

DECREE
of 10 January 2011

Laying Down Detailed Conditions Relating to Electronic Tools and Acts Taken Electronically in Awarding Public Contracts and Particulars Concerning Certificate of Conformity

Pursuant to § 159(3) of Act no. 137/2006 Coll., on Public Contracts, as amended by Act no. 179/2010 Coll. (hereinafter referred to as “the Act”), the Ministry for Regional Development, to implement § 149(8) and § 149(9) of the Act, lays down as follows:

PART ONE

GENERAL PROVISIONS

§ 1

Scope

- This Decree provides for
- a) detailed conditions relating to electronic tools and acts taken electronically in awarding public contracts,
 - b) particulars concerning conditions for the issue of the certificate of conformity, data in such a certificate of conformity and validity of the certificate of conformity.

§ 2

Definitions of Terms

For the purposes of this Decree

- a) public key of a contracting entity shall be understood as unique electronic data, which unambiguously conform to a private key of such a contracting entity and may be of service to the economic operator to encrypt the content of a tender under this Decree,
- b) private key of a contracting entity shall be understood as unique electronic data, which unambiguously conform to a public key of such a contracting entity and may be of service to the contracting entity to decrypt the content of a tender under this Decree,
- c) certificate of the public key shall be understood as a data message¹, which relates the public key of a contracting entity to such a contracting entity in a

¹ Act no. 227/2000 Coll., on Electronic Signature and on Amendment to Certain Other Acts (the Electronic Signature Act), as amended.

credible manner, serves for transmission of the public key and may be of service to verify identity of the contracting entity and Internet pages thereof,

- d) electronic act in the award procedure shall be understood as an action of an acting person performed by means of an electronic tool,
- e) operational parameters shall be understood as a set of requirements relating to functional characteristics of an electronic tool and to the environment in which such an electronic tool operates that result from the Annex to this Decree,
- f) functionality shall be understood as a totality of functional characteristics, which the electronic tool holds,
- g) environment shall be understood as conditions under which the electronic tool is operated,
- h) operator of an electronic tool shall be understood as a natural or legal person that specifies operational parameters and secures operation of such an electronic tool, by means of which the electronic acts are or are to be performed for the purpose of awarding public contracts or for the purpose of acquiring a design in a design contest, and that meets requirements established under the law and this Decree,
- i) applicant shall be understood as an operator that applies for the assessment of compliance and award of the certificate of compliance,
- j) non-encrypted data message shall be understood as a data message in which the transmitted data are not hidden e.g. by encryption and are directly legible,
- k) encrypted data message shall be understood as a data message, in which the transmitted data are hidden by means of encryption and thus are not directly legible,
- l) time information shall be understood as a recording of the date and time of an electronic act with indication of hour, minute and second,
- m) certification audit shall be understood as a process of verification of an electronic tool conformity conducted by an entity for the assessment of conformity accredited by the national accreditation body based on separate legal regulation² (hereinafter referred to as “the certification body”),
- n) certification rules shall be understood as a totality of conditions and prerequisites established by the certification body,
- o) notification shall be understood as the contract notice, prior information notice, periodic indicative notice, design contest notice, contract award notice, notice on setting aside the award procedure and the design contest or any other data,

² Act no. 22/1997 Coll., on Technical Requirements for Products and on Amendment to Certain Other Acts, as amended.

which are published in the information system on public contracts or, if appropriate, in the Official Journal of the European Union,

- p) asset shall be understood as any element of an electronic tool and operational environment, sources included, which is indispensable for the operation of such an electronic tool to the intended extent.

PART TWO

ELECTRONIC ACTS AND ELECTRONIC TOOLS

§ 3

General Requirements for Performance of Electronic Acts in Awarding Public Contracts

In the award procedure the contracting entity shall designate the authorized persons that are entitled to take electronic acts in this procedure on behalf of such a contracting entity, in particular, make calls for competition or submission of tenders, supply tender documentation and additional information, confirm the receipt of tenders, conduct the opening of tenders and dispatch invitations to negotiate about tenders.

§ 4

Supply of Tender Documentation and Additional Information

- (1) Tender documentation, which the contracting entity supplies through electronic tools, is made available by the contracting entity in the form of a remote unrestricted access on the profile thereof or, in addition, on another address of Internet pages without prior request, or on the basis of a request in writing bearing the electronic signature.
- (2) If the contracting entity supplies tender documentation through a remote unrestricted access on the profile thereof or, in addition, on other Internet pages without a prior request, it shall arrange for
 - a) everybody to be able to make sure of the identity of the contracting entity or, where appropriate, identity of the operator of Internet pages in the form of a certificate of public key issued to the profile of the contracting entity or to the address of Internet pages by means of which the contracting entity supplies tender documentation,
 - b) tender documentation to be protected against unauthorized alteration, and
 - c) tender documentation to be accessible continuously on the profile of the contracting entity or on other Internet pages within a specified period of time.
- (3) If the contracting entity supplies tender documentation on the basis of a written request of the economic operator, the contracting entity shall arrange for

