit for submitting a petition under Section 251 (2) or (3) expires, provided that the participant has not submitted such a petition, or
- c) in the event that the participant submits a petition under Section 251 (1), a decision on a discontinuance of administrative proceedings or a rejection of the tender comes into effect.

(3) When evaluating tenders or carrying out an electronic auction, the contracting authority is not obliged to take account of the participant excluded from the procurement procedure whose participation in the procurement procedure has not yet terminated; this does not apply to a situation where the exclusion of a participant from a procurement procedure has been cancelled.

(4) The participation in a procurement procedure also terminates

- a) by a withdrawal of the participant from the procurement procedure at a time other than during the award period, or
- b) by the expiry of the time limit for the submission of requests to participate, indicative tenders or tenders in respect of participants who have not submitted a request to participate, an indicative tender or a tender.

## Section 48

### Exclusion of a participant from a procurement procedure

(1) The contracting authority may exclude a participant from a procurement procedure at any time during the procurement procedure only on the grounds laid down by this Act.

2) The contracting authority may exclude a participant from a procurement procedure provided that the data, documents, samples or models submitted by the participant

- a) do not meet the award criteria or the participant has not submitted them within the prescribed time limit,
- b) have not been explained or supplemented by the participant upon request made pursuant to Section 46, or
- c) do not correspond to reality and have had or can have an influence on the assessment of the conditions for participation or on the fulfilment of the evaluation criteria.

(3) The contracting authority shall exclude a participant from the procurement procedure if the participant has failed to provide proof of the payment of the requested security or has failed to ensure the security for the entire duration of the award period.

(4) The contracting authority may exclude a participant from the procurement procedure provided that the tender submitted by the participant contains an abnormally low tender price that has not been justified by the participant.

(5) The contracting authority may exclude a participant from the procurement procedure on grounds of unsuitability provided that it demonstrates that

- a) the performance offered by the economic operator would result in a failure to comply with the duties set out in provisions of environmental, social and labour law or collective agreements relating to the subject-matter of the public contract.
- b) there is a conflict of interest, and another corrective measure, except for a cancellation of the procurement procedure, is not possible,
- c) competition has been distorted by a previous involvement of the participant during preparations for the procurement procedure, other corrective measures are not possible and the participant has failed to prove upon the contracting authority's request that competition has not been distorted,
- d) in the past 3 years from the commencement of the procurement procedure, the participant has shown grave or long-term deficiencies while performing a prior contract with the contracting authority awarding the public contract or with another contracting authority, which caused damage, led to an early termination of the prior contract or other comparable sanctions,
- e) the participant has made an unjustified attempt to influence the decision made by the contracting authority within the procurement procedure or has made an unjustified attempt to obtain non-public information that could provide it with undue advantages during the procurement procedure, or
- f) in the past three years prior or after to the commencement of the procurement procedure, the participant committed a grave professional misconduct, which renders its integrity questionable, including a misconduct for which it has been imposed a disciplinary punishment or a disciplinary measure under separate legal regulations<sup>21)</sup>.

(6) The contracting authority may also exclude a participant from the procurement procedure on the grounds of unsuitability provided that the contracting authority has sufficiently plausible indications based on trustworthy information to conclude that the participant has, in relation to the public contract, being awarded entered into a contract prohibited by another legal regulation<sup>22)</sup> with other persons .



7) The contracting authority may exclude from the procurement procedure a participant that is a joint-stock company or has a legal form similar to a joint-stock company and has issued other than exclusively booked shares.

(8) The contracting authority shall exclude a selected economic operator from participation in the procurement procedure provided that the contracting authority finds out that there are grounds for exclusion pursuant to subsection (2) or that it may prove that there are grounds for exclusion pursuant to paragraphs a) b) c) of subsection (5).

(9) In respect of the selected economic operator, the contracting authority shall verify that there are grounds for exclusion pursuant to subsection (7) on the basis of information kept in the Commercial Register. Provided that the information kept in the Commercial Register shows that there are grounds for exclusion pursuant to subsection (7), the contracting authority shall exclude the participant from the procurement procedure. If the selected economic operator has its registered office abroad and is a joint-stock company or has a legal form similar to a joint-stock company, the contracting authority shall require it to submit an affirmation in writing within a reasonable time limit showing which persons are holders of shares whose aggregate nominal value exceeds 10 % of the registered capital of the participant, and indicating the source on which the information on the amount of the share of shareholders is based; this request shall be considered a request under Section 46.

(10) The provisions of Section 48 (7) and (9) do not apply to a participant that is a joint-stock company whose shares in the aggregate nominal value of 100 % are owned by a municipality pursuant to the Act on Municipalities or by a region pursuant to the Act on Regions.

(11) The contracting authority shall send a notice of the exclusion of a participant from the procurement procedure with an explanation to the excluded participant without delay.

#### Section 49

##### **Corrective measures**

(1) Where the contracting authority establishes that it has proceeded contrary to this Act, it shall adopt a necessary and reasonable corrective measure at any time in the conduct of the procurement procedure. For the purposes of this Act, a corrective measure means actions carried out by the contracting authority that remedies the previous procedure that is in breach of this Act.

(2) The contracting authority shall adopt a corrective measure consisting in cancelling the decision to cancel the procurement procedure if it finds out that this decision has been made contrary to law, even if it has not obtained objections against such a decision; the contracting authority may, however, adopt such a corrective measure only within the time limit within which participants could file objections against the decision to cancel the procurement procedure.

#### Section 50

##### **Notice of selection**

The contracting authority shall send a notice of selection to all participants, specifying the identification data of the selected economic operator and the justification of the selection, unless otherwise provided below.

#### Section 51

##### **Termination of procurement procedure**

1) A procurement procedure is terminated by the conclusion of a contract or a framework agreement, by setting up a dynamic purchasing system or, in the event that the procurement procedure is cancelled, at the moment stipulated in subsection (2).

(2) If a procurement procedure is cancelled, it is terminated

a) at the moment of expiry of the time limit in which all participants could file objections against the cancellation of the procurement procedure by the contracting authority, where such objections have not been filed,

b) in the event that objections against the cancellation of the procurement procedure by the contracting authority have been filed, at the moment of expiry of the time limit for the submission of a petition pursuant to Section 251 (2) or (3), where the petition has not been submitted,

c) in the event that a petition was submitted pursuant to Section 251 (1) against the cancellation of the procurement procedure by the contracting authority, at the moment when a decision to discontinue the administrative proceedings or a rejection of the petition comes into force, or

d) at the moment when a decision to cancel the procurement procedure under Section 263 comes into force.

(3) The contract or framework agreement shall comply with the award criteria and the tender submitted by the selected economic operator and shall be made in writing.

(4) Before the termination of the procurement procedure, the contracting authority may commence a procurement procedure with a similar subject-matter of the public contract only where

a) it is required so by the operating needs of the contracting authority and

b) the public contract will only be awarded to the necessary extent and for a necessary period of time.

## **BOOK THREE**

### **BELOW-THRESHOLD REGIME**

#### Section 52

##### **Choice of procurement procedures**

To award a public contract in the below-threshold regime, the contracting authority may apply

- a) a simplified below-threshold procedure, with the exception of a public works contract whose estimated value exceeds CZK 50,000,000, or
- b) types of above-threshold procedures; in that case the contracting authority shall proceed pursuant to Book Four by analogy, whereas
  1. the contracting authority may apply a negotiated procedure with prior publication even if the conditions set out in Section 60 are not met,
  2. a negotiated procedure without prior publication shall comply with the condition of impossibility to observe the time limits for a simplified below-threshold procedure, provided that it concerns a below-threshold public contract that could otherwise be awarded by the contracting authority in a simplified below-threshold procedure,
  3. the provisions of Book Four apply to the time limits laid down in Section 54.

#### Section 53

##### **Simplified below-threshold procedure**

(1) The contracting authority shall commence a simplified below-threshold procedure by publication of an invitation to tender on the contracting authority profile under Section 214 by which it shall call an unlimited number of economic operators to submit tenders. The contracting authority may send the invitation only to some economic operators, in which case the invitation shall be sent to at least 5 economic operators. The invitation to tender shall contain the elements defined in Annex No. 6 to this Act.

(2) The contracting authority shall not negotiate the submitted tenders with the participants.

(3) The procurement documents shall be made public on the contracting authority profile for the entire duration of the time limit for the submission of tenders. Provisions of sections 96 to 100 apply to the procurement documents and award criteria by analogy; this does not apply to the time limit for the publication of explanation of the procurement documents under Section 98 (1) a) and to the time limit for a visit to the site of performance under Section 97.

(4) The contracting authority may apply individual procurement procedure rules to the above-threshold regime. The contracting authority may also apply other criteria for the qualification of economic operators than those specified in Book Four; provisions of sections 81 to 85, 87 and 88 apply by analogy. Economic operators shall submit their qualification documents within their tenders in copies and may substitute them by an affirmation or a European Single Procurement Document pursuant to Section 87. When conducting the procurement procedure, the contracting authority may request the submission of the originals or certified copies of the qualification documents. Documents demonstrating basic qualifications under Section 74 and professional qualifications under Section 77 (1) shall demonstrate the fulfilment of the required qualification criterion not later than 3 months before the date of the submission of the tender. The contracting authority is not entitled to reduce the number of participants pursuant to Section 111 or reduce the number of indicative tenders pursuant to Section 112. In respect of the technical requirements of a public works contract, Section 92 apply by analogy.

(5) If the contracting authority reserves the right to do so in the procurement documents, it may publish the notice of exclusion of a participant from the procurement procedure or the notice of selection of an economic operator on the contracting authority profile. In that case, the notices shall be considered to be delivered to all participants at the moment of their publication.

(6) In respect of the submission and evaluation of tenders and the selection of an economic operator, sections 107 to 110 and 114 to 122 apply by analogy. The contracting authority may also set criteria other than those stipulated in Section 116 as criteria of quality, provided that they are based on objective facts relating to the person of the economic operator or to the subject-matter of the public contract. The contracting authority shall allow all participants upon their request to inspect the written report on the evaluation of tenders and to make extracts, copies or transcripts.

(7) The procedure used for terminating a procurement procedure is governed by the provisions of sections 124 to 127 by analogy.

(8) The contracting authority shall publish the notice of cancellation of a simplified below-threshold procedure on the contracting authority profile within 5 working days from the decision to cancel the procurement procedure.

#### Section 54

##### **Time limits for below-threshold public contracts**

(1) The time limit for the submission of tenders in a simplified below-threshold procedure shall be set by the contracting authority for not less than 11 working days from the commencement of the procurement procedure.

(2) The time limit for the submission of tenders in an open procedure shall be set by the contracting authority for not less than

a) 15 working days from the commencement of the procurement procedure in the case of public supply contracts and public service contracts, or

b) 20 working days from the commencement of the procurement procedure in the case of public works contracts.

(3) The contracting authority shall set the time limit for not less than 15 working days from the commencement of the procurement procedure or from sending a call for publication in the case of

a) a request to participate in a restricted procedure or in a negotiated procedure with prior publication,

b) an indicative tender in a negotiated procedure with prior publication, or

c) a tender in a restricted procedure.

(4) The time limit specified in Section 54 (2) may be shortened by up to 5 working days in the event that the contracting authority has published a prior information notice which was sent for publication between 16 working days and 12 months before the date on which the contract notice was sent.

5) In respect of a below-threshold public contract, the contracting authority shall publish the explanation of the procurement documents not less than 4 working days before the expiry of the time limit for the submission of tenders.

(6) In respect of a below-threshold public contract, the contracting authority shall set the time limit for a visit to the site of performance so that it could take place not later than 5 working days before the expiry of the time limit for the submission of tenders.

## **BOOK FOUR**

### **ABOVE-THRESHOLD REGIME**

#### **TITLE I**

##### **CHOICE OF THE TYPE OF PROCUREMENT PROCEDURE**

###### **Section 55**

Where awarding a public contract in the above-threshold regime, the contracting authority may apply an open procedure or a restricted procedure as well as, provided that the conditions stipulated below are fulfilled, a negotiated procedure with prior publication, a negotiated procedure without prior publication, a competitive dialogue procedure or an innovative partnership procedure.

#### **TITLE II**

##### **OPEN PROCEDURE**

###### **Section 56**

(1) The contracting authority shall commence the open procedure by sending a contract notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit tenders.

(2) The contracting authority shall not negotiate the submitted tenders with the participants.

(3) Economic operators shall submit their qualification documents within their tenders.

###### **Section 57**

##### **Time limits in an open procedure**

(1) The contracting authority shall set the time limit for the submission of tenders in an open procedure for not less than 30 days from the commencement of the procurement procedure. The time limit for the submission of tenders shall be extended

a) by five days in the event that the contracting authority does not allow tenders to be submitted by electronic means,

b) by five days in the event that the contracting authority proceeds pursuant to Section 96 (2); this does not apply to cases referred to in paragraph b) of subsection (2).

(2) In respect of public supply contracts or public service contracts, the time limit for the submission of tenders may be shortened to not less than 15 days where

a) the contracting authority published a prior information notice which was sent for publication between 35 days and 12 months before the date on which the contract notice was sent, or

b) urgent circumstances unforeseeable by and not attributable to the contracting authority renders impracticable the time limit laid down in subsection (1); the contracting authority shall justify such urgency in the procurement documents.

### TITLE III

## RESTRICTED PROCEDURE

### Section 58

(1) The contracting authority shall commence the restricted procedure by sending a contract notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit requests to participate.

(2) The contracting authority defined in Section 4 (1) c) d) e) may also commence the restricted procedure by sending a prior information notice under Section 34 for publication in the manner specified in Section 212 provided that it invites economic operators to express preliminary interest. In this case, by sending the prior information notice the contracting authority fulfils the duties for which this Act otherwise requires sending a contract notice.

(3) After the expiry of the time limit for the submission of requests to participate, the contracting authority shall assess the qualifications of participants, exclude from the procurement procedure those participants who have not demonstrated that they meet the qualification requirements, and invite the non-excluded participants to submit tenders. The invitation to tender shall contain the elements defined in Annex No. 6 to this Act.

(4) A tender may only be submitted by a participant who has been invited to submit a tender. The invited participants may not submit a joint tender. The contracting authority shall not negotiate the submitted tenders with the participants.

(5) If the restricted procedure is commenced by the sending of a prior information notice, economic operators may express their preliminary interest in any form. The contracting authority shall invite in writing all participants who have expressed preliminary interest to submit requests to participate. The invitation to submit requests to participate shall contain the elements defined in Annex No. 6 to this Act. The contracting authority shall send the invitation to submit requests to participate not sooner than 35 days from sending the prior information notice for publication and not later than 12 months after sending the prior information notice for publication.

### Section 59

#### Time limits in a restricted procedure

(1) The contracting authority shall set the time limit for the submission of requests to participate for not less than 30 days from the commencement of the restricted procedure or from the sending of the invitation to submit requests to participate where the restricted procedure is commenced by means of sending a prior information notice.

(2) The contracting authority shall set the time limit for the submission of tenders for not less than 25 days from the sending of the invitation to tender. This time limit shall be extended

a) by five days in the event that the contracting authority does not allow tenders to be submitted by electronic means,

b) by five days in the event the the contracting authority proceeds pursuant to Section 96 (2); this does not apply to cases referred to in subsection (5).

(3) The contracting authority defined in Section 4 (1) c) d) e) may set the time limit for the submission of tenders for not less than 10 days from sending the invitation to tender; this time limit may be shortened upon a written consent of all participants in the procurement procedure.

(4) The time limit for the submission of tenders may be shortened to not less than 10 days from the sending of the invitation to tender in the event that the contracting authority has published a prior information notice which was not used as a means of commencing procurement procedure and which was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

(5) If urgent circumstances render it impracticable to apply the time limit under subsection (1), the time limit for the submission of requests to participate may be shortened to not less than 15 days from the commencement of the procurement procedure and the time limit for the submission of tenders may be shortened to not less than 10 days from the sending of the invitation to tender; the contracting authority shall justify such urgency in the procurement documents.

## TITLE IV

### NEGOTIATED PROCEDURE WITH PRIOR PUBLICATION

#### Section 60

##### Conditions for application

(1) The contracting authority may apply a negotiated procedure with prior publication where

- a) the needs of the contracting authority cannot be met without adaptation of the performances that are readily available on the market,
- b) the performance of the public contract includes a proposal for a solution or an innovative solution,
- c) the public contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up connected with the subject-matter of the public contract, or
- d) technical specifications cannot be established by reference to technical documents pursuant to Section 90 (1) and (2).

(2) The contracting authority may also apply a negotiated procedure with prior publication where a previous open or restricted procedure was cancelled pursuant to Section 127 (1).

#### Section 61

##### Conduct of the procedure

(1) The contracting authority shall commence the negotiated procedure with prior publication by sending a contract notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit requests to participate.

(2) The contracting authority specified in Section 4 (1) c) d) e) may also commence the negotiated procedure with prior publication by sending a prior information notice for publication in the manner specified in Section 212, where, by such notice, it invites economic operators to express preliminary interest. In this case, by sending the prior information notice the contracting authority fulfils the duties for which this Act otherwise requires sending a contract notice. Provisions of Section 58 (5) apply by analogy.

(3) In the case of procedure under Section 60 (2), the sending of a contract notice may be replaced by the sending of an invitation to submit indicative tenders provided that the contracting authority carried out the assessment of qualifications in a previous procurement procedure and it will send the invitation to submit indicative tenders to all economic operators who submitted tenders in a previous procurement procedure and proved their qualifications; in such a case, subsection 4 does not apply.

(4) The contracting authority shall indicate in the procurement documents which requirements for the performance of the public contract constitute the minimum technical specifications that shall be met by the tender.

(5) After the expiry of the time limit for the submission of requests to participate, the contracting authority shall assess the conformity of qualifications of the participants and shall reduce the number of the participants pursuant to Section 111 provided that it has reserved the right to do so in the contract notice or in the prior information notice which was used as a means of commencing procurement procedure. The contracting authority shall exclude from the procurement procedure those participants who have not proven that they meet the qualification requirements or that were not selected when the number of participants was being reduced. The contracting authority shall invite the non-excluded participants to submit indicative tenders. The invitation to submit indicative tenders shall contain the elements defined in Annex No. 6 to this Act.

(6) Indicative tenders may only be submitted by a participant who has been invited to submit an indicative tender. The invited participants may not submit a joint indicative tender. The participants may modify their indicative tenders during negotiations with the contracting authority.

(7) The contracting authority shall negotiate the indicative tenders with the participants in order to improve the indicative tenders to the benefit of the contracting authority. Within the negotiations, the number of indicative tenders to be negotiated pursuant to Section 112 may be reduced provided that the contracting authority has reserved the right to do so in the contract notice or in the prior information notice which was used as a means of commencing procurement procedure.

(8) The contracting authority may reserve the right in the procurement documents to not be obligated to negotiate indicative tenders and it may award the public contract on the basis of an indicative tender. In that case, the procedure for the opening of indicative tenders is governed by sections 108 to 110 by analogy.

(9) During the negotiations, the contracting authority shall not provide the participants with information in a discriminatory manner. The contracting authority is entitled to disclose confidential information defined in Section 218 (1) to other participants only on the basis of a written consent granted by the participant in question in relation to the information in question.

(10) During the negotiations, the contracting authority may alter or supplement the award criteria, in particular technical specifications, with the exception of the minimum technical specifications defined in subsection (4). The contracting authority shall inform the participants of such an alteration or supplementation of the award criteria in writing and provide them

with reasonable time to adjust their indicative tenders. The altered award criteria shall still meet the conditions for application of a negotiated procedure with prior publication.

(11) The contracting authority shall inform the participants of the moment at which the negotiations are terminated or of the means of determining such a moment. The contracting authority shall invite the participants to submit tenders. The invitation to tender shall contain the elements defined in Annex No. 6 to this Act.

## Section 62

### **Time limits in a negotiated procedure with prior publication**

(1) The contracting authority shall set the time limit for the submission of requests to participate for not less than 30 days from the commencement of the negotiated procedure with prior publication or from the sending of the invitation to submit requests to participate where the negotiated procedure with prior publication is commenced by means of sending a prior information notice.

(2) The contracting authority shall set the time limit for the submission of indicative tenders for not less than 25 days from the sending of the invitation to submit indicative tenders.

(3) The shortening of the time limit for the submission of requests to participate is governed by Section 59 (5) by analogy. The shortening or extending of the time limit for the submission of indicative tenders is governed by Section 59 (2) to (5) with the necessary modifications.

(4) The contracting authority shall set a reasonable time limit for the submission of tenders that shall start running, at the earliest, from the moment of termination of the negotiations.

## TITLE V

### **NEGOTIATED PROCEDURE WITHOUT PRIOR PUBLICATION**

## Section 63

### **General conditions for application**

(1) The contracting authority may apply a negotiated procedure without prior publication provided that it has not altered substantially the award criteria in comparison with a previous open procedure, restricted procedure or simplified below-threshold procedure in which

- a) no tenders or requests to participate were submitted,
- b) the submitted tenders did not meet the requirements for the subject-matter of the public contract set out by the contracting authority, or
- c) the participants did not meet the conditions for participation in their requests to participate.

(2) The contracting authority shall notify the European Commission, if so requested, of the reason for the application of a negotiated procedure without prior publication pursuant to subsection (1).

(3) The contracting authority may also apply a negotiated procedure without prior publication in a situation where the public contract can only be performed by a certain economic operator because

- a) the subject-matter of the public contract consists in a unique piece of art or performance,
- b) there is no competition for technical reasons, or
- c) it is necessary in order to protect exclusive rights, including intellectual property rights.

(4) The conditions laid down in subsection (3) b) and c) are met only if another procedure cannot be applied and if the contracting authority has not set out the award criteria for the public contract with the aim to eliminate competition.

(5) The contracting authority may also apply a negotiated procedure without prior publication where necessary because of an extreme urgency that was unforeseeable by and not attributable to the contracting authority and the time limits for an open procedure, restricted procedure or negotiated procedure with the publication cannot be observed.

## Section 64

### **Time limits for application of a public supply contract**

In the case of a public supply contract, the contracting authority may also apply a negotiated procedure without prior publication where

- a) the goods supplied are produced solely for the purposes of research, experiment, study or development; such a public contract shall not, however, include a supply intended for large-scale production performed for the purpose of achieving economic profitability or for the purpose of covering research or development related costs incurred by the contracting authority,

b) it concerns additional supplies from the same economic operator that are intended to constitute partial replacement for previous supplies or to extend the current scope of the supply, provided that a change of the economic operator would force the contracting authority to acquire supplies with different technical characteristics, which would result in incompatibility with the original performance or would mean unreasonable technical difficulties in operation and maintenance; the additional supplies pursuant to this paragraph may be acquired not later than three years from the conclusion of the original contract, unless a longer period is justified by specific circumstances,

c) it concerns supplies purchased on commodity exchanges<sup>23)</sup>, or

d) it concerns supplies that are acquired under particularly advantageous conditions from an economic operator who is in liquidation or, in the event that insolvency proceedings have been launched against the economic operator, from a person authorised to dispose of the insolvency estate.

#### Section 65

##### **Conditions for application of a public service contract**

(1) In the case of a public service contract, the contracting authority may also apply a negotiated procedure without prior publication provided that the public contract is being awarded in connection with a design contest pursuant to Section 143, under rules of which the contracting authority intends to award the public contract to the design contest participant whose design will be selected. If several designs are selected, the contracting authority shall invite all design contest participants whose designs have been selected to negotiate in a negotiated procedure without prior publication.

(2) The estimated value of the public contract awarded pursuant to subsection (1) shall include the estimated amount of prices, remunerations and other payments that the contracting authority shall provide to the design contest participants.

(3) The actual implementation of the design shall not constitute the subject-matter of the public contract awarded pursuant to subsection (1). This does not apply to cases where it is justified by the nature of the subject-matter of the design contest.

#### Section 66

##### **Conditions for application of a public service contract or a public works contract**

In the case of a public service contract or a public works contract, the contracting authority may also apply a negotiated procedure without prior publication if the contract provides for new services or new works that consist in repetition of services or works similar to those provided for in the original public contract and corresponding to the original public contract, provided that

a) the new services or new works will be awarded to the same economic operator,

b) the procurement documents of the original procurement procedure, commencement of which was published in the manner set out in Section 212 or Section 53 (1), indicated, pursuant to Section 100 (3), the possibility to award the public contract for new services or new works in a negotiated procedure without prior publication and simultaneously specified the extent of new services or new works,

c) the estimated value of the public contract for new services or new works was included, in accordance with Section 16 (3), in the estimated value of the original public contract,

d) the negotiated procedure without prior publication will be commenced within three years from the date of the conclusion of the original public contract, and

e) the real price of the public contract for new services or new works excluding value added tax will not exceed their estimated value by more than 30 % and will not exceed 30 % of the price of the original public contract.

#### Section 67

##### **Conduct of the procedure**

(1) The contracting authority shall commence the negotiated procedure without prior publication by sending an invitation to negotiate, an invitation to tender or by commencing negotiations with an economic operator.

(2) In a negotiated procedure without prior publication, the contracting authority shall negotiate the conclusion of a contract. During the negotiations, the contracting authority may alter the award criteria. The altered award criteria shall, however, still meet the conditions for application of a negotiated procedure without prior publication.

#### TITLE VI

##### **COMPETITIVE DIALOGUE**

#### Section 68

(1) The contracting authority is entitled to apply a competitive dialogue procedure provided that conditions stipulated in Section 60 are met.

(2) The contracting authority shall commence the competitive dialogue procedure by sending a contract notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit requests to participate.

(3) The contracting authority shall set the time limit for the submission of requests to participate for not less than 30 days from the commencement of the procurement procedure. This time limit shall be extended by five days in the event that the contracting authority does not allow tenders to be submitted by electronic means. In the procurement documents, the contracting authority shall define an indicative timeframe for the competitive dialogue.

(4) The contracting authority shall assess the conformity of requests to participate with the award criteria and reduce the number of participants pursuant to Section 111 provided that it has reserved the right to do so in the contract notice. The contracting authority shall exclude from the procurement procedure those participants whose requests to participate do not meet the award criteria or that were not selected when the number of participants was being reduced. The contracting authority shall invite the non-excluded participants to participate in a competitive dialogue. The invitation to participate in a competitive dialogue shall contain the elements defined in Annex No. 6 to this Act.

## Section 69

### Conduct of a competitive dialogue

(1) The contracting authority shall conduct a competitive dialogue with the participants with the aim of finding suitable solutions to meet the needs of the contracting authority (hereinafter referred to as 'solutions').

(2) When conducting a competitive dialogue, the contracting authority may negotiate the public contract in all respects.

(3) The contracting authority is entitled to disclose information of the solutions and confidential information defined in Section 218 (1) to the other participants in the course of conducting the competitive dialogue only on the basis of a written consent granted by the participant in question in relation to the information in question.

(4) The competitive dialogue may take place in successive stages in order to reduce the number of solutions to be negotiated, pursuant to Section 112, provided that the contracting authority has reserved the right to do so in the contract notice.

(5) The contracting authority shall continue the competitive dialogue until it decides if the solutions submitted are suitable. The participant whose solution is not suitable shall be excluded from the procurement procedure.

(6) When the competitive dialogue is terminated, the contracting authority shall inform the participants of this fact without delay and invite all participants to submit tenders for the solutions that have been found. The invitation to tender shall contain the elements defined in Annex No. 6 to this Act. The tender shall contain all aspects of the solution.

(7) The contracting authority may invite a participant to explain, specify or modify its tender provided that this will not lead to such a change of the tender or the award criteria that it would endanger competition or have discriminatory effects.

(8) The contracting authority may conduct negotiations with a selected economic operator with the aim to have its tender confirmed and contractual conditions specified provided that this will not lead to a change of the basic parameters of the tender or of the award criteria and that these changes would not endanger competition or have discriminatory effects.

## TITLE VII

### INNOVATION PARTNERSHIP PROCEDURE

## Section 70

### Conditions for application

(1) The contracting authority may award a public contract in an innovation partnership procedure if the need for development of an innovative supply or service or innovative works and the subsequent purchase of the resulting supplies, services or works cannot be satisfied by solutions that are already available on the market.

(2) The estimated value of the supplies, services or works awarded in the innovation partnership procedure shall not be in disproportion to the investment needed for their development.

## Section 71

### Stages of innovation partnership

(1) In the procurement documents, the contracting authority shall define innovation partnership stages that shall follow the sequence of steps in the research and innovation process and the subsequent provision of supplies, services or works. The contracting authority shall determine successive targets in the research process upon the accomplishment of which individual stages of the innovation partnership shall be terminated as well as the rules for the payment of remuneration to the partners for the achievement of such targets. The contracting authority shall ensure that the structure of the innovation partnership and the remuneration provided reflect the degree of innovation of the solution proposed and the sequence of steps in the research and innovation process.

(2) After a stage of innovation partnership is terminated, the contracting authority may, based on the results achieved,



- a) terminate the innovation partnership provided that it has reserved the right to do so in the procurement documents, or
- b) reduce the number of partners in a case where the innovation partnership involves several partners provided that the contracting authority has defined the conditions for reducing the number of partners in the procurement documents.

(3) In the case of an innovation partnership with several partners, the contracting authority shall not reveal to the other partners solutions proposed or other confidential information communicated by a partner without that partner's agreement.

## Section 72

### Conduct of the procedure

(1) The contracting authority shall commence the innovative partnership procedure by sending a contract notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit requests to participate.

(2) The contracting authority shall set the time limit for the submission of requests to participate for not less than 30 days from the commencement of the innovative partnership procedure. This time limit shall be extended by five days in the event that the contracting authority does not allow tenders to be submitted by electronic means.

(3) The contracting authority shall indicate in the procurement documents which requirements for the performance of the public contract constitute the minimum technical specifications that shall be met by the tenders. In the procurement documents, the contracting authority shall lay down rules governing the intellectual property rights created in connection with the innovation partnership and the performance of the public contract.

(4) The contracting authority shall assess the conformity of requests to participate with the award criteria and reduce the number of participants pursuant to Section 111 provided that it has reserved the right to do so in the contract notice. The contracting authority shall exclude from the procurement procedure those participants whose requests to participate do not meet the award criteria or that were not selected when the number of participants was being reduced. The contracting authority shall invite the non-excluded participants to submit indicative tenders. The invitation to submit indicative tenders shall contain the elements defined in Annex No. 6 to this Act.

(5) The contracting authority shall negotiate the indicative tenders with the participants in order to improve the tenders to the benefit of the contracting authority. The contracting authority is entitled to disclose confidential information defined in Section 218 (1) during the negotiations to the other participants only on the basis of a written consent granted by the participant in question in relation to the information in question. Within the negotiations, the number of indicative tenders to be negotiated pursuant to Section 112 may be reduced provided that the contracting authority has reserved the right to do so in the contract notice.

(6) During the negotiations, the contracting authority may alter or supplement the award criteria, in particular technical specifications, with the exception of the minimum technical specifications defined in subsection (4). The contracting authority shall inform the participants of such an alteration or supplementation of the award criteria in writing and provide them with reasonable time to adjust their indicative tenders. The altered award criteria shall still meet the conditions for the application of an innovation partnership procedure.

(7) During the negotiations, the contracting authority may alter or supplement the award criteria with the exception of the evaluation criteria and the minimum technical specifications. The contracting authority shall inform the participants of such an alteration or supplementation of the award criteria in writing and provide them with reasonable time to adjust their indicative tenders. The altered award criteria shall still meet the conditions defined in Section 70.

(8) The contracting authority may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities.

## TITLE VIII

### AWARD CRITERIA IN THE ABOVE-THRESHOLD REGIME

#### Chapter 1

##### Qualifications for the above-threshold regime

##### Division 1

##### The scope of qualification requirements set out for the above-threshold regime by the contracting authority

## Section 73

(1) In the above-threshold regime, the contracting authority shall request a proof of the basic qualification pursuant to Section 74.

(2) In the above-threshold regime, the contracting authority

- a) shall request a proof of professional qualification pursuant to Section 77 (1), with the exception of negotiated procedure without prior publication, and

b) may request a proof of professional qualification pursuant to Section 77 (2).

(3) In the above-threshold regime, the contracting authority may request a proof of

a) economic qualification pursuant to Section 78, or

b) technical qualification pursuant to Section 79.

(4) In the above-threshold regime, the contracting authority is not entitled to request a proof of qualification other than those referred to in subsections (1) to (3); without prejudice to Section 48 (5) to (7).

(5) In the procurement documents, the contracting authority is obliged to determine which data, documents, samples or models are required as a proof of fulfilment of the required criteria.

(6) If the contracting authority requests a proof of economic or technical qualifications, it shall determine, in the procurement documents, proportionately to the complexity and scope of the subject-matter of the public contract

a) which economic and technical qualification criteria it requires, and

b) the minimum degree of their fulfilment.

#### Section 74

##### Basic qualification

(1) An economic operator shall not be qualified if it

a) was convicted by final judgement in the country of its registered seat of a crime specified in Annex No. 3 to this Act or another similar crime pursuant to the law of the country of its registered office in the past five years preceding the commencement of the procurement procedure; expunged convictions are disregarded,

b) has outstanding tax arrears registered in tax records in the Czech Republic or in the country of its registered office,

c) has outstanding arrears in respect of payments and penalties of public health insurance in the Czech Republic or in the country of its registered office,

d) has outstanding arrears in respect of payments and penalties of social security contributions and contribution to the national employment policy in the Czech Republic or in the country of its registered office,

e) is in liquidation<sup>24)</sup>, has been declared insolvent<sup>25)</sup>, in respect of whom the receivership has been imposed under another legal regulation<sup>26)</sup> or it is in a similar situation pursuant to the law of the country of its registered office.

(2) If the economic operator is a legal person, both this legal person and every member of its governing body shall meet the condition specified in paragraph a) of subsection (1). Where a legal person is a member of the governing body of the economic operator, the condition specified in paragraph a) of subsection (1) shall be met by

a) this legal person,

b) every member of the governing body of this legal person, and

c) the person representing this legal person in the governing body of the economic operator.

