
	Příloha Pátevního manuálu OPPI		 EVROPSKÝ FOND PRO REGIONÁLNÍ ROZVOJ
	17_17_M_Pravidla pro výběr dodavatelů č.j.: 10596/08100	Číslo vydání/aktualizace: 8/0	

**The Regulations for Supplier Selection** (hereinafter referred to as the “Regulations”) set forth a binding procedure for the aid recipient (hereinafter referred to as the “Contracting Entity”) when:

- a) Issuance of small-scale orders whose anticipated value exceeds CZK 500,000 excl. VAT and at the same time does not reach the amount of CZK 2 million (or CZK 6 million in the case of construction works).
- b) Selection of suppliers in cases when the value of the order reaches CZK 2 million (CZK 6 million in the case of construction works) and the Contracting Entity is not governed by Act No. 137/2006 Coll., on Public Procurement, as amended (hereinafter referred to as the “Act”) (e.g., the Contracting Entity does not fulfil the definition of an assisted Contracting Entity pursuant to the Act.). A sectoral Contracting Entity shall proceed in accordance with these Regulations in the case of submitting sub-limit public procurement orders and small-scale orders in a value greater than CZK 500,000 excl. VAT.

When stating the anticipated value of the order, the Contracting Entity is obligated to proceed in accordance with Section 13 of the Act.



These regulations do not pertain to:

- a) orders or public procurement orders co-financed from the Operational Programme Enterprise and Innovation in the value lower than or equal to **CZK 500,000** excl. VAT. However, the Contracting Entity is obligated to ensure that the funding is expended economically and only for the purpose of fulfilling the objectives of the project.
- b) cases when the Contracting Entity implements the order in question within its own activities (e.g. in the form of capitalisation) if the announced programme and the Eligible Cost Regulations expressly allow this.
- c) public procurement orders which the Contracting Entity is obligated to issue pursuant to the Act<sup>1</sup>.
- d) purchase and leasing of property when the submission of an expert appraisal or an attached price map of the given location or similar relevant document will be required.
- e) the purchase of exclusive rights (e.g. patents, protected trademarks, etc.), proprietary technologies and artistic works **in the value greater than CZK 500,000 excl. VAT**, when the Contracting Entity is obligated to submit an expert appraisal prepared by an authorised expert with an assessment of such rights.
- f) orders which the Act expressly excludes from its competence (e.g. orders pursuant to Section 18, Section 19(2) et seq. of the Act).

## General principles

- 1) The time periods in these Regulations are set forth as calendar days.

<sup>1</sup> The definitions of public, sectoral and assisted Contracting Entities are set forth in Section 2 of the Act.



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- 2) The Contracting Entity shall proceed in accordance the Act in the case when the Act thus stipulates. The Contracting Entity is obligated to proceed in accordance with the Regulations if the Act does not stipulate otherwise.
- 3) The selection of suppliers must be transparent and non-discriminatory<sup>2</sup> and adhere to the principle of equal access. The Contracting Entity is, among other things, obligated to comply with: (i) the provisions of the EC Treaty on free movement of goods (Articles 28-30 of the EC Treaty<sup>3</sup>), freedom of establishment (Article 49 of the EC Treaty) and free movement of services (Article 56 of the EC Treaty SES), prohibition of discrimination (Articles 18 and 19 of the EC Treaty); (ii) all relevant legal regulations and principles of EC law which have a direct effect on the law of the Czech Republic and/or were transposed by a regulation of internal Czech law.
- 4) The Contracting Entity is obligated to provide the same access to information on the order for all tenderers. For example, in the case of renovation of a building, the Contracting Entity is obligated to enable all tenderers expressing interest to view the building. The Contracting Entity shall prepare and hand over to all tenderers the tender documentation in the same format and scope and without undue delay on the basis of their request.  
In the case of provision of supplemental information to any of the tenderers upon such tenderers' request, the Contracting Entity is obligated to provide the same information to all other known (including future) tenderers for the order.
- 5) The Contracting Entity is obligated to proceed so that the subject of the order is not divided into smaller orders with the aim of decreasing the value of the order below the stipulated financial limits of individual categories. Identical and similar activities or indivisible deliveries, services and construction works must always be understood as a single order ("principle of purpose"). If one supplier realises several orders, this shall generally be viewed as a single order. However, the Contracting Entity is not obligated to aggregate the anticipated values of orders of the same subject which will be acquired "incidentally" according to the overall current needs of the Contracting Entity and which cannot be objectively foreseen. This obligation does not apply for repeated orders which the Contracting Entity obtains irregularly and whose unit price is variable in the course of the accounting period.  
In the case of this procedure, the Contracting Entity must objectively state the reasons which led to such procedure and the provider shall assess the validity of this procedure in individual cases.
- 6) The Contracting Entity is authorised to cancel a tender procedure at any time, though no later than by the conclusion of the contract. The Contracting Entity is obligated to notify, without delay, all tenderers that have submitted a bid within the stipulated time period for submitting bids about the cancellation of the tender procedure.<sup>4</sup> The Contracting Entity is not obligated to inform the tenderers of the reason for cancelling the tender procedure if the possibility of cancelling the tender procedure is set forth in