- a) tender documentation to be supplied only based on the duly delivered application by the person, whose electronic signature was successfully verified,
 - b) tender documentation to bear electronic signature of the authorized person of the contracting entity or electronic mark of the contracting entity, where such a tender documentation is supplied in the form of dispatch to the required electronic address of the economic operator, and
 - c) fulfilment of requirements pursuant to § 4(2), where tender documentation is to be supplied in the form of making such tender documentation accessible individually by means of the profile of the contracting entity or other Internet pages.
- (4) Provisions of § 4(1) through § 4(3) shall be applicable to the supply of additional information to tender conditions by analogy.

§ 5

Submission and Opening of Tenders

- (1) The electronic address for the submission of a tender, indicative tender, request to participate, design in a design contest and submission of auction values (hereinafter referred to as “the tender”) shall be published in the notification or in the call for competition.
- (2) To secure confidentiality of data contained in tenders, they shall be always protected by means of encryption of their content in compliance with the requirements set forth by this Decree. It shall not apply in the case of submission of auction values under condition that the preservation of confidentiality of the content of a tender is secured technically in compliance with this Decree
- (3) The contracting entity shall arrange for
 - a) the public key designed for encryption of the content of tenders to conform unambiguously to the private key of the contracting entity,
 - b) rendering impossible to forge the certificate of public key while exercising reasonable efforts,
 - c) rendering impossible to forge private key of the contracting entity while exercising reasonable efforts, and
 - d) private key of the contracting entity to be secured against loss or unauthorized access throughout the term of validity of the relevant certificate of a public key.
- (4) For the purpose of encryption of the content of a tender the contracting entity shall provide economic operators with the certificate of public key through the profile thereof or, where appropriate, other Internet pages or by the dispatch, based on a request.

- (5) Where in compliance with the law the time limit for the submission of tenders is fixed, the contracting entity shall arrange for the tender submitted on the address pursuant to § 5(1):
- a) prior to the expiry of the fixed time limit, to be further processed in compliance with this Decree and stored in unaltered form until it has been opened; the advice note of the receipt thereof shall be simultaneously forwarded to the electronic address of the economic operator, and
 - b) following the expiry of the fixed time limit, to be denoted as unacceptable; in such a case the advice note of such a fact shall be simultaneously forwarded to the electronic address of the economic operator.
- (6) Record of time information pursuant to § 7 shall be affixed to the submission of a tender.
- (7) Following the submission of a tender, the validity of the electronic signature of the economic operator shall be verified and the result of such verification shall be recorded to the tender delivered.
- (8) The contracting entity or persons authorized to open the tenders shall secure decryption of the content of tenders by using a private key of the contracting entity.
- (9) The contracting entity shall arrange for decryption and opening of tenders to be performed by authorized persons by using a private key of the contracting entity so that
- a) decryption or opening shall be always conducted in the presence of two or more authorized persons,
 - b) using private key of the contracting entity to decrypt tenders in the other manner than in the presence of authorized persons, shall be impossible.
- (10) The operator shall arrange for the electronic tool not to allow for decryption and opening of a tender prior to the time limit set forth for the opening thereof. The time of decryption and opening of the tender shall be recorded in compliance with § 6.
- (11) The electronic tender, following the opening, reading, assessment and evaluation thereof, shall remain, together with the report on verification of validity of the electronic signature, stored with the contracting entity in the encrypted form in which it was delivered to the contracting entity. The option of the contracting entity to retain, in addition, the tenders also in decrypted form shall not be prejudiced thereby.

§ 6

Keeping Records of Electronic Acts

- (1) The contracting entity shall keep records of performed electronic acts and any other activities of the electronic tool. The elements of such records shall be constituted at least by
 - a) determination of an electronic act or any other activity of such a tool,
 - b) time of performance of the electronic act or activity indicated with accuracy expressed in seconds,
 - c) identification of a person that performed the electronic act or initiated the activity of a tool,
 - d) report, if appropriate, on erroneous outcome of the electronic act or any other activity of the electronic tool.

- (2) Apart from and in addition to the records pursuant to § 6(1) the information concerning system state of the electronic tool pursuant to point b) and c) of this paragraph shall be recorded with indication of the time information pursuant to § 7. The system state shall be understood as a state in which the electronic tool is found at a given moment or interval and which is commensurate with one out of three potential values
 - a) in operation,
 - b) out of operation,
 - c) reduction of functionality not allowing for the performance of electronic acts, which may otherwise be exercised by means of a given electronic tool.

