
	Annex to the Framework Manual for the Operational Programme Enterprise and Innovation (OPEI)			
	17_17_M_Contractor Selection Rules Ref. No: 31688/12/61100/61000	Edition number / revision: 8/3	Applicable from: 1 Sep 2012	

The Contractor Selection Rules (hereinafter referred as the “Rules”) lay down the procedure to be followed by a grant beneficiary (hereinafter referred as the “Contracting Entity”) in:



- a) awarding the contracts where the expected value exceeds CZK 500,000 excluding VAT and is below CZK 1 million (CZK 3 million for construction work);
- b) selecting a contractor where the expected contract value is CZK 1 million or more (CZK 3 million or more for construction work) and the Contracting Entity need not abide by Act No 137/2006 Coll., on public procurement, as amended (hereinafter referred as the “Act”) (for example, it does not comply with the definition of a subsidised Contracting Entity pursuant to the Act¹). A sectoral Contracting Entity shall follow these Rules in the event of awarding below-threshold public contracts and small-scale public contracts where the expected value exceeds CZK 500,000 excluding VAT.

In calculating the expected value of a contract, the Contracting Entity is obliged to proceed pursuant to Section 13 of the Act.

These Rules do not apply to:

- a) the contracts or public contracts co-financed from the Operational Programme Enterprise and Innovation where the expected value is lower than or equal to **CZK 500,000** excluding VAT; however, the Contracting Entity shall be responsible for spending the money economically and only for the purposes of achieving the project objectives;
- b) the events where the Contracting Entity will carry out the relevant contract by itself (e.g. by activation) if the programme launched and the Rules of Eligible Cost expressly allow this;
- c) the public contracts that the Contracting Entity is obliged to award pursuant to the Act, i.e. where it has to hold a tender process under a procedure exactly described in the Act for the individual types of processes;
- d) the buying and letting of real estate where an expert opinion or an enclosed price map of the location concerned or a similar relevant document will need to be submitted;
- e) the contracts where, for technical or artistic reasons, due to the protection of exclusive rights, the intellectual property right to the performance demanded, or for a reason arising from specific legislation, the performance demanded may only be effected by a single specific contractor. **If the contract value exceeds CZK 500,000 excluding VAT**, the Contracting Entity is obliged to justify this in writing and to submit an expert opinion by a judicial expert in evidence of this as well as to submit an expert opinion by a judicial expert with the valuation of the right;
- f) the contracts not awarded under the Act because of using an exemption from the procedures set out by the Act (such as above-threshold and below-threshold public contracts pursuant to Section 18, or above-threshold public contracts pursuant to Section 19 of the Act).

¹ The definitions of the public, sectoral and subsidised contracting entities are specified in Section 2 of the Act.

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- g) the contracts with regularly recurring supplies or services (such as energy, telephone, gas and other similar services).

General principles

- 1) Periods in these Rules are specified in calendar days unless stated otherwise.
- 2) The Contracting Entity shall proceed according to the Act where the Act so provides. The Contracting Entity is obliged to proceed according to the Rules unless the Act provides otherwise.
- 3) The selection of a contractor must be transparent, non-discriminatory and comply with equal access principles². The Contracting Entity is, inter alia, obliged to comply with: (i) the provisions of the Treaty on the Functioning of the European Union on the freedom of movement for goods (Articles 28-30 of the TFEU³), freedom of establishment (Article 49 of the TFEU) and freedom to provide services (Article 56 of the TFEU), non-discrimination (Articles 18 and 19 of the TFEU); (ii) all the relevant legislation and principles of EU law that have a direct impact on Czech law and/or have been incorporated by a regulation of Czech national law.
- 4) The Contracting Entity is obliged to maintain the same access to contract information for all applicants. For example, in the event of a reconstruction of premises, the Contracting Entity is obliged to enable all applicants to view the premises if they express interest in doing so. The Contracting Entity shall prepare Tender Specifications and deliver them to all applicants in the same format and to the same extent upon applicant's request without undue delay. In replying to a contractor's question regarding conditions of the contract to be awarded, the Contracting Entity must notify the reply, including the text of the original question, to all applicants within no later than 4 business days, and is also obliged, if the Tender Specifications are published, to publish additional information and replies to questions in the same way as the publication of the Tender Specifications.
- 5) The Contracting Entity is obliged to proceed in such a way as to avoid breaking up the subject matter of the contract into smaller and formally independent contracts in order to cut the expected contract value below the defined financial limits of the individual categories. Identical as well as similar activities or inseparable supplies, services or construction work carried out under a single project must always be viewed as a single contract ("principle of purpose"). If a single contractor is carrying out several contracts, these are usually viewed as a single contract. However, the Contracting Entity is not obliged to add together the expected values of contracts of the same subject matter which will be procured 'accidentally', in line with the very latest needs of the Contracting Entity, and which cannot be objectively foreseen in advance. This obligation does not even apply to recurring contracts procured by the Contracting Entity irregularly, where the unit price varies over the accounting period.

