

ACT
No. 137
of 14 March 2006
on Public Contracts

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

TITLE ONE
GENERAL PROVISIONS

§ 1

Scope of Application

This Act incorporates the relevant legislation of the European Communities¹⁾ and governs the following:

- (a) public procurement procedures;
- (b) design contests;
- (c) supervision over compliance with this Act;
- (d) conditions for the maintenance and purpose of the list of qualified suppliers and the system of certified suppliers.

§ 2

Contracting Entities of Public Contracts

(1) For the purposes of this Act, ‘contracting entity of public contract’ (“contracting entity”) means contracting authorities, subsidised contracting entities, and sector contracting entities.

(2) ‘Contracting authority’ means:

- (a) the Czech Republic²⁾;

¹⁾ Directive 2004/18/EC of the European Parliament and of the Council, of 31 March 2004, on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

Directive 2005/75/EC of the European Parliament and of the Council, of 16 November 2005 amending Directive 2004/18/EC, on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

Directive 2004/17/EC of the European Parliament and of the Council, of 31 March 2004, coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

Council Directive 89/665/EEC, of 21 December 1989, on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

Council Directive 92/13/EEC, of 25 February 1992, coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

Commission Directive 2005/51/EC, of 7 September 2005, amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement.

²⁾ Act no. 219/2000 Coll., on the property of the Czech Republic and its representation in legal relations, as amended.

- (b) State allowance organisations;
- (c) territorial self-administration units or allowance organisations in respect of which such territorial self-administration units act as their founders;
- (d) other legal entities, if:
 1. they have been established for the specific purpose of meeting certain needs in the general interest, not having an industrial or commercial character; and
 2. they are financed, for the most part, by the State or by any other contracting entity, or subject to the management supervision of those bodies, or having an administrative, managerial or supervisory board, and more than half of their members are appointed by the State or any other contracting entity.

(3) ‘Subsidised contracting entity’ means a legal entity or a natural person that awards public contracts paid for in excess of 50 % from funds provided by contracting authorities, also through another person, in respect of:

- (a) public works contracts with estimated value corresponding at least to the financial threshold as stipulated in § 12(4) and the subject-matter of such public contracts represents:
 1. the execution of works relating to any of the activities listed in Annex no. 3; or
 2. the execution of works according to § 9 and relating to health care, sporting, recreational and leisure time facilities, schools, and administrative buildings; or
- (b) public service contracts relating to public works contracts pursuant to § 2(3)(a) with estimated value corresponding at least to the financial threshold as stipulated in § 12(3)(b).

(4) For the purposes of concluding contracts with sub-contractors, suppliers that have been awarded public contracts by the contracting authority shall not be deemed subsidised contracting entities.

(5) Subsidised contracting entities shall order public contracts according to the provisions of this Act applicable to the contracting authorities even if they simultaneously meet preconditions for admission in another category of contracting entities pursuant to § 2(2) or § 2(6).

(6) ‘Sector contracting entities’ means natural persons or legal entities performing any of the relevant activities pursuant to § 4, if:

- (a) this relevant activity has been performed on the basis of any special or exclusive rights; or
- (b) the contracting authority is capable of exerting, directly or indirectly, domination over such entity; such contracting authority’s domination shall be exerted, if:
 1. it holds a majority of voting rights either by itself³⁾ or in agreement with any other person or entity; or
 2. it elects or appoints more than a half of the members of such entity’s statutory, administrative, supervisory or controlling bodies.

(7) If the contracting authority performs one or more relevant activities pursuant to § 4, it shall be subjected to the provisions of the Act applicable to sector contracting entities provided such public contract is to be awarded by the contracting authority in connection with the performance of relevant activities.

³⁾ E.g., § 12(1), Act no. 77/2002 Coll., on the activities of joint-stock company České dráhy, State organisation Správa železniční dopravní cesty, and amending Act no. 266/1994 Coll., on railways, as amended, and Act no. 77/1997 Coll., on the activities of State enterprises, as amended.

(8) For the purposes of this Act, also several contracting entities as per § 2(2), § 2(3) or § 2(6) shall be deemed a single contracting entity if they associate or in any other way unite for the purposes of concerted action aimed at the assignment of public contracts (“association of contracting entities”). In such cases, the contracting entities, prior to the commencement of the award procedure, shall enter into a written contract governing their mutual rights and duties in relation to the award procedure and stipulating the manner of action conducted for and on behalf of the members of the association of contracting entities. If such association of contracting entities should also include a contracting authority or a subsidised contracting entity, the provisions of this Act applicable to the contracting authorities shall also apply to such association of contracting entities; this shall be without prejudice to the provision of § 2(7).

(9) Also any other association or union between the contracting entities pursuant to § 2(2), § 2(3) or § 2(6), and any natural person or any legal entity that is not a contracting entity for the purpose of assigning a public contract shall be deemed a contracting entity. The provision of § (8)(third sentence) shall apply by analogy.

§ 3

Central Purchasing Body

(1) ‘Central purchasing body’ means a contracting authority in charge of centralised purchasing, performed namely:

- (a) by procuring for other contracting entities such supplies or services that constitute the subject-matter of public contracts and that are subsequently sold to other contracting entities for prices not exceeding procurement prices of such supplies or services; or
- (b) by executing award procedures and by awarding public supply contracts, public service contracts or public works contracts on behalf of other contracting entities.

Prior to the commencement of centralised purchasing, the contracting entities and the central purchasing body shall enter into a written contract governing their mutual rights and duties relating to such centralised purchasing.

(2) The central purchasing body shall perform centralised purchasing pursuant to § 3(1) according to the provisions of this Act applicable to contracting authorities. However, if it performs such centralised purchasing exclusively for or on behalf of sector contracting entities, it shall proceed in accordance with the provisions of this Act applicable to sector contracting entities.

(3) If any breach of this Act occurs in the course of acting in accordance with § 3(1), the central purchasing body shall be liable for any such breach, unless such breach should result from action or failure to act on the part of the contracting entity for or on behalf of which the centralised purchasing has been performed.

(4) If a public contract is awarded by the central purchasing body according to this Act, such public contract shall be deemed awarded according to this Act also in relation to the contracting entity for which such centralised purchasing has been performed.

§ 4

Relevant Activity

- (1) For the purposes of this Act, ‘relevant activity’ means:
- (a) in the gas industry⁴⁾:
 - 1. production of gas intended for the purpose of provision of a service to the public;
 - 2. provision or operation of transmission or distribution networks intended to provide a service to the public;
 - 3. provision or operation of mining gas pipelines; or
 - 4. provision or operation of underground gas storages supporting the operation of transmission or distribution networks intended to provide a service to the public;
 - (b) in the heat generation industry⁴⁾:
 - 1. production of heat intended for the purpose of provision of a service to the public; or
 - 2. provision or operation of heat distribution facilities serving the provision of heat to consumers;
 - (c) in the electricity generation industry⁴⁾:
 - 1. production of electricity intended for the purpose of provision of a service to the public; or
 - 2. provision or operation of transmission or distribution networks intended to provide a service to the public;
 - (d) in the water management industry⁵⁾:
 - 1. provision of water ducts intended to provide a service to the public for the purposes of operation of such water ducts pursuant to special legislation⁵⁾ in connection with production and supplies of drinking water;
 - 2. operation of water ducts intended to provide a service to the public pursuant to special legislation⁵⁾ in connection with production and supplies of drinking water; or
 - 3. supplies of drinking water to such water ducts pursuant to points 1 and 2 above;
 - (e) activities of natural persons or legal entities performing relevant activity pursuant to § 4(1)(d), if such activity:
 - 1. relates to water management projects, irrigation or drainage installations, provided that the volume of water to be used for the supplies of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations; or
 - 2. is connected with the disposal or treatment of sewage intended to provide a service to the public;
 - (f) activities relating to the provision or operation of networks intended to provide a service to the public in the field of transport by railway, tramway, trolleybus, bus or cable⁶⁾ and the operation of public bus transport⁷⁾ (“transport network”); the transport network shall be deemed existing if such activities pursuant to this subparagraph have been performed in compliance with the terms and conditions set out by the appropriate administration authority, in particular, the terms and conditions relating to the provision or operation of the transport network, transport capacity or frequency of provision of such activities;

⁴⁾ Act no. 458/2000 Coll., on the conditions of enterprising and the execution of State administration in the energy industry, and amending certain other legislation (the Energy Act), as amended.

⁵⁾ Act no. 274/2001 Coll., on the operation of public water ducts and sewages, and amending certain other legislation (the Water Ducts and Sewages Act), as amended.

⁶⁾ Act no. 266/1994 Coll., on the operation of railways, as amended.

⁷⁾ Act no. 111/1994 Coll., on the operation of road transport, as amended.

- (g) activities relating to the provision of:
1. reserved postal services that are or can be reserved pursuant to the legislation of the European Communities⁸⁾; or
 2. other postal services that cannot be reserved pursuant to the legislation of the European Communities⁸⁾;
- ‘postal services’ means services consisting of clearance, sorting, routing and delivery of postal items, and ‘postal items’ means an addressed item irrespective of weight and in addition to items of correspondence, such items may also include in particular books, catalogues, newspapers, and periodicals or any other merchandise;
- (h) activities relating to the provision of other than postal services as listed under § 4(1)(g), if such services have been provided by an entity that also provides any of the postal services pursuant to § 4(1)(g) and if the provision of postal services pursuant to § 4(1)(g) has not been simultaneously excluded from the scope of this Act pursuant to § 20; ‘other than postal services’ means:
1. services immediately relating to postal services, such as services preceding and subsequent to clearance or delivery, in particular, mailroom management services of either the sender or the addressee;
 2. services immediately relating to postal services and provided entirely by electronic means, including secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail;
 3. services concerning postal items not included in § 4(1)(g), such as direct mail bearing no address;
 4. financial services as defined in Annex no.1, Category 6, and in § 18(1)(e), including in particular postal money orders and postal giro transfers;
 5. philatelic services; or
 6. logistics services, such as services combining physical delivery and/or warehousing with other non-postal functions;
- (i) activities pursued in the exploitation of specified geographical area for the purpose of:
1. exploring for or extracting oil, gas, coal or other solid fuels; or
 2. the provision of airports⁹⁾, maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterways.

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

- (a) supplies of produced heat or gas, if:
1. they are supplied to networks intended to provide a service to the public;
 2. their production results from any activity other than pursuant to point 1 above;
 3. the supply is only aimed at the economic exploitation of any produced heat or gas; and
 4. they amount to not more than 20 % of the average turnover of the contracting entity for the preceding three years;
- (b) supplies of produced electricity or drinking water, if:
1. they are supplied to networks intended to provide a service to the public;

⁸⁾ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service.

Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services.

⁹⁾ Act no. 49/1997 Coll., on civil aviation, and amending Act no. 455/1991 Coll., on Businesses (the Businesses Act), as amended, as amended.

2. their production is executed for the purpose of performance of any activity other than pursuant to point 1 above;
3. the supply depends only on the contracting entity's own consumption; and
4. they amount to not more than 30 % of the total average production of electricity or drinking water of the contracting entity for the preceding three years.

(3) For the purposes of this Act, also the operation of public bus transport pursuant to § 4(1)(f) shall not be deemed relevant activity if other natural persons or legal entities can provide such service under identical conditions in the entire territory of the State or in a delimited area.

§ 5

Concurrent Activities

(1) 'Concurrent activities' means a situation when the subject-matter of the awarded public contract relates to the performance of the relevant activity and to the performance of any other activities by the contracting entity.

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

- (a) the contracting authority shall proceed in accordance with the provisions of this Act applicable to sector contracting entities only if the subject-matter of the public contract relates to the relevant activity performed by the contracting authorities; in the opposite case or if it is not possible to determine objectively whether the subject-matter of the public contract relates in the first place to the performance of the relevant activity, the contracting authority shall proceed in accordance with the provisions of this Act applicable to contracting authorities;
- (b) The sector contracting entity shall not proceed in accordance with the provisions of this Act if the subject-matter of the public contract relates in the first place to any activity other than the performance of relevant activity; in the opposite case or if it is not possible to determine objectively whether the subject-matter of the public contract relates in the first place to the performance of another activity, the sector contracting entity shall not proceed in accordance with the provisions of this Act applicable to sector contracting entities.

§ 6

Principles of Procedures Taken by Contracting Entity

The contracting entity, when acting according to this Act, shall comply with the principles of transparency, equal treatment, and non-discrimination.

§ 7

Public Contracts

(1) 'Public contract' means an act of procurement performed under a contract concluded between the contracting entity and one or more suppliers and covering supplies or services or execution of works provided for pecuniary interest. Public contracts that shall be awarded by the contracting entity pursuant to this Act, shall be performed under a written contract.

(2) Public contracts, according to their subject-matters, shall break down to public supply contracts, public service contracts, and public works contracts (“types of public contracts”).

(3) Public contracts, according to their estimated value, shall break down to above-the-threshold public contracts, below-the-threshold public contracts, and minor public contracts.

§ 8

Public Supply Contracts

(1) ‘Public supply contract’ means a public contract the subject-matter of which involves the procurement of a thing (“goods”), in particular, by purchase, purchase of goods for instalments, rental or lease of goods or hire-purchase of goods.

(2) Public supply contracts shall also mean public contracts the subject-matter of which, beside the procurement of the goods pursuant to § 8(1), also involves the provision of services consisting of placement, assembly or putting such goods into operation, if those activities do not constitute the fundamental purpose of the public contract; however, they are essential for the performance of public supply contracts.

§ 9

Public Works Contracts

(1) ‘Public works contract’ means a public contract the subject-matter of which involves:

- (a) execution of works, relating to any of the activities listed in Annex no. 3;
- (b) execution of works pursuant to § 9(1)(a) and any associated design or engineering activity; or
- (c) development of a structure¹⁰⁾ resulting from a combination of construction or assembly works, and/or relating design and engineering activities, and that, as a whole, is capable of fulfilling an independent economic or technical function.

(2) Public works contracts also mean public contracts the subject-matter of which, beside the purposes as per § 9(1), also involves provision of supplies or services, essential for the performance of the public contract by its supplier.

(3) Also such works shall be deemed public works contract that are performed by intermediary services or any similar services supplied to the contracting entity by a third party.

§ 10

Public Service Contracts

(1) ‘Public service contract’ means a public contract other than public supply contract or public works contract.

(2) Public service contracts shall also mean such public contracts the subject-matter of which, beside provision of services, also involves:

¹⁰⁾ Act no. 50/1976 Coll., on physical planning and the Building Code (Building Act), as amended.

- a) provision of supplies pursuant to § 8, if the estimated value of such provided services exceeds the estimated value of the supply provided; or
- b) the execution of works pursuant to § 9, if such works do not constitute the fundamental purpose of the public contract; however, they are essential for the performance of public service contracts.

(3) Services shall break down into categories as stipulated in Annexes nos. 1 and 2.

(4) If the subject-matter of a public contract covers provision of services as stipulated in Annex no. 1 as well as in Annex no. 2, the determination of whether they are public service contracts pursuant to Annex no. 1 or public service contracts pursuant to Annex no. 2 shall depend on which of the estimated values of the services as stipulated in the relevant Annex is higher.

§ 11

Framework Agreement

(1) 'Framework agreement', for the purposes of this Act, means a written contract concluded for a definite term by and between a contracting entity and one or more tenderers, governing the terms and conditions of the individual public supply contracts, public service contracts or public works contracts awarded during the life of the framework agreement, in particular, their price and quantity.

(2) If the term 'public contract' is used in this Act, it shall also include framework agreements pursuant to § 11(1), unless stipulated otherwise in this Act. Provisions of this Act relating to the awarding of public contracts shall also apply by analogy to the awarding of framework agreements, unless stipulated otherwise in this Act.

(3) Framework agreement, for the purposes of this Act, shall also mean any other agreements that meet the conditions stipulated in § 11(1) and entered into as part of the award procedure implemented in compliance with the legislation of the European Communities¹⁾ to the benefit of sector contracting entities with registered offices in the Czech Republic by its affiliated entity that acts as a sector contracting entity in any other Member State of the European Union.

§ 12

Public Contracts According to Estimated Value

(1) 'Above-the-threshold public contract' means a public contract with estimated value pursuant to § 13 meeting at least the financial threshold as stipulated in § 12(2), § 12(3) or § 12(4) below. The financial thresholds stipulated in § 12(2), § 12(3), and § 12(4) below are quoted without the value added tax.

(2) The financial threshold applicable to public supply contracts shall amount to:

- (a) CZK 4,290,000 for contracting entities listed in § 2(2)(a) or § 2(2)(b); for the Czech Republic – the Ministry of Defence this financial threshold shall only apply to goods as stipulated in implementing regulations;
- (b) CZK 6,607,000 for
 - 1. contracting entities listed in § 2(2)(c) or § 2(2)(d);

2. the Czech Republic – the Ministry of Defence, in the case of goods that are not listed in implementing regulations;
- (c) CZK 13,215,000 for contracting entities listed in § 2(6).

(3) The financial thresholds applicable to public service contracts shall amount to:

- (a) CZK 4,290,000 for contracting entities listed in § 2(2)(a) or § 2(2)(b), unless they are public service contracts pursuant to § 12(3)(b)(2) or § 12(3)(b)(3) below;
- (b) CZK 6,607,000 for contracting entities listed
 1. in § 2(2)(c) or § 2(2)(d);
 2. in § 2(2)(a) or § 2(2)(b) in the case of services described in Annex no. 1, Category 5, classification of which, pursuant to the directly applicable legislation of the European Communities, complies with the CPC reference numbers¹¹⁾ 7524, 7525, and 7526, and under Category 8;
 3. in § 2(2)(a) or § 2(2)(b) in the case of services listed in Annex no. 2;
 4. in § 2(3) of the Act;
- (c) CZK 13,215,000 for contracting entities listed in § 2(6).

(4) The financial threshold applicable to public works contracts shall amount to CZK 165,288,000.

(5) ‘Below-the-threshold public contract’ means a public contract with estimated value amounting at least to CZK 2,000,000 (without VAT) in the case of public supply contracts or public service contracts, or at least to CZK 6,000,000 (without VAT) in the case of public works contracts, unless they comply with the financial thresholds pursuant to § 12(2), § 12(3) or § 12(4) above.

(6) ‘Minor public contract’ means a public contract with estimated value below CZK 2,000,000 (without VAT) in the case of public supply contracts or public service contracts, or CZK 6,000,000 (without VAT) in the case of public works contracts.

§ 13

Estimated Value of Public Contracts

(1) For the purposes of this Act, ‘estimated value of public contracts’ means the amount of pecuniary interest estimated by the contracting entity and relating to the performance of the public contract that the contracting entity shall determine for the purposes of the award procedure, prior to its commencement. In determining the estimated value, price without VAT shall always be taken into consideration.

(2) The contracting entity shall determine the estimated value according to the rules as stipulated in this Act and also pursuant to data and information of contracts of equal or similar subject-matter; if the contracting entity cannot get hold of such information, the estimated value shall be determined pursuant to data and information acquired through a research of a market of required performance, and/or pursuant to data and information acquired in any other suitable manner. In determining the estimated value, the date of dispatch for publication of the notice or invitation to commence award procedure shall be taken into consideration.

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

(3) The contracting entity shall not divide the subject-matter of the public contract so that its estimated value would drop below the financial thresholds set out in § 12 as a result of such division.

(4) If a public contract is divided into lots, the estimated value shall be determined by summing up the estimated values of all lots of such public contract.

(5) If the contracting entity offers any rewards, prizes or any other consideration to participants in the design contests or participants in competitive dialogues, the estimated value shall also include such rewards, prizes or any other consideration.

(6) If the notice or invitation to commence award procedure or invitation for competitive dialogue or invitation to tender in competitive dialogue also contains an option pursuant to § 99, the estimated value shall also include the estimated value of all public supply contracts, public service contracts, and public works contracts as required by the contracting entity when the option is exercised.

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

(8) When determining the estimated value, the contracting entity shall sum up all estimated values of all similar mutually associated supplies or services to be procured in the course of the financial year. This provision shall not apply to supplies the unit prices of which vary during the financial year, and the contracting entity should procure such supplies repeatedly according to its topical requirements; however, the contracting entity shall always comply with the principles as stipulated in § 6.

§ 14

Estimated Value of Public Supply Contracts

(1) The estimated value of public supply contracts shall be determined on the basis of the following information:

- (a) the estimated amount of the total pecuniary interest of the contracting entity for the life of the supply contract, if the contract is entered into for a definite term; or
- (b) the estimated amount of the total pecuniary interest of the contracting entity for the time limit of 48 months, if the contract is to be entered into for an indefinite term or for a term that cannot be determined exactly.

(2) The contracting entity shall also include the estimated residual price¹²⁾ in the estimated value of public supply contracts determined according to § 14(1).

(3) The estimated value of public supply contracts which are regular in nature or which are intended to be renewed shall be determined on the basis of the following information:

- (a) the genuine price paid by the contracting entity in the course of the preceding 12 months for supplies of an identical or similar kind, adjusted for alterations in quantity or prices that can be expected in the course of the subsequent 12 months; or

¹²⁾ § 29(2), Act no. 586/1992 Coll., on income tax, as amended.

(b) a sum of the estimated values of all individual supplies to be procured by the contracting entity in the course of the subsequent 12 months.

(4) The basis as determined according to § 14(3) shall be adjusted for the purposes of determining the estimated value of public contracts which are regular in nature or which are intended to be renewed depending on the time limit of effect of the contract according to the rules stipulated in § 14(1) and § 14(2).

§ 15

Estimated Value of Public Service Contracts

(1) Provisions of § 14(1), § 14(3), and § 14(4) shall be applied in the determination of the estimated value of public service contracts by analogy.

(2) The estimated value of the following public service contracts shall be determined as follows:

- (a) in respect of insurance services, on the basis of the amount of the premium as well as any other considerations related to those services;
- (b) in respect of banking and financial services, on the basis of the amount of any charges, commissions, interests as well as any other considerations related to those services;
- (c) in respect of design services, on the basis of any fees as well as any other considerations related to the drafting of any project documentation.

§ 16

Estimated Value of Public Works Contracts

(1) The estimated value of public works contracts shall be determined according to the rules stipulated in § 13. The estimated value of public works contracts shall also include the estimated value of supplies, and in the case of sector contracting entities also the estimated value of services essential for the performance of the public works contracts if they were provided to the suppliers by the contracting entity.

(2) The contracting entity shall not include any estimated value of supplies or services in the estimated value of public works contracts unless such supplies or services are essential for the performance of the subject-matter of the public works contracts and their inclusion in the estimated value of public works contracts would mean that:

- (a) they need not be awarded by award procedures according to this Act; or
- (b) they would be awarded according to the provisions relating to below-the-threshold public contracts, although their estimated value indicates that they constitute above-the-threshold public supply or service contracts, or they would be awarded according to the provisions applicable to minor public contracts, although their estimated value indicates that they are below-the-threshold public supply contracts or below-the-threshold public service contracts.

§ 17

Further Definitions

For the purposes of this Act, the following terms shall have the following meanings:

- (a) 'supplier' means a natural person or a legal entity that supplies goods, provides services or executes works, if it has its registered office, place of business or permanent residence in the territory of the Czech Republic, or a foreign supplier;
- (b) 'dynamic purchasing system' means a completely electronic process for making commonly used purchases of goods, services or works, which is limited in duration and open throughout its validity to any economic operator which satisfies the admission criteria and has submitted an indicative tender;
- (c) 'electronic auction' means a process serving the evaluation of tenders and which allows the contracting entity to apply electronic device for the presentation of new prices, revised downwards, and/or new values of tenders, and which at the same time allows the topical ranking of tenders using automated evaluation methods;
- (d) 'identification data' means in the case of a legal entity its business name or name, registered office, legal form, registration number (if any), and in the case of a natural person its business name, or name and surname, place of business, and/or permanent residence, and registration number (if any);
- (e) 'supplier qualification' means the capability of suppliers to perform public contracts;
- (f) 'qualification documentation' means the documentation containing detailed descriptions of any requirements posed by the contracting entity regarding qualifications to be demonstrated by the supplier;
- (g) 'contracting entity profile' means the Internet address of the contracting entity used by the contracting entity to publish information relating to public contracts;
- (h) 'affiliated entity' means an entity in respect of which the contracting entity acts as its controlling or controlled entity pursuant to special legislation¹³⁾, or an entity that acts jointly with the contracting entity as an entity controlled by a third party pursuant to special legislation¹³⁾;
- (i) 'subcontractor' means an entity through which the supplier is required to perform a certain lot of public contracts¹⁴⁾ or which is supposed to render the supplier certain things or rights required in order to perform the public contract;
- (j) 'tenderer' means a supplier that has submitted a tender in the award procedures;
- (k) 'assignment' means the decision of the contracting entity of the selection of the winning tender and the conclusion of contract with the winning tenderer performed as part of the award procedure;
- (l) 'tender requirements' means all requirements of the contracting entity stated in the notice or invitation to commence award procedure, the tender documentation or any other documents that may specify the subject-matter of the public contract;
- (m) 'awarding' means the binding procedure to be applied by the contracting entity under this Act for the assignment of the public contract procurement procedure, until the conclusion of a contract or until the cancellation of the award procedure; awarding also means any activity pursued by the contracting entity aimed at assigning a public contract in the dynamic purchasing system, and procedures applied by the contracting authority in awarding public contracts under a framework agreement;
- (n) 'candidate' means a supplier that has submitted, within a stipulated time limit, a request to participate in restricted procedure or in negotiated procedure with publication or in

¹³⁾ § 66a of the Commercial Code.

¹⁴⁾ § 331 of the Commercial Code.

competitive dialogue, or a supplier that has been invited by the contracting entity to enter into negotiated procedure with publication, to submit an indicative tender in the dynamic purchasing system, to tender in a simplified below-the-threshold procedure, to tender in a framework agreement procedure, or to confirm interest in participating in award procedure commenced by the publication of a periodic indicative notice;

- (o) 'foreign supplier' means a foreign entity pursuant to special legislation¹⁵⁾ which supplies goods, provides services or executes works;
- (p) 'special or exclusive rights' means rights granted by law or pursuant to a law by the appropriate administration authority, under which the exercise of the relevant activities pursuant to § 4 is restricted to the benefit of one or more entities and that materially affect freedom of other entities to exercise the appropriate relevant activity; special or exclusive rights shall not comprise such rights that can be acquired by any entity subject to compliance with objective and non-discriminatory conditions as stipulated in special legislation.

§ 18

General Exceptions from the Effect of the Act

(1) The contracting entity shall not be obligated to apply the provisions of this Act in assigning public contracts, if:

- (a) their subject-matter is classified¹⁶⁾ or the publication of the tender requirements of the public contract or the performance of the public contract could jeopardize protection of classified information;
- (b) they are public contracts that, pursuant to special legislation, are connected with special security measures¹⁷⁾ or their awarding is connected with the protection of essential security interests of the State¹⁸⁾;
- (c) their subject-matter is the manufacturing or procurement of weapons, weapon systems, ammunition or procurement of any other military material required in order to ensure defence and security of the State; the list of such military material shall be stipulated in implementing regulations;
- (d) they concern research and development services¹⁹⁾ other than those where the research and development service provided is wholly remunerated by the contracting entity and the benefits accrue exclusively to the contracting entity for its use;
- (e) their object covers the issuance, sale, purchase or any other transfer of securities or any other financial instruments²⁰⁾ or any other transactions performed by the contracting entity for the purpose of acquisition of financial funds or capital, and/or financial services relating to such transactions;

¹⁵⁾ § 21 of the Commercial Code.

¹⁶⁾ Act no. 412/2005 Coll., on protection of secret information and security clearance.

¹⁷⁾ E.g., Act no. 239/2000 Coll., on the integrated rescue system and amending certain other legislation, as amended, Act no. 240/2000 Coll., on crisis management and amending certain other legislation (Crisis Act), as amended, Act no. 241/2000 Coll., on economic measures for crisis management, and amending certain associated legislation, as amended, Act no. 153/1994 Coll., on the intelligence services of the Czech Republic, as amended.

¹⁸⁾ E.g., Constitutional Act no. 110/1998 Coll., on security of the Czech Republic, as amended by Constitutional Act no. 300/2000 Coll., Act no. 222/1999 Coll., on defence of the Czech Republic, as amended.

¹⁹⁾ Act no. 130/2002 Coll., on support for research and development from public funds and amending certain associated legislation (Research and Development Support Act), as amended.

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

- (f) their subject-matter covers services provided by the Czech National Bank in performing its authority in accordance with special legislation²¹⁾;
- (g) their subject-matter covers the acquisition or lease of any existing real property, flats or non-residential premises or any associated rights, with the exception of public contracts the subject-matter of which covers financial services relating to such acquisition or lease, irrespective of whether such financial services should be provided before or after the performance of the relevant acquisition or lease agreements relating to such existing real property, flats or non-residential premises or any associated rights;
- (h) they comprise public contracts awarded by contracting authorities and relating to acquisition, development, production or co-production of programme material intended for broadcasting or distribution, and public contracts relating to air time;
- (i) their principal purpose is to permit contracting entities to provide or exploit public telecommunications networks or to provide to the public telecommunications services pursuant to special legislation²²⁾;
- (j) their subject-matter covers the provision of supplies, services or works to a contracting authority by an entity that carries out the essential part of its activities with the contracting authority and in respect of which such contracting authority holds exclusive property rights; the contracting authority shall hold exclusive property rights in respect of a certain entity, in particular, if it controls by itself all voting rights resulting from holding an interest in any such entity²³⁾ or if such entity shall be entitled to manage assets of such contracting authority, it possesses no assets of its own, and the management of such entity is exclusively controlled by such contracting authority²⁴⁾;
- (k) they are public service contracts awarded by certain contracting authorities to any other contracting authority or several contracting entities subject to an exclusive right granted by or pursuant to special legislation;
- (l) they cover the provision of arbitration and conciliatory services;
- (m) their object covers services provided by sworn experts and translators²⁵⁾ appointed by the relevant authority for the purposes of judiciary, administrative, arbitration or any other similar proceedings, including penal pre-trial proceedings;
- (n) their subject-matter covers acquisition or lease of an enterprise;
- (o) their subject-matter covers purchase of bio-fuels by the Administration of the State Material Reserves pursuant to special legislation²⁶⁾;
- (p) their awarding shall conform with special procedural rules and shall be awarded to specific supplier or suppliers under international treaties governing the stationing of foreign armed forces in the territory of the Czech Republic or the deployment of the Czech armed forces in the territories of foreign countries that are binding on the Czech Republic;
- (q) their awarding is subject to special procedures applied by international organisations;
- (r) they are awarded under international treaties concluded between the Czech Republic and countries other than the Member States of the European Union and include services or works projects intended for joint performance or use by the contractual parties; the Czech

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

²²⁾ Act no. 127/2005 Coll., on electronic communication, and amending certain associated legislation (Electronic Communication Act).

