

# **Government Decree 310/2011 (23 December) on the way of certification of suitability and verification of the non-existence of the grounds for exclusion as well as the definition of public procurement technical specifications in contract award procedures<sup>1</sup>**

The Government, on the basis of the empowerment of Article 182(1) points 1 and 2 of the Act CVIII of 2011 on Public Procurement and acting within its competence according to Article 15(3) of the Fundamental Law of Hungary, lays down the following:

## **CHAPTER 1**

### **1. Verification of non-existence of the grounds for exclusion**

#### **Article 1**

In contract award procedures conducted according to Part Two of the Act CVIII of 2011 on Public Procurement (hereinafter referred to as: the 'PPA') the tenderer or candidate shall be obliged to verify in its tender or request to participate pursuant to Articles 2-10, that it is not subject to Article 56(1)-(2) and – if specified by the contracting authority – Article 57(1).

#### **Article 2**

In case of tenderers or candidates established in Hungary, in contract award procedures conducted according to Part Two of the PPA, the contracting authority shall accept the following certificates and written declarations as regards Article 56 and shall verify the non-existence of the grounds for exclusion as follows:

- (a) the non-existence of the ground for exclusion pursuant to Article 56(1)(a) and (b) of the PPA shall be verified by the contracting authority on the basis of data included in the company register, which may be requested free of charge, electronically from the Company Information and Electronic Company Registration Service (hereinafter referred to as: 'Company Information Service'); in case of Article 56(1)(b); if the economic operator is not a company according to the Act V of 2006 on Public Company Information, Company Registration and Windingup Proceedings, or apart from the registry court, other authorities may also suspend business activities of the entity in question, a declaration attested by a notary public or an economic or professional chamber shall be accepted;
- (b) as regards Article 56(1)(c) of the PPA, certificate of no criminal record submitted by a private individual shall be accepted; in case of companies the non-existence of the ground for exclusion shall be verified by the contracting authority on the basis of data included in the company register, which may be requested free of charge, electronically from the Company Information Service; if the economic operator not being a private individual is not a company, a declaration attested by a notary public or an economic or professional chamber shall be accepted;
- (c) the non-existence of the ground for exclusion specified in Article 56(1)(d) of the PPA, shall be verified by the contracting authority in the register available on the homepage of the Public Procurement Authority (hereinafter referred to as: the 'Authority') and on the basis of data included in the company register, which may be requested free of charge, electronically from the Company Information Service;
- (d) the non-existence of the ground for exclusion specified in Article 56(1)(e) of the PPA shall be verified by the contracting authority on the basis of the database of taxpayers not having public debts pursuant to the Act XCII of 2003 on the Rules of Taxation (hereinafter referred to as: 'Art') or, in case the economic operator is not included in such database, the certificate of the competent tax and customs authority or the joint tax certificate specified in the Art shall be accepted;
- (e) as regards Article 56 (1)(f) and (i) of the PPA, the declaration of the tenderer or candidate attested by a notary public or an economic, professional chamber shall be accepted;
- (f) <sup>2</sup>

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<sup>1</sup> In a single composition with the provisions set out in Article 109 of Gov. Decree 322/2012 (16 November) on the amendment of Gov. Decrees related to building matters **and with Gov. Decree 238/2013 (30 June) amending certain decrees concerning public procurement.**

<sup>2</sup> This point was repealed on 1 July 2013.

- (g) as regards Article 56(1)(h) of the PPA, which shall only be verified by economic operators being natural persons, a certificate of no criminal record shall be accepted;
- (h) as regards Article 56(1)(j) of the PPA, there is no need to submit any certificate or declaration, the ground for exclusion is verified by the contracting authority in the course of the procedure;
- (i) as regards Article 56(1)(k) of the PPA:
  - (ia) with respect to Article 56(1)(ka) and (kb) of the PPA, there is no need to submit any certificate or declaration, the contracting authority shall verify on the basis of data included in the company register – which may be requested free of charge, electronically from the Company Information Service – whether or not the economic operator in question is actually registered in Hungary;
  - (ib) with respect to Article 56(1)(kc) of the PPA, the declaration of the tenderer or candidate specifying whether it is a company not listed in an official stock exchange or a company listed in an official stock exchange; in case the tenderer or candidate is not listed in an official stock exchange, a declaration indicating the name and permanent residence of all the actual proprietors – as defined in Article 3(r) of the Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (hereinafter referred to as the 'Act on Money Laundering') – shall be submitted; in case there is no actual proprietor as defined in Article 3(r) of the Act on Money Laundering, the statement of the tenderer or candidate thereon shall be submitted;
- (j) as regards Article 56(2) of the PPA, the declaration of the tenderer or candidate on the existence or non-existence of a legal person or a business organization without legal personality owning directly or indirectly a share exceeding 25 % in it or having the right to vote; in case of existence of such entity, the tenderer or candidate shall indicate it in a declaration and shall make a declaration on the non-existence of the grounds for exclusion specified in Article 56(2) of the PPA, with respect to such entity.

### **Article 3**

In case of tenderers or candidates established in Hungary, in procedures conducted according to Part Two of the PPA, the contracting authority shall be obliged to accept the following certificates and written declarations as regards Article 57 of the PPA, and shall verify the non-existence of grounds for exclusion as follows:

- (a) as regards Article 57(1)(a)-(c) and (f) of the PPA, the declaration of the tenderer or candidate attested by a notary public or an economic, professional chamber shall be accepted;
- (b) as regards Article 57(1)(d) of the PPA, the contracting authority shall verify the fact that the tenderer or candidate is included in the company register, on the basis of data which may be requested free of charge, electronically from the Company Information Service; in case of other registers the contracting authority shall verify the registers accessible pursuant to the provisions set out in Article 36(5) of the PPA, in all other cases it shall accept an extract from the register, a certificate issued by the entity keeping the register or any other document certifying the fact of being included in the register;
- (c) as regards Article 57(1)(e) of the PPA, the contracting authority shall verify the register accessible pursuant to the provisions set out in Article 36(5), in all other cases it shall be obliged to accept the copy of the licence or permit or a certificate attesting the membership in an association or chamber.