<sup>2</sup> The definition of the term "non-discriminatory" is provided particularly in Section 44(9) of Act No. 137/2006 Coll.

<sup>3</sup> Treaty on the Functioning of the European Union

<sup>4</sup> A written notification on the cancellation of the tender procedure posted on the Contracting Entity's website is sufficient.

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the terms and conditions of the tender procedure. However, the Contracting Entity is obligated to inform the entities conducting an inspection within the framework of the given operational programme about the reason for cancelling the tender procedure.



The Contracting Entity shall cancel the tender procedure without undue delay if:

- a) no bids were submitted within the stipulated time period, or
- b) no bids fulfilling the Contracting Entity's requirements for the subject of fulfilment of the order were submitted within the stipulated time period or all participants in the tender procedure were disqualified, or
- c) any substantial discrepancies or errors were ascertained in the notification on commencement of the tender procedure or in the call or contractual documentation, or
- d) in the course of the tender procedure, reasons worthy of special consideration emerged due to which the Contracting Entity cannot be required to continue in the tender procedure<sup>5</sup>, or
- e) the selected tenderer or, as the case may be, the tenderer second in line refused to conclude a contract or did not provide to the Contracting Party sufficient cooperation for the conclusion of a contract pursuant to item 28.

### **Tender documentation**

- 7) Upon request, the Contracting Entity is obligated to provide to the tenderers the tender document throughout the entire period of duration of the time period for submitting bids.
- 8) When announcing the tender procedure, the Contracting Entity must have the prepared tender documentation which is binding for the further evaluation of bids. The Contracting Entity is always liable for the correctness of the tender documentation.
- 9) The contractual documentation shall contain:
  - a) requirements for fulfilment of the qualification prerequisites of the tenderers
  - b) precise characteristics of the order
  - c) the anticipated value of the order
  - d) information specifying that this does not involve a tender procedure pursuant to Act No. 137/2006 Coll.
  - e) information specifying the language in which the bid must be submitted
  - f) criteria for assessment, whereas the mathematically expressed weight of each criterion must be stipulated and the method of allocating points must be described in advance
  - g) content and method of processing bids
  - h) business conditions
  - i) time periods and deadlines which must be identical to the data set forth in the notification of announcement of the order (= published inserts)
  - j) other information according to the needs of the Contracting Entity

<sup>5</sup> Reasons worthy of special consideration must have their origin in objective fact (i.e. cannot be understood hereunder as reasons of subjective origin (Contracting Entity, tenderer, aid provider, etc.)).

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10) The tender documentation must be in accordance with the issuance of the order. It is not possible to amend the tender documentation after such issuance. If an amendment occurs, it is necessary to reissue the tender. The time period in these cases runs from the beginning.

### Issuance of the order

11) Between the issuance of the tender and the deadline for submitting bids, there must be a sufficiently long period of time for preparing bids with respect to the subject of the order. The Contracting Entity is obligated to ensure that during this stipulated period the announcement on commencement of the tender procedure will be publicly available (in the Commercial Bulletin). It is recommended that the Contracting Entity include in the announcement the fact that, pursuant to Section 2(e) of Act No. 320/2001 Coll., on Financial Inspection in Public Administration, as amended, the selected supplier is an entity obligated to cooperate in the performance of financial inspections.

12) The Contracting Entity is obligated to proceed according to the valid Publicity Regulations<sup>6</sup> from the date of issuance of the tender in the case that the tender was issued following the issuance of the Decision to Grant a Subsidy. The Contracting Entity is obligated to fulfil the publicity requirements following the issuance of the Decision to Grant a Subsidy minimally in one of the following documents:

- a) Announcement on commencement of the tender procedure (= published insert)
- b) Tender documentation



13) The announcement on commencement of the tender procedure must contain at least the following information:

- a) Identification data of the Contracting Entity<sup>7</sup>
- b) Name and description of the subject of the order
- c) Time period and location for submitting bids
- d) Reference to the Contracting Entity's contact person, such person's telephone number and e-mail address
- e) Conditions for provision of the tender documentation, which is a mandatory part of this announcement and contains the essential elements pursuant to item 9.

