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D E C R E E

of 25 June 2012

on details of the scope of justification of purposefulness of public contract and statement of reasons for public contract

Pursuant to § 159(3) of Act no. 137/2006 Coll., on Public Contracts, as amended by Act no. 110/2007 Coll., Act no. 76/2008 Coll., Act no. 417/2009 Coll., Act no. 179/2010 Coll., Act no. 258/2011 Coll. and Act no. 55/2012 Coll., the Ministry of Regional Development, to implement § 86(2) and § 156(8) of the Act, lays down as follows:

§ 1

Details of the Scope of Justification of Purposefulness of Public Contract for Purposes of Contracting Authority Prior Information Notice Pursuant to § 86(2) of the Act on Public Contracts

Justification of purposefulness of a public contract for the purposes of prior information notice shall contain at least the following

- a) Description of the needs to be accomplished by the performance of a public contract,
- b) Description of the subject-matter of a public contract,
- c) Description of mutual relation between the subject matter of a public contract and the needs of contracting entity,
- d) Estimated date of performance of the public contract.

§ 2

Justification of Purposefulness of Public Contract

Justification of purposefulness of a public contract shall contain at least the following

- a) The data pursuant to § 1, where a modification occurred in contrast to the facts pursuant to § 1,

- b) Description of the risks attaching to the performance of a public contract, taken into account by the contracting entity in laying down the tender conditions.

§ 3

Justification of Requirements on Technical Qualifications Prerequisites

(1) The contracting authority shall justify proportionality of the requirements on technical qualifications prerequisites of the economic operator to perform a public supply contract in relation to the subject-matter of the public contract and the risks attaching to the performance of the public contract, where it requires

- a) Production of the list of principal deliveries, which implies that the financial value of all principal deliveries is in the aggregate at least three times the amount of the estimated value of the public contract,
- b) Production of the list of more than three technicians or technical bodies,
- c) Production of the description of technical facilities and measures used by the economic operator for ensuring quality control, and description of facilities or equipment of the economic operator designed for research,
- d) Check carried out on the production capacities by the contracting authority or on its behalf by another person and, if necessary, a check on measures relating to assurance of quality and research,
- e) Samples, descriptions or photographs of the products to be supplied,
- f) Evidence attesting conformity of a required product issued by the relevant authority.

(2) The contracting authority shall justify proportionality of the requirements on technical qualifications prerequisites of the economic operator to perform a public service contract in relation to the subject-matter of the public contract and the risks attaching to the performance of the public contract, where it requires

- a) Production of the list of principal services, which implies that the financial value of all principal services is in the aggregate at least

three times the amount of the estimated value of the public contract,

- b) Production of the list of more than three technicians or technical bodies,
- c) Production of the description of technical facilities and measures used by the economic operator for ensuring quality control, and description of facilities or equipment of the economic operator designed for research,
- d) Check carried out on the production capacities by the contracting authority or on its behalf by another person and, if necessary, a check on measures relating to assurance of quality and research,
- e) Certificate of education higher than secondary education with GCSE (general certificate of secondary education) exam, and a certificate of professional qualifications longer than three years of the economic operator or of persons with equal status and persons responsible for providing relevant services,
- f) Production of the statement of the average annual manpower of the economic operator or of other persons engaged in the performance of contracts of similar nature and of the number of economic operator's managerial staff or of persons with equal status,
- g) Statement of tools or aids, operating and technical equipment available to the economic operator for carrying out the public contract.

(3) The contracting authority shall justify proportionality of the requirements on technical qualifications prerequisites of the economic operator to perform a public works contract in relation to the subject-matter of the public contract and the risks attaching to the performance of the public contract, where it requires

- a) Production of the list of public works, which implies that the financial value of indicated public works is in the aggregate at least twice the amount of the estimated value of the public contract,
- b) Production of the list of more than three technicians or technical bodies,
- c) Certificate of professional qualifications longer than five years of the economic operator or of persons with equal status and persons responsible for carrying out relevant public works,

- d) Production of the statement of the average annual manpower of the economic operator or of other persons engaged in the performance of contracts of similar nature and of the number of economic operator's managerial staff or of persons with equal status,
- e) Statement of tools or aids, operating and technical equipment available to the economic operator for carrying out the public contract.

§ 4

Justification of Delimitation of Public Contract Commercial Terms and Conditions

(1) The contracting authority shall justify the delimitation of commercial terms and conditions of a public supply contract and public service contract in proportion to its needs and to the risks attaching to the performance of the public contract, if it

- a) Sets forth maturity of invoices longer than 30 days from the date of issue of the invoice,
- b) Requires third party liability insurance for the damage brought about by the economic operator to third persons, which is equal or larger than twice the estimated value of the public contract,
- c) Requires a bank guarantee higher than 5 % of the public contract value,
- d) Requires a guarantee period longer than 24 months,
- e) Requires a contractual penalty in the event of default of the economic operator higher than 0.2 % of the estimated value of the public contract for each day of delay,
- f) Sets forth a contractual penalty in the event of default of the contracting entity with settlement of invoices higher than 0.05 % of the amount due for each day of delay.