### **Article 4**

In case of tenderers or candidates not established in Hungary, in procedures conducted according to Part Two of the PPA, the contracting authority shall be obliged to accept the following certificates and written declarations as regards Article 56 and 57 of the PPA, and shall verify the non-existence of grounds for exclusion as follows:

- (a) as regards Article 56(1)(a)-(d), (f), (h) and (i) as well as Article 57(1)(a)-(c) of the PPA, an extract from the record of the competent court or authorities (certificate of no criminal record), or failing that, a judicial certificate or certificate of the authorities shall be accepted;
- (b) as regards Article 56(1)(e) of the PPA, a certificate issued by the competent authorities of the country in which they are established; the non-existence of the ground for exclusion with respect to public debts in Hungary, shall also be verified by the contracting authority on the basis of the database of taxpayers not having public debts pursuant to the Art., or, in case the tenderer or candidate is not included in such database, a certificate of the competent tax and customs authority or the joint tax certificate specified in the Art. shall also be submitted;
- (c) if the competent court or authority does not issue extracts and certificates according to point (a) or (b), or these do not cover all the cases referred to in point (a), then the declaration of the tenderer or candidate made under oath shall be accepted or, if such a declaration is not known in the country

concerned, a declaration made by the tenderer or candidate before the competent court, authority, chamber of professional association or attested by the notary public;

(d) <sup>3</sup>

(e) as regards Article 56(1)(j) of the PPA, there is no need to submit any certificate or declaration, the ground for exclusion is verified by the contracting authority in the course of the procedure;

(f) as regards Article 56(1)(k) of the PPA:

(fa) for Article 56(1)(k)(ka) of the PPA, a certificate of fiscal domicile issued by the competent authority of the country concerned shall be accepted;

(fb) for Article 56(1)(k)(kb) of the PPA, the declaration of the economic operator having its tax domicile outside Hungary made under oath shall be accepted or, if such declaration is not known in the country concerned, a statement made before the competent court, authority, chamber of professional association or attested by a notary public;

(fc) with respect to Article 56(1)(k)(kc) of the PPA, the declaration of the tenderer or candidate specifying whether it is a company not listed in an official stock exchange or a company listed in an official stock exchange; in case the tenderer or candidate is not listed in an official stock exchange, a declaration indicating the name and permanent residence of all the actual proprietors – as defined in Article 3(r) of the Act on Money Laundering – shall be submitted; in case there is no actual proprietor pursuant to Article 3(r) of the Act on Money Laundering, the declaration of the tenderer or candidate thereon;

(g) as regards Article 56(2) of the PPA, the declaration of the tenderer or candidate on the existence or non-existence of a legal person or a business organization without legal personality owning directly or indirectly a share exceeding 25 % in it or having the right to vote; in case of existence of such entity, the tenderer or candidate shall indicate it in a statement and shall make a statement on the non-existence of the grounds for exclusion specified in Article 56(2) of the PPA, with respect to such entity;

(h) as regards Article 57(1)(d) of the PPA, a certificate (extract), or any other certificate or declaration pursuant to the registers listed in Annex IX B for public supplies, in Annex IX A for public works, in Annex IX C for public services in Directive 2004/18/EC of the European Parliament and the Council;

(i) as regards Article 57(1)(e) of the PPA, the copy of the licence or permit or the certificate of membership in an association or chamber shall be accepted;

(j) as regards Article 57(1)(f) of the PPA, the declaration of the tenderer or candidate made under oath shall be accepted or, if such declaration is not known in the country concerned, a statement made before the competent court, authority, chamber of professional association or attested by a notary public.

## Article 5

For the purposes of Articles 2-4, the non-existence of the ground for exclusion shall be verified by the contracting authority also in cases which are not expressly stipulated in this Decree, provided the contracting authority may verify the facts, data related thereto free of charge, in an electronic, **official**<sup>4</sup> register, which is available in Hungarian.

## Article 6

If the official list of approved tenderers pursuant to Article 18 – also considering the provisions set out in Articles 18 and 20 – proves that the economic operator is not subject to any of the grounds for exclusion, the fact that the economic operator is included in the electronically available official list of approved tenderers, or the certificate submitted by an economic operator established in any other Member State of the European Union and issued by the authority responsible for keeping the list of recognized tenderers of the country where the economic operator is established, shall be accepted by the contracting authority in lieu of other ways of certification specified in Articles 2-4.

## Article 7

In contract award procedures conducted according to Part Two of the PPA, in case a change registration procedure is underway, the contracting authority shall be obliged to stipulate in the notice launching the procedure that the request for change registration submitted to the registry court as well as the certificate of receipt thereof sent by the registry court be attached to the tender or request to participate.

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<sup>3</sup> This point was repealed on 1 July 2013.

<sup>4</sup> This amendment entered into force on 1 July 2013.

## **Article 8**

1. For the purposes of Article 56(2) of the PPA – to be verified pursuant to Article 2(j) and Article 4(g) – by ‘indirect shares’ and ‘indirect right to vote’ shall be meant that the tenderer or candidate owns its share and exercises its right to vote through the ownership of the share, the right to vote of another economic operator (intermediate economic operator) having a share and a right to vote in the tenderer or the candidate. For the purpose of establishing the proportion of the indirect share and indirect right to vote, the right to vote or the share of the entity having an indirect share, right to vote in the intermediate economic operator shall be multiplied by the right to vote or the share – only by the one representing a larger proportion – of the intermediate economic operator in the tenderer or candidate. Where the right to vote or share in the intermediate economic operator exceeds 50 %, it shall be considered as a full share, right.
2. Where the declaration pursuant to Article 2(i)(ib) and (j) as well as Article 4(f)-(g) is submitted, the contracting authority has no further obligation of verification – any request made towards the authorities, other associations – as regards the ground for exclusion verified by such statement and not unless he is aware of a proof beyond a reasonable doubt shall he establish the fact of false statement.
3. As regards Article 2(i)(ib) and Article 4(f)(fc), by ‘official stock exchange’ shall be meant the official market as defined in Article 5(1) point 114 of the Act CXX of 2001 on the Capital Market.

