Basic Factors of Transparency in the Area of Public Tenders in the Czech Republic

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Abstract

The article describes factors of transparency during tender proceedings pursuant to Act No 137/2006 Coll., On Public Contracts, as amended. Transparency is examined from the point of view of proportion of tender proceedings types with the largest potential of openness and a high level of competition. The analysis is based on comparison of statistic data of implemented public contracts tenders. At the end, the author provides recommendations for higher effectiveness of public procurement process in the field of public contracts legislation focused on intensification of competition.

Key words

Factors of transparency, assessment criteria, transaction costs, effectiveness of tender proceedings

Introduction

The public procurement process is, from the subjective point of view, a purely formalised procedure through which contracting authorities (public, sector contracting authorities or those supported by subsidies) spend their funds on purchase of services, supplies or construction works. From the objective point of view, however, it is a process in the end influencing fundamentally budgets of the contracting authorities, i.e. public funds, as well as bidders regarding the spent “transaction costs” of the tender proceedings. It is therefore fully appropriate to examine whether the funds are spent efficiently, it means economically towards the subject of the supply.

The present legislation on public contracts de lege lata emphasises namely the principles of transparency, equal access and banned discrimination in tender proceedings (Section 6 of the Public Contracts Law).

In practical point of view, some provisions on “anti-corruption measures” pursuant to the law seem to be impractical, interpretation of some obligatory tasks in tender proceedings are missing entirely. It is therefore highly confounding for contracting authorities, as well as for suppliers (bidders) and so purposeless. The purpose is definitely spending funds from public budgets with view of compliance with the rules defined in Act No 320/2000 Coll., On Financial Control, therefore their efficient, economic and purposeful spending.
Because of the fact that these basic principles (designated as “3E\(^1\) principles”) are not linked in any manner in the applicable wording of the Public Contracts Law, their implementation is unclear and in practice entirely neglected.

Due to “expensiveness” of the tender process both on the side of the contracting authority, and that of the bidder (we speak about so called “transaction costs”) it is rightful to examine the rate of transparency and the power of competition in tender proceedings in relation to willingness of bidders (their number) in tender proceedings, this by individual forms of tender proceedings provided by the Public Contracts Law.

In relation with newly inbuilt institutes the purpose of which should be the highest possible elimination of the corruption potential of both contracting authorities and bidders, it is clear already now, after one year of effectiveness of the “anti-corruption amendment” that some of these provisions work rather as brakes in the tender process and make the process unreasonably long and expensive. They include in particular the provisions of Section 84 (1 e) of the Public Contracts Law under which the contracting authority is obliged to cancel the tender if it receives only one bid, or only one bid remains after assessment of the bids (de facto, therefore, also if other bidders but one have failed to meet the qualification criteria).

This institute and others can influence negatively participation of small and medium businesses\(^2\) on the public contracts market\(^3\) just for the reason of unreasonable economic load related with tender proceedings.

Due to “expensiveness” of the tender process both for contracting authorities, and for bidders (we speak about so called “transaction costs”) it is purposeful to examine the rate of transparency and the power of competition in tender proceedings in relation to willingness of bidders (their number) in tender proceedings.

In that context, the basic role is not only expensiveness of the tender process for contracting authorities, but also for bidders. It can be anticipated that the number of bids within one tender process increases competitiveness of the environment with possible impact on more efficient purchase\(^4\). The above hypothesis would certainly deserve a deeper examination and verification using selected scientific methods so that to be rejected or confirmed.

Objectives and methodology

Effectiveness of the costs spent on acquisition of assets and services by the public sector is highly influenced also by effectiveness of the course of tender proceedings. In that process, the originated costs are related with preparation and implementation of the public contract.

1. Assessment criteria

The first key factor influencing efficiency of the tender process as to efficiency regarding intensity of the competition environment is setting (choice) of assessment criteria.

The contracting authority when selecting assessment criteria can choose only from two basic options provided in Section 78 of the Public Contracts Law (this matter is treated in detail e.g. by Ochrana, 2011\(^5\)).

First, it is the criterion of the “lowest bid price”. The elementary precondition for correct use of that assessment criterion is its proper link to specification of effectiveness in Act No

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\(^1\) From the English: economy, efficiency, effectiveness

\(^2\) The definition is provided below in this text.

\(^3\) The author means tenders in the regime of the Public Contracts Law.

\(^4\) This hypothesis has not yet been verified.

320/2001 Coll., On Financial Control. Economic aspects regarding 3E are treated for example by Ochrana, 2011. The second possibility based on the mentioned paragraph is the possibility of assessment by the “economic benefit of the bid”. It is, however, the very choice of the assessment method which can indicate a certain level of transparency of a specific public tender, capable to increase or decrease the active participation of bidders in it.

2. Transaction costs

These costs are called “transaction costs” by the economic science. They include costs allocated into individual stages of the tender process and are borne both by public contracting authorities, and by bidders.

According to estimates in the European Commission document Public procurement in Europe, Cost and Effectiveness, March 2011, transaction costs of a public contract are approx. 1.5% of the total bid price while the public sector (the contracting authority) bears around ¼ of the costs. In the context of the Czech Republic, when public contracts amounted in 2011 approx. 500 billion CZK (Pavel, 2013), it means economically rational considerations leading to identification of the costs and their influence on improved effectiveness of tender proceedings also in relation to its increased transparency.

In comparison with other European countries, contracting authorities spend on tender procedures only 68.8% of the average time of tender procedures in the European countries. To be able to develop partial conclusions, it is necessary to decompose the tender procedure into individual stages with a link to allocation of costs. From that analysis of individual activities and the structure, it will be possible to verify effectiveness of the tender procedures and of individual procedures with view of legal requirements.

When comparing TD coefficient, a low number of bids in tender proceedings in the CR is significant (on average 3.7 bids compared to the European average of 5.4 bids).

<table>
<thead>
<tr>
<th>Compared entities</th>
<th>Number of days on the part of the contracting authority (AD)</th>
<th>Number of days on the part of the bidder (FD)</th>
<th>Number of bids (median) B</th>
<th>Total number of days needed for the public tender</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average of EU countries</td>
<td>22</td>
<td>16</td>
<td>5.4</td>
<td>108</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>15</td>
<td>15</td>
<td>3.7</td>
<td>71</td>
</tr>
</tbody>
</table>

Source: OCHRANA, F., 2012: Transaction costs of public tenders and new trends of public procurement. Public Contracts and PPP Projects. No 2. ISSN 1803-9553. p. 113

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6 Section 2 of Act No 320/2001 Coll., On Financial Control, specification in Section 2 as follows: “efficiency of such use of public funds for securing of defined tasks with the lowest possible expense of public funds, this with maintaining of proper quality of performed tasks, effectiveness of such use of public funds resulting in the highest possible scope, quality and benefit of performed tasks in comparison with the scope of funds spent on their performance, purposefulness of such use of public funds which will arrange optimal scope of achieved goals in performance of the defined tasks”.


When comparing the sectors, we obtain the following data (see Table No 2).

