

Questionnaire on Public Procurement in V4 countries

CZECH REPUBLIC

Give a brief insight into the legal and economic background of establishing the PP (public procurement) systems, to see the challenges your country faced on this field in the last 20 years.

Before 1989 term „Public procurement” was unknown word in Czech. Most of the economical subjects were in hands of state or in other form of collectivised ownership. That was unusual even conditions in eastern bloc in compare with East Germany or Hungary or Poland.

After political changes first legislative steps lead to forming market economy, privatisation. In that time in 1991 was formed body for regulation of competition – Bureau for protection of Competition (Úřad na ochranu hospodářské soutěže – ÚHOS). Primary was this Bureau aimed against monopoly or cartels, since 1995 this body also have supervision on public procurements.

First regulation of Public procurements was in Act 199/1994 Coll.

In Czech legislation is public procurement in a separate law. This is Act No. 137/2006 Coll. *“On Public Procurement”*, which replaced the previous Law No. 40/2004 Coll. *“On public procurement”*.

The adoption of the new Act after such a short period of validity of the old legislation, led especially the fact that, in connection with the adoption of new regulations governing public procurement in the European Union, in particular to Directives 2004/17/EC and 2004/18/EC , the Czech Republic was obliged to transpose the Directive into Czech law. The new law therefore incorporates the relevant regulations of the European Community and governs the procedures in relation to public procurement. Indeed, already well above the means of Directives 89/665/EEC and 92/13/EEC as amended by Directive 2007/66/EC of 11.12.2007. This "European" regulation is then reflected especially in Act No. 179/2010 Coll., Which was an extensive amendment to existing law.

Public procurements are seemed threatened mostly by political corruption. And manipulation of public procurements is most resource for clientelism connected with political parties. Tendency is from greedy amateurs to professionals with backup of law firms and to misusing bigger and bigger amounts of public money. According to estimates of Transparency International – Czech Republic is 75% of corruption connected with public procurements.

For illustration, quotation from report of National economic council, advising body of Prime Minister, published in 2010:

You can sew custom-tailored to a specific firm, in accordance to the law on public procurement;
 Passed in 2009 only 45% of the market through open public procurement procedure;
 One fifth of the procurement process is carried out only by offering a single source;
 Only 30% controlled entities somehow responds to the Highest Control Office and 40% of controls Bureau for protection of Competition. Financial control is formal.

I. Legal framework

Analysing the legal framework will be the fundamental part of this study. This part has to reveal the PP system of each country as a whole and identify similarities and differences between them, which may serve as the basis for further comparison. The legal framework defines the scope of each country's PP system.

1.

1. 1. Is there a separate body of law that regulates public procurement? (Y/N)	YES
<p>1. 2. Identify the relevant national-level regulations [primary/secondary law]. If possible, insert a reference to the official English translation of each act and decree in effect. Identify if there were any major changes in the regulatory framework recently.</p> <p>First regulation of Public procurements was in Act 199/1994 Coll.</p> <p>In Czech legislation is public procurement in a separate law. This is Act No. 137/2006 Coll. "<i>On Public Procurement</i>", which replaced the previous Law No. 40/2004 Coll. "<i>On public procurement</i>".</p> <p>The adoption of the new Act after such a short period of validity of the old legislation, led especially the fact that, in connection with the adoption of new regulations governing public procurement in the European Union, in particular to Directives 2004/17/EC and 2004/18/EC , the Czech Republic was obliged to transpose the Directive into Czech law. The new law therefore incorporates the relevant regulations of the European Community and governs the procedures in relation to public procurement. Indeed, already well above the means of Directives 89/665/EEC and 92/13/EEC as amended by Directive 2007/66/EC of 11.12.2007. This "European" regulation is then reflected especially in Act No. 179/2010 Coll., Which was an extensive amendment to existing law.</p> <p>Here is English translation of act 137/2006, valid to 15. September 2010: http://www.pppcentrum.cz/res/data/005/000738.pdf translations does not cover main changes which were adopted by Czech parliament in January 2012.</p>	

2.

2. Describe the scope of public procurement. Does it cover sub-national levels of government? Does it include coverage of all government procurement, including security and military procurement? Are there separate procurement rules established for parastatals?

The Contracting body – who is legally obliged to enter into the public procurement procedure is in paragraph 2 of act 137/2006 Coll. “*On Public Procurement*”.

The Act defines three possible categories of contractors: Public contracting authority subsidised contracting entity and sector contracting entity.

The Public contracting authority

The law under the concept of public authority summarized the four possible sub-categories of buyers. These may be:

- Czech Republic,
- government funded organization,
- regional or local authority (municipality, county) or an organization with which performs the function of the founder of territorial self-governing unit,
- other legal entity if it also meets three basic conditions required by law: the legal entity with legal personality (is eligible to be a bearer of rights and duties)
- legal entity established to meet the needs of the public interest, not having industrial or commercial character (which does not matter if the person carries on business as defined above in addition to still other activities that do not seek to meet the needs of the public interest)
- this entity is largely financed and controlled by the State or other public authority or state or other public authority appointed or elected by more than half the members of its statutory, administrative or supervisory authority.

These categories define the only authority in general. Under the Public contracting authority and will include an organizational unit sponsor generally defined as follows. Contracting authority, for example, not only the Czech Republic as a state, but also its individual organizational units. Also in the case of local government units can be regarded as authority for its particular district or districts. The category of public authorities, however, will never come an individual.

Subsidized entity

Subsidized by the contracting entity is any natural or legal person who commissions paid contract of more than 50% of the cash funds provided by the contracting authority if: exhaustively defined in terms of public works contracts of at least 125 451 000 CZK (near to 5 030 919 EUR, threshold public contracts), exhaustively defined in terms of excess service contracts.