² In terms of Section 6(1) of the Act

³ Treaty on the Functioning of the European Union

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If this procedure is used, the Contracting Entity must objectively present the reasons that have led to using such procedure, while the provider shall evaluate the justifiability of the procedure in the individual cases.

- 6) The Contracting Entity is obliged to notify, immediately and in writing, an annulment of the tender process to all the participants who have submitted their bids within the due deadline for submitting bids. If the Contracting Entity has annulled the tender process before the expiry of the deadline for submitting bids, the Contracting Entity is obliged to publish such information in the same way as the Contracting Entity published the notification of the commencement of the tender process. The Contracting Entity is not obliged to notify the reason for the annulment of the tender process to the applicants if the Contracting Entity reserves the right to annul the tender process in its tender process conditions. However, the Contracting Entity is obliged to notify the reason for the annulment of the tender process to entities that carry out audits under the relevant operational programme and to report that fact demonstrably, including the justification, to the grant provider. The Contracting Entity is entitled to annul the tender process in accordance with the provisions below; however, the Contracting Entity may only do so before the relevant agreement is entered into.

The Contracting Entity shall annul the tender process without undue delay if:

- a) no bids were submitted within the specified deadline, or
- b) no bids complying with the Contracting Entity's requirements for the subject of performance of the contract were submitted within the specified deadline, or all applicants were eliminated from the tender process;
- c) serious inconsistencies or shortcomings were found in the notification of the commencement of the tender process or in the Tender Specifications, or
- d) even the third applicant with whom an agreement could be entered into refused to enter into the agreement.



The Contracting Entity shall annul the tender process without undue delay if:

- a) reasons considered to be important, for which the Contracting Entity cannot be required to continue the tender process⁴, have occurred during the tender process, or
- b) the first selected applicant, or the second applicant, where appropriate, has refused to enter into an agreement or has failed to assist the Contracting Entity adequately for the agreement to be entered into.

Tender Specifications

- 7) The Contracting Entity is obliged to provide applicants with Tender Specifications upon their request throughout the period during which bids may be submitted. For construction work contracts, the bill of quantities must also be provided electronically.

⁴ The reasons considered to be important must originate in an objective fact (such as a breach of a prescribed procedure that the Contracting Entity itself has detected and where a remedial action can no longer be taken), i.e. this may not be understood as meaning any reasons of subjective origin on the part of the Contracting Entity, applicant, grant provider, etc.