## **Article 9**

For the purposes of Article 57(3) of the PPA, as regards grounds for exclusion, data included in the register pursuant to Article 36(5) of the PPA shall also be verified by the contracting authority in the tendering (dialogue and tendering) stage of procedures consisting of more than one stage; as regards further grounds for exclusion not verifiable in such a manner, a statement of the tenderer to the effect that the tenderer, its subcontractor and, if any, any other entity contributing to the certification of suitability is still not subject to the grounds for exclusion shall be sufficient on the basis of Article 87(1)(d), Article 91(1)(d), Article 105(1)(m) and Article 107(4)(e) of the PPA. In procedures according to Part Two of the PPA, the certificate or statement already submitted together with the request to participate shall only be submitted again in the tendering stage of the procedure if the certificate or statement submitted before is not suitable anymore to prove compliance with the relevant provisions.

## **Article 10**

As regards the non-existence of grounds for exclusion specified in Article 56 of the PPA, only the declaration pursuant to Article 58(3) of the PPA shall be submitted by the tenderer or candidate concerning its subcontractor and, if any, the entity contributing to the certification of suitability. Where the contracting authority has also stipulated that the grounds for exclusion specified in Article 57 of the PPA be applied to the subcontractor and any other entity contributing to the certification of suitability, the tenderer or candidate, according to its choice, may

- (a) submit a declaration made by itself, to the effect that it shall not employ any subcontractor subject to the grounds for exclusion specified in Article 57 of the PPA and no other entity employed by him to contribute to the certification of its suitability is subject to the grounds for exclusion specified in Article 57 of the PPA, or
- (b) submit the declaration of the subcontractor designated in the procedure – in addition to the declaration as defined in point (a) in case of subcontractors not designated in the procedure – as well as the declaration of any other entity employed to contribute to the certification of suitability, to the effect that the subcontractor, entity concerned is not subject to the grounds for exclusion specified in Article 57.

## **Article 11**

1. The certificate of the authorities recording public debts [Article 2(d)] according to Article 56(1)(e) of the PPA shall state whether or not the economic operator has any public debt recorded by the authority at the time of drawing up of the certificate, and in case it has, when was the payment obligation of the economic operator due, whether it was granted a permission for deferred payment of the public debt and shall also state the term of the extension for payment.
2. The official certificate specified in paragraph 1 – provided such certificate otherwise proves that the economic operator has no public debts which were due more than a year before – shall be accepted by the contracting authority even if issued for other purposes and not to be used in a contract award procedure, or it was issued for the purposes of any other contract award procedure or other procedure of the contracting authority or

an entity other than the contracting authority, or the issuing authority established less than one year of validity for the certificate and it has already expired.

3. In case an act of legislation sets forth new rates and taxes subject to Article 56(1)(e) of the PPA, the certificate thereof shall only be attached in procedures where the time limit for submission of tenders or the time limit for participation shall expire more than one year after the date of entering into force of the provision on the relevant public debts.

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#### Article 12

In contract award procedures conducted according to Part Three of the PPA, the tenderer or the candidate shall submit a declaration in its tender or request to participate to the effect that it is not subject to the grounds for exclusion specified in the notice and shall verify Article 56(1)(kb) of the PPA pursuant to Article 2(i)(ib) and Article 4(f)(fc). As regards the subcontractor and, if any, other entities contributing to the certification of suitability, it shall proceed pursuant to Article 10. Where, on the basis of Article 123 of the PPA, the contracting authority acts according to independent procedural rules developed by itself, it shall lay down the way of verification of the grounds for exclusion specified in the notice, pursuant to the provisions set out in this Decree.

#### Article 13

1. Guidelines shall be issued by the Authority on the certificates, statements, records and data defined in Articles 2-4 to be submitted by the economic operators established in Hungary, in the European Union and the European Economic Area.

2. On the basis of Article 36(6) of the PPA, the Authority shall issue guidelines on the Hungarian **official**<sup>6</sup>, electronic registers.

3. In addition to guidelines pursuant to Article 172(9) of the PPA, the Authority shall make the list of the member states of international organizations according to Article 56(1)(k)(ka) of the PPA permanently available on its homepage.

## CHAPTER II

### CERTIFICATION OF SUITABILITY

#### 2. Economic and financial standing

#### Article 14

1. In case of public supply contracts, public works contracts and public service contracts, the suitability of financial and economic standing of the tenderer or candidate necessary for the performance of the contract may be certified as follows:

- (a) with a statement to this effect, issued by a financial institution, which may be requested for not more than two years as of the dispatch – in procedures without publication of a contract notice, as of the sending – of the notice launching the procedure, depending on the date of establishment of the tenderer or candidate, the starting date of its operation, provided such information is available.
- (b) with the submission of a report – or a determined part of it – drawn up by itself or by its legal predecessor pursuant to the legislation on accounting (if the law of the country in which the economic operator is established stipulates that it be published); in case the report requested by the contracting authority is available on the homepage of the Company Information Service, the contracting authority shall verify the information related to the report, and the report available on the homepage of the Company Information Service shall not be attached to the tender or request to participate.
- (c) **with a statement of total revenue – net of VAT – and of its revenue – net of VAT – in respect of the subject-matter of the public procurement, which may be requested for a maximum of the last three financial years, depending on the date of establishment of the tenderer or candidate, the starting date of its operation, provided such information is available;**<sup>7</sup>

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<sup>5</sup> This paragraph was repealed on 1 July 2013.

<sup>6</sup> This amendment entered into force 1 July 2013.

<sup>7</sup> This amendment entered into force on 1 July 2013.

(d) with a certificate regarding the existence of its professional liability insurance as prescribed by the notice launching the procedure.