(3) If a participant in the procurement procedure is a branch of a business of

a) a foreign legal person, the condition specified in paragraph a) of subsection (1) shall be met by this legal person as well as the head of the branch,

b) a Czech legal person, the condition specified in paragraph a) of subsection (1) shall be met by the persons referred to in subsection (2) as well as the head of the branch.

(4) In the procurement documents, the contracting authority may determine that the condition specified in paragraph a) of subsection (1) shall also be met by persons other than those referred to in subsection (2); such persons may only include persons that have rights relating to representation, decision-making or control of the economic operator within the economic operator's structure.

#### Section 75

##### Proof of basic qualification

(1) The economic operator shall prove that it fulfils the basic qualification requirements in relation to the Czech Republic by submitting

a) a copy of an entry in the Criminal Records in respect of Section 74 (1) a),

b) a confirmation from a relevant tax office in respect of Section 74 (1) b),

- c) a written affirmation regarding excise duty in respect of Section 74 (1) b),
- d) a written affirmation in respect of Section 74 (1) c),
- e) a confirmation from a relevant district social security administration in respect of Section 74 (1) d),
- f) a copy of an entry in the Commercial Register, or a written affirmation in the event that the economic operator is not incorporated in the Commercial Register, in respect of Section 74 (1) e).

(2) The contracting authority is not obliged to apply the ground for exclusion of a participant from the procurement procedure even if the participant failed to meet the basic qualification requirements provided that

- a) the exclusion of the participant would make it impossible to award the public contract in this procurement procedure and
- b) an urgent public interest, including, but not limited to, public health and protection of the environment, requires the public contract to be performed.

## Section 76

### Renewal of suitability of a participant

(1) A participant may prove that in spite of having failed to meet the basic qualification criteria under Section 74 or the fact that there are grounds for its unsuitability pursuant to Section 48 (5) and (6) it has renewed its suitability to participate in the procurement procedure provided that it proves to the contracting authority in the course of conducting the procurement procedure that it has adopted sufficient corrective measures. This does not apply to the period for which the participant is serving a sentence of prohibition to perform public contracts or participate in concession award procedures that has been imposed on the participant by final judgement.

(2) The corrective measures may include, but are not limited to,

- a) a payment of amounts due or underpayments,
- b) full compensation for harm caused by the commission of a crime or by misconduct,
- c) an active collaboration with authorities performing investigation, oversight, supervision or review, or
- d) an adoption of technical, organisational or personnel preventive measures against crime or misconduct.

(3) The contracting authority shall assess whether it considers the corrective measures adopted by the participant sufficient to renew the suitability of the economic operator with regard to the gravity and the specific circumstances of the crime or other misconduct.

(4) Where the contracting authority arrives at the conclusion that the suitability of the participant has been renewed, it shall not exclude this participant from the procurement procedure and if the participant has already been excluded it shall cancel a previous exclusion of this participant from the procurement procedure.

## Section 77

### Professional qualification

(1) The economic operator shall prove its professional qualification in relation to the Czech Republic by submitting a copy of an entry in the Commercial Register or other similar records provided that registration in such records is required pursuant to another legal regulation.

(2) The contracting authority may request the economic operator to submit a document demonstrating that it

- a) has a licence to undertake business within a scope corresponding to the subject-matter of the public contract provided that such licence is required pursuant to other legal regulations,
- b) is a member of a professional self-governing chamber or another professional organisation provided that such membership is required for the performance of the public service contract under other legal regulations, or
- c) has a professional capability, or has at its disposal a person through whom it acquires a professional capability, where a professional capability is required for the performance of a public contract under other legal regulations.

(3) The economic operator is not obliged to submit the documents specified in subsections (1) or (2) if legal regulations in the country of its registered office do not require such professional qualification.

## Division 2

### Economic qualification

## Section 78

### Economic qualification criterion and its proof

(1) The contracting authority may require that the minimum yearly turnover of the economic operator or the turnover reached by the economic operator with respect to the subject-matter of the public contract for not more than three immediately preceding accounting periods reach a minimum level set by the contracting authority; where the economic operator came into existence later, it is sufficient if it submits documents on the required amount of its turnover for all accounting periods since its creation.

(2) The requirement of minimum yearly turnover shall not exceed twice the estimated value of the public contract. In the case of a procurement procedure in which a framework agreement following a reopening of competition is to be concluded, this requirement shall not exceed twice the average estimated value of the public contracts that are to be performed simultaneously on the basis of the framework agreement, or, where such value is not known, twice the estimated value of the framework agreement. In the case of a procurement procedure in which a dynamic purchasing system is to be set up, this requirement shall not exceed twice the maximum estimated value of the individual public contracts that are to be awarded under the dynamic purchasing system.

(3) Subsection (2) does not apply to cases justified by the contracting authority, which include in particular specific risks resulting from the nature of supplies, services or works.

(4) Where a public contract is divided into lots, the contracting authority shall set the requirement for economic qualification for each lot separately. The contracting authority may, however, set the economic qualification requirement by reference to groups of lots in the event that the selected economic operator is awarded several lots to be performed at the same time.

(5) The economic operator shall prove its turnover by submitting its profit and loss statement or by a similar document pursuant to the law of the country of its registered office.

(6) The contracting authority is not entitled to request economic qualification in the case of public service contracts listed in division 71 of the main vocabulary of the single classification system .

### **Division 3**

#### **Technical qualification**

##### **Section 79**

#### **Technical qualification criteria and their proof**

(1) The contracting authority shall set technical qualification criteria in order to prove human resources, technical resources or professional abilities and experience that are necessary for the public contract to be performed to an appropriate level of quality. The contracting authority may consider the technical qualification to be not proven if it demonstrates that the economic operator has contrary interests that might have a negative effect on the performance of the public contract.

(2) In order for the technical qualification criteria to be proved, the contracting authority may request

a) a list of the works carried out over the past five years before the commencement of the procurement procedure, including certificates provided by the client proving due execution and completion of the most important of these works; the contracting authority may determine that evidence of relevant works carried out more than five years before the commencement of the procurement procedure shall also be taken into account where necessary in order to ensure an adequate level of economic competition,

b) a list of significant supplies or significant services provided over the past three years before the commencement of the procurement procedure, including prices and dates of their provision and the identification of clients; the contracting authority may determine that evidence for more than three years before the commencement of the procurement procedure shall also be taken into account where necessary in order to ensure an adequate level of economic competition,

c) a list of the technicians or technical bodies that will take part in the performance of the public contract, especially those responsible for quality control and those who will execute the works, regardless of whether they are employees of the economic operator or persons otherwise related to the economic operator,

d) certificates of education and professional qualifications related to the requested supplies, services or works, in respect of both the natural persons who can provide the supplies, services or works and their managerial staff,

e) a description of technical facilities, measures taken by the economic operator for ensuring quality or a description of research facilities,

f) an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract,

g) where the products or services to be supplied are complex or are required for special purposes, a check on the technical capacity carried out by the contracting authority or on its behalf by a competent official body of the country of the economic operator's registered office, and, where necessary, on the means of the quality and research control measures,

h) measures in environmental protection management that the economic operator will be able to apply when performing the contract,

i) a statement of the average annual manpower of the economic operator or the number of managerial staff of the economic

operator or persons in a similar position for the last three years,

j) a statement of the tools or devices and plant or technical equipment available to the economic operator for performing the contract,

k) samples, descriptions or photographs of the products to be supplied, or

l) a certificate attesting the conformity of the requested product with a required technical standard or technical document.

(3) Unless the contracting authority stipulates in the procurement documents otherwise, the periods under paragraphs a) and b) of subsection (2) shall be considered fulfilled if the supply, service or works specified in a relevant list were completed in the course of such periods; this does not apply to contracts which are regular in nature in respect of which the scope of the contract implemented in the course of the period set out in paragraphs a) and b) of subsection (2) shall be considered decisive for the purpose of proving technical qualification.

(4) Unless the contracting authority stipulates in the procurement documents otherwise, the economic operator may prove the fulfilment of the qualification criteria pursuant to paragraphs a) or b) of subsection (2) by referring to supplies, services or works that it has provided

a) together with other economic operators, to the extent to which it participated in the performance of the contract, or

b) as a subcontractor, to the extent to which it participated in the performance of the supply, service or works.

(5) Equivalent documents proving the fulfilment of the criteria pursuant to paragraphs a) and b) of subsection (2) include, in particular contracts with clients and documents attesting to the performance provided by the economic operator.

(6) In the event that the proof of the requested technical qualification does not consist in submitting a document, the contracting authority is obliged to provide the economic operator with necessary assistance and the possibility to prove this part of the technical qualification criteria.

## Section 80

### Quality assurance standards and environmental management standards

(1) Where, for the purpose of proving the fulfilment of the technical qualification criteria pursuant to Section 79 (2) e), the contracting authority requires the compliance with quality assurance standards, including standards on accessibility for disabled persons, it shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies.

(2) Where, for the purpose of proving the fulfilment of the technical qualification criteria pursuant to Section 79 (2) h), the contracting authority requires the compliance with environmental management systems or standards, it shall refer to the Eco-Management and Audit Scheme (EMAS) of the European Union or to other environmental management systems as recognised in accordance with directly applicable legislation of the European Union<sup>27)</sup> or to other environmental management standards based on the relevant European or international standards adopted by accredited bodies.

## Division 4

### Common provisions governing qualifications

## Section 81

### Proving of qualification obtained abroad

Where qualification has been obtained abroad, it shall be proved by documents issued under the law of the country in which it has been obtained and to the extent required by the contracting authority.

## Section 82

### Qualification in the case of joint participation of economic operators

In the case of joint participation of economic operators, the basic and professional qualifications pursuant to Section 77 (1) shall be proved by each economic operator separately.

## Section 83

### Proving of qualification through other persons

(1) An economic operator may prove a certain part of the economic qualification, technical qualification or professional qualification, with the exception of the criterion set out in Section 77 (1), requested by the contracting authority through other persons. In that case, the economic operator is obliged to submit to the contracting authority

a) documents proving that the professional qualification pursuant to Section 77 (1) has been fulfilled by the other person,

b) documents proving that a missing part of the qualification has been fulfilled by the other person,

c) documents proving that the basic qualification was fulfilled pursuant to Section 74 by the other person and

d) a written commitment of the other person to provide performance intended for the performance of the public contract or to provide things or rights which the economic operator is entitled to use when performing the public contract, at least to the extent to which the other person has proved its qualification instead of the economic operator.

(2) It is presumed that the requirement set out in paragraph d) of subsection (1) is met if the written commitment of another person contains joint and several liability of such person and the economic operator for the performance of the public contract. Where, however, the economic operator proves qualification through the other person and submits documents pursuant to Section 79 (2) a) b) or d) relating to such person, the document under paragraph d) of subsection (1) shall contain a commitment that the other person shall carry out the works or services to which the qualification criterion in question relates.

(3) In the procurement documents, the contracting authority may request the economic operator or another person through whom the economic operator proves its economic qualification under Section 78 to bear joint and several liability for the performance of the public contract.

## Section 84

### Joint proving of qualification

In the procurement documents, the contracting authority may define more detailed rules for the proving of professional qualification pursuant to Section 77 (2), economic qualification or technical qualification provided that the economic operators participate in the procurement procedure jointly or prove qualification through other persons; the contracting authority shall not, however, exclude rules laid down in sections 82 and 83. Unless the contracting authority stipulates otherwise, the economic operators and other persons prove the qualification jointly.

## Section 85

### Requirement for proving subcontractor's qualification

(1) The contracting authority may require a participant to submit documents proving the basic qualification pursuant to Section 74 and professional qualification pursuant to Section 77 in respect of its subcontractors. In that case, the contracting authority is obliged to set the scope of the required qualification criteria in the procurement documents along with the means of their proof and potential sanctions for the failure to replace a subcontractor pursuant to subsection (2).

(2) Where a subcontractor fails to prove the fulfilment of the qualification criteria required by the contracting authority or where the contracting authority proves that there are grounds for unsuitability of a subcontractor pursuant to Section 48 (5), the contracting authority may request such a subcontractor to be replaced. In that case, the economic operator shall replace the subcontractor before the end of a reasonable time limit set by the contracting authority. The contracting authority may extend this time limit or excuse the economic operator's default.

(3) Where the subcontractor has not been replaced pursuant to subsection (2) and the procurement procedure has not been terminated in the meantime, the contracting authority may exclude the participant from the procurement procedure.

## Section 86

### Qualification documents

(1) In order for qualification to be proved, the contracting authority shall require primarily documents registered in the system that helps identify the certificates requested as a proof of qualification (e-Certis).

(2) Unless the contracting authority stipulates in the procurement documents otherwise, the economic operator may substitute the submission of documents in its request to participate, indicative tender or tender by an affirmation. The economic operator may replace the required documents by a European Single Procurement Document in any case.

(3) Before the contract is concluded, the contracting authority shall always request the selected economic operator to submit the originals or certified copies of the qualification documents, unless they have already been submitted during the procurement procedure.

(4) The economic operator is not obliged to submit documents supporting the facts contained in the European Single Procurement Document to the contracting authority provided that it informs the contracting authority that it had already submitted such documents in a previous procurement procedure.

(5) The documents demonstrating basic qualification under Section 74 and professional qualification under Section 77 (1) shall demonstrate the fulfilment of the required qualification criterion not later than three months before the date of the commencement of the procurement procedure.

## Section 87

### European Single Procurement Document

(1) For the purposes of this Act, the European Single Procurement Document means an affirmation made in writing by a participant in order to prove its qualification, including a proof through another person, which shall replace documents issued by public authorities or third parties on a form available in the information system e-Certis.

(2) The European Single Procurement Document shall attest to the fulfilment of the conditions for participation and,

where applicable, the fulfilment of the criteria for the reduction of the number of participants in the procurement procedure.

#### Section 88

##### **Changes in qualification of a participant**

(1) If the qualification of a participant changes after the submission of documents or affirmation regarding qualification, the participant is obliged to announce such change to the contracting authority within five working days and to submit new documents or affirmation of qualification within 10 working days from the announcement of such change; the contracting authority may extend these time limits or excuse their default. The participant shall not become obliged to announce changes and submit new documents under the first sentence if the qualification is changed in such a manner that

- a) the qualification requirements are still met,
- b) the criteria for the reduction of the number of participants or the number of tenders have not been influenced,
- c) the criteria for evaluation of tenders have not been influenced.

(2) If the contracting authority finds out that the economic operator has not fulfilled the duty defined in subsection (1), the contracting authority shall exclude such economic operator from the procurement procedure without delay.

#### **Chapter 2**

##### **Technical specifications for the above-threshold regime**

#### Section 89

(1) Technical specifications mean requirements for the properties of the subject-matter of the public contract which the contracting authority shall define by

- a) setting parameters expressing performance or functional requirements and describing the purpose or needs that are to be fulfilled,
- b) reference to standards or technical documents, or
- c) reference to labels.

(2) Technical specifications may also include characteristics in terms of environmental impact.

(3) Technical specifications may also refer to the specific production process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the public contract and proportionate to its value and its objectives.

(4) In the case of a public service contract or a public works contract, the contracting authority may indicate, in the procurement documents, the administrative body or other entity from which economic operators may obtain information on duties that follow from legal regulations governing the protection of employees and working conditions, environmental protection, taxes, fees or other similar pecuniary performances that are applicable at the place where the services or works are to be provided and that are related to these services or works; the economic operator shall take such information into account when drafting its tender and shall state this fact in the tender.

(5) Unless justified by the subject-matter of the public contract, the contracting authority shall not favour or disadvantage any economic operators or products by setting the technical specifications by means of a direct or indirect reference to

- a) the economic operators or products, or
- b) patents for inventions, utility models, industrial designs, trademarks or designations of origin.

(6) The contracting authority may use a reference pursuant to paragraphs a) or b) of subsection (5) where a sufficiently precise and intelligible specification of technical specifications under subsection (1) is not possible. For each such reference the contracting authority shall indicate an option to offer an equivalent solution.

#### Section 90

##### **Standards and technical documents**

(1) Where the contracting authority sets the technical specifications by reference to standards and technical documents, it shall apply them in the following order:

- a) Czech technical standards<sup>28)</sup> transposing European standards adopted by European standardisation bodies and made available to the general public,
- b) European technical assessment<sup>29)</sup>,

c) common technical specifications in the field of information and communications technology pursuant to Articles 13 and 14 of Regulation (EU) No. 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council,

d) international standards adopted by international standardisation bodies and made available to the general public,

e) technical documents produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs.

(2) Where it is not possible to refer to the standards and technical documents under subsection (1), the contracting authority may refer to

a) Czech technical standards,

b) construction technology certificates<sup>30)</sup>, or

c) national technical specifications relating to design, assessment and execution of works and construction works, and use of products.

(3) For each reference to standards or technical documents under subsections (1) or (2), the contracting authority shall indicate an option to offer an equivalent solution.

(4) The contracting authority may also use the reference to standards or technical documents under subsections (1) or (2) as a means of verifying the fulfilment of the contracting authority's requirements pursuant to Section 89 (1) a). The contracting authority may also define the technical specifications by combination of the requirements specified in Section 89 (1) a) and by reference to the standards or technical documents under subsections (1) or (2).

#### Section 91

(1) Where the contracting authority sets the technical specifications by reference to the standards or technical documents pursuant to Section 90 (1) or (2), it shall not reject a tender on the grounds that the proposed supplies, services or works do not comply with the technical specifications to which it has referred, once the economic operator proves, that the proposed supplies, services or works satisfy in an equivalent manner the requirements defined by the technical specifications. The economic operator shall prove this fact in its tender by appropriate means, in particular by a technical dossier of the manufacturer or a document pursuant to Section 95.

(2) Where the contracting authority sets the technical specifications in the form of performance or functional requirements, it shall not reject the proposed supplies, services or works that comply with the standards or technical documents stipulated in Section 90 (1) or (2) provided that these documents contain the performance or functional requirements requested by the contracting authority. The economic operator shall prove this fact in its tender by appropriate means, in particular by a technical dossier of the manufacturer or a document pursuant to Section 95.

#### Section 92

##### **Technical specifications of a public works contract**

(1) It is presumed that the technical specifications are laid down in details necessary for the participation of economic operators in a procurement procedure if the procurement documents of public works contracts contain

a) documentation to the extent determined by a regulation of the Ministry of Regional Development and

b) an inventory of works, supplies and services together with a statement of measurements to the extent determined by a regulation of the Ministry of Regional Development.

(2) The documents under subsection (1) may be replaced partially or completely by other performance or functional requirements.

#### Section 93

##### **Accessibility criteria**

(1) Where the subject-matter of the public contract is intended for use by natural persons, the contracting authority shall take account of the accessibility of the subject-matter of the public contract to people with disabilities when setting the technical specifications, unless it is made impossible by objective circumstances.

(2) Where binding requirements for accessibility to people with disabilities are governed by a regulation of the European Union, the contracting authority shall lay down the respective technical specifications by reference to such regulation.

#### Section 94

##### **Labels**

(1) If the contracting authority requires the supplies, services or works to have specific environmental or social characteristics, it may request, in the procurement documentation, the submission of a specific certificate attesting that the



relevant works, services or supplies meet the required characteristics provided that

- a) the label requirements only concern criteria which are linked to the subject-matter of the contract,
- b) the labels are appropriate to define characteristics of the works, supplies or services that are covered by the subject-matter of the contract,
- c) the label requirements are based on objectively verifiable and non-discriminatory criteria,
- d) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate,
- e) the labels are accessible to all interested parties, and
- f) the label requirements are set by a person over which the economic operator applying for the label cannot exercise a decisive influence.

(2) The contracting authority shall accept another appropriate label that confirms that the supplies, services or works meet equivalent label requirements.

(3) Where an economic operator had demonstrably no possibility of obtaining and submitting the requested or equivalent label, the contracting authority shall accept other appropriate means of proof attesting that the supplies, services or works meet the label requirements or specific requirements specified in the procurement documents, such as a technical dossier from the manufacturer.

(4) The contracting authority may require that only some of the characteristics confirmed by the label are met.

(5) Where the label also attests to characteristics that are not linked to the subject-matter of the public contract, the contracting authority shall not require the label but may request a proof of technical characteristics by reference to individual specifications of that label that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

#### Section 95

### **Test reports, certification and other means of proof**

As means of proof of conformity with the requirements or criteria defined in the procurement documents, the contracting authority may require the submission of test reports or certificates issued by a body that performs conformity assessment activities, including calibration, testing, certification and inspection and that fulfils the requirements set out in a directly applicable regulation of the European Union<sup>31)</sup>.

## **Chapter 3**

### **Common provisions governing award criteria for the above-threshold regime**

#### Section 96

### **Availability of procurement documents**

(1) The contracting authority shall publish the procurement documents, with the exception of forms pursuant to Section 212 and invitations specified in Annex No. 6 to this Act, on the contracting authority profile from the date of publication of the contract notice or from the sending of the invitation to submit requests to participate pursuant to Section 58 (5) at least until the expiry of the time limit for the submission of tenders; this does not apply to negotiated procedure without prior publication.

(2) Where some part of the procurement documents cannot be made available pursuant to subsection (1), on grounds defined in Section 211 (8) a), b), c) and d) or in the case of procedure pursuant to Section 36 (8), the contracting authority may make the relevant part of the procurement documents available by other appropriate means. In that case, the contracting authority shall send or transmit the relevant part of the procurement documents not later than three working days from the receipt of the economic operator's request for its provision. The provision of the relevant part of procurement documents may only be conditioned by reimbursement of costs pursuant to subsection (4) or, in the case of procedure pursuant to Section 36 (8), by an adoption of appropriate measures to protect the confidential nature of information.

(3) In the contract notice or invitation specified in Annex No. 6 to this Act, the contracting authority shall indicate the internet address of the contracting authority profile on which the procurement documents are available. Where any part of the procurement documents is provided under subsection (2), the contract notice or the invitation specified in Annex No. 6 to this Act shall include information on the means and conditions of providing the relevant part of procurement documents.

(4) A reimbursement of the costs of provision of the relevant part of the procurement documents may only be required up to the amount of usual costs of its reproduction and postage and packaging charges.

#### Section 97

### **Visit to the site of performance**

Where the contracting authority enables a visit to the site of performance, it shall determine in the procurement documents

- a) the time of the visit to the site of performance so that it could take place not later than 10 working days from the expiry of the time limit for the submission of tenders,
- b) the time limit for the submission of tenders so that it is always longer than the minimum time limit set out for the respective type of procurement procedure.

#### Section 98

##### **Explanation of procurement documents**

(1) The contracting authority may explain the procurement documents provided that it publishes such explanation or, where applicable, related documents on the contracting authority profile

a) not less than five working days before the expiry of the time limit for the submission of requests to participate, indicative tenders or tenders, or

b) not less than four working days before the expiry of the time limit for the submission of requests to participate, indicative tenders or tenders in cases where the time limit for the submission of tenders is shortened pursuant to Section 57 (2) b) or Section 59 (5) .

(2) Where the explanation of the procurement documents concerns such parts of procurement documents that are not made public pursuant to Section 96 (2), the contracting authority shall send or transmit them to all economic operators who have submitted requests for explanation of the respective parts of the procurement documents; subsection (1) does not apply.

(3) If an explanation of the procurement documents is requested in writing by the economic operator, the contracting authority shall publish, send or transmit the explanation including the accurate wording of the request without identifying the respective economic operator. The contracting authority is not obliged to provide an explanation if the request for explanation is not delivered in time, which means not less than three working days before the expiry of the time limits defined in subsection (1). If the contracting authority provides an explanation upon a request that has not been delivered in time, it is not obliged to observe the time limits under subsection (1).

(4) If the request for explanation of the procurement documents is delivered in time and the contracting authority fails to publish, send or transmit the explanation within three working days, it shall extend the time limit for the submission of tenders by at least as many working days as a number of days by which the period between the receipt of the request for explanation and the publication, sending or transmission of the explanation exceeded three working days.

(5) In the event that the contracting authority makes a change in the award criteria along with the explanation of the procurement documents, it shall proceed pursuant to Section 99.

#### Section 99

##### **Alteration or supplementation of the procurement documents**

(1) The contracting authority may alter or supplement the award criteria contained in the procurement documents before the expiry of the time limit for the submission of requests to participate, indicative tenders or tenders. An alteration or supplementation of the procurement documents shall be published or announced to economic operators by the same means as the award criterion that has been altered or supplemented.

(2) Where the nature of the supplementation or alteration of the procurement documents requires so, the contracting authority shall reasonably extend the time limit for the submission of requests to participate, indicative tenders or tenders. In cases where the scope of possible participants may be extended by the alteration or supplementation of the procurement documents, the contracting authority shall extend the time limit to be at least as long from the moment of sending the alteration or supplementation as the original time limit.

#### Section 100

##### **Reserved changes in obligation**

(1) The contracting authority may reserve, in the procurement documents, a change in the obligation arising from the public contract or framework agreement provided that conditions for such a change and its content are defined clearly and that the change will not alter the overall character of the public contract. Such a change may concern the scope of supplies, services or works, the price and other business conditions or technical specifications.

(2) The contracting authority may reserve, in the procurement documents, a change of the economic operator in the course of performance of the public contract provided that conditions for such a change and the manner of determining a new economic operator are defined clearly.

(3) The contracting authority may reserve, in the procurement documents, the possibility of applying a negotiated procedure without prior publication for the provision of new services or new works by a selected economic operator provided that

a) the conditions for the new services or new works are in accordance with the conditions for the application of a negotiated procedure without prior publication pursuant to Section 66,

b) the estimated value of the new services or new works does not exceed 30 % of the estimated value of the public contract, and

c) it indicates in the procurement documents the estimated length and scope of the new services or new works.

#### Section 101

##### **Division of public contracts into lots**

(1) Where the contracting authority, in the procurement documents, subdivides a public contract into lots, it shall proceed separately for each lot when selecting the economic operator, unless otherwise provided below.

(2) The contracting authority shall indicate, in the contract notice or in the invitation to submit requests to participate pursuant to Section 58 (5), whether the economic operator may submit tenders for one lot, for several lots or for all of the lots.

(3) Where tenders may be submitted for several lots, the contracting authority may limit, in the contract notice or the invitation to submit requests to participate, the number of lots to be awarded to one participant. In that case, the contracting authority shall define the criteria for the selection of lots that may be awarded to the participant, to which would otherwise under the rules for evaluation be awarded several lots.

(4) Where several lots may be awarded to one participant, the contracting authority may set rules, in the contract notice or in the invitation to submit requests to participate, to determine which lots it reserves to be potentially awarded to one participant.

#### Section 102

##### **Variants**

(1) Where the subject-matter of the public contract allows so, the contracting authority may authorise or require variants of tenders, indicative tenders or solutions to be submitted; otherwise, variants are not allowed.

(2) The contracting authority may authorise or require only such variants that are directly linked to the subject-matter of the public contract.

(3) Contracting authorities authorising or requiring variants shall state in the procurement documents the minimum technical specification to be met by the variants as well as unambiguous requirements for their submission.

(4) Where variants are authorised, the contracting authority shall define evaluation criteria by means of which it is possible to evaluate both tenders with variants and tenders that contain no variants.

(5) A tender variant shall not be denied for not meeting the award criteria in the procurement procedure on the grounds that a public supply contract would change into a public service contract or that a public service contract would change into a public supply contract.

#### Section 103

##### **Conditions for drawing up and submission of tenders**

(1) If tenders are to be evaluated then, in the procurement documents, the contracting authority

a) shall request the submission of data, documents, samples or models that the contracting authority needs in order to evaluate the tenders pursuant to Section 114,

b) shall request the submission of data, documents, samples or models that the contracting authority needs in order to assess the fulfilment of the conditions for participation in the procurement procedure,

c) shall define the form and means of the submission of tenders; in the case of electronic tenders, they shall determine the electronic tool by means of which the tenders shall be submitted,

d) may request that data on the ownership structure of the participant or its subcontractor be submitted,

e) in the case of a public services contract, a public works contract or a public supply contract that involves a siting or installation, may request economic operators to indicate in their tenders the name or names, the surname or surnames and the professional qualification of the staff who will be responsible for the performance of the public contract,

f) may request that the economic operators participating jointly demonstrate in their tender how their liability for the performance of the public contract will be divided; the contracting authority may request that all the economic operators submitting a joint tender bear joint and several liability.

(2) The contracting authority may indicate a recommended method of drawing up a tender.

(3) In the case of public works contracts, designing or design contests, the contracting authority may include, in the procurement documents, a binding requirement to use specific electronic formats, including building information modelling tools, as well as requirements for the data content, structure or format. Where such formats are not generally available, the contracting authority shall ensure access of economic operators to these formats.

(4) Subsections (1) to (3) apply with the necessary modifications to setting of conditions for other actions that influence the participation of an economic operator in the procurement procedure.

#### Section 104

##### **Further conditions for the conclusion of a contract**

(1) In the procurement documents, the contracting authority may request the selected economic operator to meet the following further conditions for the conclusion of the contract:

- a) a submission of documents or samples relating to the subject-matter of the public contract or to the economic operator's qualification,
- b) a successful result of tests of samples,
- c) a submission of a document attesting to the economic operator's capability to secure protection of classified information<sup>5)</sup> where necessary for the performance of the public contract,
- d) adoption of a certain form of collaboration pursuant to Section 37 (4), or
- e) more detailed conditions of cooperation before the conclusion of the contract.

(2) Where the selected economic operator is a legal person, the contracting authority is obliged to request in the procurement documents that the selected economic operator submits the following as a condition for the conclusion of the contract:

- a) identification data of all persons that are its real owners pursuant to the Act on Selected Measures against Legitimisation of Proceeds of Crime and Financing of Terrorism,
- b) documents that demonstrate the relation of all persons under paragraph a) to the economic operator; such documents include, but are not limited to,
  - 1. a copy of an entry in the Commercial Register or other similar records,
  - 2. a list of shareholders,
  - 3. a decision made by the governing body regarding payment of a share in profit,
  - 4. a memorandum of association, a letter of formation or articles of association.

#### Section 105

##### **Subcontracting**

(1) In the procurement documents, the contracting authority may request that the participant in its tender

- a) indicates any share of the contract that it intends to subcontract, or
- b) includes a list of subcontractors, where they are known to the participant, and indicates which share of the public contract will be subcontracted to each of these subcontractors.

(2) In the case of a public service contract, a public works contract or a public supply contract involving a siting or installation, the contracting authority may request in the procurement documents that significant activities within the public contract, as determined by the contracting authority, be performed directly by the selected economic operator.

(3) With regard to public works contracts and public service contracts to be provided at a facility under the direct oversight of the contracting authority, the selected economic operator is obliged to provide the contracting authority with identification data of the subcontractors involved in such works or services, where they are known to it, not later than within 10 working days from the receipt of the notice of the selection of the economic operator. Subcontractors who have not been identified under the first sentence and who will become involved in the performance of the public contract later, shall be identified before they commence the performance of the public contract.

(4) In the procurement documents, the contracting authorities may also lay down the obligation pursuant to subsection (3) with regard to

- a) public supply contracts or public services contracts that are not referred to in subsection (3), or
- b) subcontractors at further levels of the supply chain.

(5) The duty under subsection (3) or subsection (4) shall be considered to be fulfilled where these data are recorded in the construction daily log pursuant to another legal regulation<sup>32)</sup>.

#### Section 106

##### **Payments to subcontractors**

In the procurement documents, the contracting authority may set conditions upon the public contract that when fulfilled shall transfer due payments directly to the subcontractor upon the subcontractor's request; without prejudice to other legal regulations.

## TITLE IX

### PROCEDURE FOR SUBMISSION OF TENDERS IN THE ABOVE-THRESHOLD REGIME

#### Section 107

##### **Tenders**

(1) Tenders shall be submitted in writing, either in electronic form by means of an electronic tool defined by the contracting authority (hereinafter referred to as the 'tender in electronic form') or in paper form.

(2) A tender in paper form shall be delivered in a properly sealed envelope denoted with the title of the public contract.

(3) The economic operator may submit in the procurement procedure only one tender. A tender containing variants pursuant to Section 102 shall be considered to be one tender.

(4) The economic operator which has submitted a tender in the procurement procedure shall not be at the same time a person through which another economic operator proves qualification in the same procurement procedure.

(5) The contracting authority shall exclude a participant which has submitted several tenders either separately or together with other economic operators or a participant which has submitted a tender and is at the same time a person through which another economic operator proves qualification in the same procurement procedure.

(6) Subsections (1) and (3) to (5) apply to indicative tenders by analogy.

#### Section 108

##### **Opening of tenders**

(1) The contracting authority shall open the tenders submitted by the participants.

(2) The contracting authority shall not open any tender before the expiry of the time limit for the submission of tenders.

#### Section 109

##### **Opening of tenders in electronic form**

(1) Opening a tender in electronic form shall be understood as granting access to the content of the tender to the contracting authority. The contracting authority shall open tenders in electronic form after the expiry of the time limit for the submission of tenders.

(2) When opening tenders in electronic form, the contracting authority shall check whether the tenders were submitted within the prescribed time limit, whether they are authentic and whether the data message containing the tender has not been tampered with before the opening.

#### Section 110

##### **Opening of tenders in paper form**

(1) Opening of tenders in paper form means opening of envelopes containing tenders in which the participants as well as other persons defined by the contracting authority are entitled to take part. The contracting authority shall launch the opening of envelopes without undue delay after the expiry of the time limit for the submission of tenders. Where an electronic auction is to be held within the procurement procedure, the opening of envelopes shall take place in the absence of participants.

(2) When opening the envelopes, the contracting authority shall check whether the tenders have been delivered within the prescribed time limit and in accordance with Section 107 (2).

(3) The contracting authority shall provide the persons present with the identification data of the participants in the procurement procedure as well as with such data in their tenders that correspond to those evaluation criteria that can be expressed in numbers. This does not apply to information on the tender price or costs in the event that the contracting authority has reserved in the procurement documents that such information shall be provided in a separate envelope that shall be opened by the contracting authority after the evaluation of the quality criteria; in that case, the rules for the opening of envelopes apply to the opening of envelopes containing tender prices or costs by analogy.