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- 8) Upon the invitation to the call for tenders, the Contracting Entity must have Tender Specifications in place, which are mandatory for further steps in the tender process. The correct Tender Specifications shall always be the responsibility of the Contracting Entity.
- 9) The Tender Specifications must include at least:
- a) the requirements for compliance with applicants' qualification criteria, where the proof of qualifications is required, to the maximum extent as set out in Section 50(1) of the Act⁵. Thus the Contracting Entity is entitled to require the proof of elementary qualifications, professional qualifications and/or technical qualifications, and is also entitled to require that a declaration of honour be submitted in evidence of the contractor's economic and financial competence to accomplish the public contract⁶. If a contract with an expected value in excess of CZK 50 million excluding VAT is to be awarded, the Contracting Entity is obliged to require at least the elementary qualifications pursuant to Section 53 of the Act;
 - b) the exact characteristics of the contract;
 - c) the expected value of the contract;
 - d) the information that this is no contract award procedure under Act No 137/2006 Coll.;
 - e) the information on the language in which the bid must be submitted;
 - f) the bid evaluation criteria, which must always express the relationship between the utility value and the price, and must relate to the subject of performance⁷. The Contracting Entity is obliged to assign weights, expressed as a percentage, to the individual evaluation sub-criteria, or shall determine another mathematical relation among the sub-criteria and describe the method of assigning scores. For subjective (unmeasurable) sub-criteria, the Contracting Entity is obliged to determine which facts it will evaluate under the evaluation sub-criterion concerned and, in particular, which facts it will see as better. Evaluation sub-criteria may not include qualifications, contractual conditions the purpose of which is to ensure that the contractor meets its obligations (such as a contractual fine or guarantee), or payment terms;
 - g) the conditions of using an electronic auction⁸, if chosen by the Contracting Entity as a way of evaluating bids;
 - h) the requirement for the method of preparing the offer price;
 - i) the time and place of performing the contract;
 - j) the requirements for variants of bids, if allowed by the Contracting Entity;

⁵ The Contracting Entity is entitled to require the proof of all or only some of the qualifications in line with the extent and complexity of the contract. The Contracting Entity shall select the method to prove qualifications while the method shall not exceed the scope of the Act.

⁶ The Contracting Entity is not entitled to require the proof of economic and financial qualifications, i.e. notably the requirements relating to a policy of insurance or turnover of the contractor.

⁷ These may primarily include the offer price, quality, technical level of the performance offered, functional features, operating cost, return on cost, warranty and post-warranty service, provision of supplies, or delivery period.

⁸ To the extent set out in Section 96(4) of the Act.

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- k) the content and method of the preparation of bids;
- l) the business conditions or a mandatory draft agreement;
- m) the periods and deadlines that must be identical to the data stated in the notification of the commencement of the tender process;
- n) for construction work contracts, the Contracting Entity must stipulate in the Tender Specifications that the technical supervision for the same construction must not be exercised by the contractor or a person linked with the contractor. This does not apply if the technical supervision is exercised by the Contracting Entity itself.
- o) for construction work contracts (except contracts that also include design activities), the Tender Specifications must include:
- the relevant documentation to the extent set out by the implementing legislation, including the detailed specification of the subject matter of the contract to the extent required for the preparation of the bid and
 - a list of construction works, supplies and services, including the bill of quantities, to the extent set out by the implementing legislation⁹
- p) other information as required by the Contracting Entity.
- 10) The Tender Specifications must comply with the notification of the commencement of the tender process. If the Contracting Entity modifies the contract award conditions, it must also adequately extend the period for submitting bids, in line with the nature of the modification made. Where the change to the contract award conditions made by the Contracting Entity may expand the range of possible contractors, the Contracting Entity shall extend the deadline in such a way as to ensure that, from the moment of the change, the entire original period for submitting bids will be available. The Contracting Entity must publish such a change in the same way as the publication of the notification of the commencement of the tender process.
- 11) While determining the subject matter of the contract, neither the notification of the commencement of the tender process nor the Tender Specifications shall include requirements in respect of or references to specific entities or objects¹⁰ where this leads to favouring or eliminating certain applicants or certain products.



This rule need not be followed only if:

- a. the subject matter of the contract could otherwise not be determined accurately and comprehensibly enough¹¹, or
- b. the contracts apply to construction work and such reference does not lead to the unjustified restriction of the competition¹², or

⁹ Decree No 230/2012 Coll., laying down the details of the definition of the subject matter of public contract for construction work and the extent of the list of construction works, supplies and services, including the bill of quantities.

¹⁰ Such as the references to business names, names, or first names and surnames, or specific designations of goods and services distinctive of a specific person.

¹¹ In that event, the Contracting Entity must, in the Tender Specifications or in the Notification of the Commencement of the Tender Process, expressly allow for using other qualitatively and technically similar solutions for the performance of the contract.

