

Czech Republic

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1.Does your legal system provide specific procedures for the award of contracts by contracting authorities?

Yes, the legal system in the Czech Republic provides specific procedures for the award of contracts. Act No. 137/2006 Coll., on public contracts (hereinafter only as “Public Contracts Act”), was enacted in 2006 and implements all EU directives relevant to the matter and thus harmonizes the Czech law with the EU legislation. It covers almost all aspects of the award of public contracts, although there are some other laws and regulations which either deal with related issues or with details of public contracts award. Another two directly applicable EU regulations shall be observed by the Czech authorities.

2.Do the procedures for the award of contracts depend on the kind of goods, services etc. which are to be procured?

Yes, Czech law distinguishes under the influence of EU regulation three general types of public

contracts:

- 1)Public supply contracts
- 2)Public works contracts
- 3)Public service contracts

All these types of public contracts are governed by the Public Contracts Act. Although they all follow almost the same regime, there are some differences arising from the EU regulations. This applies to threshold amounts which determine legal regime of the public contract and to the determination of methods for calculating the estimated value of public contracts. There are some public contracts excluded from this common regime. Just to mention the most important exclusions:

- a)Contracts which contains secret information or which require special security measures
- b)Contracts for production or purchase of guns and other military material
- c)Research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority
- d)Financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting authorities to raise money or capital, and central bank services
- e)The acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon
- f)The acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time
- g)Arbitration and conciliation services Contracting authorities may freely decide which procedure shall be used for the award of these contracts.

3.Do the procedures for the award of contracts and/or certain procedural regulations depend on the value of the goods, services etc. which are to be procured (thresholds) and if so, what are the thresholds?

Yes, both the procedure and the procedural regulations depend on the estimated value of the public contract. Public contracts with estimated value (exclusive of value added tax – VAT) higher than certain thresholds (limits) are subject to stricter criteria for the awarding procedure. These thresholds were transferred into the Public Contracts Act from the Directives 2004/18/EC and 2004/17/EC. The essential thresholds currently amount to

- 1)CZK 146,447,000 – for public works contracts;
- 2)CZK 3,782,000 – for supply/service contracts awarded by Czech Republic or state allowance organizations;
- 3)CZK 5,857,000 – for supply/service contracts awarded by municipalities or their allowance organizations; the same applies for public supply contracts for goods not mentioned in an executive regulation which are awarded by the Ministry of Defense
- 4)CZK 11,715,000 – for public supply/service contracts in the sector field (water, energy, and transport sectors); the public contracts are thus divided into two categories called over-limit public contracts and under-limit public contracts. There are six types of procedures which can be used by the contracting authority depending on the value of the public contract and other relevant conditions. The most valuable over-limit contracts shall be awarded in so called open procedure and restricted procedure.

The Public Contracts Act does not apply on public contracts with estimated value lower than CZK 2,000,000, even though the contracting authority may decide to use the procedure stipulated there. In this case all terms the Public Contracts Act stipulates for the selected procedure must be observed. Sector field public contracts are contracts awarded by a contractor that carries out one of relevant businesses (e.g. in the field of gas, heating, electricity and mining industry, water supply, post and transportation services) on the basis of a special or exclusive authorization.

4. In what way does the contracting authority have to inform the market about the intended procurement?

The over-limit public contracts shall be announced in the Supplement to the Official Journal of the European Union (OJS) as they should be awarded EU-wide. Both over-limit and under-limit public contracts shall be announced in the public contracts information system which is an electronic database accessible by internet. The public contracts information web site is operated by Ceska Posta (Czech Post) at the internet address: www.isvzus.cz.

5. Does a potential bidder which is interested in the contract need to have a specific legal form, e.g., corporation, to submit a tender?

No.