(4) Where both envelopes with tenders in paper form and tenders in electronic form are delivered to the contracting authority within the time limit for the submission of tenders, the contracting authority shall, at the start of opening envelopes, provide the persons present with the information pursuant to subsection (3) in respect of the tenders in the electronic form, after which it shall continue to open envelopes with tenders in paper form.

(5) The contracting authority shall draw up a written report on the opening of the envelopes with tenders, which shall contain a list of the tenders that have been opened along with the data pursuant to subsection (3).

## Section 111

### Reduction of the number of participants

(1) The contracting authority may reduce the number of participants in the public procurement where it stipulates so in the contract notice or in the invitation specified in Annex 6 and at the same time determines the minimum number of participants whom it will invite to tender as well as criteria for the reduction of the number of participants.

(2) The minimum number of participants determined pursuant to subsection (1) shall ensure sufficient competition and shall be not lower than three.

(3) The contracting authority shall apply the technical qualification criteria as criteria for reducing the number of participants.

(4) The contracting authority shall reduce the number of participants according to the degree of fulfilment of the criteria for such reduction so that the number of invited participants corresponds to the number or the method of its determination indicated by the contracting authority in the contract notice or in the invitation to submit requests to participate. In the case that the number of participants is lower than or equal to the minimum number, the number of participants shall not be reduced and the contracting authority may continue the procurement procedure.

(5) Unless otherwise provided below, the contracting authority is not entitled to reduce the number of participants in an open or restricted procedure.

## Section 112

### Reduction of the number of tenders and solutions

(1) The contracting authority may reduce the number of indicative tenders in a negotiated procedure with prior publication or the number of solutions in a competitive dialogue procedure provided that it stipulates so in the procurement documents along with specifying the criteria for such reduction.

(2) The contracting authority shall apply the quality criteria set for procurement procedure as criteria for reducing the number of indicative tenders or solutions.

(3) The minimum number of tenders or solutions after reduction shall ensure sufficient competition and shall amount to at least three indicative tenders or solutions provided that enough indicative tenders or solutions are available.

(4) After reducing the number of indicative tenders or solutions, the contracting authority shall exclude those participants whose indicative tenders or solutions have not been selected pursuant to subsection (3).

## Section 113

### Abnormally low tender price

(1) The contracting authority shall assess whether the tender price is abnormally low before sending the notice of the selection of an economic operator.

(2) In the procurement documents, the contracting authority may determine

- a) the price or costs that it will consider to be an abnormally low tender price,
- b) the method of determining an abnormally low tender price.

(3) The case under subsection (2) does not preclude the contracting authority from assessing the tender price or costs as an abnormally low price even in cases other than those stipulated in paragraph a) or paragraph b) of subsection (2).

(4) The contracting authority shall request the participant to explain its method of setting the abnormally low tender price in writing. The request for explanation of the abnormally low price shall be considered a request pursuant to Section 46, and it may be supplemented and made repeatedly. In the request for explanation of an abnormally low price, the contracting authority shall request the participant to confirm that

- a) when performing the public contract it will ensure the compliance with duties arising from legal regulations related to the subject-matter of the public contract as well as from labour legislation and collective agreements in respect of the employees that will take part in the performance of the public contract, and
- b) it has not obtained unjustified state aid.

(5) In the explanation of the abnormally low price, the participant shall confirm the facts under subsection (4). The participant may also justify the abnormally low price mainly by referring to

- a) the economics of the manufacturing process, of the services provided or of the construction method,
- b) the technical solutions used or any exceptionally favourable conditions available to the participant for the performance of the public contract, or
- c) the originality of the work, supplies or services.

(6) The contracting authority shall assess the explanation of the abnormally low price. The contracting authority shall exclude the participant if the explanation of the abnormally low price shows that

- a) the tender price is abnormally low because of a breach of the duties stipulated in paragraph a) of subsection (4),
- b) the tender price is abnormally low because of state aid and the participant is unable to prove, upon a request by the contracting authority, that the state aid has been provided in compliance with EU legislation<sup>33</sup>; where the participant is excluded for this reason, the contracting authority shall inform the European Commission of this fact, or
- c) it does not contain confirmation of the facts stipulated in subsection (4).

## TITLE X

### EVALUATION OF TENDERS IN ABOVE-THRESHOLD REGIME

#### Chapter 1

##### Economic advantageousness of tenders

###### Section 114

(1) The contracting authority shall stipulate in the procurement documents that tenders will be evaluated on the basis of their economic advantageousness.

(2) The economic advantageousness of tenders shall be evaluated on the basis of the most advantageous price-quality ratio, including the ratio between life-cycle costing and quality. The contracting authority may also evaluate the economic advantageousness of tenders on the basis of the lowest tender price or the lowest life-cycle costing.

(3) The contracting authority shall not establish the economic advantageousness solely on the basis of the lowest tender price

- a) in a competitive dialogue procedure or an innovation partnership procedure, or
- b) in the case of a public service contract listed in
  1. division 71 of the main vocabulary of the single classification system, or
  2. category 1 or 5 according to Annex No. 4 to this Act.

###### Section 115

##### Rules for evaluation of tenders

(1) In the procurement documents, the contracting authority shall lay down rules for the evaluation of tenders that shall include

- a) evaluation criteria,
- b) the method of evaluation of tenders under the individual criteria and
- c) weighting or another mathematical relation among the criteria.

(2) Where the contracting authority is not objectively able to establish the weighting or another mathematical relation among the individual evaluation criteria, it shall indicate them in a decreasing order of the importance attributed to them.

(3) Unless the contracting authority stipulates otherwise, the decisive element for evaluation of tenders shall be

- a) a price exclusive of value added tax where the contracting authority is a value added tax payer,
- b) a price inclusive of value added tax where the contracting authority is not a value added tax payer.

###### Section 116

##### Quality criteria

(1) In order to evaluate the economic advantageousness of a tender on the basis of quality, the contracting authority shall define criteria that express qualitative, environmental or social aspects linked to the subject-matter of the public contract.

(2) The quality criteria may include, but are not limited to,

- a) technical merit,
- b) aesthetic and functional characteristics,
- c) user accessibility,

d) social, environmental and innovative characteristics,

e) organisation, qualification or experience of persons assigned to performing the public contract where the quality of the persons assigned can have a significant impact on the quality of the performance of the contract,

f) after-sales services including technical assistance, or

g) delivery conditions and delivery period or period of completion.

(3) The quality criteria shall be defined so that tenders can be compared on their basis and so that the fulfilment of the criteria can be verified. Contractual terms aimed at corroboration of obligations of an economic operator or payment conditions shall not be set as quality criteria.

(4) The contracting authority may also set a fixed price and evaluate solely the quality of the proposed performance.

(5) The quality criteria are presumed to be linked to the subject-matter of the public contract if they are related to any stage of the life cycle of the subject-matter of the public contract.

#### Section 117

##### **Life-cycle costing**

Life-cycle costing shall cover the tender price and may cover

a) costs, borne by the contracting authority or other users in the course of the life cycle of the subject-matter of the public contract, which may cover, including, but not limited to,

1. other costs relating to acquisition ,
2. costs relating to use of the subject-matter of the public contract,
3. maintenance costs, or
4. end of life costs, or

b) costs imputed to environmental externalities linked to the subject-matter of the public contract at any time during its life cycle, provided their monetary value can be determined; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

#### Section 118

##### **Method used for the assessment of life-cycle costs**

(1) Where the contracting authority assesses tenders using a life-cycle costing approach, it shall indicate in the procurement documents the data to be provided by the participants and the method which the contracting authority will use to determine the life-cycle costing on the basis of those data.

(2) To calculate the costs pursuant to Section 117 b), the contracting authority shall use a method that is

- a) based on objectively verifiable and non-discriminatory criteria,
- b) accessible to all economic operators, and
- c) based on data that can be provided by the economic operators with reasonable effort.

(3) The government may issue a decree setting common methods used for the assessment of the life-cycle costs and the scope of their use.

## **Chapter 2**

### **Procedure for evaluation of tenders**

#### Section 119

(1) The contracting authority shall evaluate the tenders on the basis of the tender evaluation rules defined in the procurement documents.

(2) The contracting authority shall draw up a written report on the evaluation of tenders in which it shall record

- a) the identification of the procurement procedure,
- b) the natural persons that took part in the evaluation; such persons shall be considered to include in particular the persons who carried out the evaluation of tenders, including committee members where a committee was formed by the contracting authority for the purpose of evaluation, or invited experts where their conclusions were taken into account in the evaluation process,
- c) the list of the evaluated tenders, and
- d) a description of the evaluation which shall clearly show
  1. the evaluated tender data that correspond to the evaluation criteria,



2. a description of the evaluation of the tender data under individual evaluation criteria,
3. a comparison of values obtained from the evaluation of the individual evaluation criteria, and
4. the result of the evaluation of tenders.

#### Section 120

##### **Conditions for application of electronic auction**

(1) The contracting authority may reserve, in the contract notice or in the invitation to submit requests to participate pursuant to Section 58 (5), the right to carry out an electronic auction after the evaluation of the tenders. In that case, the contracting authority shall proceed during the procurement procedure in such a way that the participants in the electronic auction cannot identify one another until the auction is completed.

(2) The contracting authority shall not apply an electronic auction in cases stipulated in Section 114 (3).

(3) The contracting authority may also apply an electronic auction where public contracts are awarded under a dynamic purchasing system or on the basis of a framework agreement.

(4) When applying an electronic auction, the contracting authority shall indicate in the procurement documents at least

- a) the evaluation criteria that can be expressed in numbers and whose values will be the subject of the electronic auction,
- b) a potential restriction of the tender values corresponding to the evaluation criteria under paragraph a) which will be submitted by participants during conducting of the electronic auction (hereinafter referred to as 'the auction value'),
- c) the information that will be provided to participants during conducting of the electronic auction or, where applicable, specification as to when such information will be provided to them,
- d) information concerning the conduct of the electronic auction, including the method of its termination pursuant to Section 121 (8),
- e) the conditions under which participants will be entitled to submit new auction values in the electronic auction, in particular the minimum differences for individual submissions of auction values, where suitable with regard to their nature, and
- f) information concerning the electronic tool used and further technical information necessary for electronic communication.

#### Section 121

##### **Conduct of an electronic auction**

(1) Before starting an electronic auction, the contracting authority shall

- a) assess whether the tenders correspond to the award criteria,
- b) exclude all participants in respect of whom it finds out that there are grounds for exclusion pursuant to Section 48 (2) or in respect of whom it may prove that there are grounds for unsuitability pursuant to Section 48 (5) a) to c).
- c) evaluate the tenders.

(2) After the evaluation of tenders, the contracting authority shall set the outcome as a default setting of the electronic auction and shall invite all participants to submit new auction values in the electronic auction. The invitation shall be sent to the participants in electronic form.

(3) The invitation by the contracting authority pursuant to subsection (2) shall contain all information necessary for individual connection to the electronic tools used in the electronic auction as well as the date and time of the commencement of the electronic auction. Where the information pursuant to the first sentence has already been provided in the procurement documents, it shall suffice if the invitation refers to the procurement documents.

(4) With the exception of cases where the lowest tender price is the sole evaluation criterion, the invitation pursuant to subsection (2) shall also contain

- a) the outcome of the evaluation of a tender submitted by a relevant participant in the electronic auction, and
- b) the mathematical formula that shall be used in the electronic auction to determine the automatic re-rankings on the basis of the new values submitted and that shall incorporate all the evaluation criteria.

(5) The electronic auction shall not be commenced sooner than two working days after the date on which the invitation pursuant to subsection 2 is sent out.

(6) The electronic auction may consist of individual phases. The contracting authority shall inform the participants of the length and other details concerning the individual phases of the auction in the invitation pursuant to subsection (2). Paragraphs a) and b) of subsection (8) apply to the closing of individual phases in the auction by analogy.

(7) Throughout the electronic auction the contracting authority shall grant all participants access to information on their current rankings. The contracting authority may also provide information on auction values or on the number of participants in an auction provided that it has reserved the right to do so in the procurement documents and has established the means by

which such information will be provided. The contracting authority may inform the participants of the number of participants in an auction at any time during the electronic auction.

(8) The electronic auction shall be closed

a) upon the expiry of the previously indicated period,

b) when the contracting authority receives, for a previously indicated period of time, no more new auction values that would change rankings, or

c) where the previously indicated number of phases in the auction has been completed.

## TITLE XI

### SELECTION OF THE ECONOMIC OPERATOR

#### Section 122

##### **Selection of the economic operator**

(1) In order to conclude a contract, the contracting authority is obliged to select the participant whose tender has been evaluated as the most economically advantageous on the basis of evaluation of tenders or electronic auction, where applied.

(2) Where there is only one participant in the procurement procedure, it may be selected by the contracting authority without evaluation.

(3) The contracting authority shall send the selected economic operator a notice to submit

a) the originals or certified copies of documents attesting to its qualification where they have not already been made available to it,

b) documents or samples the submission of which is a condition for the conclusion of the contract where the contracting authority has reserved the right to do so under Section 104 (1), and

c) information and documents pursuant to Section 104 (2) a) and b), where the selected economic operator is a legal person; in that case, the procedure pursuant to Section 46 (1) applies by analogy.

(4) With regard to the notice specified in subsection (3), the procedure pursuant to Section 46 (1) applies by analogy.

(5) The contracting authority shall exclude a participant which has failed to submit data, documents or samples pursuant to subsection (3) or if the outcome of sample tests does not correspond to the award criteria.

#### Section 123

##### **Notice of the selection of the economic operator**

The contracting authority shall send a notice of the selection of the economic operator to all participants without undue delay after making the decision on the selection of the economic operator. With the exception of a negotiated procedure with prior publication and a procurement procedure in which only one participant is taking part, such notice shall include

a) a report on the evaluation of tenders where tenders have been evaluated,

b) the outcome of the assessment of fulfilment of the conditions for participation in respect of the selected economic operator, which shall include

1. a list of documents that the selected economic operator used to prove its qualification, and

2. the data decisive to prove the fulfilment of respective qualification criteria with regard to the requested professional qualification under Section 77 (2), economic qualification and technical qualification,

3. a list of documents or samples the submission of which is a condition for the conclusion of the contract where the contracting authority has reserved the right to do so pursuant to Section 104 (1) a),

4. the outcome of tests of the samples provided that the contracting authority has reserved the right to do so pursuant to Section 104 (1) b).

## TITLE XII

### CONCLUSION OF A PUBLIC CONTRACT

#### Section 124

(1) After the expiry of a prohibition to conclude a contract pursuant to Section 246, the contracting authority and the selected economic operator shall conclude a contract without undue delay.

(2) The contracting authority may exclude the selected economic operator from the procurement procedure where the economic operator fails to fulfil its duty pursuant to subsection (1).

(3) The contracting authority shall exclude the selected economic operator where it finds out, on the basis of the

documents submitted pursuant to Section 122 (3) c), that the economic operator had a conflict of interest pursuant to Section 44 (2) and (3).

(4) The contracting authority shall conclude the contract in accordance with the tender submitted by the selected economic operator or, where applicable, with a tender modified in compliance with Section 69 (8).

#### Section 125

##### **Procedure after the exclusion of the selected economic operator**

(1) Where the selected economic operator is excluded, the contracting authority may invite another participant to conclude the contract, doing so in accordance with the ranking that follows from the outcome of the original evaluation of tenders or electronic auction or from the outcome of a new evaluation. The contracting authority shall conduct a new evaluation where the exclusion of the selected economic operator would substantially influence the original ranking of tenders. The participant invited to conclude the contract shall be considered to be the selected economic operator.

(2) The contracting authority may apply the procedure set out in subsection (1) repeatedly until the contract is concluded. Provisions of Section 122 (3) and (5), Section 123 and Section 124 apply by analogy; the notice of the selection of the economic operator need not include a report on the evaluation of tenders where a new evaluation of tenders has not taken place.

#### Section 126

##### **Contract award notice**

The contracting authority shall send a contract award notice for publication in the manner described in Section 212 within 30 days from the conclusion of a contract or framework agreement or from setting up a dynamic purchasing system.

#### TITLE XIII

##### **CANCELLATION OF A PROCUREMENT PROCEDURE**

#### Section 127

##### **Grounds for cancellation of a procurement procedure**

(1) In the event that there is no participant after the expiry of the time limit for the submission of requests to participate, indicative tenders or tenders, the contracting authority shall cancel the procurement procedure.

(2) The contracting authority may cancel the procurement procedure where

a) the number of participants who may be invited to submit tenders in a restricted procedure, indicative tenders in a negotiated procedure with prior publication or solutions in a competitive dialogue procedure is lower than the minimum number established in the procurement documents, or where tenders, indicative tenders or solutions are submitted by a lower number of participants than the established minimum number,

b) the participation of the selected economic operator in the procurement procedure terminates after its exclusion,

c) the grounds for continuation of the procurement procedure have ceased to exist as a consequence of a substantial change in circumstances that has arisen after the commencement of the procurement procedure and has been neither foreseeable by nor attributable to a diligent contracting authority,

d) the grounds which merit particular consideration, including economic ones, have occurred during the procurement procedure and on the basis of that grounds the contracting authority cannot be reasonably required to continue the procurement procedure, notwithstanding whether the contracting authority has caused such grounds or not,

e) the contracting authority has not obtained a subsidy which was to cover, either entirely or partly, the public contract,

f) during the procurement procedure involving a design contest the selected economic operator has submitted a tender that is economically unacceptable for the contracting authority,

g) it concerns the procurement procedure which was commenced by the contracting authority even though it was not obliged to do so, or

h) there is only one participant in the procurement procedure; the contracting authority may apply this ground for cancellation only until it sends a notice of the selection of the economic operator.

(3) The contracting authority may cancel a negotiated procedure without prior publication provided that it informs the participants of the grounds for such cancellation.

#### Section 128

##### **Notification and notice of cancellation of a procurement procedure**

1) The contracting authority shall send a written notification of cancellation of the procurement procedure to all

participants within three working days from making the decision to cancel the procedure.

(2) The contracting authority shall send a notice of cancellation of the procurement procedure for publication in the manner described in Section 212 within 30 days from the cancellation of the procurement procedure.

(3) The duty referred to in subsections (1) and (2) does not apply to a negotiated procedure without prior publication.

(4) Where the procurement procedure is cancelled by the Office for the Protection of Competition (hereinafter referred to as 'the Office'), subsections (1) to (3) apply by analogy. The time limits start running from the date on which the contracting authority learns that a decision made by the Office has come into force.

## **BOOK FIVE**

### **LIGHT REGIME**

#### **Section 129**

(1) The contracting authority shall apply the light regime to public contracts, including concession contracts under Section 174, for social and other specific services listed in Annex No. 4 to this Act. This applies even to the cases where the public contract provides for services not listed in this Annex provided that their estimated value is lower than the estimated value of the services listed in Annex No. 4 to this Act.

(2) During the public procurement process under the light regime, the contracting authority shall proceed pursuant to this Book and shall also apply books one, two and ten to thirteen.

(3) The contracting authority may commence a procurement procedure under the light regime by sending

a) a prior information notice for publication in the manner specified in Section 212 where, by such notice, it invites economic operators to express their preliminary interest, or

b) a contract notice for publication in the manner specified in Section 212 provided that the procedure is not a concession procedure.

(4) Economic operators shall express their preliminary interest in writing.

(5) Provisions of sections 96 to 99 apply to the procurement documents and award criteria by analogy. In the procurement documents, the contracting authority may set out individual rules that govern above-threshold procurement procedure.

(6) Under the light regime, the contracting authority may also define other criteria for the qualification of economic operators than those specified in Book Four; provisions of sections 76 and 81 to 88 apply by analogy.

(7) The contracting authority shall determine the conduct of the procurement procedure with regard to the specific characteristics of the services being awarded. The contracting authority may hold negotiations with the participants. The contracting authority may alter the award criteria during the procurement procedure provided that this does not violate the principles defined in Section 6. However, the altered award criteria shall still meet the conditions for the light regime.

(8) When selecting the economic operator, the contracting authority may take into account quality criteria such as the need to ensure quality, continuity, accessibility and comprehensiveness of services, the innovativeness of solutions, the contribution for users or sustainability criteria for social services.

(9) The contracting authority shall inform all participants of the selection of the economic operator along with a justification of this selection.

(10) The contracting authority shall send the contract award notice for publication in the manner described in Section 212 within 30 days or, in the case of a concession procedure, within 48 days

a) from the conclusion of the contract, or

b) from the end of each quarter where the contracting authority sends grouped notices.

# **BOOK SIX**

## **SPECIFIC PROCEDURES**

### **TITLE I**

#### **GENERAL PROVISION**

##### **Section 130**

Sections 42 to 44 apply to the procedure under this Book by analogy.

### **TITLE II**

#### **FRAMEWORK AGREEMENT**

##### **Section 131**

##### **General provisions governing framework agreements**

(1) A framework agreement means an agreement in which one or more contracting authorities and one or more economic operators set out framework terms concerning, in particular, the price and other conditions of the public contract which shall be binding throughout the term of the framework agreement.

(2) The contracting authority may conclude a framework agreement solely on the basis of such procurement procedure that it would be entitled to apply to a public contract having a similar subject-matter and similar estimated value.

(3) The duration of the relation arising from a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

(4) A tender for a public contract that is to be awarded on the basis of a framework agreement may only be submitted by such a party to the framework agreement who has been invited to submit a tender.

(5) Unless otherwise stipulated below, the contracting authority shall not allow a substantial modification to the terms and conditions laid down in the framework agreement throughout its term without conducting a new procurement procedure under this Act; Section 222 applies with the necessary modifications. The contracting authority shall not allow a substantial modification to the terms and conditions laid down in the framework agreement even when awarding public contracts on the basis of the framework agreement.

##### **Section 132**

##### **Procurement procedure for the framework agreement**

(1) A procurement procedure aimed at concluding a framework agreement is governed by the provisions for the below-threshold or above-threshold regime, unless stipulated in this Book otherwise.

(2) The procurement documents shall define unequivocally the contracting authority or a group of contracting authorities that are to become parties to the framework agreement. Throughout the term of the framework agreement, the group of contracting authorities or group of economic operators who are parties to the framework agreement shall not be extended. The contracting authority shall determine in the procurement documents whether the framework agreement will be concluded with one or more participants.

(3) The contracting authority shall determine in the procurement documents whether the public contract based on a framework agreement concluded with several economic operators will be awarded using a procedure

- a) with reopening of competition among the parties to the framework agreement,
- b) without reopening of competition among the parties to the framework agreement, or
- c) involving a combination of the procedures set out under paragraphs a) and b).

(4) A public contract may be awarded by a procedure not involving a reopening of competition among the parties to the framework agreement provided that

- a) all terms and conditions of the public contract are contained in the framework agreement, and
- b) the procurement documents for the framework agreement indicate clearly which party to the framework agreement will be awarded the public contract based on the framework agreement.

(5) A public contract may be awarded using the procedure under paragraph c) of subsection (3) where the procurement documents for the framework agreement indicate the method of determining which public contracts based on the framework agreement will be awarded by a procedure without reopening of competition among the parties to the framework agreement and which will be awarded by a procedure with reopening of competition among the parties to the framework

agreement. In that case, the contracting authority may invite the parties to the framework agreement to submit tenders even for those public contracts being awarded on the basis of a framework agreement where the contracting authority stated in procurement documents for the framework agreement that these contracts will be awarded without reopening of competition.

(6) The contracting authority shall not request participants to provide a security.

(7) The contracting authority shall send the contract award notice for publication in the manner described in Section 212 within 30 days from concluding the framework agreement or from the cancellation of the procurement procedure.

#### Section 133

##### **Selection of parties to the framework agreement**

(1) Where concluding a framework agreement with several economic operators, the contracting authority shall proceed pursuant to the rules for the selection of an economic operator and shall conclude a framework agreement with at least the minimum number of the economic operators listed in the procurement documents.

(2) In the event that the contracting authority is unable to select the number of economic operators indicated in the procurement documents on the grounds that tenders have been submitted in an insufficient number or that these tenders have not met statutory requirements or the requirements set by the contracting authority, the contracting authority may conclude a framework agreement with only those participants which have met such requirements or it may cancel the procurement procedure.

(3) Where the contracting authority has indicated in the procurement documents that it intends to conclude a framework agreement with reopening of competition, it shall not conclude a framework agreement with only one economic operator.

(4) Where any of the selected economic operators is excluded, Section 125 applies in relation to all the selected economic operators by analogy.

#### Section 134

##### **Procedure without reopening of competition among parties to the framework agreement**

(1) When awarding a public contract on the basis of a framework agreement by the procedure without reopening of competition among the parties to the framework agreement, the contracting authority shall proceed pursuant to the terms and conditions stipulated in the framework agreement.

(2) When proceeding pursuant to subsection (1), the contracting authority may request a party to the framework agreement to supplement its tender where necessary for the performance of the public contract.

#### Section 135

##### **Procedure with reopening of competition among parties to the framework agreement**

(1) When awarding a public contract on the basis of a framework agreement by the procedure with reopening of competition among the parties to the framework agreement, the contracting authority shall

a) invite the parties to the framework agreement in writing to submit tenders on the basis of the conditions set out in the procurement documents for the framework agreement; where necessary for the performance of the public contract, these conditions may be formulated more precisely,

b) set a reasonable time limit for the submission of tenders,

c) apply provisions of sections 107 to 110 to the submission and opening of tenders by analogy,

d) inform all parties to the framework agreement who have submitted tenders of the selection of the economic operator along with a justification of this selection,

e) award the public contract based on the framework agreement to the party to the framework agreement that has been selected on the basis of the criteria laid down in the procurement documents for the framework agreement.

(2) A tender shall be considered as not to have been submitted where

a) a party to the framework agreement offered in its tender less advantageous conditions than those in the procurement procedure for the framework agreement, or

b) the parties to the framework agreement have submitted a joint tender.

(3) The contracting authority may conclude the contract even before the expiry of the time limit for filing objections against the selection of the economic operator.

## Section 136

### **Verification of qualification of the parties to the framework agreement**

(1) If the term of the framework agreement exceeds one year, the contracting authority may request the economic operators who are parties to the framework agreement to submit documents attesting to their qualification after the end of each year of the term of the framework agreement. In that case, the contracting authority shall set a time limit for the submission of such documents by economic operators to at least the same extent to which this time limit was set in the original procurement procedure.

(2) The contracting authority may also prove that there are grounds for unsuitability of any party to the framework agreement pursuant to Section 48 (5) or (6) at any time during the term of the framework agreement.

(3) The contracting authority shall not invite an economic operator to submit a tender where the respective economic operator fails to submit documents pursuant to subsection (1) or in respect of which the contracting authority proves that there are grounds for unsuitability pursuant to subsection (2). In the event that the economic operator submits documents pursuant to subsection (1) later than within the time limit set by the contracting authority or if it proves a renewal of its suitability pursuant to Section 76 by analogy, the contracting authority shall invite it to submit a tender again as of this moment.

## Section 137

### **Contract award notice**

The contracting authority shall send the contract award notice concerning a contract based on a framework agreement for publication in the manner described in Section 212 within 30 days from

- a) the conclusion of the contract, or
- b) the end of each quarter where the contracting authority sends grouped notices.

## TITLE III

### **DYNAMIC PURCHASING SYSTEM**

## Section 138

### **General provisions**

(1) The contracting authority may set up a dynamic purchasing system, which for the purposes of this Act means a completely electronic and open system for the award of public contracts having as their subject-matter the acquisition of common and generally available products, services or works. The contracting authority shall set up a dynamic purchasing system during the procurement procedure during which it shall follow, with the necessary modifications, the rules of the restricted procedure. The contracting authority may divide the dynamic purchasing system into categories that are objectively defined on the basis of the subject-matter of the public contracts or on the basis of their territorial scope.

(2) Economic operators shall not be required to pay for using the dynamic purchasing system.

## Section 139

### **Setting up of a dynamic purchasing system**

(1) In the contract notice, the contracting authority shall specify the period of validity of a dynamic purchasing system and shall indicate that a dynamic purchasing system is being set up.

(2) The time limit for the receipt of requests to participate shall not be shorter than 30 days from the commencement of the procurement procedure by which a dynamic purchasing system is set up.

(3) The contracting authority shall provide economic operators with unlimited remote access to the procurement documents, starting from the publication of the contract notice for setting up of the dynamic purchasing system until the termination of the dynamic purchasing system.

(4) In the procurement documents, the contracting authority shall define the elements of a restricted procedure as well as

- a) the type, subject-matter and estimated value of the public contracts to be awarded under the dynamic purchasing system,
- b) information on division into categories pursuant to Section 138 (1) and selection criteria for each category, where the dynamic purchasing system is divided into categories, and
- c) information concerning the electronic tool used and further technical information necessary for electronic communication.

(5) The contracting authority is not entitled to request the participants to provide a security.

(6) The contracting authority shall assess the conformity of the requests to participate it has received within the time limit for their submission with the award criteria. The contracting authority shall exclude from the procurement procedure those

participants whose requests to participate do not meet the award criteria and shall admit the remaining participants to the dynamic purchasing system. The contracting authority shall inform the participant admitted to the dynamic purchasing system of its admission without undue delay.

(7) The dynamic purchasing system shall be considered to be set up at the moment when

- a) the time limit in which all participants could file objections against exclusion from the procurement procedure expires, where such objections have not been filed,
- b) in the event that the objections have been filed, the time limit for submitting a petition under Section 251 (2) or (3) expires, provided that the petition has not been submitted, or
- c) in the event that the participant submits a petition under Section 251 (1), a decision on a discontinuance of administrative proceedings or a rejection of the tender comes into effect.

(8) The contracting authority shall send the contract award notice for publication in the manner described in Section 212 within 30 days from setting up the dynamic purchasing system.

(9) The contracting authority shall send a notice of a change for publication in the manner described in Section 212 where

- a) the period of validity of the dynamic purchasing system specified in the contract notice for setting up of the dynamic purchasing system has changed, or
- b) the dynamic purchasing system has been terminated.

#### Section 140

##### **Admission to the dynamic purchasing system**

(1) The contracting authority shall give any economic operator, throughout the entire period of validity of the dynamic purchasing system, the possibility to submit the request to participate in the system. Requests to participate submitted after the dynamic purchasing system was set up shall be assessed by the contracting authority within 10 working days from their receipt. In justified cases, the contracting authority may prolong this time limit to 15 working days.

(2) The contracting authority shall send an economic operator a notice of its admission to the dynamic purchasing system or of its rejection within the time limit pursuant to subsection (1). The contracting authority shall justify a rejection of the request of the economic operator to be admitted to the dynamic purchasing system.

(3) The contracting authority may, at any time during the period of validity of the dynamic purchasing system, request the economic operators admitted to the dynamic purchasing system to submit an updated European Single Procurement Document. In that case, the economic operator is obliged to submit the updated European Single Procurement Document to the contracting authority within five working days from the date of receipt of the contracting authority's request. The rules for the submission of documents defined in Section 45 and for proving qualification pursuant to sections 81 to 88 apply with the necessary modifications throughout the entire period of validity of the dynamic purchasing system. The contracting authority may prove that there are grounds for unsuitability pursuant to Section 48 (5) in respect of an economic operator admitted to the dynamic purchasing system at any time during the period of validity of the dynamic purchasing system.

(4) The contracting authority shall not invite an economic operator to submit a tender where the respective economic operator fails to submit documents pursuant to subsection (3) or in respect of which the contracting authority proves that there are grounds for unsuitability. In the event that the economic operator submits documents pursuant to subsection (3) later than within the time limit set by the contracting authority or if it proves a renewal of its suitability pursuant to Section 76 by analogy, the contracting authority shall invite it to submit a tender again as of this moment.

#### Section 141

##### **Award of a public contract under a dynamic purchasing system**

(1) Before the award of a public contract under the dynamic purchasing system, the contracting authority shall send an invitation to tender to all economic operators admitted to the dynamic purchasing system. Where the dynamic purchasing system has been divided into categories, the contracting authority shall invite all economic operators having been admitted to the category corresponding to the specific public procurement concerned to submit a tender. The invitation to tender shall contain the elements defined in Annex No. 6 to this Act. The invitation to tender may not be sent before the dynamic purchasing system is set up.

(2) The time limit for the submission of tenders shall not be less than 10 days from the date, on which the invitation to tender was sent. The contracting authority defined in Section 4 (1) c) to e) may shorten this time limit on the basis of a written consent of all economic operators admitted to the dynamic purchasing system or to its relevant category.

(3) The contracting authority shall inform all economic operators admitted to the dynamic purchasing system who have submitted tenders of the selection of the economic operator along with a justification of this selection. The contracting authority shall award the public contract under the dynamic purchasing system to the economic operator which has been selected on the basis of the criteria indicated in the invitation to tender.

(4) The contracting authority may conclude the contract even before the expiry of the time limit for filing objections against the selection of the economic operator.



## Section 142

### **Contract award notice**

The contracting authority shall send the contract award notice concerning a contract concluded under the dynamic purchasing system for publication in the manner described in Section 212 within 30 days from

- a) the conclusion of the contract, or
- b) the end of each quarter where the contracting authority sends grouped notices.

## TITLE IV

### **DESIGN CONTEST**

## Section 143

(1) A design contest means a procedure which enables the contracting authority to acquire a design, which is mainly a plan or a project in the fields of town and country planning or architecture, construction, technical and inspection services. Section 107 applies to the submission of designs by analogy.

(2) The contracting authority shall apply a design contest where it intends to award a public service contract in a following negotiated procedure without prior publication pursuant to Section 65; the contracting authority shall indicate such intention in the contest notice.

(3) The contracting authority shall also apply a design contest where

- a) the design contest is part of a procurement procedure for a public service contract, or
- b) the estimated aggregate value of prizes, remunerations and other payments connected with participation in the design contest exceeds CZK 2,000,000; this does not apply to cases specified in sections 29, 30, 158, 177 to 178 and 191.

## Section 144

### **Design contest conditions**

(1) In the design contest conditions, the contracting authority shall determine whether it will apply an open design contest or a restricted design contest.

