

# WORLD TRADE ORGANIZATION

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**Working Group on Transparency in  
Government Procurement**

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## NATIONAL PROCEDURES AND PRACTICES ON TRANSPARENCY IN GOVERNMENT PROCUREMENT

### Communication from the Czech Republic

#### Introduction

With reference to the agreement reached at the last meeting of the Working Group on the proposal from the Chair that delegations would provide information on their national practices relating to the transparency in government procurement the Czech Republic intends to contribute to the study phase of the Working Group.

#### Information on national legislation and procedures

Public procurement in the Czech Republic is governed by Act No. 199/1994 Coll. on Public Procurement, in the wording of Act No. 148/1996. When drafting the Act, it was drawn both on domestic sources (i.e. Building Procurement Code of 1991) and foreign legal regulations, particularly the "Model Law of Procurement", designed by the Commission for International Law (UNCITRAL), and EC Directives on Public Procurement from 1993 (Nos. 93/36, 93/37 and 93/38).

According to the Act, the regular manner of public procurement is that the contract is awarded on the basis of a public tender in which an unlimited number of interested parties can participate, provided they meet the terms stipulated by the Act and the tender. Where such method is used, the contracting authority concludes a contract with the participant whose bid was selected as the most suitable.

The Act also provides for "other methods of public procurement", such as procurement on the basis of invitations issued to several parties, simplified procurement, procurement in cases of small-scale contracts and procurement on the basis of an invitation issued to a single party. The above-mentioned methods may be used only in cases specifically listed by the Act.

#### General rules on how public notice is given

A public tender, the terms thereof, changes thereto or cancellation thereof shall be announced by the contracting authority in the Commercial Bulletin ("Obchodní věstník").

The notice of the public tender must not be published in any other way prior to their publication in the Commercial Bulletin, and the content thereof must not be disclosed to any person.

#### Prequalification

The contracting authority may stipulate in its announcement of a public tender that it shall require proof of applicants' qualifications, to be established by means of prequalification proceedings. In the

prequalification proceedings, the contracting authority shall select applicants who by satisfying qualification requirements prove their capability to execute the public procurement.

The contracting authority must request in the qualification documentation particularly the relevant licences and specify the manner in which further prerequisites (e.g. technical and material base necessary for execution of the public procurement, the number of staff of relevant specialised professions decisive for execution of the public procurement) are to be documented. Moreover, the contracting authority must state the time-limit for and place of presentation of the qualification documentation, as well as the time-limit for notification of the results of evaluation.

The time-limit for notification of the results of the prequalification proceedings must end 25 days prior to the expiry of the time-limit for receipt of bids at the latest.

Based on the outcome of the prequalifications proceedings, the contracting authority shall exclude applicants who fail to satisfy the qualification requirements. Only those applicants who have met the qualification requirements may submit bids.

#### Tender procedures and documents

##### - Public tender (open procedure)

The notice of the public tender must be published in the Commercial Bulletin. Contracting authorities are obliged to publish the tender notice if the amount the future monetary liability arising from a contract relating to real estate, with the exception of lease, or a set of machinery and equipment forming a separate functional unit, is in excess Kč 20,000,000, or in excess of Kč 5,000,000 in other cases. Tender notices must contain the following elements:

- Definition of the scope of execution of the public procurement;
- the time and place of execution of the public procurement;
- qualification requirements for proof of suitability of applicants;
- the method of bid evaluation;
- standard requirements for determination of the bid price, including the terms of payment;
- the time-limit for the receipt of bids and the place where envelopes containing bids shall be opened;
- the time-limit of effectiveness of the bids;
- the place to which the bids are to be delivered and the time when they can be submitted in person;
- the name, registered office, telephone number, telex or facsimile numbers of the contracting authority;
- a notice stating the time of viewing of the place of execution of the public procurement or the time when documentation can be viewed, if any such viewing is envisaged, and provided such documentation is not included in the documentation accompanying the invitation to tender;

- requirement of any security required and specification of the amount thereof.
- Invitation to several parties

The contracting authority may conclude a contract on the basis of a written invitation made to no less than five interested parties in the case of public procurements where the pecuniary value of the contract is in excess of Kč 2,500,000, excluding VAT, for real estate with the exception of a lease, or a set of machinery or equipment constituting a separate functional unit, or in excess of Kč 500,000 in other cases.

Conclusion of a contract on the basis of a written invitation sent by the contracting authority to parties interested in the public procurement whose pecuniary value is in excess of the amount mentioned above, shall also be permissible in the event:

- Of an urgent need, as decided by the Government of the Czech Republic;
- of a specialized public procurement;
- that a public tender was previously organized and cancelled;
- that a publication of the terms of the tender could jeopardise a state secret, defence and security of the state or the property of the contracting authority.