(2) The contracting authority shall justify the delimitation of commercial terms and conditions of a public supply contract and public service contract in proportion to its needs and to the risks attaching to the performance of the public contract, if it delimits commercial terms and conditions other than those indicated in § 4(1).

(3) Where the contracting authority delimits commercial terms and conditions of a public works contract, it shall not act upon § 4(1) and § 4(2).

§ 5

Justification of Delimitation of Technical Conditions

(1) Where the contracting authority delimits technical conditions of a public contract in the tender documentation, it shall justify delimitation of such requirements in proportion to its needs and to the risks attaching to the performance of such a public contract.

(2) In the case of a public works contract the contracting authority shall justify only the technical conditions which it delimited in the tender conditions over the scope of technical characteristics, descriptions and conditions of the execution of public works indicated in the tender documentation pursuant to § 44(4) of the Act on Public Contract.

§ 6

Justification of Delimitation of Basic and Partial Evaluation Criteria and of Manner of Tender Evaluation

(1) The contracting authority shall set forth basic and partial evaluation criteria in proportion to its needs.

(2) The contracting authority shall justify proportionality of setting forth partial evaluation criteria, where it applies the evaluation criterion of economic advantageousness of the tender and where a partial evaluation criterion of the tender price is subject to a lower weighting than

- a) 60 % in respect of public service contracts, or**
- b) 80 % in respect of public supply contracts and public works contracts.**

§ 7

Justification of Delimitation of Estimated Value of Public Contract

(1) Where the Act on Public Contracts requires justification of setting forth the estimated value of a public contract, such justification shall contain information decisive for setting forth the estimated value of the public contract and the manner of setting the estimated value of such a public contract forth.

§ 8

Structure of Statement of Reasons

For the statement of reasons under this Decree the contracting authority shall use the structure in compliance with the Annex to this Decree.

§ 9

Effectiveness

This Decree shall enter into effect on 1 September 2012.

Minister:

Ing. Jankovský, autograph

Justification of Purposefulness of Public Contract for the Purposes of Contracting Authority Prior Information Notice Pursuant to § 1 of the Decree

- 1. Description of the needs to be accomplished by the performance of a public contract.**
The contracting authority shall describe its needs for a due performance of entrusted tasks.
- 2. Description of the subject matter of a public contract.**
The contracting authority shall describe briefly the subject matter of a public contract.
- 3. Description of a mutual relationship between the subject matter of a public contract and the needs of the contracting entity.**
The contracting authority shall describe to what extent the realisation of the subject matter of a public contract will contribute to the accomplishment of the needs of the contracting entity.
- 4. Foreseen deadline for the execution of a public contract.**
The contracting authority shall delimit when the public contract will be executed either by a specific date or by a time span.

Statement of Reasons for Purposefulness of Public Contract Pursuant to § 2 of the Decree

<p>The contracting authority shall describe the modifications</p> <ul style="list-style-type: none"> a) In the description of the needs to be accomplished through the performance of a public contract, b) In the description of the subject matter of a public contract, c) Of a mutual relationship between the subject matter of a public contract and the needs of the contracting entity, d) In the foreseen deadline of the performance of a public contract, <p>in contrast to the facts referred to pursuant to § 1.</p>	
<p>The description of the risks attaching to the performance of a public contract which were taken into account by the contracting entity in setting forth tender conditions. It particularly involves the risks of failure to execute a public contract, delay with the performance of a public contract, reduced quality of the performance, expending additional financial costs.</p>	
<p>The contracting authority may delimit the variants of the accomplishment of the need and justification of the selected variant of the public contract.</p>	
<p>The contracting authority may delimit to what extent the public contract will influence the performance of envisaged target.</p>	
<p>The contracting entity may state supplementary information justifying the purposefulness of a public contract.</p>	

Statement of Reasons for the Requirements on Technical Qualifications Prerequisites for the Performance of a Public Supply Contract Pursuant to § 3(1) of the Decree

The contracting authority shall justify proportionality of the requirements on technical qualifications prerequisites in relation to the subject matter of the public contract and to the risks attaching to the performance of the public contract

<p>Justification of proportionality of the requirements on the list of principal deliveries. (The contracting authority shall fill it in compulsorily, where the required financial value of all principal deliveries amounts in the aggregate to at least three times the estimated value of the public contract).</p>	
<p>Justification of proportionality of the requirement for production of the list of technicians or technical bodies. (The contracting authority shall fill it in compulsorily, where it requires the submission of the list of more than three technicians or technical bodies).</p>	
<p>Justification of proportionality of the requirement for production of the description of technical facilities and measures used by the economic operator for ensuring quality control, and description of facilities or equipment of the economic operator designed for research.</p>	
<p>Justification of proportionality of the requirement for the check carried out on the production capacities by the contracting authority or on its</p>	

behalf by another person and, if necessary, a check on measures relating to assurance of quality and research.	
Justification of proportionality of the requirement for submission of samples, descriptions or photographs of the products to be supplied.	
Justification of proportionality of the requirement for production of evidence attesting conformity of a required product issued by the relevant authority.	