(2) The design contest conditions shall be made public on the contracting authority profile for the entire duration of the time limit for the submission of designs. Provisions of Section 96 (2) to (4) and Section 99 apply to the design contest conditions by analogy. The contracting authority shall publish an explanation of the design contest conditions on the contracting authority profile not later than 14 days before the expiry of the time limit for the submission of designs.

(3) Design contest conditions relating to a design contest having as its subject-matter services listed in division 71 of the main vocabulary of the single classification system shall contain at least

- a) the name, or names, and surname or names and surnames of the jury members,
- b) the method of designation of the designs and their annexes in order to ensure their anonymity,
- c) the amount of prizes, remunerations and other payments where they are provided,
- d) conditions for treatment of intellectual property rights where the design enjoys such protection,
- e) the estimated amount of investment costs where a public service contract is to be awarded, and
- f) the means of publication of the designs.

(4) The communication between the contracting authority and economic operators shall be governed by Section 211 by analogy.

## Section 145

### **Open design contest**

(1) The contracting authority shall commence an open design contest by sending a contest notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit designs.

(2) The time limit for the submission of designs shall not be shorter than 35 days, or 45 days in respect of a design contest having as its subject-matter services listed in division 71 of the main vocabulary of the single classification system, from the date on which the design contest notice was sent.

## Section 146

### **Restricted design contest**

(1) The contracting authority shall commence a restricted design contest by sending a design contest notice for publication in the manner specified in Section 212, by means of which it invites an unlimited number of economic operators to submit requests to participate. Provisions of Section 58 apply by analogy.

(2) The time limit for the submission of requests to participate shall not be less than 20 days from the date on which the design contest notice was sent. The time limit for the submission of designs shall not be shorter than 30 days, or 45 days in respect of a design contest for services listed in division 71 of the main vocabulary of the single classification system, from the date on which the invitation to submit designs was sent.

(3) In the design contest notice, the contracting authority may specify which economic operators it will invite to submit designs, provided that it specifies at least three such economic operators.

(4) The contracting authority shall assess the conformity of the requests to participate with the design contest conditions and reduce the number of design contest participants pursuant to Section 111 (1) to (4) by analogy provided that it has reserved the right to do so in the contest notice. In the event that the contracting authority proceeds simultaneously pursuant to subsection (3), the number of design contest participants to be invited to submit designs as specified in the contest conditions shall not be lower than twice the number of economic operators indicated in the contest notice pursuant to subsection (3). The contracting authority shall exclude from the design contest those participants whose requests to participate do to meet the design contest conditions or that have not been selected when the number of design contest participants was being reduced. The contracting authority shall invite the non-excluded participants to submit designs.

### **Section 147**

#### **Reduction of the number of designs**

The contracting authority may reserve, in the design contest conditions, that the contest will take place in several phases and that the number of designs may be reduced in its course; provisions of Section 112 apply by analogy.

### **Section 148**

#### **Jury**

(1) In order to evaluate the designs, the contracting authority shall form a jury composed of natural persons. The jury members shall not have a conflict of interest pursuant to Section 44. A majority of the jury members shall be independent in relation to the contracting authority. Jury members shall be understood as being independent if they have no long-term business, employment or similar relationship with the contracting authority. The contracting authority shall request all jury members to submit affirmations attesting that they have no conflict of interest, and in the case of a design contest having as its subject-matter services listed in division 71 of the main vocabulary of the single classification system it shall request the jury members to express a consent to the design contest conditions.

(2) Where the contracting authority applies requirements for professional qualification of economic operators pursuant to Section 77 (2) b) and c) as a condition for participation in the design contest, at least one half of the jury members shall have the requested or equivalent qualification.

(3) In the event that the composition of the jury changes in the course of the design contest, the contracting authority shall ensure that the conditions laid down in subsections (1) and (2) are met. In the case of a design contest having as its subject-matter services listed in division 71 of the main vocabulary of the single classification system, the contracting authority shall inform all design contest participants of the names of the newly appointed jury members.

(4) The contracting authority shall ensure that the jury evaluates the designs anonymously. Anonymity of designs shall be observed until the jury has reached its opinion.

(5) The jury shall draw up a report, signed by its members, on the evaluation of the designs, in which it shall record the ranking of the designs made on the basis of the criteria indicated in the contest notice.

(6) The design contest participants may be invited by the jury, where necessary, to respond to additional questions, which the jury shall record in the report on the evaluation of designs. The jury shall draw up detailed minutes of the dialogue between the jury and the design contest participants.

(7) When selecting a design, the contracting authority shall be bound by the jury's opinion. The contracting authority shall decide to conduct a new evaluation of designs where it finds out that during the evaluation of designs the jury breached the procedure stipulated by this Act or by the design contest conditions. The new evaluation of designs shall be conducted by the original jury or the contracting authority shall appoint a new jury; the requirement of anonymity of designs shall always be observed. The contracting authority shall include the reasons for a new evaluation of designs in the original report on the evaluation of designs.

### **Section 149**

#### **Notice of the selection of the design**

(1) The contracting authority shall send a notice of the selection of the design to all design contest participants.

(2) If the participant who submitted the selected design is excluded from the design contest, the contracting authority may decide to select another design in accordance with the ranking determined in the report on the evaluation of designs.

(3) The design contest shall be considered to be terminated at the moment when

a) the time limit in which all participants could file objections against the selection of a design expires, where such objections have not been filed,

b) in the event that the objections have been filed, the time limit for submitting a petition under Section 251 (2) or (3) expires, provided that the petition has not been submitted, or

c) in the event that the participant submits a petition under Section 251 (1), a decision on a discontinuance of administrative proceedings or a rejection of the tender comes into effect.

(4) The contracting authority may reserve, in the design contest conditions, the possibility to cancel the design contest before the jury makes a decision only if it simultaneously lays down conditions for compensation of the design contest participants.

#### Section 150

##### **Notice of a design contest termination**

(1) The contracting authority shall send a notice of the result of the design contest for publication in the manner described in Section 212 within 30 days from cancelling or terminating the design contest.

(2) In the case of a design contest having as its subject-matter the services listed in division 71 of the main vocabulary of the single classification system, the contracting authority shall send the design contest documents, including the jury's opinion and all designs, in electronic form to the Czech Chamber of Architects<sup>34)</sup>.

## **BOOK SEVEN**

### **UTILITIES PUBLIC CONTRACTS PROCEDURE**

#### **TITLE I**

##### **GENERAL PROVISIONS**

#### Section 151

##### **Utilities public contract**

(1) Utilities public contract means a public contract which the contracting authority awards during the pursuit of the relevant activity.

(2) Utilities public contract also means a public contract which is awarded by another person during the performance of the relevant activity where

a) it performs the relevant activity on the grounds of a special or exclusive right pursuant to Section 152, or

b) the contracting authority may exercise, directly or indirectly, its dominant influence over such person.

(3) For the purposes of this Act, dominant influence means the case, where one person, directly or indirectly,

a) holds the majority of another person's subscribed registered capital,

b) controls the majority of the votes attaching to shares issued by another person, or

c) may appoint more than half of the another person's governing or supervisory body.

(4) The contracting authority shall act during the award of a utilities public contract, which is not a concession, in accordance with Book Four, Book Five or Book Six and shall also apply Book One, Book Two and books ten to thirteen, unless provided in this book otherwise. During the award of a utilities public contract, which is a concession, the contracting authority shall act in accordance with Book Eight.

#### Section 152

##### **Special or exclusive rights**

(1) Special or exclusive rights means rights granted by a competent public authority on the grounds of a legal regulation containing the effect of which is to limit the exercise of relevant activities defined in Section 153 to one or more persons, and which substantially affects the ability of other persons to carry out such activity.

(2) Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute special or exclusive rights. Such

procedures shall include, but are not limited to,

- a) the procurement procedure enabling participation of an unlimited number of economic operators, or
- b) the procedure pursuant to other legal regulations listed in Annex No. 5 to this Act.

#### Section 153

#### Relevant activity

(1) For the purposes of this Act, relevant activity means,

- a) in the gas sector,
  - 1. provision or operation of the gas transportation or distribution system, gas recovery lines pursuant to another legal regulation<sup>35)</sup> relating to production, transportation or distribution of gas, or
  - 2. gas supply into the gas or distribution system, gas recovery line,
- b) in the heat sector,
  - 1. provision or operation of the heat supply system pursuant to another legal regulation<sup>35)</sup> relating to production and transportation of heat, or
  - 2. heat supply in the heat supply system,
- c) in the electricity sector,
  - 1. provision or operation of transmission or distribution system pursuant to another legal regulation<sup>35)</sup> relating to generation, transmission or distribution of electricity, or
  - 2. electricity supply into transmission or distribution system,
- d) in the water sector,
  - 1. provision or operation of water pipeline pursuant to another legal regulation<sup>36)</sup>, or
  - 2. the supply of drinking water to the water pipeline,
- e) activity of the contracting authority performing the relevant activity pursuant to paragraph d) of subsection 1, where such activity relates to
  - 1. hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations; or
  - 2. the disposal of sewage by the sewage system or purification and treatment of sewage,
- f) activity relating to the provision or operation of networks providing services to the public in the field of transport by railway, tramway, trolley bus, public bus or cable (hereinafter referred to as 'transport network'); a transport network shall be considered to exist where the service pursuant to this paragraph is provided under conditions laid down by a competent administrative body,
- g) activity relating to the exploitation of a geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterways,
- h) activities relating to the provision of
  - 1. postal services consisting of the posting, sorting, routing and delivery of postal items regardless of whether they are basic services<sup>37)</sup> or not; postal item means an item marked with an address irrespective of its weight or value, or
  - 2. other services than postal services, where they are provided by the person who provides any of the postal services; for the purposes of this provision other services than postal services mean services directly relating to postal services including services preceding the posting, as well as services subsequent to dispatch of the postal item, including but not limited to services of administration of the sender's or recipient's mailroom or services relating to items which are not listed in subparagraph 1, in particular direct mail bearing no address, or
- i) activity relating to the exploitation of a geographical area for the purposes of
  - 1. extracting oil or gas, or
  - 2. exploring for, or extracting, coal or other solid fuels.

(2) For the purposes of subsection (1), supply means generation or another form of production and resale.

(3) Unless the contracting authority is concerned, for the purposes of this Act, the following shall not be concerned the relevant activity:

- a) the activity pursuant to paragraphs a) or b) of subsection (1), where
  - 1. it is carried out on the grounds of economic exploitation of heat or gas produced as the consequence of the activity different from the activity specified in subsection (1), and
  - 2. income generated from this activity does not reach more than 20 % of the average turnover of the contracting authority during the preceding three years including the present year,
- b) the activity pursuant to paragraphs c) or d) of subsection (1), where
  - 1. the contracting authority produces electricity or drinking water for the purposes of an activity different from the activity referred to in subsection (1) and
  - 2. the contracting authority's own consumption is at least 70 % of the average production of electricity or drinking water during the preceding three years including the present year.

## Section 154

### Competition relating to the pursuit of the relevant activity

(1) The activity, which is directly exposed to competition on the market to which access is not restricted, shall not be considered the relevant activity within the meaning of Section 153, where the European Commission has decided so pursuant to the legal regulation of the European Union<sup>38)</sup>.

(2) Where it is reasonably foreseeable that conditions for exemption of any relevant activity within the meaning of subsection (1) are met, the ministry having in rem jurisdiction may submit an application for a decision in this matter through the Ministry of Regional Development to the European Commission, or the contracting authority performing the relevant activity may submit an application for a decision in this matter to the European Commission. When submitting an application to the European Commission the ministry having in rem jurisdiction or the competent contracting authority shall act in accordance with legislation of the European Union<sup>39)</sup>.

(3) In the case of a request submitted by the contracting authority carrying out the relevant activity, the ministry having in rem jurisdiction shall assess whether, with regard to this activity, it is reasonably foreseeable that the conditions specified in subsection (1) will be met.

(4) Where the contracting authority submits an application it shall send a copy thereof to the Ministry of Regional Development and to the ministry having in rem jurisdiction.

(5) For the purposes of subsection (1), it is presumed that the European Commission has decided to exempt the relevant activity when the time limit for issuance of such decision defined in the legal regulation of the European Union<sup>38)</sup> has expired.

## Section 155

### Contracts awarded to affiliated persons

(1) Affiliated person means any person which is obliged to have the annual accounts consolidated<sup>40)</sup> by the contracting authority or another person which, directly or indirectly,

- a) may be subject to a dominant influence by the contracting authority,
- b) may exercise a dominant influence over the contracting authority, or
- c) is subject to a dominant influence of the same person as the contracting authority.

(2) The public contract awarded by the contracting authority to the affiliated person or awarded jointly by several contracting authorities in order to pursue the relevant activity to the person affiliated to any of those contracting authorities, shall not be considered a utilities public contract where concerning

- a) services provided that at least 80 % of the average total turnover of the affiliated person over the preceding three years, taking into account all services provided by that undertaking, derives from the provision of services to the contracting authority or other persons with which it is affiliated,
- b) supplies provided that at least 80 % of the average total turnover of the affiliated person over the preceding three years, taking into account all supplies provided by that undertaking, derives from the provision of supplies to the contracting authority or other persons with which it is affiliated, or
- c) works provided that at least 80 % of the average total turnover of the affiliated person over the preceding three years, taking into account all works provided by that undertaking, derives from the provision of works to the contracting authority or other persons with which it is affiliated,

(3) Where, because of the date on which an affiliated person was created or an affiliated person demonstrably commenced its activities later, the average turnover for the preceding three years may not be determined, it shall be sufficient for that person to show that meeting conditions pursuant to subsection (2) is credible, in particular by means of business projections.

(4) Where more than one person affiliated with the contracting authority with which they form an economic group provides the same or similar services, supplies or works, the percentages specified in subsection (2) shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated persons.

## Section 156

### Contracts awarded to affiliated undertakings

The public contract awarded by the contracting authority to the person which it founded exclusively with other contracting authorities for the purpose of pursuit of relevant activities over a period of at least three years and where it is stipulated in writing in the forming juridical act that exclusive participation of founding contracting authorities in this person will last for at least three years from its formation, shall not be considered a utilities public contract. This applies by analogy also in the case where such person awards the public contract to contracting authorities by which it was found.

## Section 157

### Notifications to the European Commission

When proceeding pursuant to Section 155 and Section 156, the contracting authority shall notify the European Commission, if so requested, of

- a) the name of all persons participating in the award of a public contract,
- b) the subject-matter and price of relevant utilities public contracts, and
- c) the facts, which the European Commission considers necessary for proving that conditions pursuant to Section 155 and Section 156 have been met.

## TITLE II

### SPECIFIC RULES GOVERNING THE AWARD OF UTILITIES PUBLIC CONTRACTS

## Section 158

### Specific provisions governing exclusions for utilities public contracts

(1) The contracting authority is not obliged to use the procurement procedure to award a utilities public contract having an estimated value below the threshold determined by the secondary legal regulation pursuant to Section 25.

(2) In addition to cases specified in Section 29, the contracting authority is not obliged to use the procurement procedure to award a utilities public contract where

a) a central purchasing body conducting central purchasing activities is not concerned and a public contract is awarded for the purposes of resale or lease to third parties, whereas the contracting authority does not enjoy any specific or exclusive right to sell or lease the subject-matter of such utilities public contract and other persons are free to sell or lease the subject-matter of the utilities public contract under the same conditions as the contracting authority; the contracting authority shall notify the European Commission, if so requested, to which categories of things or activities they regard such exclusion to apply,

b) the public contract is awarded

- 1. for purposes other than the pursuit of the relevant activity, or
- 2. for the pursuit of the relevant activity in countries outside the territory of the European Union under conditions not involving the physical use of networks or geographical areas within the European Union;

the contracting authority awarding a utilities public contract shall notify the European Commission, if so requested, of any activities to which they regard such exclusion to apply, or

c) the contract is a utilities public service contract being awarded to a person which is a contracting authority or an association of contracting authorities on a basis of an exclusive right which it enjoys pursuant to other legal regulations which are compatible with European Union law.

(3) Provisions of sections 29 d), 29 i) 1., 29 l) 2., 29 p) and 29 s) do not apply.

## Section 159

### Exclusions for supplies of water, fuels or energy

The contracting authority is not obliged to use the procurement procedure to award a utilities public contract for the pursuit of

- a) the relevant activity pursuant to Section 153 (1) d) where the purchase of water is concerned, or
- b) the relevant activity pursuant to Section 153 a) b) c) or i) where
  - 1. the supply of fuels for the production of energy is concerned, or
  - 2. the supply of energy, including supplies of supporting services, pursuant to another legal regulation<sup>35)</sup>.

## Section 160

### Exclusion for contracting authority providing postal services

The contracting authority performing the relevant activity pursuant to Section 153 (1) h) 1. is not obliged to use the procurement procedure to award a public contract where concerning

- a) services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);
- b) financial services, the subject of which are banking activities, investment services, insurance, supplementary pension insurance and security instruments,
- c) philatelic services, or

d) logistics services combining physical delivery or warehousing with other non-postal functions pursuant to Section 153 (1) (h) (2).

#### Section 161

##### **Specific provision governing the choice of procurement procedure**

During the award of a utilities public contract the contracting authority may use a negotiated procedure with prior publication in any case.

#### Section 162

##### **Specific provisions governing negotiated procedure without prior publication**

(1) The contracting authority may use a negotiated procedure without prior publication under conditions specified in Section 63 (1) regardless of the type of a previous procurement procedure which has been cancelled.

(2) The contracting authority may also use a negotiated procedure without prior publication for a utilities public supply contract for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices.

(3) The contracting authority may use a negotiated procedure without prior publication where a utilities public contract is purely for the purpose of research, experiment, study or development and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts; provisions of Section 64 a) do not apply.

(4) The contracting authority may also use a negotiated procedure without prior publication under conditions specified in Section 64 d) where a public service contract is concerned.

(5) Time limits for commencement of a negotiated procedure without prior publication set forth in Section 64 b) and Section 66 d) do not apply in the case of utilities public contracts.

#### Section 163

##### **Specific provisions governing restricted procedure and negotiated procedure with prior publication**

(1) During the award of a utilities public contract in a restricted procedure prior to the sending of the invitation to tender, the contracting authority may reduce the number of participants pursuant to Section 111. In such case the contracting authority shall exclude from the procurement procedure the participants that were not selected when the number of participants was being reduced.

(2) On the basis of a mutual agreement with participants and under the condition that the time limit is the same for all participants, the contracting authority awarding a utilities public contract may determine the time limit for submission of

a) tenders in a restricted procedure, or

b) indicative tenders in a negotiated procedure with prior publication.

(3) Unless the contracting authority agrees with participants as referred to in subsection (2), the time limit for the submission of tenders or indicative tenders shall not be less than 10 days from the date on which the invitation to tender was sent.

(4) The contracting authority may make an invitation to submit requests to participate in a restricted procedure or in a negotiated procedure with prior publication by means of the qualification system. In such case the contracting authority shall

a) send the invitation to all economic operators engaged in the qualification system, or

b) invite economic operators to submit requests to participate by means of a notice on the existence of a qualification system, where it proceeds pursuant to Section 165.

#### Section 164

##### **Specific provisions governing commencement of procurement procedures**

(1) During the award of a utilities public contract in a restricted procedure or a negotiated procedure with prior publication the contracting authority may also commence the procurement procedure by sending

a) a prior information notice for publication in the manner specified in Section 212 where, by such notice, it invites economic operators to express their preliminary interest, or

b) a notice on the existence of a qualification system for publication in the manner specified in Section 212, where, by such notice, it invites economic operators to submit their requests to participate in the procurement procedure.

In this case, by sending a prior information notice or notice on the existence of a qualification system the contracting authority fulfils the duties for which this Act otherwise requires sending a contract notice.

(2) Where the procurement procedure is commenced pursuant to subsection (1) the contracting authority shall publish the procurement documents with the exception of forms referred to in Section 212 and notices referred to in Annex No. 6 to this

Act on the contracting authority profile from the date of publication of the prior information notice or the notice on the existence of a qualification system until the expiry of the time limit for the submission of tenders.

#### Section 165

##### **Qualification system**

(1) For the purposes of the award of utilities public contracts, the contracting authority may establish a qualification system, into which the contracting authority admits qualified economic operators. The contracting authority may divide the qualification system into categories that are objectively defined on the basis of the subject-matter of public contracts or on the basis of their territorial scope. The contracting authority shall keep a list of economic operators admitted to the qualification system.

(2) The contracting authority shall send a notice on the existence of a qualification system for publication pursuant to Section 212. In the notice on the existence of a qualification system, the contracting authority shall indicate its purpose, how to have access to the rules concerning its operation and the period of validity of this system. Where the period of validity of the qualification system is changed or the system is terminated the contracting authority shall send a notification in the manner specified in Section 212.

(3) Contracting authority which establishes or operates a qualification system shall ensure that economic operators are at all times able to request qualification.

(4) The qualification system may involve different qualification stages.

(5) The contracting authority is entitled to use another contracting authority's qualification system, with its consent.

(6) The contracting authority is entitled to send an invitation to tender in a restricted procedure or indicative tenders in a negotiated procedure with prior publication to all economic operators admitted to the qualification system by means of the qualification system.

#### Section 166

##### **Operation of the qualification system**

(1) Contracting authorities shall establish objective rules for the operation of the qualification system and objective rules and grounds for the exclusion and selection of economic operators requesting qualification. The contracting authority shall provide economic operators with such rules on their request; Section 36 (8) applies by analogy.

(2) Rules for the operation of the qualification system shall enable to prove qualification through other persons. Provisions of Section 83 and Section 85 (2) apply by analogy.

(3) The contracting authority may make requests for qualification subject to payment by an economic operator, the payment shall be proportionate to the generated costs.

(4) Where the contracting authority also determines rules regarding technical specifications, the contracting authority may update such technical specifications. Updated rules shall be communicated to all economic operators being admitted to the qualification system.

(5) The contracting authority shall decide on the economic operator's request for qualification within four months from its submission. This time limit may be prolonged within two months from the submission of the request along with a justification and information on the date of decision. The contracting authority shall decide on the economic operator's request within six months from its submission, in any case.

(6) The contracting authority shall inform economic operators whose qualification is refused of the refusal decision and the reasons for that decision within 15 days from the date of the refusal decision.

(7) Qualification of an economic operator may be brought to an end only if the economic operator is notified of the reasoning justifying its excluding at least 15 days before the date on which the qualification is due to end.

#### Section 167

##### **Specific provisions governing award criteria**

During the award of a utilities public contract, the contracting authority may also define other criteria for the qualification of economic operators than those specified in Book Four; provisions of sections 76 and 81 to 88 apply by analogy. However, the contracting authority shall not, in particular,

a) define criteria applicable to some of the economic operators that are not applicable to the other economic operators, or

b) request repeatedly documents, tests or other data without a serious reason.

(2) With regard to the contracting authority referred to in Section 151 (2) provisions of Section 73 (1) and 73 (2) b) do not apply.

(3) In the case of procurement procedures commenced by the prior information notice, the contracting authority shall provide an economic operator, upon its request, with technical specifications usually requested with regard to utilities public



contracts being awarded by the contracting authority or with technical specifications which it intends to use or, where applicable, with reference to documents which have already been made available to the economic operator.

(4) During the award of utilities public contracts, provisions of Section 97 a) do not apply.

#### Section 168

##### **Tenders comprising supplies originating in third countries**

(1) In the case of a utilities public supply contract the contracting authority may exclude any participant where the proportion of the supplies, including software used in telecommunications network equipment, originating in countries with which the European Union has not concluded an agreement ensuring comparable and effective access for European Union economic operators to the markets of those countries, as determined in accordance with the directly applicable regulation of the European Union<sup>41)</sup>, exceeds 50 % of the total value of the proposed supplies. This does not apply where a promulgated international agreement concluded by the Czech Republic provides otherwise.

(2) Where two or more tenders are equivalent in the light of the evaluation criteria, preference shall be given to the tender which may not be rejected pursuant to paragraph (1) of this Section. The tender price of such tender shall be considered equivalent for the purposes of this provision, if the price difference does not exceed 3 %.

(3) The contracting authority is not obliged to use subsection (2) where as a result thereof it would oblige the contracting authority to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, or technical difficulties in operation and maintenance, or disproportionate costs.

(4) Supplies originating in countries to which the benefit of the Directive 2014/25/EU of the European Parliament and the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC has been extended, shall not be taken into account for determining the proportion specified in subsection (1).

#### Section 169

##### **Specific provisions governing framework agreements**

(1) In the case of utilities public contracts, the term of a framework agreement shall not exceed eight years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

(2) When selecting economic operators, in the case of utilities public contracts being awarded on the grounds of a framework agreement, the contracting authority shall proceed in accordance with conditions and criteria defined in the framework agreement. Provisions of sections 131 (3), 133 (1) to (3), 134, 135, 136 do not apply.

#### Section 170

##### **Specific provisions governing cancellation of a procurement procedure**

The contracting authority awarding a utilities public contract may cancel the procurement procedure even if there are not any grounds for cancellation pursuant to Section 127, provided that it has reserved the right to do so in the procurement documents. In such case the contracting authority shall indicate justification of such conduct in the notice of cancellation of the procurement procedure.

#### Section 171

##### **Specific provisions governing documentation of the procurement procedure**

The contracting authority shall send main elements of documentation of the procurement procedure to the European Commission, if requested.

#### Section 172

##### **Specific provisions governing a written report of the contracting authority**

Provisions of Section 217 (2) f) g) j) l) m) and n) do not apply to a written report of the contracting authority on the utilities public contract.

#### Section 173

##### **Specific provisions governing supplements to contract**

Provisions of Section 222 (5) c) and Section 222 (6) c) do not apply to supplements to a utilities public contract.

## **BOOK EIGHT**

### **CONCESSIONS AWARD PROCEDURE**

#### **TITLE I**

#### **GENERAL PROVISIONS**

##### **Section 174**

##### **Concession**

(1) The contracting authority shall proceed in accordance with this Book in case of public contracts which are works or service concessions. The contracting authority shall also apply Book One, Book Two, Title I of Book Seven and books ten to thirteen, unless otherwise provided below.

(2) The award of a works concession shall be deemed conclusion of a contract for pecuniary interest, by which the contracting authority

a) awards the provision of the activity pursuant to Section 14 (3) a) b) or c) to an economic operator, the consideration for which consists either solely in the right to exploit the work that is the subject of the contract or in that right together with payment, and

b) transfers an operating risk in exploiting those works to the economic operator.

(3) The award of a services concession shall be deemed conclusion of a contract for pecuniary interest, by which the contracting authority

a) awards the provision of other activities pursuant to Section 14 (3) a) to c) to an economic operator, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment and

b) transfers an operating risk in exploiting those services to the economic operator.

The operating risk is presumed to be transferred to the economic operator pursuant to subsections (2) and (3) where, under normal market conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are covered by the subject-matter of the concession. It may concern demand risk or supply risk or both. It may also concern the partial transfer of operating risk, if the part of the risk transferred to the economic operator involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the economic operator are not merely negligible.

##### **Section 175**

##### **Methods for calculating the estimated value of the concession**

(1) The estimated value of the concession shall be the total turnover of the economic operator, net of value-added tax, generated over the duration of the concession contract arising from consideration for the works and services being covered by the subject-matter of the concession, as well as for the supplies incidental to such works and services.

(2) The contracting authority shall determine an estimated value of the concession at the moment at which the procurement procedure is commenced.

(3) The estimated value of the concession shall be calculated on the grounds of objective facts using a method specified in the procurement documents. When calculating the estimated value of the concession, the contracting authority shall take into account in particular

a) the value of any form of possible options including any extension of the duration of the concession,

b) revenue from the payments made by the users of the subject-matter of the concession,

c) payments or any financial advantage in any form whatsoever made by the contracting authority or any other public authority to the economic operator, including compensation for compliance with a public service obligation and public investment subsidies,

d) payments or any other financial advantages, in any form, from third parties for the performance of the concession,

e) revenue from sales of any assets which are connected to the subject-matter of the concession;

f) the value of all the supplies, services and works that are made available to the economic operator by the contracting authority for the performance of the concession, or

g) any prizes or payments to the participants.

(4) When calculating the estimated value, the provisions of sections 16, 18 (3) and 19 to 23 do not apply.

## TITLE II

### RULES GOVERNING THE AWARD OF CONCESSIONS

#### Section 176

##### Choice of procurement procedures

(1) The contracting authority shall award concessions in a concession award procedure unless it applies a different type of procurement procedure pursuant to Section 55. The contracting authority may apply a negotiated procedure without prior publication only if the conditions specified in Section 63 (1) or (2) are met.

(2) Concessions for social and other specific services listed in Annex No. 4 to this Act shall be awarded under a light regime pursuant to Section 129.

(3) Utilities concession means a concession which the contracting authority awards during the pursuit of the relevant activity.

(4) The contracting authority shall proceed in accordance with this Book during the award of a public contract in the fields of defence and security, which is a concession.

#### Section 177

##### Specific exclusions for concessions

(1) The contracting authority is not obliged to use the procurement procedure to award a concession concerning

a) services concession being awarded to an economic operator on the basis of the exclusive right which was granted pursuant to another legal regulation transposing one of the legal regulations of the European Union listed in Annex No. 5 to this Act; in such case the contracting authority shall send a concession award notice for publication in the manner specified in Section 212 unless the European Commission is informed on the grounds of another legal regulation. The contracting authority shall inform the European Commission of the granting of an exclusive right to pursue any of the relevant activities,

b) services concession for air transport services based on the granting of an operating licence within the meaning of directly applicable legal regulation of the European Union<sup>42)</sup>,

c) concession for public passenger transport services within the meaning of directly applicable legal regulation of the European Union<sup>43)</sup>,

d) service concession for lottery services, which are covered by CPV code 92351100-7, awarded by a Member State to an economic operator on the basis of an exclusive right; the grant of such an exclusive right shall be subject to publication in the Official Journal of the European Union,

e) concession awarded by the contracting authority for the pursuit of its activities in a country outside the territory of the European Union under conditions not involving the physical use of a system, network or geographical area of the European Union, or

f) concession in the fields of defence and security, provided that the conditions laid down in Section 191 (2) a) to c), f) and g) are met.

(2) During the award of the concession the contracting authority is not entitled to apply the exclusion pursuant to

a) Section 29 b), c) or t) where the concession in the field of defence and security is not concerned, or

b) Section 29 a), e) to g) or r) where the concession in the field of defence and security is concerned.

#### Section 178

##### Small-scale concession

The contracting authority is not obliged to use the procurement procedure to award the small-scale public concession estimated value of which is equal to or lower than CZK 20.000.000; sections 27 and 31 do not apply.

#### Section 179

##### Duration of the concession

(1) The contracting authority shall set the duration of the concession, whereas the concession contract may only be concluded for a fixed term.

(2) For concessions lasting more than five years, the contracting authority shall set the duration of the concession so that the maximum duration of the concession does not exceed the time that an economic operator could reasonably be expected to take to recoup the investments made to achieve the specific contractual objectives. The investments shall include both initial investments and investments during the life of the contract.

(3) For concessions lasting more than five years, the contracting authority shall justify the duration of the contract in writing in the procurement documents.

### **TITLE III**

## **CONCESSION AWARD PROCEDURE**

### **Section 180**

#### **Conduct of the concession award procedure**

(1) The contracting authority shall commence the concession award procedure by sending a concession notice for publication in the manner specified in Section 212 by means of which it invites an unlimited number of economic operators to submit requests to participate, indicative tenders or tenders.

(2) The contracting authority shall commence the concession award procedure by sending an invitation to negotiate or by commencement of negotiations with the economic operator where an invitation to negotiate was not sent in advance, provided that the conditions for application of a negotiated procedure without prior publication pursuant to Section 63 (1) and (2) are met.

(3) The contracting authority shall lay down detailed conditions for the conduct of the concession award procedure. The concession award procedure may take place in a number of stages. Where tenders or indicative tenders are not required by the contracting authority in the contract notice, the contracting authority may invite participants to their submission by means of a notice. The contracting authority may reserve, in the procurement documents, the right to reduce the number of participants or the number of indicative tenders; in such case provisions of sections 111 and 112 apply by analogy and the contracting authority shall exclude from the procurement procedure the participants that have not been selected when reducing the number of participants or the number of indicative tenders.

(4) The contracting authority is entitled to hold negotiations with the participants.

(5) Sections 96 to 99 apply to the procurement documents and award criteria by analogy. In the procurement documents, the contracting authority may set out individual rules that govern above-threshold procurement procedure.

(6) The contracting authority may also define other criteria for the qualification than those specified in Part Four; provisions of sections 76 and 81 to 88 apply by analogy. In the concession award procedure, the contracting authority shall request a proof of the basic qualification pursuant to Section 74.

(7) The contracting authority shall indicate in the procurement documents both which requirements for the performance of the concession contract constitute the minimum technical specifications that shall be met by the performance offered and the planned conduct of the procedure.

(8) With regard to participation of subcontractors Section 105 applies by analogy.

(9) During the negotiations, the contracting authority may alter or supplement the award criteria with the exception of the evaluation criteria and the minimum technical specifications. The altered award criteria shall still meet conditions for the procedure pursuant to this Book and the subject-matter of the concession shall not be altered in such a way so that participation of other economic operators would be enabled.

(10) During the concession award procedure, the contracting authority shall not provide participants with information in a discriminatory manner. The contracting authority is entitled to disclose confidential information defined in Section 218 (1) to other participants only on the basis of a written consent granted by the participant in question in relation to the information in question.

### **Section 181**

#### **Time limits**

(1) The time limit for the submission of tenders, indicative tenders or requests to participate, where they are requested in the contract notice, shall not be less than 25 days from the commencement of the concession award procedure.

(2) Where the contracting authority invites to submit indicative tenders later than in the contract notice the time limit for the submission of indicative tenders shall not be less than 22 days from the date when the invitation to submit indicative tenders was sent.

(3) The time limit referred to in subsection (1) shall be extended by five days in the event that the contracting authority does not allow tenders to be submitted by electronic means pursuant to Section 213.