14) In the case of orders in the anticipated value of more than CZK 500,000 excl. VAT and up to CZK 50 million incl. VAT, the Contracting Entity shall have the issuance of the order publicised in the Commercial Bulletin (in the electronic version). The

<sup>6</sup> The Publicity Regulations are available at <http://www.mpo.cz/dokument85869.html>. In the given case this involves the information pursuant to Article 9 of Commission Regulation (EC) No. 1828/2006: a) symbol of the European Union (flag) together with a reference to the EU (written words "European Union"); b) reference to the relevant fund (written words "European Regional Development Fund"); c) slogan "Investment in Your Future".

<sup>7</sup> Identification information is understood as the commercial firm or name, registered office, legal form, and identification number if such has been assigned, if this concerns a legal entity, and the commercial firm or name and surname, place of business or permanent residence, and identification number if such has been assigned, if this concerns a natural person.

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minimum time period for submitting bids is 30 days from the date of publication in the Commercial Bulletin<sup>8</sup>.

In the case of orders in the anticipated value of up to CZK 2 million excl. VAT, a public Contracting Entity<sup>9</sup> is not obligated to publicise the issuance of the order in the Commercial Bulletin, but shall publicise the issuance of the order on its website after a period of 15 days. Contributory organisations shall use the website of their governing body for the same cases.



- 15) In the case of orders in the anticipated value of more than CZK 50 million excl. VAT and up to CZK 100 million incl. VAT, the Contracting Entity shall have the issuance of the order publicised in the Commercial Bulletin (in the electronic version) and on Central Address ([www.centralniadresa.cz](http://www.centralniadresa.cz)) in the Other Offers section. The minimum time period for submitting bids is 40 days from the date of publication in the Commercial Bulletin.
- 16) In the case of orders in the anticipated value of more than CZK 100 million excl. VAT, the Contracting Entity shall have the issuance of the order publicised in the Commercial Bulletin (in the electronic version) and on Central Address ([www.centralniadresa.cz](http://www.centralniadresa.cz)) in the Other Offers section and in the Official Journal of the European Union – TED ([ted.europa.eu](http://ted.europa.eu)). The minimum time period for submission of bids is 60 days from the date of publication in the Commercial Bulletin.
- 17) Following the publication of the announcement on commencement of the tender procedure pursuant to the requirements set forth above, the Contracting Entity can directly address known, suitable suppliers and directly request the submission of bids from them. The Contracting Entity shall evaluate the bids thus acquired together with the bids acquired on the basis of the announcement on commencement of the tender procedure following the expiration of the time period for submitting bids. The Contracting Entity is obligated to maintain the principle of equal access pursuant to item 4 of the Regulations toward such directly addressed tenderers.
- 18) The Contracting Entity is always obligated to assess only suitable bids from suppliers. Bids which are in contravention of the tender documentation cannot be considered as suitable. Bids pursuant to Section 22 (1) a) – f) of the Act are unacceptable. This concerns bids:
- a) which are unsuitable as they do not fulfil the Contracting Entity's requirements for the subject of fulfilment of a public procurement order.
  - b) which do not fulfil the contractual terms and conditions from the perspective of the Contracting Entity's other requirements apart from the requirements for the subject of the public procurement order.
  - c) in the case of which the tenderer does not demonstrate the required qualifications.

<sup>8</sup> The course of the time period does not include the day when the fact determining the start of the period occurred. This similarly applies for the time periods in items 15, 16 and 17. We recommend that the applicants inform, in advance, the publishers request from periodicals or, as the case may be, website administrators information pertaining to deadlines for submitting documents so that the announcement can be published on time.

<sup>9</sup> The definition of a public Contracting Entity is set forth in Section 2 of the Act.