Statement of Reasons for Proportionality of the Requirements on Technical Qualifications Prerequisites for the Performance of a Public Service Contract Pursuant to § 3(2) of the Decree

The contracting authority shall justify proportionality of the requirements on technical qualifications prerequisites in relation to the subject matter of the public contract and to the risks attaching to the performance of the public contract

Justification of proportionality of the requirements for the list of principal services. (The contracting entity shall fill it in compulsorily, where the required financial value of all principal services is in the aggregate at least three times the amount of the estimated value of the public contract.)	
Justification of proportionality of the requirement for submission of the list of technicians or technical bodies. (The contracting authority shall fill it in compulsorily, where it	

<p>requires the submission of the list of more than three technicians or technical bodies).</p>	
<p>Justification of proportionality of the requirement for production of the description of technical facilities and measures used by the economic operator for ensuring quality control, and description of facilities or equipment of the economic operator designed for research.</p>	
<p>Justification of proportionality of the requirement on the check carried out on the production capacities by the contracting authority or on its behalf by another person and, if necessary, a check on measures relating to assurance of quality and research.</p>	
<p>Justification of proportionality of the requirement for production of a certificate of education and professional qualifications of the economic operator or those of the economic operator's managerial staff or of persons with equal status and persons responsible for providing relevant services (The contracting entity shall fill it in compulsorily, where it requires submission of a certificate of education higher than secondary education with GCSE (general certificate of secondary education) exam, or a certificate of professional qualifications longer than three years).</p>	
<p>Justification of proportionality of the requirement for production of the statement of the average annual manpower of the economic operator or of other persons engaged in the performance of contracts of similar</p>	

<p>nature and of the number of economic operator’s managerial staff or of persons with equal status.</p>	
<p>Justification of proportionality of the requirement for production of the statement of tools or aids, operating and technical equipment available to the economic operator for carrying out the public contract.</p>	

Statement of Reasons for Proportionality of the Requirements on Technical Qualifications Prerequisites for the Performance of a Public Works Contract Pursuant to § 3(3) of the Decree

The contracting authority shall justify proportionality of the requirements on technical qualifications prerequisites in relation to the subject matter of the public contract and to the risks attaching to the performance of the public contract

<p>Justification of proportionality of the requirements for production of the list of principal public works. (The contracting entity shall fill it in compulsorily, where it requires production of the list of public works, which implies that the financial value of all indicated principal public works is in the aggregate at least twice the amount of the estimated value of the public contract.)</p>	
<p>Justification of proportionality of the requirement for production of the list of technicians or technical bodies. (The contracting entity shall fill it in compulsorily, where it requires submission of the list of more than</p>	

<p>three technicians or technical bodies).</p>	
<p>Justification of proportionality of the requirement for production of a certificate of education and professional qualifications of the economic operator or those of the economic operator’s managerial staff or of persons with equal status and persons responsible for carrying out public works. (The contracting entity shall fill it in compulsorily, where it requires submission of a certificate of professional qualifications longer than five years).</p>	
<p>Justification of proportionality of the requirement for production of the statement of the average annual manpower of the economic operator or of other persons engaged in the performance of contracts of similar nature and of the number of economic operator’s managerial staff or of persons with equal status.</p>	
<p>Justification of proportionality of the requirement on production of the statement of tools or aids, operating and technical equipment available to the economic operator for carrying out the public contract.</p>	

**Statement of Reasons for Delimitation of Commercial Terms and
Conditions for Public Supply Contracts and Public Service Contracts
Pursuant to § 4 of the Decree**

<p>Justification of delimitation of the commercial term setting forth maturity of invoices longer than 30 days</p>	
<p>Justification of delimitation of the commercial term setting forth the requirement for third party liability insurance for the damage brought about by the economic operator to third persons amounting to twice the estimated value of the public contract.</p>	
<p>Justification of delimitation of the commercial term setting forth the requirement for a bank guarantee higher than 5 % of the public contract value.</p>	
<p>Justification of delimitation of the commercial term setting forth the requirement for a guarantee period longer than 24 months</p>	
<p>Justification of delimitation of the commercial term setting forth a contractual penalty in the event of default of the economic operator higher than 0.2 % of the estimated value of the public contract for each day of delay.</p>	
<p>Justification of delimitation of the commercial term setting forth a contractual penalty in the event of default of the contracting entity higher than 0.05 % of the due</p>	

amount for each day of delay.	
Justification of delimitation of other commercial terms and conditions pursuant to § 5(2). The contracting authority shall justify delimitation of commercial terms and conditions of a public supply contract and public service contract in proportion to its needs and to the risks attaching to the performance of the public contract.	

Statement of Reasons for Delimitation of Technical Conditions of Public Contract Pursuant to § 5 of the Decree

Technical Condition	Statement of Reasons for Technical Condition

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**Statement of Reasons for Setting Forth Basic and Partial Evaluation
Criteria Pursuant to § 6 of the Decree**

Evaluation Criterion	Statement of Reasons

**Statement of Reasons for Estimated Value of Public Contract Pursuant
to § 7 of the Decree**

Value	Statement of Reasons