### **Section 182**

#### **Technical specifications**

(1) Technical specifications mean requirements for characteristics of the subject-matter of works concessions or services concessions which the contracting authority shall determine by means of

a) setting parameters expressing performance or functional requirements and describing the purpose or needs that are to be

fulfilled,

b) reference to standards or technical documents, or

c) reference to labels.

(2) Technical specifications may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the concession contract and proportionate to its value and its objectives.

The technical specifications may include characteristics with regard to the effect on the environment, quality levels, design for all requirements including accessibility for disabled persons and conformity assessment, performance, safety or dimensions, terminology, symbols, testing and test methods, marking and labelling, or user instructions.

(4) Unless justified by the subject-matter of the concession, technical specifications shall not, directly or indirectly, refer to specific economic operators or products with the effect of favouring or eliminating certain economic operators or certain products. Such a reference shall be permitted, where a sufficiently precise and intelligible description of technical specifications pursuant to subsection (1) is not possible. Such reference shall be accompanied by the words 'or equivalent'.

(5) Where a contracting authority uses the option of referring to the standards or technical specifications, it shall not reject a tender on the grounds that the proposed works or services do not comply with the technical specifications to which it has referred, once the economic operator proves, that the proposed works or services satisfy in an equivalent manner the requirements defined by the technical specifications.

#### Section 183

##### **Evaluation of tenders in the concession award procedure**

(1) The contracting authority shall indicate evaluation criteria in a contract notice or in an invitation to tender. Provisions of sections 114 to 118 apply by analogy. The contracting authority may proceed pursuant to Section 115 (2) in any case. The contracting authority may also set other criteria than those stipulated in Section 116 as criteria of quality, provided that they are based on objective facts relating to the person of economic operator or subject-matter of the concession. With regard to the procedure for evaluation of tenders Section 119 applies by analogy.

(2) Where the contracting authority receives a tender which proposes an exceptional innovative solution which could not have been foreseen by a diligent contracting authority, the contracting authority may modify the ranking order of the evaluation criteria to take into account that innovative solution.

In the case of modification pursuant to subsection (2), the contracting authority shall inform all participants about the modification of the ranking of the evaluation criteria and shall send

a) a new contract notice where the evaluation criteria were laid down in the contract notice, or

b) a new invitation to tender where the evaluation criteria were laid down in the invitation to tender; in such cases the time limits pursuant to Section 181 shall be respected.

#### Section 184

##### **Selection of an economic operator and termination of the concession award procedure**

(1) The selection of an economic operator and termination of the concession award procedure is governed by sections 122 to 127 by analogy.

(2) The contracting authority shall cancel a concession award procedure where according to the tender of the selected economic operator the value of the concession

a) exceeds the threshold laid down in the government decree and simultaneously it exceeds the estimated value of concession determined prior to the commencement of the concession award procedure by more than 20 % and

b) the contracting authority did not publish the contract notice in the Official Journal of the European Union.

#### Section 185

##### **Concession award notices**

The contracting authority shall send the concession award notice for publication in the manner described in Section 212 within 48 days from the conclusion of the contract.

## TITLE IV

### SPECIFIC PROCEDURE GOVERNING CONCLUSION OF AND SUPPLEMENTS TO THE CONTRACT

#### Section 186

##### **Opinion of the Ministry of Finance**

(1) In the case of concessions, the contracting authority referred to in Section 4 (1) d) or e) shall apply for a prior opinion of the Ministry of Finance to conclude a contract with the legal person where a territorial self-government unit founded or established such legal person or the legal person is funded mainly thereby or the self-government unit exercises decisive influence over the legal person, appoints or elects more than half of the members of its governing or controlling body, or to supplement any of those contracts. Where suggested supplements involve the amount of applicant's financial obligations, it shall be applied for an opinion on supplements to the contract.

(2) Application for the opinion referred to in subsection (1) shall contain general elements of a filing pursuant to the Code of Administrative Procedure, selected data from the contract or their modification, justification pursuant to Section 179 (3), economic analysis of impacts of conclusion of the contract or supplement to the contract on the economic standing of the contracting authority, including data on the state of indebtedness of the contracting authority, which are necessary to assess its ability to perform obligations arising from the contract; elements of an application's content shall be laid down by the regulation of the Ministry of Finance. When assessing the application, the Ministry of Finance shall not consider any other facts than those which are pursuant to subsection (5) decisive factors for assessment of the application.

(3) The application for opinion on conclusion of the contract or its supplement shall be filed by a territorial self-government unit on behalf of both itself and other contracting authorities referred to in subsection (1).

(4) Where the application is not complete the Ministry of Finance shall request its completion and shall set a reasonable time limit for such completion.

(5) The Ministry of Finance shall assess the application with regard to possible impacts of acceptance of obligations arising from the contract and their influence on the economic standing of the contracting authority referred to in subsection (1) or on international obligations of the Czech Republic.

(6) Where the Ministry of Finance does not give its opinion within two months from the receipt of the complete application, it shall be conclusively presumed, that it does not have any objections against conclusion of the contract or supplement to the contract.

## BOOK NINE

### PUBLIC PROCUREMENT PROCEDURE INVOLVING DEFENCE AND SECURITY ASPECTS

#### TITLE I

##### GENERAL PROVISIONS

#### Section 187

##### **Public contract in the fields of defence or security**

(1) Public contract in the fields of defence and security means a public contract which is awarded by a contracting authority having as its subject-matter

- a) supplies of military material and parts thereof, spare parts or components,
- b) supplies of sensitive material and parts thereof, spare parts or components,
- c) works, supplies or services directly relating to the supplies specified in paragraphs a) or b) for all stages of their life cycles,
- d) works or services intended specifically for military purposes, or
- e) sensitive works or sensitive services.

(2) For the purposes of this Act, sensitive material, sensitive works and sensitive services mean material, works or services which are related to classified information or classified information is requested for their provision or is included in them.

(3) During the award of a public contract in the fields of defence and security, which is not a concession, the contracting authority shall proceed pursuant to Book Three, Book Four or Title II of Book Six and shall apply Book One, Book Two, books ten to thirteen, unless otherwise provided in this book. The contracting authority shall not proceed in accordance with this Book during the award of a public contract in the fields of defence and security, which is a concession.

(4) In the fields of defence and security, the contracting authority shall not use an open procedure and innovation partnership procedure, design contest pursuant to Title IV of Book Six and is not entitled to set up a dynamic purchasing system.

#### Section 188

##### **Specific provisions governing the central purchasing body**

In the case of public contracts in the fields of defence and security, a European public entity may also be the central purchasing body.

#### Section 189

##### **Specific provisions governing vertical cooperation**

(1) For the purposes of this Book, a contract concluded between the contracting authority and another person shall not be considered an award of a public contract where

a) the contracting authority itself or in joint cooperation with other contracting authorities exercises over such legal person a control which is similar to that which it exercises over its own departments; with regard to the state the organisational unit of the state which founded or established the controlled person shall be considered the controlling person,

b) there is no direct capital participation in the controlled person with the exception of the controlling contracting authority or contracting authorities, and

c) a substantial part of the activities of the controlled legal person in the past three years are carried out in the performance of tasks entrusted to it by the controlling contracting authority or controlling contracting authorities or by other legal persons controlled by that controlling contracting authority or controlling contracting authorities.

(2) The contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.

(3) The contracting authorities exercise joint control over the legal person referred to in subsection (1) where

a) the decision-making bodies of the controlled legal person exercising influence over the controlled legal person are composed of representatives of all participating contracting authorities; individual representatives may represent more controlling contracting authorities,

b) controlling contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person, and

c) the controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities.

(4) Provisions of Section 11 do not apply.

#### Section 190

##### **Specific provisions governing horizontal cooperation**

(1) For the purposes of this Book, a contract concluded exclusively between contracting authorities shall not be considered an award of a public contract where

a) the contract establishes or implements cooperation between the contracting authorities with the aim of achieving their joint objectives in ensuring the meeting of needs in the general interest that such contracting authorities are established to ensure,

b) the cooperation referred to in paragraph a) is governed solely by considerations relating to the public interest, and

c) those contracting authorities do not carry out a substantial part of their activities concerning the cooperation under paragraph a) on the market.

(2) Provisions of Section 12 do not apply.

## TITLE II

### SPECIFIC RULES GOVERNING PUBLIC PROCUREMENT INVOLVING DEFENCE AND SECURITY ASPECTS

#### Section 191

##### **Specific provisions governing exclusions for public contracts in the fields of defence and security**

(1) During the award of public contracts in the fields of defence and security, the contracting authority shall not apply the exclusion specified in provisions of Section 29 a), c), d), g), i) and k) to r).

(2) The contracting authority is not obliged to use the procurement procedure to award public contracts in the fields of

defence and security where

a) they are awarded within cooperation programmes in the fields of research and development<sup>44)</sup> conducted jointly by the Czech Republic and at least one Member State with regard to the development of a new product, and, where applicable, also in the later stages of the entire life cycle of this product or a part thereof; when concluding agreements on those cooperation programmes between the Czech Republic and other Member States, the Czech Republic shall notify the European Commission of proportion of costs of research and development to the total costs of such programme, of sharing the costs, as well as of potential intended proportion of acquisitions by individual Member States,

b) they are awarded at the time of deployment of armed units of the Czech Republic outside the territory of the European Union and for the purposes of operational needs it is required for them to be awarded to the contracting authorities situated in territories of that operations,

c) they are awarded by the contracting authority defined in Section 4 (1) a) to the government or local government of another state and where they have as their subject-matter

1. supplies of military or sensitive material,
2. works or services directly relating to the supplies referred to in subparagraph 1,
3. works or services intended specifically for military purposes, or
4. sensitive works or sensitive services,

d) they have as their subject-matter financial services with the exception of insurance services,

e) they are awarded for the purposes of intelligence activities of intelligence services,

f) they are awarded pursuant to specific rules defined in an international agreement concluded between the Czech Republic and a non-Member State, or

g) specific rules of an international organisation purchasing for its own purposes apply to the award of them or where they shall be awarded by Member States in accordance with those rules.

#### Section 192

##### **Security of classified information**

In the case of a public contract in the fields of defence and security in respect of which

a) classified information is accessed, or

b) it is requested to enter independently security area or meeting area, the contracting authority may define, in the procurement documents, measures, which are necessary to protect this information in accordance with the respective type of securing the protection of the classified information<sup>9)</sup>. Where it is necessary for protection of such information, subcontractors shall also comply with defined measures for securing the protection of classified information.

#### Section 193

##### **Securing supplies**

(1) With regard to the nature and subject-matter of a public contract the contracting authority may define requirements for securing supplies in the procurement documents of the public contract in the fields of defence and security. For this purpose, in the procurement documents, the contracting authority may require a participant to submit in its tender

a) documents or statements issued by authorities of the Czech Republic or the relevant state demonstrating that, in respect of the public contract, the participant will be able to honour its obligations regarding the import, export, transfer and transit of the products which are covered by the subject-matter of the public contract<sup>45)</sup>, or

b) notification of any restriction on the contracting authority resulting from export, import control or security measures.

(2) With regard to the nature and subject-matter of a public contract the contracting authority may define requirements for securing supplies in the procurement documents of a public contract in the fields of defence and security, in particular a participant may be obliged to

a) secure that the organisation of the participant and location of subcontractors will enable the participant to meet requirements of the contracting authority in the field of securing supplies specified in the procurement documents or that potential changes in its subcontractors, which will occur during performance of the public contract, would not adversely affect compliance with these requirements,

b) secure maintenance, modernisation or adaptation of supplies covered by the subject-matter of the public contract,

c) timely inform the contracting authority of all changes in its organisation, its contractors or production strategy which may affect obligations of the participant towards the contracting authority, or

d) provide the contracting authority with all specific tools, which are necessary for production of spare parts, parts, components or special testing equipment, including technical drawings, licences and instruction manuals in case that it is not able to carry out supplies in question.



#### Section 194

##### **Specific provisions governing professional qualification**

In the case of a public contract in the fields of defence and security in respect of which

- a) classified information is accessed, or
- b) it is requested to enter independently security area or meeting area, the contracting authority may require, in addition to requirements specified in Section 77, a document proving economic operator's ability to secure the protection of the classified information in accordance with the respective type of securing the protection of the classified information<sup>5)</sup>. Compliance with this condition may not be proven through another person.

#### Section 195

##### **Specific provisions governing suitability of a participant**

(1) The contracting authority may exclude a participant from the procurement procedure on grounds of unsuitability provided that

- a) it was convicted by final judgement of a crime merits of the case of which relate to professional integrity, in particular, where it concerns a breach of other legal regulation in the field of supplies of military or sensitive material,
- b) it proves that the participant committed a grave professional misconduct, in particular a breach of duties in the field of classified information or security of supplies with regard to a previous supply, or
- c) it was not found, on the basis of any evidence including classified information, reliable enough to eliminate risks for security of the Czech Republic.

(2) Provisions of grounds of unsuitability pursuant to Section 48 (5) d), f) and renewal of suitability pursuant to Section 76 do not apply.

#### Section 196

##### **Specific provisions governing technical qualification criteria**

(1) When defining requirements for proving technical qualification criteria the contracting authority shall proceed pursuant to Section 79 (2) c) to l). Furthermore, the contracting authority may request

- a) a list of the works executed over the past five years before the commencement of the procurement procedure, including certificates provided by the client proving due execution and completion of the most important of these works,
- b) a list of significant supplies or significant services provided over the past five years before the commencement of the procurement procedure, including prices and dates of their provision and the identification of clients and certificates provided by the clients; the contracting authority may determine that evidence of provided supplies and services for more than five years before the commencement of the procurement procedure shall also be taken into account where necessary in order to ensure an adequate level of economic competition.

(2) The certificate provided by the client specified in paragraph a) of subsection (1) may be substituted by an affirmation of the economic operator where issuance of the certificate is not possible or the client has refused to issue the certificate.

#### Section 197

##### **Specific provisions governing standards and technical documents**

(1) Where, in the fields of defence and security, the contracting authority defines technical specifications by reference to standards or technical documents, it shall not proceed pursuant to Section 90. The contracting authority shall apply standards and technical documents in the following order:

- a) Czech technical standards<sup>28)</sup> transposing European standards adopted by European standardisation bodies and made available to the general public,
- b) European Technical Assessment<sup>29)</sup>,
- c) common technical specifications adopted by a procedure recognised by Member States and published in the Official Journal of the European Union,
- d) Czech technical standards transposing international standards,
- e) international standards adopted by international standardisation bodies and made available to the general public,
- f) technical documents issued by European standardisation bodies,
- g) Czech technical standards,

h) construction technology certificates<sup>30)</sup>,

i) national technical specifications relating to design, assessment and execution of works and construction works, and use of the products,

j) technical specifications approved by a body specialized in drawing up technical specifications for repeated or continuous application in the field of defence.

(2) For each reference to standards or technical documents pursuant to subsection (1), the contracting authority shall indicate an option to offer an equivalent solution.

(3) The contracting authority may also use the reference to standards or technical documents pursuant to subsection (1) as a means of verifying the fulfilment of the contracting authority's requirements pursuant to Section 89 (1) a). The contracting authority may also define the technical specifications by combination of the requirements specified in Section 89 (1) a) and by reference to the standards or technical documents under subsections (1) or (2).

#### Section 198

##### **Specific provisions governing negotiated procedure without prior publication**

(1) In the case of a public contract in the fields of defence and security, the contracting authority may apply a negotiated procedure without prior publication pursuant to Section 63 (1) even if no requests to participate were submitted in a previous competitive dialogue procedure.

(2) The contracting authority may award a public contract in the fields of defence and security in a negotiated procedure without prior publication even where

a) a public contract may not be awarded in a different type of procurement procedure for reasons of time as a consequence of a crisis; crisis means an exceptional situation including armed conflicts and war in the Czech Republic or another country which has already occurred or the occurrence thereof is deemed to be impending and which substantially endangers or restricts the life, health of people or property or requires the adoption of measures in order to supply the population with necessities,

b) the subject-matter of the public contract consists in research and development services which are not governed by Section 191 (2) a), or

c) the subject-matter of the public contract consists in the provision of air and maritime transport services for armed units of the Czech Republic deployed or to be deployed abroad, if it is impossible for the economic operators to guarantee the validity of their tenders for a period of time long enough to allow for the contract to be awarded by another type of the procurement procedure.

(3) The contracting authority may apply a negotiated procedure without prior publication pursuant to Section 64 b) in respect of the public contract in the fields of defence and security where the entire term of an original contract, including the term of the contract for additional supplies does not exceed five years unless it is justified by special circumstances determined with regard to expected useful life of supplies, including their installation or systems and technical difficulties which may be caused by the change of the economic operator.

(4) The contracting authority may apply a negotiated procedure without prior publication pursuant to Section 66 in respect of the public contract in the fields of defence and security even where the conditions specified in Section 66 d) and e) are not met. In such case, the contracting authority may commence a negotiated procedure without prior publication only within five years from the date when the original public contract was concluded; a negotiated procedure without prior publication may even be commenced later if it is justified by the grounds which merit particular consideration.

(5) The contracting authority may award a public works contract or public service contract in a negotiated procedure without prior publication even where it concerns additional works or additional services which were not included in the original procurement documents, the need of which has arisen from unforeseeable circumstances and these additional works or additional services are necessary for provision of the original works or provision of the original services provided that

a) the additional works or additional services are awarded to the same economic operator,

b) additional works or additional services may not be technically or economically separated from the original public contract without causing serious harm to the contracting authority or although technically or economically separable, such additional works or additional services are essential for the completion of the subject-matter of the original public contract, and

c) the aggregate value of such additional works or additional services does not exceed 50 % of the price of the original public contract with regard to the contracting authority, .

(6) In respect of a public contract in the fields of defence and security, the contracting authority shall justify the award of the contract in a negotiated procedure without prior publication in the contract award notice pursuant to Section 126.

#### Section 199

##### **Specific provisions governing negotiated procedure with prior publication**

(1) The contracting authority may award a public contract in the fields of defence and security in a negotiated procedure with prior publication even where conditions stipulated in Section 60 are not met.

(2) The contracting authority may proceed pursuant to Section 61 (3) even where a previous procurement procedure was a competitive dialogue procedure.

#### Section 200

##### **Specific provisions governing restricted procedure**

In a restricted procedure, the contracting authority may reserve, in the contract notice, the right to reduce the number of participants pursuant to Section 111. In such case it shall proceed pursuant to Section 66 (5) by analogy.

#### Section 201

##### **Specific provisions governing time limits for above-threshold public contracts**

(1) In the case of an above-threshold public contract in the fields of defence and security awarded in a restricted procedure, negotiated procedure with prior publication or competitive dialogue procedure, the contracting authority shall set the time limit for the submission of a request to participate for not less than 37 days from the commencement of the procurement procedure.

(2) In a restricted procedure concerning an above-threshold public contract in the fields of defence and security the contracting authority shall set the time limit for submission of tenders for not less than 40 days from the sending of the invitation to tender. This time limit may be shortened by five days where the contracting authority publishes the full procurement documents on the contracting authority profile already from the date of publication of the notice of the restricted procedure.

(3) The time limit for the submission of tenders may be shortened to not less than 22 days in the event that the contracting authority has published a prior information notice which was not used as a means of commencing procurement procedure and which was sent for publication between 52 days and 12 months before the date on which the contract notice was sent.

(4) The time limit specified in the first sentence of subsection (2) may be shortened by seven days where the contracting authority sends forms for publication pursuant to Section 212 by electronic means.

(5) Shortenings of time periods pursuant to subsections (2) and (4) may be added up provided that the conditions specified therein are met.

(6) Where setting a time limit under subsection (1) is not possible due to extreme urgency the contracting authority may set

a) the time limit for the submission of requests to participate in a restricted procedure or a negotiated procedure with prior publication for not less than 15 days or respectively 10 days from the commencement of the procurement procedure where the contracting authority sent a form for publication pursuant to Section 212 by electronic means, or

b) the time limit for the submission of tenders for not be less than 10 days from the date, on which the invitation to tender was sent.

The contracting authority shall justify the urgency in the procurement documents.

#### Section 202

##### **Specific provisions governing time limits for above-threshold public contracts**

(1) In case of below-threshold public contracts in the fields of defence and security awarded in a restricted procedure, negotiated procedure with prior publication or competitive dialogue procedure, the contracting authority shall set the time limit for the submission of requests to participate for not less than 15 working days from the commencement of the procurement procedure.

(2) In the restricted procedure, the contracting authority shall set the time limit for the submission of tenders for not less than 25 working days from the sending of the invitation to tender.

#### Section 203

##### **Specific provisions governing the ban on conclusion of the contract**

Public contracts in the fields of defence and security being awarded on the basis of the framework agreement are not governed by Section 246 (1) a).

#### Section 204

##### **Specific provisions governing framework agreements**

The term of the framework agreement in the fields of defence and security shall not exceed seven years, with the exception of cases, where expected useful life of the goods supplied and technical difficulties which may be caused by the change of the economic operator are taken into account; the contracting authority shall duly justify these objective reasons and shall indicate them in the contract award notice published in the manner specified in Section 212.

## Section 205

### **Specific provisions governing a written report of the contracting authority**

In the case of a public contract or framework agreement in the fields of defence and security, a written report of the contracting authority shall contain requirements defined in Section 217 (2) as well as justification of

- a) exceeding of the entire period pursuant to Section 64 b), where this period is exceeded,
- b) failure to keep the time limit pursuant to Section 198 (3), where this time limit is not kept, and
- c) conclusion of a framework agreement for the period longer than seven year, where such framework agreement is concluded.

## TITLE III

### **SPECIFIC PROVISIONS GOVERNING SUBCONTRACTING**

## Section 206

(1) In the case of a public contract in the fields of defence and security, the contracting authority may require, in the procurement documents, a tender to contain the commitment of the participant to inform the contracting authority of all changes in subcontractors during the performance of the public contract. In the case of the above-threshold public contract in the fields of defence and security, the contracting authority may also require, in the procurement documents, the selected economic operator to

- a) proceed pursuant to the provisions of this Title with respect to all or any shares of the public contract which it intends to subcontract, or
- b) subcontract shares of the public contract specified in its tender in the minimal financial volume determined by the contracting authority to one or more subcontractors and to act in compliance with provisions of this Title when selecting a subcontractor; the contracting authority shall set the financial volume in the form of range of values, comprising a minimum and maximum percentage, whereas the maximum percentage shall be proportionate in respect of a public contract and shall not exceed 30 % of the estimated value of the public contract.

(2) In the case of a public contract in the fields of defence or security, the contracting authority shall indicate requirements pursuant to subsection (1) in the contract notice or invitation to commence a procurement procedure.

(3) Provisions of Section 105 (3) do not apply.

## Section 207

### **Procedure for selection of subcontractor**

(1) The selected economic operator where it is not a contracting authority specified in Section 4 shall proceed in accordance with this provision when conducting a procedure for selection of the subcontractor in respect of a public contract in the fields of defence and security, provided that the contracting authority stipulates so in the procurement documents pursuant to Section 206 (1).

(2) For the purposes of subsection (1), the person in relation to which the selected economic operator is a controlling or controlled person pursuant to another legal regulation<sup>46)</sup>, or the person which is jointly with the selected economic operator a person controlled by another person pursuant to another legal regulation<sup>46)</sup>, shall not be considered a subcontractor; in such case, the economic operator shall indicate a complete list of those persons in its tender and shall update it without undue delay after each change of relations between those persons.

(6) When selecting a subcontractor, the selected operator shall comply with the principles specified in Section 6.

## Section 208

### **Subcontract notice**

(1) In case that the estimated value of a share of a public contract to be performed by a subcontractor is equal to or greater than the financial threshold set by an implementing legal regulation pursuant to Section 25 for public contracts in the fields of defence and security, the selected economic operator shall send the subcontract notice for publication in the manner specified in Section 212. The provisions of sections 16 to 23 regulating the calculation of the estimated value of a lot of the public contract apply by analogy.

(2) Where the contracting authority defines, in the procurement documents of the public contract, the requirements in respect of qualifications of a subcontractor, the selected economic operator shall indicate them in the subcontract notice. The selected economic operator is entitled to indicate in the subcontract notice any other criteria allowing for an objective assessment of subcontractor's qualifications. Such qualifications criteria shall be objective, non-discriminatory, in compliance with qualification criteria required by the contracting authority during the award of the public contract and shall relate immediately and reasonably to the subject-matter of the performance provided by the subcontractor.

(3) Where conditions for application of a negotiated procedure without prior publication are met in respect of the share of the public contract to be performed by the subcontractor, the selected economic operator is not obliged to publish the

subcontract notice.

(4) The selected economic operator is not obliged to select subcontractors by the procedure stipulated in this Title where it proves to the contracting authority that any of subcontractors participating in the procedure or any of their tenders do not meet requirements specified in the subcontract notice and therefore such procedure would prevent it from performance of the public contract.

#### TITLE IV

### SPECIFIC PROVISIONS GOVERNING MODIFICATION OF OBLIGATIONS ARISING FROM PUBLIC CONTRACTS

#### Section 209

In the case of public contracts in the field of defence and security, provisions of Section 222 (4) to (8) do not apply.

## BOOK TEN

### COMMON PROVISIONS

#### Section 210

##### Concurrence of activities

For the purposes of this Act, concurrence of activities means a situation where the subject-matter of the public contract covers parts which shall be awarded in accordance with different books of this Act. Where the different parts of the subject-matter of the contract are objectively separable, the contracting authority may award them separably or may choose to award them as a single contract to award of which the rules specified in subsections (2) and (3) apply. Choice of procurement used for one public contract shall not be aimed at circumventing this Act.

(2) In the case of the public contract only a part of which constitutes a utilities public contract or a concession and such parts are objectively not separable the contracting authority shall act in accordance with the rules for procurement relating to the activity to which the public contract mainly relates.

(3) Where the parts of a public contract are objectively separable or are objectively not separable and it is not possible to determine to which activity the public contract mainly relates to, the contracting authority shall not act in accordance with the rules for procurement of

a) concessions, in the case of public contracts which are concessions only partly, or

b) utilities public contracts, in the case of public contracts which are utilities public contracts only partly; this does not apply to public contracts which are partly a utilities public contract and partly a concession in which case the contracting authority shall act in accordance with the rules for procurement of utilities public contracts.

(4) In the case of a public contract only a part of which forms a public contract in the fields of defence or security the contracting authority may act in accordance with the rules for procurement of public contracts in the fields of defence or security only where the parts of the public contract are objectively not separable. Where the parts of a public contract are objectively separable the contracting authority may choose to award particular parts of the public contract independently or to award a single public contract which is awarded according to the rules applicable to the remaining part of the public contract.

#### Section 211

##### Communication between contracting authority and economic operator

(1) Contracting authority and economic operator shall communicate in writing during the procurement procedure and when applying specific procedures pursuant to Book Six; unless provided in this Act otherwise, oral communication may also be used, provided that its content is sufficiently documented, in particular by records, audio recordings or summaries of principal elements of communication.

(2) In the course of communication between a contracting authority and economic operators, confidentiality of tenders and requests to participate and integrity of data contained therein shall not be breached. The contracting authority shall not be enabled to access the content of tenders and requests to participate prior to the expiry of the time limit set for their submission.

(3) Written communication between a contracting authority and an economic operator shall be carried out by electronic means with the exception of cases when

a) with regard to a specific nature of a public contract, using electronic means of communication requires specific tools, equipment or file formats which are not generally accessible or are not supported by generally accessible applications; applications used for description of the subject-matter which use file formats that cannot be processed by means of any other application having an open source code or by means of a generally available application, or they are covered by commercially provided licences and the contracting authority cannot access them to download them or use them by remote access, shall not be considered as generally accessible,

b) using electronic means of communication requires special office equipment which is not generally available to contracting

authorities,

c) the award criteria require the submission of samples or models which cannot be submitted using electronic means of communication, or

d) using other than electronic means of communication is necessary because of the breach of security of the electronic communication or because of protection of especially sensitive nature of information and simultaneously the required level of security may not be duly provided by generally available electronic tools or the tools referred to in Section 103 (3).

(4) When using electronic communication in the conduct of the procurement procedure, design contest and during the award of public contracts on the basis of a framework agreement or under the dynamic purchasing system, the contracting authority shall make available to the economic operators all information of technical nature, including coding and encryption, which are necessary for electronic communication, in particular, for electronic submission of tenders and requests to participate.

(5) Unless the communication is carried out by an electronic tool or by a data box<sup>47)</sup>, the data message<sup>48)</sup> shall be accompanied by a certified electronic signature<sup>48)</sup>, where it contains

a) a notice designated for the participants,

b) a notice of the selection of the economic operator,

c) a decision on the most suitable design in respect of the design contest,

d) an exclusion of the participant.

(6) When communicating by means of a data box, the document shall be delivered at the moment when it is delivered to the recipient's data box.

## Section 212

### Publication of forms

(1) In order to send a publication pursuant to this Act, the contracting authority is obliged to use a form pursuant to the directly applicable regulation of the European Union or a form pursuant to the implementing legal regulation (hereinafter referred to as the 'form'). The contracting authority shall fill in the form in the manner laid down in the implementing regulation.

(2) Where, in the case of the above-threshold public contract, the contracting authority did not send a contract notice, it may send a voluntary notice on the intention to conclude a contract by means of the form pursuant to the directly applicable regulation of the European Union.

(3) The contracting authority shall send the form electronically to

a) the Tenders Electronic Daily where a below-threshold public contract is concerned,

b) the Tenders Electronic Daily and the Official Journal of the European Union where an above-threshold public contract is concerned; the contracting authority may send the form to the Official Journal of the European Union through the operator of the Tenders Electronic Daily.

The form shall not be considered as sent where the operator of the Tenders Electronic Daily or the Official Journal of the European Union does not accept it for publication on the grounds of failure to fill in obligatory data or failure to keep given formats. The contracting authority shall be able to prove the date of the sending the form for publication in the Tenders Electronic Daily, or in the Official Journal of the European Union.

(4) In the case of modification of information stated in the form the contracting authority shall send a correcting form.

(5) The contracting authority may publish forms in the Official Journal of the European Union even where the Act does not prescribe an obligation of their publication.

(6) Where the contracting authority does not send a form to the Official Journal of the European Union through the operator of the Tenders Electronic Daily, it shall send the form for publication in the Tenders Electronic Daily along with the copy of the announcement of the form's publication in the Official Journal of the European Union, without undue delay, after it received the confirmation of publication in the Official Journal of the European Union. Where the announcement of publication of the form in the Official Journal of the European Union is not delivered to the contracting authority within 48 hours from the delivery of the confirmation of the receipt of the announcement for publication in the Official Journal of the European Union, the contracting authority shall send the form for publication in the Tenders Electronic Daily along with the confirmation of the receipt of the announcement for publication in the Official Journal of the European Union.

(7) With regard to the above-threshold public contracts, the form shall not be published in the Tenders Electronic Daily or on the contracting authority profile before its publication in the Official Journal of the European Union. This does not apply where announcement of publication of the form in the Official Journal of the European Union was not delivered to the contracting authority or to the operator of the Tenders Electronic Daily within 48 hours from the delivery of confirmation of the receipt of the announcement for publication in the Official Journal of the European Union.

(8) Any data that are different from the data included in the forms sent for publication in the Official Journal of the European Union or published on the contracting authority profile, shall not be published in the Tenders Electronic Daily. Information on the commencement of the procurement procedure shall not be published on the contracting authority profile before the publication of the form in the Tenders Electronic Daily.

(9) Ministry of Regional Development shall specify, by its regulation,

- a) the forms serving for publication of information pursuant to this Act where the form is not determined by a directly applicable regulation of the European Union,
- b) the manner of filling in the forms, including determining obligatory data to be filled in,
- c) the conditions for receipt of forms for publication,
- d) the procedure for modification of data contained in forms,
- e) the access to the published forms,
- f) the manner of delivery of forms, and
- g) the procedure for correction of errors in the published forms and defects of performance caused by the operator of the Tenders Electronic Daily.

#### Section 213

##### **Electronic tools**

(1) The contracting authority may use electronic tools only where the use of such electronic tools does not breach prohibition of discrimination and such electronic tools are, with regard to the subject-matter of the public contract, generally available and compatible with information and communication technologies in general use. The contracting authority shall use an electronic tool free of charge.

(2) With regard to electronic tools, by means of which tenders, indicative tenders, requests to participate, requests to be admitted to the qualification system, or, where applicable, requests to participate or designs in design contests are received, the contracting authority shall secure that

- a) the date and time of the performance of an electronic action pursuant to this Act can be exactly determined,
- b) nobody accesses their content prior to the fixed time limits,
- c) only authorised persons may set and modify data for access to the delivered data,
- d) in the course of conducting the procurement procedure or design contest all handed over data or its part is accessible only on the grounds of a prior decision of authorised persons,
- e) decision of authorised persons pursuant to paragraph d) can enable access to information or documents handed over after the previously determined date,
- f) information or documents, which were handed over and made accessible, are accessible only to persons, who are authorised to get acquainted therewith and that they are protected against an unauthorised access of third persons,
- g) in the case of a breach of conditions or an attempt to breach conditions pursuant to Section 213 (2) b) to f), it is secured that the breach or the attempt to breach are clearly detectable, and
- h) technical support and service is secured for electronic tools, in the case of a breakdown.

(3) Ministry of Regional Development shall specify, by its regulation,

- a) conditions for provision of documents and information by means of an electronic tool and access thereto,
- b) conditions for delivery by means of an electronic tool,
- c) conditions for submission, receipt and opening of tenders, requests to participate and designs in design contests by means of an electronic tool,
- d) requirements for carrying out electronic actions when awarding public contracts,
- e) requirements for making records on electronic actions,
- f) conditions for issuance of the certificate of conformity,
- g) elements and validity of the certificate of conformity,
- h) requirements for functional characteristics of an electronic tool and environment, in which the electronic tool shall be operated in relation to the certification of the electronic tool, and
- i) technical characteristics of the contracting authority profile.

(4) The contracting authority shall secure that the electronic tools by means of which the actions are carried out during public procurement, demonstrably satisfy the requirements stipulated by this Act and implementing legal regulations. The

satisfaction of requirements regarding electronic tools may always be proved by the certificate of conformity, issued by the conformity assessment body accredited by the national accreditation body on the basis of another legal regulation<sup>49)</sup>.