6. Are bidders allowed to submit joint offers, e.g., as general contractor and subcontractor or as bidding consortium?

Yes, both are possible. In the case of joint offers an agreement is required in which all bidders assume joint and several responsibility and liability for their obligations arising from the public contract to the contracting authority and third parties. One of the members of the consortium shall be appointed as the principal partner and only he concludes the contract and represents other partners towards the contracting authority. But all members of the consortium shall be stated in the bid and the structure of the consortium shall not be changed during the award procedure.

7. Do potential bidders interested in the contract need to have a registered office or branch office in your country or is it possible to submit a tender for the contract directly from abroad?

Potential bidders need not have a registered office or branch office in the Czech Republic and an offer may be submitted from abroad. There shall be no discrimination for foreign bidders. Only in the case of supply contracts in the sector field (water, energy and transport) bids may be rejected, if more than 50 percent of the total value of goods to be supplied under the contract originates in non-EU member states which are stated in Council Regulation (EEC) Decision No. 2913/92.

8. If it is possible for foreign bidders to submit a bid for a contract to a contracting authority directly from abroad, does the foreign bidder have to consider certain additional aspects, such as having to provide certain additional supporting documents or whether domestic bidders receive preferences in the award of contracts?

There is no substantial difference in the procedure for foreign bidders. They shall provide basically the same evidences that they fulfill the criteria as domestic bidders. There are some criteria under the Public Contracts Act that every bidder has to fulfill to have the possibility of the public contract award. The basic qualifications conditions are the following:

- 1) The bidder or any member of his statutory body (and eventually the head of branch located in the Czech Republic) have not been convicted of certain offenses which indicate unreliability or are connected with their business – this shall be proved by an extract from Criminal Register from both Czech Republic and their country of origin.
- 2) The bidder is not listed in the (black) list of bidders who according to the decision of the Office for the Protection of Competition breached the Public Contracts Act.
- 3) Bidder's applicable taxes and duties, as well as the social insurance contributions, have been duly paid – shall be proved by a certificate issued by relevant authority.
- 4) There are no bankruptcy proceedings in progress against the bidder and it is not in liquidation.

The bidder shall also present an extract from the Commercial Register (Register of Companies) or similar record and his trade certification (authorization under which the bidder is allowed to carry out his business). The contracting authority may require further documents such as an insurance policy for the damage caused by the bidder to third parties, last financial statement etc.

As a rule, the documents shall not be older than 90 days and unless the contracting authority stipulates otherwise they shall be in original or a certified copy and accompanied by a certified Czech translation.

9. Is a multinational bidding consortium allowed to submit a bid?

Yes, it is possible. For more information please see above question No. 6.

10. In which language do the tenders have to/can be submitted and which form is required, e.g., written form, fax, e-mail or digital?

The contracting authority shall make known in the public contract notice:

- 1) The language or languages of the bids – mostly Czech
- 2) The required form for the bids which can be either (i) in writing (in sealed envelope marked with the name of the public contract), or (ii) in electronic form (signed by a valid guaranteed electronic signature and sent or recorded on the certified electronic device),
- 3) The deadline for the receipt of the bids;
- 4) The minimum time the bidder is bound by conditions stipulated in his bid

11. Are there any legal regulations governing the time within which bids have to/can be submitted to the contracting authority?

Yes, every bidder may complain to the contracting authority that his rights were violated by alleged non-compliance with the law governing the award of contracts. The complaint shall be in writing and shall be submitted to the contracting authority within 15 days since the bidder learned about the non-compliance or till the conclusion of public contract, however, not later than five days after the deadline for submitting the bids. It is not subject to any fee. Statement of the reasons for the complaint must be included.

Due submission of a complaint prevents the contracting authority to conclude the public contract or to cancel the proceedings. The contracting authority has 10 days to consider the complaint. If the contracting authority refuses the complaint, it must inform the complainer about the possibility to submit a plea to the Office for the Protection of Competition within 10 days. The contracting authority cannot conclude the public contract or cancel the proceedings before the expiry of this period or before the period of 45 after the motion was filled. All bidders shall be informed immediately by the contracting authority that a complaint was submitted.