As regards the first condition is the fact that a person acquires defined public works contracts, it should be pointed out that the term does not only mean acquiring construction, but any works which relate to these objects. It should be borne in mind that this is the acquisition of construction of a minimum financial threshold required by law. In practice,

most often are the constructions of any expensive modifications (e.g., total reconstruction of the building) will be rather exceptional.

Subsidized entity progresses further procurement in accordance with the provisions of the Act on public procurement applicable to the contracting authority (e.g. in case of time limits).

The sector contracting entity

Sectorial contracting authority is by law a person who performs any of the relevant activities referred to in § 4 of the Public Procurement Act and that this activity is performed by special or exclusive rights or over that person, if the contracting authority may directly or indirectly exercise a dominant influence.

The basic prerequisite for a person's status as a contracting sector is one of the performance of relevant activities defined in § 4 This means the relevant activities such as activities in the gas, heating, electricity, water, etc.

The central contracting body

The law also introduces the central authority, which allows sponsors to purchase goods, services or works through a central authority, without themselves having to go through the tender procedure. This leads to the central task of the client. The central authority can only be a contracting authority, the Act further restrict that person will be the central authority. Contracting entities shall close with a central authority before the centralized procurement contract, which modifies the conditions associated with the centralized award.

3.

3. 1. Was / is there any EU infringement case in progress against the government concerning PP? (Y/N)	N
3. 2. Describe the cases briefly and indicate the violated EU regulations. (source: http://ec.europa.eu/eu_law/infringements/infringements_en.html)	
There are 37 cases on Court of Justice of European Union but none of them is connected with public procurements in any way.	

4.

4. 1. Please indicate if the following OECD principles are expressed by the national regulations. (Y/N)	
4. 1. 1. Transparency	Y
4. 1. 2. Good management	Y
4. 1. 3. Prevention of misconduct	N
4. 1. 4. Accountability and control	Y
4. 2. Are the following key recommendations of the OECD ensured by the relevant regulations? (Y/N)	
4. 2. 1. Providing an adequate degree of transparency throughout the whole	Y

procurement cycle in order to promote fair and equitable treatment for potential suppliers	
4. 2. 2. Maximising transparency in competitive tendering and taking precautionary measures to enhance integrity, in particular for exceptions to competitive tendering	N
4. 2. 3. Ensuring that public funds are used in public procurement according to purposes intended	Y
4. 2. 4. Developing a set of professional standards to enhance the knowledge, skills and integrity of public procurement officials	N
4. 2. 5. Putting mechanisms in place to prevent risks to integrity in public procurement	N
4. 2. 6. Encouraging close co-operation between government and the private sector to maintain high standards of integrity, in particular in contract management	Y
4. 2. 7. Providing specific mechanisms for the monitoring of public procurement and the detection and sanctioning of misconduct in public procurement	Y
4. 2. 8. Establishing a clear chain of responsibility together with effective control mechanisms	N
4. 2. 9. Handling complaints from potential suppliers in a fair and timely manner	Y
4. 2. 10. Empowering civil society organisations, media and the wider public to scrutinise public procurement	N
<p>4. 3. If you have any remarks on the above listed principles and recommendations please describe.</p> <p>General problem in control of public procurement is formalism and lack of clear responsibility especially in cases when responsibility is divided between political body and executive apparatus.</p>	
<p>4. 4. Indicate any other guiding principles expressed in the legal regulations.</p>	

5.

<p>5. 1. Which procurement methods are allowed by the national regulation? (e. g. open, restricted, negotiated, accelerated). List them.</p> <p>Public Procurement Act distinguishes and provides the following types of award procedures:</p> <p>(a) open procedure (§ 27), (b) restricted procedure (§ 28), (c) negotiated procedure with publication (§ 29), (d) negotiated procedure without publication (§ 34), (e) competitive dialogue (§ 35), (f) Simplified below-the-threshold procedure (§ 38).</p>

Brief description of different types of competitions

Open procedure

The simplest type is an open tender procedure. In this type of competition contracting entity invite an unlimited number of suppliers (tenderers) to submit their tenders. Open procedure is unlimited tender; the tender shall be entitled to any person who has a tender interest.

Restricted procedure

In the strict management of the contracting entity invites an unlimited number of suppliers to submit applications to participate in restricted procedure. This type of procedure is in contrast to the open procedure restricted procurement procedure. Offer this type of proceeding may submit only those persons who have authority, at their request to participate in restricted procedure called.

Negotiated procedure with publication and without publication

Negotiated procedure with publication of a simpler and less formal method of procurement, the contracting entity has unlimited invites suppliers to apply for participation in this proceeding. Invited applicants submit an offer on the basis of contracting with them to discuss further the specific terms of the contract.

Negotiated procedure without publication is the simplest and least formal method of procurement. In the negotiated procedure without publication of the contracting authority direct calls to one or more suppliers to negotiate. Candidates do not serve as its offer, but contracting with them directly instead of negotiating.

Major amendment No. 179/2010 Coll. Significantly modified in order to enter the regime of negotiated procedure (with publication without publishing) when:

- a) New has authority to enter a negotiated procedure with publication also re-order if the lower tier in the simplified procedure should be made only incomplete or unacceptable (to date this option is valid only for the open procedure, restricted procedure and competitive dialogue);
- b) contracting authority can enter the negotiated procedure without publication of a contract also repeated if the lower tier simplified procedures have been submitted or no tenders were submitted, the offer not meeting the subject of the contract. (Previously this option was only valid for open, restricted and negotiated procedures with publication)
- c) negotiated procedure without publication can now enter new works and services only if it is a "similar works or services, as in the original public contract and the corresponding original public contract";
- d) contracting authority has the option of negotiated procedure without publication of a new type works and services in connection with the simplified sublimit proceedings. (Previously this option was only valid for open and restricted procedure).