²³⁾ § 61 of the Commercial Code.

²⁴⁾ E.g., Act no. 77/1997 Coll., on the State Enterprise, as amended, Act no. 250/2000 Coll., on territorial budgetary rules, as amended, Act no. 219/2000 Coll., as amended.

²⁵⁾ Act no. 36/1967 Coll., on experts and translators.

²⁶⁾ § 3(12) of Act no. 86/2002 Coll., on air protection and amending certain other legislation (Air Protection Act), as amended.

Republic shall report the conclusion of any such treaties to the Commission of the European Communities (the “European Commission”).

(2) The contracting entity shall not be obligated to apply the provisions of this Act in awarding below-the-threshold public contracts:

- (a) for supplies or services directly relating to visits by constitutional representatives of other countries and their authorised representatives in the Czech Republic;
- (b) for supplies or services provided to the Czech Republic by the Czech Prison Service;
- (c) for supplies or services relating to provisions of humanitarian assistance²⁷⁾;
- (d) for supplies or services relating to the organisation of referenda or the organisation of elections pursuant to special legislation²⁸⁾;
- (e) if the contracting entity is an intelligence service pursuant to special legislation²⁹⁾;
- (f) if the contracting entity is an embassy of the Czech Republic abroad;
- (g) if their subject-matter covers the procurement, maintenance or reinstatement of any assets of the Czech Republic abroad;
- (h) if their subject-matter covers acquisition of a thing or an ensemble of things designated for a museum collection³⁰⁾;
- (i) if their subject-matter covers the manufacturing, purchase or repair of weapons, weapon systems, ammunition or procurement of any other military material for the armed forces of the Czech Republic; the list of such military material shall be stipulated in implementing regulations.

(3) The contracting entity shall not be obligated to apply the provisions of this Act in awarding minor public contracts; however, the contracting authority shall comply with the principles stipulated in § 6.

§ 19

Exceptions from the Effect of the Act Applicable to Sector Contracting Entities

(1) Sector contracting entities shall proceed in accordance with the provisions of this Act only in awarding above-the-threshold public contracts in connection with the performance of relevant activities.

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

- (a) they are awarded for any purpose other than the performance of relevant activity pursuant to § 4 or for the purpose of the performance of relevant activity in any country other than the Member States of the European Union, unless they concern the exploitation of networks or geographical areas in the European Communities; sector contracting entities shall notify the European Commission upon request of what activities are in their opinion subject to exemptions under this subparagraph;

²⁷⁾ Government Decree no. 463/2000 Coll., on the setting out of rules for participation in international rescue operations, provision and acceptance of humanitarian aid and reimbursement of expenses incurred by legal entities and individual businessmen in public protection, as amended.

²⁸⁾ E.g., Act no. 247/1995 Coll., on elections to the Parliament of the Czech Republic and modifying and amending certain other legislation, as amended, Act no. 130/2000 Coll., on elections to regional assemblies, and amending certain other legislation, as amended, Act no. 491/2001 Coll., on elections to local assemblies, and amending certain other legislation, as amended, Act no. 62/2003 Coll., on elections to the European Parliament, and amending certain other legislation.

²⁹⁾ Act no. 153/1994 Coll., on the intelligence services of the Czech Republic, as amended.

³⁰⁾ Act no. 122/2000 Coll., on protection of museum collections, as amended.

- b) they are awarded for the purpose of a further sale or sublease of the subject-matter of public contracts to third parties provided such sector contracting entity does not possess any special or exclusive rights to sell or sublease the subject-matter of the public contract, and any third parties may sell or sublease the subject-matter of the public contract in particular under identical conditions as enjoyed by the sector contracting entity; sector contracting entities shall notify the European Commission upon request of what categories of goods or activities are in their opinion subject to exemptions under this subparagraph;
- c) they are public contracts for the purchase of water, if they are awarded by sector contracting entities performing relevant activity pursuant to § 4(1)(d);
- d) they are public contracts for supplies of electricity or fuels required for energy generation, if they are awarded by sector contracting entities performing the relevant activity pursuant to § 4(1)(a), § 4(1)(b) or § 4(1)(c) or pursuant to § 4(1)(i)(point 1); or
- e) they are public contracts for the procurement of support services pursuant to special legislation⁴⁾ required for the provision of systematic services and for the procurement of electricity to cover losses incurred in the transmission and distribution networks, if they are awarded by operators of such transmission and distribution networks.

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

- (a) they are awarded exclusively to affiliated entities; or
- (b) they are awarded jointly by several sector contracting entities for the purpose of the performance of the relevant activity exclusively to an entity that is an affiliated entity in relation to at least one of such contracting entities.

(4) The conditions applicable pursuant to § 19(3) mean, in relation to:

- (a) public supply contracts, provided that at least 80% of the average turnover of an affiliated undertaking with respect to supplies for the preceding three years derives from the provision of such supplies to undertakings with which it is affiliated;
- (b) public service contracts, provided that at least 80% of the average turnover of an affiliated undertaking with respect to services for the preceding three years derives from the provision of such supplies to undertakings with which it is affiliated;
- (c) public works contracts, provided that at least 80% of the average turnover of an affiliated undertaking with respect to works for the preceding three years derives from the provision of such supplies to undertakings with which it is affiliated.

(5) When, because of the later date on which the affiliated undertaking was established or manifestly commenced activities, the average turnover is not available for the preceding three years, it will be sufficient for that undertaking to show that it meets the conditions as stipulated in § 19(4) for the time limit commencing upon its establishment, and/or for the time limit when it commenced the relevant activities, and at the same time, when assumption of compliance with those conditions exists also in future, particularly by means of business projections.

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

(7) The provisions of this Act shall not further apply to above-the-threshold public contracts awarded:

- (a) jointly by several sector contracting entities (“joint sector contracting entity”) in connection with the performance of the relevant activity to the benefit of one of those contracting entities;
- (b) by a sector contracting entity to the joint sector contracting entity, if such sector contracting entity ranks within those joint sector contracting entity, and namely that the sector contracting entities have joined together for the purpose of performance of relevant activity for a time limit of at least three years; the relevant deed establishing such association of sector contracting entities shall stipulate the obligation of the sector contracting entities to maintain such association for the time limit of at least three years.

(8) The sector contracting entities that have applied any of the provisions of § 19(3) to § 19(7) shall notify the European Commission upon request of the following information:

- (a) the business names, names, or names and surnames of all joint sector contracting entities;
- (b) the subject-matter and price of the relevant above-the-threshold public contracts; and
- (c) any evidence testifying to the relations between the sector contracting entities and any persons or entities that are awarded above-the-threshold public contracts being according to the provisions of § 19(3) to § 19(7).

§ 20

Competition Relating to Performance of Relevant Activity

(1) This Act shall not apply to the awarding of public contracts relating to performances of relevant activity by sector contracting entities, if the European Commission has stipulated pursuant to the legislation of the European Communities³¹⁾ that such relevant activity is directly exposed to competition on markets to which access is not restricted.

(2) If there is a legitimate assumption that any of the relevant activities listed in § 4 is directly exposed to competition on markets to which access is not restricted, the relevant ministry in charge³²⁾, through the Ministry for Regional Development (“Ministry”), or the relevant sector contracting entity, shall submit a petition for decision on that matter to the European Commission. When submitting the petition to the European Commission, the relevant ministry in charge or the sector contracting entity shall act according to the legislation of the European Communities³³⁾ and shall state in the submission all relevant information relating, in particular, to the legislation or to any measures concerning the assessment of whether such relevant activity is directly exposed to competition on markets to which access is not restricted.

(3) The relevant ministry in charge, upon request submitted by the sector contracting entities performing such relevant activity, shall assess whether legitimate assumption pursuant to § 20(2) exists in relation to such activity.

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

³²⁾ Act no. 2/1969 Coll., on the establishment of ministries and other central Government authorities, as amended.

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

(4) If the petition is submitted by the relevant sector contracting entity, a copy of the petition shall be also delivered to the Ministry and to the relevant ministry in charge.

(5) The sector contracting entities shall not be required to apply the provisions of this Act in awarding public contracts that should be awarded in connection with the performance of the relevant activity by the sector contracting entities, commencing on the date of effect of a decision of the European Commission pursuant to § 20(1) by way of which the relevant activity is removed from the scope of this Act, and/or upon lapse of the time as set out in the legislation of the European Communities³¹⁾ for the issuance of such decision.

TITLE TWO

AWARD PROCEDURES

Part I

Types and Conditions of Award Procedures

§ 21

Types of Award Procedures

(1) This Act governs the following types of award procedures:

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

(2) The contracting entity may assign public contracts by either open procedure or restricted procedure and, subject to the conditions stipulated in § 22 and § 23, also by the negotiated procedure with publication or by negotiated procedure without publication.

(3) The contracting authority, subject to the conditions stipulated in § 24, may assign public contracts by competitive dialogue and, subject to the conditions stipulated in § 25, by simplified below-the-threshold procedure.

§ 22

Conditions for Use of Negotiated Procedure with Publication

(1) The contracting entity may award public contracts by negotiated procedure with publication (of a contract notice) if only incomplete or unacceptable tenders have been submitted in the previous open procedure, restricted procedure or competitive dialogue, provided the tender requirements have not substantially changed and the negotiated procedure with publication is commenced without any delay following the cancellation of the previous award procedure. 'Incomplete tenders' means tenders that have not passed the check for completeness pursuant to § 71(8). 'Unacceptable tenders' means:

- (a) unsuitable tenders that have failed to meet the requirements of the contracting entity and relating to the subject matter of public contracts;
- (b) tenders that have failed to meet the tender requirements in respect of any requirements of the contracting entity other than the subject-matter of the public contract;

- (c) tenders whereby the tenderer has failed to prove its qualifications;
- (d) tenders contradicting the existing legislation;
- (e) tenders containing adjusted conditions of performance contradicting the requirements of the contracting entity or abnormally low tender price; or
- (f) tenders submitted after the time limit for submitting tenders.

(2) The contracting entity needs not publish a notice of negotiated procedure with publication pursuant to § 22(1) if tenders were submitted within the previous award procedure within a time limit for the submitting of tenders that complied with the requirements pursuant to § 69(5). In such cases, the contracting entity shall apply § 34(1) through § 34(3) by analogy. The contracting entity shall deliver an invitation for negotiations to all tenderers that have submitted tenders pursuant to § 22(2)(first sentence). The contracting entity shall also set out a reasonable time limit in the invitation for negotiations for any amended or improved tenders or qualifications as required; the tenderers shall submit their amended or improved tenders or qualifications within such time limit that at the same time shall constitute the time limit for submitting the tenders. The provisions of § 29 through § 32 shall not apply.

(3) The contracting entity may also award public contracts by negotiated procedure with publication:

- a) in exceptional cases, if it can be reasonably expected that the tender prices quoted by the tenderers would be incomparable in view of the nature of the supplies, services or works, or their underlying risks;
- b) in the case of public service contracts, particularly in the case of insurance, banking, investment or design services, or audit, translating, legal or any other similar services, if the nature of such services does not facilitate sufficiently exact prior determination of the subject-matter of the public contract so that it can be awarded by procedures as stipulated in this Act for open procedure or restricted procedure, particularly as far as the setting out of the contract award criteria as early as upon the commencement of open procedure or restricted procedure is concerned; or
- c) in the case of public works contracts, particularly in the case of works performed exclusively for the purpose of research or development and not for the purpose of profit or coverage of costs of research and development.

(4) Sector contracting entities may award public contracts by negotiated procedure with publication also without the satisfaction of the conditions stipulated in § 22(1) through § 22(3).

(5) The contracting authority may award public contracts by negotiated procedure with publication also without the satisfaction of the conditions stipulated in § 22(1) through § 22(3), if they are public service contracts listed in Annex no. 2.

§ 23

Conditions for Use of Negotiated Procedure without Publication

(1) The contracting entity may award public contracts by negotiated procedure without publication (of a contract notice), if:

- (a) no tenders have been submitted in the previous open procedure, restricted procedure or negotiated procedure with publication;
- (b) only unsuitable tenders pursuant to § 22(1)(a) have been submitted in the previous open procedure, restricted procedure or negotiated procedure with publication; or

(c) no requests to participate in restricted procedure or negotiated procedure with publication have been submitted.

(2) The contracting entity, upon satisfaction of the conditions stipulated in § 23(1), may award public contracts by negotiated procedure without publication provided the tender requirements have not substantially changed and the negotiated procedure without publication commences without any delay following the cancellation of the previous award procedure.

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

(4) The contracting entity may also award public contracts by negotiated procedure without publication, if:

- (a) such public contract, due to technical or artistic reasons, due to the protection of any exclusive rights or due to reasons resulting from special legislation, may only be performed by one sole supplier; or
- (b) it is necessary to award such public contracts under the conditions of extreme urgency that have not been caused or could not be envisaged by the contracting entity, and if such public contracts cannot be awarded by any other award procedure due to time restraint.

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

- (a) when the products involved are manufactured purely for the purposes of research or development; this provision does not extend to quantity production to establish commercial viability for the contracting entity or to recover its research and development costs;
- (b) when they constitute additional deliveries by the original supplier and that are intended either as a partial replacement of normal supplies or as the extension of existing supplies where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics, which would result in incompatibility with the original supply or disproportionate technical difficulties in operation and maintenance of the original supply; the overall length of such original contract as well as that of recurrent contracts pursuant to this provision may not exceed three years if a contracting authority is involved, unless extraordinary circumstances apply;
- (c) when they are supplies quoted and purchased on a commodity market;
- (d) when they are supplies procured on particularly advantageous terms from either a supplier which is definitively winding up its business activities or which is under an arrangement with creditors, or the receivers or liquidators of a bankruptcy, arrangement administrators or receivers in the case of suppliers whose assets have been subject to declaration of bankruptcy or in respect of which arrangement with creditors has been permitted or forced arrangement with creditors confirmed or which have been subjected to forced administration; or
- (e) when they are goods procured for prices substantially lower than the usual market prices, such substantially lower prices being offered by suppliers for a very short time limit of time; the contracting authority may award public contracts by negotiated procedure without publication under this subparagraph only in relation to below-the-threshold public contracts.

(6) The contracting entity may also award public service contracts by negotiated procedure without publication if they are awarded in connection with design contests, under which such public contract must be awarded to a selected participant or to one of selected

participants in the competition. In the case of two and more participants in design contests, the contracting entity shall invite all such selected participants to participate in negotiated procedure without publication.

(7) The contracting entity may also award public works contracts or public service contracts by negotiated procedure without publication, if they constitute:

- (a) additional works or additional services not included in the original tender requirements, they have become necessary due to objectively unforeseen circumstances, and such additional works or additional services are necessary for the performance of the original works or for the provision of the original services, on the condition that:
 - 1. the award of the additional works or additional services is made to the supplier performing such works or services;
 - 2. the additional works or additional services cannot be technically or economically separated from the original public contract without major inconvenience to the contracting entity or, although technically or economically separable, such additional works or additional services are strictly necessary for the completion of the subject-matter of the original public contract; and
 - 3. in the case of a contracting authority, the aggregate value of such additional works or additional services may not exceed 20 % of the price of the original public contract;or
- b) new works, and in the case of a contracting authority also new services, constituting works or services of an identical or similar nature to those contained in the original public contract, provided:
 - 1. the award of the new works or new services is made to the supplier performing such works or services;
 - 2. the original public contract is awarded by open procedure or restricted procedure, and in the case of sector contracting entities also by negotiated procedure with publication;
 - 3. the tender requirements of the original award procedure have contained the option of awarding public contracts for new works or for new services by negotiated procedure without publication;
 - 4. the estimated value of public contracts for such new works or for such new services is included in the estimated value of the original public contract; and
 - 5. the negotiated procedure without publication will commence within three years following the conclusion of the original public contract.

(8) The sector contracting entities may also assign above-the-threshold public contracts by negotiated procedure without publication, if:

- (a) the public contract is only awarded for the purposes of research or development but not for the purpose of generation of profit by the contracting entity or coverage of costs incurred by the contracting entity in respect of research or development, provided that the assignment of such public contract would not prevent the assignment of any subsequent public contracts to any other suppliers; § 23(5)(a) shall not apply in such case; or
- b) they are public contracts awarded under a framework agreement.

(9) In the cases as stipulated in § 23(4)(b), § 23(5)(d) or § 23(5)(e), § 23(7)(a) or § 23(8)(b), framework agreements shall not be awarded by negotiated procedure without publication.

§ 24

Conditions for Use of Competitive Dialogues

(1) The contracting authority, when assigning particularly complex public contracts, may apply competitive dialogue, if the use of open procedure or restricted procedure is not possible in view of the nature of the subject-matter of the public contract.

(2) 'Particularly complex public contracts' mean public contracts whereby the contracting authority is objectively incapable of determining exactly the following:

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

§ 25

Conditions for Use of Simplified Below-the-Threshold Procedure

The contracting authority may apply simplified below-the-threshold procedure in assigning the following contracts:

- a) below-the-threshold public supply contracts or below-the-threshold public service contracts; or
- b) below-the-threshold public works contracts with estimated value not exceeding CZK 20,000,000 (without VAT).

Part II

Commencing and Course of Award Procedures

§ 26

Commencing of Award Procedures

(1) The contracting entity shall commence the procedure for the awarding of a contract as follows:

- (a) by the publication of a notice of the commencing of the award procedure; or
- b) by the dispatch of an invitation concerning the commencing of the award procedure.

(2) 'Notice of the commencing of the award procedure' means the following for the purposes of this Act:

- (a) notice of open procedure, restricted procedure, negotiated procedure with publication or competitive dialogue published by a contracting authority;
- (b) notice of open procedure, restricted procedure or negotiated procedure with publication published by a sector contracting entity;
- (c) periodic indicative notice published by a sector contracting entity, if is applied in order to commence restricted procedure or negotiated procedure with publication;
- (d) simplified notice applied in awarding public contracts under the dynamic purchasing system.

(3) 'Invitation to commence award procedure' means the following for the purposes of this Act:

- (a) a written invitation for negotiations by negotiated procedure without publication;
- (b) a written invitation to submit tenders in simplified below-the-threshold procedure;

(c) a written invitation to submit tenders in procedures under a framework agreement (§ 92).

(4) The contracting entity shall issue the notice of the commencing of the award procedure in a manner as stipulated in § 146 and in § 147.

(5) If the contracting authority commences the awarding of below-the-threshold public contracts by procedures applicable to the awarding of above-the-threshold public contracts, it shall proceed in accordance with the provisions applicable to the awarding of above-the-threshold public contracts. If the contracting authority commences the awarding of minor public contracts (§ 12(6)) by procedures applicable to the awarding of below-the-threshold public contracts, it shall proceed in accordance with the provisions applicable to the awarding of below-the-threshold public contracts.

§ 27

Open Procedure

The contracting entity, in an open procedure notice, shall notify an unlimited number of suppliers of its intention to award public contracts by such award procedure; an open procedure notice represents an invitation to submit tenders by suppliers and for proving compliance with qualification requirements.

§ 28

Restricted Procedure

(1) The contracting entity, in a restricted procedure notice, shall notify an unlimited number of suppliers of its intention to award public contracts by such award procedure; a restricted procedure notice represents an invitation to submit requests to participate in such restricted procedure and for proving compliance with qualification requirements.

(2) Candidates shall submit requests to participate and prove compliance with qualification requirements within a set time limit. The contracting entity, following an assessment of the qualifications of the candidates, shall invite to tender those candidates that have complied with the qualification requirements. If the contracting entity, in the restricted procedure notice, should restrict the number of candidates for participation in such restricted procedure, it shall invite to tender only those candidates selected according to § 61, if a contracting authority is involved; or according to § 66, if a sector contracting entity is involved. The contracting entity may also set out a maximum number of candidates to be invited to tender.

(3) The contracting authority shall invite at least five candidates to tender. If the contracting authority receives less than five requests to participate in restricted procedure or fewer requests to participate than the contracting authority has stipulated in the restricted procedure notice, it may invite to tender all candidates that have submitted their requests to participate and that have proven compliance with qualification requirements as required. This shall also apply if less than five candidates have proven compliance with qualification requirements.

(4) The sector contracting entities shall invite at least three candidates to tender. If the sector contracting entity receives less than three requests to participate in the restricted procedure or fewer requests to participate than the contracting authority has stipulated in the

restricted procedure notice, it may invite to tender all candidates that have submitted their requests to participate and that have proven compliance with qualification requirements as required. This shall also apply if less than three candidates have proven compliance with qualification requirements.

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

- (a) the tender documentation or conditions of access to or provision of the tender documentation pursuant to § 48;
- (b) information of publication of the restricted procedure notice;
- (c) the time limit for submitting tenders; this shall not apply if the sector contracting entity should set out a time limit pursuant to § 41(4);
- (d) the place for submitting the tenders;
- (e) information of the contract award criteria pursuant to § 78, if such information is not included in the restricted procedure notice or in the tender documentation; and
- (f) information of the language of the tenders.

§ 29

Negotiated Procedure with Publication

(1) The contracting entity, in the negotiated procedure with publication notice, shall announce its intention to award a public contract as part of award procedure; the negotiated procedure with publication notice represents an invitation to submit requests to participate in negotiated procedure with publication and to prove compliance with qualification requirements.

(2) Candidates shall submit written requests to participate and to prove their compliance with qualification requirements within a set time limit. The contracting entity, following an assessment of the qualifications of the candidates, shall invite the candidates that have complied with the qualification requirements, to tender. If the contracting entity should restrict the number of candidates for participation in such negotiated procedure with publication in the negotiated procedure with publication notice, it shall invite to tender only those candidates that have been selected according to § 61, if a contracting authority is involved; or according to § 66, if a sector contracting entity is involved. The contracting entity may also set out a maximum number of candidates to be invited to tender.

(3) The contracting entities shall invite at least three candidates to tender. If the contracting authority receives less than three requests to participate in the negotiated procedure with publication or fewer requests to participate than the contracting authority has stipulated in the negotiated procedure with publication notice, it may invite to tender all candidates that have submitted their requests to participate and that have proven their compliance with qualification requirements as required. This shall also apply if less than three candidates have proven compliance with qualification requirements.

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

- (a) the tender documentation or conditions of access to or provision of the tender documentation pursuant to § 48;
- (b) information of publication of the negotiated procedure with publication notice;

- c) the time limit for submitting tenders; this shall not apply if the sector contracting entity should set out a time limit pursuant to § 41(4);
- d) the place for submitting the tenders;
- e) information of the contract award criteria pursuant to § 78, if such information is not included in the restricted procedure notice or in the tender documentation;
- f) the number of tenderers to be invited by the contracting entity to negotiations of tenders if the contracting entity has decided to restrict the number of candidates to be invited to negotiations; in such cases, the contracting entity shall state in the invitation whether it would find it acceptable to enter into negotiations of tenders with fewer tenderers than stipulated if a sufficient number of tenders is not submitted or if, upon the assessment of the tenders submitted, fewer tenders than stipulated should be taken into consideration;
- g) the manner and principles of negotiation of tenders with the tenderers;
- h) the manner of selection of the tenderers for any successive stages of negotiations if the contracting entity should decide to reduce, one after another, the number of tenderers whose tenders should be negotiated at the individual stages of the procedure; and
- i) information of the language of the tenders.

§ 30

Negotiations of Tenders under Negotiated Procedure with Publication

(1) Following the opening of the envelopes with tenders, and the assessment and evaluation of the tenders pursuant to Title Two, Part VII, of this Act, the contracting entity shall notify in writing all tenderers whose tenders have been evaluated and that have not been excluded from the negotiated procedure with publication, of the preliminary outcome of the evaluation of the tenders. Simultaneously with the notice of the preliminary outcome of the evaluation of the tenders, the contracting entity shall invite in writing those tenderers to initial negotiations of tenders, specifying the place, time, and language of such negotiations.

(2) If the contracting entity has indicated in the invitation to tender that it would restrict the number of tenderers to be invited to negotiate their tenders, it would only invite such restricted number of tenderers to negotiate their tenders. Restrictions as per § 29(4)(f) and § 29(4)(h) shall not be applied simultaneously during the initial negotiations of tenders.

(3) The contracting entity shall state in the negotiated procedure with publication notice whether the negotiations of tenders should take place in several stages serving the gradual restriction of the number of tenderers to be invited to negotiations of their tenders. The contracting entity may perform such negotiations in several stages also if the number of tenderers is not restricted within the individual stages.

(4) The contracting entity may negotiate with the tenderers all conditions of performance contained in the tenders, in particular, those conditions that are to be evaluated. The contracting entity shall not amend the tender requirements in the course of the negotiations of tenders.

(5) The contracting entity may assign the task of negotiating the tenders to an evaluating committee, to some of its members or to any other person. For those persons, the provisions of § 74(7) and § 75(6)(first sentence) shall apply by analogy.

(6) The contracting entity shall not disclose in the course of the negotiations of tenders to the tenderers any information relating to tenders submitted by any other tenderers without the prior consent of such tenderers, with the exception of the current tender price.

(7) The contracting entity may negotiate the tenders with all tenderers simultaneously or separately.

(8) The contracting entity shall ensure in the course of all negotiations of tenders compliance with the principles stipulated in § 6.

§ 31

Negotiations of Tenders at Individual Stages of Negotiated Procedure with Publication

(1) The tenderers shall be invited to individual negotiations of tenders in writing, unless they took notice of the venue and the date of the subsequent negotiations at the previous session. The contracting entity shall notify them of the place, date and time of negotiations in the invitation.

(2) The contracting entity shall issue a report from the individual negotiations of tenders, detailing all agreements that might result in any alteration of the tender or draft contract ("report from negotiations"). The report from negotiations shall be signed by the contracting entity and the tenderer or tenderers participating in the negotiations of tenders.

(3) Upon signing, each individual report from negotiations and information and agreements described in such report from negotiations shall become binding on the tenderers. Any later agreement contained in any duly signed minutes for negotiations shall substitute any previous agreement.

(4) The tenderers shall be entitled to inspect, and make extracts from and copies of, the report from negotiations that they have participated in.

(5) Following the completion of each stage of negotiations of tenders, the contracting entity shall determine the ranking of the tenderers on the basis of the results of the negotiations. The contracting entity shall determine the ranking of the tenderers on the basis of the contract award criteria pursuant to § 29(4)(e), always by having applied all contract award criteria. The contracting entity shall make records of such ranking of tenderers, stating the results of the evaluation of the negotiations of tenders, the ranking of the tenderers, and information of which tenderers would be invited to partake in the successive stages of negotiations ("record of final results of evaluation").

(6) The contracting entity shall deliver the reports on final results of evaluation to all tenderers that have participated in that particular stage of negotiations of tenders, not later than five days of the completion of any such stage of negotiations.

(7) The contracting entity may notify the tenderers prior to the commencement of any such stage of negotiations of tenders that the subsequent one shall be the final stage of negotiations of tenders; the contracting entity and all tenderers may agree on that at any time in writing.

(8) The provisions of § 31(2) through § 31(5) shall apply by analogy also if only one stage of negotiations with tenderers takes place.

§ 32

Amended Draft Contract under Negotiated Procedure with Publication

(1) The winning tenderer, according to the results of the negotiations of tenders, shall submit its amended draft contract to the contracting entity within seven days of delivery of the report on final results of evaluation, unless it is agreed with the contracting entity otherwise. The contracting entity shall deliver to such tenderer copies of all reports from negotiations of its tender, together with the report on final results of evaluation.

(2) The amended draft contract pursuant to § 32(1) shall reflect the results of the negotiations of tender submitted by that tenderer and, beside information contained in the original tender that have not been affected by the results of the negotiations, it shall contain all of the agreements as shown in the report from negotiations relating to that tenderer. The amended draft contract shall substitute the original draft contract contained in the tender.

(3) The contracting entity may require that the amended draft contract should be complemented by additional documents if so reasonably required.

(4) The contracting entity shall reject an amended draft contract if it does not reflect the results of the negotiations of tender and if it fails to include agreements as shown in the report from negotiations or if it contains any information other than those contained in the original tender submitted by the tenderer that have not been affected by the negotiations of tender. In such cases, the contracting entity shall set out a reasonable time limit to modify or amend the draft contract.

(5) If the winning tenderer fails to submit the amended draft contract within the time limit as stipulated in § 32(1) or if it fails to modify or amend the amended draft contract pursuant to § 32(4), the contracting entity may invite to submit their amended draft contracts, one after another, the tenderers that placed second, and/or third according to the results of the negotiations of tenders. § 32(1) through § 32(4) shall apply in relation to those tenderers by analogy.

(6) The provisions of § 32(1) through § 32(5) shall not apply, if the conditions contained in the tenderer's draft contract have not changed as a result of the negotiations of tender.

§ 33

Special Provisions Concerning Negotiations with Sector Contracting Entities Prior to Submission of Tenders

(1) The sector contracting entities, in the case of particularly complex public contracts (§ 24(2)), upon assessing the qualifications of candidates and/or restricting their number, may invite in writing the candidates to negotiations for the purpose of identifying and specifying one or more suitable solutions capable of meeting their needs and requirements.

(2) The sector contracting entities are also entitled to specify their needs, requirements as well as any other facts in special documentation.

(3) The written invitation pursuant to § 33(1) shall contain at least such special documentation pursuant to § 33(2) or any conditions for access to or provision of such special

documentation, or the tender documentation or any conditions for access to or provision of the tender documentation; in such cases § 29(4)(a) shall not apply.

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

(5) The sector contracting entities shall invite to tender all candidates that have been invited to negotiations. Beside the provisions of § 29(4), the invitation to tender shall also be governed by § 37(1) and § 37(2) by analogy.

§ 34

Negotiated Procedure without Publication

(1) The contracting entity, in a written invitation for negotiation within negotiated procedure without publication, shall notify the candidates or a restricted number of candidates of its intention to award a public contract with help of the given award procedure.

(2) The written invitation for negotiations within negotiated procedure without publication shall contain at least the following information:

- (a) information of the subject-matter of the public contract;
- (b) identification data of the contracting entity;
- (c) the tender documentation or conditions of access to or provision of the tender documentation pursuant to § 48; this shall not apply to cases pursuant to § 23(4)(b), § 24(5)(c) through § 24(5)(e) and § 24(8)(b);
- (d) the place, day and time of holding the initial negotiations, including the language of such negotiations;
- (e) the manner and principles of negotiations if more than one candidate should take part in such negotiations;
- (f) the latest possible date of such negotiations, in particular, with a view to the time limit for submitting tenders;
- (g) the time limit and the place for submitting tenders, if such information is not supposed to be agreed within the negotiations;
- (h) requirements for proving compliance with qualification conditions if the contracting entity is entitled to require proof of compliance with qualification conditions; and
- (i) information of contract award criteria pursuant to § 78, if they are not part of the tender documentation and the public contract is not awarded to a single candidate.