2. Where the tenderer or candidate started to operate after the beginning of the period stipulated by the contracting authority for the purpose of the document specified in paragraph 1(b), and therefore such document is not at its disposal for the whole period as required by the contracting authority, it may certify its suitability by the submission of a statement regarding the revenue in respect of the subject-matter of the public procurement. The contracting authority shall be obliged to establish the suitability of the economic and financial standing of the tenderer or candidate, if, in the period of its operation, its revenue – net of VAT – in respect of the subject-matter of the public procurement equals or exceeds the value set by the contracting authority in the notice launching the procedure. For the purposes of the provisions set out in this paragraph, the value of the revenue required from the economic operators established later shall be set by the contracting authority in the notice launching the procedure, if it prescribes the submission of the document pursuant to paragraph 1(b).

3. Where the legal form in which the tenderer or candidate operates does not allow the submission of such report or statement on revenue, and therefore the document specified in paragraph 1(b) and (c) is not at its disposal, it may certify its economic and financial standing by the submission of any other statement or document considered as suitable by the contracting authority, in lieu of the suitability requirement and way of certification stipulated in relation to the above-mentioned points. The tenderer or candidate concerned shall be obliged to confirm in the course of a request for additional information that it operates in a legal form which does not allow the submission of such report and statement on revenue, and shall request information on the way of certification of suitability accepted by the contracting authority in lieu of the suitability requirement and way of certification prescribed in relation to the above-mentioned points.

4. For the purposes of paragraph 1(c), the contracting authority may prescribe either solely the submission of the statement on the whole revenue or solely the submission of the statement on the revenue in respect of the subject-matter of the public procurement, or both.

4a.<sup>8</sup> In case of public works contracts the contracting authority shall accept the exact indication of the requirement and the place of documents certifying the compliance instead of the submission of documents specified in paragraph 1, if the documents in compliance with the requirements set out in paragraph 1 and included in the list of the Hungarian Chamber of Commerce and Industry on contractors prove that the economic operator complies with the criteria set by the contracting authority.

5. If the official list of approved tenderers pursuant to Article 18 – also considering the provisions set out in Articles 18 and 20 – proves that the economic operator complies with the set suitability criteria, the fact that the economic operator is included in the electronically available official list of approved tenderers, or the certificate submitted by an economic operator established in any other Member State of the European Union and issued by the authority responsible for keeping the list of recognized tenderers of the country where the economic operator is established, shall be accepted by the contracting authority instead of other ways of certification specified in paragraph 1.

6. Contracting entities subject to Chapter XIV of the PPA and the separate act of legislation on specific public procurement rules pertaining to the public procurement contracts in the utilities sector, may prescribe suitability criteria and way of certification thereof other than those set out in paragraph 1.

7. In procedures conducted according to Part Three of the PPA, where the contracting authority proceeds pursuant to Article 123 of the PPA, it may prescribe further ways of certification pursuant to Article 123(4) of the PPA, provided it prescribes any suitability criteria in the procedure.

8. In procedures conducted according to Part Three of the PPA, in case the contracting authority proceeds pursuant to Article 122 of the PPA, where the contract value of the public supply or public service does not reach twenty-five million forints (HUF 25,000,000) or the estimated contract value of the public works does not reach one hundred million forints (HUF 100,000,000), the contracting authority may accept – in lieu of the ways of certification specified in paragraph 1 – the declaration of the tenderer or candidate to the effect that it complies with the suitability criteria prescribed by the contracting authority, provided the contracting authority included this possibility in the notice launching the procedure.

9. In cases pursuant to paragraph 8, the contracting authority may only prescribe suitability criteria which may be certified with the documents specified in paragraph 1, and – where the contracting authority has provided for it – the tenderer or candidate may, according to its own choice, certify its suitability by submitting a declaration, in lieu of the ways of certification pursuant to paragraph 1. Where, in the course of the evaluation process, the contracting authority has doubts concerning the truthfulness of the statement, it may stipulate, in the course of

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<sup>8</sup> This point entered into force on 1 January 2013.

the supply of missing information pursuant to Article 67(1) of the PPA, that the certificate specified in Article 14(1) be submitted.

### 3. Technical and professional ability

#### Article 15

1. In the case of public supply contracts – considering the nature, volume and purpose thereof – the following evidence may be furnished regarding the suitability of the technical and professional ability of the tenderer and candidate for the fulfilment of the contract:

- (a) **a list of major deliveries during the last three years as of the dispatch – in case of procedures without publication of a contract notice, as of the sending – of the notice launching the procedure; the contracting authority shall take into account the performance in the whole period of three years, but if it deems it necessary for ensuring an adequate level of competition, it may choose to take into account the deliveries made during the last six years as of the dispatch (the sending) of the notice launching the procedure, provided it was indicated in the notice launching the procedure;**<sup>9</sup>
- (b) a description of the supplier's technical facilities, its quality assurance measures and its study and research facilities;
- (c) **an indication of the professionals (bodies) and/or managers envisaged to be involved in the performance, indicating also their qualifications and/or skills as well as professional experience, especially those responsible for quality control;**<sup>10</sup>
- (d) a description, sample and/or photograph of the product to be supplied, the authenticity of which must be certified if the contracting authority so requests;
- (e) certificates drawn up by recognized entities (accredited in any national system) attesting conformity to certain specifications or standards of products clearly identified by references to specifications or standards;
- (f) where the products to be supplied are complex or are required for a special purpose, a check carried out by the contracting authority or by any other organization on the production capacities of the supplier and on its study and research facilities and quality control measures.

2. In case of public works contracts, the following evidence may be furnished regarding the suitability of the technical capacity and professional qualification of the tenderer and candidate for the fulfilment of the contract:

- (a) **a list of major public works during the last five years as of the dispatch – in case of procedures without publication of a contract notice, as of the sending – of the notice launching the procedure; the contracting authority shall take into account the performance in the whole period of five years, but if it deems it necessary for ensuring an adequate level of competition, it may choose to take into account the public works fulfilled during the last eight years as of the dispatch (the sending) of the notice launching the procedure, provided it was indicated in the notice launching the procedure;**<sup>11</sup>
- (b) a statement of the tools, equipment and technical facilities available to the contractor for carrying out the work;
- (c) **the qualifications and/or skills of the tenderer, candidate and/or its executive officers and, in particular, the qualifications and/or skills of those responsible for the delivery of the works;**<sup>12</sup>
- (d) a statement of the firm's average annual manpower statistics and the number of executive officers, which may be requested for not more than the last three years;
- (e) **an indication of the professionals (bodies) envisaged to be involved in the performance, indicating also their qualifications and/or skills as well as professional experience, especially those responsible for quality control;**<sup>13</sup>

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<sup>9</sup> This amendment entered into force on 1 July 2013.

