Public Procurement World - Czech Republic

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# 1. The Laws

## a. What is the applicable legislation?

Act No. 134/2016 Coll., on award of public contracts, as amended ("Act") regulates the tender procedures for conclusion of public contracts. The Act is based on the principles of transparency, proportionality, non-discrimination and equal treatment.

## b. Does the legislation relate to or interact with any applicable trade agreement, such as the European Union procurement rules, WTO Government Procurement Agreement (GPA) or the procurement requirements of the North American Free Trade Agreement (“NAFTA”)?

The Czech Republic, as an EU member state, implements the European Union procurement rules.

## c. What are the basic underlying principles of the legal framework?

The contracting authority is bound by the principles of transparency, proportionality, non-discrimination, equal treatment and prohibition of unreasonable restriction of competition.

The transparency principle is implemented specifically by the obligation to publish the tender procedure, the right of contractors to take part in the opening of envelopes, the obligation to substantiate the decision on the most suitable tender, and the determination of evaluation criteria in advance.

The principle of proportionality follows from the EU public procurement directives and applies to all stages of the procurement procedure. The principle of proportionality is expressed in the statutory regulation of public contracts award in respect of their financial value.

The principle of equal treatment demands that the contracting authority treats all contractors in the same way during the whole tender procedure. The principle of equal treatment demands that similar tender conditions apply to all contractors and that any contractor is entitled to submit a tender in the public procurement procedure.

The principle of non-discrimination is violated if the contractor is, in advance, deprived of the possibility to participate in a tender procedure (e.g., if unreasonable qualification criteria for contractors are stipulated), or participation in the tender is restricted only to domestic contractors.

## d. Is aerospace and defense procurement treated differently from other types of procurement?

The manufacture of military material or trade with military material are not subject to public procurement rules of the Act if they are necessary for the protection of important security interests of the Czech Republic.

Public contracts in the area of defence and security are subject to special rules of the Act which simplify the conditions for use of certain types of award procedures. Defence and public security contracts may not be awarded within some types of the procedures, in particular in an open procedure, i.e. the number of contractors submitting a tender is always restricted and the contracting authority never invites an unlimited number of contractors to submit a tender. The use of the negotiation procedure with and without publication is allowed. Further, specific additional qualification criteria must be fulfilled by the contractors.

There are no specific rules for public procurement in aerospace.

# 2. Application of the Statutory Procurement Laws

## a. Which public agencies are covered by the laws?

The Act distinguishes three types of entities covered by the Act: contracting authorities, subsidized contracting authorities, and sector contracting authorities.

Contracting authorities are: the Czech Republic; Czech National Bank, state allowance organizations; municipal and regional units; allowance organizations founded by municipal or regional units; and also other legal entities (i) which were established or founded for the purpose of meeting the needs of general economic interest not having an industrial or commercial character, and (ii) are predominantly financed or controlled by the state or other contracting authority or in which the state or other contracting authority appoints or elects more than half of the members in its management, administrative, supervisory or controlling body.

Examples of entities covered by the procurement laws are public universities, university hospitals and public insurance funds.

## b. Which private entities are covered by the laws?

Subsidized contracting authorities are legal entities or natural persons which award public works contracts reimbursed by more than 50% (or in the amount exceeding CZK 200,000,000; approx. USD 7,950,000) from money provided by the contracting authority. Subsidized contracting authorities follow the same rules as contracting authorities which are public agencies.

Sector contracting authorities are authorities performing relevant activity as defined by the Act, provided that this relevant activity is based on a special or exclusive right, or the contracting authority directly or indirectly controls the sector contracting authority.

Examples of sector contracting authorities are entities executing activities in the sector of gas industry, water and energy supply, etc.

## c. Are co-operations between contracting authorities exempted from public procurement law? If so, what are the conditions for the exemption?

Co-operation between contracting authorities (i.e. in-house co-operation) is exempted from the Act if the following statutory requirements are met: (i) the contract shall be awarded to an entity that is predominantly controlled by the contracting authority awarding the contract; (ii) the contractor carries out the essential part of its activities (i.e. more than 80%) for the controlling contracting authority; and (iii) no private equity investment in the contractor's entity exists.