Competitive Dialogue

Contracting authority on the basis of competitive dialogue notice invites unrestricted number of applicants to submit applications to participate in this proceeding and to demonstrate competence. After assessing the qualifications of candidates such authority shall invite the applicant to participate in competitive dialogue to find one or more suitable solutions of the public contract. After finding a solution to this authority shall invite all interested persons originally invited to tender, with the fact that these bids are to respect the authority chosen solution.

Simplified below-the-threshold procedure

In a simplified lower tier management authority shall invite at least five candidates to tender for contracts below the threshold performance. The new authority is an obligation to publish a written invitation to tender in the lower tier simplified procedure for your profile on the Internet, new authority for the obligation to receive and evaluate bid contractor who was not invited to tender in the lower tier simplified procedure. The new management cannot be simplified sublimit cancelled only at the will of the contracting authority - must be met any lawful reason.

With the new limit for the simplified treatment in the case of the so-limit orders, they can apply and get their bodies that were not addressed directly the sponsor to submit a bid and the contracting entity shall also assess the supply of these entities. Such a measure increases equality and eliminating discrimination against candidates those who formerly were the sponsor invitation to tender and hence could not participate in the procurement procedure.

5. 2. Are conditions for use of various procurement methods clearly established? (Y/N)	Y
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5. 3. Is there an explicit requirement that open competitive bidding is the preferred or default method? (Y/N)	N
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5. 4. Describe these.

5. 5. Specify the relevant thresholds by types (min/max) and relevance (goods, works, and services). [Insert extra rows/columns if needed]

type	goods		services		construction)	
	min	max	min	max	min	max
Small scale (not regulated by PP act)	0,-	2.000.000,- Kč	0,-	2.000.000,- Kč	0,-	6.000.000,- Kč

Under limit	2.000.000,- Kč	3,236.000	2.000.000,- Kč	3,236.000	6.000.000,- Kč	125,45 1.000
Over limit (state)	3,236.000		3,236.000		125,45 1.000	
Over limit (regional or local authority)	4,997.000		4,997.000		125,45 1.000	
Over limit (sector)	10,020.000		10,020.000		125,45 1.000	

For Construction procurements in thresholds over 20.000.000,- CZK are the same rules like for Over limit procurements, with this exception that they can't should be published on European level.

If thresholds of procurement is over 500.000.000,- CZK and contract is at least for 5 years The Public contracting authority have to ask Ministry of Finance for statement.

6.

6. Do legal provisions stipulate the use of new and innovative techniques in PP process (automatic or e-procurement)?

act 137/2006 Coll. "On Public Procurement" paragraphs 96 and 97

Electronic marketplace (electronic auctions)

The aim is to enable electronic auction the contracting authority in the final stage of the procurement procedure to achieve financial savings in a transparent manner. The electronic auction is the Institute, which is not a separate procurement procedure, but based on an extension of the process and within the standard procurement procedures; the sponsor may apply in the final stage of the procedure. Therefore, if the sponsor decides to use an electronic auction, electronic auctions are becoming a tool for evaluation of bids, and the result is the basis for the decision of the evaluation committee, respectively. clients, who have no other choice but to declare such an outcome. Prerequisite for the use of electronic auctions is the publication of this fact at the beginning of suppliers tendering procedure.

The sponsor is entitled to hold an electronic auction in all kinds of tender, except only the negotiated procedure without publication of a competitive dialogue. In these two cases cannot use an electronic auction. An electronic auction can also be used for public works or services designed to transactions involving intellectual property rights. However, this restriction cannot be interpreted too broadly, as public contracts whose subject matter relates to intellectual property rights, the whole series. This limitation would be directed primarily to such contracts, under which there is a certain author's work and the author's

work is the primary target customer. An example would be a public contract for the original project or architectural studies.

Public Procurement Act also provides minimum information that the contracting authority shall indicate in the specifications. The sponsor is primarily required in the tender evaluation criteria indicate conditions whose values will be the subject of electronic auction. These criteria can only be quantifiable criteria, ie. Criteria are expressed numeric value.

The sponsor must disclose the identity of the participants in the electronic auction of any of its phases. On the contrary, throughout the electronic auction is obliged to disclose information about candidates to his present or currently ranking the best auction values. But it must not disclose such data, from which we could deduce the identity of applicants with the best auction values.

The electronic auction may result in several possible ways. The sponsor is obliged to provide relevant information about a termination of the electronic auction and it has already sent the challenge before the actual auction. Possible ways to end e-auctions are therefore:
at the end of a predetermined day and hour
termination, if the sponsor does not receive any new auction values
after the end of exhaustion (known in advance) the number of auction rounds

7.

7. 1. Describe the system of administrative or judicial review/appeal. Is it fair and adequate?

In compliance with the law during the selection process overseen by the Protection of Competition (the "Office"). He then examines the legality of acts of authority to ensure that the guidelines applicable to the selection process, therefore the principle of transparency, equal treatment and non-discrimination. Tenderer who feels the procedure damaged the authority of their rights, the primary sponsor to submit justified objections against the procedure. IF this procedure does not lead to a successful conclusion and settlement of the dispute between the applicant and the sponsor, the applicant may lodge a complaint to the Office for Protection of Competition.