<sup>10</sup> This amendment entered into force on 1 July 2013.

<sup>11</sup> This amendment entered into force on 1 July 2013.

<sup>12</sup> This amendment entered into force on 1 July 2013.

<sup>13</sup> This amendment entered into force on 1 July 2013.

(f) in appropriate cases, providing a description of the environmental measures that the tenderer or candidate shall be able to apply in the course of the performance of the contract.

3. In the case of public service contracts – considering the nature, volume and purpose thereof, and further, considering that capability may primarily be assessed based on professional skills, efficiency, experience and reliability – the following evidence may be furnished regarding the suitability of the technical and professional ability of the tenderer and candidate for the performance of the contract

(a) **a list of major service providing activities during the last three years as of the dispatch – in case of procedures without publication of a contract notice, as of the sending – of the notice launching the procedure; the contracting authority shall take into account the performance in the whole period of three years, but if it deems it necessary for ensuring an adequate level of competition, it may choose to take into account the services provided during the last six years as of the dispatch (the sending) of the notice launching the procedure, provided it was indicated in the notice launching the procedure;**<sup>14</sup>

(b) **the qualifications and/or skills of the tenderer, candidate and/or its executive officers and, in particular, the qualifications and/or skills of those responsible for the provision of the services;**<sup>15</sup>

(c) a statement of the firm's average annual manpower statistics and the number of executive officers, which may be requested for not more than the last three years;

(d) an indication of the professionals (bodies) envisaged to be involved in the supply of the service, indicating their qualifications and professional experience, especially those responsible for quality control;

(e) a statement of the tool, equipment or technical facilities available to the service provider for carrying out the services;

(f) a description of the service provider's measures for ensuring quality and his study and research facilities;

(g) where the service is complex or required for a special purpose, a check carried out by the contracting authority or by any other organization on the production capacities of the supplier and if necessary on its study and research facilities and quality control measures;

(h) an indication of the proportion of the contract which the tenderer or candidate may intend to sub-contract;

(i) in appropriate cases, providing a description of the environmental measures that the tenderer or candidate shall be able to apply in the course of the performance of the contract.

## Article 16

1. In contract award procedures conducted pursuant to Part Two of the PPA, cases specified in Article 15(1)(a) and (3)(a) shall be certified as follows:

(a) where the other contracting party is an entity according to Article 6(1)(a)-(c) of the PPA or – in case of entities not established in Hungary – an entity being a contracting authority pursuant to Directive 2004/18/EC of the European Parliament and Council, with the certificate issued or signed by it;

(b) where the contracting party is other than the entities pursuant to point (a), with a certificate submitted by it or the statement of the tenderer or candidate, or any other entity contributing to the certification of suitability.

2. The certificate or statement specified in paragraph 1(a)-(b) shall contain at least: the date of performance, the other party to the contract concluded, the subject-matter of the delivery or service provision, the sum of the consideration and a statement to the effect that performance was in compliance with the relevant regulations and the contract. The contracting authority shall be entitled to stipulate among the content elements of the reference certificate or statement that further information necessary for the assessment of suitability be provided.

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<sup>14</sup> This amendment entered into force on 1 July 2013.

<sup>15</sup> This amendment entered into force on 1 July 2013.



3. In contract award procedures conducted pursuant to Part Two of the PPA, with respect to Article 15(2)(a) of this Decree, a certificate issued by the other contracting party shall be furnished. Such certificate shall contain at least the amount of the consideration, the time and place of delivery and a statement to the effect that the performance was in compliance with the relevant regulations as well as the contract. The contracting authority shall be entitled to stipulate among the content elements of the reference certificate that further information necessary for the assessment of suitability be provided. Where the reference certificate concerning a public works contract performed by the winning joint tenderers may not be drawn up in a way that separates the work done by each tenderer, the contracting authority shall be bound to accept the reference certificate, concerning the whole public works contract, submitted by any tenderer who participated in the performance of the public works, provided the joint tenderers are jointly and severally liable for the performance and the percentage of the participation in the performance delivered by the tenderer who submits the reference certificate reaches 15 %.<sup>16</sup>

4. According to paragraphs 1-3, in case of performance in conformity with the contract, the other contracting party shall issue the certificate free of charge, within two business days after the request therefor.

5. In contract award procedures conducted pursuant to Part Three of the PPA, with respect to Article 15(1)(a) and (3)(a) of this Decree, a declaration made by the tenderer, the candidate or any other entity contributing to the certification of suitability or a certificate issued by the other contracting party shall be furnished. In contract award procedures conducted pursuant to Part Three of the PPA, with respect to Article 15(2)(a) of this Decree, the certificate specified in paragraph 3 shall be furnished.<sup>17</sup>

#### Article 17

1. If the official list of approved tenderers pursuant to Article 18 – also considering the provisions set out in Articles 18 and 20 – proves that the economic operator complies with the set suitability criteria, the fact that the economic operator is included in electronically available official list of approved tenderers, or the certificate submitted by an economic operator established in any other Member State of the European Union and issued by the authority responsible for keeping the list of recognized tenderers of the country where the economic operator is established, shall be accepted by the contracting authority instead of other ways of certification specified in Article 15(1)-(3).

1a.<sup>18</sup> In case of public works contracts the contracting authority shall accept the exact indication of the requirement and the place of documents certifying the compliance instead of the submission of documents specified in Article 15(2), if the documents in compliance with the requirements set out in Article 15(2) and included in the list of the Hungarian Chamber of Commerce and Industry on contractors prove that the economic operator complies with the criteria set by the contracting authority.