- (3) All and every data pursuant to § 6(1) and § 6(2) shall be protected against unauthorized access, alteration or destruction.

§ 7

Recording of Time

- (1) The time information shall be provided by the operation system linked to the source reproducing coordinated universal time UTC, e.g. to the national time measurement standard and frequencies or by virtue of the receiver Global Positioning System (GPS).

- (2) The synchronisation of the time measured by operation system pursuant to § 7(1) with the coordinated universal time shall be carried out at least once 24 hours in the course of an award procedure.

- (3) The synchronisation pursuant to § 7(2) shall be secured even in the case of occurrence of the leap second.

PART THREE

CERTIFICATION OF CONFORMITY OF ELECTRONIC TOOLS

§ 8

Certificate of Conformity

(1) The conformity of an electronic tool shall be assessed both from the point of functionality of such an electronic tool as well as in respect of the environment in which the electronic tool is operated. Detailed requirements concerning functional characteristics of the electronic tool and environment in which such an electronic tool is to be operated are referred to in the Annex to this Decree.

(2) For the purposes of the assessment of conformity of functionality of the electronic tool, the electronic acts shall be subdivided in to the groups as follows:

- a) electronic acts not including transmission and receipt of tenders
 - 1. dispatch and receipt of data messages,
 - 2. electronic acts of the contracting entity excluding the dispatch of a data message,
 - 3. negotiation of the contracting entity or of a body appointed by the contracting entity (commission) with the economic operator by means allowing for a remote access,
 - 4. supply of documents through a remote access,
- b) electronic acts consisting in transmission and receipt of tenders.

(3) The certificate of conformity shall contain at least following data:

- a) business name or name, registered office, legal form, identification number of the person, if it was assigned as regards a legal person, and business name or name and surname, place of business and, where appropriate, permanent residence, identification number of the person, if it was assigned as regards a natural person, of the certification body that issued the certificate of conformity,
- b) business name or name, registered office and legal form of the operator, if it is a legal person,
- c) name and surname or, where appropriate, business name and place of business, or, if relevant, permanent residence of the operator, if it is a natural person,
- d) identification number of the operator, if it was assigned,
- e) trademark and version of the electronic tool,

- f) indication of the group of electronic acts in the breakdown pursuant to § 8(2), for which the electronic tool is certified in compliance with requirements set forth by this Decree and statement of electronic acts in the framework of this group,
- g) date of issue of the certificate of conformity,
- h) term of validity of the certificate of conformity, and
- i) signature of the person authorised to act for and on behalf of the certification body.

(4) The certificate may be issued in paper form or in electronic format with valid electronic signature of the person authorized to act on behalf of or for the certification body.

(5) The certificate shall be issued in the Czech language.

(6) If the operator submits a valid certificate of conformity, it proves that the electronic tool operated thereby satisfies the requirements set forth by the law and this Decree to the extent of the group of electronic acts and the data referred to in the certificate of conformity.

(7) Where the electronic tool is operated by a person other than the applicant that proved conformity and holds a valid certificate of conformity, such a person, to prove the satisfaction of requirements set forth by legal regulations, is entitled to produce the certificate of conformity of another operator for such an electronic tool. In such a case the electronic tool satisfies the requirements set forth by the law for the functional characteristics of an electronic tool to the extent of the group of electronic acts referred to in the certificate of conformity. However, the conformity to the requirements concerning the environment, in which the electronic tool is operated, shall not be proved by the production of the certificate of conformity of another operator.

§ 9

Details Relating to Conditions for Issue of Certificate of Conformity

(1) The application for the issue of the certificate of conformity shall be filed by the applicant with the certification body. In the application and subsequent certification audit the applicant shall prove conformity of the electronic tool to the requirements set forth by legal regulations in respect of functionality of such an electronic tool and in respect of the environment in which the electronic tool is operated. The applicant will have proved the conformity of the electronic tool, if such an electronic tool satisfies at least the requirements laid down in the Annex to this Decree.

(2) Where the electronic tool holds a valid certificate of conformity in respect of functionality and is operated by the person other than the applicant that the certificate of conformity was issued to, the other person in the capacity of an applicant shall prove before the certification body only the satisfaction of requirements in respect of the operational environment in which the electronic tool is operated, within the meaning of the Annex to this Decree.

(3) The request for the issue of the certificate of conformity shall at least meet the particulars set forth in § 10. In the case referred to in § 9(2) the valid certificate of conformity that was issued for such an electronic tool, shall be supplemented to the application for the

issue of the certificate of conformity. The certification body shall issue the certificate of conformity for an electronic tool, where the conformity of such an electronic tool to the requirements referred to in the Annex to this Decree was established, namely to the extent of the established conformity. The certification body is not entitled to issue the certificate of conformity for an electronic tool beyond the framework of the submitted application for the issue of the certificate of conformity.