Office for Protection of Competition initiates the procedure for review of the acts of the contracting authority either on its own initiative or on application and the complainant (tenderer). Office design can be brought against any of the contracting entity, as a result threatens or has suffered loss to the petitioner's rights, in particular against:

- award conditions
- content of the notice or invitation to open tender
- exclusion of candidates from the award procedure
- decision on selecting the best bid
- use the type of procurement procedure

7. 2. Specify the legal sanctions (penalties etc.) of violating legal regulations regarding public procurements.

The Authority may decide to breach the law by the contracting authority to enter into a contract that prohibits the procurement procedure or cancel the award procedure or just a single act of authority. In the event that the contract for performance of the contract has been concluded, the Office will decide by imposing a ban to perform the contract if the tender during the committed administrative offense.

In relation to the new Authority contractor has the opportunity to ban the performance of public contracts, supplier, and if the Contractor shall submit to demonstrate compliance with qualification information or documents which do not reflect reality and should or could affect the assessment of qualifications suppliers in the procurement procedure or fails to file a request for a change registration of qualified suppliers, if such change would result in failure to establish eligibility criteria. For this ban on the performance of contracts by suppliers caught on the general term "black list".

8.

8. 1. Are there minimum time limits for the receipt of tenders required for public procurements below EU-threshold? (Y/N)	Y	
8. 2. If so, specify by types and conditions of procurement. [Insert extra rows if needed]		
time limits for receipt of requests to participate in the tender (public authority)		
type of procurement	over limit	under limit
open procedure		52
restricted procedure	37	15
negotiated procedure with publication	37	15
negotiated procedure without publication		
competitive dialogue	37	15
simplified below-the-threshold procedure		
negotiated procedure with publication in case of need	15	10

time limit for the tender documentation

Time limit for receipt of requests for participation is now also explicitly set a time limit for providing the tender documentation by the sponsor individual candidates. Time limits for:

a) Sending tender documents in paper form to the supplier's request promptly, the contract documents in electronic form shall provide the Contracting Authority no later than 6 days and simplified management of lower tier within 2 working days of receipt of written request from the supplier.

b) sending or qualification documentation in paper or electronic form suppliers promptly, no later than 6 working days of receipt of the written request of the supplier;

c) additional information on the tender conditions within 5 working days of receipt of the request of the supplier; the shortened time limits within 3 working days;

d) Sending additional information on the requirements for qualification within 3 working days of receipt of the request of the supplier; the shortened time limits within 2 working days.

Time limits for submission of tenders (public authority)

The minimum period for submission of bids is then determined in the following table. In the case of competitive dialogue, negotiated procedure with publication or negotiated procedure without publication, the contracting authority deadline for submission of bids at its discretion, in those cases the minimum period set by law. The sponsor, however, has set a deadline for submission of tenders so as to respect the legal principle of a reasonable length of time with respect to the subject contract.

type of procurement	over limit	under limit
open procedure	52	22
restricted procedure	40	15
restricted procedure, provided for overriding objective reasons cannot keep time min. 40 days (threshold public contracts) or 15 days (below the threshold public contract)	10	7
simplified procedure cannot be below the threshold	Not possible	15
simplified sublimit proceedings if the overriding objective reasons cannot set a deadline min. 15 days	Not possible	7
competitive dialogue	at the discretion of the contracting authority	
negotiated procedure with publication	at the discretion of the contracting authority	
negotiated procedure without publication	at the discretion of the contracting authority	

Deadlines for receipt of requests to participate in the tender (sector contracting entity)

The legislation limits the award procedure for the contracting sector is to some extent consistent with the legislation applicable to the contracting authority. Similar to the contracting authority, the authority for the sector are the fundamental principle that the period must be determined with respect to the subject contract. Otherwise, the deadline set for the sector contracting entity, there are some differences. One difference is the fact that the deadline for submission of tenders in restricted procedure and negotiated procedure with publication can also be determined by agreement of all contracting sector candidates. Such time limits shall be the same for all candidates; it is not possible under such an

agreement to negotiate with the candidate's different periods. Minimum time limit for requests to participate in restricted procedure or negotiated procedure with publication or time limit for receipt of confirmation of interest to participate in the following table:	
type of procurement	over limit
restricted procedure	37
restricted procedure, provided for overriding objective reasons cannot keep time min. 37 days	22
negotiated procedure with publication	37
negotiated procedure with publication, if the overriding objective reasons cannot keep time min. 37 days	22
confirm interest in participating	37
confirm interest in participating if the overriding objective reasons cannot keep time min. 37 days	22
negotiated procedure without publication	at the discretion of the contracting authority

Deadlines for submission of tenders (sector contracting entity)	
The minimum period for submission of tenders in restricted procedure and negotiated procedure with publication set for the case if the option purchaser chooses a sector agreement with the tenderer not to use or if the applicant has agreed to a deadline. The time limits specified sector contracting entity shall be proportionate and must respect the particular legal principle of fair length limit with respect to the subject contract.	
open procedure	52
restricted procedure	24
negotiated procedure with publication	24
restricted procedure, where justified,	10
negotiated procedure with publication, in justified cases	10

9.

9. Is there a legal or regulatory requirement for public disclosure of procurements /related legal texts and statistical data? (Y/N)	Y
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10.

10. Are there provisions regarding preferences for particular categories of suppliers (sp. preferential treatment of local bidders) and/or categories of goods, works and services (cf. private sector provision/operation of power, water or other infrastructure facilities)? If so, specify. YES
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§ 101 Preference for Economic Operators Employing Handicapped People

11.

11. 1. Are there any explicit anti-corruption / transparency rules - as part of the framework regulation? If so, specify the essential features.

Except simple Bribery in Criminal Code Act No. 40/2009 is there a crime § 256 - Negotiation advantages in procurement and § 257 Manipulation with procurement.