(3) If the negotiated procedure without publication involves negotiations with more than one candidate, the contracting entity shall not inform the candidates of any conditions or proposals submitted by any other candidate without such other candidate's prior consent.

(4) The contracting entity may agree within the negotiations with the invited candidates also on other conditions for the performance of the public contract than those stipulated in the invitation for negotiations or in the tender documentation. However, any alteration of any conditions for the performance of the public contract shall continue to meet the requirements for the use of negotiated procedure without publication (§ 23).

§ 35

Competitive Dialogues

(1) The contracting authority, in a competitive dialogue notice, shall notify an unlimited number of suppliers of its intention to award a public contract as part of award procedure; such competitive dialogue notice represents an invitation to submit requests to participate in competitive dialogue and to prove compliance with qualification requirements.

(2) The contracting authority, beside the notice pursuant to § 35(1), may specify its needs, requirements as well as any other facts in special competitive dialogue documentation.

(3) Candidates shall submit their requests to participate and prove their compliance with qualification requirements within a set time limit. The contracting authority, following an assessment of the qualifications of the candidates, shall invite the candidates that have complied with the qualification requirements to partake in competitive dialogue. If the contracting authority should restrict in the competitive dialogue notice the number of candidates in competitive dialogue, it shall invite only those candidates to partake in competitive dialogue that have been selected according to § 61. The contracting authority may also set out a maximum number of candidates to be invited to partake in competitive dialogue.

(4) The contracting authority shall invite at least three candidates to partake in competitive dialogue. If the contracting authority has received less than three requests to participate or fewer requests to participate than the contracting authority has stipulated in the competitive dialogue notice, the contracting authority may invite all candidates to partake in competitive dialogue that have submitted their request to participate and that have proven their compliance with qualification requirements as required. This shall also apply in those cases when less than three candidates have proven their compliance with qualification requirements.

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

- (a) the competitive dialogue documentation or conditions for access to or provision of the competitive dialogue documentation; the provision of § 48 shall be applied by analogy;
- (b) information of the publication of the competitive dialogue notice;
- (c) information of the contract award criteria pursuant to § 78, if such information is not included in the competitive dialogue notice or in the competitive dialogue documentation; and
- (d) information of the place and time of initial negotiations in competitive dialogue and of the language of such negotiations.

(6) The contracting authority may award participants in competitive dialogue prizes if their submitted solutions have been selected by the contracting authorities as capable of meeting its needs and requirements. The contracting authority may award participants in competitive dialogue also other considerations relating to their participation in competitive dialogue. The contracting authority shall stipulate the conditions of awarding such prizes or any other considerations in the competitive dialogue notice or in the competitive dialogue documentation.

§ 36

Course of Competitive Dialogue

(1) The contracting authority shall enter into negotiations with selected candidates for the purpose of identifying and specifying one or more suitable solutions capable of meeting its needs and requirements.

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

(3) The contracting authority shall ensure compliance with the principles pursuant to § 6 in the course of competitive dialogue. The contracting authority shall also ensure confidential treatment for any proposed solutions or any other confidential information disclosed by candidates in competitive dialogue. The contracting entity may disclose any proposed solutions or confidential information only if it is in the possession of a prior written consent of the candidates that have either proposed such solution or are concerned by such information.

(4) The contracting authority shall issue reports from all negotiations in competitive dialogue showing the object and results of such negotiations.

(5) The contracting authority shall not be required to negotiate with all selected candidates simultaneously, however, it shall observe similar subject-matter and scope of negotiations with all candidates.

(6) The contracting authority may reserve the right in the competitive dialogue notice to hold competitive dialogues in stages, with the goal of reducing the number of solutions subjected further to competitive dialogue. The contracting authority shall always reduce the number of solutions according to the previous sentence according to the contract award criteria as published in the competitive dialogue notice or in the competitive dialogue documentation, in each case following the completion of the individual stages.

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

§ 37

Invitation to Tender in Competitive Dialogues

(1) The contracting authority shall inform in writing all candidates that have been invited to partake in competitive dialogue about the completion of negotiations in competitive dialogue, and at the same time it will invite in writing those candidates to tender.

(2) The contracting authorities shall duly identify one or more solutions for the performance of public contracts that has been selected by the contracting entity in competitive dialogue in the invitation to tender.

(3) If the contracting authority has selected more than one solution, it means that it has accepted the option of variant tenders.

(4) The invitation to tender shall contain at least the following information:

(a) the time limit for submitting tenders;

- (b) the place for submitting tenders;
- (c) information of the language or languages of tender; and
- (d) the tender documentation or conditions of access to or provision of the tender documentation pursuant to § 48.

§ 38

Simplified Below-the-Threshold Procedure

(1) The contracting authority shall invite at least five candidates to tender in a simplified below-the-threshold procedure and to prove their compliance with the qualification requirements.

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

(3) The contracting authority shall not invite an identical circle of candidates repeatedly, unless this is justified by the subject-matter of the public contract or any other special circumstances.

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

- (a) the identification data of the contracting authority;
- (b) information of the type and subject-matter of public contract;
- (c) the tender documentation or conditions of access to or provision of the tender documentation pursuant to § 48;
- (d) the place and the time limit for submitting tenders;
- (e) the requirements for proving compliance with qualification conditions pursuant to § 62;
- (f) information of the contract award criteria pursuant to § 78, if such information is not included in the tender documentation.

Part III

Time Limits

§ 39

Time Limits in Award Procedure Applicable to Contracting Authorities

(1) All time limits set out by the contracting authorities shall be determined with a view to the subject-matter of the public contract.

(2) The time limits for submitting requests to participate in restricted procedure, negotiated procedure with publication or competitive dialogue, and of the required documents proving compliance with qualification requirements, shall not be:

- (a) in respect of above-the-threshold public contracts
 1. shorter than 37 days; or
 2. shorter than 15 days under restricted procedure and negotiated procedure with publication, if the time limit as per item 1. above cannot be set out due to urgent objective reasons;
- (b) in respect of below-the-threshold public contracts
 1. shorter than 15 days; or

2. shorter than 10 days under restricted procedure and negotiated procedure with publication, if the time limit as per item 1. above cannot be set out due to urgent objective reasons.
- (3) The time limits for submitting tenders shall not be:
 - (a) in respect of above-the-threshold public contracts
 1. shorter than 52 days under open procedure;
 2. shorter than 40 days under restricted procedure; or
 3. shorter than 10 days under restricted procedure if the time limit as per item 2. above cannot be set out due to urgent objective reasons;
 - (b) in respect of below-the-threshold public contracts
 1. shorter than 22 days under open procedure;
 2. shorter than 15 days under restricted procedure and under simplified below-the-threshold procedure; or
 3. shorter than 7 days under restricted procedure and under simplified below-the-threshold procedure if the time limit as per item 2. above cannot be set out due to urgent objective reasons.
- (4) The time limits for submitting tenders shall be set out by the contracting authority as follows:
 - (a) in competitive dialogue and in negotiated procedure with publication, in the invitation to tender;
 - (b) in negotiated procedure without publication, in the invitation for negotiations, if it is not agreed within the negotiations;
 - (c) in procedure under a framework agreement pursuant to § 92, in the invitation to tender.
- (5) The time limits shall commence on the date next subsequent to the date of dispatch of such notice or invitation to commence award procedure or invitation to tender.

§ 40

Changes of Time Limits in Award Procedure Applicable to Contracting Authorities

- (1) If the contracting authority has published an indicative notice pursuant to § 86, and if such indicative notice has been sent out for publication or the notice of publication of the indicative notice has been sent out for publication on the contracting authority profile within a time limit not shorter than 52 days and not longer than 12 months prior to the dispatch of the notice of award procedure, the contracting authority, upon compliance with the conditions for publication pursuant to § 146(2)(second sentence), may reduce the time limit for submitting tenders in respect of above-the-threshold public contracts to 36 days in open procedure or restricted procedure, and to up to 22 days in open procedure or restricted procedure, if such time limit cannot be set out due to objective reasons.
- (2) If the award procedure notice has been sent out via electronic means (§ 149), the contracting authority may reduce
 - (a) the time limits pursuant to § 39(2)(a)(1), § 39(3)(a)(1) and § 40(1), by 7 days;
 - (b) the time limit pursuant to § 39(2)(a)(2), by 5 days.
- (3) If the contracting authority would allow full, unlimited, and direct remote access to the tender documentation commencing on the date of publication of the open procedure notice or restricted procedure notice, also stating the Internet address where such access to the tender

documentation can be obtained, the contracting authority may reduce the time limit for submitting tenders by 5 days.

(4) Reductions of time limits pursuant to § 40(1) through § 40(3) can be combined.

(5) If the tender documentation or any additional information to the tender documentation have not been for any reasons delivered within the time limit pursuant to § 48 and § 49, or if tenders may only be submitted following an inspection of the place of performance, the contracting authority shall reasonably extend the time limit for submitting tenders; the contracting authority shall notify thereof all suppliers pursuant to § 49(2)(second sentence).

(6) If the contracting authority makes any alterations in the publication pursuant to § 147(8), it shall at the same time reasonably extend the time limit for submitting requests to participate in the award procedure or the time limit for submitting tenders, subject to the nature of the alterations made.

§ 41

Time limits in Award Procedure Applicable to Sector Contracting Entities

(1) Time limits set out by sector contracting entities shall be determined with a view to the subject-matter of the public contract.

(2) The time limits for submitting requests to participate in restricted procedure or in negotiated procedure with publication or the time limits for delivery of confirmation of interest in participating pursuant to § 88(3), including all required documents testifying to compliance with qualification requirements, in respect of above-the-threshold public contracts, shall not be

(a) shorter than 37 days; or

(b) shorter than 22 days, if the time limit cannot be set out pursuant to § 41(2)(a) due to urgent objective reasons.

(3) The time limits for submitting tenders in respect of above-the-threshold public contracts in open procedure shall not be shorter than 52 days.

(4) The time limits for submitting tenders in restricted procedure and in negotiated procedure with publication may be set out pursuant to an agreement between the sector contracting entities and all candidates that have been invited to tender. The time limits as set out shall be identical for all candidates.

(5) The sector contracting entity shall set out the time limits for submitting tenders in restricted procedure and in negotiated procedure with publication, if it decided not to exercise the option of determining the time limits pursuant to § 41(4) or has failed to reach an agreement with the candidates. In such cases, the time limits shall not be shorter than 24 days, and in justified cases shorter than 10 days.

(6) The time limits for submitting tenders in negotiated procedure without publication shall be determined by the sector contracting entity in its invitation for negotiations.

(7) The time limits shall commence on the date next subsequent to the date of dispatch of such notice or invitation.

§ 42

Changes of Time limits in Award Procedure Applicable to Sector Contracting Entities

(1) If the sector contracting entity has published a periodic indicative notice pursuant to § 87, and if such periodic indicative notice has been sent out for publication or the notice of publication of the indicative notice has been sent out for publication on the sector contracting authority profile within a time limit not shorter than 52 days and not longer than 12 months prior to the dispatch of the notice of open procedure, the sector contracting entity, upon compliance with the conditions for publication pursuant to § 146(2)(second sentence), may reduce the time limits for submitting tenders in open procedure in respect of above-the-threshold public contracts to 36 days, and to up to 22 days if such time limits cannot be set out due to objective reasons.

(2) If information of commencing the award procedure has been dispatched by electronic means (§ 149), the sector contracting entity may reduce the time limits for submitting tenders in open procedure, the time limits for submitting requests to participate in restricted procedure or negotiated procedure with publication or the time limits for confirmation of interest in participating, by 7 days.

(3) If the sector contracting entity facilitates a full, unlimited, and direct remote access to the tender documentation commencing on the date of publication of the notice of commencing the award procedure, also stating the Internet address where such access to the tender documentation can be obtained, the sector contracting entity may reduce the time limits for submitting tenders by 5 days. This shall not apply if the time limits for submitting tenders have been agreed pursuant to § 41(4).

(4) Such reductions of time limits pursuant to § 42(1) through § 42(3) can be combined, if sector contracting entity complies with the minimum time limits as stipulated in § 42(5) through § 42(7).

(5) The time limits for submitting tenders in open procedure shall never drop below 22 days, and in the case that such open procedure notice is delivered via electronic means (§ 149), it shall never be shorter than 15 days.

(6) The time limits for submitting requests to participate in restricted procedure or in negotiated procedure with publication or the time limits for delivery of confirmation of interest in participating pursuant to § 88(3) shall never be shorter than 15 days.

(7) The time limits for submitting tenders in restricted procedure or negotiated procedure with publication shall never be shorter than 10 days, if such time limits have not been determined on the basis of an agreement pursuant to § 41(4).

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

§ 43

Award Term

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

(2) The contracting entity shall set out the duration of the award term or its termination by stipulating a date in the notice or invitation to commence award procedure.

(3) The award term shall commence upon the termination of the time limit for submitting tenders and it shall terminate upon the delivery of the notice of the contracting entity of the selection of the most suitable tender. The award term shall be extended in respect of tenderers eligible to conclude a contract with the contracting entity according to this Act, until such conclusion of the contract pursuant to § 82(3) or until the cancellation of the award procedure.

(4) The award term shall be discontinued if any objections have been submitted. The time limit shall continue to run on the date of delivery to the supplier of a decision on such objections published by the contracting entity. The award term shall also be discontinued for any time limit of time during which the contracting entity is not allowed under this Act to enter into a contract.

(5) The award term shall be discontinued in the case of the submitting of a proposal to review an act of the contracting entity with the Office for Protection of Economic Competition (“Office”). The time limit shall continue to run on a date next subsequent to the date of legal force of a decision of the Office concerning such proposal. This provision shall apply by analogy also to such cases when an administrative proceeding for the review of conduct of the contracting entity has been commenced by the Office *ex officio*; in such cases, the time limit shall be discontinued as of the date of commencing such administrative proceedings. Also, the award term shall be discontinued for a time limit of time when the contracting entity, pursuant to a decision of the Office, is required to apply remedial measures pursuant to § 118; the contracting entity shall inform any relevant tenderers and candidates accordingly.

Part IV

Tender Documentation and Technical Specifications

§ 44

Tender Documentation

(1) ‘Tender documentation’ means a set of documents, data, requirements, and technical specifications set up by the contracting entity and defining the subject-matter of the public contract in such detail as required for the elaboration of tenders. The contracting entity shall be responsible for correctness and completeness of the tender documentation.

(2) The tender documentation may also contain detailed specifications of data carried in the notice or invitation to commence award procedure.

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

- (a) the trade terms, including terms of payment, and/or objective conditions allowing to exceed the tender price;
- (b) technical specifications (§ 45), if so required by the subject-matter of the public contract;
- (c) requirements for variants of tenders pursuant to § 70, if they are allowed by the contracting entity;
- (d) required method for elaborating tender price;
- (e) conditions and requirements applicable to the elaboration of the tender;
- (f) method of evaluation of tenders according to contract award criteria; and
- (g) other requirements laid down by the contracting entity regarding the performance of public contracts.

(4) The tender documentation of public works contracts must also contain, beside the provisions described in § 44(3), the following information:

- (a) works project documentation or any other documentation pursuant to special legislation³⁴⁾ drawn up in such detail as required for the elaboration of tenders;
- (b) lists of works, supplies and services complete with a statement of measurements, also in electronic format.

(5) In the case of public works contracts pursuant to § 9(1)(b) or § 9(1)(c) that also contain designing, such documents pursuant to § 44(4) may be replaced with technical specifications in the form of performance and functional requirements pursuant to § 46(4) or § 46(5).

(6) The contracting entity may require in the tender documentation that the tenderers specify those lots of the public contracts in their tenders that they intend to subcontract to one or more sub-contractors, and to identify each of such individual sub-contractors. The contracting entity may reserve requirements in the tender documentation that a certain portion of the subject-matter of the public contract shall not be performed by sub-contractors; in such cases, the contracting entity shall state in the notice or invitation to commence award procedure that it intends to reserve such requirements. However, the contracting entity shall not totally prevent performances of public contracts by sub-contractors.

(7) In the case of public service contracts or public works contracts, the contracting entity may identify in the tender documentation an administrative authority or any other subject wherefrom the suppliers can obtain information of obligations under special legislation relating to protection of employees and working conditions, protection of the environment or taxes in force in the venue where the services should be provided or works performed, and that relate to such services or works; the suppliers are required to take into consideration such information in elaborating their tenders and to confirm it in their tenders.

(8) The contracting entity may also include in the tender any requirements relating to special conditions applicable to the performance of public contracts, in particular, in the social, employment or environmental fields.

(9) Unless justified by the subject-matter of the public contract, tender documentation, and in particular, technical specifications, shall not contain any requirements or refer to business names, names, or names and surnames, specific identification data of goods and services characteristic for a specific entity, and/or its branch, or to patents, utility models,

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

industrial designs, trademarks or identification of origin, with the effect of favouring or excluding certain suppliers or certain products. Such reference shall be permitted on an exceptional basis where a sufficiently precise and intelligible description of the subject-matter of the public contract pursuant to § 45 and § 46 is not possible. The contracting entity shall in such cases allow the execution of the public contract by way of other, qualitatively and technically similar solutions.

§ 45

Technical Specifications

(1) ‘Technical specifications’, in the case of public supply contracts or public service contracts means a specification defining characteristics and requirements applicable to supplies determined in an objective and unequivocal manner and expressing the purpose of the required performance intended by the contracting entity.

(2) ‘Technical specifications’, in the case of public works contracts, means the totality of technical prescriptions determining the required technical characteristics and requirements applicable to works, and at the same time to supplies and services relating to such works, which permit the subject-matter of the public works contract to be described in an unequivocal and objective manner such that it fulfils the use for which it is intended by the contracting entity.

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

(4) The contracting entity shall define the technical specifications in one of the ways as described in § 46(1), § 46(2), § 46(4), and § 46(5).

(5) Sector contracting entities, upon request by the supplier, shall provide the technical specifications usually contained in the public supply contracts, public service contracts, and public works contracts awarded by such sector contracting entities, or technical specifications that they intend to apply in the case of public contracts listed in the periodic indicative notice. If the technical specifications are contained in documents available to suppliers, the sector contracting entity may refer to such documents.

§ 46

Definition of Technical Specifications

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

- (a) Czech national technical standards³⁵⁾ transposing European standards or any other national technical standards transposing European standards;
- (b) European technical approvals³⁶⁾;

³⁵⁾ § 4 of Act no. 22/1997 Coll., on technical requirements for products and modifying and amending certain other legislation, as amended by Act no. 71/2000 Coll. and Act no. 205/2002 Coll.

- (c) common technical specifications laid down in accordance with a procedure recognised by the Member States of the European Union which has been published in the Official Journal of the European Union;
- (d) international standards; or
- (e) different types of technical documents other than standards adapted by the European standardisation organisations.

(2) If the technical specifications cannot be defined pursuant to § 46(1), the contracting entity shall define them with reference to the following documents:

- (a) Czech national technical standards³⁵⁾;
- (b) building technical certificates³⁷⁾; or
- (c) national technical specifications relating to design, calculation and execution of construction projects and works, and use of the products.

(3) The contracting entity shall allow the use of other, qualitatively and technically similar solutions, with each reference pursuant to § 46(1) or § 46(2).

(4) The contracting entity may define technical specifications in the form of performance or functional requirements that may include environmental characteristics. Those requirements and characteristics shall be sufficiently precise in order to allow tenderers to determine unequivocally the subject-matter of the contract and to elaborate comparable tenders.

(5) The contracting entity may define technical specifications also in the form of performance or functional requirements pursuant to § 46(4), by referring to documents listed in § 46(1) or § 46(2) as a means of presuming conformity with such performance or functional requirements or, with certain characteristics, by referring to documents listed in § 46(1) or § 46(2), and by referring to performance or functional requirements pursuant to § 46(4) for other characteristics.

(6) Where a contracting entity, in defining the technical specifications, makes use of the option of referring to documents pursuant to § 46(1) or § 46(2), it cannot reject a tender on the grounds that the tendered supplies or services do not comply with the specifications to which it has referred, once the supplier proves that tendered supplies or services satisfy in an equivalent manner the requirements defined in the technical specifications. The supplier shall prove this fact in the tender, in particular, by the technical dossier of the manufacturer or a test report issued by a recognised body.

(7) Where a contracting entity defines the technical specifications in the form of performance or functional requirements as listed in § 46(4), it may not reject a tender for supplies, services or works which comply with the documents listed in § 46(1), if such documents address the defined performance or functional requirements laid down by the contracting entity. The supplier shall prove this fact in the tender, particularly, by the technical dossier of the manufacturer of the goods or a test report issued by a recognised body.

³⁶⁾ Art. 8 Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products.

³⁷⁾ § 3 of Government Decree no. 163/2002 Coll., setting out technical requirements for certain selected construction products.

(8) Where a contracting entity lays down environmental characteristics in terms of performance or functional requirements pursuant to § 46(4), it may use similar specifications or any parts thereof, as defined by European, or (multi-) national or by any other systems on awarding eco-labels³⁸⁾, provided that those specifications are appropriate to define the characteristics of products or services that constitute the subject-matter of the public contract.

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

(10) 'Recognised bodies' means testing and calibration laboratories or certification or inspection bodies which comply with applicable European standards. Contracting entities shall also accept test report from recognised bodies established in other Member States of the European Union.

§ 47

Classification of Subject-Matter of Public Contracts

The contracting entity, in defining the subject-matter of public contract in the notice or invitation to commence award procedure, shall apply classifications of goods, services and works according to the reference classification applicable to public contracts on the basis of the directly applicable legislation of the European Communities³⁹⁾.

§ 48

Provision of Tender Documentation to Suppliers

(1) If the contracting entity fails to provide an unlimited and direct remote access to the tender documentation in open procedure or in simplified below-the-threshold procedure, it shall deliver the tender documentation by hand or send them in a hard copy or in electronic format to the supplier in open procedure within six days, and in simplified below-the-threshold procedure within 2 days of the date of delivery of a written request of the supplier.

(2) Written requests for tender documentation submitted by suppliers must be delivered to the contracting entity not later than 12 days prior to the expiration of the time limit for submitting tenders in open procedure, and not later than 5 days prior to the expiration of the time limit for submitting tenders in simplified below-the-threshold procedure. Tenders may also be submitted by suppliers that have not requested the tender documentation from the contracting entity or that have failed to collect the tender documentation, if the tender documentation has been available on a publicly accessible electronic tool.

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

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

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

- (a) provide the tender documentation in the form of an enclosure to the invitation to tender;
- (b) enclose a reference to the place of access to the tender documentation in the invitation to tender, if they are remotely accessible;
- (c) deliver the tender documentation by hand or send them in a hard copy or in electronic format to the suppliers within six days of the date of delivery of a written request of the supplier for such tender documentation if the request has been delivered not later than eight days prior to the expiration of the time limit for submitting tenders; or
- (d) state the address where it is possible to request the tender documentation, if they are available from any entity other than the contracting entity; in such cases, such other entity shall deliver the tender documentation by hand or send them in a hard copy or in the electronic format to the supplier within six days of the date of delivery of a written request of the supplier for such tender documentation if the request has been delivered not later than eight days prior to the expiration of the time limit for submitting tenders.

(4) The contracting entity may reserve the right in the tender requirements to require reimbursement for costs relating to the provision of the tender documentation. In such cases, it shall state in the tender requirements the amount of such costs for the reproduction of the tender documentation, the post and package costs, as well as the payment conditions relating to the provision of the tender documentation. However, the contracting entity shall not require any reimbursement of any such costs in excess of usual costs.

§ 49

Additional Information to Tender Requirements, Inspection of Place of Performance

(1) The suppliers may require contracting entities in writing to provide them with additional information complementing the tender requirements. Such written requests shall be delivered to the contracting entity not later than 12 days prior to the expiration of the time limit for submitting tenders; in the case of procedures for the award of a contract whereby the time limits have been determined pursuant to § 39(3)(a)(item 3) or pursuant to § 41(5), not later than 7 days prior to the expiration of the time limit for submitting tenders, and in the case of procedures for the award of a contract whereby the time limits have been determined pursuant to § 39(3)(b)(item 2) or § 39(3)(b)(item3), not later than 5 days prior to the expiration of the time limit for submitting tenders.

(2) The contracting entity shall deliver such additional information complementing the tender requirements, and/or any related documents, not later than 6 days of the delivery of the request of the supplier pursuant to § 49(1), and in the case of procedures for the award of a contract whereby the time limits have been determined pursuant to § 39(3)(a)(item 3), § 39(3)(b)(item 2) or § 39(3)(b)(item 3) or pursuant to § 41(5), not later than 3 days of the delivery of the request pursuant to § 49(1). Such additional information, including the exact wording of the request, shall be delivered by the contracting entity simultaneously to all suppliers that have requested the tender documentation or that have been provided the tender documentation. The contracting entity shall publish the additional information, including the exact wording of the request, also in a manner by which it has provided an unlimited and direct remote access to the tender documentation.

(3) The contracting entity may provide the suppliers with additional information complementing the tender requirements even without any prior request. § 49(2) shall be applied by analogy.

(4) If it is essential for the performance of public contracts or for the production of tenders, the contracting entity shall allow an inspection of the place of performance at a time specified by the contracting entity in the tender requirements to all suppliers interested in submitting their tenders in open procedure, or to all candidates that have been invited to tender in restricted procedure, in negotiated procedure with publication, in simplified below-the-threshold procedure or to participate in competitive dialogue. The contracting entity shall allow the inspection of the place of performance not later than 12 days prior to the expiration of the time limit for submitting tenders; in the case of procedures for the award of a contract whereby the time limits have been determined pursuant to § 39(3)(a)(item 3) or pursuant to § 41(5), not later than 7 days prior to the expiration of the time limit for submitting tenders, and in the case of procedures for the award of a contract whereby the time limits have been determined pursuant to § 39(3)(b)(item 2) or § 39(3)(b)(item 3), not later than 5 days prior to the expiration of the time limits for submitting tenders.

Part V
Qualifications

Chapter 1
Qualification Requirements of Contracting Authorities

§ 50

Scope of Qualifications

(1) Qualification requirements shall be met by suppliers that have proven their compliance with

- (a) basic qualification requirements pursuant to § 53;
- (b) professional qualification requirements pursuant to § 54;
- (c) economic and financial qualification requirements pursuant to § 55; and
- (d) technical qualification requirements pursuant to § 56.

(2) The contracting authority shall set out conditions of proving compliance with qualification requirements in the notice or invitation to commence award procedure. A detailed description of such conditions may be contained in the qualification documentation or in the tender documentation. The contracting authority shall make available the qualification documentation on its web site or in any other suitable manner; the provision of § 48 shall be applied *mutatis mutandis*.

(3) The contracting authority shall limit the scope of any qualification requirements solely to information and documents immediately relating to the subject-matter of the public contract.

(4) The economic and financial qualifications and technical qualifications shall not be the subject matter of contract award criteria.

§ 51

Proving Compliance with Qualification Requirements

(1) The contracting authority shall require a proof of compliance with qualification requirements on the part of the suppliers, unless stipulated in this Act otherwise.

(2) Proving compliance with qualification requirements as required by the contracting authority and stipulated according to this Act shall be a precondition for the assessment and evaluation of tenders submitted by tenderers in open procedure, the evaluation of indicative tenders of candidates in dynamic purchasing system, the invitation of candidates to tender in restricted procedure or in negotiated procedure with publication, the participation of candidates in competitive dialogue, and the precondition of the conclusion of contracts in simplified below-the-threshold procedure.

(3) In the case of cases listed in § 23(4)(b), in § 23(5)(c) through § 23(5)(e) or in § 23(6) in negotiated procedure without publication, compliance with qualification requirements needs not be proven. In any other cases of negotiated procedure without publication, the contracting authority may require compliance with qualification requirements by the invited candidates; in such cases, proving compliance with qualification requirements shall be a precondition for the conclusion of the contract.

(4) If any supplier is not capable of proving full compliance with certain qualifications as required by the contracting authorities pursuant to § 50(1)(b) through § 50(1)(d), it may prove compliance with qualification requirements to the missing extent through its sub-contractor. In such cases, suppliers shall submit a contract to the contracting entity concluded with a sub-contractor containing an obligation of such sub-contractor to render performance required in order to perform the public contract by the supplier, or to render things or rights that the supplier will be capable of disposing of when performing the public contract, at least to the extent as the sub-contractor has proven compliance with qualification requirements. The supplier shall not prove compliance with qualification requirements pursuant to § 54(a) through a sub-contractor.

(5) If the subject-matter of the public contract is to be performed jointly by several suppliers that submit or intend to submit a joint tender for that purpose, each supplier shall prove full compliance with the basic qualification requirements pursuant to § 50(1)(a), and the professional qualification requirements pursuant to § 54(a). Compliance with qualification requirements pursuant to § 50(1)(b) through § 50(1)(d) shall be proven by all suppliers jointly. In the case of proving compliance with qualification requirements to the missing extent through a sub-contractor, § 51(4) shall be applied by analogy.

(6) If the subject-matter of the public contract is to be performed pursuant to 51(5) jointly by several suppliers, they shall submit to the contracting authority, together with documents of compliance with the qualification requirements, an agreement containing a commitment that all of those suppliers will be bound jointly and severally to the contracting authority and to third parties in respect of any legal relationships in connection with the public contract, for the entire term of performance of the public contract as well as throughout the existence of any other liabilities relating to the public contract. The requirements for the commitment pursuant to § 51(6)(first sentence), namely that the suppliers should be bound jointly and severally, applies if it is not stipulated in special legislation or by the contracting entity otherwise. If the suppliers act jointly in restricted procedure, negotiated procedure with publication or competitive dialogue, for the purpose of submitting a joint tender following

their proof of compliance with qualification requirements, they shall submit the agreement pursuant to this paragraph not later than on the submission of their joint tender.

(7) Unless special legislation stipulates otherwise, foreign suppliers shall prove compliance with qualification requirements in a manner pursuant to the laws of their country of registered office, place of business or place of residence, to the extent as required by this Act and by the contracting authorities. If a certain document is not available pursuant to the laws of the country of registered office, place of business or place of residence of a foreign supplier, such foreign supplier shall prove compliance with such portion of the qualifications by an affidavit. If compliance with any qualifications is not required in the country of registered office, place of business or place of residence of a foreign supplier, such foreign supplier shall issue an affidavit to this effect. Documents confirming compliance with qualification requirements shall be submitted by foreign suppliers in their original languages complete with a certified translation into the Czech language attached, unless the contracting entity in the tender requirements or an international treaty binding upon the Czech Republic stipulate otherwise; this provision shall also apply if compliance with qualification requirements is certified by documents in any language other than the Czech language by suppliers with registered office, place of business or place of permanent residence in the territory of the Czech Republic.