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- c. the performance demanded would be incompatible with the equipment or systems already in use, and its adaptation would cause serious troubles to the Contracting Entity's operations¹³.

Contract notice



- 12) The period between the invitation to the call for tenders and the deadline for submitting bids must be, with regard to the subject matter of the contract, adequately long to allow for the preparation of the bids. The minimum periods, depending on the amount of the expected value of the contract, are specified below (items 15, 16, 17). The Contracting Entity is obliged to ensure that the notification of the commencement of the tender process will be publicly available (in the Commercial Bulletin) throughout that defined period. The Contracting Entity is encouraged to state in the invitation that, pursuant to Section 2(e) of Act No 320/2001 Coll., on financial audit in public administration, as amended, the contractor selected is a person obliged to co-participate in the exercise of financial audit.
- 13) The Contracting Entity is obliged to proceed according to applicable Publicity Rules¹⁴ since the invitation to the call for tenders where this call for tenders was made after the issuance of the Decision to Provide a Grant. The Contracting Entity is obliged to meet the publicity requirements after the issuance of the Decision to Provide a Grant at least in one of the documents specified below:
- a) The notification of the commencement of the tender process in the Commercial Bulletin
 - b) The Tender Specifications
- 14) The notification of the commencement of the tender process must include at least the following data:
- a) Contracting Entity's identification data¹⁵;
 - b) Name and description of the subject matter of the contract;
 - c) Expected contract value excluding VAT;
 - d) Deadline and place for submitting a bid;

¹² In that event, the Contracting Entity must, in the Tender Specifications or in the Notification of the Commencement of the Tender Process, expressly allow for using other qualitatively and technically similar solutions for the performance of the contract.

¹³ In that event, the Contracting Entity may, in the Notification of the Commencement of the Tender Process or in the Tender Specifications, state in detail the specific description of the performance.



¹⁴ The Publicity Rules are available to applicants on the website of the Ministry of Industry and Trade; in this case, they consist of the data in Article 9 of the Commission Regulation (EC) No 1828/2006, specifically: a) the emblem of the European Union (flag) and reference to the European Union (the words "European Union" shall be included); b) reference to the Fund concerned (the words "European Regional Development Fund" shall be included); c) the statement "Investing in your future".

¹⁵ The identification data shall mean the name or business name, registered office, legal form, identification number if assigned and where the entity is a legal entity, and the business name or first name and surname, place of business or, where appropriate, place of permanent residence, identification number if assigned and where the entity is a natural person.

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- e) The information that this is not the contract award procedure pursuant to Act No 137/2006 Coll., as amended;
 - f) The information on the language in which the bid must be submitted (unless the notification of the commencement of the tender process includes that information, it is understood that the bids shall be submitted in Czech);
 - g) Reference to the Contracting Entity's contact person, its telephone number and e-mail address;
 - h) Conditions of providing the Tender Specifications, which form a mandatory part of this notification and include the elements required according to item 9 of these Rules.
- 15) For contracts where the expected value exceeds CZK 500,000 excluding VAT and amounts up to CZK 50 million excluding VAT inclusive, the Contracting Entity shall have the contract notice published in the Commercial Bulletin (electronic version). The minimum period for submitting bids shall be 30 days from the date of publication in the Commercial Bulletin¹⁶.
For contracts of up to CZK 1 million excluding VAT, a public contracting entity is not obliged to publish the contract notice in the Commercial Bulletin; however, it shall publish the contract notice on its websites for a period of 15 days. Publicly funded organisations shall use the websites of their respective founders to this end.
- 16) For contracts where the expected value exceeds CZK 50 million excluding VAT and amounts up to CZK 100 million excluding VAT inclusive, the Contracting Entity shall have the contract notice published in the Commercial Bulletin (electronic version) and at the Central Address – CA (www.centralniadresa.cz). The minimum period for submitting bids shall be 40 days from the date of publication in the Commercial Bulletin.
- 17) For contracts where the expected value exceeds CZK 100 million excluding VAT, the Contracting Entity shall have the contract notice published in the Commercial Bulletin (electronic version), at the Central Address (www.centralniadresa.cz) and in the Official Journal of the European Union – TED (ted.europa.eu). The minimum period for submitting bids shall be 60 days from the date of publication in the Commercial Bulletin.
- 18) After the publication of the notification of the commencement of the tender process according to the above requirements, the Contracting Entity may directly contact appropriate contractors known to the Contracting Entity and directly request that they submit their bids. The bids received in this way shall be evaluated by the Contracting Entity along with the bids received under the notification of the commencement of the tender process after the period for submitting bids expires. The Contracting Entity is