Study on that issue: <http://ies.fsv.cuni.cz/sci/publication/show/id/4063/lang/cs>

11. 2. Is there a conflict of interest policy in effect? If so, describe the essential features.

ACT 159/2006 Coll. On Conflict of Interest

§ 2

public official

- a) dealt with the financial resources of the public administration as a principal operations within the meaning of the Act on Financial Control, financial operations, if the value exceeds 250 000 CZK,
- b) directly involved in decisions concerning the award of public contracts or decisions in the exercise of rights and obligations of the contracting authority in the implementation of procurement contracts
- c) take decisions in administrative proceedings, except for block management, or
- d) participates in the conduct of criminal prosecutions.

§ 6

Public official referred to in § 2, paragraph 1 point. c) To m) and 2 point. b) to e) may not be for 1 year from the termination of their work or become a partner in the bodies of legal persons employed or to conclude a labour relationship with the employer engaged in business activities, if such legal person or an employer in the last 3 years before the end of the function of public officials have contracted with the State, local government unit or entity established or constituted by law or established by the State or local government, it was the excess of the contract, and if the public official or institution in which the public official acted on this contract settled .

Sources: regulations, laws, other studies, reports

II. Institutional framework

The institutional framework introduces the public entities taking part in PP procedures, and the managerial framework.

1.

<p>1. 1. Name the institutions/authorities in charge of PP in your country. Describe their duties and responsibilities. Quote the legal sources of the infrastructural framework.</p> <p>Ministry of regional development Czech Post – administrator of PP publishing subsystem www.centralniadresa.cz Bureau for protection of Competition – administrative control of PP www.compet.cz The Supreme Audit Office –control of state institutions http://www.nku.cz/</p>	
1. 2. Is the procurement system in your Country centralized or decentralized? (C/D)	Y
1. 3. Is there a central tender board or authority? (Y/N)	Y

2.

<p>2. 1. Is there an entity with oversight responsibilities for procurement functions throughout public administration (e.g., with primary regulatory powers, responsible for harmonization of rules and monitoring of compliance)? If so, identify and describe responsibilities and structure.</p> <p>Ministry of regional development - responsible for harmonization of rules and monitoring of compliance</p> <p>Bureau for protection of Competition – administrative control of PP</p>	
2. 2. Are procurement decisions overridden by higher governmental agencies? (Y/N)	Y
<p>2. 3. If so, by whom?</p> <p>Bureau for protection of Competition (UHOS)</p> <p>In compliance with the law during the selection process overseen by the Protection of Competition (the "Office"). He then examines the legality of acts of authority to ensure that the guidelines applicable to the selection process, therefore the principle of transparency, equal treatment and non-discrimination. Tenderer who feels the procedure damaged the authority of their rights, the primary sponsor to submit justified objections against the procedure. IF this procedure does not lead to a successful conclusion and settlement of the dispute between the applicant and the sponsor, the applicant may lodge a complaint to the Office for Protection of Competition.</p> <p>Office for Protection of Competition initiates the procedure for review of the acts of the contracting authority either on its own initiative or on application and the complainant (tenderer). Office design can be brought against any of the contracting entity, as a result threatens or has suffered loss to the petitioner's rights, in particular against:</p> <ul style="list-style-type: none"> - award conditions 	

<ul style="list-style-type: none"> - content of the notice or invitation to open tender - exclusion of candidates from the award procedure - decision on selecting the best bid - use the type of procurement procedure 	
2. 4. Are the authorities relating to procurement clearly delegated to the entities carrying out the process?	Y
2. 5. Are the applicable procedures clearly defined?	Y

3.

3. 1. Are there any integrity and transparency guidelines or code of ethics for employees working with PP? (Y/N)	Yes,
3. 2. What guidelines ensure integrity and transparency in PP? It is not centralized. Some cities have ethical codex's and there e is ethical codex of Platform for transparency in public procurement. http://www.transparentnizakazky.cz/dokumenty/122-doporueni-pro-dodavatele-veejne-zakazky	

4.

4. What institutions have the power of supervision and control in the PP system? Name the key authorities, describe their rights and duties. Distinguish between internal management control and external audit. Bureau for protection of Competition – administrative control of PP The Supreme Audit Office –control of state institutions
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5.

5. Describe how review and remedy is regulated in Public Procurement. Name the key authorities. It is in paragraphs 110 – 124, in act 137/2006 Key authority is UHOS www.compet.cz http://www.pppcentrum.cz/res/data/005/000738.pdf The proposal must include the Office served in addition to other requirements laid down by the Public Procurement Act, proof of a deposit. The Act thus establishes as a condition for applying for bail in the amount on account of the Office for Protection of Competition. It is necessary that the applicant had passed the deposit on behalf of the Authority in due time, as proof of its composition is a necessary part of the proposal. Unfolded bond or failure to prove its composition has the effect of terminating the proceedings without a decision on the merits. Generally, the deposit amount is 1% of the bid price of the petitioner. The law on public procurement but also sets the minimum and on the other hand, the maximum amount of deposit. The lower limit is determined by the amount of CZK 50 000, then the upper amount of 2 million. The law also regulates the situation where it is not possible to determine the offer price. In this case, the deposit consists of 100 thousand. The purpose of bail is to prevent unjustified claims for the review authority operations, and reduce the burden on the
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Office only in cases of serious violation of the law. If the Authority finds the proposal as unjustified, and it stops the proceedings, bail forfeited and becomes the income of the state budget. In other cases, the Office deposit with interest the petitioner comes back within 15 days of the decision.

Objections may be submitted only in the procurement procedure and the sublimit excess of the contract.