(8) Compliance with qualification requirements may also be proven with help of electronic means pursuant to § 149, if it is possible in view of the nature of the relevant qualification requirements.

§ 52

Time of Proving Compliance with Qualification Requirements

(1) Suppliers shall prove compliance with qualification requirements within the time limit for submitting tenders in open procedure and in simplified below-the-threshold procedure. In the case of open procedure involving the setting up of the dynamic purchasing system, suppliers shall prove compliance with qualification requirements when submitting the indicative tender at the latest.

(2) In restricted procedure, negotiated procedure with publication and in competitive dialogue, suppliers shall prove compliance with qualification requirements within the time limit for submitting their requests to participate.

(3) In negotiated procedure without publication, suppliers shall prove compliance with qualification requirements within the time limit set out by the contracting authorities in the invitation for negotiations, before the conclusion of the contract at the latest.

§ 53

Basic Qualifications

- (1) Basic qualifications shall be complied with by those suppliers:
- (a) that have not been finally sentenced for crimes committed to the benefit of a criminal conspiracy, by participation in criminal conspiracy, legalisation of proceeds from criminal activity, accessoryship, accepting bribes, bribery, indirect bribery, fraud, loan fraud, including cases of preparation for and attempts of or conspiracy for such crime, or

if such sentences pronounced for such crimes have been expunged; in the case of legal entities, such qualifications shall be complied with by the statutory body or each member of the statutory body, and if a legal entity acts as the statutory body or a member of the statutory body of a supplier, such qualifications shall be complied with by the statutory body or each member of the statutory body of such legal entity; if a tender or request to participate is submitted by a foreign legal entity via its branch, the qualifications under this subparagraph shall be complied with, beside the above described persons or entities, also by the head of the branch; such basic qualifications shall be complied with by the supplier both in the territory of the Czech Republic and in the country of its registered office, place of business or residence;

- (b) that have not been finally sentenced for crimes the facts of which relate to the objects of the suppliers pursuant to special legislation or if such sentence pronounced for such crimes has been expunged; in the case of legal entities, such qualifications shall be complied with by the statutory body or each member of the statutory body, and if a legal entity acts as the statutory body or a member of the statutory body of a supplier, such qualifications shall be complied with by the statutory body or each member of the statutory body of such legal entity; if a tender or request to participate is submitted by a foreign legal entity via its branch, the qualifications under this subparagraph shall be complied with, beside the above described persons or entities, also by the head of the branch; such basic qualifications shall be complied with by the supplier both in the territory of the Czech Republic and in the country of their registered office, place of business or residence;
- (c) that have not accomplished the state of fact of unfair competition by bribery pursuant to special legislation⁴⁰⁾;
- (d) whose assets have not been subjected to adjudication of bankruptcy or bankruptcy petition has not been rejected due to lack of assets on the part of the supplier or in respect of which composition has not been permitted or forced administration imposed pursuant to special legislation⁴¹⁾;
- (e) that have not been in liquidation;
- (f) that have no tax arrears registered in their tax records, both in the Czech Republic and in the country of their registered office, place of business or residence;
- (g) that have no arrears in respect of the payment of the public health insurance premiums or any penalties, both in the Czech Republic and in the country of their registered office, place of business or residence;
- (h) that have not arrears in respect of the payment of the social policy and the state employment policy contributions, both in the Czech Republic and in the country of their registered office, place of business or residence; and
- (i) that have not been finally disciplinary punished in the past three years or that have not been finally subjected to punitive measures pursuant to special legislation if proof of professional qualifications pursuant to special legislation is required pursuant to § 54(d); if the suppliers perform such activity through an authorised agent or any other person liable for the activities of the suppliers, such qualifications shall be complied with by those persons.

(2) The suppliers shall prove compliance with the basic qualification requirements pursuant to § 53(1) by the delivery of the following documents:

- (a) an extract from the Criminal Register [§ 53(1)(a) and § 53(1)(b)];

⁴⁰⁾ § 49 of the Commercial Code.

⁴¹⁾ E.g., Act no. 328/1991 Coll., on bankruptcy and composition, as amended, Act no. 21/1992 Coll., governing Banks, as amended.

- (b) a certificate issued by the relevant Tax Authority, and an affidavit concerning the excise tax [§ 53(1)(f)];
- (c) a certificate of the relevant authority or institution [§ 53(1)(h)];
- (d) an affidavit [§ 53(1)(c) through § 53(1)(e), and § 53(1)(i)].

§ 54

Professional Qualifications

Compliance with professional qualification requirements shall be proven by suppliers that have submitted the following documents:

- (a) an extract from the Commercial Register if it is registered therein or an extract from any other similar register⁴²⁾, if it is registered therein;
- (b) a proof of authorisation to do business pursuant to special legislation to the extent reflecting the subject-matter of the public contract, particularly, a proof of relevant business authorisation or licence;
- (c) a proof issued by a professional self-administration chamber or any other professional organisation confirming such supplier's membership of such chamber or organisation if such membership is essential for the performance of public service contracts pursuant to special legislation⁴³⁾; and
- (d) a proof of professional capability of the supplier or any other person or entity through which the supplier acquires such professional capability if it is essential for the performance of the public contract pursuant to special legislation⁴⁴⁾.

§ 55

Economic and Financial Qualifications

(1) The contracting authority, for the purpose of proving compliance with economic and financial qualification requirements, may require that the supplier should submit one or more of the following documents:

- (a) a third party liability insurance contract taken out by the supplier;
- (b) the latest balance sheet drawn up pursuant to special legislation⁴⁵⁾ or certain parts of such balance sheet; or
- (c) information of the overall turnover of the supplier identified pursuant to special legislation⁴⁶⁾, and/or the turnover of the supplier in view of the subject-matter of the public contract, for up to three previous financial year; if the supplier was established later or demonstrably commenced activities relating to the subject-matter of the public contract later, it will suffice to submit information of its turnover for all financial years from its establishment or from its commencement of the relevant activity.

(2) The contracting authority may require, beside documents pursuant to § 55(1), also any other documents proving compliance with economic and financial qualification requirements by the supplier.

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

⁴³⁾ E.g., Act no. 417/2004 Coll., on patent agents and amending the Industrial Property Protection Act, Act no. 254/2000 Coll., on Auditors, and amending Act no. 165/1998 Coll., as amended, Act no. 85/1996 Coll., governing Advocacy, as amended.

⁴⁴⁾ E.g., Act no. 360/1992 Coll., on the execution of the vocation of authorised architects and the execution of the vocation of authorised construction engineers and technicians, as amended.

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

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

(3) The contracting authority, in relation to the economic and financial qualification requirements, shall include the following information in the notice or invitation to commence award procedure:

- (a) stipulate the scope of any required information and documents;
- (b) describe the manner of proving compliance with those qualification requirements; and
- (c) define the minimum level of such qualification requirements reflecting the type, scope, and complexity of the subject-matter of public contract.

(4) If the supplier cannot for objective reasons prove compliance with economic and financial qualification requirements in any manner as described in § 55(3), it may prove it with help of any other equivalent documents, if the contracting authority would not refuse to accept them for objective reasons.

§ 56

Technical Qualifications

(1) The contracting authority may require the following information for the purpose of proving compliance with the technical qualification requirements for the performance of public supply contracts by the supplier:

- (a) a list of significant deliveries performed by the supplier over the past three years, also giving their scope and time limit of performance; this list shall be annexed with the following documents:
 - 1. a certificate issued and signed by a contracting authorities, if the goods were supplied to a contracting authority;
 - 2. a certificate issued by any other entity, if the goods were supplied to any entity other than a contracting authority; or
 - 3. an affidavit issued by the supplier, if the goods were supplied to any entity other than a contracting authority, and at the same time it is not possible to obtain a certificate pursuant to item 2 above from such entity for reasons on the part of such other entity;
- (b) a list of engineers or engineering units designated to perform the public contract, in particular, engineers or engineering units in charge of quality control, irrespective of whether they are employees of the supplier or persons with any other relationship to the supplier;
- (c) description of the technical equipment and measures applied by the supplier in ensuring quality, and description of equipment or facilities of the supplier designated for research; the contracting authority may also require the submission of a certificate pursuant to § 56(4);
- (d) execution of a review of the manufacturing capacity by the contracting authorities or by any other person on its behalf, and if so required, also a review of measures relating to ensuring quality and research, provided the goods to be supplied are complex or are required for very special purposes;
- (e) samples, descriptions or photographs of the goods to be supplied; or
- (f) a certificate of compatibility of the required product issued by the relevant authority⁴⁷⁾.

(2) The contracting authority may require the following information for the purpose of proving compliance with the technical qualification requirements for the performance of public service contracts by the supplier:

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

- (a) a list of significant deliveries performed by the supplier over the past three years, also giving their scope and time limit of performance; this list shall be annexed with the following documents:
 - 1. a certificate issued by a contracting authorities, if the services were provided to a contracting authority; or
 - 2. a certificate issued by any other entity, if the services were provided to any entity other than a contracting authority; or
 - 3. an affidavit issued by the supplier, if the services were provided to any entity other than a contracting authority, and at the same time it is not possible to obtain a certificate pursuant to item 2 above from such entity for reasons on the part of such other entity;
- (b) a list of engineers or engineering units designated to perform the public contract, in particular, engineers or engineering units in charge of quality control, irrespective of whether they are employees of the supplier or persons with any other relationship to the supplier;
- (c) description of the technical equipment and measures applied by the supplier in ensuring quality, and description of equipment or facilities of the supplier designated for research; the contracting authority may also require the submission of a certificate pursuant to § 56(4);
- (d) execution of a review of the manufacturing capacity by the contracting authorities or by any other person on its behalf, and if so required, also a review of measures relating to ensuring quality and research, provided the services to be rendered are complex or are required for very special purposes;
- (e) a certificate of education and professional qualifications of the supplier or the supplier's management⁴⁸⁾ or persons of similar standings and persons in charge of the provision of the relevant services;
- (f) measures in the field of management for the protection of the environment to be applied by the supplier in the performance of the public contract if so required in view of the subject-matter of the public contract; the contracting authority may also require the submission of a certificate pursuant to § 56(5);
- (g) an overview of the annual average number of employees of the supplier or any other persons performing contracts of a similar nature, and of the supplier's management⁴⁸⁾ or persons of similar standings over the past three years; or
- (h) an overview of tools or aids, operating and technical equipment available to the supplier in the performance of the public contract.

(3) The contracting authority may require the following information for the purpose of proving compliance with the technical qualification requirements in the performance of public works contracts by the supplier:

- (a) a list of works performed by the supplier over the past five years and certificates issued by the client testifying to due execution of the most important of those works; such certificates shall show the price, place and time of execution of such works, as well as information of whether the works have been executed duly and in a professional manner;
- (b) a list of engineers or engineering units designated to perform the public contract, in particular, engineers or engineering units in charge of quality control, irrespective of whether they are employees of the supplier or persons with any other relationship to the supplier;

⁴⁸⁾ § 9(3) of the Labour Code.

- (c) a certificate of education and professional qualifications of the supplier or the supplier's management⁴⁸⁾ or persons of similar standings, and persons in charge of the implementation of the relevant works⁴⁹⁾;
- (d) measures in the field of management for the protection of the environment to be applied by the supplier in the performance of the public contract if it is justified by the subject-matter of the public contract; the contracting authority may also require the submission of a certificate pursuant to § 56(5);
- (e) an overview of the annual average number of employees of the supplier or any other persons performing contracts of a similar nature, and of the supplier's management⁴⁸⁾ or persons of similar standings over the past three years; or
- (f) an overview of tools or aids, operating and technical equipment available to the supplier in the performance of the public contract.

(4) If it is justified by the subject-matter of the public contract, the contracting authority may require as part of proving compliance with the technical qualification requirements the submission of a quality management certificate pursuant to the Czech technical standards⁵⁰⁾ issued by a duly accredited entity⁵¹⁾. The contracting authority shall recognise any equivalent documents issued in any other Member State of the European Union. The contracting authority shall also recognise any other documents testifying to equivalent quality management measures.

(5) If it is justified by the subject-matter of the public contract, the contracting authority may require as part of proving compliance with the technical qualification requirements pursuant to § 56(2)(f) or pursuant to § 56(3)(d), a document testifying to registration in the eco-management and audit scheme (EMAS)⁵²⁾ or an eco-management certificate issued under the Czech technical standards⁵³⁾ by a duly accredited entity⁵¹⁾. The contracting authority shall recognise any equivalent documents issued in any other Member State of the European Union. The contracting authority shall also recognise any other documents testifying to equivalent eco-management measures.

(6) The contracting authority may require a proof of compliance with one or more technical qualification requirements as stipulated in § 56(1) through § 56(5). If the public contract consists of performances relating to more than one type of public contracts pursuant to § 8 through § 10, the contracting authority may require a proof of compliance with technical qualification requirements as stipulated in § 56(1) through § 56(5) to a reasonable extent separately for each of the types.

(7) The contracting authority shall stipulate the following information in the notice or invitation to commence award procedure in respect of technical qualifications:

- (a) the scope of any required information and documents;
- (b) the manner of proof of compliance with those qualification requirements; and
- (c) the minimum level of such qualification requirements reflecting the type, scope, and complexity of the subject matter of the public contract.

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

⁵⁰⁾ Czech Technical Standards ČSN EN ISO 9000.

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

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

⁵³⁾ Czech Technical Standards ČSN EN ISO 14000.

(8) If the supplier cannot for objective reasons prove compliance with technical qualifications in a manner as stipulated in § 56(7), it may prove it with help of any other equal documents, if the contracting authority would not refuse to accept them for objective reasons. If the extent of the list of measures relevant for environmental management pursuant to § 56(2)(f) or pursuant to § 56(3)(d) equals that of the scope of measures required for the issuance of the certificate pursuant to § 56(5), the contracting authority shall recognise such form of proof of compliance with technical qualification requirements pursuant to § 56(5).

(9) If such proof of compliance with any required technical qualification requirements should constitute action other than a mere submission of any document, the contracting authority shall provide the supplier with any required cooperation and possibility of proving such portion of technical qualification requirements prior to the expiration of the time limit for proving such qualifications. The contracting authority shall deliver to the supplier a written certificate of successfully proving compliance with the relevant technical qualification requirements that shall serve as a proof of compliance with the qualification requirements to the appropriate extent.

§ 57

Document Authenticity and Age

(1) Unless stipulated otherwise by the contracting authority in the tender requirements, suppliers shall submit any documents proving compliance with qualification requirements in original or notarised copies.

(2) Documents testifying to compliance with the basic qualification requirements and the extract from the Commercial Register shall not be older than 90 days as on the last date of the time limit for proving compliance with the qualification requirements.

§ 58

Qualification Changes

(1) If any changes in the qualifications of the supplier should occur within the time limit until the release of the decision on the selection of the most suitable tender that would otherwise result in its non-compliance with the qualification requirements pursuant to § 60, the supplier shall notify thereof the contracting authority in writing not later than within seven days, and at the same time deliver any required documentation proving its full compliance with the qualification requirements.

(2) The obligation pursuant to § 57(1) shall also apply by analogy to tenderers that are eligible to conclude the contract according to the decision of the contracting authority pursuant to § 81, until such conclusion of the contract. In such cases, the tenderer with whom the contracting authority concludes the contract shall submit any required documents proving full compliance with the qualification requirements not later than on the conclusion of the contract.

§ 59

Assessment of Qualifications

(1) The contracting authority shall assess compliance with qualification requirements by the supplier in view of the requirements set out according to this Act (“assessment of qualifications”).

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

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

(4) The contracting authority may require that suppliers should explain in writing any submitted information or documents or submit any additional information or documents proving compliance with qualification requirements, save for cases when compliance with any specific portion of qualifications has not been proven by the supplier at all. Suppliers shall comply with this obligation within a reasonable time limit as set out by the contracting authorities.

§ 60

Non-Compliance with Qualification Requirements

(1) Suppliers that have failed to comply with qualifications to the extent as required or that have failed to comply with their obligation stipulated in § 58 shall be excluded by the contracting authorities from the award procedure.

(2) The contracting authority shall notify such suppliers without delay and in writing about its decision to exclude them from the award procedure, including giving the relevant reasons.

§ 61

Restricting Numbers of Candidates in Restricted Procedure, Negotiated Procedure with Publication and Competitive Dialogue

(1) If the contracting authority has restricted the number of candidates for participation in restricted procedure, in negotiated procedure with publication or in competitive dialogue, it shall select those candidates that have duly proven compliance with their qualification requirements, according to objective criteria pursuant to § 61(2) of § 61(4) as set out in the notice of commencing the award procedure. A detailed specification of such objective criteria may be stipulated in the qualification documentation.

(2) The objective criteria pursuant to § 61(1) shall be:

- (a) determined in view of the nature, scope, and complexity of the subject matter of the public contract;
- (b) according to the principles stipulated in § 6; and

(c) reflecting any of the economic and financial qualification requirements or technical qualification requirements for the performance of the public contract, compliance with which has been required by the contracting authority.

(3) The contracting authority shall make the selection according to the objective criteria pursuant to § 61(2) by determining the ranking of the candidates that have proven compliance with qualification requirements, in accordance with the degree of compliance with such relevant criteria, and it would subsequently select those candidates that have complied best of all with the said criterion. If the candidates have proven compliance with qualification requirements in an absolutely identical degree or if it is not possible to determine objectively the ranking of such qualified candidates pursuant to this paragraph, the contracting authority shall make a random selection by a draw.

(4) The number of candidates may also be reduced pursuant to § 61(1) in an objective manner by a draw, and/or a combination of the objective criteria pursuant to § 61(2) and a random selection by a draw. Such draw shall be performed by the contracting authority according to the principles as per § 6. Those candidates concerned by such draw shall be entitled to partake in the draw. The contracting entity shall notify them about the date of such draw at least five days in advance.

(5) The number of candidates selected pursuant to § 61(3) and § 61(4) shall correspond to the number quoted by the contracting authority in the notice of commencing the award procedure.

(6) The contracting authority shall exclude from the award procedure all candidates that have not been selected without any delay following the selection pursuant to § 61(3) through § 61(5). The contracting authority shall notify the candidates in writing about their exclusion without any delay.

(7) The contracting authority shall issue a report on the course of the reduction of the number of the candidates showing the manner and the results of the reduction of the number of the candidates. The candidates may inspect such a report.

§ 62

Qualifications Applicable to Below-the-Threshold Public Contracts

(1) If a contracting authority awards below-the-threshold public contracts, it shall require a proof of compliance with the basic and professional qualification requirements by the supplier. If the contracting authority should also require a proof of compliance with the economic and financial qualification requirements or the technical qualification requirements, § 55 and § 56 shall apply by analogy.

(2) With below-the-threshold public contracts, compliance with the basic qualification requirements shall be proven by submitting an affidavit. The content of the affidavit shall make it clear that the supplier meets the relevant basic qualifications of the contracting authorities. The contracting authority, in the notice or invitation to commence award procedure, may set out the duty of proving compliance with the basic qualification requirements with help of documents as stipulated in § 53(2), and/or the duty of proving compliance with some of the basic qualification requirements with help of those documents.

Chapter 2
Qualification Requirements of Sector Contracting Entities

§ 63

Scope of Qualifications

(1) The sector contracting entities may stipulate any objective requirements facilitating objective assessment of qualifications of the supplier.

(2) If the sector contracting entities require proving compliance with certain qualification requirements that correspond to some qualification requirements pursuant to § 53(1), they shall require proving compliance with those requirements with help of documents pursuant to § 53(2).

(3) If the contracting authority awards public contracts in connection with the performance of relevant activity, it shall require, as part of the award procedure, proving compliance with the basic qualification requirements pursuant to § 53(1)(a) and § 53(1)(c).

(4) The sector contracting entities shall specify the scope of information and documents within the qualification requirements with a view to the type, scope, and complexity of the subject-matter of the public contracts. The sector contracting entity shall announce the qualification requirements in the notice of commencing the award procedure, in the invitation for negotiations in negotiated procedure without publication, and/or in the invitation to confirm interest in participating.

(5) If it is justified by the subject-matter of the public contract, the sector contracting entity may require, in the case of public service contracts or public works contracts, as part of the proof of compliance with the technical qualifications, the submission of a document testifying to registration in the eco-management and audit scheme (EMAS)⁵²⁾ or an eco-management certificate issued under the Czech technical standards⁵³⁾ by a duly accredited entity⁵¹⁾. The sector contracting entities shall recognise any equivalent documents issued in any other Member State of the European Union. The sector contracting entities shall also recognise any other documents testifying to equivalent eco-management measures.

(6) If it is justified by the subject-matter of the public contract, the sector contracting entity, as part of a proof of compliance with the technical qualifications, may require the submission of an eco-management certificate issued under the Czech technical standards⁵⁰⁾ by a duly accredited entity⁵¹⁾. The sector contracting entities shall recognise any equivalent documents issued in any other Member State of the European Union. The sector contracting entities shall also recognise any other documents testifying to equivalent eco-management measures.

(7) Data relating to economic, financial or technical qualifications of the supplier shall not be the subject-matter of contract award criteria, unless in the case of public service contracts with a prevailing subject-matter consisting of the provision of financial, advisory, and consultation services.

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

§ 64

Proof of Compliance with Qualification Requirements

(1) The sector contracting entities shall require a proof of compliance with qualification requirements by the supplier in restricted procedure and in negotiated procedure with publication. A proof of compliance with qualification requirements by the supplier to the extent as stipulated by sector contracting entities represents a precondition for inviting candidates to submit tenders in restricted procedure or in negotiated procedure with publication.

(2) Sector contracting entities may require a proof of compliance with qualification requirements by the supplier in open procedure and in negotiated procedure without publication; this provision shall be without prejudice to § 63(3). A proof of compliance with qualification requirements to the extent stipulated by sector contracting entities represents in such cases a precondition for the assessment and evaluation of the tender submitted by the tenderer in open procedure, and a precondition for the conclusion of the contract in negotiated procedure without publication.

(3) In negotiated procedure without publication, compliance with qualification requirements by invited candidates needs not be proven in cases as per § 23(4)(b), § 23(5)(c) through § 23(5)(e), § 23(6) or § 23(8)(b).

(4) If the supplier is not capable of proving full compliance with any portion of their economic, financial or technical qualifications due to objective reasons, it may prove such compliance also with help of any equal documents, if the sector contracting entity would not refuse to accept them for objective reasons.

(5) If the supplier is not capable of proving full compliance with any qualifications requirements of the sector contracting entities concerning their economic, financial or technical qualifications, and/or their competence to do business, membership of professional self-administration chambers or professional capability, it may prove compliance with such qualifications to the missing extent through their sub-contractor. Suppliers shall not prove compliance with qualification requirements pursuant to § 54(a) through sub-contractors. The provisions of § 51(4)(second sentence) and § 51(4)(third sentence) shall apply by analogy.

(6) If the subject-matter of the public contract should be performed jointly by several suppliers that submit or intend to submit a joint tender to this goal, each supplier shall prove full compliance with qualification requirements; this shall not apply to the economic, financial or technical qualifications or licence to do business, membership of any professional self-administration chamber or any other professional organisation of professional capability whereby it shall suffice to prove compliance with such qualifications jointly by all suppliers. The option of proving compliance with qualification requirements to the missing extent through their sub-contractor pursuant to § 64(5) shall be applied by analogy.

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

§ 65

Time limit for Proving Compliance with Qualification Requirements

(1) In open procedure, suppliers shall prove compliance with qualification requirements within the time limit for submitting tenders. In open procedure involving the setting up of the dynamic purchasing system, suppliers shall prove compliance with qualification requirements together with their submission of the indicative tender at the latest.

(2) In restricted procedure and in negotiated procedure with publication, suppliers shall prove compliance with qualification requirements within the time limit for submitting the requests to participate, and/or within the time limit for confirmation of interest in participating.

(3) In negotiated procedure without publication, suppliers shall prove compliance with qualification requirements within the time limit set out by the sector contracting entities in the invitation for negotiations, and prior to the conclusion of the contract at the latest.

§ 66

Reduction of Numbers of Candidates in Restricted Procedure and in Negotiated Procedure with Publication

(1) If the sector contracting entity has reduced the number of candidates for restricted procedure or negotiated procedure with publication, such selection shall be made from among candidates that have proven compliance with qualification requirements; this shall be done pursuant to one or more objective criteria as per § 66(2) or § 66(4) as stipulated in the notice of commencing the award procedure or in the invitation to confirm interest in participating. Similar specification of objective criteria may also appear in the qualification documentation.

(2) Objective selection criteria pursuant to § 66(1)

- (a) shall be set out in view of the nature, extent, and complexity of the subject matter of public contracts;
- (b) shall be according to the principles as per § 6; and
- (c) shall comply with any of the qualification requirements relating to the financial, economic or technical qualifications as required by the sector contracting entity.

(3) The sector contracting entity shall select the candidates according to the objective criteria pursuant to § 66(2) by ranking the candidates that have proven compliance with the qualification requirements, according to their degree of compliance with such relevant criteria, and then appoint those candidates that have best complied with the relevant criterion. If the candidates have proven compliance with the qualification requirements to an absolutely identical degree or if it is not possible to determine objectively the ranking of such qualified candidates pursuant to this paragraph, the sector contracting authority shall make a random selection by a draw.

(4) The number of candidates may also be reduced pursuant to § 66(1) in an objective manner by a draw, and/or a combination of the objective criteria pursuant to § 66(2) and a random selection by a draw. Such draw shall be performed by the sector contracting authority according to the principles as per § 6. Those candidates shall be entitled to partake in the draw, which are concerned by such draw. The contracting entity shall notify them about the date of such draw at least five days in advance.

(5) The number of candidates selected pursuant to § 66(3) and § 66(4) must comply with the number quoted by the sector contracting entity in the notice of commencing the award procedure or in the invitation to confirm interest in participating.

(6) The provisions of § 61(6) and § 61(7) shall apply to sector contracting entities by analogy.

§ 67

Collateral

(1) The contracting entity may require in the notice of open procedure, restricted procedure, negotiated procedure with publication or competitive dialogue that the tenderers should provide collateral as a guarantee of meeting their obligations resulting from their participation in the award procedure. Collateral shall not be required if the dynamic purchasing system is set up. The absolute amount of such collateral shall be determined by the contracting entity as 2 % of the estimated value of the public contract. The collateral shall be provided by the tenderer by paying a cash amount to the account of the contracting entity (“pecuniary collateral”) or by a bank guarantee.

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

- (a) whose tender has been selected as the most advantageous one or that has become eligible to conclude the contract pursuant to § 82(3), within 7 days of the conclusion of the agreement;
- (b) whose tender has not been selected as the most advantageous and that has not become eligible to conclude the contract pursuant to § 82(3), within 7 days of the delivery of the notice of the selection of the most advantageous tender pursuant to § 81(2);
- (c) that has been excluded from the award procedure, immediately following such exclusion.

(3) The contracting entity shall release the pecuniary collateral including any interest credited by the financial institution.

(4) If the tenderer has submitted any objections and the contracting entity has accepted such objections, the tenderer shall re-pay the pecuniary collateral that had been released by the contracting entity, within 7 days of the delivery of the decision of the contracting entity pursuant to § 111(1). If the tenderer fails to comply with this obligation, the contracting entity may exclude it from the award procedure. If the tenderer has filed a proposal for the commencement of administrative proceeding for the review of conduct of the contracting entity, the tenderer shall re-pay the pecuniary collateral that had been released by the contracting entity, and enclose a receipt testifying to the payment of the collateral to the proposal.

(5) If the collateral should be provided in the form of a bank guarantee, the tenderer shall ensure its validity for the entire term of the award term pursuant to § 43.

(6) The entire paid collateral including interest credited by the financial institution shall be forfeited to the contracting entity if the tenderer, contrary to this Act or tender requirements, should cancel or modify the tender or refuse to conclude the agreement pursuant to § 82(2) and § 82(3). The paid collateral including interest credited by the financial institution may also be forfeited to the contracting entity on the basis of its decision if the tenderer has failed to comply with the obligation of providing the contracting entity with due cooperation towards the conclusion of the contract pursuant to § 82(3). The contracting entity

shall have such decision duly reasoned and delivered without any delay to the relevant tenderer.

Part VI Tenders

§ 68

Content of Tenders

(1) Public contracts may be assigned to suppliers exclusively subject to their submission of tenders, unless stipulated otherwise in this Act.

(2) The tenders shall include the identification data of the tenderers. The tenders shall contain a draft contract signed by a person authorised to act for and on behalf of the tenderers, as well as a declaration signed by a person authorised to act for and on behalf of the tenderers confirming that the tenderers would be bound the entire tenders for the entire award term. The tenders shall also contain other documents as may be required by the Act or the contracting entity. In open procedure and in simplified below-the-threshold procedure, the tenders shall also include documents and information proving compliance with qualification requirements, unless the contracting entity stipulates otherwise; this shall be without prejudice to the provision of § 64(2)(first sentence).

(3) Preliminary tenders in dynamic purchasing system shall contain information relevant for the assessment of whether the supplier meets the conditions for admission in the dynamic purchasing system.

§ 69

Submission of Tenders

(1) Each supplier may submit only one tender. Tenders containing variants pursuant to § 70 shall be deemed a single tender.

(2) Suppliers that have submitted a tender in an award procedure shall not at the same time act as subcontractors to other suppliers in the same award procedure. Suppliers that have not submitted a tender in an award procedure, however, may act as subcontractors to several tenderers in the same award procedure.

(3) If a supplier should submit several tenders either individually or jointly with other suppliers, or submits a tender and at the same time acts as a subcontractor to another supplier in the same award procedure, the contracting entity shall set aside all tenders submitted by such supplier either individually or jointly with other suppliers.

(4) 'Joint tender' means a tender submitted under the terms and conditions as stipulated in § 51(6) jointly by several suppliers. In such cases, all suppliers submitting a joint tender shall be deemed a single tenderer.

(5) Tenders shall be submitted in writing. Tenderers shall submit tenders within the time limit for submitting tenders. Tenders in a hard copy shall be submitted in duly sealed envelopes bearing the name of the public contract and the address for notices pursuant to

§ 71(6). Tenders submitted via electronic means shall be submitted according to the requirements pursuant to § 149.

(6) The contracting entity shall keep records of any submitted tenders, including their order number, date and time of delivery. For the purpose of allocation order numbers of the submitted tenders, the contracting entity shall number individual tenders submitted in a hard copy and tenders submitted via electronic means. The order numbers of all submitted tenders shall be determined by the contracting entity by putting the numerical series of tenders submitted via electronic means before the numerical series of the tenders submitted in a hard copy.