¹⁶ The duration of the period shall not include the day when the fact that determines the start of the period occurred. This similarly applies to the periods in items 16 and 17. Applicants are encouraged to ask, in advance, the publishers of the periodicals or the administrators of the websites, as appropriate, about the deadlines for delivering their inputs for their advertisements to be published in time.

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obliged to maintain equal approach according to item 4 of the Rules even vis-à-vis the entities contacted in that way.

Bid

19) The bids pursuant to Section 22(1)(a-f) of the Act are unacceptable and must be eliminated from the tender process. These include:



- a) inappropriate bids, i.e. those failing to meet the Contracting Entity's requirements for the subject of performance of the contract;
- b) the bids that have failed to meet the contract conditions in terms of the Contracting Entity's requirements other than those pertaining to the subject matter of the contract, unless these were formal requirements;
- c) the bids where the applicant has failed to prove its compliance with qualification criteria (if the proof of qualifications was required);
- d) the bids that contravene legislation in force;
- e) the bids that include modified conditions of performance, in contravention of the Contracting Entity's requirements, or an unjustified and extremely low offer price (the Contracting Entity shall decide whether or not an offer price is unjustified and extremely low);
- f) the bids submitted after the expiry of the period for submitting bids.

20) If a bid is sent electronically, it must be either provided with an advanced electronic signature through a qualified certificate, or a statement signed by the applicant (or a by a person authorised to act on behalf of or for the applicant), with the specification of express consent to the content of the bid, must be enclosed with the bid. If the bid is sent electronically, the Contracting Entity is obliged to proceed in accordance with the provision of Section 149(6) of the Act.

21) Bids may not be opened / their content may not be made available to a person authorised by the Contracting Entity or to the commission for opening envelopes or to the evaluation commission until the defined period for submitting bids expires.

22) After meeting the condition of the non-discriminatory and transparent selection of a contractor, the Contracting Entity always has to select the best bid, based on the evaluation criteria defined. Bids in a foreign currency shall be converted by the exchange rate of the Czech National Bank applicable as at the last day of the period for submitting bids. If the Contracting Entity has received no acceptable bid in the tender process, it has to annul the tender process, pursuant to item 6, and to call for tenders again.

23) The Contracting Entity is obliged to establish an evaluation commission. For contracts where the expected value exceeds CZK 500,000 excluding VAT and amounts up to CZK 50 million excluding VAT inclusive, such a commission shall have at least 3 members. For contracts where the expected value exceeds CZK 50 million excluding VAT, such a commission shall have at least 5 members. The individual members of the commission shall be appointed by the Contracting Entity.

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Each member of the commission (or a person authorised by the Contracting Entity, as appropriate) is obliged to sign a declaration of confidentiality and absence of bias. This signature is to confirm that the person has not participated in the preparation of any of the bids and that the person is not personally or economically linked with any of those who have prepared the bids, and that the person undertakes to refrain from disclosing the facts that the person has become aware of in his or her capacity as member of the commission (or a person authorised by the Contracting Entity, as appropriate).

The completeness of the bids shall be verified by the evaluation commission or by a person authorised by the Contracting Entity, as appropriate. The bids shall be assessed in terms of their acceptability, i.e. compliance with the Contracting Entity's requirements specified in the notification of the commencement of the tender process and in the Tender Specifications.