The procedure for award of a small scale is not possible to object, although it is obliged to respect the principle of transparency, equal treatment and non-discrimination. Such a provision law give rise to the interpretation of many a client that the other provisions of the Public Procurement Act does not control and is thus often leads to excessive meeting of the authorities, who disregard the express provisions of the Act, which contain just fulfil the principle of transparency, equal treatment and non-discrimination violate the only obligation to them in small-scale procurement law requires. General courts in response to explicit violations of these principles of small-scale procurement concluded that unlawfull act against contracting the procurement of a small scale it is possible to defend itself. Such action against the sponsor will not be objected under § 110 of the Act, but any other act - such protest. If no protest by the contracting authority does not remove the vendor violation may be contacted at the Office for Protection of Competition and then possibly court.

The procedure for the award over the limit and below the threshold public contracts can be to challenge any alleged violation of law authority, unless such act threatened or harmed the rights of the supplier. Objections against breaking the law by the contracting authority the contractor shall deliver the sponsor within 15 days from the date of the violation of such contractor learned.

Objections to tender conditions can sponsor only deliver up to 5 days after the day was the deadline for submission of tenders. In our view, will lead to the fact that the opening of the tenders will be conducted after the authorities of this period (the 6th day after the date on which tenders should be submitted), precisely to eliminate the possibility of suppliers to challenge the terms of reference for when the opening the envelopes shows that offer a certain candidate is likely to be rated as the best.

Objections to decisions on selecting the most suitable tenders or contracting entity's decision to exclude from participation in a procurement procedure the supplier must deliver the sponsor within 15 days of receipt of notification of selection of the best supply of public order or decision to exclude from participation in procurement proceedings.

The new law also included the opportunity to challenge the cases in notification authority of intent to contract, if this happens without the authority published a notice of initiation of the procedure. The deadline for filing such objections is 15 days after publication of the notice of intent to contract.

The opposition is necessary in writing and must specify who is given authority against which the action directed in what is seen breaking the law, as well as POSIS injury that threatens suppliers.

Opposition generally has the effect that until the decision on the objections cannot sponsor contract with the contractor selected as the best offer.

If the sponsor fails to comply with the objections, the Contractor is to refer the objections to the Office for Protection of Competition. Objections served the Office must be delivered within 10 days from the date on which the contractor was served with the decision to sponsor non-objection.

The Authority shall commence upon receipt of an administrative procedure by filing an administrative order, summons the parties and the evidence. The Authority is not bound only filed objections, but the review process, award of contract authority complex, which, although often leads to delays in proceedings, but also often happens that the Office encounters a violation of the law, even where the complainant (the supplier) was not looking.

The amendment of 1 First 2010 also provides for two new institutes measures to the Authority to respond to violations of the law of the contracting authority and suppliers.

The Authority may decide to breach the law by the contracting authority to enter into a contract that prohibits the procurement procedure or cancel the award procedure or just a single act of authority. In the event that the contract for performance of the contract has been concluded, the Office will decide by imposing a ban to perform the contract if the tender during the committed administrative offense.

6.

6. Is there a national Public Procurement strategy? If so, describe its main objectives, targets and indicators. If it is publicly available, please add online reference.

There is a project "Streamlining the management of public property and resources" is part of the pillar "Institutions" Strategy for the international competitiveness of the Czech Republic for the period 2012 to 2020 (SMK).

PP is also mentioned I Anticorruption strategy of government.

7.

7. 1. Can public procurement be outsourced?	Yes
7. 2. Do procurement agents or consultant / law firms take part in tendering?	Yes
7. 3. If so, under what circumstances? How are they selected? They are selected under the same rules, PP act, as other competitive. Problem with outsourcing is in clientelistic connections of PP agencies and Big business and in dividing responsibility for PP. Outsourcing of PP is one of the biggest problems connected with PP market in Czech Rep.	

7. 4. Describe the normal basis for compensation and contract duration.

There are no relevant statistic data for this question. There is big difference between services or buildings contract. Theoretically all PP should be in publishing system. But it is not obvious and very often are PP manipulated that they are divided into more PP to be under limit of 2.000.000,- Kč where is lower level of control and transparency.

8.

8. 1. How are employees in PP institutions recruited? (Are vacancies publicly announced? What are the HR requirements – e. g. professional certificate, experience)

There is no certification.

8. 2. How are PP employees trained? Are there regular training programs for entry- and higher level staff?

There is no centralised system.

III. Practice and performance

The third part focusing on practical issues shows how Public Procurement systems operate in reality, how transparency and integrity are guaranteed, what deficiencies there are among them. This part plays a key role in analysing whether and how Freedom of Information prevails in the PP system.

1.

1.1. What are the main performance indicators of the PP sector - for the year 2010? (Or latest available statistics Indicate the year:

<p>GDP 2010 is 3667,6 Billions of CZK</p> <p>nominal value PP in 2010 239 billion CZK– info by Czech Credit Buro 270 billion CZK – info by Ministry of Regional</p> <p>Development. But Ministry also mentioned that more than half of PP is not in publish in the IZVUS system so total amount of CZK is much larger.</p>	
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1. 2. Please indicate the share of methods (% in volumes and cases) [Insert extra rows if needed]

Methods (cf. open, restricted etc.)	in volume		case	
	In %	Nominal value in PPP	%	TOTAL

		in billions of CZK		
Open	36%	97,2		
Restricted	4%	10,8		
Negotiated with publication	32%	86,4		
Negotiated without publication	23%	62,1		
Other / Unspecified	3%	8,1		
TOTAL	100	270	100	9049

1. 3. Please indicate the share of PP types (works, goods, and services - % in volumes and cases)

http://www.bezkorupce.cz/wp-content/uploads/2011/10/Otevrenost_zadavacich_rizeni-EN.pdf

type (cf. goods, services, etc.)	in volume		case	
	In %	Nominal value in PPP	In %	TOTAL
[type1]				
[type2]				
TOTAL	100		100	

2.