2. Where contracting authorities require the submission of certificates issued by independent bodies for attesting the conformity of the tenderer or candidate with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the relevant European standards series. Contracting authorities shall accept equivalent certificates from bodies registered in other Member States and shall also accept other evidence of equivalent quality assurance measures.

3. If the contracting authority prescribes that the tenderer or candidate must furnish, **in respect of Article 15(2)(f) or of Article 15(3)(i)**<sup>19</sup>, a certificate issued by an independent organization attesting their compliance with certain environmental management systems, then it shall refer to the eco-management and audit scheme (EMAS) attested by the organization according to the relevant Regulation of the European Union, or to the relevant European or international eco-management standards. The contracting authority shall accept any equivalent certification issued by an organization registered in any other Member State of the European Union, as well as other evidence of equivalent eco-management systems.

4. Contracting entities subject to Chapter XIV of the PPA and the separate act of legislation on specific public procurement rules pertaining to the public procurement contracts in the utilities sector, may prescribe suitability criteria and way of certification thereof other than those set out in Article 15.

5. In procedures conducted according to Part Three of the PPA, where the contracting authority proceeds pursuant to Article 123 of the PPA, it may prescribe further ways of certification pursuant to Article 123(4) of the PPA, provided it prescribes any suitability criteria in the procedure.

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<sup>16</sup> This amendment entered into force on 1 July 2013.

<sup>17</sup> This amendment entered into force on 1 July 2013.

<sup>18</sup> This point entered into force on 1 January 2013.

<sup>19</sup> This amendment entered into force on 1 July 2013.

6. In procedures conducted according to Part Three of the PPA, in case the contracting authority proceeds pursuant to Article 122 of the PPA, where the contract value of the public supply or public service does not reach twenty-five million forints (HUF 25,000,000) or the estimated contract value of the public works does not reach one hundred million forints (HUF 100,000,000), the contracting authority may accept – in lieu of the ways of certification specified in Article 15(1)-(3) – the statement of the tenderer or candidate to the effect that it complies with the suitability criterion (criteria) prescribed by the contracting authority, where the contracting authority has provided for that possibility in the notice launching the procedure. The contracting authority may only prescribe suitability criteria which may be certified with the documents specified in Article 15(1)-(3), and – where the contracting authority has provided for it – the tenderer or candidate may, according to its own choice, certify its suitability by submitting a declaration, in lieu of the ways of certification pursuant to Article 15(1)-(3). Where, in the course of the evaluation process, the contracting authority has doubts concerning the truthfulness of the declaration, it may stipulate, in the course of the supply of missing information pursuant to Article 67 of the PPA, that the certificate specified in Article 15(1)-(3) be submitted.

## **CHAPTER III**

### **4. Official list of approved tenderers**

#### **Article 18**

1. The official list of approved tenderers (hereinafter referred to as: the ‘list’) shall be maintained by the Authority.
2. The following conditions shall be satisfied for inclusion in the list:
  - (a) the economic operator shall fulfil the approval criteria published by the Authority, and
  - (b) the economic operator have given proof – specified in this Decree – of payment of the administrative service fee for inclusion in the list.
3. The criteria for approval shall be laid down by the Authority – more precisely by the Council operating within its framework, after having taken into consideration the opinion of the competent professional chambers – within its scope of responsibility as laid down in Article 172(2)(e)(eb) of the PPA and shall be published on its homepage. Verification of compliance with the criteria for approval shall be provided pursuant to Article 56(1)(a)-(d), (f)-(i) and (k), as well as Article 56(2), Article 55(1)-(2) and (5)-(6), Article 57(1) of the PPA, as well as Article 1 and Article 14-16 of this Decree. For the purposes of establishment of the criteria for approval, the Authority shall be entitled to choose from the non-mandatory grounds for exclusion and the suitability criteria. When publishing the criteria for approval, the Authority shall indicate the way of verification pursuant to the provisions set out in this paragraph.
4. In the course of the establishment of the criteria for approval, there shall be no discrimination whatsoever of tenderers based on their place of establishment, or otherwise. For the purposes of laying down the criteria for approval, the Authority may break down the criteria by activities or sectors and may also set several levels within the categories created as mentioned above.
5. For the purposes of Article 55(5) of the PPA, in addition to the obligations of verification specified in the PPA, the organization providing resources shall make a statement to the effect that the resources presented by it will be disposable in the whole period of inclusion of the tenderer in the list.

#### **Article 19**

1. The official list of approved tenderers shall be managed by the Authority and published on its homepage. The list managed by the Authority is authentic, data included shall be presumed to be real until the contrary is proven.
2. The official list shall contain the following:
  - (a) the approved tenderer’s name, place of establishment (residence);
  - (b) the approved tenderer’s category within the list;
  - (c) the approved tenderer’s date of registration in the list;
  - (d) the criteria for approval certified by the approved tenderer.

3. Being the organisation managing the official list of approved tenderers, the Authority shall be required to send its address to all the other Member States of the European Union and to the European Commission.

#### **Article 20**

1. The Authority shall issue a certificate of registration proving that the tenderer is included in the list. This certificate shall state a reference to compliance with the criteria for approval and the classification given in that list.

2. The list maintained by the Authority is also available in electronic form, on the homepage of the Authority, and this form is also authentic. In the contract award procedures, contracting authorities shall accept the fact that a tenderer is included in the list as a certification of the non-existence of the grounds for exclusion (with the exception of the case specified in paragraph 3) and of its compliance with the minimum requirement (requirements) of suitability (considering paragraph 4).

3. Approved tenderers shall be required to furnish a separate certificate under this Decree stating that they do not fall within the scope of Article 56(1)(e) of the PPA.

4. Approved tenderers shall also be required to furnish a separate certificate concerning their suitability to fulfil the relevant contract in relation to suitability criteria in case of which the contracting authority – in its contract award procedure or in the pre-qualification system – lays down stricter criteria and way of certification for the tenderers' financial and economic standing, technical capacity and professional qualification than the criteria for approval laid down pursuant to Article 18(3). The contracting authority shall make specific reference to such stricter suitability criteria in the notice (invitation).