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- d) which are in conflict with the legal regulations in force.
  - e) which contain adjusted conditions of fulfilment in conflict with the Contracting Entity's requirements or which are unreasonable due to an extraordinarily low bid price (the Contracting Entity shall decide whether this concerns an unreasonably low bid price).
  - f) which were submitted following the expiration of the time period for submitting bids.
- 19) In the case that a bid is submitted electronically, it must be either secured with a guaranteed electronic signature via a qualified certificate, or a declaration signed by the tenderer with a statement of agreement with the content of the bid must be attached to the bid. In the case of submitting a bid electronically, the Contracting Entity is obligated to proceed in accordance with the provisions of Section 149 (6) of the Act.
- 20) For fulfilment of the conditions of non-discriminatory and transparent supplier selection, it is necessary that the Contracting Entity always select the most favourable bid. Bids in foreign currencies are converted using the exchange rate of CNB valid on the date of bid evaluation. If the Contracting Entity does not receive any suitable bids within the tender procedure, the Contracting Entity must cancel the tender procedure pursuant to item 6 and to again announce the tender procedure.
- 21) During the evaluation, the Contracting Entity must adhere only to the tenderers' bids and evaluate them according to predetermined criteria. The subject of evaluation consists in the bids which fulfil the Contracting Entity's requirements stated in the contractual documentation. If, within the stipulated time period, the Contracting Entity receives bids in the case of which the Contracting Entity determines that clarification of information is required, the Contracting Entity can request such clarification after the stipulated time period. However, changes of the pricing and technical parameters may not occur and the offered conditions may not change.
- 22) The Contracting Entity is obligated to set up an evaluation committee. In the case of orders in the anticipated value of more than CZK 500,000 excl. VAT and up to CZK 50 million incl. VAT, this committee shall have at least three members. In the case of orders in the anticipated value of more than CZK 50 million excl. VAT, this committee shall have at least five members. Individual committee members shall be appointed by the Contracting Entity. Inspection of the completeness of bids shall be conducted by the committee for opening parcels. The Contracting Entity can stipulate that the role of the committee for opening parcels will be fulfilled by the evaluation committee.
- 23) The evaluation committee shall have a quorum only when all of its members are present and shall take decisions based on a simple majority of votes.
- 24) Each member of the committee is obligated to sign a declaration of non-prejudice by which such member shall assert that he/she has not participated in the preparation of any of the bids and that he/she has no connection of a personal or economic nature with any of the bid preparers.

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## Report on the tender procedure

25) The Contracting Entity shall compose a report on the tender procedure. Such report shall include:

- a) name, registered office and identification number of the Contracting Entity
- b) name of the project
- c) subject of the order
- d) date of publication of the notice on the announcement of the tender procedure, final date for submitting bids
- e) list of registered (addressed) entities and received bids
- f) evaluation of tenderers' individual bids according to the selection criteria with a statement of the number of points and determination of the winning bid, the method of conducting the evaluation including bid prices and other evaluated parameters of all suitable bids, and a list of rejected bids including the rationale for their rejection
- g) information about the composition of the evaluation committee
- h) signature of the person authorised to act on behalf of the Contracting Entity

26) In the case of OPEI aid programmes, the Contracting Entity is obligated to include the documents pursuant to item 33a in the list of documents in eAccount and to inform the provider via the bulletin board. The provider reserves the right to suspend the payment application if the documents in eAccount are not complete. In the case of the relevant accounting documents, the applicant is obligated to state the relationship thereof to the tender procedure.

## Contract



27) In the case that the selected tenderer refuses to conclude a contract with the Contracting Entity or does not provide to the Contracting Entity sufficient cooperation<sup>10</sup>, the Contracting Entity can conclude a contract with the second-place tenderer. The Contracting Entity can repeat the procedure according to the previous sentence for the third-place tenderer if the first- and second-place tenderers refuse to conclude a contract.

28) The Contracting Entity is obligated to ensure that the tenderer with which it has concluded a contract is an entity obligated to cooperate in the performance of a financial inspection pursuant to Section 2 e) of Act No. 320/2001 Coll., on Financial Inspection in Public Administration.

29) The contract must be in written form and must contain at least the following appurtenances:

- a) identification of the contracting parties including identification numbers
- b) the subject of fulfilment (specified quantitatively and qualitatively), the subject of the contract must correspond to the subject of the given tenderer's bid

<sup>10</sup> The time period for providing sufficient cooperation is set at 15 days from the date of sending (by registered post) the notification of the results of the tender procedure.

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- c) the price including VAT and a separate statement of the VAT itself or, as the case may be, a statement that the supplier is not a VAT payer; payment conditions
- d) time and place of fulfilment

### **Provision of information to all tender participants**



#### **Information on the result of the tender procedure**

30) All tenderers which submitted bids within the stipulated deadline must be informed of the tender's result without undue delay. Notification of the tender's result must contain at least the following information: identification data of the suppliers whose bids were evaluated and the result of the bid evaluation from which the ranking of bids is clear. This information must be sent in writing in the form of a letter or electronically (the Contracting Entity must be able to furnish proof that such information was sent – delivery receipt, registered-post receipt, handover protocol, e-mail delivery receipt together with a hardcopy of the sent e-mail, etc.) or published on the Contracting Entity's website.