If a bid is found to be unclear or incomplete, the commission (or a person authorised by the Contracting Entity, as appropriate) may, provided that the principles under Article 3 of the Rules are followed, request that the applicant explain the bid in writing or complete the bid within an additional period. However, the performance offered, the offer price and the facts relevant for the evaluation may not be completed or changed in this way. If the applicant fails to respond to such a request for completion according to the commission's requirements within the expiry of the additional period, the commission (or a person authorised by the Contracting Entity, as appropriate) must eliminate such a bid from the further process, and the bid may not even be used as the basis for entering into an agreement.

The next stage consists of the evaluation of individual bids. Limiting the number of applicants by drawing lots or in any other way is prohibited under the evaluation process.

- 24) In its evaluation process, the evaluation commission may only take account of applicants' bids and evaluate them according to predefined criteria and in the manner set out in the Tender Specifications. The bids to be evaluated shall be those which have met the Contracting Entity's requirements set out in the Tender Specifications.

All objective (measurable) evaluation criteria must include the specification of the values that were evaluated and the scores assigned to the applicants (taking account of the criterion's weight).

All subjective (unmeasurable) evaluation criteria must include a verbal description of the rating, which must comply with the facts defined by the Contracting Entity as being part of the evaluation process (and notably those which the Contracting Entity has selected as better-rated), as well as the score assigned to the applicant in the relevant criterion. The score assigned in a subjective evaluation criterion must be consistent with the verbal description of the rating of that evaluation criterion.

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The individual evaluation sub-criteria must be rated in such a way as to ensure that the maximum score (100 is recommended) is assigned to the most appropriate bid within the relevant evaluation sub-criterion, whereas the scores assigned to the other bids shall be proportionate to how good the bids are in terms of the relevant evaluation sub-criteria in relation to the most appropriate bid (the recommended scale is 1-100). The scores ascertained in this way shall be subsequently recalculated using the weight of the evaluation sub-criterion.



If an electronic auction is used, the Contracting Entity is obliged to proceed according to Sections 96 and 97 of the Act in particular.

The grant provider reserves the right to request clarification or completion of the required information from the contractor if any evaluation-related uncertainties occur.

- 25) The evaluation commission shall only constitute a quorum if all of its members are present, and shall decide by the simple majority of votes.

Tender process report

- 26) The Contracting Entity shall draw up a tender process report, which shall include:
- a) name, registered office, ID of the Contracting Entity;
 - b) project name;
 - c) subject matter of the contract;
 - d) date of publication of the notification of the commencement of the tender process, final deadline for submitting bids;
 - e) list of contractors who have requested Tender Specifications, list of bids received, and list of applicants requested to complete their bids;
 - f) evaluation of individual applicants' bids by evaluation criteria, including the specification of scores and the determination of a winning bid; evaluation method, including offer prices and other evaluated parameters from all evaluated bids; list of eliminated bids, including specific justifications for their elimination;
 - g) data on members of the evaluation commission and signatures by all of its members;
 - h) signature by the person authorised to act on behalf of or for the Contracting Entity, whereby consent to the outcome of the evaluation process shall be expressed and the decision to select a contractor shall be made;
 - i) Contracting Entity's declaration of honour certifying that, during the tender process, the Contracting Entity has not detected any fact preventing the Contracting Entity from entering into the agreement according to item 28 of the Rules, and that the Contracting Entity has no economic or similar links with the winning applicant according to item 36 of the Rules.

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Agreement



27) If the selected applicant refuses to enter into the agreement with the Contracting Entity or fails to assist the Contracting Entity adequately¹⁷, the Contracting Entity may enter into the agreement with the applicant who finishes second. The Contracting Entity may repeat the procedure according to the foregoing sentence for the applicant who finishes third if both the applicant who finishes first and that who finishes second refuse to enter into the agreement. The agreement must be entered into in accordance with the conditions of the tender process and with the bid selected.