Furthermore, the Act does not apply to contracts concluded between contracting authorities (i.e. public-public co-operation) if the contract aims at provision of public services governed solely by considerations relating to the public interest and if each of the contracting authorities carries out on the market less than 20% of its activities that are subject to the co-operation.

## d. Which types of contracts are covered?

Public contracts are either supply contracts, works contracts or service contracts.

Public supply contracts are procurement contracts for goods, especially in the form of purchase, purchase in instalments, rental or lease, or lease purchase, of goods.

Public works contracts are contracts for the execution of construction works and associated design and development activity, or development of a building resulting from a combination of construction or assembly works and/or related design and engineering activities capable of fulfilling an independent economic or technical function.

A public service contract means a public contract other than public supply contract or public works contract.

## e. How are changes to an existing contract dealt with? Do changes require a new procurement procedure?

Whether a new public procurement procedure is required in the event of changes to an existing contract depends on nature of the changes at issue. If the change to an existing contract is found to be substantial, as defined by the Act, a new public procurement procedure shall be initiated.

The Act provides for that a change is deemed to be substantial if new contractual conditions are introduced under which:

Different bidders could have participated in the procurement procedure;

A different contractor could have been selected;

Contractual economic balance is modified in favour of the selected contractor; or

The contract is substantially extended.

Replacement of the initial contractor with another contractor is also deemed as a substantial change to an existing contract, unless such a replacement results from a universal or partial succession into the position of the initial contractor, following for instance a corporate restructuring, and the new contractor fulfils the criteria for qualitative selection initially established. Furthermore, the change of contractor may be expressly reserved by the contracting authority in tender documents.

A new public procurement procedure is particularly not required in the following cases:

A change of the contract is unambiguously reserved in the tender documents;

The change does not affect the overall nature of the public contract and the costs of such change do not exceed the statutory threshold;

Unforeseen additional supplies, works or services become necessary and the current contractor cannot be replaced for economic or technical reasons and the costs of the original procurement are not increased by more than 50%; or

The change becomes necessary due to unforeseeable events, the overall characteristics of the contract are not modified and the costs of the original procurement are not increased by more than 50%.

## f. What is the applicable regime for framework agreements?

Framework agreements are concluded based on a standard award procedure with one or more contractors. Under the framework agreement, the contracting authority awards individual public contracts in accordance with conditions laid down therein to parties to the framework agreement.

When awarding individual contracts under the framework agreement, the contracting authority may proceed without a competitive procedure for the award if the conditions of particular transactions have already been stipulated in procurement documents for the framework agreement. If the conditions have not been agreed upon, the contracting authority shall conduct a competitive procedure for the award of particular contracts under the framework agreement by requesting the contractors to submit their bids. The contractual relationship arising from a framework agreement cannot be concluded for a period longer than four years, unless stipulated in exceptional cases otherwise.

## g. What is the applicable regime for public-private partnerships (PPPs)?

The public-private partnership is not specifically regulated under Czech law and, therefore, general rules concerning public contracts or concessions apply depending on the assessment whether the public-private partnership at issue falls within the scope of legal regulation of a public contract or a concession.

## h. How are concessions dealt with?

Legal regulation of concessions falls within the scope of the Act and, therefore, general public procurement rules apply. However, as concessions are deemed as a subcategory of public contracts with specific characteristics, they are also subject to certain special provisions set out in a separate part of the Act.

The Act regulates two types of concessions, namely concessions on works and concessions on services. As opposed to general public contracts, there is no definition of concessions on supplies. They can, however, be part of concessions on works or services. The difference between general public contracts and concessions (as a subcategory thereof) is such that in case of concessions the contractor is entitled to use the benefits arising from operating the works or provision of services and the risk associated therewith is born by the contractor.

## i. Are there anti-avoidance rules (including laws on bid rigging)?

Severe violation of bidding rules of public procurement procedures contrary to public procurement laws is a criminal offense under Czech law. Criminal law also sanctions an agreement on preferential terms with a contractor to the detriment of other contractors and conspiracies in connection with the award of a public contract (which is defined very broadly). Czech law imposes sanctions of up to 3 years imprisonment for natural persons found guilty of committing one of these crimes. A legal entity may be prohibited from performing public contracts for a period of up to 20 years if it has committed a crime in connection with conclusion of public contracts or the performance thereof, or in connection with participation in the procurement procedure.