2. 1. Are summaries of information about public procurement published? (Y/N)	Y	
<p>Most centralized official web this run by Ministry of Regional Development: http://www.portal-vz.cz/default.aspx?lang=en-GB but there is lack of information's like statistics, summaries etc.</p> <p>Information's are published but there is no official summary. Best resource for summaries is this academics project „Z Index”. Their research has more validity than official numbers www.zindex.cz</p> <p>Information's about PP is possible find in www.centralniadresa.cz</p> <p>Other information's about PP is possibly ask by 106/1999 act on free access of information's. It needs sometimes long time of legal confrontation but theoretically is it possible. Very often information's are refused to publish with argument of confidential of trade secrets.</p>		
2. 2. Is there any comprehensive database on PP? (Y/N)	N	
2. 3. What kind of data is available? Specify the format.	Y/N	format
2. 3. 1. number of received bids	y	
2. 3. 2. number of contracts awarded	y	
2. 3. 3. names of successful bidders / losing bidders	y	

2. 3. 4. public advertisements	N (possibly by 106/1999)	
2. 3. 5. prequalification documents (if used)	N (possibly by 106/1999)	
2. 3. 6. the prequalification evaluation report documenting any decisions not to prequalify certain potential bidders	N (possibly by 106/1999)	
2. 3. 7. the bidding documents	N (possibly by 106/1999)	
2. 3. 8. record of any pre-bid meetings	N (possibly by 106/1999)	
2. 3. 9. the bid opening minutes	N (possibly by 106/1999)	
2. 3. 10. final bid evaluation report	N (possibly by 106/1999)	
2. 3. 11. detailed record of the reasons used to accept or reject each bid	N (possibly by 106/1999)	
2. 3. 12. copies of bids	N (possibly by 106/1999)	
2. 3. 13. appeals against procedures or award recommendations	N (possibly by 106/1999)	
2. 3. 14. signed copy of the final contract	N (possibly by 106/1999)	
2. 3. 15. any performance and advance payment securities issued	N (possibly by 106/1999)	
2. 3. 16. any changes in the final contract	N (possibly by 106/1999)	
2. 3. 17. documents on contract performance/completion	N (possibly by 106/1999)	
2. 4. Is a timeline follow up of a tender possible? (Does a tender have a specific ID from the beginning to the end?) (Y/N)		y

2. 5. Describe the access rules. Indenticate if there are legal restrictions on the public availability of these data. Are data easily available to the general public?

Except data from Military tenders which could be secret, all other data should be accessible to public. It is not obvious and free access to information's is still the issue.

2. 6. Describe forms of publication (printed, electronic), scope and frequency. Does the country have a national gazette (or other similar publication) published in a timely fashion?

There is web portals:

Yes - <http://www.centralniadresa.cz/cadr/>
<http://www.isvzus.cz/>
<http://vz.statnisprava.cz/mob.aspx?sid=0&pg=home>

2. 6. Is there a public website available with comprehensive real time data? If so, please insert reference link.

<http://www.centralniadresa.cz/cadr/>
<http://www.isvzus.cz/>

2. 7. Who handles public procurement data? Name the authority.

Ministry of Regional Development
 Administrator of informational system Czech Post – state company

3.

3. 1. Do procuring entities have internal quality and control mechanisms? (Y/N)	Y
3. 2. Are they regularly audited? If so, describe scope, frequency, who carries them out, etc. This is work of The Supreme Audit Office. Their powers are limited only to state institutions, that mean that all regional self-governance is out of their duty.	
3. 3. Is procurement monitoring and administration computerized? (Y/N)	y
3. 4. How adequately do procurement entities track the key steps in the procurement process and collect appropriate project-related cost and schedule information?	
3. 5. Do procurement units regularly update their informations on prices for goods and works? (Y/N)	n
3. 6. For small contracts or purchase orders for goods procured using shopping procedures, is a database maintained showing the current market price for commonly needed items? (Y/N)	n

http://old.transparency.cz/pdf/TIC_ZMR_publicace.pdf

quotation from National Economic Council of Government:

Small orders (up to CZK 6 million for construction work to CZK 2 million for goods and services) account for about half of all public procurement in terms of volume, the number of them are hundreds of thousands. But not for reasons of capacity controlled by OPC and existing legislation does not specify the binding process of writing, only general principles that can be interpreted with a high degree of flexibility. Transparency in public procurement market in the CR is clearly not sufficient. Generally dominated by purchases from the allocation of free hand in the small-scale orders. Open competitions does not cover a third of the market. Allocation of entering free hand obviously has a negative impact on the utilization possibility of competing pressures for cost reduction of the public sector. It is also necessary to emphasize THOSE small orders and contracts outside the scope of the Public Procurement Act are also subject to less intensive control mechanism and they can assume greater vulnerability and corrupt conduct.

<http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/zaverecna-zprava-NERV.pdf> page 38.

3. 7. Are completion of contracts adequately monitored? (Y/N)

n

3. 8. How frequently are contracts not completed on schedule? What is the major cause for slippage? Which sectors and which particular kinds of contracts are effected? Specify.

There was a study of Z-Index on example of Czech Ministries which showed that 67% of PP directly from ministries was out of information system.

Generally is estimated that 30% of PP are small contracts was not published in information system. We could only estimate that number of missing contracts is over 30%.

3. 9. How frequently are contracts not completed within the originally approved contract price? How frequently are clauses of the contract (quality/quantity of goods, services, work) modified? What is the major cause for modification? Which sectors and which particular kinds of contracts are affected? Specify.

This should be only estimated. There are number of contracts with increased price during execution (extra works), we know number of cases when initial scope of work was modified and additional works were carried out.

4.

4. 1. Describe briefly the selection and contract awarding procedures. (Per tender type).
Take the checklist questions as a guideline

Procurement planning - defining requirements, preparation of documents

Procurement procedures and vendor selection - only this phase is regulated by the Law on Public Procurement Implementation and feedback control	
4. 2. Are qualification criteria appropriate and clearly described? (Y/N)	y
4. 3. Do Instructions to Bidders (ITBs) contain all information necessary to prepare responsive bids and clearly understand evaluation criteria and their method of application? (Y/N)	y
4. 4. Are time limits for the receipt of tenders fairly prescribed and sufficient for the preparation of bids? (Y/N)	y
4. 5. Are bidders afforded sufficient time to revise their bids following a modification of the documents? (Y/N)	y
4. 6. Are qualification requirements for bidders, if any, fair and appropriate for the purpose of the contract? (Y/N)	n
4. 7. Is prequalification carried out when appropriate? (Y/N)	n
<p>4. 8. Specify the types of contract prequalification is used for.</p> <p>Qualifying conditions are conditions or characteristics which must be met each supplier who is seeking the public Contract. Qualifications are grouped in 4 groups. These are the basic qualifications, professional qualifications, economic and financial qualifications and technical qualifications.</p> <p>The contractor must submit an extract from the criminal records of persons authorized to act on behalf of the supplier and the Social Security statement of the absence of arrears on premiums and statements the Tax Office of the absence of tax arrears.</p> <p>Since September 15, 2010 are inserted into the Act a new basic qualifications. These are:</p> <ul style="list-style-type: none"> i. submit a list of shareholders or members, if a legal person; ii. submit a list of employees or members of statutory bodies, who in the past three years working with the client and were in a position of decision-makers to decide on public procurement; iii. submit a list of shareholders and if the supplier is a joint stock company then demonstrate that it has only issued shares. 	
<p>4. 9. Who carries out the evaluations? Are evaluations conducted by qualified evaluating committees? Are evaluating committees appointed ad hoc for each evaluation? Describe the composition of evaluation committees.</p> <p>There are two committees. One to open envelopes and read bids - role is to check all formal requirements and, all bidders can attend this meeting and public control is in place. The key is second committee - for evaluation of bids. It is appointed by contracting authority - it consists of experts and authority representatives. Members should declare no conflict of interests and should remain silent about bids. The qualification and professionalism of members in practice differs significantly.</p>	

<p>4. 10. What kind of information do bid evaluation reports contain? (i.e. a clear and complete description of the evaluation process, including the reasons for rejecting any bid as non-responsive, how the stated evaluation criteria were applied, and how the successful bidder's qualifications were verified) Describe.</p> <p>Bid evaluation report contains ranking of bid, number of points each bid received, some reasoning when for instance certain bid was not evaluated). It is not necessarily enough, many bidders feel often</p> <p>It should be underlined that evaluation committee only proposes winning bid, but signature of contract is in hand of contracting authority and its representative (minister, mayor, city council, and so on).</p>	
<p>4. 11. Are contracts required to be awarded to the lowest evaluated responsive bidder who has been determined to be qualified to perform the contract satisfactorily? (Y/N)</p> <p>There are two criteria – lowest price <u>or</u> economically advantageous bid.</p> <p>One criteria – lowest price 55,37 % More criteria - economically advantageous bid 41,25 % Other 3,38%</p> <p>Source: Analyse of CERGE-EI 2010 http://www.bezkorupce.cz/wp-content/uploads/2011/10/Otevrenost_zadavacich_rizeni-EN.pdf Project: http://www.bezkorupce.cz/verejne-zakazky-v-cr-a-sr/</p> <p>For illustration quotation from study of National Economic Council of Government: There is study of National Economic Council of Government which compare price of construction works chosen European countries. This study shows that price of Czech infrastructure contracts are about 62% more expensive compared to the price level of housing construction. Compared to total construction prices, this increase in infrastructure is still very high 38% .</p>	<p>N</p>
<p>4. 12. Are additional Government approvals required before contracts can be made effective? (Y/N)</p>	<p>Y</p>

<p>5. Evaluate briefly the national public procurement system in your country. Identify the major problems and challenges. Is the system clear, comprehensive and consistent compared to EU framework?</p> <p>Theoretically the system is comparative with systems of PP in other countries of EU. Problem is low transparency and opening of the process.</p> <p>Manipulation of PP is not organised by individuals but by professional law firms who can use all possibilities of extensive interpretation of law. The main responsibility is now on control institutions like UHOS.</p>
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WEB Resources on PP in Czech Republic (in Czech or English:

<http://www.bezkorupce.cz/verejne-zakazky-v-cr-a-sr/>

http://www.bezkorupce.cz/wp-content/uploads/2011/10/Otevrenost_zadavacich_rizeni-EN.pdf

<http://www.bezkorupce.cz/verejne-zakazky-v-cr-a-sr/transparentnost-systemu-verejnych-zakazek-v-cr-2/>

www.zindex.cz

<http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/zaverecna-zprava-NERV.pdf>
page 38.

<http://www.portal-vz.cz/default.aspx?lang=en-GB>

http://old.transparency.cz/pdf/TIC_ZMR_publicace.pdf

<http://www.centralniadresa.cz/cadr/>

<http://www.isvzus.cz/>

<http://vz.statnisprava.cz/mob.aspx?sid=0&pg=home>

<http://www.pppcentrum.cz/res/data/005/000738.pdf>

www.compet.cz

www.nku.cz