



LEGAL REGULATION OF PUBLIC PROCUREMENT IN THE EU

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Автори в статті поводять аналіз правових аспектів здійснення державних закупівель в Європейському Союзі та на підставі проведеного аналізу, базуючись на *de lege lata*, розробили ряд науково-практичних рекомендацій щодо адаптації чеського законодавства до норм та стандартів ЄС.

Ключові слова: державні закупівлі, процедура державної закупівлі, державні закупівлі в ЄС.

Автори в статті ведуть аналіз правових аспектів здійснення державних закупок в країнах ЄС та на основі проведеного аналізу, базуючись на *de lege lata*, розробили ряд науково-практичних рекомендацій по адаптації чеського законодавства до норм та стандартів ЄС.

Ключевые слова: государственные закупки, процедура государственной закупки, государственные закупки в ЕС.

Within this article the authors have performed an analysis of legal aspects of public procurements in the European Union; based on the analysis carried out and *de lege lata* they have produced a set of scientific and practical recommendations as to adaptation of Czech laws to the EU norms and standards.

Keywords: public procurement, public procurement procedures, public procurement in the EU.

The legal regulation of public procurement governs the award of public contracts by contracting authorities, sectoral contracting entities and certain other contracting parties. The relevant contracts may be concluded only on the basis of the result of a procurement procedure (based on the selection of the most advantageous tender). This is true for contracting parties consisting in organizational branches of the State, public corporations and contracting parties providing for sectoral – utility supplies (suppliers of electricity, water, gas, etc.), where vast financial volumes are involved.

The foundation is governed by the EU procurement regulations, which limit free movement of goods and services, and in specific cases contracts may not be concluded without prior procurement procedures.

On the basis of public contracts, the contractors obtain the opportunity to provide extensive supplies. A major part of funds available to society is spent in this sector.

Legal regulation in the European Union

The area of public procurement is regulated in the EU particularly through Directives. As is generally known, Regulations are directly applicable in the Member States while Directives are transposed to national legislations. The individual entities are then, in principle, subject to the national legislation.

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement proce-

dures of entities operating in the water, energy, transport and postal services sectors (sectoral contracts) have already been transposed to the Czech legislation.

However, there also exist directly applicable regulations. These include particularly Commission Regulation (EC) No 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council.

Furthermore, Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) is being directly implemented and applied.

However, the European regulation applies only to “above-the-threshold contracts”, i.e. contracts where the anticipated value reaches at least the thresholds stipulated in the EU regulations.

These thresholds are generally indicated in the following table.

The thresholds stipulated in the EU regulations in Euro are converted to CZK and published through Regulations of the Government of the Czech Republic. The limits published in Regulations of the Government in CZK are determined on the basis of the EUR/CZK exchange rate.

Legal regulation in the Czech Republic

The legal regulation applicable in the Czech Republic is currently embodied in Act No. 137/2006 Coll., as amended, which transposed the cited EU Directives and also stipulated some other aspects.



CONTRACTING PARTIES	SUPPLIES AND SERVICES	CONSTRUCTION WORK
Czech Republic, State contributory organizations, for the Czech Republic – the Ministry of Defence – this threshold applies only to goods pursuant to an implementing regulation	EUR 151,280	EUR 5,858,000
Territorial self-governing unit or contributory organizations where the duties of the founder are performed by “another legal entity”; for the Czech Republic – the Ministry of Defence – in respect of goods that are not listed in an implementing regulation	EUR 234,280	EUR 5,858,000
Sectoral contracting entity	EUR 468,600	EUR 5,858,000

In addition to “above-the-threshold contracts”, it also provides for the duty to award “contracts of minor value” (awarded in a simplified procedure) and “below-the-threshold contracts” (the EU requires merely that the procedure related to these contracts conform to the principles of transparency and non-discrimination and prescribes no specific regulation).

Public contract of minor value means a public contract whose anticipated value will not exceed, for public contracts for supplies or public contracts for services, CZK 2,000,000 excluding value added tax, or for public works contracts, CZK 6,000,000 excluding value added tax.

Below-the-threshold public contract means a public contract whose anticipated value equals, for public contracts for supplies or public contracts for services, at least CZK 2,000,000 excluding value added tax, or for public works contracts, at least CZK 6,000,000 excluding value added tax, and will not attain the set financial threshold.

Where Act No. 37/2006 Coll. stipulates the duty to publish a notice, this means

- for below-the-threshold public contracts, a notice published in the domestic information system (pursuant to Section 157);
- for above-the-threshold public contracts, a notice published in the domestic information system and in the Official Journal of the European Union (with the exception of services pursuant to Annex No. 2 to the Act).
- The national regulation provides for two types of procurement procedures, which may be used either

generally or only in cases stipulated by law. This includes the following procedures:

- open procedure – this is a general method where the applicant is to demonstrate qualifications and submit his tender;
- restricted procedure – this is a general method where the applicant is first to demonstrate qualifications and, if chosen to the restricted procedure, submit his tender as a tenderer;
- negotiated procedure with publication; or
- negotiated procedure without publication – both these procedures are the simplest methods of procurement; they are applied only in cases specified by law.
- Consequently, a contracting party may not proceed with a negotiated procedure based on its own discretion, but rather only in those cases where this is allowed by law. Open and restricted procedures are general methods of procurement and it is up to the contracting party which method it will choose.

Sectoral contracting entities (which need not manage public assets) may award contracts directly in a negotiated procedure with publication.

The European Union now strives to further specify the regulation of public procurement, particularly by providing clearer stipulation of exemptions, specifying the regulation of concession contracts (also in respect of PPP – Public Private Partnership projects) and specifying the set remedies aimed at review of the acts taken by the contracting party.