§ 70

Variants of Tenders

(1) Variants of tenders shall be permissible if a public contract is awarded on the basis of the basic contract award criterion of the most economically advantageous tender, and if the contracting entity has allowed such variants in advance in the tender requirements.

(2) If the variants of tenders have been allowed, the contracting entity shall stipulate requirements applicable to such variants in the tender documentation, and/or jointly with any special requirements applicable to the production of the tenders.

(3) Variants of tenders shall not be set aside in the assessment of the tenders due to the reason that a public supply contract would be changed to a public service contract or that a public service contract would be changed to a public supply contract.

Part VII

Chapter 1

Opening of Envelopes with Tenders

§ 71

Opening of Envelopes

(1) The contracting authority shall appoint a committee of at least three members for the opening of envelopes with tenders (“envelope”). Sector contracting entities and contracting authorities awarding public contracts under a framework agreement shall not be required to appoint a committee for the opening of envelopes and all rights and duties relating to the opening of envelopes shall be performed by the contracting entity.

(2) Committee members shall keep confidential any facts that they may have learned in connection with their membership of the committee.

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

(4) Neither the contracting entity nor the committee shall open any envelopes prior to the expiration of the time limit for submitting tenders. The envelopes shall be opened within the time limit set out by the contracting entity, but not later than within 30 days of the expiration of the time limit for submitting tenders.

(5) If the information of the date of the opening of envelopes has not been included in the tender requirements, the contracting entity shall notify the tenderers in writing of the date of the opening of envelopes at least 5 business days prior to the opening of envelopes.

(6) The committee shall not open tenders submitted after the expiration of the time limit for the submission of tenders. The contracting entity shall notify without any delay the tenderers that their tenders have been submitted after the time limit for submitting tenders.

(7) The opening of envelopes may be attended by tenderers whose tenders have been delivered to the contracting entity within the time limit for submitting tenders, and any other persons as appointed by the contracting entity. The contracting entity may require any tenderers present to certify their presence at the opening of envelopes by signing a list of tenderers present.

(8) The committee shall open the envelopes one after another according to their order numbers, and shall check completeness of the tenders, i.e., whether

- (a) the tender is drawn up in the language as required;
- (b) the draft contract and the declaration of the tenderer pursuant to § 68(2) have been signed by a person authorised to act for and on behalf of the tenderer; and
- (c) the tender contains all components as stipulated by law or by the contracting entity in the tender requirements.

(9) Having checked completeness of each individual tender pursuant to § 71(8), the committee shall convey to the tenderers present the identification data of such tenderer and information of whether such tender complies with the requirements pursuant to 71(8).

(10) If the committee finds out that a tender is not complete, the tender shall be set aside. The contracting entity shall exclude without delay any tenderers from the award procedure whose tenders have been set aside by the committee. The contracting entity shall notify the excluded tenderers without any delay and in writing about their exclusion, also giving the reasons.

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

§ 72

Opening of Tenders Submitted via Electronic Means

(1) 'Opening of tenders submitted via electronic means' means the disclosing of their content to the committee. Tenders submitted via electronic means shall be opened by the committee following the expiration of the time limit for submitting tenders until the time limit for opening envelopes pursuant to § 71(4).

(2) In awarding public contracts under the dynamic purchasing system pursuant to § 95, the contracting entity shall open tenders and no committee for the opening of envelopes shall be established.

(3) If the contracting entity, within the time limit for submitting tenders, has been delivered both envelopes with tenders in a hard copy and tenders submitted via electronic means, the committee shall notify all participants at the beginning of the opening of the

envelopes about the data pursuant to § 71(8) that concern tenders submitted via electronic means, and then it would continue to open the envelopes submitted in a hard copy.

(4) If the contracting entity, within the time limit for submitting tenders, has been delivered only tenders submitted via electronic means, the opening of envelopes pursuant to § 71(7) needs not be held. The contracting entity shall announce this fact without any delay.

(5) The committee, while opening the tenders submitted via electronic means, shall be checking, beside provisions as per § 71(8), also the authenticity of the tenders and whether the data message containing the tender has not been manipulated prior to the opening.

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

§ 73

Reports on Opening of Envelopes

(1) The committee shall issue reports on the opening of envelopes or tenders submitted via electronic means. With each of the tenders, the committee shall report the data that have been disclosed to the tenderers present pursuant to § 71(8).

(2) If the committee opens tenders submitted via electronic means, beside provisions as per the previous paragraph, it shall also issue reports on the procedure applied in the opening of the tenders submitted via electronic means and data pursuant to § 72(5).

(3) The report on the opening of envelopes shall be signed by all committee members present. The report on the opening of envelopes, along with the list of participants, shall be attached to the list of tenders. The contracting entity shall allow the tenderers upon request to inspect the report on the opening of envelopes. If no opening of the envelopes pursuant to § 72(4) is held, the contracting entity shall make the report on the opening of envelopes available to the tenderers without any delay via electronic means.

Chapter 2

Evaluation Committee

§ 74

Composition of Evaluation Committee

(1) The contracting authority shall set up an evaluation committee in order to assess and evaluate the tenders in open procedure, restricted procedure, and competitive dialogue and in simplified below-the-threshold procedure, as well as for the preliminary evaluation of tenders in negotiated procedure with publication. If the evaluation committee performs any acts in relation to the suppliers under this Act, they shall be deemed acts performed for and on behalf of the contracting entity.

(2) The contracting authority shall not be required to set up an evaluation committee pursuant to § 74(1) while awarding public contracts under the dynamic purchasing system pursuant to § 95. In such cases, the evaluation shall be performed by the contracting entity applying the automated evaluation method.

(3) The evaluation committee shall have at least 5 members. If it is justified by the subject-matter of the public contract, at least one third of the members of the evaluation committee shall possess the appropriate professional qualifications as required by the subject-matter of the public contract.

(4) Also, a representative of the contracting authority shall be a member of the evaluation committee. Simultaneously with the nomination of the members of the evaluation committee, the contracting authority shall also nominate a substitute member for each member of the evaluation committee. The provisions of this Act relating to the members of the evaluation committee shall apply by analogy to the substitute members.

(5) If the estimated value of public contracts awarded by the contracting authority pursuant to § 2(2)(a) and § 2(2)(b) exceeds the amount of CZK 200 million (without VAT), the evaluation committee shall have at least seven members. If it is justified by the subject-matter of the public contract, at least two thirds of the members of the evaluation committee shall possess the appropriate professional qualifications as required by the subject-matter of public contract. The evaluation committee shall be set up as follows:

- (a) by the minister³²⁾ or any other person acting for and on behalf of the contracting authority pursuant to § 2(2)(a)⁵⁴⁾;
- (b) by the minister superior to the contracting authority pursuant to § 2(2)(b).

(6) If the estimated value of public contracts awarded by the contracting authority pursuant to § 2(2)(a) and § 2(2)(b) exceeds the amount of CZK 500 million (without VAT), the evaluation committee shall have at least nine members. If it is justified by the subject-matter of the public contract, at least two thirds of the members of the evaluation committee shall possess the appropriate professional qualifications as required by the subject-matter of public contract. The evaluation committee shall be set up by the Government at least by the end of the time limit for the submission of tenders, as follows:

- (a) upon a move by persons as stipulated in § 74(5)(a), in case of contracting authorities pursuant to § 2(2)(a);
- (b) upon a move by persons as stipulated in § 74(5)(b), in case of contracting authorities pursuant to § 2(2)(b).

(7) Members of the evaluation committee shall not be biased in any way in relation to the public contract and the tenderers, particularly, they shall not partake in the production of the tenders, they shall have no private interests in the assignment of the public contract, and they shall not be in any private or professional or any other relationship with the tenderers. Members of the evaluation committee shall make written affidavits addressed to the hands of the contracting authority confirming absence of any bias at the beginning of the initial meeting of the evaluation committee or at the beginning of the meeting of the evaluation committee at which such member is present. To this goal, the contracting authority shall notify the members of the evaluation committee, prior to its first meeting, about the identification data of such tenderers that have submitted their tenders.

(8) If any member of the evaluation committee becomes biased in the course of their work, such member shall notify the contracting authority thereof without any delay. In such case, the contracting authority shall exclude such member from the evaluation committee. If the contracting authority is in doubt about any bias on the part of any member of the evaluation committee, it shall act analogically. In such cases, the chair person of the

⁵⁴⁾ § 7(1) Act no. 219/2000 Coll.

evaluation committee shall invite the substitute member to take up the place of the excluded member of the evaluation committee.

(9) The contracting authority awarding public contracts under a framework agreement, and the sector contracting entity shall not be required to establish the evaluation committee and any rights and duties relating to the assessment and evaluation of the tenders shall be performed by the contracting entity.

§ 75

Meetings of Evaluation Committee

(1) The evaluation committee shall elect its chair-person and vice chair-person from among its members at its initial meeting convened by the contracting authority. Each member of the evaluation committee shall be invited to attend the initial meeting at least seven days in advance. Any further meetings of the evaluation committee shall be convened and chaired by its chair-person, or the vice chair-person in the chair-person's absence.

(2) If a member of the evaluation committee is unable to take part in any meeting, they shall report it without any delay to the chair-person, or if not possible, to the vice chair-person, of the evaluation committee, or to the contracting authority if it concerns the initial meeting of the evaluation committee, and they will arrange for the presence of a substitute member.

(3) The evaluation committee may negotiate and adopt resolutions if at least two thirds of its members or their substitute members are present. The evaluation committee shall decide by the majority of votes of all members or substitute members present.

(4) Meetings of the evaluation committee may also be attended by other persons as appointed by the contracting authority or the evaluation committee.

(5) Meetings of the evaluation committee shall be recorded in minutes ("minutes from meetings"). The minutes from meetings shall be signed by all members of the evaluation committee present. If a member of the evaluation committee holds a different opinion as against the opinion of the majority, such differing opinion shall be recorded in the minutes from the meeting, including the reasoning.

(6) Members of the evaluation committee shall keep confidential any facts that they may have learned in connection with their involvement in the evaluation committee. This provision shall apply by analogy also to any other persons invited by the contracting authorities or the evaluation committee to attend such meetings.

Chapter 3

Assessment and Evaluation of Tenders

§ 76

Assessment of Tenders

(1) The evaluation committee shall assess tenders submitted by tenderers, namely whether they meet certain statutory requirements and other requirements of the contracting entity as described in the tender requirements, and also if the tenders submitted by the

tenderers are acceptable pursuant to § 22(1)(d). Tenders that fail to meet such requirements shall be set aside. Unless all variant tenders have been set aside, the tender shall not be deemed set aside. The evaluation committee shall disregard any obvious errors in calculation in tenders as identified during the assessment of tenders, unless they have an impact on the tender price.

(2) The evaluation committee may invite advisors to assist it in the assessment of tenders; such advisors, however, shall not be biased in relation to the public contract or to the tenderers; any such invited advisors shall issue an affidavit to this effect pursuant to § 74(7). The provision of § 74(8) and § 75(6) shall apply by analogy.

(3) In the case of any ambiguity, the evaluation committee may require the tenderers to provide explanation of their tenders in writing. In its request, the evaluation committee shall explain what the ambiguous point of the tender is that the tenderer is required to explain further. The evaluation committee shall set aside such tender if the tenderer fails to deliver such explanation within three business days of the date of delivery of the request for explanation of the tender, unless the evaluation committee determines a longer time limit.

(4) The evaluation committee, following such written explanation of any ambiguities of the tender, may invite the tenderers to attend a meeting of the evaluation committee for the purpose of explaining their tenders. The evaluation committee shall deliver the relevant invitation to such meeting at least five business days prior to its holding.

(5) Upon request by the contracting authority, suppliers in competitive dialogue shall deliver to the contracting authority any additional information intended further to clarify, specify or explain their tender as submitted. The contracting entity, in its request for additional information, shall specify what information relating to the tender needs to be clarified, specified or explained, while setting out a reasonable time limit, however, in the duration of at least five days. Any additional information provided by the tenderer shall not include any alteration of the tender or contradict the invitation to tender.

(6) The tenderer whose tender has been set aside during the assessment of tenders by the evaluating committee, shall be excluded by the contracting authority without any delay from the award procedure. The contracting authority shall notify the tenderer without any delay and in writing about such exclusion, also giving the reasons.

§ 77

Abnormally Low Tender Price

(1) During the assessment of tenders submitted by the tenderers from the point of view of their compliance with the tender requirements, the evaluation committee shall also assess the amount of the tender prices in relation to the individual subject-matter of public contract. If the tender contains an abnormally low tender price in relation to the subject-matter of public contract, the evaluation committee shall request an explanation from the tenderer in respect of those parts of the tender that are relevant for the amount of the tender price; the explanation shall be delivered by the tenderer within three business days of the delivery of the request to the tenderer, unless the evaluation committee determines a longer time limit.

(2) The evaluation committee may take into consideration such explanation of an abnormally low tender price if it is justified by objective reasons, in particular by the following:

- (a) the economics of the construction method or technology, the manufacturing process or the services provided;
- b) the innovative technical solutions chosen or any extraordinarily favourable conditions available to the tenderer for the execution of works or for the supply of the goods or services;
- c) the originality of the work, supplies or services;
- d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed; or
- e) the possibility of the tenderer obtaining State Aid⁵⁵⁾.

(3) The evaluation committee, following the written explanation of the abnormally low tender price, may invite the tenderer to attend a meeting of the evaluation committee for the purpose of detailing the submitted explanation. The evaluation committee shall deliver the relevant invitation to attend such meeting to the tenderer at least five business days prior to its holding.

(4) When assessing such abnormally low tender price, the evaluation committee shall take into consideration the written justification provided by the tenderer, and its explanation.

(5) Where the evaluation committee establishes that the tender price is abnormally low because the tenderer has obtained State Aid, such tender can be set aside on that ground alone only after consultation with the tenderer where the latter is unable to prove to the evaluation committee within a sufficient time limit that the State Aid has been granted according to the legislation of the European Communities⁵⁵⁾. Where the evaluation committee sets aside the tender due to this reason in case of above-the-threshold public contracts, the contracting entity shall inform the European Commission accordingly.

(6) If the tenderer has failed to explain in writing the abnormally low tender price within a set time limit, if it has failed to turn up to provide explanation or if the evaluation committee considers its explanation as insufficient, the tender shall be set aside. The provisions of § 76(6) shall be applied by analogy.

§ 78

Contract Award Criteria

(1) The basic contract award criterion for assigning public contracts (“basic contract award criterion”) shall be as follows:

- (a) economical advantageousness of the tender; or
- (b) the lowest tender price.

(2) The basic contract award criterion in competitive dialogue shall be limited to economical advantageousness of the tender.

(3) The contracting entity shall set out the basic contract award criterion according to the type and complexity of the public contract, and it shall describe it in the notice or invitation to commence award procedure.

⁵⁵⁾ Art. 87 et seq. of the Treaty establishing the European Community.

(4) If the contracting entity decides to assign a public contract according to the basic contract award criterion of the most economically advantageous tender, partial contract award criteria shall always be determined. Such partial contract award criteria must relate to the implementation of the public contract on offer, and – beside the tender price – may include in particular quality, technical standards of implementation of offer, aesthetical and functional qualities, attributes of implementation in view of their effect on environmental protection, operating costs, return on costs, warranty and after-warranty servicing, guaranteed supplies, delivery time limit or completion time limit.

(5) If the basic contract award criterion of the most economically advantageous tender is applied, the contracting entity shall be allocated weights set out as a percentage to the individual partial contract award criteria. The allocated weights may be identical with the individual partial contract award criteria.

(6) The contracting entity shall announce the partial contract award criteria and their weights in the notice or invitation to commence award procedure or in the tender documentation, and/or in the invitation to tender in restricted procedure or in negotiated procedure with publication or in the invitation for negotiations in negotiated procedure without publication, and/or in the invitation to confirm interest in participating or in the competitive dialogue documentation.

(7) If the contracting entity is not objectively in the position of allocating weights to the partial contract award criteria, it shall draw up a list of such partial contract award criteria in the order from the most to the least important one for the contracting entity.

§ 79

Evaluation of Tenders

(1) The evaluation committee shall perform the evaluation of tenders according to the contract award criteria as stated in the documents pursuant to § 78(6). If the basic contract award criterion of the most economically advantageous tender is applied, the evaluation committee shall evaluate the tenders and determine their ranking according to the individual partial contract award criteria and their allocated weights.

(2) In evaluating the tender price, its amount without VAT shall be considered as decisive, unless the contracting entity has determined in the tender requirements otherwise.

(3) If the contracting entity has determined the partial contract award criteria pursuant to § 78(7) in the descending order of importance, the evaluation committee shall evaluate the tenders according to their partial contract award criteria, and justify the allocation of their specific values with each partial evaluation criterion of the tenders in a report from the assessment and evaluation of tenders.

(4) If the basic contract award criterion of the lowest tender price is applied, the evaluation committee shall determine the ranking of the tenders according to their tender price. Prior to the determination of the success ranking of the tenders, the evaluation committee shall consider their tender price pursuant to § 77.

(5) The contracting entity shall decide on a new assessment and evaluation of tenders if it identifies any breach by the evaluation committee of any procedures as per this Act. The contracting entity shall appoint a new evaluation committee in order to perform the new

assessment and evaluation of tenders, and/or it shall perform such new assessment and evaluation of tenders by itself. The contracting entity shall attach a reasoning of any such new assessment and evaluation of tenders to the original report on the assessment and evaluation of tenders. If the new assessment and evaluation of tenders pursuant to this paragraph should be performed by the contracting entity by itself, it shall draw up a report on the assessment and evaluation of tenders pursuant to § 80(1) by analogy.

(6) The evaluation committee shall not perform the evaluation of tenders if it would have to evaluate a tender submitted by one single tenderer.

§ 80

Report on Assessment and Evaluation of Tenders

(1) The evaluation committee shall issue a written report on the assessment and evaluation of tenders also containing a list of the tenders assessed, a list of tenders set aside from the award procedure by the evaluation committee, including reasons thereof, a description of the manner of evaluation of the remaining tenders, including reasons thereof, the results of the evaluation of tenders, information of evaluation of the tenders in respect of the individual contract award criteria, and information of the composition of the evaluation committee. If the evaluation committee did not evaluate the tenders pursuant to § 79(6), the report on the assessment and evaluation of tenders shall not contain information relating to the evaluation of the tenders.

(2) The report pursuant to § 80(1) shall be signed by all members of the evaluation committee that have attended the meeting of the evaluation committee where the evaluation of the tenders was performed. The evaluation committee, immediately upon completion of its mission, shall deliver the report pursuant to § 80(1), together with the tenders and any other documentation relating to its activity, to the contracting entity.

(3) The contracting entity, until the conclusion of the relevant contract, shall allow all tenderers upon request to inspect the report on the assessment and evaluation of tenders and to make an extract or a copy thereof.

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

Part VIII

Termination of Award Procedures

§ 81

Selection of Most Suitable Tenders

(1) The contracting entity shall decide about the selection of the most suitable tender by selecting that tenderer whose tender, according to the contract award criteria, has been evaluated

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

(2) The contracting entity shall send out notices of the selection of the most suitable tender within five business days of the decision pursuant to § 81(1) to all tenderers that have not been excluded from the award procedure.

(3) The contracting entity shall include the following information in the notice of the selection of the most suitable tender:

- (a) the identification data of such tenderers whose tenders have been evaluated;
- (b) the results of the evaluation of tenders clearly indicating the ranking of the tenders;
- (c) justification of the selection of the most suitable tender, if the contracting authority has selected as the most suitable tender one submitted by another tenderer than recommended by the evaluation committee; in such cases, the contracting authority shall also explain what information provided in the tender has been evaluated by the contracting authority in a way different to that taken by the evaluation committee, and how the contracting authority evaluated the tender according to the individual contract award criteria; and
- (d) the number and ranking of the tenders evaluated in negotiated procedure with publication on the basis of negotiations of tenders, and also information from the tenders evaluated in a different way by the contracting entity on the basis of such negotiations and the evaluation of individual tenders according to the individual contract award criteria.

(4) If a public contract is awarded following negotiations with a single invited supplier in negotiated procedure without publication or under a framework agreement concluded with a single tenderer, the provision of § 81(3) shall not apply. In any other cases of negotiated procedure without publication or public contract awarded under a framework agreement, the notice of the selection of the most suitable tender shall also contain information as per § 81(3)(a) and § 81(3)(b).

§ 82

Conclusion of Contract

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

(2) If no objections pursuant to § 110(4) have been submitted within a set time limit, the contracting entity shall conclude the contract with the selected tenderer within 15 days of the expiration of the time limits for raising objections. The contracting entity shall conclude the contract according to the draft contract included in the tender submitted by the selected tenderer, and/or amended pursuant to § 32.

(3) The selected tenderer shall provide the contracting entity with due cooperation as required in order to conclude the contract so that the contract can be concluded within a time limit pursuant to § 81(2). If the selected tenderer refuses to conclude the contract with the contracting entity or if it fails to provide any required cooperation so that the contract can be concluded within a time limit pursuant to § 81(2), the contracting entity may conclude the contract with the tenderer that placed second in the ranking. If the tenderer that placed second in the ranking refuses to conclude the contract with the contracting entity or if it fails to provide any required cooperation for its conclusion, the contracting entity may conclude the contract with the tenderer that placed third in the ranking. The tenderers that placed second or third in the ranking shall provide the contracting entity with any required cooperation in order

to have the contract concluded within 15 days of the date of delivery of the invitation to conclude the contract.

(4) If a framework agreement is to be concluded with several tenderers and any of the selected tenderers refuses to conclude the contract or fails to provide any required cooperation in order to conclude the framework agreement within the time limit as per 82(2), the contracting entity, in order to meet the pre-determined number of parties to the framework agreement, may conclude the framework agreement with another tenderer whose tender has been evaluated. If the contracting entity should not proceed according to the first sentence, or if it cannot conclude the framework contract with the pre-determined number of parties in a manner as described in the first sentence, the framework agreement may be concluded with a lower number of parties; the provision of § 89(2)(first sentence) shall apply by analogy.

(5) The contracting entity shall notify without any delay and in writing about the conclusion of the contract those tenderers who are eligible to conclude the contract pursuant to § 82(3).

§ 83

Notice of Results of Award Procedures

(1) The contracting authority, within 48 days of the conclusion of the contract, shall send out for publication a notice of the results of the award procedure. With sector contracting entities, the time limit makes 2 months. In those cases as described in § 83(4) and § 83(5), the information that is not designated for publication, shall be delivered to the operator of the Public Procurement Information System (“information system”) and/or the Office for Official Publications of the European Communities (“Publication Office”) for statistical purposes.

(2) The contracting entity may send out the notice of the results of the award procedure relating to the dynamic purchasing system in aggregate for the preceding quarter; the contracting authority shall send such aggregate notice within 48 days and the sector contracting entity within 2 months of the end of the relevant calendar quarter.

(3) The contracting entity needs not send out such notice pursuant to § 83(1) if the contract is concluded under a framework agreement.

(4) If the subject-matter of the concluded contract covers provision of any of the services as described in Annex No. 2, the contracting entity shall stipulate in the notice pursuant to § 83(1) upon its dispatch whether it approves its publication.

(5) The contracting entity, upon the dispatch of the notice pursuant to § 83(1), may stipulate that any of the information submitted shall not be published, if the publication of such information would be in breach of special legislation or contrary to public interest or capable of breaching the right to commercial secret of the supplier or impacting on economic competition. Sector contracting entities, upon dispatch of notices pursuant to § 83(1), may stipulate that also information concerning the number of tenders submitted, and suppliers’ identification or prices, should not be published.

(6) If the sector contracting entity concludes the contract using the procedure pursuant to § 23(8)(a), it may limit information of such nature and quantity of services rendered in the notice pursuant to § 83(1) to a general reference to services rendered for the purpose of research and development. If the contract relating to research and development has not been

concluded using the procedure pursuant to § 23(8)(a), the sector contracting entity may limit such information concerning the nature and quantity of services rendered due to protection of its commercial secrets. Sector contracting entities, however, shall ensure that any information published according to this paragraph shall not be more detailed than any information published in the notice or invitation to commence award procedure.

§ 84

Cancellation of Award Procedures

- (1) The contracting entity shall cancel the award procedure without any undue delay, if
 - (a) no tenders, requests to participate or confirmations of interest in participating have been submitted within a set time limit;
 - (b) all suppliers have been excluded from the award procedure;
 - (c) as a result of circumstances anticipated in § 82(3), the contract has not been concluded with the last tenderer in the ranking eligible to conclude such contract; or
 - (d) in negotiated procedure with publication, the last tenderer in the ranking eligible to conclude such contract has failed to submit its amended draft contract pursuant to § 32(5) or the contracting entity has failed to invite the next tenderer in the ranking to submit its amended draft contract pursuant to § 32(5) or an insufficient number of tenders has been submitted or following the assessment of the tenders submitted a lower number of tenders would have to be evaluated than set out by the contracting entity, unless the contracting entity has allowed in the invitation to tender pursuant to § 29(4)(f) that negotiations of tenders may be conducted even with a lower number of tenderers than stipulated in the invitation to tender.
- (2) The contracting entity may cancel the award procedure without any undue delay only if
 - (a) it has stipulated a minimum number of candidates that should submit their requests to participate, or confirmations of interest in participating in restricted procedure, negotiated procedure with publication or competitive dialogue, and such stipulated number has not been met, and/or it has not been met following the assessment of qualifications;
 - (b) the number of candidates invited by the contracting entity to submit tenders in restricted procedure, negotiated procedure with publication or competitive dialogue was lower or equal to the minimum statutory number and tender have been submitted by a lower number of candidates than invited to do so by the contracting entity;
 - (c) the selected tenderer, and/or the tenderer second in the ranking, have refused to conclude the contract or have failed to provide the contracting entity with due cooperation towards its conclusion pursuant to § 82(3);
 - (d) the reasons have no longer existed for continuing the award procedure due to a substantial change in circumstances that has occurred after the commencement of the award procedure and that could not be anticipated or caused by the contracting entity even if considering all circumstances;
 - (e) causes deserving special regard have occurred in the course of the award procedure due to which the contracting entity cannot be justifiably required to continue in the award procedure.
- (3) The contracting entity may cancel the award procedure
 - (a) until the moment of the conclusion of the contract, in the case as anticipated in § 90(2) or if it is not possible to conclude a framework agreement with all selected tenderers; or

(b) until the moment of the decision on the selection of the most suitable tenders, if only one tender has been submitted or if only unacceptable tenders pursuant to § 22(1) have been submitted or would have to be evaluated.

(4) The contracting entity may cancel negotiated procedure without publication, simplified below-the-threshold procedure or proceedings under a framework agreement until the moment of the conclusion of the contract.

(5)) Sector contracting entities may also cancel the award procedure, if this option has been reserved in the notice of commencing the award procedure.

(6) The contracting entity shall not commence the award procedure that has been preceded by an award procedure with a similar subject-matter prior to the cancellation of such preceding award procedure.

(7) The contracting entity shall send out notices of cancellation of the award procedure for publication in the information system pursuant to § 157 within three days of the adoption date of the decision; this duty shall not apply to negotiated procedure without publication and to proceedings under a framework agreement.

(8) The contracting entity shall deliver notices of cancellation of the award procedure within five days of the adoption date of the decision to all known candidates or tenderers, complete with giving the reasons thereof.

§ 85

Written Reports Drawn up by Contracting Entity

(1) The contracting entity shall draw up written reports concerning each above-the-threshold public contract.

(2) Such written report shall contain at least the following information:

- (a) identification data of the contracting entity, the subject-matter of the public contract, and the price agreed in the contract;
- (b) identification data of the selected tenderer, and/or tenderers if the contract is to be concluded with more parties on the tendering side, the justification of the selection of the most suitable tenders and specification what portion of the public contract should be performed through sub-contractors;
- (c) identification data of the candidates or tenderers that have been excluded from the award procedure, including justification of their exclusion, and/or identification data of candidates that have not been invited to tender, to negotiate or to partake in competitive dialogue, including due justification thereof;
- (d) justification of exclusion of tenderers whose tenders contained abnormally low tender prices, if such exclusion took place;
- (e) the reasons for applying competitive dialogue, negotiated procedure with publication or negotiated procedure without publication, if applicable; and
- (f) the reasons for the cancellation of an award procedure if such award procedure has been cancelled.

(3) The contracting entity shall send the written report on request to the European Commission or to the Office.

(4) In the case of public contracts awarded under a framework agreement in proceedings pursuant to § 92, the contracting entity shall send the written report to the operator of the information system within 30 days of the conclusion of the agreement or cancellation of the award procedure.

TITLE THREE

SPECIAL PROCEDURES UNDER AWARD PROCEDURE

Part I

Indicative Notice and Periodic Indicative Notice

§ 86

Indicative Notice Published by Contracting Authorities

(1) The contracting authority shall publish, by an indicative notice, all above-the-threshold public contracts that it intends to award in the next 12 months and in respect of which it intends to reduce the time limits for submitting tenders.

(2) In the case of above-the-threshold public supply contracts and above-the-threshold public service contracts, the contracting authority shall send out the indicative notice pursuant to § 86(1) for publication usually at the beginning of each financial year. The contracting authority shall specify all of the following information in the indicative notice pursuant to § 86(1):

- (a) all product areas of supplies according to the directly applicable legislation of the European Communities⁵⁶⁾ with estimated value being in excess of an equivalent of EUR 750,000; or
- (b) all categories of services, with the exception of services listed in Annex no. 2, with estimated value being in excess of an equivalent of EUR 750,000.

(3) In the case of above-the-threshold public works contracts, the contracting authority shall send out the indicative notice pursuant to § 86(1) for publication usually and without any undue delay following the decision approving the intention to award such above-the-threshold public works contracts. The contracting entity shall specify the subject-matter of the above-the-threshold public works contracts in the indicative notice pursuant to § 86(1).

(4) The contracting entity, instead of publishing the indicative notice pursuant to § 146 and § 147, may publish the indicative notice on the contracting entity profile. In such cases, the contracting authority shall dispatch for publication, via electronic means, a notice of the publication of the indicative notice on the contracting entity profile pursuant to § 146 and § 147. The contracting authority shall not publish the indicative notice on the contracting entity profile prior to the dispatch for publication of the notice pursuant to the second sentence of this paragraph. The date of dispatch of the notice for publication shall be mentioned on the contracting entity profile.

(5) The contracting authority may publish an indicative notice also in case of other above-the-threshold public contracts, although the provision of § 86(2) do not apply to them.