#### Section 214

##### **Contracting authority profile**

(1) The contracting authority shall send the internet address of its contracting authority profile for publication in the Tenders Electronic Daily using the procedure specified in Section 212. The information published on the contracting authority profile shall be considered published pursuant to this Act no sooner than from the moment of the publication of the internet address of the contracting authority profile in the Tenders Electronic Daily.

(2) The contracting authority is not entitled to publish information regarding its procurements using several of its profiles that are marked as active in the Tenders Electronic Daily at the same time. This is without prejudice to the contracting authority's right to use simultaneously an electronic tool administered by the Ministry of Regional Development as its contracting authority profile; in that case, the contracting authority shall proceed pursuant to subsection (1) by analogy.

(3) Where an operational unit of the contracting authority is concerned as specified in Section 17 (2), such operational unit may use the contracting authority profile to publish information on its procurements. Subsections (1) and (2) apply by analogy.

(4) Ministry of Regional Development shall specify, by its regulation,

- a) the access to the information published,
- b) the structure of the data published on the contracting authority profile, and
- c) the procedure used to modify the contracting authority profile.

#### Section 215

##### **Electronic catalogues**

(1) The contracting authority may request or admit that a tender be presented in the form of an electronic catalogue or that an electronic catalogue be part of a tender. For the purposes of this Act, an electronic catalogue means a set of information containing prices corresponding to individual items of the subject-matter of the public contract as well as a description of such items, and, where applicable, further related information. The electronic catalogue shall meet all requirements laid down for electronic tools used for electronic communication.

(2) Where the contracting authority requests or admits that a tender be presented in the form of an electronic catalogue, it shall indicate so in the contract notice, in the invitation to submit requests to participate pursuant to Section 58 (5), in the invitation to tender or in the invitation to negotiate. The contracting authority shall specify, in the procurement documents, all information necessary for the submission of an electronic catalogue, including, without limitation, the prescribed format of the electronic catalogue and the technical means used. Tenders presented in the form of an electronic catalogue may be accompanied by other documents.

(3) Where an electronic catalogue is used in the process of awarding a public contract on the basis of a framework agreement concluded with several parties or under a dynamic purchasing system, the contracting authority

- a) shall invite, in writing, all parties to the framework agreement to submit again the electronic catalogue, which shall be adjusted to the award criteria of the public contract that is being awarded on the basis of the framework agreement, or
- b) shall announce to the parties to the framework agreement that the public contract based on the framework agreement shall be awarded by means of selection from the electronic catalogues submitted when concluding the framework agreement. The announcement shall contain the date and time at which the contracting authority will select the data for awarding the public contract on the basis of the framework agreement. The announcement shall be sent electronically not later than five working days before the selection of such data. A party to the framework agreement may update the data in the electronic catalogue that has been submitted. Where a party to the framework agreement disagrees with the use of the data provided in the submitted electronic catalogue for awarding a public contract on the basis of the framework agreement, it shall notify the contracting authority of this fact before the date and time of the selection of data; such data shall then be disregarded.

Before awarding the public contract based on the framework agreement, the contracting authority shall submit the selected data from the electronic catalogue to the selected economic operator to check the facts.

(4) Where the contracting authority uses an electronic catalogue in the case of a dynamic purchasing system, it shall proceed in accordance with subsection (3) by analogy.

#### Section 216

##### **Storage of procurement procedure documentation**

(1) The contracting authority shall store the procurement procedure documentation, which comprise all documents in paper or electronic form and outcomes of oral communication which shall be acquired pursuant to this Act in the course of conducting the procurement procedure, or, where applicable, after the termination thereof, including the complete wording of the originals of the tenders submitted by all economic operators, for a period of 10 years from the date of termination of the procurement procedure or from the modification of the obligation arising from the public contract, unless another legal regulation<sup>50)</sup> sets out a longer period.



(2) The contracting authority shall acquire the procurement procedure documentation in such manner so as to be able to submit documents regarding the current stage of the procurement process when necessary.

(3) The provisions regarding the storage of procurement procedure documentation apply to the award of public contracts on the basis of framework agreements or under dynamic purchasing systems or to design contests by analogy.

#### Section 217

##### **Written report of the contracting authority**

(1) The contracting authority shall draw up a written report with regard to each procurement procedure.

(2) The written report shall contain at least

a) the identification of the contracting authority, the subject-matter of the public contract and the price agreed in the public contract, where it has been concluded,

b) the type of procurement procedure used,

c) the identification of the participants,

d) the identification of all participants excluded from the procurement procedure including a statement of grounds for their exclusion,

e) the identification of the economic operators with which a contract or a framework agreement was concluded or the identification of the economic operators who were admitted to the dynamic purchasing system, including a statement of reasons for their selection,

f) the identification of subcontractors of the economic operators specified in paragraph e), where they are known to the contracting authority,

g) justification of the use of a negotiated procedure with prior publication or a competitive dialogue procedure, where such procedures was used,

h) justification of the use of a negotiated procedure without prior publication, where such procedure was used,

i) justification of the use of a light regime, where such regime was used,

j) justification of the cancellation of the procurement procedure or of not setting up a dynamic purchasing system where such cases occurred,

k) justification of the use of means of communication other than electronic means for the submission of tenders, where such other means were used,

l) a list of persons who were found to have a conflict of interest and a list of subsequently adopted measures, where a conflict of interest was detected,

m) where the contracting authority does not divide an above-threshold public contract into lots, it shall indicate the justification of such procedure, unless it has already indicated it in the procurement documents, and

n) justification of laying down the requirement of turnover when proceeding pursuant to Section 78 (3), where it has not already indicated it in the procurement documents.

(3) In the written report, the contracting authority may refer to the contract award notice provided that the published notice contains the information specified in subsection (2).

(4) The contracting authority shall send the written report to the European Commission upon request.

(5) The contracting authority shall publish the written report on the contracting authority profile within 30 working days from the termination of the procurement procedure.

#### Section 218

##### **Confidentiality**

(1) The information or communications that the economic operator has provided to the contracting authority during the procurement procedure, designating them as confidential, shall be considered confidential.

(2) Pursuant to the Act on Free Access to Information, the contracting authority shall not disclose

a) any information related to the content of tenders and to the persons taking part in the conduct of the procurement procedure until the termination of the procurement procedure,

b) the confidential information specified in subsection (1); this does not apply to the information that the contracting authority is obliged to provide, pursuant to this Act, in the evaluation report, in the notice of the selection of an economic operator, in the

result of assessment of the conditions for participation of the selected economic operator or in the written report of the contracting authority.

(3) The contracting authority is not obliged to publish information pursuant to this Act where its publication would infringe another legal regulation or would be contrary to the public interest, or where it could infringe the right of the economic operator to the protection of trade secret or where it could influence competition.

#### Section 219

##### **Publication of the public contract and of the actually paid price**

(1) The contracting authority shall publish, on the contracting authority profile, the public contract including all supplements and amendments thereto within 15 days from their conclusion or from the end of each quarter with regard to public contracts awarded on the basis of a framework agreement or under a dynamic purchasing system. This does not apply to

- a) a public contract whose price does not exceed CZK 500,000 net of value-added tax,
- b) a public contract during the award of which the contracting authority proceeded pursuant to Section 29 a) to c) and l) 2., Section 30 d), or Section 191 (2) e),
- c) a contracting authority that is an intelligence service pursuant to another legal regulation, or
- d) a contract published pursuant to another legal regulation.

(2) The contracting authority shall publish a framework agreement on the contracting authority profile within 15 days from its conclusion.

(3) The contracting authority shall publish, on the contracting authority profile, not later than within three months from the completion of the contract, the actually paid price for the performance of the contract, which is subject to the duty of publication as specified in subsection (1). With respect to a contract whose term exceeds one year, the contracting authority shall publish the price for its performance in the previous calendar year not later than on 31 March of the following calendar year.

(4) The structure of the data for the publication of the actually paid price for the performance of the public contract as well as the details of the publication of the public contract shall be set out in a regulation of the Ministry of Regional Development.

#### Section 220

##### **Sensitive activity**

(1) Where the contracting authority specified in Section 4 (1) a) or c) awards a public contract whose estimated value exceeds CZK 300,000,000, the activity that consists in

- a) the approval of the procurement documents, or
- b) the award of the public contract shall be considered, for the purposes of this Act, a sensitive activity as specified in the Act on the Protection of Classified Information and Security Capacity.

(2) The natural person that carries out a sensitive activity specified in subsection (1) shall meet the requirements set out in the Act on the Protection of Classified Information and Security Capacity.

#### Section 221

##### **Invoicing the performance of public contracts**

The contracting authority shall not reject an electronic invoice issued by an economic operator for the performance of a public contract on the grounds of its format where it has been issued in a format compatible with the European standard for e-invoicing.

#### Section 222

##### **Modification of obligation arising from a public contract**

(1) Unless otherwise stipulated below, the contracting authority shall not allow a substantial modification of the obligation arising from a public contract throughout its duration without conducting a new procurement procedure in accordance with this Act.

(2) The application of reserved modifications of the obligation stipulated in the public contract on the basis of award criteria pursuant to Section 100 (1) shall not be considered a substantial modification.

(3) A substantial modification of the obligation arising from a public contract shall be such a change in contractual terms that would

- a) allow the participation of other economic operators, or could influence the selection of the economic operator during the original procurement procedure, where the award criteria of the original procurement procedure would correspond to such

modification,

- b) change the economic balance of the contractual obligation in favour of the selected economic operator, or
- c) lead to a substantial extension of the scope of performance of the public contract.

(4) A modification of the obligation arising from a public contract shall not be considered substantial where it does not alter the overall nature of the public contract and whose value is

- a) lower than the financial limit for an above-threshold public contract, and
- b) lower than
  1. 10% of the original value of the contract, or
  2. 15% of the original value of the obligation arising from a public works contract that is not a concession.

Where more modifications are carried out, the sum of values of all such modifications shall be decisive.

(5) Additional works, services or supplies executed, provided and supplied by the economic operator selected in the original procurement which were not included in the original public contract shall not be considered a substantial modification of the obligation arising from the public contract provided that such works, services or supplies are necessary and that a change in the person of the economic operator

a) cannot be made for economic or technical reasons such as requirements of compatibility or interoperability with the existing equipment, services or installations procured by the contracting authority under the original procurement procedure,

b) would cause significant inconvenience or substantial duplication of costs for the contracting authority and

c) the value of the additional works, services or supplies does not exceed 50% of the original value of the contract; where, however, more modifications are made, the sum of values of all modifications specified in this subsection shall be decisive.

(6) A modification of the obligation arising from a public contract shall not be considered substantial where

a) the need of which has arisen from circumstances which a diligent contracting authority could not foresee,

b) it does not alter the overall nature of the contract, and

c) the value of the modification does not exceed 50% of the original value of the contract; where, however, more modifications are made, the sum of values of all modifications specified in this subsection shall be decisive.

(7) With regard to a public works contract, a substitution of one or more items in the inventory of works by one or more items shall not be considered a substantial modification of the contractual obligation as specified in subsection (3), provided that

a) new items in the inventory of works constitute a comparable kind of material or works in relation to the items being substituted,

b) the price of the material or works under the new items in the inventory of works is equal to or lower than the items being substituted,

c) the material or works under the new items in the inventory of works are of the same or higher quality in relation to the items being substituted,

d) the contracting authority draws up an overview with respect of each individual substitution containing the new items of the inventory of works and defining the items in the original inventory of works that are being substituted, along with a detailed and comprehensible reasoning of the comparability of the material or works as specified in paragraph a) and the same or higher quality as specified in paragraph c).

(8) When proceeding pursuant to subsection (5) or (6), the contracting authority shall send a notice of the contract modification for publication in the manner described in Section 212 within 30 days from the modification of the obligation.

(9) For the purposes of calculation of the value of the modification or the price increase, the original value of the contractual obligation means the price stipulated in the public contract, set out in compliance with provisions regarding a price change, where the public contract contains such provisions. The total price increase connected with the modifications pursuant to subsections (5) and (6), after deduction of the price for works, services or supplies that have not been materialised with regard to such modifications, shall not exceed 30 % of the original value of the contract.

(10) A replacement of the economic operator by another economic operator shall also constitute a substantial modification of the obligation arising from a public contract. It shall, however, be possible to replace the economic operator by another economic operator

a) in the case of application of reserved modifications of the obligation stipulated in the public contract on the basis of award criteria pursuant to Section 100 (2), or

b) where a change in the person of the economic operator is a consequence of legal succession related to a transformation of the economic operator, a death of the economic operator or a transfer of the economic operator's enterprise, or, where applicable, part of the enterprise, and the new economic operator meets the qualification criteria set out in the procurement documents of the original procurement procedure.

## Section 223

### **Termination of the obligation arising from a public contract**

(1) The contracting authority may terminate the obligation arising from a public contract or withdraw from the contract provided that its performance cannot be continued without violating the provisions of Section 222.

(2) The contracting authority may terminate the obligation arising from a public contract or withdraw from the contract, without undue delay, after it finds out that the contract should not have been concluded because

- a) the selected economic operator should have been excluded from the procurement procedure,
- b) the selected economic operator submitted, before the award of the public contract, such data, documents, samples or models that did not correspond to reality and affected or could have affected the selection of the economic operator, or
- c) the selection of the economic operator is connected with a serious infringement of the duty of the Member State within the meaning of Article 258 of the Treaty on the Functioning of the European Union, as decided by the Court of Justice of the European Union.

(3) The right of the contracting authority to terminate the obligation arising from the public contract pursuant to other legal regulations shall not be prejudiced by this provision.

(4) Covenants diverting from subsections (1) to (3) are disregarded.

## **BOOK ELEVEN**

### **INFORMATION SYSTEM ON PUBLIC CONTRACTS**

## Section 224

### **Information System on Public Contracts**

(1) The Information System on Public Contracts means a public administration information system administered by the Ministry of Regional Development. The Information System on Public Contracts contains

- a) the Tenders Electronic Daily,
- b) the List of Approved Economic Operators, and
- c) further information necessary for electronic communication during the public procurement.

(2) Individual parts of the Information System on Public Contracts are operated by the Ministry of Regional Development or a legal person authorised by the Ministry. Where authorising another person, the Ministry of Regional Development shall approve the rules of operation issued by an operator for individual parts of the Information System on Public Contracts. The Ministry of Regional Development shall publish the decision on authorising the operator in the form of communication in the Collection of Laws.

## TITLE I

### TENDERS ELECTRONIC DAILY

## Section 225

### **Operation of the Tenders Electronic Daily**

For the purposes of this Act, the Tenders Electronic Daily means a part of the Information System on Public Contracts used for publication of information on procurement procedures and public contracts at the national level.

## TITLE II

### LIST OF APPROVED ECONOMIC OPERATORS

## Section 226

### **Maintenance of the List of Approved Economic Operators**

(1) For the purposes of this Act, the List of Approved Economic Operators means a part of the Information System on Public Contracts used by economic operators to prove the basic qualification pursuant to Section 74 and the professional qualification pursuant to Section 77.

(2) The List of Approved Economic Operators shall be accessible through unlimited remote access.

## Section 227

### Data recorded in the list

The following data shall be recorded in the List of Approved Economic Operators:

- a) the name and registered office of the economic operator, where a legal person is concerned,
- b) the branch of the economic operator and its registered office,
- c) the name, or names, and surname, or, where applicable, the corporate name and registered office, where a natural person is concerned,
- d) the legal form of the legal person,
- e) the identification number, where it has been assigned,
- f) the name, or names, and surnames of the persons referred to in Section 74 and their position, office or another relation to the economic operator,
- g) the scope of business or another activity that is subject to entry into the List of Approved Economic Operators,
- h) the list of documents which the economic operator has used to prove its basic qualification and professional qualification,
- i) the date of entry into the List of Approved Economic Operators,
- j) the date of the latest update of the data recorded in the List of Approved Economic Operators, and
- k) the data specified in Section 231 (4), where applicable.

## Section 228

### Extract from the List of Approved Economic Operators

(1) Where the economic operator submits to the contracting authority an extract from the List of Approved Economic Operators, such extract shall replace the document attesting to

- a) the professional qualification pursuant to Section 77 to the extent to which the data contained in the extract prove the fulfilment of the professional qualification criteria, and
- b) the basic qualification pursuant to Section 74.

(2) The contracting authority shall accept an extract from the List of Approved Economic Operators provided that on the last day on which the basic qualification or professional qualification is to be proved, the extract is not older than three months. The contracting authority is not obliged to accept an extract from the List of Approved Economic Operators in which the commencement of proceedings pursuant to Section 231 (4) is recorded.

(3) In the same manner as using an extract from the List of Approved Economic Operators, the economic operator may prove its qualification by submitting a certificate issued in another Member State, in which the economic operator has its registered office, and which is an equivalent of the extract from the List of Approved Economic Operators.

## Section 229

### Issuance of an extract from the List of Approved Economic Operators

(1) The extract from the List of Approved Economic Operators shall be issued by the Ministry of Regional Development or by means of the public administration information system<sup>20)</sup> in paper form or in electronic form signed by a recognised electronic signature or designated by a recognised electronic mark. The extract from the List of Approved Economic Operators shall be issued to the person who has applied for it. The extract from the List of Approved Economic Operators shall be issued in the Czech language.

(2) The Ministry of Regional Development shall issue the extract from the List of Approved Economic Operators within five working days from the date on which it receives the application.

## Section 230

### Registration into the List of Approved Economic Operators

(1) The registration into the List of Approved Economic Operators shall be made on the basis of an application submitted by an economic operator. The application shall contain the originals or certified copies of the documents proving the basic qualification pursuant to Section 74 and the professional qualification pursuant to Section 77. The documents being submitted shall prove the fulfilment of the qualification criteria not later than three months before the date on which the application is submitted.

(2) The documents referred to in subsection (1) may be replaced by a reference to information kept in a public administration information system<sup>20)</sup> that enables unlimited remote access. Such a reference shall contain the internet address

and credentials necessary for logging in and for the lookup of the requested information. The economic operator may also authorise the Ministry of Regional Development to submit an application for an extract or acknowledgement from a public administration information system that does not enable remote access provided that

- a) it provides the data necessary for their obtaining, and
- b) such extracts or acknowledgements are provided free of charge.

(3) Where the documents referred to in subsection (1) are issued in a language other than the Czech language, Section 45 (3) and (4) applies by analogy.

#### Section 231

##### **Changes in the List of Approved Economic Operators**

(1) An economic operator registered in the List of Approved Economic Operators shall deliver, before 31 March of the year following its registration, to the Ministry of Regional Development

- a) a written declaration stating that the entered data has not changed, and
- b) documents proving basic qualification pursuant to Section 74 (1) b) to d).

(2) The economic operator registered in the List of Approved Economic Operators is entitled to submit an application for registration of the change in the data recorded in the List of Approved Economic Operators. In that case, the procedure applicable to the submission of application for registration applies by analogy.

(3) Where a change occurs in an economic operator's data recorded in the List of Approved Economic Operators, the respective economic operator shall submit an application for registration of the change within 15 working days from the date on which the change occurs.

(4) In the List of Approved Economic Operators, the Ministry of Regional Development shall record the commencement of proceedings concerning a change of data or an exclusion of an economic operator from the List of Approved Economic Operators pursuant to Section 232.

#### Section 232

##### **Exclusion from the List of Approved Economic Operators**

The Ministry of Regional Development shall decide to exclude an economic operator from the List of Approved Economic Operators where

- a) it finds out that the economic operator fails to meet the conditions for registration into the list,
- b) it finds out that the economic operator has used documents or information that have proven to be incorrect or incomplete as supporting documents for the registration,
- c) the economic operator has applied for its exclusion, or
- d) the economic operator has failed to fulfil the duty set out in Section 231 (1) or (3).

## **BOOK TWELVE**

### **SYSTEM OF CERTIFIED ECONOMIC OPERATORS**

#### Section 233

##### **System of Certified Economic Operators**

Under the System of Certified Economic Operators, certificates which may be used as a proof of qualification or part thereof are issued.

#### Section 234

##### **Proving qualification by a certificate**

(1) A valid certificate, issued within an approved System of Certified Economic Operators, may be used to prove qualification during the procurement procedure. The economic operator is presumed to be qualified to the extent recorded in the certificate.

(2) The contracting authority shall not question the data recorded in the certificate without specific reasons. Prior to concluding a contract, the economic operator who has proven its qualification by a certificate may be requested to submit the documents referred to in Section 74 (1) b) to d).

(3) In the same manner as using a certificate, the economic operator may prove its qualification by submitting a

certificate issued in another Member State, in which the economic operator has its registered office, and which is an equivalent to the certificate issued within a System of Certified Economic Operators.

#### Section 235

##### **Approval of the System of Certified Economic Operators**

(1) The System of Certified Economic Operators shall be approved by the Ministry of Regional Development upon an application submitted by the legal person that intends to administer the System of Certified Economic Operators.

(2) The application shall include a description of the System of Certified Economic Operators as well as the rules for its use.

(3) The rules for the use of the System of Certified Economic Operators shall contain at least

- a) the name of the System of Certified Economic Operators,
- b) the identification data of the system administrator,
- c) the organisational structure of the System of Certified Economic Operators,
- d) the procedure used for the issuance of certificates,
- e) determination of the type and, where appropriate, categories of the public contracts to which the System of Certified Economic Operators applies,
- f) determination of professional qualifications, economic qualifications and technical qualifications whose fulfilment is to be assessed in the system of certified economic operators,
- g) determination of documents that will be required to prove the qualification pursuant to paragraph f) as well as the basic qualification,
- h) the procedure used in the qualification assessment,
- i) the rules governing the issuance, modification and withdrawal of the certificate, and
- j) the internet address at which the system administrator will fulfil its publication duties pursuant to this Act.

(4) The certificate shall be issued upon a request submitted by the economic operator. The system administrator shall inform the economic operator of the decision made with regard to its application without undue delay.

(5) The documents that will be required to prove the qualification pursuant to paragraph g) of subsection (3) shall not exceed the scope that may be required by the contracting authority. An economic operator having its registered office in another Member State shall not be required to submit more documents than a person having its registered office in the Czech Republic.

(6) The procedures used for proving qualification pursuant to paragraph g) of subsection (3) shall enable, after the submission of a commitment specified in Section 83 (1) d), to prove qualification through other persons pursuant to Section 82 or Section 83 by analogy.

(7) The Ministry of Regional Development shall approve the System of Certified Economic Operators provided that the system complies with the conditions laid down by this Act.

#### Section 236

##### **Modification and cancellation of the System of Certified Economic Operators**

(1) A modification of the System of Certified Economic Operators shall be made upon an application submitted by the system administrator and shall follow the procedure set out in Section 235 by analogy.

(2) Where the Ministry of Regional Development finds out that the System of Certified Economic Operators has failed to meet the statutory requirements or that the conditions under which it was approved have changed, it shall invite the system administrator to remove the detected deficiencies and to produce evidence of this fact to the Ministry. Where the system administrator fails to remove the deficiencies within the prescribed time limit, the Ministry of Regional Development shall take a decision on cancelling this system.

(3) The system administrator may also cancel the System of Certified Economic Operators by notifying the Ministry of Regional Development in writing. The System of Certified Economic Operators shall be cancelled as of the date of delivery of such notification to the Ministry of Regional Development or, where applicable, as of the date indicated in such notification.

(4) The certificates issued within the System of Certified Economic Operators prior to its cancellation shall not lose validity as a consequence of the cancellation of the system.

#### Section 237

##### **Duties of the system administrator**

(1) The system administrator shall ensure that the System of Certified Economic Operators continuously complies with the requirements laid down by this Act.

(2) The system administrator shall maintain records of certificate issuers, the certificates issued and the economic operators to which certificates have been issued.

(3) The system administrator shall offer unlimited remote access to such records as well as to the rules governing the use of the System of Certified Economic Operators.

#### Section 238

##### **Certificate issuers**

The certificates shall be issued by an accredited conformity assessment body pursuant to the law regulating technical requirements for products.

#### Section 239

##### **Certificate**

(1) The certificate shall contain at least

- a) the identification data of the certificate issuer,
- b) the name of the system of certified economic operators,
- c) the identification data of the administrator of the system of certified economic operators,
- d) the identification data of the economic operator,
- e) the purpose or branch of business or another activity, for which the certificate is being issued,
- f) the type and, where appropriate, the category of the public contracts for which the certificate is being issued,
- g) the list of documents used by the economic operator to prove its qualification,
- h) the potential scope of the commitment pursuant to Section 83 (1) d) and the identification data of the person having duties thereunder,
- i) the extent to which the qualification has been proven,
- j) the date of issuance of the certificate,
- k) the period of validity of the certificate.

(2) The certificate shall be issued in the Czech language in paper or electronic form.

(3) The longest admissible validity of the certificate shall be one year from the date of its issuance.

#### Section 240

##### **Changes to the economic operator's qualification and withdrawal of the certificate**

(1) The economic operator shall notify the certificate issuer without delay of any changes that may result in the economic operator no longer being qualified to the extent indicated in the certificate.

(2) The certificate issuer shall assess the changes, and where it finds out that they influence the correctness of the data recorded in the certificate, it shall withdraw the certificate or issue a new one.

(3) The certificate issuer shall also withdraw the certificate where the economic operator fails to meet the conditions for the issuance of the certificate or where it finds out that the supporting documents on the grounds of which the certificate was issued do not correspond to reality.



## **BOOK THIRTEEN**

### **PROTECTION AGAINST IRREGULAR PRACTICES OF CONTRACTING AUTHORITY**

#### **TITLE I**

#### **OBJECTIONS**

##### **Section 241**

##### **Filing of objections**

(1) Objections may be filed by the economic operator who has been harmed or is at risk of being harmed by the practices of the contracting authority connected to the awarding of below-threshold or above-threshold public contracts including concession contracts, with the exception of small-scale concessions pursuant to Section 178, or to specific procedures defined in Book Six (hereinafter referred to as the 'complainant').

(2) The objections referred to in subsection (1) shall be filed in writing and may be filed against

- a) all actions or omissions made by the contracting authority during the procurement procedure as well as against a specific procedure under Book Six, including the setting of the award criteria,
- b) the selection of the type of the procurement procedure or the regime of the public contract,
- c) the practices of the contracting authority aimed at the award of a public contract outside the procurement procedure contrary to this Act.

(3) Objections concerning the contracting authority's actions or omissions other than the setting of the award criteria, the selection of the type of the procurement procedure, the regime of the public contract and the practices aimed at awarding the public contract outside procurement procedure may only be filed by a participant.

##### **Section 242**

##### **Time limits for the filing of objections**

(1) Unless otherwise stipulated below, objections shall be delivered to the contracting authority within 15 days from the date on which the complainant learned of the alleged infringement of this Act by the contracting authority; the objections shall not be submitted after the conclusion of a contract or after a design contest is considered to be terminated following the selection of a design.

(2) Objections against actions notified in the documents that the contracting authority is obliged to publish or send to the complainant pursuant to this Act shall be delivered to the contracting authority within 15 days from their publication or delivery to the complainant.

(3) Where a time limit for the submission of requests to participate has been laid down during the procurement procedure, objections against requirements for the qualification of the economic operator shall be delivered to the contracting authority not later than before the expiry of such time limit.

(4) Where a time limit for the submission of tenders has been laid down during the procurement procedure, objections against the procurement documents shall be delivered to the contracting authority not later than before the expiry of such time limit; in the case of a negotiated procedure with prior publication, the objections against the procurement documents shall be delivered to the contracting authority not later than before the expiry of the time limit for the submission of indicative tenders.

(5) Objections against a voluntary notice expressing intention to conclude a contract pursuant to Section 212 (2) shall be delivered to the contracting authority within 30 days from the publication of such notice.

##### **Section 243**

##### **Waiver of the right to file objections**

A participant may waive in writing its right to file objections to the contracting authority only after such right has been created. The time limit for filing objections is conclusively presumed to expire for this participant upon the delivery of the waiver of the right to file objections to the contracting authority.

##### **Section 244**

##### **Elements of objections**

(1) The objections shall indicate who is filing them, what action of the contracting authority is considered to be an infringement of this Act and what the complainant seeks. Where the participant files objections against its exclusion on the grounds that it has renewed its qualification pursuant to Section 76, it shall not state in the objections what action is considered to be an infringement of this Act; it shall, however, include a description of the corrective measures it has taken in order to renew its qualification.

(2) In the case of objections other than those to which the time limits specified in Section 242 (2) to (5) apply, the complainant shall also state when it learned of the alleged infringement of the Act.

(3) In the case of objections against the award criteria, against the selection of the type of procurement procedure or the public contract regime, against practices aimed at awarding a public contract outside the procurement procedure or against a voluntary notice expressing the intention to conclude a contract pursuant to Section 212 (2), the complainant shall also indicate what harm it has suffered or what harm it is facing.

#### Section 245

##### **Settling of objections**

(1) The contracting authority shall send its decision regarding the objections to the complainant within 15 days from the delivery of the objections. In its decision, the contracting authority shall state whether it accepts or rejects the objections; the decision shall include a reasoning in which the contracting authority shall express, in a detailed and comprehensible manner, its opinion on all the facts stated by the complainant in the objections. Where the contracting authority accepts the objections, it shall indicate what corrective measures it will adopt.

(2) Where the contracting authority finds no grounds for accepting the objections, it shall reject them by its decision. A partial acceptance of the objections or an implementation of a corrective measure other than that sought by the complainant in its objections shall also be considered a rejection. Where the contracting authority takes a corrective measure other than that sought by the complainant, the complainant is entitled to file new objections against such corrective measure.

(3) The contracting authority shall also reject objections that

- a) have not been filed by a competent person specified in Section 241,
- b) have been filed with delay, or
- c) fail to meet the elements specified in Section 244.

(4) Where the contracting authority rejects the objections, it shall advise the complainant, in the decision on the objections, of the possibility to file, within the time limit specified in Section 251 (2), a petition with the Office to launch proceedings to review the actions of the contracting authority as well as of the duty to submit a duplicate of the petition to the contracting authority.

(5) Where the contracting authority fails to decide on the objections within the time limit specified in subsection (1), it is conclusively presumed, for the purposes of filing a petition in accordance with Section 250 (1), that it has rejected the objections.

#### Section 246

##### **Ban on conclusion of a contract**

(1) The contracting authority shall not conclude a contract with an economic operator

- a) prior to the expiry of the time limit for filing objections against a decision to exclude a participant, against a decision on the selection of an economic operator or against a voluntary notice expressing the intention to conclude a contract,
- b) prior to the delivery of the decision on the objections to the complainant, where such objections have been filed,
- c) prior to the expiry of the time limit for filing a petition to launch proceedings to review the contracting authority's actions, where the contracting authority has rejected the filed objections,
- d) within a period of 60 days from the date of commencement of the proceedings to review the actions of the contracting authority, where a petition to launch such proceedings has been filed in time; the contracting authority may nevertheless conclude a contract even within this time limit provided that the Office has dismissed the petition or that the administrative proceedings concerning the petition has been discontinued and such decision has come into force.

(2) The contracting authority shall not conclude a contract with the economic operator within 60 days from the date of commencement of the proceedings to review the actions of the contracting authority, where the Office launches such proceedings by virtue of office; the contracting authority may nevertheless conclude a contract even within this time limit provided that the administrative proceedings has been discontinued and such decision has come into force.

#### Section 247

##### **Objections against setting up of innovation partnership**

(1) After an innovation partnership has been set up, objections in writing may be filed by the partner with whom the innovation partnership has been terminated as a consequence of the contracting authority's procedure pursuant to Section 71 (2) b), by which the contracting authority reduced the number of partners after completing one phase of the innovation partnership.

(2) Section 242 (1) and (2), Section 243, Section 244 (1) and (2) and Section 245 (1) to (5) apply to the objections referred in subsection 1 by analogy.

## TITLE II

### SUPERVISION OVER COMPLIANCE WITH THE ACT

#### Chapter 1

##### Supervision over the award of public contracts and over specific procedures

###### Section 248

###### Exercise of supervision over the award of public contracts and over specific procedures

(1) The Office shall exercise supervision over compliance with the rules laid down by this Act and by the award criteria for below-threshold and above-threshold public contracts, including concession contracts, with the exception of the small-scale concessions specified in Section 178, and for the specific procedures specified in Book Six, during which it shall

- a) decide on whether the contracting authority proceeded in compliance with this Act when awarding a public contract or when conducting a specific procedure,
- b) decide on whether the contracting authority's practices aimed at awarding a public contract outside the procurement procedure is in compliance with this Act,
- c) impose corrective measures,
- d) decide on the petition specified in Section 267,
- e) check, in accordance with the Inspection Code, the compliance of the contracting authority's actions during the award of public contracts with this Act.

(2) Where the contracting authority has commenced a procurement procedure to award a small-scale public contract pursuant to Section 4 (4), the public contract being awarded shall be considered a below-threshold public contract for the purposes of supervision over the compliance with the rules laid down by this Act.

(3) The Office shall hear administrative delicts in accordance with this Act and impose sanctions for their commission.

#### Chapter 2

##### Proceedings to review the actions of the contracting authority

###### Section 249

###### Commencement of the proceedings

The proceedings to review the actions of the contracting authority shall be initiated upon a written petition filed by the complainant (hereinafter referred to as the 'petitioner') or by virtue of office.

###### Petition

###### Section 250

(1) The petition may be filed against all actions as well as omissions of the contracting authority that are not in compliance with this Act and as a consequence of which the petitioner's rights have been breached, or are under threat of being breached, in particular against

- a) the award criteria,
- b) the voluntary notice,
- c) the exclusion of a participant from the procurement procedure,
- d) the decision on the selection of the economic operator,
- e) the choice of the type of procurement procedure, or
- f) the practices of the contracting authority aimed at awarding a public contract outside procurement procedure.

(2) After the conclusion of a public contract or a framework agreement, it shall be possible to file only a petition to impose a ban on the performance of the contract specified in Section 254, even without a prior filing of objections.