Office for the Protection of Competition exercises the control of compliance of public contract awards with the law. Its proceedings are commenced either by a motion of a bidder or out of its own initiative. Previous complaint to the contracting authority is indispensable for filling the motion. There must be deposited a surety in the amount of one percent of the value of the contract (min. CZK 50,000, max. CZK 2,000,000) which shall be devolved in the case the motion was successful.

12. Can the bidders claim their costs for preparing their bid? If so what are the conditions for, and the maximum amount of, reimbursement?

The Public Contracts Act prohibits granting reimbursement of the costs for the bids to the bidders. On the other hand there shall not be levied any fee for the participation in the award except for the common costs of the contractual documents issued by the contracting authority which contains

the conditions and data of the public contract.

Costs may be claimed only in special procedures of awards which are used when the contracting authority invites bidders to propose some solution e.g. before the contracting authority awards a major contract, and where the proposal is the substantial part of service supplied. The possibility of reimburse the cost at least partially compensate high costs of making such proposals.

13. Are there any selection criteria set by law that bidders have to satisfy to in order to receive the award of a contract and can the contracting authority establish its own additional selection criteria?

Yes. Both the law stipulates several groups of selection criteria which the bidders have to satisfy to take part in the competition for the award of contract. These criteria have been mentioned above in the answer A8. Thus shall be ensured that the bidders accepted in the award procedure are trustworthy and capable both economically and professionally to perform the public contract. In the case of noncompliance with these criteria the bidder shall be excluded from the procedure. It should be noted, that even formal and non-essential mistakes and omissions may end in exclusion.

The criteria under which the bid is finally evaluated are the economic advantageousness of the bid or the lowest bid price. One of these criteria shall be chosen at notifying the public contract. The criterion of economic advantageousness shall be further specified in the contractual documents and split into clearly defined sub-criteria with their weight for evaluation.

14. Does your legal system provide legal protection against the proposed award of a contract to a competing bidder even before the contract with the competitor is actually awarded (primary legal protection)? If so please generally explain the proceedings. Is such a primary legal protection available to foreign bidders without any restriction?

Yes, every bidder may complain to the contracting authority that his rights were violated by alleged non-compliance with the law governing the award of contracts. The complaint shall be in writing and shall be submitted to the contracting authority within 15 days since the bidder learned about the non-compliance or till the conclusion of public contract, however, not later than five days after the deadline for submitting the bids. It is not subject to any fee. Statement of the reasons for the complaint must be included.

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15. If primary legal protection exists in your country, does it depend on certain conditions, i.e., certain thresholds or the kind of goods, services etc. to be procured? If so, what are the conditions?

The above described procedure of primary legal protection may be used by every bidder in the case of both over-limit and under-limit contracts.

16.If there is no primary legal protection, is there legal protection granted after the contract has been awarded, e.g. through damage claims etc. (secondary legal protection)? If so, what are the principal conditions which have to be presented to a court in order to receive a damage award?

Even though the Public Contracts Act does not directly deal with the possibility of damage claims the general civil regulation on the damages is to be used and the injured bidder can seek the award of damages at court. To receive a damage award is necessary for the claimant to prove (a) unlawful conduct, (b) damage incurred and (c) causality between the unlawful conduct and the damage. The last one may be difficult because the bidder would have to prove he should have been awarded the public contract. The damages claimed would amount to the costs incurred for participation in the public contract award procedure.

17. Can your office

–give legal advice to foreign clients concern in the relevant formal conditions for preparing a proper bid, etc. and assist in the procurement procedure in your country?

–represent foreign clients seeking primary and secondary legal protection before all public offices/courts in your country?

–Please name a contact person within your office for questions of public procurement law!

Yes, our law firm is fully competent to provide any assistance and advice in every aspect of procurement procedure as well as to represent foreign clients seeking primary and secondary legal protection before relevant authorities and courts in the Czech Republic. The contact persons for questions related with public procurement law are Ivan Roubal and Tomas Pekarek.