Violations of public procurement procedures also constitute administrative offences sanctioned by the Act. Contracting authorities violating these procedures in such a way that it could influence the decision on the most suitable offer, or failing to comply with other obligations stipulated by the Act, face a fine of up to 10% of the value of the public contract or up to CZK 20,000,000 (approx. USD 800,000) if it is not possible to determine the overall value of the public contract at issue.

Bid rigging is sanctioned under Act No. 143/2001 Coll., on Protection of Competition, as an unlawful cartel by the imposition of a fine of up to 10% of the turnover of the undertaking.

# 3. Procurement Procedures

## a. What procurement procedures can be followed?

The Act stipulates the following forms of award procedures:

simplified below-the-threshold procedure;

open procedure;

restricted procedure;

negotiated procedure with publication;

negotiated procedure without publication;

competitive dialogue;

innovative partnership;

procedure on award of concession; and

simplified procedure.

The Act further regulates *sui generis* forms of award procedures:

framework agreement; and

dynamic purchasing system.

Open procedure and restricted procedure may generally be used by the contracting authorities without any restrictions. Competitive dialogue and simplified below-the-threshold procedure may not be used by sector contracting authorities.

In an open procedure, an unlimited number of contractors are invited to submit a tender and prove the fulfilment of the qualification criteria.

A restricted procedure is a two-phase procedure. First, the contractors are invited to prove the qualification criteria. Contractors who fulfilled the qualification criteria are then invited to submit a tender.

Negotiated procedure with publication or without publication may generally be used only after a previous unsuccessful award procedure or in other exceptional circumstances. In the negotiated procedure, the tender is subject to further amendments in order to achieve more advantageous conditions for the contracting authority based on negotiations with the respective contractors.

Competitive dialogue may only be used in case of a particularly complex subject matter of the public contract, i.e. in case the contracting authority is objectively incapable of determining exactly the technical specifications, legal or financial requirements applicable to the performance of public contracts. In the course of the competitive dialogue, the contracting authority enters into negotiations with selected contractors for the purpose of identifying and specifying one or more suitable solutions capable of meeting its needs and requirements.

Innovative partnership may only be used if the need to develop innovative supplies, services or works, including subsequent purchase of results of such development, cannot be satisfied through the solutions that are already available on the market.

Simplified below-the-threshold procedure enables the contracting authority to invite only specific candidates (at least five) to submit a tender.

Simplified procedure could be used for awarding public contracts for social and other specific services listed in the Annex to the Act. Examples of these special services would be healthcare services, hotel and restaurant services, postal services, etc.

Dynamic purchasing systems may be set up by the contracting authority for public contracts which cover regular and commonly available goods, services or works in open procedure. Contractors submit indicative offers during the duration of the dynamic purchasing system. Contractors who have submitted indicative offers in accordance with the requirements of the contracting authority would be admitted to the dynamic purchasing system. Public contracts are awarded on the basis of an invitation to tender to contractors admitted to the dynamic purchasing system.

## b. What status do electronic means/procedures have?

Subject to statutory exceptions, written communication within the entire procurement procedure between a contracting authority and contractors is to be conducted via electronic means as of 18 October 2018. Certain contracting authorities, such as the Czech National Bank and central contracting authorities, are already required to use the electronic means for communication with contractors as of 18 April 2017.

Additionally, the following electronic methods and tools for procurement procedures are already available for use:

Dynamic purchasing system (as described above);

Electronic catalogues allowing bidders to submit their bids (or a part thereof) in an electronic form and containing information regarding price, product description, etc.; use of electronic catalogues may be expressly required by the contracting authority; and

Electronic auctions the use of which for purposes of evaluation of tenders may be reserved by the contracting authority in the RFP; the electronic auctions may also be used in case of public contracts awarded in a dynamic purchasing system or under the framework agreement.

## c. Where are contract notices, i.e. calls for bid, published?

EU-wide calls for bids are published on the website Bids Electronic Daily (TED):

<http://ted.europa.eu/>

TED is the online version of the Supplement to the Official Journal of the EU, dedicated to European public procurement.