The contracting authority shall send an invitation for submission of bids under (a), (c) and (d) to a minimum of three parties interested in the public procurement and under (b), to all interested parties who execute such specialized public procurement in the Czech Republic.

In the event of invitation to several parties, the contracting authority shall set identical requirements for all parties interested in the public procurement, and state the criteria for evaluation of their bids, i.e. the consideration of the lowest amount, or the most suitable bid on the whole. The contracting authority shall notify all applicants of the selection of the most suitable bid.

The time-limit for submission of bids shall not be shorter than 14 days. If the public procurement is awarded in the event of the urgent need, the Government may resolve to apply a reduced time-limit.

- Simplified award of contract

The contracting authority is obliged to request bids from a minimum of three interested parties in the case of public procurement where the pecuniary value of the contract is in excess of Kč 100,000, excluding VAT, but does not exceed the limits set out for the invitation to several parties.

The contracting authority must specify the requirement of:

- Determination of the bid price depending on the place of execution of the public procurement;
- time-limit for execution and other terms relating to the public procurement.

The contracting authority shall evidence any invitation made by a written record.

- Small-scale public procurement

In the case of public procurement whose future pecuniary value does not exceed Kč 100,000, excluding VAT, the contracting authority may decide to award the public procurement directly a price customarily charged in the place of execution. If the contracting authority decides to award the contract in this manner, it shall draw on market information and on its experience.

- Invitation to a single candidate

Conclusion of a contract on the basis of a written invitation for submission of a bid, sent by the contracting authority to a single candidate interested in the public procurement, shall be permissible only in the case of:

- An urgent need, where human lives or health are threatened, when there is a disaster, natural catastrophe or an imminent threat of extensive damage;
- a specialized public procurement in cases where only one party interested in the public procurement can execute it;
- a supplementary or repeated public procurement provided it does not exceed 50 per cent of the price of the original procurement and provided the invitation by the contracting authority is effected within 12 months of the execution of the public procurement;
- a partial renovation of the object of the original public procurement, if a change of applicant would result in the contracting of authority having to procure execution of a public procurement of different technical parameters, which execution would lead to technical incompatibility or difficulties in operation and maintenance;
- where publication of the terms of the tender could jeopardise a state secret, defence and security of the state;
- where a winner of an architectural competition pertaining to the object of execution of the public procurement reaches an agreement with the contracting authority that shall draft the project documentation;
- execution for the State Material Reserves.

The applicant must present his business licence prior to conclusion of the contract.

Qualification of applicants and clarification

Applicants must demonstrate in their bids that they are qualified to execute the relevant public procurement. The contracting authority may require in its invitation to tender that other prerequisites for execution of the relevant public procurement be met.

The qualification requirements for execution a public procurement are met by the applicant:

- Who has the relevant licence to engage in business, provided such licence is required under special legal regulations;
- against whose property no bankruptcy procurement has been issued;

- who owes no tax according to the records kept by authorities;
- who has not been duly sentenced for a criminal act related to his object of business, or for economic crime or crime against property;
- against whom no disciplinary measures have been taken under special legal regulations governing the performance of the relevant specialized activity.

The applicant shall prove that he satisfies the qualification requirements by submitting his licence to engage in business and an affidavit. The applicant with whom a contract is to be concluded shall prove his qualification by an extract from the Commercial Register (not older than 90 days) and by an extract from the Criminal Register (not older than six months).

Further prerequisites for execution of a public procurement include, but are not limited to:

- A technical and material base necessary for execution of the public procurement;
- the number of staff of relevant specialized professions decisive for execution of the public procurement;
- a list of significant procurements delivered by the applicant in recent years.

Further prerequisites for execution of a public procurement shall be outlined by the contracting party in the invitation to tender or qualification documentation. Applicants may request additional information from the contracting authority as to how they should prove the attainment of further prerequisites up to seven days prior to the expiry of the time-limit set for bidding; such information must be provided to all applicants.

Any applicant is obliged to notify the contracting authority of any changes which occur after the submission of his bid and which concern the data required by the contracting authority as proof of his qualifications.

If an applicant fails to prove his attainment of any one of the qualification requirements or fails to notify any changes in qualifications, the contracting authority shall exclude such applicant from any further participation in subsequent proceedings concerning the public procurement. The decision to exclude an applicant shall be communicated thereto without delay.

#### Time-limits

Time-limit for the receipt of bids means the period within which bids may be submitted. The time-limit for the receipt of bids shall not be shorter than 36 calendar days. This time-limit shall start running on the day of publication of the public tender in the Commercial Bulletin and shall end on the day and the hour when the envelopes containing bids are opened. The terms of the public tender shall stipulate the date and hour of the opening of the envelopes containing the bids.

Time-limit of effectiveness of bids means the period of time for which the applicants are bound by their respective bids. The contracting authority shall stipulate this period of time in calendar years in the notice of the public tender. The time-limit of effectiveness of the bids as set forth in the terms of the public tender shall be the same for all applicants, and it shall be extended with respect to the applicants ranking first, second and third in the evaluation up till the conclusion of the contract. The term of effectiveness of the bids without extension shall not exceed 90 calendar years; it shall start

running on the day of opening of the envelopes containing the bids and end on the day of dispatch of notices regarding the selection of the most suitable bids.

Transparency of decisions on contract awards

- Method of bid evaluation

Bids shall be evaluated by means of a single criterion or several criteria, and it shall be stated what method shall be used to arrive at the order of bids.

In the event of the evaluation of bids by means of:

- A single criterion, the bids shall be evaluated according to the bid price;
- several criteria, the contracting authority shall apply, in addition to the bid price, some of the following criteria depending on the nature of public procurement: requirements of quality, terms of delivery, qualifications of applicants, quality guarantees, operation and maintenance requirements.

If the contracting authority opts for evaluation by means of several criteria, it shall list these individual criteria in the terms of the tender according to priority attached to them.

- Manner of submission of bids

Bids shall be submitted in person or by registered mail, in writing, in sealed envelopes marked "tender", with the edges of the flaps stamped by the applicants' seals.

The bids must be delivered to the contracting authority before the end of the time-limit for receipt of bids. Each interested party may submit only one bid; should a breach of these duties occur, the contracting authority shall be obliged to exclude such applicant from the tender.

- Receipt of bids and opening of envelopes containing bids

The contracting authority is obliged to make sure that the envelopes containing the delivered bids are marked with a serial number, date and hour of delivery, and that the bids are entered, together with the above data, in the list of bids. If a bid is delivered in person, the contracting authority shall issue to the person in question a receipt of delivery bearing the data listed in the first sentence herein.

In addition to the contracting authority, the following parties are entitled to participation at the opening of the envelopes containing bids:

- Applicants whose bids have been delivered to the contracting authority within the time-limit for receipt of bids;
- representatives of the authority in charge of surveillance;
- representatives of the Ministry of Finance;
- representatives of the authority from whose budget the public procurement is financed in full or in part, if such authority is not identical with the contracting authority.

The contracting authority shall appoint a commission comprising at least three members to open the envelopes containing bids. The commission shall open the bids one by one according to their serial numbers and check the completeness of each bid with a view to the requirements prescribed by the contracting authority in the terms of the tender. If the commission discovers after opening the envelope that the bid is not complete with a view to the notice of the tender, the bid is excluded from further assessment and evaluation; such exclusion of any bid is announced to the attendees. The contracting authority shall exclude the respective applicant from further participation in the public tender without delay.

The commission shall draw up a record on the opening of envelopes containing bids. This record shall be signed by the member of the commission. The record shall not be made public but applicants shall be entitled to view the record. A copy of the record shall be provided to any authority whose representatives are entitled to attend the opening of envelopes.

- Evaluation of bids

The contracting authority shall establish a commission composed particularly of persons with education and experience relevant to the nature of public procurement in question. The commission shall have a minimum of five members. There shall always be a representative of the contracting authority on the commission.

The commission shall commence its activity by receiving from the contracting authority those bids which satisfies the terms of the tender with regard to completeness, checked upon the opening of the envelopes containing bids.

After the commission reviews the bids to establish whether their content is in accordance with terms of the tender and whether the applicant proceeded in compliance with principles of protection of economic competition, the commission shall propose to the contracting authority which bids failing to satisfy the above requirements be excluded from the tender.

An applicant excluded from the tender may request that the contracting party state the reason for his decision to exclude him. The contracting authority shall advise the relevant applicant of its decision without delay.

After assessing, and, as the case might be, excluding bids, the commission shall evaluate the remaining bids by the published method of evaluation. The commission shall set the order of individual bids depending on the results of its evaluation.

The commission shall draft a report on the assessment and evaluation of bids, which report shall contain:

- Data on the composition of the commission;
- an overview of bids received by the commission from the contracting authority for assessment, which overview shall include the names of the respective applicants;
- the result of the assessment of individual bids;
- the conclusion from the assessment conducted by any experts invited;
- a list of bids whose exclusion was proposed to the contracting authority after the commission conducted its assessment;

- a list of bids evaluated by the commission;
- a brief description of the method used to evaluate the bids;
- the results of evaluation of individual bids;
- the order of bids according to the results of evaluation.