#### **Provision of information to the relevant aid provider**

31) In the case of orders in the value of more than CZK 2 million, the Contracting Entity is obligated to send to the aid provider electronically via eAccount a verifiably written invitation to the meeting of the evaluation committee if such meeting takes place following the signing of the Decision to Grant a Subsidy. The invitation shall be sent no later than seven calendar days prior to the meeting. According to its own discretion, the aid provider shall decide whether its representative will participate or not participate in the meeting. If the provider's representative participates in the meeting of the evaluation committee, he/she shall act in the role of observer. Such representative cannot in any case be appointed as a member of the evaluation committee.

32) The Contracting Entity is obligated to inform the aid provider if a contract is awarded to a closely related entity pursuant to Section 116 of Act No. 40/1964 Coll. or to an economically related entity. An economically related entity is understood as a partner or related enterprise according to the Definition of Small and Medium-Sized Enterprises, which is part of the Instructions for Applicants for the relevant programme (this document is available on the website at [www.mpo.cz](http://www.mpo.cz) in the section Business Support/Operational Programme Enterprise and Innovation/Aid Programmes/Announcement of the Relevant Programme). In the case of awarding a contract to a closely related entity pursuant to Section 116 of Act No. 40/1964 Coll., in dealings bearing the characteristics set forth in the provisions of Section 66b (acting in concert) of Act No. 513/1991 Coll., the Commercial Code, or an economically related entity, only those costs whose amount was set forth in an assessment by an officially appointed expert selected in accordance with Act No. 36/1967 Coll., on Experts and Translators, as amended, from the list of officially appointed translators, are considered as eligible costs. Other provisions of the Eligible Cost Regulations – the general and special sections of the relevant programme (e.g. the ineligibility of VAT)

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– are not thereby affected, nor are the provisions of the particular Call concerning purchases of intangible assets thereby affected. The costs of processing the assessment shall be paid by the Contracting Entity. In accordance with the preceding sentence, the Contracting Entity is obligated to have an expert assessment conducted following the completion of the order and to submit it together with the payment application to the aid provider.

## Archiving

33) The Contracting Entity must keep documentation on the course of the tender procedure for the purpose of a possible inspection by the supervisory bodies (Ministry of Industry and Trade, among others – see the Aid-Provision Terms and Conditions) authorised to do so. The Contracting Entity shall retain the following documents: tender documentation, the announcement on commencement of the tender procedure, report on the selection procedure, bids, correspondence with the tenderers before and after submission (if such correspondence was conducted), affidavit on absence of bias, registration list of submitted bids, tenderers' requests for supplemental information, Decision on Cancellation of the Tender, the contract and the text of the tender-results notification (see item 29). The archiving period is set forth in the Aid-Provision Terms and Conditions. The supplier-tender documentation must be sufficiently evidentiary for assessing whether the Regulations for Supplier Selection were complied with. In the event of an inspection, the Contracting Entity shall submit the documentation in the official language (Czech). At the aid-provider's request, the Contracting Entity is obligated to submit the required documents in the Czech language.



33a) At the latest together with the Payment Application related to the order in question, the Contracting Entity shall input into eAccount the contract, tender documentation, the announcement on commencement of the tender procedure, the report on the tender procedure and other documents relating to the tender procedure according to the requirements arising in connection with the course of the tender procedure (e.g. addenda). In the case that within OPEI aid programmes the Contracting Entity is notified by the provider that its project was rejected, the Contracting Entity is not obligated to archive the above-mentioned documents.

## Final provisions

34) In the case when there is an increase of the order price as compared with the tender price, the difference between the tender price and the increased price will not be recognised as an eligible cost.

35) These Regulations for Supplier Selection are valid also for individual entities of the implementation structure of the Operational Programme Enterprise and Innovation (Ministry of Industry and Trade, CzechInvest, CzechTrade) if there is not a necessary procedure pursuant to the Act.

36) In the case of tender procedures commenced prior to the signing of the Decision to Grant a Subsidy, the Contracting Entity is obligated to proceed in accordance with the Regulations valid on the date of the announcement (see [www.mpo.cz](http://www.mpo.cz)). The decisive

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date for determining the validity of the regulations for the given order is the date of sending the announcement on commencement of the tender procedure to the Commercial Bulletin. In the case of tender procedures commenced following the signing of the Decision to Grant a Subsidy, the Contracting Entity is obligated to proceed in accordance with the Regulations set forth in the Aid-Provision Terms and Conditions.