###### Section 251

(1) In addition to general elements laid down for filings in the Code of Administrative Procedure, the petition shall identify the contracting authority and state what action is considered to be an infringement of the law, as a consequence of which the rights of the petitioner have been breached or are under threat of being breached, what evidence is proposed to be produced, and what the petitioner seeks. The petitioner shall add the written evidence, whose production it has proposed, to

the petition in electronic form, where such evidence is not part of the procurement procedure documentation. The petition shall also include an evidence of payment of the deposit pursuant to Section 255 (1) or (2), and, in the case of a petition sent to the Office prior to the conclusion of a public contract, an evidence of the delivery of objections to the contracting authority.

(2) Unless stipulated otherwise, the petition shall be delivered to the Office and in duplicate to the contracting authority within 10 days from the date on which the complainant received the decision under which the contracting authority rejected the objections.

(3) Where the contracting authority has not decided on the objections within the time limit specified in Section 245 (1), the petition specified in Section 250 (1) shall be delivered to the Office and to the contracting authority not later than within 25 days from the date on which the objections were sent by the complainant.

(4) The elements of the petition specified in the first and second sentences of subsection (1) shall not be additionally altered or supplemented, with the exception of a removal of deficiencies in the petition within the time limit set by the Office; the Office shall not take account of such alterations and supplementations. The Office shall take account of new facts included in the petition instead of the facts contained in the objections filed with the contracting authority only where the new facts are of such nature that the petitioner was unable to claim them yet against the contracting authority; the petitioner shall prove that it had been unable to claim such new facts yet against the contracting authority.

(5) In proceedings initiated upon a petition, the parties to the proceedings may propose evidence, allege facts and make other proposals not later than within 15 days from the date on which the notice of the commencement of the proceedings was delivered, provided that restrictions specified in subsection (4) do not apply to such cases; the Office shall not take account of facts, proposals for evidence and other proposals submitted later, with the exception of facts, proposals for evidence and other proposals that are aimed at questioning the credibility of the supporting documents on the grounds of which a decision is to be made. The parties to the proceedings, with the exception of the petitioner, shall be advised, in the notice of the commencement of the proceedings, of the conditions under which they may apply proposals for evidence, new facts and other proposals specified in the first sentence.

#### Section 252

(1) The contracting authority shall send its opinion on the petition to the Office within 10 days from its delivery. Along with this opinion, the contracting authority shall send to the Office the relevant procurement procedure or design contest documentation.

(2) The time limit for the issuance of a decision by the Office shall start running from the moment of the delivery of the contracting authority's opinion and the procurement procedure or design contest documentation and, where applicable, a copy of the public contract. The time limit for the issuance of a decision shall not, however, start running until the general elements of the petition are supplemented and until the petition identifies the contracting authority and specifies what the petitioner seeks.

(3) The contracting authority shall send its opinion on the received petition as well as other filings and the procurement documents, with the exception of non-textual parts of the procurement documents or design contest documents, to the Office exclusively by means of a data box or as a data message signed by a recognised electronic signature. The petitioner shall send the petition and other filings to the Office exclusively by means of a data box or as a data message signed by a recognised electronic signature. Other parties to the proceedings shall send their filings to the Office exclusively by means of data boxes or as data messages signed by recognised electronic signatures.

(4) The contracting authority shall send parts of the procurement procedure or design contest documentation not listed in subsection (3) and the non-textual part of the procurement documents or design contest documents to the Office in paper form, by means of a data box, or as a data message signed by a recognised electronic signature.

#### Section 253

##### **Specific provisions governing a petition against practices of the contracting authority aimed at awarding a public contract outside the procurement procedure**

The petition against the contracting authority's practices aimed at awarding a public contract outside the procurement procedure shall specify what performance the contracting authority intends to acquire by the award of a contract outside the procurement procedure as well as what procedure the contracting authority intends to use to acquire the relevant performance.

#### Section 254

##### **Specific provisions governing a petition to impose a ban on the performance of a public contract**

(1) The petition to impose a ban on the performance of a public contract may be filed by the petitioner who claims that the contracting authority has concluded a contract

a) without prior publication of a contract notice, a prior information notice or an invitation to submit tenders in a simplified below-threshold procedure, although it was obliged to do so, unless it has published a voluntary notice expressing the intention to conclude a contract pursuant to Section 212 (2),

b) despite a ban on the conclusion of the contract stipulated by this Act or by a preliminary measure,

c) by conduct outside a procurement procedure, although it has been banned to continue conducting of such procedure by a decision made pursuant to Section 263 (7), or

d) by procedure specified in Section 135 (3) or Section 141 (4), during which it has breached the rules for the award of a public

contract on the basis of a framework agreement or under a dynamic purchasing system and thus has influenced or could have influenced the selection of the economic operator.

(2) The petition shall indicate when the petitioner learned that the contracting authority concluded the contract by the procedure referred to in subsection (1).

(3) The petitioner shall deliver the petition to the Office and in duplicate to the contracting authority within one month from the date on which the contracting authority published the contract award notice in the manner specified in Section 212 (2) accompanied with a statement of the reason for the award of the public contract without publication of a contract notice, a prior information notice or an invitation to submit tenders in a simplified below-threshold procedure, however not later than within six months from the conclusion of such contract.

(4) The petitioner shall deliver the petition specified in paragraph d) of subsection (1) to the Office and in duplicate to the contracting authority within one month from the date on which the contracting authority published a contract award notice regarding a contract awarded on the basis of a framework agreement pursuant to Section 137 or a contract award notice regarding a contract under a dynamic purchasing system pursuant to Section 142, however, not later than within six months from the conclusion of such contract.

(5) Within 10 days from the delivery of the petition, the contracting authority shall deliver to the Office all documents containing the award criteria and the procurement procedure documentation. Where the contracting authority does not conduct a procurement procedure or conducts a procurement procedure that does not require the publication of a notice or an invitation in order to be commenced, it shall state the grounds for such procedure to the Office within the same time limit.

(6) The contracting authority shall also deliver its opinion on the petition to the Office within the time limit set out in subsection (5). Where the contracting authority intends to prove the existence of the grounds which merit particular consideration pursuant to Section 264 (3) or (4), the opinion shall also include allegations and proposals for evidence to prove such grounds; such allegations and proposals for evidence shall not be altered or extended after the expiry of the time limit specified in subsection (5).

(7) A preliminary measure shall not be issued in proceedings regarding the petition specified in subsection (1).

#### Section 255

##### Deposit

(1) Except for the cases referred to in subsection (2), the petitioner shall pay, within the time limit for the submission of a petition, to the bank account of the Office a deposit amounting to 1% of the petitioner's tender price for the entire period of performance of the public contract, or for the period of the first four years of performance with regard to contracts concluded for an indefinite period, however not less than CZK 50,000 and not more than CZK 10,000,000. Where the petitioner is unable to set the total tender price, it shall pay a deposit amounting to CZK 100,000. In the case of a petition to impose a ban on the performance of a contract, the petitioner shall pay a deposit amounting to CZK 200,000.

(2) With regard to the proceedings to review a concession award procedure, the petitioner shall pay, within the time limit for the submission of a petition, to the bank account of the Office a deposit amounting to 1% of the estimated value of the concession published in the Tenders Electronic Daily or on the contracting authority profile, however, not less than CZK 50,000 and not more than CZK 10,000,000. Where the contracting authority fails to publish the estimated value of the concession in the Tenders Electronic Daily or on the contracting authority profile, the petitioner shall pay a deposit amounting to CZK 100,000. In the case of a petition to impose a ban on the performance of a concession contract, the petitioner shall pay a deposit amounting to CZK 200,000.

(3) The deposit shall devolve on the state where the Office

a) rejects the petition by final decision pursuant to Section 265 a), or

b) makes a final decision to discontinue the proceedings where the petitioner has withdrawn its petition after a non-final decision on rejecting the petition was made pursuant to Section 265 a) during the same proceedings.

(4) Where the petitioner has withdrawn its petition prior to a decision on the merits is issued, 35 % of the deposit shall devolve on the state, however not less than CZK 30,000; the Office shall return the remaining part of the deposit to the petitioner.

(5) The deposit that has devolved on the state shall constitute state budget revenue.

(6) Where the Office makes a decision other than those referred to in subsection (3), or where it discontinues the proceedings for a reason other than that referred to in subsection (3), it shall return the deposit or part thereof to the petitioner within one month from the date on which the decision came into force.

#### Section 256

##### Parties to the proceedings

The contracting authority shall be a party to the proceedings, and where the proceedings is initiated upon a petition, the petitioner shall be a party as well; where the subject of the proceedings consists in a review of the selection of an economic operator or the selection of a design in a design contest, the selected economic operator or the selected participant in the design contest shall be a party to the proceedings as well. In proceedings regarding the commission of an administrative delict, the person suspected of its commission shall be a party to the proceedings. In proceedings on imposing a ban on the

performance of a contract, the petitioner and the contracting parties shall be parties to the proceedings.

#### Section 257

##### **Discontinuance of the proceedings**

The Office shall discontinue the initiated proceedings by a resolution where

- a) the petition lacks general elements for filings laid down in the Code of Administrative Procedure or the identification of the contracting authority or fails to state what the petitioner claims, or a document attesting to the payment of the deposit in the amount specified in Section 255 (1) or (2) is not attached to the petition, and the petitioner has failed to remove such deficiencies in the petition within the time limit set by the Office,
- b) the petition does not state what action is considered to constitute an infringement of the law, as a consequence of which the rights of the petitioner have been breached or are under threat of being breached,
- c) the deposit specified in Section 255 has not been paid,
- d) a document attesting to the delivery of objections to the contracting authority is not attached to the petition sent to the Office prior to the conclusion of a public contract,
- e) the petition has not been delivered to the Office and to the contracting authority within the time limits set out in Section 251 (2) or (3) or in Section 254 (3),
- f) in proceedings initiated by virtue of office, no grounds for imposing a corrective measure pursuant to Section 263 or for imposing a sanction pursuant to Section 268 or Section 269 have been found,
- g) the contracting authority has cancelled the procurement procedure,
- h) no objections filed in due and timely manner preceded the petition; this does not apply to petitions specified in Section 254,
- i) the contracting authority has cancelled the actions being reviewed or has adopted the requested corrective measure,
- j) the contracting authority concluded a contract to perform the subject-matter of the public contract being reviewed when conducting administrative proceedings,
- k) the petition was filed after the conclusion of the contract, with the exception of a petition to impose a ban on the performance of the contract,
- l) a petition to impose a ban on the performance of the contract has been filed and the Office finds out that the obligation arising from this contract has been fulfilled, or
- m) in proceedings initiated by virtue of office, the contracting authority has cancelled the actions being reviewed or adopted corrective measures.

#### Section 258

##### **Special provisions governing conduct prior to the commencement of the proceedings**

(1) The contracting authority shall, within 10 days from the delivery of a notice to the Office, send the procurement procedure documentation by means of a data box or as a data message signed by a recognised electronic signature, with the exception of documents referred to in Section 252 (4), which it shall send to the Office, within the same time limit, in paper form, by means of a data box or as a data message signed by a recognised electronic signature.

(2) A motion to commence proceedings by virtue of office filed by a complainant that has not used the possibility to file objections in the same matter shall not be taken into account.

#### Section 259

(1) The Office shall collect a fee amounting to CZK 10,000 for the filing of a motion to commence administrative proceedings by virtue of office from the person that has filed such motion for each public contract in relation to the award of which the motion states misconduct.

(2) Where a motion has been filed jointly by more persons, the fee specified in subsection (1) shall be collected only once.

(3) The fee shall be payable to the bank account of the Office along with the filing of the motion.

(4) Where the fee fails to be paid along with the filing of the motion within the time limit specified in subsection (3), the motion shall not be taken into account.

(5) The fee shall not be returned.

(6) Exemption from the fee or extension of the time limit for the payment of the fee shall not be admissible.

(7) The Act on Administrative Fees does not apply.

## Section 260

### **Special provisions governing confidentiality**

Throughout the period of exercising supervision pursuant to this Book, the Office shall not disclose the information contained in the procurement procedure documentation, with the exception of the part of information which is used as the grounds on which the issuance of the decision is based. The period of exercising supervision under the first sentence means the period from the delivery of the procurement procedure documentation to the Office pursuant to Section 252 (1), Section 254 (5) or Section 258 (1) to their sending back to the contracting authority.

## Section 261

### **Special provisions governing the conduct of the proceedings**

(1) The following shall be sent to the Office exclusively by means of a data box or as a data message signed by a recognised electronic signature:

- a) filings submitted by the parties during the proceedings to review the contracting authority's actions initiated by virtue of office,
- b) a remonstrance and other filings submitted by parties during remonstrance proceedings.

(2) The Office may suspend the proceedings while exercising supervision pursuant to Section 248 in order to obtain a specialist opinion or a sworn expert opinion. The time limit for the issuance of a decision shall not be running from the issuance of the resolution to suspend the proceedings to the delivery of the specialist opinion or sworn expert opinion to the Office.

(3) Prior to issuing a decision on the merits, the Office shall set a time limit for the parties to the proceedings to express their opinions on the supporting documents for the decision. This time limit shall not be shorter than seven days. The Office shall not take account of opinions expressed later. The first sentence after semicolon of Section 251 (5) applies by analogy.

## Section 262

### **Special provisions governing remonstrance proceedings**

Filing remonstrance shall not be admissible where filed against a resolution which

- a) regulates the conduct of the administrative proceedings,
- b) has set the time limit for performing an action, or
- c) has corrected obvious incorrectness, unless such correction concerns the statement contained in the decision.

### **Corrective measures and invalidity of contracts or invalidity of framework agreements**

## Section 263

(1) The Office shall not be bound by the petition with regard to the corrective measure being imposed.

(2) Where the contracting authority fails to comply with the rules for the procurement procedure or for the specific procedure specified in Book Six, whereby it influences or can influence the selection of an economic operator or the selection of a design, and a contract has not been concluded yet, the Office shall cancel the procurement procedure or the design contest or only an individual action of the contracting authority.

(3) Where the contracting authority sets out the award criteria contrary to this Act, the Office shall impose a corrective measure consisting in the cancellation of the procurement procedure.

(4) Where the contracting authority, during proceedings to review the contracting authority's actions prior to the conclusion of a contract, fails to deliver the procurement procedure documentation to the Office pursuant to Section 252 (1) or Section 254 (5) within the prescribed time limits, or in an additional five-day period set by the Office, the Office shall impose a corrective measure consisting in the cancellation of the procurement procedure or of the action being reviewed, as specified in the notice of the commencement of the proceedings.

(5) Where the reasoning of the decision to reject objections is unreviewable due to incomprehensibility or a lack of grounds, the Office may impose a corrective measure consisting solely in cancelling the decision regarding the objections; in that case, it is conclusively presumed that new objections with an identical content are filed at the moment when the Office's decision imposing such corrective measure comes into force. The contracting authority shall not reject such new objections as being delayed.

(6) Where the Office finds out, during conducting proceedings regarding a petition, that the contracting authority has failed to decide, within the meaning of Section 245 (5), on the objections that preceded the petition within the time limit specified in Section 245 (1), it shall impose a corrective measure consisting, depending on the nature of the case, either in cancelling the action against which the objections were aimed as well as all subsequent actions made by the contracting authority during the procurement procedure, or in cancelling the entire procurement procedure.

(7) The Office shall ban the contracting authority from continuing the conduct that has been challenged by the petition,

provided that it finds out, during proceedings regarding a petition against the contracting authority's conduct aimed at awarding a public contract outside the procurement procedure, that the contracting authority's conduct is contrary to or circumventing this Act.

(8) Where the Office imposes a corrective measure, with the exception of a ban on the performance of a contract, it shall simultaneously ban the contracting authority from concluding a contract during the procurement procedure until the decision by which the proceedings is concluded comes into force; a remonstrance against such statement shall not have a suspensory effect.

#### Section 264

(1) During proceedings initiated upon the petition specified in Section 254, the Office shall impose a ban on the performance of a contract on the contracting authority provided that the public contract or framework agreement has been concluded in the manner described in Section 254 (1). The contract in respect of which the Office has imposed the ban on performance, where not proceeding pursuant to subsection (3), shall be conclusively presumed to be void ab initio.

(2) A public contract shall become invalid on the grounds of infringement of this Act solely in cases where the Office imposes a ban on its performance pursuant to subsection (1). This is without prejudice to invalidity based on other grounds.

(3) Where the contracting authority proves that grounds which merit particular consideration in relation to public interest require continuation of the performance of the contract, the Office shall issue a decision setting a time limit, not longer than 12 months, after the expiry of which the performance of the contract shall be banned; this time limit starts running from the moment when the decision comes into force. Economic interest in the performance of the contract may be considered such a ground only under exceptional circumstances where a suspension of the performance of the contract would lead to disproportionate consequences. Economic interests directly linked to the public contract concerned, including, but not limited to, the costs resulting from a delay during the performance of the public contract, the costs of commencement of a new procurement procedure, the costs resulting from the change of the person performing the public contract and the costs of the legal obligations resulting from the ban on the performance of the contract, shall not constitute the grounds which merit particular consideration requiring the performance of the contract to continue.

(4) The Office shall not impose a ban on the performance of the contract pursuant to subsection (1) where the contracting authority proves, apart from the facts specified in subsection (3), that the conduct pursuant to the first sentence of subsection (3) is not sufficient to protect the public interest concerned.

(5) The Office shall also not impose a ban on the performance of the contract pursuant to subsection (1) where a public contract in the fields of defence or security is concerned and where, simultaneously, the consequences of such ban would seriously endanger the existence of a broader defence or security programme that is of fundamental importance for the security interests of the Czech Republic.

#### Section 265

The Office shall dismiss the petition where

- a) no grounds for imposing a corrective measure have been found,
- b) the petition has not been filed by a competent person, or
- c) the petition is not aimed against the procedure that the contracting authority is obliged to observe pursuant to this Act.

#### Section 266

##### **Costs of proceedings**

(1) The Office's decision imposing a corrective measure or a ban on the performance of the contract shall include a decision concerning the duty of the contracting authority to pay the costs of the administrative proceedings. The costs of the proceedings shall be paid out by a lump sum set out by a regulation of the Ministry of Regional Development.

(2) On grounds which merit particular consideration, the duty to pay the costs of the proceedings pursuant to subsection (1) may be waived in full or in part upon a request of a party to the proceedings.

#### Section 267

##### **Petition filed after the completion of a stage of innovation partnership**

(1) Where the contracting authority has reduced the number of partners by procedure specified in Section 71 (2) b), the partner with whom the innovation partnership has been terminated on such grounds is entitled to submit a petition to the Office.

(2) Where the contracting authority fails to comply with the rules for the reduction of the number of partners, the Office shall, in its decision, declare such conduct unlawful and, depending on the nature of the case, shall order the contracting authority to remedy the situation within 15 days from the moment when such decision comes into force.

(3) The petitioner shall pay a deposit amounting to CZK 200,000 along with filing the petition pursuant to subsection (1).

(4) Where the contracting authority fails to submit procurement procedure documentation during proceedings



regarding the petition submitted pursuant to subsection (1) within the time limit set out in Section 252 (1), or where the Office finds out that the contracting authority has failed to decide, within the meaning of Section 245 (5), on the objections that preceded the petition within the time limit specified in Section 245 (1), it shall impose a corrective measure pursuant to subsection (2).

(5) The contracting authority and the petitioner shall be parties to the proceedings regarding the petition filed pursuant to subsection (1).

(6) Provisions of sections 251, 252, 255 (3) to (6), 257, 260, 261, 262, 263 (5) and 265 apply to the proceedings regarding the petition filed pursuant to subsection (1) by analogy.

(7) A preliminary measure shall not be issued in proceedings regarding the petition specified in subsection (1).

### **Chapter 3**

#### **Administrative delicts**

##### **Section 268**

#### **Administrative delicts committed by the contracting authority**

(1) The contracting authority commits an administrative delict where it

a) fails to comply with the rules laid down by this Act for the award of a public contract or for the specific procedures specified in Book Six, whereby it has influenced or can influence the selection of an economic operator or the selection of a design in a design contest, and awards a public contract, concludes a framework agreement, or the design contest is considered terminated after a selection of a design,

b) lays down the award criteria contrary to the law and awards a public contract, concludes a framework agreement, or the design contest is considered terminated after a selection of a design,

c) fails to acquire or keep procurement procedure documentation pursuant to Section 216 (1) or (2),

d) proceeds contrary to Section 245 (1), (2), (3) or (4) when settling objections, or

e) fails to fulfil any of the duties set out in Section 252 (1), (3) or (4), Section 254 (5) or (6) or Section 258 (1).

(2) Unless the procedure specified in subsection (3) is applied, the following fine shall be imposed for the commission of an administrative delict:

a) 10 % of the public contract price, or equal to or less than CZK 20,000,000 where the total public contract price cannot be established, with regard to the administrative delict specified in paragraphs a) to c) of subsection (1),

b) CZK 20,000,000, with regard to the administrative delict specified in paragraph d) of subsection (1),

c) CZK 1,000,000, with regard to the administrative delict specified paragraph e) of subsection (1).

(3) Where the procedure for the award of concessions is breached, the following fine shall be imposed for the commission of the administrative delict specified in subsection (1):

a) 5 % of the estimated value of the concession contract, or equal to or less than CZK 20,000,000, where the estimated value of the concession contract cannot be established, with regard to the administrative delict specified in paragraphs a), b) or c) or subsection (1),

b) CZK 20,000,000, with regard to the administrative delict specified in paragraph d) of subsection (1),

c) CZK 1,000,000, with regard to the administrative delict specified paragraph e) of subsection (1).

##### **Section 269**

#### **Administrative delicts committed in the process of publication**

(1) The contracting authority commits an administrative delict in the process of publication pursuant to this Act by

a) not sending a contract award notice or a notice of the conclusion of a framework agreement for publication in accordance with this Act,

b) not sending a notice of cancellation of the procurement procedure for publication in accordance with this Act,

c) not sending a notice of a change to a public contract for publication in accordance with this Act,

d) not sending a notice of a change of the period of validity of a dynamic purchasing system for public contracts for publication in accordance with this Act,

e) not publishing a written report of the contracting authority in accordance with Section 217 (5).

(2) The contracting authority commits an administrative delict in the process of publication pursuant to this Act by not publishing the concluded public contract in accordance with Section 219 (1).

(3) The fine imposed for an administrative delict shall amount to

a) CZK 1,000,000, with regard to the administrative delict specified in subsection (2),

b) CZK 200,000, with regard to the administrative delict specified in subsection (1).

#### Section 270

##### **Common provisions regulating administrative delicts committed by contracting authorities**

(1) The contracting authority shall not be liable for an administrative delict where it proves that it has deployed all efforts that could be reasonably required to avert a breach of a legal duty.

(2) In establishing the extent of the fine to be imposed on the contracting authority, the gravity of the administrative delict shall be taken into account, in particular, the manner of its commission and consequences thereof and the circumstances under which it was committed. Where a ban on the performance of a contract has been imposed, the extent to which such a contract has been performed so far shall also be taken into account.

(3) The liability of the contracting authority for an administrative delict shall expire where the Office fails to commence the relevant proceedings within three years from the date on which it learned of such delict, however not later than within five years from the date of its commission.

(4) The administrative delicts under this Act shall be heard in the first instance by the Office.

#### Chapter 4

##### **Common provisions regarding the exercise of supervision**

#### Section 271

##### **Duty of confidentiality and protection of trade secret**

(1) The staff of the Office as well as those who have been entrusted with performing tasks pertaining to the competence thereof shall maintain confidentiality of all facts that they have learned while fulfilling their occupational duties. The duty of confidentiality shall not apply where the persons concerned give testimony of such facts to investigative, prosecuting and adjudicating bodies or during proceedings before a court or, where appropriate, where they are invited by such authorities or the court to submit a written representation. The duty of confidentiality on the part of the staff of the Office shall be without prejudice to the disclosure of data and information by the Office under another legal regulation<sup>51)</sup>.

(2) Where the Office learns of a fact that constitutes the subject of a trade secret, it shall take measures to avoid a breach of such trade secret.

#### Section 272

##### **Publication of final decisions made by the Office**

The Office shall continuously publish its final decisions under this Act on its Internet address.

## BOOK FOURTEEN

### TRANSITIONAL AND FINAL PROVISIONS

#### Section 273

##### **Transitional provisions governing the public procurement**

(1) The public procurement, the award of framework agreements, design contests, proceedings to review the actions made by the contracting authority or proceedings regarding administrative delicts before the Office for the Protection of Competition pursuant to Act No. 137//2006 Coll., in the wording effective by the date of the entry of this Act into effect, initiated before the effective date of this Act shall be completed under Act No. 137//2006 Coll., in the wording effective by the date of the entry of this Act into effect.

(2) The concession award procedure pursuant to Act No. 139/2006 Coll., in the wording effective by the date of the entry of this Act into effect, initiated before the effective date of this Act, shall be completed under Act No. 139/2006 Coll., in the wording effective by the date of the entry of this Act into effect.

(3) For the purposes of sections 60 (2) and 63 (1), the procurement procedures pursuant to Act No. 137/2006 Coll., in

the wording effective by the date of the entry of this Act into effect, shall be deemed the procurement procedures pursuant to this Act.

(4) Procurements regarding public contracts being awarded on the basis of framework agreements concluded pursuant to Act No. 137/2006, in the wording effective by the date of the entry of this Act into effect, which

a) were initiated before the effective date of this Act, or

b) will be initiated after the effective date of this Act, shall be completed under Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect.

(5) Dynamic purchasing system set up pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be considered the dynamic purchasing system pursuant to this Act from the entry of this Act into effect. Public contracts awarded under the dynamic purchasing system which were commenced before the effective date of this Act shall be completed pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect

(6) Modifications of obligations arising from the public contracts or concession contracts concluded pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, or pursuant to Act No. 139/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be governed by this Act from the effective date of this Act. The sum of values of all modifications of the contractual obligation pursuant to Section 222 (5) c) and 222 (6) c) shall also include modifications of obligations arising from the public contracts or concession contracts made before the effective date of this Act.

(7) Prior information notices or regular prior information notices of a utilities contracting authority pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, published before the entry of this Act into effect, shall be considered prior information notices pursuant to this Act.

(8) Voluntary notice on the intention to conclude a contract pursuant to Section 146 (2) of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be considered a voluntary notice on the intention to conclude a contract pursuant to Section 212 (2) of this Act.

#### Section 274

##### **Transitional provisions governing supervision over compliance with the Act**

(1) It shall be proceeded pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, or pursuant to Act No. 139/2006 Coll., in the wording effective by the date of the entry of this Act into effect, in respect of proceedings to review the actions made by the contracting authority or proceedings regarding administrative delicts initiated by the Office for the Protection of Competition after the effective date of this Act, provided that they concern

a) the award of public contracts or framework agreements pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect,

b) the award of public contracts on the basis of the framework agreement pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect,

c) the concession award procedure and the award of concession contracts pursuant to Act No. 139/2006 Coll., in the wording effective by the date of the entry of this Act into effect,

a) design contests pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect.

(2) The ban on performance of public contracts imposed pursuant to Section 120a) of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, and the ban on performance of a concession contract pursuant to Section 27a of Act No. 139/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall not apply to public contracts pursuant to this Act.

#### Section 275

##### **Transitional provisions governing information system and publication**

(1) The information system regarding public procurement pursuant to Section 157 of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be considered the information system pursuant to this Act. Information contained in the information regarding public procurement pursuant to Section 157 of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall form the content of the information system pursuant to this Act.

(2) Publication of data and information regarding public contracts pursuant to sections 146 to 147a of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, which concern the procurement procedure, the concession award procedure or design contests initiated pursuant to of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be conducted pursuant to this Act.

## Section 276

### **Transitional provisions governing the List of Approved Economic Operators**

(1) The List of Approved Economic Operators pursuant to Section 125 of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be considered the List of Approved Economic Operators pursuant to this Act. Proceedings regarding registration, changes and exclusion from the List of Approved Economic Operators initiated before the effective date of this Act, shall be completed pursuant to this Act.

(2) An economic operator registered in the List of Approved Economic Operators pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, is obliged to submit missing qualifications, including the relevant documents, by the procedure pursuant to Section 230 of this Act before the submission of application for issuance of the extract from the List of Approved Economic Operators pursuant to Section 229 of this Act; the extract from the List of Approved Economic Operators shall be issued to the economic operator after the registration is changed pursuant to Section 231 of this Act.

(3) The economic operator registered in the List of Approved Economic Operators pursuant to Section 125 of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, is obliged to submit missing qualifications, including the relevant documents, by the procedure pursuant to Section 230 of this Act within three months from the effective date of this Act, otherwise, it is conclusively presumed that it is not registered in the list from the first day of the fourth month from the effective date of this Act.

(4) The economic operator may replace the proof of the basic qualification in its entirety and the professional qualification to the extent of the extract stated in the extract from the List of Approved Economic Operators issued pursuant to Section 128 of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, within three months from the effective date of this Act, unless the facts on the basis of which the extract was issued have not changed.

## Section 277

### **Transitional provisions governing Systems of Certified Economic Operators**

(1) The System of Certified Economic Operators pursuant to Section 125 of Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, shall be considered the System of Certified Economic Operators pursuant to this Act. Proceedings regarding approval, modification and cancellation of the System of Certified Economic Operators initiated before the effective date of this Act, shall be completed pursuant to this Act.

(2) Where the System of Certified Economic Operators which was approved pursuant to Act No. 137/2006 Coll., in the wording effective by the date of the entry of this Act into effect, is not in compliance with this Act, the administrator of the System of Certified Economic Operators shall file an application for change of the System of Certified Economic Operators within three months from the effective date of this Act. Until a decision regarding this application is made, certificates shall not be issued within this system.

(3) The economic operator may prove its qualification by the certificate which was issued under the System of Certified Economic Operators before the effective date of this Act, only within three months from the effective date of this Act.

## Section 278

### **Repealing provisions**

The following shall be repealed:

1. Act No. 137/2006 Coll., on Public Contracts.
2. Act No. 139/2006 Coll., on Concession Award Procedure and Concession Contract (the Concession Act).
3. Book Thirteen of Act No. 110/2007 Coll., on Certain Measures within the Network of Central Government Authorities Relating to the Cancellation of the Ministry of Information Technologies and Amendment to Certain Other Acts.
4. Book One Hundred and One of Act No. 296/2007 Coll., amending Act No. 182/2006 Coll. on Bankruptcy and Settlement (the Insolvency Act), as amended, and certain acts in connection with its adoption.
5. Act No. 30/2008 Coll., amending Act No. 139/2006 Coll., on Concession Award Procedure and Concession Contract (the Concession Act).
6. Act No. 76/2008 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended by Act No. 110/2007 Coll.
7. Books Four and Five of Act No. 110/2009 Coll., amending Act No. 130/2002 Coll., on Support for Research, Experimental Development and Innovations from Public Resources and Amendment to Certain Related Acts (Act on Support for Research and Development), as amended and other related acts.
8. Book Twenty-Eight of Act No. 41/2009 Coll., on Amendment to Certain Other Acts Connected to the Adoption of Criminal Code.
9. Act No. 417/2009 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended, and Certain Other Acts.
10. Act No. 179/2010 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended, and Certain Other Acts.

11. Books One Hundred and Seventy-Six and One Hundred and Seventy-Seven of Act No. 227/2009 Coll, amending Certain Other Acts in Connection with Adoption of Basic Registries Act.
12. Act No. 423/2010 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended.
13. Book Twenty-Eight of Act No. 73/2011 Coll., on Labour Office of the Czech Republic and on Amendment to Certain Related Acts.
14. Act No. 258/2011 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended.
15. Book Six of Act No. 367/2011 Coll., amending Act No. 435/2004 Coll., on Employment, as amended, and Certain Related Acts.
16. Book Forty of Act No. 420/2011 Coll., on Amendment to Certain Acts in Connection with adoption of Act on Criminal Liability of Legal Persons and their Prosecution.
17. Book Three of Act No. 1/2012 Coll., amending Act No. 435/2004 Coll., on Employment, as amended, and Certain Related Acts.
18. Act No. 55/2012 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended.
19. Book Twenty-Nine of Act No. 167/2012 Coll., amending Act No. 499/2004 Coll., on Archiving and Filing Service and Amendments to Certain Other Acts, as amended, Act No. 227/2000 Coll., on Electronic Signatures and on the Amendment to Certain Other Acts (Electronic Signatures Act), as amended, and other related acts.
20. Books Sixty-Four and Sixty-Five of Act No. 303/2013 Coll., amending Act No. 499/2004 Coll., on Archiving and Filing Service and Amendments to Certain Other Acts, as amended, Act No. 227/2000 Coll., on Electronic Signatures and on the Amendment to Certain Other Acts (Electronic Signatures Act), as amended, and other related acts.
21. Statutory measures of the Senate No. 341/2013 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended, and Act No. 55/2012 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended.
22. Act No. 40/2015 Coll., amending Act No. 137/2006 Coll., on Public Contracts, as amended.
23. Regulation No. 217/2006 Coll., implementing concession act.
24. Regulation No. 238/2006 Coll., laying down essentials of the application for prior opinion on conclusion of a concession contract or a contract under concession act and on amendment to the concluded concession contract or contract under concession act.
25. Regulation No. 274/2006 Coll., laying down the list of products in the field of defence for purposes of the act on public contracts.
26. Regulation No. 328/2006 Coll., laying down the lump sum of the costs of proceedings for the review of practices of contracting authority for the purposes of the act on public contracts.
27. Regulation No. 392/2010 Coll., on determination of elements of the application for a prior opinion of the Ministry of Finance in the field of public contracts.
28. Regulation No. 9/2011 Coll., laying down detailed conditions relating to electronic tools and acts taken electronically in awarding public contracts and particulars concerning certificate of conformity.
29. Regulation No. 162/2011 Coll., on the manner of laying down separate technical conditions for the purposes of the act on public contracts.
30. Regulation No. 133/2012 Coll., on publication for purposes of the act on public contracts and on elements of contracting authority profile.
31. Regulation No. 230/2012 Coll., laying down details of determination of the subject-matter of public works contract and the scope of the inventory of works, supplies and services together with a statement of measurements
32. Regulation No. 231/2012 Coll., laying down terms and conditions for public works contracts.
33. Regulation No. 232/2012 Coll., on details of the scope of justification of purposefulness of public contract and statement of reasons for public contract.
34. Government Decree No. 77/2008 Coll., laying down the financial limits for the purposes of the Act on Public Contracts, defining goods procured by the Czech Republic - the Ministry of Defence, to which the specific financial limit applies, and on conversion of amounts set out in the Act on Public Contracts from Euro to the Czech currency.
35. Government Decree No. 78/2008 Coll., laying down financial limits for the purposes of the Concession Act.
36. Government Decree No. 474/2009 Coll. amending government decree No. 77/2008 Coll., laying down the financial limits for the purposes of the Act on Public Contracts, defining goods procured by the Czech Republic - the Ministry of Defence, to which the specific financial limit applies, and on conversion of amounts set out in the Act on Public Contracts from Euro to the Czech

currency and Government Decree No. 78/2008 Coll., laying down financial limits for the purposes of the Concession Act.