(4) The certification body shall lay down detailed certification rules. In view of individual types of certificates of conformity the certification rules shall contain at least the following:

- a) address for the submission of the application to issue a certificate of conformity,
- b) content and formal particulars of the application to issue a certificate of conformity,
- c) description of individual steps of certification audit,
- d) time intensity of a certification audit,
- e) content and formal particulars of the output of a certification audit,
- f) fee tariff for actions taken by the certification body, which shall contain at least the following:
 - 1. amount of remuneration to carry out certification audit,
 - 2. amount of remuneration to carry out certification audit to extend the validity of a certificate of conformity, attesting to the compliance with the requirements imposed upon the environment pursuant to § 11(1),
 - 3. amount for remuneration for the change in the certificate as a consequence of a change of characteristics or, if appropriate, conditions of such an electronic tool pursuant to § 11(2),
 - 4. amount of remuneration for the change of extent of the certificate of conformity pursuant to § 11(4), and
 - 5. amount of remuneration in case the certification body proceeds pursuant to § 11(3).
- g) corrective measures for actions of the certification body.

(5) The certification body shall be obligated to publish certification rules on the Internet pages thereof.

§ 10

Minimum Particulars of Request for Issue of Certificate of Conformity

(1) In the application for the issue of the certificate of conformity the applicant shall indicate identification data thereof, i.e. business name or name, registered office, legal form, identification number if it was assigned, as regards a legal person, and business name or name and surname, place of business or, if appropriate, place of residence, identification number, if it was assigned, as regards a natural person.

(2) In case that the applicant for the issue of the certificate of conformity is not a person that is the manufacturer of the electronic tool, the applicant shall indicate in the application for the issue of the certificate of conformity the identification data of the manufacturer, i.e. business name or name, registered office, legal form, identification number, if it was assigned, as regards a legal person, and business name or name and surname, place of business or, if appropriate, place of residence, identification number, if it was assigned, as regards a natural person.

(3) In the application for the issue of the certificate of conformity the applicant shall indicate the trademark and version of the electronic tool, and in compliance with § 8, the group or the groups within which such an electronic tool falls, and the statement of electronic acts in the framework of such a group that the electronic tool secures.

§ 11

Validity of Certificate of Conformity

(1) Unless provided otherwise it shall apply that if the operator proves to the certification body the conformity of an electronic tool to the requirements imposed on the functional characteristics of an electronic tool, the certificate of conformity shall have unrestricted validity to the extent of the group of electronic acts and the data referred to in such a certificate of conformity concerning functional characteristics of the electronic tool. Where, in addition, the operator proves to the certification body the conformity of an electronic tool to the requirements imposed on the environment, in which such an electronic tool is or is to be operated, the certificate of conformity shall be valid for the period of 3 years as from the date of issuance thereof to the extent of data referred to in the certificate of conformity concerning the operational environment. The validity of the certificate of conformity to the extent of data concerning functional characteristics of the electronic tool shall not be prejudiced by the expiry of the indicated period of time. At the request of the operator it shall possible to extend the validity of the certificate of conformity attesting to the conformity to the requirements imposed on environment by another 3 years, even repeatedly.

(2) Where the modification of characteristics or conditions of the operation of the electronic tool occurs compared to characteristics or conditions of the operation of such an electronic tool, on the basis of which the certificate of conformity was issued, and where these characteristics and conditions could implicate non-demonstration of conformity to the requirements laid down by legal regulations to the given extent, the operator shall be obligated to notify the certification body of this fact not later than within 15 days as from the date, when such a modification occurred and simultaneously submit the draft corrective measure. Otherwise, the certification body shall withhold the certificate of conformity or, where appropriate, modify the extent thereof, if such a modification of characteristics and conditions of operation of the electronic tool affords that.

(3) In addition, the certification body shall withhold or modify the certificate of conformity in case that the operator

a) fails to meet the conditions for the issuance of the certificate of conformity, or

b) used as background materials for the issuance of the certificate of conformity such evidence or, where appropriate, information which proved false or incomplete.

(4) The applicant is entitled to file a proposal to modify the extent of the certificate of conformity. In such a case the operator shall prove to the certification body only satisfaction of the requirements immediately affected by such a modification.

(5) The applicant is entitled to waive the certificate of conformity. The applicant shall be obligated to notify the certification body in writing of the renunciation of the certificate of conformity.

PART FOUR

FINAL PROVISIONS

§ 12

Repealing Provisions

Decree no. 329/2006 Coll., laying down detailed requirements for electronic means, electronic tools and electronic acts in awarding public contracts shall be repealed.

§ 13

Entry into Effect

This Decree shall enter into effect on the date of promulgation thereof.

Minister: