DECREES

of 14 June 2006

Laying Down Detailed Requirements upon Electronic Means, Electronic Tools and Electronic Acts in Awarding Public Contracts

Pursuant to § 159(3) of Act no. 137/2006 Coll., on Public Contracts (hereinafter referred to as “the Act”), the Ministry for Regional Development in agreement with the Ministry of Informatics lays down as follows:

§ 1

Scope

This Decree provides for detailed requirements, relating to electronic means, electronic tools and electronic acts in awarding public contracts.

§ 2

Terms

For the purposes of this Decree

a) electronic address shall be understood as information in electronic form, which unambiguously identifies a site (object) on the Internet,
b) Internet address of the contracting body shall be understood as an address of the Internet site allowing for remote access by means of which the contracting body supplies information in the course of an award procedure,
c) public key shall be understood as unique electronic data, which unambiguously conform to a private key and may be of service to the economic operator to encrypt the content of tender under this Decree,
d) private key shall be understood as unique electronic data, which unambiguously conform to a public key and may be of service to the contracting body to declassify the content of tender under this Decree,
e) certificate of the public key shall be understood as a data message, which relates such a public key to the economic operator in a credible manner, serves for transmission of the public key and may be of service to verify identity and Internet address thereof,
f) electronic act shall be understood as an action of an acting person performed through an electronic means,
g) system state shall be understood as a state in which the electronic tool finds itself at a given point in time or interval and which is commensurate with one of three potential values:
   1. in operation,
   2. out of operation,
   3. any other state defined by a range of potential functional states of the tool.
§ 3

Electronic Acts in Awarding Public Contracts

(1) In the award procedure the contracting body shall designate authorized persons that are on behalf of such a contracting body entitled to take electronic acts in this procedure, in particular supply of tender documentation, calls for competition or submission of tenders and indicative tenders, supply of additional information or confirmation of the receipt of tenders and indicative tenders, opening of tenders and invitations to negotiate about tenders.

(2) If the contracting body in the award procedures takes an electronic act towards certain economic operator, such an act shall bear valid advanced electronic signature based on a qualified certificate\(^1\) of the authorized person of the contracting body or valid electronic mark based on a qualified system certificate\(^2\) of the contracting body under separate legal regulation.

(3) Qualified certificates and qualified system certificates used pursuant to § 3(2) shall contain
\[\begin{align*}
\text{a) essentials set out under separate legal regulation}\(^2\), to the exception of making use of the alias of a signing person, and} \\
\text{b) indication of occupational status of the authorized person or Internet address of the contracting body.}
\end{align*}\]

(4) Verification of validity of an advanced electronic signature or electronic mark shall be carried out by analogy under separate legal regulation\(^3\).

§ 4

Supply of Tender Documentation to Economic Operators

(1) Tender documentation, which the contracting body supplies through electronic tools, is supplied by the contracting body in the form of remote access on the Internet address thereof without a prior request or on the basis of a request in writing of the economic operator.

(2) If the contracting body supplies tender documentation through remote access on the Internet address of the contracting body without prior request, it shall arrange for
\[\begin{align*}
\text{a) everybody to be able to make sure of identity of the contracting body or, where appropriate, identity of the operator of Internet address of the contracting body in the form of certificate of public key of the contracting body issued to the Internet address of the contracting body by means of which it supplies tender documentation,} \\
\text{b) tender documentation to be protected against unauthorized alteration,} \\
\text{c) tender documentation to be accessible continuously on the Internet address of the contracting body within specified period of time.}
\end{align*}\]

(3) If the contracting body supplies tender documentation on the basis of written request of the economic operator, the contracting body shall arrange for tender documentation

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

\(^2\) § 12 and § 12 a of the Act on Electronic Signature.

\(^3\) Decree no. 496/2004 Coll., on Electronic Filing Offices.
a) to be supplied only based on the application duly received, the advance electronic signature of which was successfully verified,
b) to be protected against unauthorized alteration pursuant to § 3(2) and
c) to bear advanced electronic signature based on qualified certificate\textsuperscript{1} of the authorized person of the contracting body or electronic mark based on qualified system certificate\textsuperscript{1} of the contracting body, to be supplied in the form of sending to the required electronic address of the economic operator or in the form of making tender documentation accessible individually by means of the Internet address of the contracting body.

(4) The contracting body shall secure that the time of supply of tender documentation be recorded.

§ 5

Supply of Additional Information

§ 4 shall apply by analogy to the supply of additional information.

§ 6

Submitting and Supplementing Tenders and Indicative Tenders

(1) The contracting body shall publish the electronic address for submission of a tender, indicative tender, request to participate and submission of auction values (hereinafter referred to as “the tender”) in the notification or in the call for competition.

(2) The contracting body shall protect submitted tenders against unauthorized reading by encryption of the content thereof.

(3) For the purpose of encryption of the content of a tender the contracting body shall provide certificate of public key to economic operators through the Internet address of the contracting body or by sending thereof based on request.

(4) The contracting body shall arrange for
   a) public key designed for encryption of the content of tenders to conform unambiguously to the private key of the contracting authority and
   b) rendering impossible to forge the certificate of public key while expending reasonable means.

(5) Where the contracting body in compliance with the law fixes the time limit for the submission of tenders, it 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 drawn up in compliance with this Decree and stored in unaltered form until it has been opened; The contracting body shall simultaneously forward the advice note of the receipt thereof to the on 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 contracting body shall forward the advice note of such a fact to the electronic address of the economic operator.

(6) The contracting body shall record the time of submission of a tender pursuant to § 6(2).
(7) Following the submission of a tender, the contracting body shall verify validity of the advanced electronic signature of the economic operator and shall record the result of verification to the tender received. The record of verification of validity of the advanced electronic signature shall be further handled as the indicator of the electronic filing office under separate legal regulation by analogy.

§ 7

Opening of Tenders

(1) The contracting body or the persons authorized to open tenders shall secure declassification of the content of tenders by using private key.

(2) The contracting body shall arrange for
   a) rendering impossible to forge the private key while expending reasonable means and
   b) such a private key to be protected against unauthorized access.

(3) The contracting body shall arrange for declassification of tenders by using private key to carried out by unauthorized persons in such a way that
   a) declassification of tenders may be always carried out by two or more authorized persons out of their total number,
   b) it is impossible to use private key for declassification of tenders in any other manner than through cooperation of authorized persons.

(4) The contracting body shall, in addition, arrange for the electronic tool not to facilitate declassification of tenders prior to the limit set out for the opening thereof. The time of declassification of a tender shall be recorded.

(5) The electronic tender, following the opening, reading, assessment and evaluation thereof, shall remain stored with the contracting body only in the encrypted form thereof.

(6) The private key designed for declassification of tenders shall be secured by the contracting body against loss and unauthorized access throughout the validity of relevant certificate of the public key.

§ 8

Keeping Records of Electronic Acts

(1) The contracting body shall perform electronic acts under this Decree by means of electronic tools.

(2) The electronic body shall draw up 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 act or activity,
   c) identification of a person that performed the electronic act or initiated the activity of a tool,
   d) report, where appropriate, on non-standard outcome of the act or any other activity of the tool.
(3) Apart from records pursuant to § 8(2) the contracting body shall, in addition, record information concerning system state of the electronic tool and synchronization of time pursuant to § 9.

(4) Any data pursuant to § 8(1) to (3) shall be protected against unauthorized access, alteration or destruction.

§ 9

Recording of Time

(1) Where this Decree or law requires recording of the time of an electronic act (hereinafter referred to as “the time information”), the contracting body shall make use as a source of the time information:

   a) the time measuring tool calibrated under separate legal regulation⁴, or
   b) the time information provided by operation system of the contracting body shall be linked to the source reproducing coordinated universal time UTC, e.g. to the national time measurement standard and standard frequencies or by virtue of the receiver Global Positioning System (GPS).

(2) The contracting body shall evidence the fulfilment of requirements pursuant to § 9(1)(a) with calibration sheet⁴ and the obligations pursuant to § 9(1)(b) with the document evidencing uncertainty with which the time information is linked to UTC together with technical documentation evidencing the manner of such linkage.

(3) The contracting body shall synchronize the time measuring tool or the time measured by operation system pursuant to § 9(1) with the coordinated universal time at least once 24 hours in the course of an award procedure.

(4) Synchronization pursuant to § 9(3) shall be secured by the contracting body even in the case of occurrence of the leap second.

(5) The time measuring tool pursuant to § 9(1)(a) shall be protected by the contracting body against unauthorized adjustments, which could modify technical or metrological characteristics secured by calibration pursuant to § 9(1).

§ 10

Entry into Effect

This Decree shall enter into effect on 1 July 2006.

Minister:

Mgr. Martínek, autograph

⁴ Act no. 505/1990 Coll., on Metrology, as subsequently amended.