37. Government Decree No. 276/2011 Coll. amending government decree No. 77/2008 Coll., laying down the financial limits for the purposes of the Act on Public Contracts, defining goods procured by the Czech Republic - the Ministry of Defence, to which the specific financial limit applies, and on conversion of amounts set out in the Act on Public Contracts from Euro to the Czech currency, as amended by Government Decree 474/2009 Coll.

38. Government Decree No. 447/2011 Coll. amending government decree No. 77/2008 Coll., laying down the financial limits for the purposes of the Act on Public Contracts, defining goods procured by the Czech Republic - the Ministry of Defence, to which the specific financial limit applies, and on conversion of amounts set out in the Act on Public Contracts from Euro to the Czech currency, as amended and Government Decree No. 78/2008 Coll., laying down financial limits for the purposes of the Concession Act, as amended by the Government Decree No. 474/2009 Coll.

39. Government Decree No. 386/2012 Coll. amending government decree No. 77/2008 Coll., laying down the financial limits for the purposes of the Act on Public Contracts, defining goods procured by the Czech Republic - the Ministry of Defence, to which the specific financial limit applies, and on conversion of amounts set out in the Act on Public Contracts from Euro to the Czech currency, as amended.

## **BOOK FIFTEEN**

### **EFFECT**

#### **Section 279**

(1) This Act comes into effect on the first day of the sixth month of the calendar year following the year when it was promulgated.

(2) Provisions of Section 211 (3) come into effect in respect of the contracting authorities referred to in Section 4 (1) a), the Czech National Bank and the central purchasing bodies on 18 April 2017 and in the case of other contracting authorities on 18 October 2018.

(3) Postponing of the effect pursuant to subsection (2) shall not apply to

- a) the dynamic purchasing system,
- b) the electronic auction,
- c) the electronic catalogues,
- d) the sending of forms to the Tenders Electronic Daily and to the Official Journal of the European Union, and
- e) the publication of procurement documents pursuant to Section 96.

(4) Provisions of Section 86 (1) come into effect on 18 October 2018.

(5) Provisions of Section 221 come into effect,

a) in the case of the contracting authorities referred to in Section 4 (1) a) and the Czech National Bank, on the first day of the eighteenth month,

b) in the case of contracting authorities not referred to in paragraph a), on the first day of the thirteenth month, after publication of the reference to the European legislation containing the European standard in the Official Journal of the European Union.

**Hamáček, manu propria**

**Zeman, manu propria**

**Sobotka, manu propria**

**Annex No. 1**  
**List of military material pursuant to Section 28 n)**

Category	Description
1.	handheld and mounted firearms, except for hunting and sporting weapons: 1. rifles, carbines, revolvers, pistols, submachine guns, machine guns and grenade launchers, 2. flame throwers
2.	artillery weapons, weapon systems and equipment for the discharge of smoke and gas: 1. guns (guns, howitzers, cannon howitzers, mortars), mortars, rocket launchers, mounted, anti-tank and anti-aircraft guns (sets - launchers), 2. military technical equipment to discharge or firing smoke and gas
3.	ammunition intended for weapons referred to in Category 1, and 2 including sub-munitions components, blocks, resources, products and packaging, charge articles, belts, boxes, trays and equipment specially designed using explosives
4.	bombs, torpedoes, rockets, guided and unguided missiles, pyrotechnic cartridges, expelling decoy, cassette (container) ammunition, mines, grenades, pyrotechnic devices, signal and lighting devices, booby explosive devices, including the radio activating devices for remote detonation
5.	equipment and devices specially designed for the handling, fire, destruction, detonation or detection of military items referred to in category 4.
6.	command and control systems, including sub-systems, fire control systems, their components and accessories: 1. computer equipment for fire control (hardware and software) including systems for distinguishing and evaluating targeted objectives and data transmission, 2. systems for target grid coordinate measurement, range finders, position indicators and altimeters 3. electronic, light, infrared (electrooptical), thermal, optical and acoustic observation and sighting devices 4. devices for the control and guidance of missiles, radar devices and devices for detecting or identifying their own or foreign targets, electronic, electro-optical, thermal, gyroscopic, acoustic and optical targeting devices for military use during day and night, 5. aeronautical and weapon sights and periscopes,
7.	full-tracked, wheeled vehicles, vehicles and containers specifically made for carrying out the tasks of ensuring the defence or national security: 1. tanks, 2. armoured personnel carriers, 3. military vehicle type, armed or armoured, including amphibious, 4. armed trains 5. special military transport vehicles, special military vehicles with special-purpose bodies and military trailers, 6. military vehicles for rescue,
8.	radioactive products and sources of ionizing radiations, toxic chemicals and their precursors, hazardous biological agents and toxins made for ensuring the defence or national security and the means for their handling, distribution, detection, identification and destruction,
9.	explosives, including dust filling, incendiary mixture and liquid or solid propellants specially designed and constructed for ensuring the defence or national security,
10.	ships, their special equipment and other manageable floating

I	I	bodies, which was designed, made for or adapted to carry out	I
I	I	I the tasks of ensuring the defence or national security,	I
I	I	I-----I	I
I	11.	I aviation equipment and the materials for ensuring the defence	I
I	I	I or national security:	I
I	I	I 1. specially designed or modified aircraft, helicopters and	I
I	I	I unmanned aerial vehicles,	I
I	I	I 2. aircraft engines,	I
I	I	I 3. specially constructed equipment of aircraft or helicopters,	I
I	I	I 4. weapons and other systems for aircraft referred to in	I
I	I	I paragraph 1,	I
I	I	I 5. ground equipment for facilities referred to in paragraph 1,	I
I	I	I-----I	I
I	12.	I electronic material designed for the defence or national	I
I	I	I security:	I
I	I	I 1. electronic communications networks and electronic	I
I	I	I communication devices,	I
I	I	I 2. electronic warfare systems - jammers, receivers, systems	I
I	I	I for protection against interference, sights signal sources,	I
I	I	I including special types of command and control systems for the	I
I	I	I jammer,	I
I	I	I 3. safety equipment for the processing and protection of data,	I
I	I	I transmission and signal lines,	I
I	I	I 4. identification, authentication, reading, filling equipment,	I
I	I	I and other data processing equipment,	I
I	I	I 5. active and passive radar systems and related data	I
I	I	I processing systems,	I
I	I	I 6. transponders and beacons,	I
I	I	I 7. detecting seismic, acoustic, magnetic and electromagnetic	I
I	I	I sensors presence personnels and technology	I
I	I	I 8. satellite technology (search, navigation, communication and	I
I	I	I data transfer),	I
I	I	I 9. technology to detect sound (acoustic station) and	I
I	I	I topographic connections	I
I	I	I-----I	I
I	13.	I weapons systems utilizing directed energy or kinetic energy:	I
I	I	I 1. specially designed laser systems causing destruction or	I
I	I	I missing the target, systems that create particle beams and	I
I	I	I radio frequency systems, radio high performance frequency	I
I	I	I systems capable of destruction or missing the target,	I
I	I	I 2. specially designed components, equipment specially designed	I
I	I	I for the detection and identification systems referred to	I
I	I	I category 1,	I
I	I	I 3. weapons systems designed for destruction or causing missing	I
I	I	I the target, test and evaluation operations including	I
I	I	I instrumentation,	I
I	I	I 4. subsystems designed for using in the above-mentioned	I
I	I	I systems,	I
I	I	I 5. measuring and diagnostic technology for the development	I
I	I	I of the above-mentioned weapons systems,	I
I	I	I 6. non-lethal and cold weapons,	I
I	I	I-----I	I
I	14.	I photographic, optoelectronic and other display devices and	I
I	I	I specially designed devices:	I
I	I	I 1. cameras for aerial reconnaissance, film processing machines,	I
I	I	I other cameras, and other optoelectronic display devices	I
I	I	I operating in different areas of the frequency spectrum,	I
I	I	I including radar display sensors, either recording or	I
I	I	I transmitted via a data connection,	I
I	I	I 2. specialized equipment for cameras and optoelectronic	I
I	I	I display device,	I
I	I	I-----I	I
I	15.	I special equipment to simulate and evaluate the military	I
I	I	I situation:	I
I	I	I 1. military types and systems of simulators and trainers	I
I	I	I including weapons and displaying systems,	I
I	I	I 2. special hardware and software equipment for simulators,	I
I	I	I trainers, evaluation and transmission devices, development,	I
I	I	I manufacture and use of products	I
I	I	I-----I	I
I	16.	I additional facilities, equipment, technology and materials,	I
I	I	I as well as specially designed components:	I
I	I	I 1. parachutes and parachute material,	I
I	I	I 2. specially produced material for overcoming obstacles	I
I	I	I 3. electrically and mechanically powered headlights,	I
I	I	I 4. means of protection against the effects of military items	I
I	I	I listed in (referred to) the category 3rd, 4th, 8th, 9th, 12th	I



I	I and 13th,	I
I	I 5. special equipment,	I
I	I I. Parts of military uniforms, clothing and machinery equipped I	I
I	I with camouflage pattern, providing protection against resources I	I
I	I exploration in the visible and invisible part of the spectrum, I	I
I	I meeting the requirements set by Czech defence standards: I	I
I	I - components of field and summer uniforms with camouflage I	I
I	I pattern, ECWCS clothing, camouflage costumes and clothing with I	I
I	I winter camouflage pattern I	I
I	I - modular components and other combat support systems, I	I
I	I including carriers and rucksacks, combat and tactical vests I	I
I	I and jackets for specialists. I	I
I	I II. Parts established into service for specialists of the I	I
I	I armed forces based on the specific requirements arising from I	I
I	I their activities: I	I
I	I - equipment for paratroopers, scouts, snipers and members of I	I
I	I special forces I	I
I	I - equipment for crews of tanks and combat vehicles, I	I
I	I - equipment for the flight crew, helicopter crew and I	I
I	I members of the engineering and aviation services, I	I
I	I - equipment for fireworks, I	I
I	I - equipment for members of the military rescue units, I	I
I	I - riot and combat gear for the military police. I	I
I	I-----I	I
I	I 17. I specific parts of the material referred to in categories I	I
I	I 1 to 15 if these are necessary for ensuring defence or I	I
I	I national security. I	I
I	I-----I	I
I	I 18. I machinery, equipment and resources that are devoted I	I
I	I exclusively to the study, manufacture, testing and control I	I
I	I of arms, ammunition and equipment exclusively for military use I	I
I	I specified in this list. I	I
I	I-----I	I

## Annex 2

**List of services which the contracting authority is not obliged, in accordance with Section 29 n), to award pursuant to the Act**

I	I-----I	I	I-----I	I
I	I Category	I Description	I CPV code	I
I	I-----I	I-----I	I-----I	I
I	I 1.	I Fire-brigade and rescue I	I 75250000-3 I	I
I	I	I services I	I I	I
I	I-----I	I-----I	I-----I	I
I	I 2.	I Fire-brigade services I	I 75251000-0 I	I
I	I-----I	I-----I	I-----I	I
I	I 3.	I Firefighting services I	I 75251100-1 I	I
I	I-----I	I-----I	I-----I	I
I	I 4.	I Fire-prevention services I	I 75251110-4 I	I
I	I-----I	I-----I	I-----I	I
I	I 5.	I Forest-firefightening services I	I 75251120-7 I	I
I	I-----I	I-----I	I-----I	I
I	I 6.	I Rescue services I	I 75252000-7 I	I
I	I-----I	I-----I	I-----I	I
I	I 7.	I Civil defence services I	I 75222000-8 I	I
I	I-----I	I-----I	I-----I	I
I	I 8.	I Nuclear safety services I	I 98113100-9 I	I
I	I-----I	I-----I	I-----I	I
I	I 9.	I Ambulance services I	I 85143000-3 I	I
I	I-----I	I-----I	I-----I	I

Category No. 9 does not include patient ambulance transport services.

List of services which the contracting authority is obliged, upon fulfilment of conditions specified in Section 29 r), to award pursuant to the Act

I	I-----I	I	I-----I	I
I	I Category	I Description	I CPV code	I
I	I-----I	I-----I	I-----I	I
I	I 1.	I Research and development I	I 73000000-2 I	I
I	I	I services and related consultancy I	I I	I
I	I	I services I	I I	I
I	I-----I	I-----I	I-----I	I
I	I 2.	I Research and experimental I	I I	I

I	I development services	I 73100000-3	I
I-----I	I-----I	I-----I	I-----I
I 3.	I Research services	I 73110000-6	I
I-----I	I-----I	I-----I	I-----I
I 4.	I Research laboratory services	I 73111000-3	I
I-----I	I-----I	I-----I	I-----I
I 5.	I Marine research services	I 73111000-0	I
I-----I	I-----I	I-----I	I-----I
I 6.	I Experimental development	I 73120000-9	I
I	I services	I	I
I-----I	I-----I	I-----I	I-----I
I 7.	I Design and execution of	I 73300000-5	I
I	I research and development	I	I
I-----I	I-----I	I-----I	I-----I
I 8.	I Pre-feasibility study	I 73420000-2	I
I	I and technological demonstration	I	I
I-----I	I-----I	I-----I	I-----I
I 9.	I Test and evaluation	I 73430000-5	I
I-----I	I-----I	I-----I	I-----I

**Criminal offences for the purposes of proving basic qualification pursuant to Section 74 (1) a)**

For the purposes of proving basic qualification pursuant to Section 74 (1) a), criminal offence mean

a) a criminal offence committed in favour of an organised criminal group or a criminal offence of participation in an organised criminal group,

b) criminal offence of human trafficking,

c) these criminal offences against property

1. fraud,
2. credit Fraud,
3. subvention Fraud,
4. participation,
5. negligent Participation,
6. money Laundering,
7. money Laundering out of Negligence,

d) these economic criminal offences

1. abuse of Information and Status in Business Relations,
2. negotiating advantages during public procurement, public competition and public auction,
3. machinations during public procurement and public competition,
4. machinations in Public Auction,
5. harming Financial Interests of European Communities.

e) generally dangerous criminal acts,

f) Criminal Offences against the Czech Republic, foreign states and International Organisations.

g) these criminal offences against order in public matters

1. criminal offences against the execution of powers of public authority and public official,
2. Abuse of Competence of Public Official,
3. Corruption,
4. Other Interference with Activity of Public Authority.

### List of services being awarded under light regime pursuant to Section 129

Category	Description	CPV code
1.	Health, social and related services	75200000-8
		75231200-6
		75231240-8
		79611000-0
		79622000-0

I	I	I-----I
I	I	I 79624000-4 I
I	I	I-----I
I	I	I 79625000-1 I
I	I	I-----I
I	I	I from 85000000-9 to 85323000-9I
I	I	I-----I
I	I	I 98133100-5 I
I	I	I-----I
I	I	I 98133000-4 I
I	I	I-----I
I	I	I 98200000-5 I
I	I	I-----I
I	I	I 98500000-8 I
I	I	I-----I
I	I	I 98513000-2 to 98514000-9 I
I-----I	I-----I	I-----I
I 2.	I Administrative, social and	I 85321000-5 I
I	I education services, healthcare	I-----I
I	I and cultural services	I 85322000-2 I
I	I	I-----I
I	I	I 75000000-6 I
I	I	I-----I
I	I	I 75121000-0 I
I	I	I-----I
I	I	I 75122000-7 I
I	I	I-----I
I	I	I 75124000-1 I
I	I	I-----I
I	I	I from 79995000-5 to 79995200-7I
I	I	I-----I
I	I	I from 80000000-4 to 80660000-8I
I	I	I-----I
I	I	I from 92000000-1 to 92700000-8I
I	I	I-----I
I	I	I 79950000-8 I
I	I	I-----I
I	I	I 79951000-5 I
I	I	I-----I
I	I	I 79952000-2 I
I	I	I-----I
I	I	I 79952100-3 I
I	I	I-----I
I	I	I 79953000-9 I
I	I	I-----I
I	I	I 79954000-6 I
I	I	I-----I
I	I	I 79955000-3 I
I	I	I-----I
I	I	I 79956000-0 I
I-----I	I-----I	I-----I
I 3.	I Compulsory social security	I 75300000-9 I
I	I services	I I
I-----I	I-----I	I-----I
I 4.	I Benefit services	I 75310000-2 I
I	I	I-----I
I	I	I 75311000-9 I
I	I	I-----I
I	I	I 75312000-6 I
I	I	I-----I
I	I	I 75313000-3 I
I	I	I-----I
I	I	I 75313100-4 I
I	I	I-----I
I	I	I 75314000-0 I
I	I	I-----I
I	I	I 75320000-5 I
I	I	I-----I
I	I	I 75330000-8 I
I	I	I-----I
I	I	I 75340000-1 I
I-----I	I-----I	I-----I
I 5.	I Other community, social and	I 98000000-3 I
I	I personal services including	I-----I
I	I services furnished by trade	I 98120000-0 I
I	I unions, political organisations,	I-----I
I	I youth associations and other	I 98132000-7 I

I	I membership organizations	I-----I
I	I services	I 98133110-8 I
I	I	I-----I
I	I	I 98130000-3 I
I-----I		I-----I
I 6.	I Religious services	I 98131000-0 I
I-----I		I-----I
I 7.	I Hotel and restaurant services	I from 55100000-1 to 55410000-7I
I	I	I-----I
I	I	I from 55521000-8 to 55521200-0I
I	I	I-----I
I	I	I 55510000-8 I
I	I	I-----I
I	I	I 55511000-5 I
I	I	I-----I
I	I	I 55512000-2 I
I	I	I-----I
I	I	I 55523100-3 I
I	I	I-----I
I	I	I 55520000-1 I
I	I	I-----I
I	I	I 55522000-5 I
I	I	I-----I
I	I	I 55523000-2 I
I	I	I-----I
I	I	I 55524000-9 I
I-----I		I-----I
I 8.	I Legal services, to the extent	I 79100000-5 to 79140000-7 I
I	I not excluded pursuant to	I-----I
I	I Section 29 k)	I 75231100-5 I
I-----I		I-----I
I 9.	I Other administrative services	I 75100000-7 to 75120000-3 I
I	I and government services	I-----I
I	I	I 75123000-4 I
I	I	I-----I
I	I	I 75125000-8 to 75131000-3 I
I-----I		I-----I
I 10.	I Provision of services to	I 75200000-8 to 75231000-4 I
I	I the community	I I I
I-----I		I-----I
I 11.	I Prison related services,	I 75231210-9 to 75231230-5 I
I	I public security and rescue	I-----I
I	I services, to the extent not	I 75240000-0 to 75252000-7 I
I	I excluded pursuant to	I-----I
I	I Section 29 n)	I 794300000-7 I
I	I	I-----I
I	I	I 98113100-9 I
I-----I		I-----I
I 12.	I Investigation and security	I 79700000-1 to 79721000-4 I
I	I services	I-----I
I	I	I 79722000-1 I
I	I	I-----I
I	I	I 79723000-8 I
I-----I		I-----I
I 13.	I International services	I 98900000-2 I
I	I	I-----I
I	I	I 98910000-5 I
I-----I		I-----I
I 14.	I Postal services	I 64000000-6 I
I	I	I-----I
I	I	I 64100000-7 I
I	I	I-----I
I	I	I 64110000-0 I
I	I	I-----I
I	I	I 64111000-7 I
I	I	I-----I
I	I	I 64112000-4 I
I	I	I-----I
I	I	I 64113000-1 I
I	I	I-----I
I	I	I 64114000-8 I
I	I	I-----I
I	I	I 64115000-5 I
I	I	I-----I
I	I	I 64116000-2 I
I	I	I-----I
I	I	I 64122000-7 I

I-----I-----I-----I-----I			
I 15.	I Miscellaneous services	I 50116510-9	I
I	I	I-----I	I
I	I	I 71550000-8	I
I-----I-----I-----I-----I			

**Annex. 5**  
**List of legal regulations pursuant to Section 152 (2) b)**

I-----I-----I-----I-----I			
I	EU legal regulation	I Implemented national legal regulation	I
I-----I-----I-----I-----I			
I 1. granting of authorization to operate	I 1. natural gas facilities in compliance with the	I 1. Section 3 (3) of Act No. 458/2000	I
I procedures set out in Article 4 of Directive	I 2009/73/EC of the European Parliament and of	I Coll., on Business Conditions and	I
I the Council of 13 July 2009 concerning common	I rules for internal market in natural gas and	I Public Administration in the Energy	I
I repealing Directive 2003/55/EC	I	I Sector and on Amendment to Certain	I
I	I	I Other Acts (the Energy Act), as	I
I	I	I amended	I
I-----I-----I-----I-----I			
I 2. authorisation or invitation to tender for	I 2. the construction of new electricity production	I 2. Section 3 (3) of Act No. 458/2000	I
I facilities in compliance with Directive	I 2009/72/EC of the European Parliament and of	I Coll., on Business Condition and	I
I the Council of 13 July 2009 concerning common	I rules for internal market in electricity	I Public Administration in the Energy	I
I and repealing Directive 2003/54/EC	I	I Sector and on Amendment to Certain	I
I	I	I Other Acts (the Energy Act), as	I
I	I	I amended	I
I-----I-----I-----I-----I			
I 3. Granting of authorisation in compliance	I 3. with the procedures specified in Article	I 3. Section 22 of Act No. 29/2000	I
I 9 of Directive 97/67/EC of the European	I Parliament and of the Council of 13 July	I Coll., on Postal Services and on	I
I 2009 on common rules for the development on	I of the internal market of Community postal	I Amendment to Certain Other Acts (the	I
I services and the improvement of quality of the	I service connected to the postal services which	I Postal Services Act)	I
I are not or shall not be reserved	I	I	I
I-----I-----I-----I-----I			
I 4. the procedure for granting authorisation to	I 4. conduct activities involving the extraction of	I 4. Section 28 of Act No. 44/1988 Coll.,	I
I hydrocarbons in compliance with Directive	I 94/22/EC of the European Parliament and of the	I on the Protection and Use of Mineral	I
I Council of 30 May 1994 on the conditions for	I granting and using authorizations for the	I Resources (the Mining Act), as amended	I
I prospecting, exploration and production of	I hydrocarbons	I	I
I-----I-----I-----I-----I			
I 5. public service contracts within the meaning	I 5. of Regulation (EC) No. 1370/2007 of the	I 5. Section 9 of Act No. 194/2010 Coll.,	I
I European Parliament and of the Council of	I 23 October 2007 on public passenger transport	I on Public Services in Public Passenger	I
I services by rail and by road and repealing	I Council Regulations (EEC) Nos 1191/69 and	I Transport and on Amendments to Certain	I
I 1107/70 in the field of public passenger	I transport services by bus, tram, metro or	I Other Acts, as amended	I
I train, which were concluded on the basis of	I a tendering procedure in compliance with	I	I
I Article 5 (3), of the Regulation stated above,	I provided that their term is in compliance with	I	I
I Article 4, (3) or (4) of the Regulation stated	I above	I	I
I-----I-----I-----I-----I			

**Annex No. 6**  
**Elements of notices referred to in sections 53 (1), 58 (3) and (5), 61 (5) and (11), 68 (4), 69 (6), 72 (4), 141 (1)**

A. Invitation to tender in simplified below-threshold procedure pursuant to Section 53 (1) shall contain at least the

following:

1. the identification data of the contracting authority,
2. the data regarding the access to the procurement documents,
3. the time limit for the submission of tenders,
4. the means of submission of tenders including information on the language in which they may be submitted,
5. the requirements for proving qualification including requested documents,
6. the evaluation criteria pursuant to Section 115,

B. Invitation to tender in restricted procedure pursuant to Section 58 (3), in negotiated procedure with prior publication pursuant to Section 61 (11), in competitive dialogue pursuant to Section 69 (6) shall contain at least the following:

1. the identification data of the contracting authority,
2. reference to the published contract notice,
3. the data regarding the access to the procurement documents,
4. the time limit for the submission of tenders,
5. the means of submission of tenders including information on the language in which they may be submitted,
6. the evaluation criteria pursuant to Section 115.

C. Invitation to submit requests to participate in restricted procedure pursuant to Section 58 (5) or in negotiated procedure with prior publication pursuant to Section 61 (2) shall contain at least the following:

1. the type of the procurement procedure,
2. the identification data of the contracting authority,
3. the description of the subject-matter of the public contract and the manner of its performance (e.g. purchase, leasing, execution of the work), including its estimated scope and period of performance,
4. the scope of performance of reserved changes of obligation, provided that the contracting authority has reserved them pursuant to Section 100, including the estimated period and scope of provision of new services or new works,
5. where applicable, the estimated time-frame for the relating performance, including the estimated commencement of the relating procurement procedure,
6. the estimated time of invitation to tender,
7. the data regarding the access to the procurement documents,
8. time limit for submission of requests to participate,
9. the means of submission of requests to participate including information on the language in which they may be submitted,
10. the requirements for proving qualification including requested documents,
11. the evaluation criteria including their weighting or another mathematical relation among them, and, where applicable, the ranking of the evaluation criteria, where the contracting authority is not objectively able to establish the weighting or another mathematical relation among the individual evaluation criteria.

D. Invitation to submit indicative tenders in negotiated procedure with prior publication pursuant to Section 61 (5), in innovation partnership pursuant to Section 72 (4) shall contain at least the following:

1. the identification data of the contracting authority,
2. reference to the published contract notice,
3. the data regarding the access to the procurement documents,
4. the time limit for the submission of indicative tenders,
5. the means of submission of indicative tenders including information on the language in which they may be submitted,
6. the evaluation criteria including their weighting or another mathematical relation among them, and, where applicable, the ranking of the evaluation criteria, where the contracting authority is not objectively able to establish the weighting or another mathematical relation among the individual evaluation criteria.

E. The invitation to participate in a competitive dialogue pursuant to Section 68 (4) shall contain at least the following:

1. the identification data of the contracting authority,
2. reference to the published contract notice,
3. the data regarding the access to the procurement documents,
4. The data regarding the conduct of the dialogue, including the data on commencement of the dialogue and the language, in which the dialogue will be conducted,
5. the evaluation criteria including their weighting or another mathematical relation among them, and, where applicable, the ranking of the evaluation criteria, where the contracting authority is not objectively able to establish the weighting or another mathematical relation among the individual evaluation criteria.

F. Invitation to tender in dynamic purchasing system pursuant to Section 53 (1) shall contain at least the following:

1. the identification data of the contracting authority,
2. the data regarding the access to the procurement documents,
3. the time limit for the submission of tenders,
4. the means of submission of tenders including information on the language in which they may be submitted,
5. the evaluation criteria pursuant to Section 115.

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1) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

Directive 2009/81/EU of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.

Council Directive 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 (89/665/EEC).

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.

Directive 2007/66/EU of the European Parliament and of the Council of 11 December 2007 on amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement.

2) Act No. 219/2000 Coll., on the Property of the Czech Republic and the Representation of the Czech Republic in Legal Relation.

3) Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) as amended.

4) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

Directive 2009/81/EU of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.

5) Act No. 412/2005 Coll. on the Protection of Classified Information and Security Capacity, as amended.

6) E.g. Act No. 239/2000 Coll., on Integrated Rescue System and Amendments to Certain Other Acts, as amended, 240/2000 Coll. on Crisis Management and on Amendment to Certain Other Acts (the Crisis Act), as amended, Act No. 241/2000 Coll., on the Economic Measures for States of Crisis and on the Amendment to Certain Related Acts, as amended.

7) Act No. 127/2005 Coll., on Electronic Communications and on Amendment to Certain Related Acts (the Electronic Communications Act), as amended.

8) Act No. 231/2001 Coll., on Providing of Radio and Television Broadcasting and on the Amendment to Other Acts, as amended.

9) Act No. 132/2010, on On-demand Audiovisual Media Services, and Amendment to Certain Acts (the On-demand Audiovisual Media Services Act), as amended.

10) Act No. 358/1992 Coll., on Notaries and Their Activities (Notarial Code), as amended.

11) E.g. Act No. 120/2001 Coll. on Licensed Executors and Execution (Enforcement Procedure Code) and on the Amendment to Other Acts, as amended, Act No. 358/1992 Coll., on Notaries and Their Activities (Notarial Code), as amended.

12) Act No. 256/2004 Coll., on Business Activities on the Capital Market, as amended.

- 13) E.g. Act No. 6/1993 Coll., on the Czech National Bank, as amended.
- 14) Act No. 266/1994 Coll., on Rail Systems, as amended.
- 15) Government Decree No. 463/2000 Coll., on setting the rules for participation in international rescue operations, granting and receiving humanitarian aid and reimbursement of expenses incurred by legal persons and natural persons pursuing business activities for protection of inhabitants, as amended.
- 16) Act no. 122/2000 Coll., on Protection of Museum Collections and Amendments to Certain Other Acts, as amended.
- 17) Act No. 20/1987 Coll., on State Monument Care, as amended.
- 18) Act No. 71/1994 Coll., on the Sale and Export of Objects of Cultural Value, as amended.
- 19) Act No. 36/1967 Coll. on Certified Experts, Translators and Interpreters, as amended.  
Regulation No. 37/1967 Coll. to execute the Act on Certified Experts, Translators and Interpreters, as amended.
- 20) Act No. 365/2000 Coll. on Public Administration Information Systems and Amendments to Certain Other Acts, as amended.
- 21) E.g. Act No. 85/1996 Coll. on the Legal Profession, as amended, Act No. 360/1992 Coll., on the Practice of the Profession of Chartered Architects and on the Practice of the Profession of Chartered Engineers and Technicians Active in Construction, as amended.
- 22) Act No. 143/2001 Coll., on the Protection of Competition and on Amendment to Certain Other Acts (Act on the Protection of Competition), as amended.
- 23) Act No. 229/1992 Coll. on Commodity Exchanges, as amended.
- 24) Section 187 of Civil Code.
- 25) Section 136 of Act No. 182/2006 Coll. on Bankruptcy and Settlement (the Insolvency Act).
- 26) E.g. Act No. 21/1992 Coll., on Banks, as amended, Act No. 87/1995 Coll., on Savings and Loan Associations and Certain Related Measures and on the Amendment of Czech National Council Act No. 586/1992 Coll., on Income Tax, as amended, Act No. 363/1999 Coll., on Insurance and on Amendment to Certain Related Acts.
- 27) Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC.
- 28) Section 4 of Act No. 22/1997 Coll. on Technical Requirements for Products and on Amendment and Supplement to Certain Other Acts, as amended.
- 29) Article 26 of Regulation (EC) No. 305/2011 of the European Parliament and of the Council of 9 March 2011 on laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC.
- 30) Section 3 of Government Decree No. 163/2002 Coll. of 6 March 2002 that lays down technical requirements for selected construction products, as amended.
- 31) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93.
- 32) Section 157 of Act No. 183/2006 Coll., on town and country planning and building code (Building Act), as amended.
- 33) Article 107 of Treaty on the Functioning of the European Union.
- 34) Act No. 360/1992 Coll., on the Practice of the Profession of Chartered Architects and on the Practice of the Profession of Chartered Engineers and Technicians Active in Construction, as amended.
- 35) Act No. 458/2000 Coll., on Business Conditions and Public Administration in the Energy Sectors and on Amendment to Certain Other Acts (the Energy Act), as amended.
- 36) Act No. 274/2001 Coll., on Water Supply and Sewerage Systems for Public Use and on Amendment to Certain Other Acts (Act on Water Supply and Sewerage), as amended.
- 37) Section 3 of Act No. 29/2000 Coll., on Postal Services and on Amendment to Certain Other Acts (the Postal Services Act), as amended.
- 38) Articles 34 and 35 of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.
- 39) Commission decision of 7 January 2005 on the detailed rules for the application of the procedure provided for in Article 30 of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sector.
- 40) Section 22 of Act No. 563/1991 Coll., On Accounting, as amended.
- 41) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.
- 42) Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast).
- 43) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.
- 44) Act No. 130/2002 Coll. on Support for Research, Experimental Development and Innovations from Public Resources and Amendment to Certain Related Acts (Act on Support for Research and Development), as amended.



45) E.g. Act No. 38/1994 Coll., on Foreign Trade with Military Material and Amendment to Act No. 455/1991 Coll. on Trade Business Activities (the Trade Licensing Act), as amended, Act No. 140/1961 Coll., the Penal Code, as amended, Act No. 310/2006 Coll. on Handling Certain Materials Usable for Defence and Security Purposes in the Czech Republic and on Amendments to Certain Other Acts (the Act on Handling Security Material), as amended.

46) Section 74 et seq. of Act No. 90/2012 Coll. on Commercial Companies and Cooperatives (Business Corporations Act).

47) Section 2 of Act No. 300/2008 Coll., on the Electronic Acts and Authorized Document Conversion.

48) Act No. 227/2000 Coll., on Electronic Signatures and on the Amendment to Certain Other Acts (Electronic Signatures Act), as amended.

49) Section 16 of Act No. 22/1997 Coll. on Technical Requirements for Products and on Amendment and Supplement to Certain Other Acts, as amended.

50) Act No. 499/2004 Coll., on Archiving and Filing Service and Amendments to Certain Other Acts, as amended.

51) E.g. Act No. 280/2009 Coll., Tax Procedure Code, as amended, or Act No. 106/1999 Coll., on Free Access to Information, as amended