In the Czech Republic, calls for tenders are published in the Public Procurement Journal which is available on the following website: [https://www.vestnikverejnychzakazek.cz](https://www.vestnikverejnychzakazek.cz/)

## c. Can certain prospective bidders be excluded from the competition?

Prospective bidders may only be excluded from the procurement procedure if the statutory requirements concerning exclusion of bidders are met. In some cases, the exclusion is optional and depends on decision of the contracting authority, in other cases, such as non-payment of a monetary deposit, the exclusion is obligatory and follows directly from the Act. A non-exhaustive list of acts resulting in potential exclusion of bidders is stated below.

The contracting authority may exclude a prospective bidder from participation in the procurement procedure if

The information submitted by the bidder does not meet the qualification criteria or if the information has not been submitted within the set period;

The provided information is not true and is capable of influencing evaluation of the participation conditions or fulfilment of evaluation criteria; and

The tender contains abnormally low bid price which has not been clarified by the bidder.

Further, a prospective bidder may be excluded for ineligibility if the contracting authority proves that

The performance offered by the bidder would lead to non-compliance with environmental laws, employment laws or collective agreements relating to the public contract to be awarded;

There is a conflict of interest that cannot be prevented by a less restrictive measure;

Competition has been distorted by participation of the bidder in preparation of the procurement procedure that cannot be remediated by other, less incisive measures, and the bidder cannot prove that the competition has not been distorted;

The bidder committed severe misconduct relating to performance of a contractual relationship with the contracting authority awarding the current public contract in the last three years prior to initiation of the procurement procedure and such misconduct resulted in damage, early termination of the contractual relationship or other comparable sanctions; and

The bidder tried to unlawfully influence the procurement procedure.

Other reasons for prohibition to taking part in the procurement procedure include e.g. bid rigging or professional misconduct of a bidder.

# 4. Bidder Selection

## a. Are there any rules on the selection criteria?

As a general rule, the contracting authority selects the contractor whose tender has been evaluated as being economically most advantageous. The economical advantageousness is evaluated based on ratio of the offered bid price to quality, including ratio of the life cycle costs and quality. In addition, the contracting authority may evaluate the economical advantage on basis of the lowest offered bid price or the lowest life cycle costs.

The evaluation rules consisting of evaluation criteria, evaluation method in relation to particular criteria and mathematical relationship between the criteria shall be set out in tender documents.

## b. Is prequalification an option? If so, what are the requirements? What is the procedure?

Yes, prospective bidders may apply for registration with the Register of Qualified Contractors to obtain the possibility to prove their professional and general qualification by submitting an excerpt from the Register to the contracting authority.

The application for registration has to be accompanied by documents proving that the contractor possesses required professional and general qualification. The documents cannot be issued earlier than 3 months prior to the application. Subsequently, every year following the date of registration, the contractor registered with the Register of Qualified Contractors shall deliver to the Ministry for Regional Development (which administers the Register) either a written statement that the registered information has not changed or new documents proving general qualification of the contractor in order to keep the Register up to date.

## d. Do “blacklists” for bidders exist? If so, what are the conditions for unlisting?

The official public list of bidders excluded from participation in any procurement procedure for a period of three years has been abolished by coming into force of the Act.

The Act provides for that a bidder can in certain cases self-clean to participate in procurement procedure by proving to the contracting authority that it has adopted appropriate and sufficient measures, such as repayment of outstanding debts, full compensation for harm sustained as a result of a criminal offence or misconduct, adoption of technical, organizational or personal preventive measures against criminal activity or misconduct. With regard to severity and particular circumstances of the misconduct at issue, the contracting authority shall assess whether the adopted measures are sufficient to restore the eligibility of the bidder.

## e. Does the involvement of a company in the set-up of a procurement procedure exclude the company from said procedure due to conflict of interest?

In order to prevent conflicts of interest, a company that was involved in the set-up of a procurement procedure can be excluded from said procedure if the involvement of the company in the set-up has led to a distortion of competition that cannot be remediated by other, less incisive measures, and the bidder cannot prove that the competition has not been distorted.