- 28) The Contracting Entity may not enter into the agreement with an applicant
- a) if the applicant's bid was co-prepared by a Contracting Entity's employee or a member of the statutory body, the statutory body, a member of the project implementation team or a person who, under a contractual relationship, was engaged in the preparation of the tender process or in the publication of the call for tenders;
 - b) or with an applicant in association who is a Contracting Entity's employee or a member of the implementation team or a person who, under a contractual relationship, was engaged in the preparation of the tender process or in the publication of the call for tenders, or
 - c) whose subcontractor is a Contracting Entity's employee, a member of the implementation team or a person who, under a contractual relationship, was engaged in the preparation of the tender process or in the publication of the call for tenders.

If, during the tender process, the Contracting Entity detects any of the above facts, the Contracting Entity is obliged to eliminate such a bid once this is detected at any stage of the tender process but no later than before the agreement is entered into.

- 29) For contracts where the expected value exceeds CZK 50 million excluding VAT, the Contracting Entity may not enter into the agreement with the selected applicant before the grant provider completes the verification of the Contracting Entity's procedure in organising the tender process.
- 30) The Contracting Entity is obliged to ensure that the applicant with whom the agreement was entered into is a person obliged to co-participate in the exercise of the financial audit pursuant to Section 2(e) of Act No 320/2001 Coll., on financial audit in public administration, as amended.
- 31) The agreement must be made in writing and must include at least the following elements:
- a) identification of the parties, including their ID numbers and Taxpayer IDs, if these have been assigned;

¹⁷ The period for providing adequate assistance has been set at 15 days from the date of sending (by a registered letter) the notification of the result of the contract award procedure.



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- b) the subject of performance (specified in terms of both quantity and quality); the subject matter of the agreement must be identical to the subject matter of the relevant applicant's bid;
 - c) the price, including VAT, and the specification of VAT separately or, where appropriate, the statement that the contractor is not a VAT payer; payment terms;
 - d) time and place of performance;
 - e) other mandatory elements required for the agreement to come into force.
- 32) The Contracting Entity may not allow for a substantial change to the rights and responsibilities arising from the agreement it has entered into with the selected applicant. A substantial change is deemed to be such a change that
- a) would extend the subject matter of the public contract; this has no effect on the right to award contracts for additional services or construction work where the conditions pursuant to Section 23(7)(a) of the Act are met;
 - b) would enable other contractors to participate if used in the original tender process;
 - c) might influence the choice of the most appropriate bid if used in the original tender process; or
 - d) would alter the economic balance of the agreement in favour of the selected applicant.

Information on the outcome of the tender process

- 33) As provided in Section 147a of the Act, a public as well as subsidised Contracting Entity has to publish the full text of its agreement or framework agreement within 15 days from entering into it if the price exceeds CZK 500,000 excluding VAT, i.e. even for small-scale public contracts.
- 34) The outcome of the tender process must be notified, without undue delay, to all applicants who have submitted their bids within the due period for submitting bids. The notification of the outcome of the contract award procedure must include at least the following information: identification data on the contractors whose bids were evaluated and the result of the bid evaluation process with a clear indication of the order of the bids. This information must be sent in writing, either by letter or electronically, (the Contracting Entity will have to be able to prove sending that information – by a delivery notification, certificate of posting, handover record, email delivery notification along with a copy of the sent email message, etc.). If the Contracting Entity has so reserved in the notification of the commencement of the tender process, it may, within the tender process, publish the notification of the choice of the most appropriate bid and, where appropriate, the notification of the elimination of a bid within 5 business days from the relevant decision in the Contracting Entity's profile¹⁸. In that event, the notification of the choice of the most appropriate bid and, where appropriate, the notification of the elimination of a bid shall be considered to

¹⁸ The Contracting Entity's profile is an electronic instrument defined in Section 17(x) of the Act.

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have been delivered to all relevant interested parties as well as to all relevant applicants once published in the Contracting Entity's profile.