#### **Article 21**

1. Where an approved tenderer established in Hungary submits in a contract award procedure launched by a contracting authority of another Member State of the European Union a certificate of registration issued by the Authority, the certificate shall constitute a presumption of suitability only as regards Article 56(1)(a)–(d) and (f)–(h), Article 57(1) of the PPA, as well as Article 14(1)(b)–(c), Article 15(1)(a)–(f), (2)(a)–(e) and (3)(a)–(c) and (e)–(i) of this Decree.

2. Paragraph 1 shall apply as appropriate in cases where a tenderer established in any other Member State of the European Union submits, in a contract award procedure of a contracting authority within the meaning of the PPA, a certificate issued by an authority - including assurance organizations delegated such task - operating in the State where the tenderer is established, responsible for keeping the list of recognized tenderers.

#### **Article 22**

1. Registration in the official list of approved tenderers shall be applied for in writing to the Authority. The applicant may request its approval and registration in the official list at any time, upon the presentation of the required data and facts, and the supply of the required supporting documents, statements and other documents. The term of validity of inclusion in the list shall cover 12 (twelve) months as of the day following the date of registration and may be renewed. Where the applicant submits the application between 1 January and 31 May – or the decision on registration is made by the Authority between 1 January and 31 May – and the report concerning the previous year – drawn up pursuant to the legislation on accounting requirements – is not at the applicant's disposal at the time of the submission of the application (decision of the Authority), the expiry date of the certificate of inclusion in the list shall be 31 July. If the applicant certifies the approval of the report in compliance with the relevant rules by 31 July and submits once more the statements issued pursuant to the relevant rules by a financial institution, the Authority shall draw up a certificate for one year.

2. Renewal may be requested in writing from the Authority. Where criteria for approval have been modified not more than six months before submission of the application, the applicant shall not be made subject to the approval process and shall not submit the documents required in relation to the modified criteria for approval, provided it has already proved compliance therewith.

3. The applicant may also fulfil the criteria for approval related to suitability by relying on the resources of any other organisation according to the provisions set out in the PPA and this Decree. In such a case the applicant shall prove that the resources in accordance with the criteria for approval will be at its disposal for the period of inclusion in the list of approved tenderers. Regarding the availability of exploited resources, certification is made pursuant to Article 55(5)–(6) of the PPA, noting that the declaration as defined in Article 55(6)(a) and (b) of the PPA shall indicate the way of the actual exploitation of the resources and the actual use of the professional experience during the period of inclusion in the list, in the contracts to be concluded on the basis of the contract award procedures; furthermore, in lieu of the statement on the provision of guarantee specified in Article 55(6)(c) of the PPA, the applicant shall submit the declaration of the above-mentioned 'other

organization' to the effect that this organization, in the period of inclusion in the list, undertakes to submit the required statement on provision of guarantee in each contract award procedure in case of which the suitability criterion certified by it is prescribed.

4. Inclusion in the list of approved tenderers shall be subject to the payment of an administrative service fee. The amount of the fee shall be one hundred thousand forints (HUF 100,000). Exemption from the payment of this fee shall not be granted. The proof of payment of the fee referred to in paragraph 2 shall be attached to the application.

5. Renewal of the inclusion in the list of approved tenderers shall be subject to the payment of an administrative service fee. The amount of the fee shall be fifteen thousand forints (HUF 15,000), which shall be paid at the time of renewal of the certificate issued for a period of one year. No exemption may be granted from the payment of such fee. The proof of payment of such fee shall be attached to the application for renewal.

5. The application shall be ruled on by the Authority in a decision within forty-five working days upon receipt of the application. When justified, the time-limit may be extended once for a period of maximum forty-five working days.

6. The applicant shall become an approved tenderer as of the date of registration in the official list or as of the date of renewal of the term of validity of its inclusion in such list by the Authority.

### **Article 23**

1. The Authority shall strike the approved tenderer off the official list in the event of

- (a) failure to fulfil the approval criteria;
- (b) exclusion from participation in contract award procedures ordered by a final decision in remedy proceeding related to public procurement;
- (c) a final decision in remedy proceeding related to public procurement has ordered that the tenderer in question be struck off the official list of approved tenderers;
- (d) request to this effect by the approved tenderer;
- (e) expiration without renewal of the term of validity of inclusion in the list;
- (f) termination or death of the approved tenderer.

2. An approved tenderer shall only be entitled to apply for being struck off the list if he is not participating in an ongoing contract award procedure.

3. Upon receiving the decision about being struck off the official list, the approved tenderer shall, without delay, notify the contracting entity of this fact, if it is participating in an ongoing contract award procedure.

### **Article 24**

The approved tenderer shall be required to notify the Authority of any changes in its data or circumstances relating to the criteria for approval, without delay, but not later than five working days from the occurrence of such change. If due to such change the approved tenderer no longer fulfils the criteria for approval, the Authority shall strike it off the list.

### **Article 25**

1. In the event that the Authority modifies the criteria for approval and the ways of certification, it shall be required to re-announce the criteria for approval and to inform approved tenderers already registered in the official list and persons submitting applications simultaneously, directly and in writing.

2. In the event that the criteria for approval are modified, approved tenderers already registered in the official list shall also certify, in the manner required, their conformity with the new or modified criterion for approval. Approved tenderers shall be called upon to do so in the framework of provision of information specified in paragraph 1. Where a submitted application is in the process of evaluation, the Authority shall call upon the applicant to supply the missing information, as required for the modification of the application. No specific fee shall be paid by the approved tenderers already included in the list, if the criteria for approval be modified during the term of validity of their inclusion in the list.