However, pursuant to the case law of the Office for the Protection of Competition (with reference to case law of the European Court of Justice), the fact that a person participated as an employee of the contracting authority in preparation of the tender documents and, subsequently, the same person becomes member of a preparatory team of the bidder actively participating in preparation of the tender, does not in itself automatically lead to a conclusion that the bidder should be excluded from the procurement procedure.

## f. Can bidders combine to submit a bid (bidder consortia)? What limitations apply?

Contractors may submit a joint tender, but each contractor must comply with the general and professional qualification criteria to the full extent. Economic and technical qualification criteria may be fulfilled by the contractors together. The contracting authority may, however, stipulate in the tender documents further requirements for fulfilment of professional, economic and technical qualification criteria if contractors submit a joint tender. Furthermore, the contracting authority may request the contractors submitting a joint tender to be liable for performance of the public contract jointly and severally.

A contractor may also perform part of the public contract with the help of one or more subcontractors. A subcontractor may also provide the contractor with certain rights or goods. The contractor is liable for the subcontractor's performance as if the performance was rendered by the contractor. The contracting authority may exclude in the tender requirements that a specific part of the public contract is performed by the subcontractor and it may also require that the contractor indicates which part of the public contract it intends to perform with the help of a subcontractor. However, the contracting authority may not exclude the performance of the public contract by the subcontractor as such. If the contracting authority is not capable of proving full compliance with professional, economic and financial or technical qualification criteria, it may prove compliance with qualification requirements to the missing extent through its subcontractor.

## g. Can members of a bidder consortium be changed during a procurement procedure?

Although the Act does not specifically address this issue, an argument could be made that the members of a bidder consortium could not be changed during a procurement procedure.

## h. Do limitations apply for participation of related bidders in the same procurement procedure with competitive bids?

Participation of related bidders with competitive bids in the same procurement procedure is not expressly excluded. However, under certain circumstances, it may be challenged on grounds of competition rules, e.g. it could possibly viewed as bid rigging.

## i. Is there a special regulation or a special requirement for a foreign company to participate in a procurement procedure?

Provided that the qualification required for participation in the procurement procedure has been acquired in a country other than the Czech Republic, contractors are obliged to submit to the contracting authority documents issued in the country in which the qualification has been acquired, including a Czech translation thereof. If the contracting authority is in doubt about accuracy of the translation, it may request an official translation by an interpreter listed in the Register of Experts and Interpreters.

Alternatively, contractors are entitled to submit the European Single Procurement Document which is a self-declaration of the contractors' financial status, abilities and suitability for a public procurement procedure. It may be used as a preliminary evidence of fulfilment of the conditions required in public procurement procedures across the European Union.

# 5. Specifications

## a. Are there any rules on the specifications?

The Act prescribes (i) general qualification criteria which require proof that the contractor: was not sanctioned for certain criminal offences or found guilty of unfair competition in the form of bribery; is not insolvent or bankrupt; and does not have any arrears of taxes or other fees. The Act further prescribes the fulfilment of (ii) professional qualification criteria by submission of an official document proving the authorization to conduct business activity in the Czech Republic, and the fulfilment of (iii) economic and financial qualification criteria by submission of an insurance contract, balance sheet or information on the total turnover, and the fulfilment of (iv) technical qualification criteria by submission of a list of important supplies made within the last three years, list of technicians which will be involved in the performance of the public contract, description of technical equipment, control of the production facilities, specimen, photos or description of goods or documents proving conformity of the goods.

## b. Are bidders allowed to change the specifications or submit their own standard terms of business?

No, as a general rule, bidders are obliged to follow the specifications set out by the contracting authority in the tender documents.

## c. Is the protection of Small and Medium Enterprises addressed in procurement legislation? If so, how?

The protection of Small and Medium Enterprises ("SME"), which is one of the main objectives of the Directive 2014/24/EU, is indirectly embodied in several provisions of the Act. If it is possible with regard to nature of the public contract, the contracting authority shall divide the contract into lots to guarantee an award chance for SMEs. Further, as regards economic and financial qualification criteria, the contracting authority may only request a minimum annual turnover twice as high as the value of the bid, except if the risks of the bid require a higher amount.