Providing information to the grant provider

- 35) For contracts where the expected value exceeds CZK 1 million excluding VAT, the Contracting Entity is obliged to demonstrably send the grant provider a written invitation, electronically via the eAccount, to a meeting of the evaluation commission if such a meeting is held after signing the Decision to Provide a Grant, and to do so no later than 5 business days prior to the meeting. The grant provider shall, at its own discretion, decide whether or not its representative will take part in the evaluation commission meeting. If the provider's representative takes part in the evaluation commission meeting, the representative shall be an observer, and cannot be appointed member of the evaluation commission.
- 36) The Contracting Entity is obliged to notify the grant provider if the contract is awarded to a closely related person under Section 116 of Act No 40/1964 Coll., as amended, to an economically linked person (this means a partner enterprise or a linked enterprise according to the definition of the small and medium-sized enterprise as laid down in Annex 1 to the Commission Regulation (EC) No 800/2008) or to a person having the constituent elements as provided in Section 66b (concerted practices) of Act No 513/1991 Coll., the Commercial Code, as amended. The Contracting Entity is also obliged to have an expert opinion created, with the expert to be selected in accordance with the wording of Act No 36/1967 Coll., on experts and interpreters, as amended, from the list of judicial experts after the completion of the contract, and to submit the opinion, along with an application for payment, to the grant provider. If the expert establishes a lower price in his or her expert opinion than the price arising from the tender process, only the expenditure the amount of which has been established by the expert opinion shall be regarded as the eligible expenditure on the contract. This has no effect on other provisions of the Rules of Eligible Cost – the general and specific parts of the relevant programme (such as ineligible VAT) as well as no effect on the provision of a specific Call concerning the procurement of intangible assets. The costs of creating the expert opinion shall be borne by the Contracting Entity.

Archiving and reviews

- 37) The Contracting Entity must keep all documentation of the progress of the tender process for the purposes of any audits to be carried out by competent audit authorities (Ministry of Industry and Trade and others – see the Conditions of Providing a Grant). The Contracting Entity shall keep the following documents: Tender Specifications, notification of the commencement of the tender process, tender process report, bids, mailings (if any) exchanged with applicants before and after the publication, declaration of honour in respect of confidentiality and absence of bias, registration sheet of the bids submitted, request for completing applicant's data, decision to annul the tender process, agreement, and notification of the outcome of the process. The archiving period is laid down in the Conditions of Providing a Grant. The documentation of the tender process to select a contractor must be conclusive enough

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to assess whether the Contractor Selection Rules have been followed. The Contracting Entity submits documentation in the official language (Czech) during audits.

Audits of tender processes

- 38) For contracts where the expected value is lower than CZK 50 million excluding VAT inclusive, the Contracting Entity shall, for the purposes of verifying the Contracting Entity's procedure used in the tender process and prior to the planned submission of the application for payment pertaining to the contract concerned, enter the notification of the commencement of the tender process (as proof of its publication), the Tender Specifications, the winning bid, the tender process report, the agreement, and other documents pertaining to the tender process, as actually needed in relation to the progress of the tender process (such as annexes), into the e-Account.

The provider reserves the right to suspend an application for payment if the supporting documents in the eAccount are incomplete. In its application for payment, the applicant is obliged to specify the reference to the tender process in the relevant accounting documents.

For contracts where the expected value exceeds CZK 50 million excluding VAT, the Contracting Entity, **prior to signing the agreement with the winning applicant**, is obliged to add the notification of the commencement of the tender process (as proof of publication), the Tender Specifications, the winning contractor's bid, the tender process report, and the draft agreement under which the contractual relationship is to be concluded, to the list of documents in the eAccount.

Final provisions

- 39) Where the contract price is increased vis-à-vis the price arising from the tender process, the difference between the price arising from the tender process and the increased price shall not be recognised as eligible expenditure.
- 40) These Contractor Selection Rules also apply to the individual entities of the implementation structure of the Operational Programme Enterprise and Innovation (Ministry of Industry and Trade, CzechInvest, CzechTrade), unless the procedure pursuant to the Act is required.
- 41) For the tender processes commenced before signing the Decision to Provide a Grant, the Contracting Entity is obliged to proceed according to the Rules applicable on the date of publication (see www.mpo.cz). The operative date to determine the date of applicability of the rules for a contract is the date of sending the notification of the commencement of the tender process to the Commercial Bulletin. For the tender processes commenced after signing the Decision to Provide a Grant, the Contracting Entity is obliged to proceed according to the Rules set out in the Conditions of Providing a Grant.