The report on the assessment and evaluation of bids shall be signed by all members of the commission and submitted to the contracting authority together with all the previous tender documentation. The contracting authority shall then make it possible for any applicants whose bid were assessed and evaluated to view the report at his request.

- Decision by the contracting authority on the most suitable bid

The contracting authority is obliged to decide on the selection of the most suitable bid based on the assessment and evaluation of the bids by the commission. If the contracting authority's decision on the selection of the most suitable bid does not correspond to the order of bids as determined by the commission, the contracting authority is obliged to justify its decision in writing.

The contracting authority is obliged to notify all applicants, unless they have been excluded from the tender, of its decision on selection of the most suitable bid, including data on the applicant selected and the bid thereof.

The contracting authority shall state data on the applicant ranking second and third in its notification of selection of the bid (name of the applicants, their registered offices, if they are legal entities their domiciles and places of business, if they are physical entities). The notification of selection of the most suitable bid shall include information on the possibility to raise objections.

- Documentation of the public tender and publication of results of public tenders

When holding a public tender, the contracting authority shall fill in "Public Tender Registration Sheet" and send it to the supervisory authority within 15 days of conclusions of contract. The Public Tender Registration Sheet contains the following information:

- Contracting authority (name, address);
- manner of award of public procurement (public tender, invitation to several parties, invitation to a single candidate);
- total number of bids received;
- highest bid price;
- lowest bid price;
- selected applicant (name, address);
- object of public procurement (unit, number of units);
- place and district of execution (name, code);



- price (Kč);
- date of execution of contract relating to the public procurement.

The contracting authority is obliged to publish the name of the applicant with whom a contract was concluded and the bid price thereof, in the Commercial Bulletin within 30 days of conclusion of contract.

The contracting authority shall preserve the tender documentation, including all bids submitted by applicants for a period of five years.

#### System of remedies regarding public procurement

The Office for the Protection of Economic Competition performs surveillance over the compliance with the Act. This surveillance takes the form of review of applicants to the procedures employed by the contracting authority.

#### - Objections to the procedures employed by the contracting authority

Any participant, or, as the case might be, any participant in a prequalification procedure, may raise an objection to individual procedures employed by the contracting authority.

Objections are filed to the contracting authority in writing no later than seven days following the delivery of a notice of procedures employed by the contracting authority, or no later than seven days of delivery of a notice regarding the selection of the most suitable bid.

#### - Review of procedures employed by the contracting authority by the body of surveillance

The contracting authority's decision on objections may be reviewed by the body of surveillance i.e. by the Office for the Protection of Economic Competition. Proceedings before the body of surveillance are initiated upon delivery of a proposal for review of the contracting authority's decision on objections, unless the body of surveillance instigates proceedings on its own initiative.

The proposal is filed no later than seven days from the delivery of the contracting authority's decision.

If the proposal is filed within the prescribed time-limit, the time-limit for the receipt of bids ceases running from the date on which the proposal is lodged till the date when the decision on the proposal enters into force. The contracting authority must not complete its assessment and evaluation of bids, or conclude the contract. The contracting authority is obliged to advise other applicants of the fact.

Where a proposal for review of the contracting authority's decision regarding selection of the most suitable bid is filed, the body of surveillance examines the application and:

- Cancels the contracting authority's decision, if it finds the proposal well founded, and changes the contracting authority with making a new selection, or, where appropriate, with newly defining the public procurement in question;
- rejects the proposal and upholds the decision issued by the contracting authority, where no violation of the Act is established.

In other cases the Office shall examine the procedures employed by the contracting authority and decide that the said procedures:

- Constitute no violation of the Act, and reject the proposal; or
- constitute a violation of the Act, and charge the contracting authority with making changes, or, as the case might be cancel the tender.

The Office decides on two different levels. An appeal can be filed against the decision of the body of surveillance, the Chairman of the Office decides on such appeals.

- Decision on suits filed against decisions of the Office

The lawfulness of a decision of the Office may be examined by court. Such judicial review falls under the jurisdiction of the relevant High Courts.

Proceedings are instigated solely by virtue of a proposal, labelled in the civil judicial code as "suit". A suit must be filed no later than two months after the delivery of the decision issued by the administrative body in the last instance.

The suit does not have a suspensive effect on the enforceability of the challenged decision. There is no other remedy available against the court ruling.