# 6. Contract Award

## a. Are there any rules on the award of contracts?

The Act prescribes detailed rules on the awarding of contracts. Public contracts are awarded to contractors based on the submission of tenders. The submitted tenders fulfilling formal requirements are further evaluated in terms of their economical advantageousness.

The contracting authority may not conclude the public contract for a certain period during which contractors who were not selected may object to the decision on the most suitable tender.

The Act also prescribes an exhaustive list of reasons for the cancellation of the award procedure.

## b. Are there any limitations regarding the offered bid price?

If the the contracting authority finds the offered bid price to be abnormally low, it shall request the bidder to clarify in writing how the offered bid price was determined. The bidder shall confirm in its clarification that it will, in particular, ensure compliance with laws relating to the subject-matter of the public contract as well as with employment laws. The abnormally low bid price may be justified by economic aspects of the manufacturing process, applied technical solutions, etc.

Subsequently, the contracting authority assesses the clarification provided by the bidder and if the statutory requirements are not met, the tender shall be excluded.

## c. Are there any rules on alternative bids?

Alternative tenders are admissible only if the public contract is awarded based on the evaluation criterion of economical advantageousness and if the contracting authority allowed alternative tenders in the tender requirements.

# 7. Exemptions to Competitive Bidding

## a. Are there any exemptions to competitive bidding, i.e. under what conditions is a direct award/single sourcing permissible?

The Act includes a number of various exceptions. The contracting authority is not obliged to conclude public contracts according to the Act, e.g., in case the value of the public contract does not reach a certain threshold (small-scale public contracts), if the award procedure would jeopardize protection of classified information, if the subject matter of the public contract concerns research and development, or manufacture or trade with military material, or arbitration and mediation services.

## b. What are the consequences for violation of the competitive bidding requirement?

If a contract should have been awarded under public procurement rules and the contracting authority failed to do so (e.g., it applied an exemption from the Act which did not relate to the contract at issue), such contract would by declared null and void.

# 8. Remedies and Enforcement

## a. Are there any remedies and enforcement mechanisms in the procurement legislation?

The Office for the Protection of Competition supervises the compliance with the Act, including reviews of lawfulness of conduct performed by the contracting entity. The Office decides on whether the contracting entity proceeded according to the Act in awarding public contracts, imposes remedies and sanctions and reviews administrative offences.

If the contracting authority fails to comply with the procedure stipulated in the Act for the award of public contacts and if such conduct has or could have substantially affected the selection of the most suitable tender, and the relevant contract has not yet been concluded, the Office imposes remedies by cancelling the award of the public contract or any single act performed by the contracting authority, or otherwise suspends the proceedings. The Office may ban the contracting authority from conclusion or performance of the public contract.

## b. Are remedies available outside the scope of procurement legislation, e.g. civil law damage claims?

In case of an infringement of procurement rules bidders can claim damages according to general civil law provisions. This may include not only reimbursement of the costs for preparation of the bid and participation in the procurement procedure but also consequential damages caused by the unlawful award.

## c. Is there a specific forum before which procurement disputes are heard?

Disputes are heard by the Office for the Protection of Competition which may commence proceedings ex officio or based on written request of the contractor. The decision of the Office may be reviewed by administrative courts.

## d. Are there any timing requirements for the review?

Generally, objections against any act of the contracting authority must be submitted within 15 days after the contractor acquires knowledge of such unlawful act. Objections against the decision on the most suitable offer must be submitted within 15 days after delivery of the information on the selection of the most suitable offer to the contractor. The contracting authority is obliged to review the objections within 15 days after submission and decide whether it allows or denies the objection. If the contracting authority does not allow the objection, the contractor may submit an application for review with the Office for the Protection of Competition within 10 days after delivery of the decision denying the objections.

## e. What are the main preconditions for review?

An application for review of the procurement procedure may be submitted against all acts of the contracting authority (including omission) which are not compliant with the Act if the applicant has suffered or is likely to suffer damage as a result of such acts. In addition, prior to submitting an application for review with the Office for the Protection of Competition, the applicant is obliged to submit objections with the contracting authority under the conditions stated hereinabove. Without meeting this requirement, the review proceedings cannot be successfully initiated.

## f. What are admissible grounds for starting a review proceeding?

As discussed above, the review proceedings may be initiated if the contracting authority acts in conflict with the Act which results, or may result, in damage incurred by a bidder. Violation of procedural rules is likely to be one of the most common grounds for initiating the review proceedings.

## g. Does a review proceeding affect an ongoing procurement procedure or an awarded contract respectively?

The contracting authority may not conclude the public contract during the period for submission of objections. If the contracting authority denied the objections of a contractor, the contracting authority may not conclude the contract during the period for submission of an application for review with the Office and if such application was submitted, within 60 days after the review proceedings has been initiated.

## h. What are the consequences of a successful review proceeding for the affected procurement procedure or awarded contract respectively?

Measures that may be imposed by a decision of the Office for the Protection of Competition on the contracting authority which has been found to be in breach of the Act are as follows:

Cancellation of the entire procurement procedure;

Cancellation of a particular act of the contracting authority;

Prohibition to proceed with the procurement procedure; or

Prohibition to award the public contract.

In addition, if the Office imposes one of the said measures, it shall also prohibit the contracting authority to award the contract until the decision becomes final and cannot be appealed against.

In the event that the public contract has already been awarded, the Office shall prohibit its performance.

## i. How long does a judicial proceeding for review take?

As a general rule, the Office for the Protection of Competition should issue its decision within 60 days after the initiation of the review proceedings. This conclusion follows from the provision stipulating that the contracting authority cannot award the contract within the said period. In exceptional cases, however, the 60-day period during which the contracting authority is prevented from awarding the contract may be extended by a preliminary injunction imposed by the Office.

The Act does not provide for any specific time frame for the review of the first instance decision.

## j. Must unsuccessful bidders be notified before the award? If so, when?

Yes, the contracting authority must notify all bidders without undue delay after the contractor has been selected (i.e. before award of the public contract). Subject to statutory exceptions, the notification shall include report on bids assessment and assessment of the participation conditions in relation to the selected contractor.

## k. Are review proceedings common?

As regards the objections against acts of the contracting authority, it is quite common that bidders challenge decisions of the contracting authority which prevents them from taking part in the procurement procedure. The review proceedings before the Office for the Protection of Competition is, however, less common as the entity seeking the protection is obliged to pay a guarantee in the amount of up to CZK 10,000,000 (approx. USD 404,370) depending on the offered bid price in case of a proposal filed by the bidders or in the amount of CZK 10,000 (approx. USD 400) in case of a complaint to initiate the review proceedings *ex officio*. In the latter case the guarantee is not refundable.

## l. Are damage claims in relation with procurement procedures common?

The Act does not specifically deal with damage claims, except for a cancellation of a design contest. The frustrated bidders may however seek damages before civil courts under the Czech Civil Code, as stated above.

## m. What are the leading court decisions involving procurement disputes?

There are a number of important decisions. However, please note that the Czech Republic is a civil law country and, thus, no leading decision is relevant to the extent that it would substantially "rewrite" the Act.

# 9. Other Relevant Rules of Law

## a. Are there any related bodies of law of relevance to procurement by public agencies?

Does not apply.

## b. Does a specific contract law apply for public contracts?

No, public contracts awarded under public procurement laws are in terms of contractual law matters subject to Czech Civil Code.

# 10. Industry sectors of special importance or with a specific procurement regime

## a. Are there any specific laws or practices that apply in the technology sector?

Does not apply.

## b. Are there any specific laws or practices that apply in the defense sector?

As some of the general rules concerning public procurement have to be modified with respect to specific requirements relating to the defence sector, such as confidentiality of sensitive information or the security of supply, award of public contracts in the defence sector is subject to special rules set out in the Act. As an example of such a rule, the already awarded public contracts in the defence sector cannot be changed under the conditions referred to in paragraph 2(e) above.

## c. Are there any specific laws or practices that apply in the health care sector?

Does not apply.

## d. Are there any specific laws or practices that apply to any other particular industry sector?

Does not apply.

# 11. Looking Ahead

## a. Are there any proposals to change the law in the future?

As the current Act came into force on 1 October 2016, it is not likely that it will be substantially amended in the near future.

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