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

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

§ 87

Periodic Indicative Notice Published by Sector Contracting Entities

(1) Sector contracting entities shall publish, by a periodic indicative notice, all above-the-threshold public contracts that they intend to award in the subsequent 12 months and in respect of which they intend to reduce the time limits for submitting tenders.

(2) If the sector contracting entity should state in the periodic indicative notice that it represents an additional periodic indicative notice it needs not repeat the information that has already been included in the previous periodic indicative notice.

(3) Sector contracting entities shall be governed by § 86(2) through § 86(6) by analogy.

§ 88

Periodic Indicative Notice as Way of Commencing Restricted Procedure or Negotiated Procedure with Publication

(1) Sector contracting entities may commence restricted procedure or negotiated procedure with publication by a periodic indicative notice pursuant to § 87.

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

- (a) specification of supplies, services or works that make the subject-matter of the public contract;
- (b) information that the public contract will be awarded by restricted procedure or by negotiated procedure with publication, without any subsequent notice of commencing the award procedure; and
- (c) an invitation on suppliers to indicate in writing their interest in participating in restricted procedure or in negotiated procedure with publication within a set time limit.

(3) Sector contracting entities shall invite in writing all candidates that, on the basis of the invitation in the periodic indicative notice pursuant to § 88(2)(c), have indicated in writing their interest in participating in restricted procedure or in negotiated procedure with publication, to confirm in writing and within a set time limit their interest in participating and at the same time to prove their compliance with the qualification requirements. Sector contracting entities may send out such invitation to confirm interest in participating pursuant to the first sentence of this paragraph not later than 12 months of the publication of the periodic indicative notice.

(4) The written invitation to confirm interest in participating pursuant to § 88(3) shall contain at least the following information:

- (a) quantity and specification of the subject-matter of the supplies, services or works;
- (b) quantity and specification of the subject-matter of all options relating to any connected or subsequent public contracts, and if possible, also a time estimate of the exercise of such options with recurrent public contracts;
- (c) information if it concerns restricted procedure or negotiated procedure with publication;

- (d) identification of commencement and termination of the time limit for the performance of the public contract, if applicable;
- (e) tender documentation or conditions of access to or provision of the tender documentation pursuant to § 48;
- (f) identification data of sector contracting entities;
- (g) economic and financial requirements of sector contracting entities for the qualification of suppliers and other information and documents required by sector contracting entities;
- (h) information of whether such public supply contracts relate to purchases, hire-purchases of goods, lease or rental of goods or purchase of goods for instalments, or any combination thereof; and
- (i) information of the contract award criteria pursuant to § 78, if they have not been mentioned in the periodic indicative notice, the tender documentation or invitation to tender.

(5) Sector contracting entities shall invite in writing all candidates that, on the basis of the invitation pursuant to § 88(4), have confirmed their interest in participating and have complied with the qualification requirements to the required extent, to submit tenders.

(6) The written invitation pursuant to § 88(5) shall contain the provisions pursuant to § 28(5) or § 29(4), unless any of the information has already been provided to the suppliers in the invitation to confirm interest in participating.

(7) The proceedings in restricted procedure and negotiated procedure with publication shall be governed by the rules applicable to the given award procedure, unless this section stipulates otherwise.

Part II Framework Agreements

§ 89

General Provisions of Framework Agreements

(1) The contracting entity, in the notice or invitation to commence award procedure, shall state whether it intends to conclude the framework agreement with one or more tenderers.

(2) If the contracting entity intends to conclude the framework agreement with more than one tenderer, the number of candidates shall not be lower than three. The contracting entity may stipulate in the notice or invitation to commence award procedure the maximum number of candidates with whom the framework agreement may be concluded.

(3) The contracting entity concludes one framework agreement regardless of whether it is concluded with one or more tenderers.

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

(5) The contracting entity, in the notice or invitation to commence award procedure, shall stipulate the term of such framework agreement. The term of such framework agreement concluded by contracting authorities shall not exceed four years, unless a longer term is justified by objective reasons relating, in particular, to the subject-matter of the framework agreement.

(6) Public contracts under a framework agreement shall be awarded as follows:

- (a) pursuant to § 92, if a contracting authority is involved; or
- (b) in negotiated procedure without publication, if a sector contracting entity is involved.

(7) If the number of candidates eligible to perform public contracts under a framework agreement should drop under three during the life of a framework agreement concluded with more than three tenderers, the contracting entity may not award any public contracts under such framework agreement. This shall also apply in the case of framework agreements concluded pursuant to § 90(2) with two tenderers if both of the tenderers are not qualified to perform public contracts under a framework agreement.

(8) When awarding public contracts under a framework agreement, the parties to the framework agreements shall not be allowed to agree any substantial alterations of the terms and conditions as stipulated in the framework agreement.

(9) If the framework agreement is concluded in negotiated procedure with publication, the provision of § 32 shall not apply. If the draft of the framework agreement has been agreed in negotiations with all tenderers eligible to conclude the framework agreement, the modified draft of the framework agreement shall be submitted by the contracting entity following the decision about the selection of the most suitable tender.

(10) Tenderers that are parties to the framework agreement shall not submit a joint tender for the performance of public contracts awarded under a framework agreement. Tenderers that are parties to a framework agreement shall not submit a joint tender with suppliers that are not parties to such framework agreement. Tenderers that are parties to a framework agreement shall not act in awarding a public contract under a framework agreement as subcontractors to other tenderers that are party to such framework agreement.

(11) The contracting entity shall not require proving compliance with the qualification requirements for the tenderer during awarding public contracts under a framework agreement.

§ 90

Selection of Parties to Framework Agreements

(1) Selection of several tenderers for the conclusion of the framework agreement shall be conducted by analogy to the selection of the most suitable tenderer for the awarding of the public contract, and the contracting entity shall select such number of candidates as stipulated in the notice or invitation to commence award procedure.

(2) If the contracting entity is unable to select such number of candidates pursuant to § 90(1) due to a lack of tenders and because the tenders do not comply with statutory requirements or requirements set out by the contracting entity or due to a failure on the part of a sufficient number of candidates to prove compliance with qualification requirements as required, the contracting entity may conclude the framework agreement only with those tenderers that have complied with those requirements. The provision of § 89(2) shall not apply.

§ 91

**Contract Award Criteria Applicable to Awarding Public Contracts
under Framework Agreements**

The contracting entity, when awarding public contracts under a framework agreement, may apply identical contract award criteria as those applied as contract award criteria in awarding the framework agreement. In such cases, a tenderer shall offer the contracting entity at least such terms and conditions for the performance of the public contract as those under which the framework agreement was concluded with that tenderer.

§ 92

Awarding Public Contracts by Contracting Authorities under Framework Agreements

- (1) If a framework agreement is concluded with one sole tenderer
- (a) and all terms and conditions of its performance have been specified in detail in the framework agreement, the contracting authority shall conclude with the tenderer a contract for the performance of the public contract against a written invitation to perform, that represents an offer to conclude such contract, and a written acceptance of such invitation by the tenderer, that represents the acceptance of the offer to conclude the contract; or
 - (b) all of the terms and conditions of performance have not been specified in detail in the framework agreement, the contracting authority shall award the public contract against a written invitation to tender.

(2) In specially justified cases and with regard to the nature of the subject-matter of the performance of the framework agreement, particularly, if the subject-matter has been determined in full or in part pursuant to special legislation, the contracting authority may conclude the framework agreement with more than one tenderer, the framework agreement having to specify in detail the terms and conditions of performance of the public contract, and the tenderer that is required to perform the public contract under such framework agreement shall not be selected on the basis of the contract award criteria as stipulated in the contract. In such cases, the contracting authority shall conclude a contract with the tenderer on the basis of a written invitation to perform, and a written acceptance of such invitation by the tenderer.

(3) If the framework agreement has been concluded with more than one tenderer, the contracting authority shall award the public contract to a selected tenderer upon a prior written invitation on the basis of the contract award criteria that have been:

- (a) specified in detail in the framework agreement;
- (b) specified in the framework agreement in general and their detailed specification appears in the written invitation;
- (c) specified by the contracting authorities in the written invitation, if not specified at all in the framework agreement; or
- (d) specified in a manner according to § 92(3)(a) through § 92(3)(c).

(4) The written call for submitting tenders shall contain, beside a general description of the required performance, provisions pursuant to § 34(2)(a), § 34(2)(b), § 34(2)(g) and § 34(2)(i). In the case of a framework agreement pursuant to § 92(1) and § 82(2), the provision of § 34(2)(i) shall not apply.

Part III
Dynamic Purchasing System

§ 93

Setting Up of Dynamic Purchasing System

(1) For the purposes of awarding public contracts the subject-matter of which covers procurement of regular and commonly available goods, services or works, the contracting entity may set up a dynamic purchasing system in open procedure.

(2) When setting up the dynamic purchasing system and admitting suppliers into dynamic purchasing system, the contracting entity shall proceed according to the rules applicable to open procedure until the moment of the assigning of the public contracts in such dynamic purchasing system.

(3) A dynamic purchasing system may only be set up if this fact is published in the open procedure notice. Such open procedure notice of setting up a dynamic purchasing system represents an invitation to submit indicative tenders. In the open procedure notice of setting up a dynamic purchasing system, the contracting entity shall also publish the Internet address where the tender documentation is available.

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

(5) A dynamic purchasing system shall not exceed four years, excluding exceptional cases duly justified by the contracting entity.

(6) The contracting entity shall provide suppliers with unlimited, full, and direct remote access to the tender documentation, from the publication of the open procedure notice of setting up the dynamic purchasing system until the termination of the dynamic purchasing system.

(7) The contracting entity shall specify at least the following information in the open procedure notice of setting up the dynamic purchasing system and in the tender documentation:

- (a) the type and subject-matter of the public contracts that should be awarded using the dynamic purchasing system;
- (b) conditions for admission in the dynamic purchasing system that shall also specify the qualification requirements applicable to suppliers; this provision shall apply to sector contracting entities only if they require a proof of compliance with qualification requirements;
- (c) the contract award criteria for awarding public contracts in a dynamic purchasing system, if it is suitable in view of the time span until the awarding of public contracts in a dynamic purchasing system;
- (d) information concerning the dynamic purchasing system and any applied electronic equipment; and
- (e) information relating to the submission of indicative tenders.

(8) When using a dynamic purchasing system and in awarding public contracts using such dynamic purchasing system, the contracting entity as well as the suppliers shall apply exclusively electronic means pursuant to § 149.

§ 94

Admission in Dynamic Purchasing System

(1) The contracting entity, for the entire duration of the dynamic purchasing system, shall allow all suppliers to submit indicative tenders.

(2) The contracting entity shall admit those suppliers in the dynamic purchasing system that have complied with the conditions for admission in the dynamic purchasing system and that have submitted indicative tenders according to the requirements of the contracting entity.

(3) The contracting entity shall assess such indicative tenders within 15 days of the date of delivery. The contracting entity may reasonably extend this time limit provided that no invitation to tender has been issued in the mean time.

(4) The contracting entity shall send to the suppliers a decision of admission in or rejection from the dynamic purchasing system within the time limit as stipulated in § 94(3). The contracting entity shall duly justify all decisions of rejection of indicative tenders submitted by suppliers.

(5) The contracting entity, for the entire duration of the dynamic purchasing system, shall allow suppliers to improve their indicative tenders, provided that they will continue to comply with the conditions applicable to admission in dynamic purchasing system.

§ 95

Awarding of Public Contracts in Dynamic Purchasing System

(1) Public contracts shall be awarded using a dynamic purchasing system on the basis of an invitation to tender.

(2) Prior to the dispatch of such invitation to tender using a dynamic purchasing system, the contracting entity shall publish a simplified notice; this provision shall not apply if the public contract is awarded on the basis of a notice pursuant to § 93(3).

(3) The contracting entity shall invite suppliers to submit their indicative tenders by a simplified notice. The time limit for submitting such indicative tenders shall not be shorter than 15 days of the date of publication of the simplified notice. The provisions of § 94(2) through § 94(4) shall be applied by analogy.

(4) The contracting entity shall announce its intention to award public contracts using a dynamic purchasing system to all candidates admitted in the system by an invitation to tender.

(5) A written call for submitting tenders shall contain at least the following information:

- (a) information of access to the tender documentation;
- (b) information of publication of a simplified notice;
- (c) the time limit for submitting tenders;
- (d) the place for submitting tenders;
- (e) information of contract award criteria pursuant to § 78; and
- (f) information of the language of the tenders.

(6) The contracting entity shall not send the invitation to tender to all candidates admitted in the dynamic purchasing system before the assessment of all indicative tenders submitted within the time limit for submitting indicative tenders pursuant to the simplified notice.

(7) The contracting entity shall stipulate in the invitation to tender the time limit for submitting tenders that shall not be shorter than seven days. The contracting entity may formulate more precisely the contract award criteria in the invitation to tender.

Part IV **Electronic Auction**

§ 96

Conditions and Extent of Using Electronic Auctions

(1) In open procedure, restricted procedure, and negotiated procedure with publication or in simplified below-the-threshold procedure, the contracting entity may use electronic auction as a means of evaluation of tenders. In negotiated procedure with publication, the contracting authority may use electronic auction as a means of evaluation of tenders only in the case as stipulated in § 22(1). Electronic auction shall not be used in the case of public works contracts or public service contract the subject-matter of which involves performances relating to intellectual property rights.

(2) The contracting entity may use electronic auction also as a means of evaluation of tenders in the case of public contracts awarded under a dynamic purchasing system or under a framework agreement.

(3) Electronic auction may be used if such fact is published in the notice or invitation to commence award procedure.

(4) The contracting entity using electronic auction shall specify at least the following information in the tender requirements:

- (a) the contract award criteria that can be expressed in figures and their values will be the subject of electronic auction;
- (b) any limits on new values of tenders submitted by tenderers in compliance with the contract award criteria pursuant to § 96(4)(a) to be submitted in the course of electronic auction (“auction value”);
- (c) information to be provided to tenderers in the course of the electronic auction, and/or indication as to when such information would be provided;
- (d) information relating to the process of electronic auction;
- (e) conditions under which tenderers may submit new auction values within electronic auction, in particular, the stipulation of minimum differences applicable to the individual submissions of auction values, if it is suitable in view of their nature; and
- (f) information relating to any applied electronic means and any other technical information required for electronic communication.

§ 97

Course of Electronic Auction

(1) Prior to commencing electronic auction, the contracting entity shall perform assessment and evaluation of tenders and execute a report on assessment and evaluation of tenders pursuant to § 80 (“indicative evaluation”).

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

(3) The invitation published by the contracting entity pursuant to § 97(2) shall contain all information necessary for executing individual connection to the electronic equipment applied for the performance of electronic auction, the date and time of the commencing of the electronic auction. If information pursuant to the first sentence has already been stipulated in the tender requirements, it will suffice if this invitation refers to the tender requirements.

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

- (a) the results of the indicative evaluation of tenders submitted by the relevant tenderer; and
- (b) the mathematic formula to be applied in the course of electronic auction in order to determine the automatic changes of the order when new auction values have been submitted that shall also include all partial contract award criteria published in the notice or invitation to commence award procedure.

(5) Electronic auction shall not be commenced any earlier than two business days after the dispatch of all invitations pursuant to § 97(2).

(6) Electronic auction may be composed of separate periods of time (“auction phases”). The contracting entity shall inform tenderers of the duration of the auction phases and any other details relating to the separate auction phase in the invitation pursuant to § 97(2).

(7) For the entire duration of the electronic auction, the contracting entity shall provide tenderers with information about their topical rankings or about the topical best auction values. The contracting entity may provide also other information of any relating prices or values in a manner as stipulated in the invitation pursuant to § 97(2), provided this has been reserved in the tender requirements. The contracting entity may notify the tenderers, at any time in the course of electronic auction, of the number of participants in the given auction phase. However, the contracting entity shall not disclose the identity of the participants in electronic auction in the course of any of its phases.

(8) Tenderers are entitled to require the contracting entity to provide them with information about auction values submitted by other tenderers, if the contracting entity has allowed for such right in the tender requirements or in the invitation pursuant to § 97(2).

(9) The contracting entity may terminate electronic auction as follows:

- (a) on a predetermined date and hour;
- (b) if no new auction values have been submitted that would meet the requirements for minimum differences for separate submissions; in such cases, the contracting entity may also stipulate a time limit in the invitation pursuant to § 97(2) that has to expire following

- the delivery of the last submission containing a new auction value before electronic auction can be terminated; or
- (c) if the number of the auction phases as stipulated in the invitation pursuant to § 97(2) has been completed.

(10) The contracting entity shall describe the manner of termination of electronic auction in the invitation pursuant to § 97(2). If the contracting entity would elect the manner of termination of electronic auction pursuant to § 97(9)(c), and/or in combination with § 97(9)(b), it shall also determine any required information of the duration of each auction phase in the invitation to participate in electronic auction.

Part V Additional Institutes

§ 98

Awarding Lots of Public Contracts

(1) The contracting entity may divide public contracts into lots if it is allowed by the nature of the subject-matter of such public contract.

(2) If a public contract is divided into lots, the contracting entity shall state this fact in the notice or invitation to commence award procedure, and shall specify the subject-matter of the individual lots of such public contract as well as any other requirements related to the division of the public contract into lots.

(3) If the contracting entity has divided public contracts into lots, it shall specify in the notice or in the invitation to commence award procedure whether suppliers may submit tenders for all or only some lots of such public contracts procurement or only to one lot of such public contract.

(4) If a public contract is divided into lots, the provisions of this Act relating to procedure to be taken by the contracting entity during the award procedure or the rights and duties of suppliers shall apply to each individual lot, unless this Act stipulates otherwise. This shall be without prejudice to the provision of § 13(4).

(5) If the nature of their performance makes it possible to divide the subject-matter of above-the-threshold public supply contracts, public service contracts, and public works contracts into separate lots, the contracting entity may award such lots of supply, service or works contracts according to the procedures applicable to below-the-threshold public contracts, provided that the estimated value of the relevant part, in the case of supply and service contracts, is lower than an amount equal to EUR 80,000, and in the case of works contracts, lower than an amount equal to EUR 1,000,000, and also provided that the overall estimated value of all such awarded lots does not exceed 20 % of the estimated value of the subject-matter of the entire public contract. This shall be without prejudice to the provision of § 19(1).

§ 99

Options

(1) 'Option' means the right of the contracting entity to the provision of additional supplies, services or works the assignment of which has been reserved by the contracting entity in the tender requirements. The contracting entity may exercise options only in respect of those suppliers that have been awarded public contracts.

(2) The contracting entity may award public contracts by exercising its option in negotiated procedure without publication, and/or, if the contracting authority exercises an option in relation to a framework agreement concluded with a single tenderer, also by procedure pursuant to § 92(1), subject to compliance with statutory conditions.

(3) The contracting entity shall not exercise an option if the price payable for the performance of the subject-matter of a public contract while exercising such option would be obviously disproportionate to the part of the estimated value of the performance relating to the option as stipulated prior to the commencement of the original award procedure.

(4) If the contracting entity reserves any options, suppliers shall only quote in their tenders for public contracts tender prices relating to such parts of the performance of the public contract that do not relate to any such options, unless the contracting entity stipulates in the tender requirements otherwise.

(5) The contracting entity, upon the commencing of the award procedure, shall indicate the time of exercise of any such option and specify the basic subject-matter of the performance of the public contract relating to any such option.

§ 100

Tenders Covering Supplies Originating in Third Countries

(1) This provision shall apply to tenders that cover supplies originating in countries with which the European Communities have not concluded international treaties providing for comparable and efficient access for suppliers with registered office or place of residence in the territory of any Member State of the European Union to markets of those countries. This provision shall not prejudice any liabilities of the Czech Republic towards such other countries.

(2) Sector contracting entities may reject tenders to any public supply contracts if the share of the value of supplies originating in countries as specified in the directly applicable legislation of the European Communities⁵⁷⁾ exceeds 50 % of the total value of the supplies contained in the tender.

(3) If two or more tenders are tantamount in view of the contract award criteria, the sector contracting entity shall give priority to such tender that cannot be refused pursuant to § 100(2). Tender prices quoted in such tenders will be deemed tantamount for the purposes of this provision if the price difference does not exceed 3 %.

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

(4) Sector contracting entities need not give priority to any tenders pursuant to § 100(3) if, by the acceptance of such tender, they would have to procure equipment possessing technical parameters different from the parameters possessed by its existing equipment, resulting in a lack of compatibility or in technical obstacles in the operation and maintenance or in unreasonable costs.

(5) The share of supplies originating from countries determined according to the provision of § 100(2) shall not include supplies from countries that, upon the decision of the Council of the European Union, are entitled to enjoy the benefits of the legislation of the European Communities.

§ 101

Advantages Offered to Suppliers that Employ Handicapped People

(1) If so stipulated by the contracting entity in the notice or invitation to commence award procedure, the award procedure may only be participated in by suppliers that operate sheltered workshops or that are involved in employment programmes under which such suppliers employ more than 50 % of handicapped people pursuant to special legislation⁵⁸⁾ out of the total number of the employees of such suppliers.

(2) The fact that a supplier employs more than 50 % of handicapped people pursuant to § 101(1) shall be mentioned by that supplier in the tenders together with certificates or decisions of social security authorities relating to such handicapped people. In the case of sheltered workshops, suppliers shall enclose to their tenders a certificate of or an agreement with the labour office pursuant to special legislation⁵⁹⁾.

(3) If this provision is applied, the option of proving facts pursuant to § 101(2) via third parties shall be excluded.

(4) The list of goods in respect of which the contracting authority pursuant to § 2 is obligated to apply benefits according to § 101(1), § 101(2), and § 101(3) shall be stipulated in implementing regulations.

(5) If suppliers employing more than 25 employees, out of whom more than 50 % are handicapped people⁵⁸⁾, take part in open procedure or restricted procedure for awarding below-the-threshold public supply contracts or below-the-threshold public service contracts, the tender price offered by such suppliers shall be evaluated as the lowest one, if it does not exceed the lowest tender price submitted by the other tenderers, by up to 15 %.

(6) The facts as per § 101(5) shall be proven by the suppliers in respect of each of the four preceding calendar quarters prior to the date of commencing the relevant award procedure. The total number of employees as well as of employees who are handicapped people shall be finally determined by the average quarterly converted number of employees pursuant to special legislation⁶⁰⁾.

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

⁵⁹⁾ § 76 of Act no. 435/2004 Coll.

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

(7) Tender prices offered by suppliers may be evaluated according to § 101(4) solely if the facts pursuant to § 101(5) have been proven in the tender by delivering a certificate issued by the local labour office.

TITLE FOUR

DESIGN CONTESTS

§ 102

Use of Design Contests

(1) This part of the Act applies to contracting entities, if the estimated value of design contests corresponds at least to the financial threshold as stipulated in § 12(3). The contracting authority may proceed pursuant to this title of this Act also if the estimated value of design contests is below such limit.

(2) This title of the Act shall not apply to the holding of design contests

- (a) in such cases when this Act shall not apply to awarding public contracts pursuant to § 18(1)(a) through § 181(1)(c), and § 18(1)(o) through § 181(1)(r);
- (b) in such cases when this Act shall not apply to awarding public contracts pursuant to § 18(1)(i), if contracting authorities are involved;
- (c) in such cases when this Act shall not apply to awarding public contracts pursuant to § 19(2)(a), if sector contracting entities are involved;
- (d) by sector contracting entities in connection with the performance of other than relevant activity pursuant to § 4 or in connection with the performance of relevant activity, if the application of this Act has been excluded in relation to such relevant activity according to § 20.

§ 103

Design Contests

(1) ‘Design contest’ means a procedure taken by a contracting entity aimed at obtaining a design, project or plan (“design”).

(2) The contracting entity shall apply design contests, in particular, in the field of physical planning, architecture, construction and data processing.

(3) The contracting entity shall apply design contests, if

- (a) such contest is followed by the awarding of a public service contract; or
- (b) a selected participant or participants in a design contest are to be awarded prizes or payments on the basis of such contest.

(4) The estimated value of design contests shall be determined as follows:

- (a) pursuant to § 103(3)(a), from the estimated value of the public service contracts awarded following this contest, including in particular the amount of any above-assumed prizes or payments provided to participants in design contests;
- (b) pursuant to § 103(3)(b), from the overall assumed amount of prizes and payments and including in particular the estimated value of public service contracts that the contracting authority may award according to § 27(6), if the contracting entity has not excluded this option in the notice of design contests.

(5) The contracting entity may not restrict participation of candidates in design contests with reference to any territory or its part in any Member State of the European Union.

§ 104

Design Contest Notices and Manner of Communication

(1) Design contests shall be commenced by the publication of design contest notices. The contracting entity shall publish design contest notices using a form according to the directly applicable legislation of the European Communities⁶¹).

(2) The contracting entity shall stipulate in design contest notices a time limit for submitting designs or a time limit within which candidates for participation in a design contest (“candidates for participation”) may submit their requests to participate.

(3) The contracting entity may restrict the number of candidates for participation that should be invited to partake in design contests, by setting out either a minimum or a maximum number of participants in design contests, while defining clear and non-discriminatory criteria for their selection. The number of candidates for participation invited to partake in the contest shall be sufficient for the holding of the contest, if it is not excluded by objective occurrences.

(4) The contracting entity shall ensure communication, delivery and submission of documents or information so that protection of all such documents and information is guaranteed.

§ 105

Course of Design Contests

(1) The contracting entity, not later than on the date of publication of design contest notices, shall make available the contest conditions or facilitate their collection by all candidates for participation.

(2) The contracting entity, for the entire duration of the contest and until the moment of the decision by which a jury nominates the most suitable participant or participants in the design contests, shall ensure anonymity of the submitted designs at least so that the jury in evaluating the designs is not able to match designs and those participants in design contests that have submitted them. The contracting entity shall describe the manner in which it would ensure such anonymity in the contest conditions. If a participant in a design contest fails to comply with the requirements of the contracting entity relating to such anonymity, the contracting entity shall exclude such participant from the design contest and shall notify the excluded participant in the design contest thereof in writing.

(3) The contracting entity shall also ensure that members of the jury should acquaint themselves with the content of the designs within a time limit designated in the contest conditions, but not earlier than following the expiration of the time limit for submitting such designs.

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

(4) The contracting entity shall reject any designs submitted following the expiration of the time limit for submitting design and shall return them to the appropriate candidates for participation.

§ 106

Composition and Decisions of Jury

(1) The designs shall be evaluated by a jury. The contracting entity shall appoint members of the jury for the evaluation of the designs and their substitute members not later than on the last day of the time limit for submitting designs.

(2) The jury shall be composed exclusively of natural persons that must be unbiased in respect of the participants in design contests.

(3) If the participants in design contests are required to meet certain professional qualifications, at least one third of the members of the jury shall also meet similar or identical qualifications. All designs shall be evaluated by identical members of the jury or their substitute members, unless this is not possible in specially justified cases.

(4) The jury shall evaluate the submitted designs against contract award criteria as stipulated in the design contest notice.

(5) The jury shall draft a report describing the manner of evaluation of the designs and their ranking, to be signed by all members of the jury or their substitute members that have been involved in the evaluation of the designs.

(6) The jury may ask additional questions concerning certain aspects of some designs in the reports on the evaluation of the designs pursuant to § 106(5).

(7) The jury shall surrender the report on the evaluation of the designs to the contracting entity. Following the surrender of the report pursuant to the first sentence, the contracting entity shall invite the participants in the design contest to take part in the presentation of the results of the evaluation of the designs. During the presentation of the results of the evaluation, the members of the jury or the contracting entity may discuss any additional question pursuant to § 106(6) with the participants in the design contest. If it is justified by the nature of the subject-matter of the contest, the contracting entity may in absolutely exceptional cases, upon the discussion of the additional questions pursuant to the second sentence, set out a reasonable time limit for a participant in the design contest to provide additional answers or documents. The jury may change the ranking of the designs listed in the report on the evaluation of the designs solely if such provision of additional answers or documents would result in a substantial change in the evaluation of the designs according to the contract award criteria stipulated in the design contest notice.

(8) The contracting entity shall draw up a written report describing the course of the presentation of the results of the evaluation of the designs and any potential discussion of any additional questions pursuant to § 106(7).

(9) The contracting entity shall not be bound by the decision of the jury as shown in the report on the evaluation of the designs, if it has reserved such right in the design contest notice. In the opposite case, the contracting entity shall comply with the decision of the jury.

§ 107

Decision on Selection of Most Suitable Designs

(1) The decision on the selection of the most suitable design or designs shall be the responsibility of the contracting entity. The contracting entity shall notify all participants in the design contest of its decision. If the decision of the contracting entity differs from the decision of the jury, the contracting entity shall justify its decision in a notification. Objections can be submitted according to § 110 and § 111 by analogy.

(2) Following the delivery of the notification of the decision on the most suitable designs, the contracting entity shall allow those participants in the design contest the designs of which have not been selected to collect them.

(3) The contracting entity shall publish the results of the design contest according to § 146 and § 147. The contracting entity shall publish the results of the design contest with help of a form pursuant to the directly applicable legislation of the European Communities⁶¹⁾.

(4) The contracting authority may require that the results of the design contest are not published, if their publication would be in breach of special legislation or contrary to public interest or if it may breach the right of a participant in the design contest in respect of commercial confidentiality of the contest or if it may have an impact on economic competition. Sector contracting entities may stipulate that also such information shall not be published that concerns the number of submitted designs, the identification of participants in design contests or prices.

§ 108

Cancellation of Design Contests

The contracting entity may cancel a design contest at any time until the jury adopts a decision on the most suitable design, if it has reserved so in the design contest notice or in the contest conditions. In such cases, it shall return their designs to the participants in the design contest and publish a notice of cancellation of the design contest in the information system and on the Internet address as stipulated in the design contest notice, and shall facilitate collection of any submitted design by the candidates.

§ 109

Special Provisions Concerning Keeping Design Contest Documentation

If the contracting entity should return their designs to the participants in the design contest pursuant to § 107(2) or § 108, it shall draw up appropriate documentation about such designs to be subsequently kept on records pursuant to § 155.

TITLE FIVE

PROTECTION AGAINST IMPROPER CONDUCT OF CONTRACTING ENTITY

Part I

Objections

§ 110

Extent and Manner of Submitting Objections

(1) In the course of awarding above-the-threshold and below-the-threshold public contracts or a design contest, suppliers are free to submit justified objections with the contracting entity if they have been interested in obtaining certain public contracts and if their rights have been or risk being harmed due to an alleged breach of legislation by a conduct of the contracting entity (“complainer”).

(2) Justified objections may also be submitted by suppliers whom, due to an alleged breach of legislation, the contracting entity refused to admit in the dynamic purchasing system.