## CHAPTER IV

### RULES PERTAINING TO THE PUBLIC PROCUREMENT TECHNICAL SPECIFICATIONS

#### 5. Definition of the technical specifications

##### Article 26

1. For the purposes of the provisions pertaining to the public procurement technical specification, the following terms shall mean
  - (a) *‘European technical approval’*: a favourable technical assessment of the fitness for use of a product, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. The European technical approval shall be issued by an approval body designated for this purpose by the Member State of the European Union;
  - (b) *‘common technical specification’*: a technical specification laid down in accordance with the procedure recognized by the Member States of the European Union, and that has been published in the Official Journal of the European Union;
  - (c) *‘technical recommendation’*: any document issued by the European Standardization Organization that is not a standard, that has been developed in course of a regulated procedure, in order to satisfy requirements of the market;
  - (d) *‘standard, national standard, European standard, international standard’*: terms as defined in the Act on National Standardization;
2. Without prejudice to mandatory technical rules, to the extent that they are compatible with EU law, the technical specifications shall be drawn up as follows:
  - (a) with respect to the design, calculation, and execution of the works and use of the product by reference to national standards transposing European standards, European technical approvals, common technical specifications, international standards, technical reference systems or – where these do not exist – to national standards, or national technical approvals, or national technical specifications; or
  - (b) in terms of performance or functional requirements; or
  - (c) according to the terms mentioned in point (b), with reference to the specifications mentioned in point (a) as a means of presuming conformity with such requirements; or
  - (d) for certain characteristics referring to the specifications mentioned in point (a), and for other characteristics referring to the requirements mentioned in point (b).
3. In case of paragraph 1(a), the contracting authority shall, in addition to referring to the name of the standard, technical approval, technical specifications, technical reference system, mention the term “or equivalent”. No tender may be declared invalid exclusively for the reason the products and services incorporated thereto do not comply with the standards or other prescriptions provided in the technical specification if the tenderer in, an appropriate manner, using any appropriate means shows that the solutions recommended comply equivalently to the requirements provided in the public procurement technical specification.
4. In case of paragraph 1(b), a tender that complies with national standards transposing European standards, European technical approvals, common technical specifications, international standards or technical reference systems shall not be declared invalid where these specifications refer to the performance or functional requirements provided by the contracting authority. The tenderer shall provide evidence in its tender, appropriately, using any appropriate means, that the product, services or works complying with standards comply with the performance and functional requirements provided by the contracting authority.
5. For the purposes of paragraphs 3-4, the technical documentation of the manufacturer or the certification of an independent, professionally recognized body particularly may be considered as appropriate means. Recognized bodies are test and calibration laboratories, and certification and inspection bodies which comply with applicable European standards. Contracting authorities shall accept certificates from recognized bodies established in any other Member State.

6. The technical specifications may not result in inappropriate restraint of competition in public procurement. The contracting authority shall not define the public procurement technical specification as to exclude from the procedure certain economic operators or products, or with the effect of favouring or disadvantaging in any other manner. If the precise and intelligible description of the subject-matter of the public procurement justifies reference to a specific make or source, or type, or a particular process, activity, person, patent or trade mark, the specification shall state this was justified only by the need to specify the subject-matter precisely, and such a reference shall be accompanied by the word “or equivalent”.

#### **Article 27**

1. The public procurement technical specifications shall be drawn up in a way that allows criterion of equal access to the services by all users – including persons with disabilities, where it makes sense considering the subject-matter of the public procurement – to be taken into account.

2. Where contracting authorities lay down environmental characteristics in terms of performance or functional requirements specified in Article 26(2), they may refer to European, national or international eco-labels, or to detailed specifications defined by any other eco-label or, if necessary, parts thereof, provided:

- (a) those specifications are appropriate to define the characteristics required by the subject-matter of the public procurement,
- (b) the requirements for the label are drawn up on the basis of scientific data,
- (c) the eco-label has been adopted using a procedure in which all interested parties could participate, and
- (d) the specifications are accessible to all interested parties.

3. Contracting authorities may stipulate that the products and services bearing the eco-label are presumed to comply with the public procurement technical specifications. In this case the contracting authority shall accept any other appropriate means of proof, in particular a technical documentation of the manufacturer, or a test report from a recognized body. Recognized bodies are test and calibration laboratories, and certification and inspection bodies which comply with applicable European standards. Contracting authorities shall accept certificates from recognized bodies established in other Member States.

### **6. Contents of the technical specifications**

#### **Article 28**

1. Technical specifications shall include the definitions of environmental performance, of appropriately developing every requirement, in particular the criteria of equal access to the services by persons with disabilities, of safety and of sizes, including the requirements applicable to the subject-matter of a public contract as regards terminology, symbols, testing and test methods, packaging, marking, labeling, users' manuals, manufacturing processes and methods.

2. In case of public works, public procurement technical specifications shall include – in addition to the provisions set out in paragraph 1 – rules relating to quality assurance, to design and to costing, the conditions for testing, inspecting and accepting the works, the construction methods and technologies, and all other technical conditions, which the contracting authority is in a position to prescribe through general or specific requirements pertaining to the works completed and the material and parts incorporated.

3. In case of public supply or public services, public procurement technical specifications shall include – in addition to the provisions set out in paragraph 1 - requirements related to quality, performance, the purpose of the product in question, and to the appropriate liability certification system.

## **CHAPTER V**

### **FINAL PROVISIONS**

#### **Article 29**

1. This Decree shall enter into force on 1 January 2012, the provisions herein shall be applied for public procurements launched after the entering into force of this Decree.

2. The term of validity of the inclusion in the official list of approved tenderers of economic operators which are already included in such a list at the time of entering into force of this Decree, shall expire on 30 June 2012

in case of economic operators registered prior to 30 June 2011, and shall expire on 31 December 2012 in case of economic operators registered after 30 June 2011. The term of validity of inclusion in the list may be renewed under the provisions set out in this Decree.

**3. The Articles of this Decree set out in Article 4 of Gov. Decree 238/2013 (30 June) amending certain decrees concerning public procurement (hereinafter referred to as AmendD) shall be applied to public procurements which were started after the entering into force of the AmendD.<sup>20</sup>**

### **Article 30**

This Decree, together with the PPA, shall serve the purpose of compliance with Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as well as Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

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<sup>20</sup> This paragraph entered into force on 1 July 2013.