(3) Objections shall be delivered by the complainer to the contracting entity within 15 days of the date when the complainer has learned about the alleged breach of legislation by conduct of the contracting entity, however, in any case not later than until the moment of the conclusion of the contract. Until the delivery of the decision of the contracting entity about the objections, the contracting entity shall not conclude the contract or cancel the award procedure.

(4) Objections against decisions about the selection of the most suitable tenders or against decisions of the contracting entity concerning exclusion from award procedure shall be delivered by the complainer to the contracting entity within 15 days of the date of delivery of the notice of the selection of the most suitable tenders for the public contract pursuant to § 81 or the decision concerning exclusion from award procedure. Prior to the expiration of the time limit for submitting objections pursuant to this paragraph, and subject to timely submission of such objections, the contracting entity shall not conclude the contract or cancel the award procedure until the delivery of the decision concerning the objections.

(5) Objections shall be submitted in writing. Due submission of objections conditions the submission of any proposal for the review of conduct of the contracting entity in an identical matter.

(6) The complainer shall specify in the objections exactly who submits them, against what act of the contracting entity they have been submitted, what act is considered to be in breach of the legislation, what injury has been pending or suffered by the complainer as a result of such alleged breach of the legislation, and what remedy the complainer is seeking. In the case of objections pursuant to § 110(3), the complainer shall also specify in the objections any facts substantial for the determination of the moment when it learned about the alleged breach of the legislation by conduct of the contracting entity. The contracting entity shall reject any objections that fail to contain the provisions pursuant to this paragraph and shall inform the complainer thereof without delay and in writing.

(7) Candidates or tenderers may waive in writing the right to submit objections against decisions concerning the selection of the most suitable tenders or against the decision of the

contracting entity about their exclusion from the award procedure; such right to submit objections cannot be waived by candidates or tenderers prior to the origination of such right to submit objections. If candidates or tenderers have waived their right to submit objections, it shall be deemed that the time limit for submitting objections by such candidates or tenderers has already expired.

§ 111

Procedure Applied by Contracting Entities in Reviewing Objections

(1) The contracting entity shall review any submitted objections in full and send to the complainer a written decision of whether the objections have been granted or not, including reasons, within ten days of the delivery of the objections. If the contracting entity grants the objections, it shall also include a decision on remedy.

(2) If the contracting entity should not grant the objections, it shall notify the complainer by a written decision of the complainer's right to submit a proposal with the Office for the commencement of administrative proceeding for the review of conduct of the contracting entity within a time limit pursuant to § 113(3).

(3) The contracting entity shall inform, without any delay and in writing, all tenderers, and if the time limit for submitting tenders has not expired at the time of the processing of the objections, all candidates, of any submitted objections and its relevant decisions thereon.

(4) The contracting entity shall not decide on objections that have been submitted late or that have been withdrawn by the complainer. The contracting entity shall notify the complainer in writing about such circumstances. If the complainer should withdraw its objections, it shall not submit a proposal for the commencement of administrative proceeding for the review of conduct of the contracting entity with the Office in the same case.

(5) If the contracting entity fails to grant the submitted objections within a time limit pursuant to § 111(1), the contracting entity, prior to the expiration of the time limit for submitting a proposal for the commencement of administrative proceeding for the review of conduct of the contracting entity, and if such proposal has been submitted duly and on time, within the time limit of 45 days of the delivery of the objections, shall not conclude the contract or cancel the award procedure. If the contracting entity does not decide on the objections within the time limit pursuant to § 111(1), it shall be deemed that it has not granted the objections. If, prior to the time limit pursuant to § 110(5)(first sentence), the proceeding for the review of conduct of the contracting entity has been discontinued, the ban on concluding the contract or cancelling the award procedure shall be lifted upon the date of such discontinuation of the proceedings.

(6) If the contracting entity finds out in the course of the award procedure that any of its acts were in breach of the law, it shall adopt appropriate remedial measures even if no objections have been submitted against such acts.

Part II
Compliance Supervision

Chapter 1
Supervision over Public Procurement Procedures

§ 112

Execution of Supervision over Public Procurement Procedures

(1) The Office shall execute supervision over compliance with this Act, including reviews of lawfulness of conduct performed by the contracting entity, with the goal of ensuring compliance with the principles as per § 6.

(2) The Office shall

- (a) issue preliminary injunctions;
- (b) decide on whether the contracting entity proceeded according to this Act in awarding public contracts;
- (c) impose remedial measures and penalties;
- (d) review administrative offences;
- (e) check conduct of the contracting entity in awarding public contracts pursuant to special legislation⁶²⁾. This provision shall be without prejudice to the authority of any other bodies executing such checks pursuant to special legislation⁶³⁾;
- (f) fulfil any other tasks if so stipulated in special legislation.

Chapter 2

Proceedings for Review of Conduct of Contracting Entities

§ 113

Commencement of Proceedings for Review of Conduct of Contracting Entities

(1) Proceedings for the review of conduct of the contracting entity shall be commenced with the Office upon a written proposal by the complainer or *ex officio*.

(2) The proposal shall be delivered to the Office, with a copy to the contracting entity, within ten calendar days of the date of delivery to the complainer of the decision by which the contracting entity has not granted the objections.

(3) If the contracting entity has failed to process the objections pursuant to § 111(1), the proposal may be delivered to the Office and to the contracting entity not later than 25 calendar days of the date of dispatch of the objections by the complainer (“proposer”).

⁶²⁾ Act no. 552/1991 Coll., on State control, as amended.

⁶³⁾ E.g., Act no. 166/1993 Coll., on the Supreme Audit Bureau, as amended.

§ 114

Proposal

(1) The proposal may be submitted against all and any acts of the contracting entity that exclude or could exclude the principles as per § 6 and that have caused or risk causing harm to the rights of the proposer, particularly, against:

- (a) the tender requirements;
- (b) the content of a notice or invitation to commence award procedure;
- (c) exclusion of a tenderer from the award procedure;
- (d) decision on the selection of the most suitable tenders;
- (e) use of a certain type of the award procedure.

(2) The proposal, beside the general provisions applicable to submissions⁶⁴⁾, shall also contain an exact identification of the contracting entity, what act is exactly deemed to be in breach of the legislation as a result of which the proposer's rights have been or risk to be harmed, any relevant evidence, and what exactly the proposer has been seeking. The proposal sent to the Office shall also contain a receipt testifying to the delivery of the objections to the contracting entity, and a receipt of payment of deposit pursuant to § 115.

(3) If the proposal lacks any prescribed provisions pursuant to § 114(2) and the proposer fails to remedy it within the time limit set out by the Office, or fails to deliver it to the Office and the contracting entity within time limits pursuant to § 113(2) or § 113(3) or has not been submitted by a duly authorised person or the Office has not material jurisdiction over the decision on the proposal, the Office shall discontinue any commenced proceedings; if there is justified suspicion of a breach of this Act, it shall commence administrative proceedings *ex officio*.

(4) The contracting entity shall send to the Office its opinion on the delivered proposal within seven days of its delivery. It shall also send to it the appropriate public contract documentation together with such opinion.

§ 115

Deposit

(1) Along with submitting the proposal, the proposer shall pay a deposit to the Office in the amount of 1 % of the tender price quoted by the proposer, in every case, though, not less than CZK 50,000 and not more than CZK 2,000,000. If it is not possible to determine the proposer's tender price, the deposit payable by the proposer shall equal CZK 100,000. The Office shall specify its bank details on its Internet page.

(2) The deposit shall represent an income of the State budget if the Office discontinues the proceedings commenced upon the proposal by a final decision pursuant to § 118; otherwise, the Office shall reimburse the deposit to the proposer, together with any interest incurred, within 15 days of the legal force of the decision.

⁶⁴⁾ § 37(2) of the Administrative Code.

§ 116

Parties to Proceedings

The contracting entity, and in proceedings commenced upon a proposal also the proposer, shall be parties to the proceedings; if the matter of the proceedings involves a review of a decision on the most suitable tenders, then also the selected tenderer shall be a party to the proceedings.

§ 117

Preliminary Injunction

(1) The Office, prior to the issuance of the decision pursuant to § 118, within the extent as required and upon a proposal by a party to the proceedings or *ex officio*, and in order to ensure the purpose of the proceedings, may issue the following preliminary injunction in respect of the contracting entity:

- (a) to ban it from concluding a contract in the award procedure; or
- (b) to suspend the award procedure.

(2) The proposal to impose the preliminary injunction, beside the general provisions applicable to submissions⁶⁴⁾, shall also contain the exact identification of the contracting entity, what act is exactly deemed to be in breach of the legislation, as a result of which the proposer is threatened with or has suffered an injury to its rights, any relevant evidence, and what exactly the proposer has been seeking. If the proposal lacks any of the prescribed provisions, the Office shall not impose the preliminary injunction.

(3) The Office shall cancel a preliminary injunction as soon as the reasons for which it was imposed have passed; otherwise it shall expire on the date of legal force of the decision pursuant to § 118.

(4) Any appeals against decisions on preliminary injunctions shall not have a postponing effect.

§ 118

Remedial Measures

If the contracting entity fails to comply with the procedure as stipulated for the assignment of public contracts, if such conduct has or could have substantially affected the selection of the most suitable tenders, and the relevant contract has not yet been concluded, the Office shall impose remedial measures by having cancelled the assignment of the public contract or only any single act performed by the contracting entity, or otherwise suspend the proceedings.

§ 119

Costs of Proceedings

(1) Unless stipulated otherwise in this Act, the Office and the parties to the proceedings shall bear their own costs of the proceedings.

(2) The decision of the Office pursuant to § 118 shall also contain a decision concerning the duty of the contracting entity to pay the costs of the administrative proceedings (“costs of proceedings”). The costs of proceedings shall be paid out by a lump sum as stipulated in implementing regulations.

(3) Due to reasons deserving special consideration, the duty to pay the costs of proceedings pursuant to § 119(2) can be waived in full or in part.

Chapter 3 **Administrative Offences**

§ 120

Specification of Administrative Offences, Penalties for Administrative Offences

(1) The contracting entity shall have committed an administrative offence as follows:

- (a) if it fails to comply with the procedure stipulated in this Act for the awarding of public contracts, and if such conduct has or could have substantially affected the selection of the most suitable tenders, and it has concluded the contracts with a tenderer pursuant to § 82;
- (b) if it cancels the award procedure if the conditions pursuant to § 84 have not been duly met;
- (c) if it fails to draw up or keep the relevant public contract documentation pursuant to § 109 and § 155; or
- (d) if it fails to comply with its duty for publication pursuant to § 146 and 147.

(2) Such administrative offences shall attract penalties as follows:

- (a) up to 5 % of the price of the contract or up to CZK 10,000,000, if the price of the contract has not been quoted, in the case of administrative offences pursuant to § 120(1)(a);
- (b) up to CZK 10,000,000, in the case of administrative offences pursuant to § 120(1)(b), § 120(1)(c) or § 120(1)(d).

(3) The amount of the penalty pursuant to § 120(2) shall double if the contracting entity commits such administrative offence pursuant § 120(1) repeatedly. An administrative offence shall be committed repeatedly if less than five years have passed since the date of commitment of any previous administrative offence pursuant to § 120(1).

§ 121

Joint Provisions Relating to Administrative Offences

(1) The contracting entity that is a legal entity shall not be liable for administrative offences if it is capable of evidencing that it has exerted its utmost efforts that it can be required to exert in order to avert such breach of law.

(2) In determining the penalty assessable on the contracting entity that is a legal entity, it is necessary to consider the momentousness of the administrative offence, particularly, the manner of its commitment and consequences.

(3) Liability of a contracting entity that is a legal entity for an administrative offence shall expire to the extent the Office fails to commence the relevant proceedings within five years of the date when it became aware of it, in any case within ten years of the date of its commitment.

(4) Administrative offences under this Act shall be dealt with by the Office in the first instance.

(5) Liability for acts performed in respect of or in direct connection with business activities pursued by a natural person⁶⁵⁾ shall be governed by the provisions of this Act relating to liability and recourse applicable to contracting entities that are legal entities.

(6) Penalties shall be collected and recovered by the Office. The income from such penalties constitutes the income of the State budget.

Chapter 4 **Joint Provisions Relating to Supervision**

§ 122

Confidentiality and Protection of Commercial Confidentiality

(1) Employees of the Office as well as those in charge of tasks falling under its authority shall be obliged to keep confidential all facts that they have learned in the course of the execution of their jobs. Such confidentiality duty shall not apply if such persons are required to provide testimony of such fact before law enforcement authorities and before courts, and/or if they have been invited by such authorities or courts to provide a written testimony⁶⁶⁾. Confidentiality duty on the part of employees of the Office shall be without prejudice to the provision of data and information by the Office pursuant to special legislation⁶⁷⁾.

(2) If the Office should learn anything that constitutes commercial secrets, it shall take measures in order to prevent any breach of such commercial confidentiality.

§ 123

Publication of Final Decisions of Office

The Office shall concurrently publish its final decisions under this Act on its Internet address.

Part III **Conciliation**

§ 124

Conciliation

(1) Any suppliers that are now or that have been at any time before interested in winning above-the-threshold public contracts and that, as a result of any alleged breach of this Act or any laws of the European Communities in the field of public contracts caused by any conduct of any sector contracting entities, are threatened with or have suffered an injury to their rights (“applicant”) may apply in writing for conciliation with the European Commission or the

⁶⁵⁾ § 2(2) of the Commercial Code.

⁶⁶⁾ Act no. 141/1961 Coll., on Penal Proceedings (Penal Code), as amended.

⁶⁷⁾ E.g., Act no. 337/1992 Coll., on the administration of taxes and charges, as amended, Act no. 106/1999 Coll. governing free access to information, as amended.

Office. The Office shall immediately advance any such application submitted to it to the European Commission.

(2) In conciliation before the European Commission that shall only be commenced with the consent of the contracting entity,

- a) each party, upon having approved the arbitrator proposed by the European Commission, shall each nominate another arbitrator;
- b) each party may terminate such conciliation at any time;
- c) each party shall bear the costs incurred in connection with such conciliation, unless the parties agree otherwise, with the exception of those procedural costs that should be borne by both parties equally.

(3) If a proposal pursuant to § 114 has been submitted in the course of any conciliation by any party other than the supplier that has applied for the conciliation, the contracting entity shall inform the arbitrators thereof.

(4) Any other matters in relation to conciliations at the level of the European Commission shall be governed by the legislation of the European Communities⁶⁸⁾.

TITLE SIX

LIST OF QUALIFIED SUPPLIERS, SYSTEM OF CERTIFIED SUPPLIERS, LIST OF FOREIGN SUPPLIERS

Part I

List of Qualified Suppliers

§ 125

Keeping List of Qualified Suppliers

(1) The list of qualified suppliers ("list") belongs to the information system.

(2) The list contains suppliers that have requested registration in the list and have proven compliance with the basic qualification requirements pursuant to § 53(1) and the professional qualification requirements pursuant to § 54.

(3) The list is accessible to the general public, also by remote access.

(4) Remote access to the list is free.

(5) The Ministry shall notify the European Commission and other Member States of the European Union of the address of the location where applications for the registration in the list are accepted.

§ 126

Data Recorded in List

The list shall contain the following information about suppliers:

⁶⁸⁾ Art. 9, 10, and 11 of Council Directive 92/13/EEC.

- a) business name or name and address of the supplier, if it is a legal entity;
- b) name and surname, and/or business name, and the place of business, and/or permanent residence, if it is a natural person;
- c) legal form of a legal entity;
- d) registration number, if assigned;
- e) name and surname of the statutory body or all of its members or name and surname of the statutory body or all members of the statutory body of the person that acts as the statutory body or a member of the statutory body of the supplier, and/or also name and surname of any other person, if the supplier so requests, and the manner of their acting for and on behalf of the supplier;
- f) object of business or any other activity applicable to the registration in the list;
- g) a list of documents by which the supplier has proven compliance with both basic and professional qualification requirements, and if it concerns
 1. a business licence, the list shall contain the enumeration of any relevant licences;
 2. documents pursuant to § 54(c), the list shall contain the name of the professional self-administration chamber or any other professional organisation that has issued the document;
 3. documents pursuant to § 54(d), the list shall contain information of the type of professional capability;
- h) date of submission of the application for registration in the list;
- i) date of registration in the list;
- j) date of the latest update of the information in the list; and
- k) if required, information pursuant to § 130(8).

§ 127

Proving Compliance with Qualification Requirements by Extract from List

(1) If the supplier delivers to the contracting authority an extract from the list within a time limit for proving compliance with qualification requirements, such extract shall replace such proof of compliance with the following:

- a) basic qualification requirements pursuant to § 53(1); and
- b) professional qualification requirements pursuant to § 54 to such extent, to which documents proving compliance with such professional qualification requirements cover the requirements of the contracting authority for proving compliance with professional qualification requirements for the performance of public contracts.

(2) Sector contracting entities shall recognise such extract from the list as a means of proving compliance with qualification requirements provided that the information contained in the extract cover the requirements set out by them for proving compliance with qualification requirements stipulated by sector contracting entities, and/or their parts.

(3) The contracting entity, beside the extract, may also require the submission of documents proving compliance with qualification requirements pursuant to § 53(1)(f) through § 53(1)(h), if it has reserved such right in the notice or invitation to commence award procedure.

(4) The contracting entity shall recognise such extract from the list if the extract is not older than three months as of the last day of the time limit for proving compliance with qualification requirements.

§ 128

Issuance of Extract from List

(1) The list operator (§ 132) shall issue an extract from the list relating to any supplier registered in the list to whoever requests such extract, and pays the administrative fee pursuant to special legislation⁶⁹⁾.

(2) The list operator shall issue such extract within five calendar days of the date of delivery of such request.

(3) Extracts can be issued in a hard copy or in electronic format guaranteed with an electronic signature based on a qualified certificate or electronic mark based on a qualified system certificate.

(4) Extracts from the list shall contain information according to § 126.

(5) Extracts from the list shall be issued in the Czech language.

§ 129

Registration in List

(1) Suppliers that wish to be registered in the list shall request such registration in the list and prove compliance with qualification requirements pursuant to § 125(2). Registration in the list shall be subject to an administrative fee pursuant to special legislation⁶⁹⁾.

(2) Documents proving compliance with the basic qualification requirements by the supplier and documents proving compliance with the professional qualification requirements pursuant to § 54(a) shall not be older than 90 days as on the date of submission of the request.

(3) All documents shall be submitted in original or notarised copies.

(4) The list operator shall register such suppliers in the list that have complied with the provisions stipulated in this Act.

(5) The list operator shall also register in the list international suppliers that have requested such registration and that have proven compliance with qualification requirements pursuant to § 125(2) to the similar extent. As far as proving compliance with qualification requirements by international suppliers is concerned, the provisions of § 51(7) shall apply by analogy. The list operator shall not require from any international suppliers any documents proving compliance with qualification requirements in excess of those required from Czech suppliers.

(6) Requests for registration shall be submitted in the Czech language. The provisions of § 51(7) shall apply by analogy.

⁶⁹⁾ Act no. 634/2004, on Administrative Charges.

§ 130

Changes to List

(1) Suppliers need not prove compliance with basic qualification requirements and professional qualification requirements repeatedly, unless § 130(2), § 130(4), § 130(5) or § 130(6) stipulate otherwise.

(2) In the case of any change in any information registered in the list in respect of any supplier that would otherwise result in its failure to prove compliance with basic qualification requirements or professional qualification requirements, the supplier shall submit a request for an amendment of the records in the list within 15 days of the date of such change; the supplier shall also submit any required documents proving compliance with basic qualification requirements or professional qualification requirements to which such change applies. If the supplier fails to meet such obligation pursuant to this paragraph, it shall be deemed that such supplier is no longer registered in the list commencing on the date of such change; this provision shall also apply in cases that an extract from the list has been issued to the supplier following the occurrence of such change.

(3) If the list operator comes to the knowledge that a supplier has failed to notify a change in the information recorded in the list pursuant to § 130(2), it shall commence proceedings for the deletion of the supplier from the list.

(4) Suppliers registered in the list shall notify the list operator in writing at the beginning of the relevant calendar year, but not later than on or before 31 March, that no information recorded in the list has changed. If a supplier fails to comply with this obligation, it shall be deemed that the supplier is no longer registered in the list commencing on 1 April of that year.

(5) Suppliers shall submit documents within the time limit as per § 130(4) proving compliance with the basic qualification requirements pursuant to § 53(1)(f) through § 53(1)(h). If a supplier fails to comply with this obligation, it shall be deemed that the supplier is no longer registered in the list commencing on 1 April of that year.

(6) Suppliers registered in the list may at any time request amendment of the information contained in the list. In such cases, it shall be preceded by analogy as in the case of requests for registration; the information contained in the list shall not be affected thereby if the supplier has not requested such relevant information to be amended.

(7) Registration of amendments in the information contained in the list shall be subject to administrative fee pursuant to special legislation⁶⁹⁾.

(8) The list operator, as of the date of delivery of the relevant request for registration of a change in the information contained in the list or as of the date of commencement of proceedings for the deletion of such supplier from the list, shall record such fact in the list.

§ 131

Deletion from List

- (1) The list operator shall delete a supplier from the list if
- a) it finds out that the supplier does not meet the conditions for registration in the list;

- b) it finds out that the supplier has requested registration on the basis of documents or information that have proven untruthful or incomplete; or
- c) the supplier has requested its deletion.

(2) The list operator shall delete the supplier from the list in the case of any of the occurrences pursuant to § 130(2), § 130(4) or § 130(5).

§ 132

List Operator

(1) The function of the list operator shall be executed by the Ministry or any other legal entity so authorised by the Ministry pursuant to special legislation⁷⁰⁾.

(2) The list operator shall maintain confidentiality of all data and information that have been disclosed to it in connection with the keeping of the list, with the exception of data and information that shall be disclosed according to this Act.

Part II

System of Certified Suppliers

§ 133

System of Certified Suppliers

(1) The system of certified suppliers shall allow, under the conditions stipulated in § 134, to replace a proof of compliance with qualification requirements or any part thereof, by the supplier, with a certificate issued by an accredited body⁵¹⁾ (“certification body”).

(2) The Ministry shall notify the European Commission and other Member States of the European Union of the names and identification data of administrators of approved systems of certified suppliers.

§ 134

Proving Qualifications by Certificate

(1) If a supplier submits to the contracting authority a certificate issued within the system of certified suppliers and containing the provisions as stipulated in § 139 within the time limit for proving compliance with qualification requirements, and the information in the certificate is valid at least on the last day of the time limit for proving compliance with qualification requirements (§ 52), such certificate shall replace to the extent as stipulated in it a proof of compliance with qualification requirements by the supplier.

(2) Sector contracting entities shall recognise such certificates as a means and proof of compliance with qualification requirements within the appropriate extent provided that the information contained in the certificate complies with the requirements applicable to such proof of compliance with qualification requirements stipulated by sector contracting entities or any part thereof.

⁷⁰⁾ § 2(d) of Act no. 365/2000 Coll., on Public Administration Information Systems, and amending certain other legislation.

§ 135

Approval of System of Certified Suppliers

(1) The system of certified suppliers shall be approved by the Ministry upon request submitted by a legal entity that manages such system of certified suppliers (“system manager”). The approval procedure shall be subject to administrative fee pursuant to special legislation⁶⁹.

(2) Such request to be submitted by the system manager shall also be appended with documents describing the system of certified suppliers and stipulating its rules of operation (“system rules”).

(3) The Ministry shall approve the system of certified suppliers if the system meets the conditions stipulated by law and the system rules comply with the provisions as per § 136.

(4) The system manager shall ensure that the system of certified suppliers continuously meets the conditions stipulated by law.

(5) The Ministry shall keep a list of approved systems of certified suppliers within its information system.

§ 136

System Rules

The system rules shall contain at least the following information:

- a) name of the system of certified suppliers;
- b) identification data of the system manager;
- c) organisational structure of the system of certified suppliers;
- d) specification of the type and/or categories of the public contracts to which the system of certified suppliers applies;
- e) specification of the professional qualification requirements, economic and financial qualification requirements, and technical qualification requirements, compliance with which will be evaluated within the system of certified suppliers;
- f) identification of documents to be required as a proof of compliance with the qualification requirements pursuant to § 136(e), and the basic qualification requirements;
- g) procedures applied in the assessment of qualifications by the certification body;
- h) rules governing the issuance, amendments, and removal of certificates; and
- i) the Internet address of the register of certified suppliers.

§ 137

Changes and Cancellation of System of Certified Suppliers

(1) Procedures applicable to changes of the system of certified suppliers shall be governed by § 135(1) though § 135(4) by analogy.

(2) If the Ministry finds out that the system of certified suppliers fails to meet certain statutory conditions or that the conditions for its approval have changed, the system manager shall be requested to remove such identified defects and prove their removal to the Ministry.

Unless the system manager removes such defects within a set time limit, the Ministry shall decide without delay about the cancellation of such system of certified suppliers.

(3) If the system manager decided to cancel the system of certified suppliers, it shall notify thereof the Ministry in writing. In such cases, the system of certified suppliers shall be cancelled as of the date of delivery of such notice to the Ministry, unless the system manager specifies any later date.

(4) In the case of any cancellation of the system of certified suppliers, the relevant certificate shall remain in force until the expiration of the term of its force as stipulated in the certificate, unless the circumstances for the issuance of the certificate have changed.

§ 138

Conditions for Certificate Issuance

(1) The issuance of the certificate shall be conditioned by proving full compliance with the basic qualification requirements with help of documents pursuant to § 53(2), and proving compliance with the professional qualification requirements, economic and financial qualification requirements or technical qualification requirements to the extent as stipulated in the system rules with help of documents pursuant to § 54, § 55(1) and § 55(2) or § 56(1) through § 56(5).

(2) Documents proving compliance with the basic qualification requirements by the supplier, and documents proving compliance with the professional qualification requirements pursuant to § 54(a), shall not be older than 90 days upon the date of submission of the request for the certificate.

(3) All documents shall be submitted to the certification body in original or notarise copies.

(4) The system manager may stipulate that a supplier needs no prove any facts during a repeated request for certificate that have not changed since the previous certification process. However, suppliers shall always submit at least an affidavit concerning such facts.

(5) The provisions of § 129(5)(last sentence) and § 129(6) shall apply by analogy.

§ 139

Certificate

(1) The certificates shall contain at least the following information:

- a) identification data of the certification body that has issued the certificate;
- b) name of the system of certified suppliers;
- c) identification data of the system manager of the system of certified suppliers;
- d) business name or name and address of the supplier, if it is a legal entity;
- e) name and surname, and/or business name, and place of business, and/or permanent residence, if it is a natural person;
- f) legal form of legal entity;
- g) registration number, if assigned;

- h) name and surname of the statutory body or all of its members or name and surname of the statutory body or all members of the statutory body of the person that acts as the statutory body or a member of the statutory body of the supplier, and/or also name and surname of any other persons, if the supplier so requests, and the manner of their acting for and on behalf of the supplier;
- i) objects or line of business or any other activity to which the certificate applies;
- j) type, and/or category of public contracts to which the certificate applies;
- k) list of documents applied by the supplier in order to prove compliance with the basic and professional qualification requirements, subject to the following:
 - 1. if it concerns licence to the business, the list shall contain an enumeration of all relevant business licences;
 - 2. if it concerns a document pursuant to § 54(c), the list shall contain the name of the professional self-administration organisation that has issued the document;
 - 3. if it concerns a document pursuant to § 54(d), the list shall contain information about the type of professional capability;
- l) information of which qualification requirements have been proven pursuant to § 55 and § 56, including information about any achieved level of proof of qualifications in respect of any individual qualification requirements;
- m) date of issue of the certificate;
- n) validity date of the certificate; and
- o) signature of the person authorised to act for and on behalf of the certification body.

(2) The certificate may be issued in a hard copy or in electronic format with guaranteed electronic signature pursuant to a qualified certificate.

(3) The certificate shall be issued in the Czech language.

§ 140

Validity of Certificate

(1) The certificate shall be valid one year of its issuance.

(2) In the case of any change of circumstances for the issuance of the certificate on the part of the supplier that would otherwise result in its failure to prove compliance with the qualification requirements to the extent as stipulated, the supplier shall – within 15 days of the date of such change – notify the certification body about such circumstances and at the same time submit any required documents proving compliance with the relevant qualification requirements; in the opposite case, the certification body shall decide on the removal of the certificate, and/or its alternation, if such change in circumstances for the issuance of the certificate has only occurred in respect of some of the qualification requirements compliance of which has been proven by the supplier.

(3) The certification body shall further decide on the removal of the certificate if it finds out that the supplier:

- a) fails to meet the conditions for the issuance of the certificate; or
- b) has requested registration on the basis of documents or information that has proven untruthful or incomplete.

(4) The supplier may request an alteration of the certificate at any time. In such cases, procedures shall be applied by analogy as in the case of requesting repeatedly such certificate.

§ 141

Obligations of Qualification Certification Authorities

The qualification certification authorities shall,

- a) prior to commencing any activity, notify the system manager of their acquisition of the relevant accreditation, together with submitting the relevant certificate of accreditation;
- b) notify without any undue delay any changes in its accreditation, its suspension or removal;
- c) deliver issued certificates to the system manager within time limits and in a manner as stipulated in the system rules of system of certified suppliers;
- d) notify the system manager without any undue delay of any removal of any certificates from any suppliers.

§ 142

Register of Certified Suppliers

(1) The system manager shall keep the following records in the register of certified suppliers (“register”):

- a) records of qualification certification authorities;
- b) records of certified suppliers; and
- c) records of issued certificates.

(2) The system manager shall publish the existing wording of the system rules in the register.

(3) The register shall be open to the general public in a manner allowing for remote access.

(4) Remote access of the register shall be free.

(5) The system manager may publish any issued certificate or their part in the register.

(6) The Ministry shall publish reference/link to the register in the information system.

Part III

LIST OF FOREIGN SUPPLIERS

§ 143

Acceptance of Extracts from Foreign Lists of Suppliers

(1) The contracting entity, subject to conditions stipulated in § 143(2), shall accept extracts from foreign lists of qualified suppliers (“foreign list”), and/or any applicable foreign certificates issued in countries that belong to the European Economic Area or any other country if so stipulated in international treaties concluded by the European Community or the Czech Republic. The provisions of § 51(7)(fourth sentence) shall apply by analogy.

(2) The contracting entity may accept extracts from foreign lists or foreign certificates from foreign suppliers only if such foreign suppliers have their registered Office or place of business, and/or place of residence, in that country that has issued the extract from foreign list or foreign certificate.

(3) If, according to an extract from a foreign list or a foreign certificate, a foreign supplier has proven compliance with the following:

- a) basic qualification requirements that are analogical in the relevant country to qualification requirements pursuant to § 53(1);
- b) professional qualification requirements that are analogical in the relevant country to qualification requirements pursuant to § 54;
- c) economic and financial qualification requirements that are analogical in the relevant country to qualification requirements pursuant to § 55(1)(b) and § 55(1)(c); or
- d) technical qualification requirements that are analogical in the relevant country to qualification requirements pursuant to § 56(1) in the case of supplies, pursuant to § 56(2)(a), § 56(2)(c) through § 56(2)(i) in the case of services, and pursuant to § 56(3)(a) through 56(3)(c) and 56(3)(e) and 56(3)(f) in the case of works;

such extracts from foreign lists or foreign certificates shall replace, under the conditions stipulated in § 143(4), compliance with qualification requirements pursuant to the above-described provisions of this paragraph, and/or compliance with its relevant part. The contracting entity, beside extracts from a foreign list or foreign certificates, may also require submission of documents proving compliance with qualification requirements pursuant to § 53(1)(f) through § 53(1)(h), if it has reserved such right in the notice or invitation to commence award procedure.

(4) Extracts from foreign lists shall not be older than 3 months. Foreign certificates must be valid as of the last day of the time limit for proving compliance with qualification requirements.

(5) Extracts from foreign lists or foreign certificates shall not be accepted as documents for the registration in the list of qualified suppliers or the issuance of certificates in the system of certified suppliers.

Part IV

Administrative Offences in Proving Compliance with Qualifications

§ 144

Administrative Offences

(1) Suppliers shall commit administrative offences by submitting to the contracting entity, as a proof of compliance with qualification requirements,

- (a) an extract from the list, in the case of changes of any information registered in the list that can result in a failure to prove compliance with basic qualification requirements or professional qualification requirements, and the supplier has failed to comply with its duties pursuant to § 130(2);
- (b) a certificate issued within the system of certified suppliers, in the case of changes of any circumstances for the issuance of the certificate, that can result in a failure to prove compliance with qualification requirements stipulated in the certificate, and the supplier has failed to comply with its duties pursuant to § 140(2).

(2) A penalty in the amount of up to CZK 10,000,000 shall be imposed for such administrative offence pursuant to § 144(1).

§ 145

Proceedings Concerning Administrative Offences in Proving Compliance with Qualifications

(1) Proceedings concerning administrative offences in proving compliance with qualifications pursuant to § 144 shall be commenced upon a written proposal submitted by the relevant contracting entity, and in the case of administrative offences pursuant to § 144(1)(b) also upon a proposal submitted by the system manager or *ex officio*.

(2) The provisions of § 121 shall be applied by analogy.

TITLE SEVEN

JOINT PROVISIONS

§ 146

Publication

(1) If this Act contains the duty to publish notices of commencing award procedure, indicative notices, periodic indicative notices, design contest notices, notices of the results of the award procedure, notices of cancellation of award procedures or design contests or any other information (“notification”), this shall mean their publication as follows:

- a) in the information system pursuant to § 157, in the case of below-the-threshold public contracts;
- b) in the information system pursuant to § 157 and in the Official Journal of the European Union (“Official Journal”), in the case of above-the-threshold public contracts; in the case of public service contracts pursuant to Annex no. 2, however, only notices of the results of award procedures or notices relating to design contests shall be published in the Official Journal.

‘Publication of notification’ means the publication of all information contained in the notification as delivered by the contracting entity.

(2) The contracting entity shall execute such publication of notification with help of standard forms according to the directly applicable legislation of the European Communities⁶¹⁾, and in the case of notices of cancellation of award procedures or design contests, with help of standard forms as stipulated in implementing regulations. In the case of indicative notices and periodic indicative notices, the contracting entity shall mention in the notification only that information that is available at the moment of dispatch of the notification for publication.

(3) The contracting entity shall be required to prove the date of dispatch of such notification for publication in the information system, and/or in the Official Journal. The information system operator shall issue receipt of publication of the notification in the information system to the contracting entity. If the information system operator, upon request from the contracting entity, has also dispatched the notification for publication in the Official Journal, the receipt shall also contain the date of such dispatch of the notification to the Publication Office.

(4) Operators of the sub-system of the information systems that takes care of the publication of notifications in the information system shall be appointed by the Ministry on the basis of an authorisation. The Ministry shall approve the rules of operation of such

operator of the sub-system of the information system pursuant to this paragraph, as well as the prices to be paid by contracting entities to the operator for the publication of their notifications. Decisions on the authorisation of operators of the sub-system of the information system shall be published by the Ministry in the form of a communication in the Collection of Laws.

(5) The list of mandatory information to be published in standard forms that are used for the publication of notifications, the manner of publication of notifications relating to below-the-threshold public contracts, model forms of notices of cancellation of award procedures or design contests, types of standard forms, procedures applicable to the amending of information in published notifications, access to published notifications, methods of delivery of such notifications and procedures in remedying defects of notifications and defects of performance on the part of operators of the sub-system of the information system pursuant to § 146(4) shall be stipulated in implementing regulations.

§ 147

Methods of Publication

(1) The contracting entity may publish notifications in the Official Journal as follows:

- a) directly through the Publication Office; or
- b) through the mediation of the information system operator upon request by the contracting entity.

(2) If the contracting entity makes use of the option under § 147(1)(a), the contracting entity shall at the same time send out the notification for publication in the information system.

(3) If the contracting entity sends out the notification for publication in the Official Journal through the mediation of the information system operator, the information system operator shall ensure, beside publication of the notification in the information system, that the Publication Office is provided with all information contained in the notification as published at the national level.

(4) The information system operator shall publish the notification at the national level within 12 days, or within five days of its dispatch by the contracting entity if the notification is sent by the contracting entity by electronic means pursuant to § 149. In the case of above-the-threshold public contracts, the information system operator shall send the notification to the Publication Office for publication in the Official Journal within an identical time limit, by electronic means or by fax, if the notification has been delivered to the contracting entity by fax.

(5) If the contracting authority commences restricted procedure or negotiated procedure with publication pursuant to § 39(2)(a)(2), the notice of award procedure shall be sent by fax or by electronic means; in such cases, the time limit pursuant to § 147(4) equals five days. If the sector contracting entity commences an award procedure pursuant to § 41(2)(b) and the notification is sent out by fax, the time limit pursuant to § 147(4) also equals five days.

(6) In the case of above-the-threshold public contracts, such notifications shall not be published in the information system prior to their dispatch for publication in the Official Journal. Also, no information shall be published in the information system dissimilar to

information contained in the notifications sent out for publication in the Official Journal or published in the contracting entity profile. Notifications published in the information system or in the contracting entity profile shall contain the date of their dispatch for publication in the Official Journal or the date of their publication in the contracting entity profile.

(7) The contracting entity may publish in the Official Journal any notifications pursuant to § 146(1) in the manner as stipulated in § 147(1) through § 147(3) even if the publication duty is not statutory established. The contracting entity may publish the notifications in any other manner following their publication in the information system. The provisions of § 147(6)(second sentence) shall apply by analogy.

(8) The contracting entity, subject to respecting the principles pursuant to § 6, may modify such published notifications; in such cases, it shall publish such alterations pursuant to § 147(1) through § 147(3) and notify all candidates or tenderers about such alterations within five days of their dispatch for publication, together with any relevant justification.

§ 148

Communication between Contracting Entities and Suppliers

(1) Within communication between the contracting entity and suppliers, confidential nature of tenders and requests to participate and completeness of any information contained in them shall not be violated. The contracting entity shall not have access to the content of tenders and requests to participate prior to the expiration of the time limit for their submission.

(2) Any documents under this Act may be delivered by hand, through another person that performs delivery of consignments (courier service), through a holder of a postal licence pursuant to special legislation, via electronic means or in any other manner.

(3) The contracting entity shall keep written records in connection with award procedure covering all acts taken by suppliers in respect of the contracting entity and by the contracting entity in respect of suppliers, the office or the European Commission. The written records shall contain order numbers of such acts, their description, date and identification data of suppliers.

(4) Requests to participate in restricted procedure, negotiated procedure with publication or competitive dialogues can be made by suppliers also via the telephone; in such cases, suppliers shall confirm their requests to participate in writing, and such written requests to participate shall be sent to the contracting entity on or before the date of expiration of the time limit for submitting such requests to participate.

(5) The contracting entity may require the confirmation of requests to participate submitted pursuant to § 148(4)(first sentence), if this requirement and the time limit for submitting such confirmations have been stipulated in the notice of commencing the award procedure or in the tender documentation.

(6) Tenders and other documents under this Act may always be submitted in the Czech language, and/or in the languages as stipulated by the contracting entity in the tender requirements.

(7) The provisions of this section shall apply to TITLE FOUR of this Act by analogy.

§ 149

Electronic Means and Electronic Tools

(1) 'Electronic means', for the purposes of this Act, means electronic communication networks and services²²⁾. Fax shall not be deemed an electronic means for the purposes of this Act.

(2) 'Electronic tools, for the purposes of this Act, means the hardware or software, and/or their parts, linked to the electronic communication networks or services and facilitating the performance of acts in electronic format under this Act through such electronic communication networks or services, including processing, such as digital compression, and data storage. The contracting entity may use electronic tools solely provided such use is not in breach of the ban on discrimination; such electronic tools are commonly available in view of the subject-matter of the public contract, and interoperable with commonly applied information and communication technologies. In order to meet those requirements as described above, electronic tools may only be applied in award procedures if they have been duly attested by the Ministry of Informatics. Applications for attest shall attract a fee. The fee shall amount to CZK 100,000. Details about the attestation, provisions of the application for attestation, and the amount of the application fee, shall be stipulated in implementing regulations. 'Attestation' means a procedure involving a review of compliance of electronic tools with the requirements as stipulated in this Act and in the relevant implementing regulations issued in respect of this Act. The Ministry of Informatics, upon such attestation, shall issue the attest that shall constitute evidence of the positive outcome of attestation.

(3) The contracting entity, during electronic communication relating to award procedures or design contests, shall provide suppliers that may be interested in taking part in such procedures or contests, with all and any information of technical nature, including encoding and encryption, that is necessary for communication via electronic means, in particular, electronic submission of tenders and requests to participate.

(4) If a supplier submits any tender, request to participate, objections against conduct of the contracting entity or if it proves compliance with qualification requirements via electronic means, or in the case of requests to participate or proposals in design contests or if the contracting entity applies the electronic means in order to send out any notice or invitation to commence award procedure, invitations for negotiations or invitations for tenders in award procedures or for participation in competitive dialogues, notices of assignment of public contracts, notices of the manner of processing of objections or decisions on the most suitable design in a design contest, such data message⁷¹⁾ shall be furnished with a valid guaranteed electronic signature pursuant to a qualified certificate. The contracting entity may require that such data message should also be furnished with electronic signature pursuant to a qualified certificate or electronic mark pursuant to a qualified system certificate, in the case of any data messages sent over via electronic means.

(5) In the absence of documents proving compliance with qualifications in electronic format, suppliers shall submit to the contracting entity such documents in a hard copy within a time limit pursuant to § 52 or § 65.

⁷¹⁾ § 2(d) of Act no. 227/2000 Coll., on electronic signature, and amending certain other legislation (Electronic Signature Act), as amended by Act no. 440/2004 Coll.

(6) The contracting entity shall ensure that electronic tools used for electronic communication, in particular, electronic transfer and delivery of tenders, and/or electronic delivery of requests to participate and designs in design contests, meet the following guarantees:

- a) electronic signatures relating to tenders, requests for participate and the forwarding of plans and projects comply with requirements applicable pursuant to special legislation⁷²⁾;
- b) the exact time and date of the receipt of tenders, requests to participate, and the submission of plans and projects can be determined precisely;
- c) it may be reasonably ensured that, before the time limits laid down, no one can have access to data transmitted under these requirements;
- d) if that access prohibition is infringed pursuant to § 149(6)(c), it may be reasonably ensured that the infringement is clearly detectable;
- e) only authorised persons may set or change dates for opening recommended information;
- f) during the different stages of the contract award procedure or of the design contest access to all data submitted, or to part thereof, must be possible only upon prior decision of authorised persons;
- g) decisions of authorised persons pursuant to § 149(6)(f) must give access to data submitted only after the prescribed date;
- h) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith;
- i) they are properly protected against unauthorised third party access;
- j) technical support and servicing thereof in the case of a breakdown is guaranteed.

(7) Suppliers may submit to the contracting entity information required for the evaluation of tenders also in the format of an electronic catalogue, particularly, in the case of public contracts awarded by the contracting entity under a framework agreement or the dynamic purchasing system. 'Electronic catalogue', for the purposes of this Act, means an ensemble of information containing prices and relating to the individual items of the subject-matter of public contracts, the description of such items, and/or any other information relating to them. Electronic catalogues must comply with all requirements as stipulated for electronic tools applied in communication via electronic means pursuant to this section.

(8) Any detailed requirements relating to electronic means, electronic tools, and electronic acts in the course of awarding public contracts shall be stipulated in implementing regulations.

§ 150

Ministry of Informatics

The Ministry of Informatics

- (a) shall execute the competence stipulated in this Act in the field of attestation;
- (b) shall publish the Journal (in Czech: *Věstník*) serving the publication of granted attestations and other documents relating to the electronic equipment; the publication of the Journal shall be executed by the Ministry of Informatics through the public service portal.

⁷²⁾ Act no. 227/2000 Coll., as amended.

§ 151

Representation of Contracting Entities in Proceedings

(1) The contracting entity can be represented in the exercise of its rights and duties under this Act relating to award procedures or design contests by another person. Such person shall not be biased pursuant to § 74(7) and shall not be a party to the relevant award procedure.

(2) Persons representing the contracting entity pursuant to § 151(1) shall not be granted any authorisation to assign public contract, exclude suppliers from procedures, cancel procedures, decide on the selection of the most suitable designs, cancel design contests or decide on the manner of processing objections.

(3) The provisions of § 151(1) shall be without prejudice to any liability on the part of the contracting entity for compliance with this Act.

§ 152

Protection of Confidential Information

(1) The contracting entity shall maintain confidentiality of all information or documents provided by suppliers, if they have been described as confidential when provided; this provision shall not prejudice protection of data pursuant to other legislation. The contracting entity may apply any information or documents provided by suppliers if it is necessary in order to act under this Act or if it ensues from the purpose of this Act or if it has reserved the right to apply certain information or documents in the tender requirements. The contracting entity, in handling any information or documents belonging to suppliers, shall always respect the rights of suppliers.

(2) The contracting entity may stipulate certain requirements and conditions relating to protection of confidentiality of certain information or documents provided to suppliers in the tender requirements.

§ 153

Expenses and Charges

Unless stipulated otherwise in this Act, the contracting entity shall not award suppliers any right to reimbursement of any expenses associated with participation in award procedures or design contests, or require suppliers to pay any charges for participation in any such procedures.

§ 154

Translation of Financial Funds into Czech Currency

Translation of financial funds quoted in EUR in this Act to the Czech currency shall be stipulated in implementing regulations.

§ 155

Keeping of Documentation

(1) The contracting entity shall keep all documentation about public contracts and all records of electronic acts pursuant to § 149 for the term of five years of the execution or amendment of the relevant contracts or cancellation of award procedures, unless stipulated otherwise in special legislation⁷³⁾; ‘public contract documentation’ means a sum of all documents in hard copy or in electronic format as required in the course and/or upon the termination of award procedures under this Act, including the full wording of original tenders submitted by all suppliers, and concluded contracts.

(2) The provisions of § 155(1) shall apply by analogy also to documentation relating to design contests, including in such cases when such contests are not followed by any award procedure.

(3) The contracting entity shall adopt suitable measures for documenting the course of award procedures or design contests, including their parts executed via electronic means.

(4) Sector contracting entities shall keep for the term of five years all relevant information that, in the case of above-the-threshold public contracts relating to the performance of relevant activity, justify the application of exemptions pursuant to § 4(2), § 18 or § 19.

§ 156

Special Provisions Applicable to Above-the-Threshold Public Contracts

Above-the-threshold public contracts in respect of which

- (a) the contract for the performance of public contracts has been concluded for a definite term, and at least for the term of five years; and
- (b) suppliers bear certain economic risks associated with the performance of public contracts usually borne by the contracting entity;

shall be governed by the provisions of this Act and also by the provisions of special legislation⁷⁴⁾.

§ 157

Information System

(1) ‘Information system’ represents the Public Administration Information System⁷⁵⁾. The information system is managed by the Ministry.

(2) The information system shall ensure the following:

- a) publication of information about public contracts;
- b) keeping the list of qualified suppliers;
- c) keeping the list of the systems of certified suppliers;

⁷³⁾ Act no. 499/2004 Coll., on archives and records, and amending certain other legislation.

⁷⁴⁾ § 1(2) and § 1(3) of Act no. .../2006 Coll., on Concession Contracts and Concession Procedures (Concessions Act).

⁷⁵⁾ Act no. 365/2000 Coll.

- d) statistical information about public contracts.

TITLE EIGHT

TRANSITIONAL AND CLOSING PROVISIONS

§ 158

Transitional Provisions

(1) Awarding of public contracts, public design contests, proceeding for the review of conduct of the contracting entity by the office and proceedings for the imposition of penalties commenced prior to the date of effect of this Act shall proceed in accordance with the existing legislation.

(2) Proceedings for the review of conduct of the contracting entity and proceedings for the imposition of penalties commenced following the effect of this Act and that follow the awarding of public contracts or public design contests pursuant to § 158(1), shall proceed in accordance with the existing legislation. Proposals for commencing the proceedings pursuant to the first sentence shall attract a fee pursuant to the existing legislation.

(3) The list of qualified suppliers pursuant to § 76 of Act no. 40/2004 Coll., shall be deemed to be a list under this Act. Proceedings concerning the registration in, amendment of or deletion from, the list of qualified suppliers commenced prior to the effect of this Act shall proceed in accordance with the existing legislation.

(4) Suppliers, instead of proving full compliance with the basic qualification requirements and compliance with professional qualification requirements to the extent as described in the extract, may draw up an extract from the list of qualified suppliers issued pursuant to § 80 of Act no. 40/2004 Coll., not later than three months of the effect of this Act, if the circumstances upon which the extract has been issued have not changed.

(5) Suppliers registered in the list of qualified suppliers pursuant to § 76 of Act no. 40/2004 Coll., prior to the submission of applications for the issuance of an extract from the list pursuant to § 128(1) of this Act, shall prove any missing qualification, including any relevant documents, according to § 130(2) of this Act; the extract from the list shall not be issued to such supplier until the execution of the amendment to the extract pursuant to § 130 of this Act. Suppliers shall prove any missing qualifications pursuant to the previous sentence not later than three months of the effect of this Act, otherwise it shall be deemed that they are no longer registered in the list commencing as on the first day of the fourth month of effect of this Act.

(6) Suppliers, instead of proving compliance with qualification requirements pursuant to § 134 of this Act, may produce a certificate issued by the certification authority confirming compliance with the criteria of the national qualification and classification system of works suppliers pursuant to § 30(4) of Act no. 40/2004 Coll., to the same extent of data as described in the certificate, within three months of effect of this Act, if the circumstances upon which the certificate has been issued have not changed.

(7) The information system of awarding public contracts pursuant to § 83 of Act no. 40/2004 Coll., shall be deemed the information system under this Act. Information contained in the information system about awarding public contracts pursuant to § 83 of Act no. 40/2004 Coll. shall be deemed the content of the information system.

(8) Publication of data and information about public contracts pursuant to § 84 of Act no. 40/2004 Coll. relating to award procedures, concession proceedings or public design contests that have been commenced according to Act no. 40/2004 Coll. prior to the date of effect of this Act, shall proceed according to this Act.

§ 159

Authorisation Provisions

(1) The Government shall issue an ordinance in order to execute § 12(2)(a) and § 12(2)(b)(item 2), § 101(4) and § 154.

(2) The Ministry of Defence shall issue a decree in order to execute § 18(1)(c) and § 18(2)(i).

(3) The Ministry, in agreement with the Ministry of Informatics, shall issue a decree in order to execute § 149(8).

(4) The Ministry shall issue a decree in order to execute § 119(2) a § 146(2) and § 146(5).

(5) The Ministry of Informatics shall issue a decree in order to execute § 149(2).

§ 160

Repealing Provisions

The following shall be repealed:

1. Act no. 40/2004 Coll., on public procurement.
2. Decree no. 239/2004 Coll., on the determining the detailed content and extent of tender documentation of works.
3. Decree no. 240/2004 Coll., on the information system about awarding public contracts and methods of evaluation of tenders according to their economic advantageousness.
4. Decree no. 137/2005 Coll., amending decree no. 240/2004 Coll., on the information system about awarding public contracts and methods of evaluation of tenders according to their economic advantageousness.

TITLE NINE

ENTRY INTO EFFECT

§ 161

This Act shall enter into effect on the first day of the third calendar month following its publication.

Zaorálek s.

Klaus s.

Paroubek s.

List of services subjected to publication in the Official Journal of the European Union

Category	Description	CPC Reference Number ¹⁾	CPV Reference Number
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000 to 50982000 (except 50310000 through 50324200 and 50116510-9, 50190000-3, 50229000-6, 50243000-0)
2	Land transport services ²⁾ , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	From 12000-6 to 60129300-1 (except 60121000 through 60121600, 60122200-1, 60122230-0) and from 64120000-3 to 64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 62100000-3 to 62300000-5 (except 62121000-6, 62221000-7)
4	Transport of mail by land and by air ³⁾	71235, 7321	60122200-1, 60122230-0, 62121000-6, 62221000-7
5	Telecommunications services	752	From 64200000-8 to 64228200-2, 72318000-7 and from 72530000-9 to 72532000-3
6	Financial services a) Insurance services b) Banking and investment services ⁴⁾	Ex 81, 812, 814	From 66100000-1 to 66430000-3 and from 67110000-1 to 67262000-1 ³⁾
7	Computer and related services	84	From 50300000-8 to 50324200-4, from 72100000-6 to 72591000-4 (except 72318000-7 and from 72530000-9 to 72532000-3)
8	R&D services ⁵⁾	85	From 73000000-2 to 73300000-5 (except 73200000-4, 73210000-7, 7322000-0)
9	Accounting, auditing and book-keeping services	862	From 74121000-3 to 74121250-0
10	Market research and public opinion polling services	864	From 74130000-9 to 74133000-0 and 74423100-1, 74423110-4
11	Management consultant services and related services ⁶⁾	865, 866	From 73200000-4 to 73220000-0, from 74140000-2 to 74150000-5 (except 74142200-8) and 74420000-9, 74421000-6, 74423000-0, 74423200-2, 74423210-5, 74871000-5, 93620000-0

Category	Description	CPC Reference Number ¹⁾	CPV Reference Number
12	Architectural services; engineering services and integrated engineering services; urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services	867	From 74200000-1 to 74276400-8 and from 74310000-5 to 74323100-0 and 74874000-6
13	Advertising services	871	From 74400000-3 to 74422000-3 (except 74420000-9 and 74421000-6)
14	Building-cleaning services and property management services	874, 82201 through 82206	From 70300000-4 to 70340000-6 and from 74710000-9 to 74760000-4
15	Publishing and printing services on a fee or contract basis	88442	From 78000000-7 to 78400000-1
16	Sewage and refuse disposal services; sanitation and similar services	94	From 90100000-8 to 90320000-6 and 50190000-3, 50229000-6, 50243000-0

¹⁾ Classification CPC (transitional version) applied in order to specify the subject-matter of Directive 92/50/EEC.

²⁾ Except rail transport services pursuant to Category 2, Annex no. 2 to the Act.

³⁾ Except rail transport services pursuant to Category 2, Annex no. 2 to the Act.

⁴⁾ Except public contracts pursuant to §18(1)(e) through (g).

⁵⁾ Except public contracts pursuant to §18(1)(d).

⁶⁾ Except public contracts pursuant to §18(1)(l).

List of services not subjected to publication in the Official Journal of the European Union

Category	Description	CPC Reference Number	CPV Reference Number
17	Hotel and restaurant services	64	From 55000000-0 to 55524000-9 and from 93400000-2 to 93411000-2
18	Rail transport services	711	60111000-9 and from 60121000-2 to 60121600-8
19	Water transport services	72	From 61000000-5 to 61530000-9 and from 63370000-3 to 63372000-7
20	Supporting and auxiliary transport services	74	62400000-6, 62440000-8, 62441000-5, 62450000-1, from 63000000-9 to 63600000-5 (except 63370000-3, 63371000-0, 63372000-7) and 74322000-2, 93610000-7
21	Legal services	861	From 74110000-3 to 74114000-1
22	Personnel placement and supply services	872	From 74500000-4 to 74540000-6 (except 74511000-4) and from 95000000-2 to 95140000-5
23	Investigation and security services, except armoured car services	873 (except 87304)	From 74600000-5 to 74620000-1
24	Education and vocational education services	92	From 80100000-5 to 80430000-7
25	Health and social services	93	74511000-4 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26	Recreational, cultural and sporting services	96	From 74875000-3 to 74875200-5 and from 92000000-1 to 92622000-7 (except 92230000-2)
27	Other services ¹⁾		

¹⁾ Except public contracts pursuant to §18(1)(h), if they involve the contracting authority.

Works pursuant to § 9(1)(a)

NACE ¹					
CODE F			CONSTRUCTION		CPV CODE
Division	Product areas	Class	Description	Notes	
45			Construction	This section includes: construction of new buildings and civil engineering constructions, additions and alterations, works maintenance	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: <ul style="list-style-type: none"> – demolition or wrecking of buildings and other structures – clearing of building sites – earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. – site preparation for mining: earth moving and other development and preparation of mineral properties and sites This class also includes: <ul style="list-style-type: none"> – building site drainage – drainage of agricultural or forestry land 	45110000
		45.12	Test drilling and boring	This class includes: <ul style="list-style-type: none"> – test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes This class excludes: <ul style="list-style-type: none"> – drilling of production oil or gas wells (see 11.20) – water well drilling (see 45.25) – shaft sinking (see 45.25) – geophysical, geological and seismic surveying (see 74.20) 	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000

¹In the event of different interpretation of CPV and/or NACE classifications, the NACE classification shall take precedence.

NACE ¹					
CODE F			CONSTRUCTION		CPV CODE
Division	Product areas	Class	Description	Notes	
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> – construction of all types of buildings – construction of civil engineering constructions: bridges, including those for elevated highways, viaducts, tunnels and subways long-distance pipelines, communication and power lines urban pipelines, urban communication and powerlines; ancillary urban works; – relating urban engineering constructions – assembly and erection of prefabricated constructions on the site <p>This class excludes:</p> <ul style="list-style-type: none"> – service activities incidental to oil and gas extraction (see 11.20) – erection of complete prefabricated constructions from self-manufactured parts not of concrete (see divisions 20, 26 a 28) – construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations (see 45.23) – building installation (see 45.3) – building completion (see 45.4) – architectural and engineering activities (see 74.20) – project management for construction (see 74.20) 	45210000
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> – erection of roofs 	45220000

NACE ¹					
CODE F			CONSTRUCTION		CPV CODE
Division	Product areas	Class	Description	Notes	
				<ul style="list-style-type: none"> - roof covering - waterproofing, including hydrophobic wall treatment 	
		45.23	Construction of motorways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> - construction of motorways, streets, roads, other vehicular and pedestrian ways - construction of railways - construction of airfield runways - construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations - painting of markings on road surfaces and car parks <p>This class excludes:</p> <ul style="list-style-type: none"> - preliminary earth moving (see 45.11) 	45230000
		45.24	Construction of water projects	<p>This class includes construction of:</p> <ul style="list-style-type: none"> waterways, harbour and river works, locks, etc. dams and dykes dredging subsurface work 	45240000
		45.25	Other construction work involving special trades	<p>This class includes:</p> <ul style="list-style-type: none"> construction activities specializing in one aspect common to different kind of structures, requiring specialized skill or equipment: construction of foundations, including pile driving water well drilling and construction, shaft sinking erection of non-self-manufactured steel elements steel bending bricklaying and stone setting scaffolds and work platform erecting and dismantling, including renting of scaffolds and work 	45250000

NACE ¹					
CODE F			CONSTRUCTION		CPV CODE
Division	Product areas	Class	Description	Notes	
				platforms erection of chimneys and industrial ovens This class excludes: renting of scaffolds without erection and dismantling (see 71.32)	
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	This class includes: installation in buildings or other construction projects of: electrical wiring and fittings telecommunications wiring electrical heating systems residential antennas and aerials fire alarms and alarm systems burglar alarm systems lifts and escalators lightning conductors, etc.	45310000
		45.32	Insulation work activities	This class includes: installation in buildings or other construction projects of thermal, sound or vibration insulation This class excludes: waterproofing, (see 45.22)	45320000
		45.33	Plumbing	This class includes: installation in buildings or other construction projects of: gas fittings, plumbing and sanitary equipment heating, ventilation, refrigeration or air-conditioning equipment and ducts sprinkler systems This class excludes: installation of electrical heating systems (see 45.31)	45330000
		45.34	Other building installation	This class includes: installation of illumination and signalling systems for roads, railways, airports and harbours installation in buildings or other construction projects of fittings	45340000

NACE ¹					
CODE F			CONSTRUCTION		CPV CODE
Division	Product areas	Class	Description	Notes	
				and fixtures n.e.c. (e.g., railings, grates, signboards)	
	45.4		Building completion		45400000
		45.41	Plastering	This class includes: application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials	45410000
		45.42	Joinery installation	This class includes: installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials interior completion such as ceilings, wooden wall coverings, movable partitions, etc. This class excludes: laying of parquet and other wood floor coverings (see 45.43)	45420000
		45.43	Floor and wall covering	This class includes: laying, tiling, hanging or fitting in buildings or other construction projects of: ceramic, concrete or cut stone wall or floor tiles, ceramic stove fitting parquet and other wood floor coverings carpets and linoleum floor coverings, including of rubber or plastic terrazzo, marble, granite or slate floor or wall coverings	45430000
		45.44	Painting and glazing	This class includes: interior and exterior painting of buildings painting of civil engineering structures installation of glass, mirrors, etc. This class excludes: installation of windows (see 45.42)	45440000
		45.45	Other building completion	This class includes: installation of private swimming pools steam cleaning, sand blasting and similar activities for building	45450000

NACE ¹					
CODE F			CONSTRUCTION		CPV CODE
Division	Product areas	Class	Description	Notes	
				exteriors other building completion and finishing work n.e.c. This class excludes: interior cleaning of buildings and other structures (see 74.70)	
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	This class excludes: renting of construction or demolition machinery and equipment without operators (see 71.32)	45500000

¹⁾ Council Regulation (EEC) No. 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (Official Journal No. L 293, 24.10.1990, p. 1). Regulation as amended by Commission Regulation (EEC) No. 761/93 (Official Journal No. L 83, 3.4.1993, p. 1).