Table No 2 Comparison of selected coefficients within the sector of services

<table>
<thead>
<tr>
<th>Category of services</th>
<th>Number of bids/tender proceedings</th>
<th>Contract value (in mil. EUR)</th>
<th>Total time (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hotels &amp; Restaurants</td>
<td>3.0</td>
<td>2.6</td>
<td>120</td>
</tr>
<tr>
<td>Railways</td>
<td>2.6</td>
<td>22.7</td>
<td>183</td>
</tr>
<tr>
<td>Water management</td>
<td>2.8</td>
<td>8.5</td>
<td>157</td>
</tr>
<tr>
<td>Transport</td>
<td>3.3</td>
<td>3.1</td>
<td>123</td>
</tr>
<tr>
<td>Legal services</td>
<td>5.2</td>
<td>1.2</td>
<td>153</td>
</tr>
<tr>
<td>HR services</td>
<td>5.9</td>
<td>6.4</td>
<td>142</td>
</tr>
<tr>
<td>Security</td>
<td>6.1</td>
<td>1.4</td>
<td>131</td>
</tr>
<tr>
<td>Education</td>
<td>3.3</td>
<td>1.6</td>
<td>144</td>
</tr>
<tr>
<td>Healthcare/Social services</td>
<td>4.1</td>
<td>2.3</td>
<td>134</td>
</tr>
<tr>
<td>Free time</td>
<td>3.3</td>
<td>0.9</td>
<td>140</td>
</tr>
<tr>
<td>Others</td>
<td>4.4</td>
<td>2.3</td>
<td>126</td>
</tr>
</tbody>
</table>


As clear from Table No 2, the number of bids can fluctuate depending on the sector (here the category of services). The following hypothesis results:

Does the size of the economic sector influence the number of bids submitted in a public tender for one contract? Because such comparison has not yet been seriously performed the factor sector size/category of services cannot be defined with certainty as important for more efficient tender proceedings.

The precondition for efficient operation of the market for public tenders is sufficient competition on the offer side which can be approximated by the average number of bids submitted into tender proceedings. A sufficient number of bids enables, thanks to the competition effect (inversely proportional relationship between the number of submitted bids and the achieved price) in achieving of profitable prices for the contracting authority.

The following Graph No 1 shows the development of average numbers of submitted bids in tender proceedings of public and sector contracting entities in the Czech Republic in 2006 to 2011. Higher average numbers of submitted bids are reported by public contracting entities where the number achieved the value of 4.9 in 2011, while in the case of sector contracting authorities, it was only 2.7. Positive assessment can be, namely for public contracting authorities, for gradual increase of this coefficient in 2007 to 2011; its value, however, remains under the average of EU15, where it ranges around 5.8.

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9 Part of suppliers
10 ISVZ includes also records of public tenders where the number of submitted bids is not defined or is defined as 0. Those bids were excluded from the analysis. Because such bids are included in 1-2% of cases, this does not result in larger distortion of the presented data.
Results and discussion

The competition level ranges strongly depending on the type of the subject of the supply. Most competitive are construction works, both with the public, and sector contracting authorities; on the other hand, the least competitive is the market for deliveries. There has been a tendency with public contracting authorities since 2008 to gradually increased competition in construction works and services. In the case of deliveries, there is rather stagnation.

Available on www.mmr.cz

Available on www.mmr.cz
To develop partial conclusions regarding efficiency of the tender process, considering very high difficulty to define the term itself and to measure it in practice, I consider as important to perform comparison of the allocated value of public contracts implemented in the Czech Republic with their numbers by individual types of tender proceedings.

Graph No 3 – Financial proportion by the selected type of tender proceedings

Source: MMR statistics\(^\text{15}\), own calculations and adjustment

According to the graphs, the financial scope of public contracts tendered in open procedures during 2006 - 2010 decreases (in 2010, it achieves only 47% of total funds on the market for public contracts) while the proportion of contracts tendered in this way remains in principle constant since 2007 (approx. 35%).

In comparison with numbers in the EU countries, i.e. according to the data provided in the document of the European Commission\(^\text{16}\), in the EU countries together 106 000 calls for public tenders for contracts in open procedures were published in 2010. This number represents 73% of all tender procedures in the EU countries, but only 52% of the value of all public contracts in those countries\(^\text{17}\).

The presented comparison of proportion of the implemented value of the market for public contracts shows that in year-on-year comparison, lower and lower proportion of the total financial scope\(^\text{18}\) is implemented through the most transparent type of tender procedures – open procedures.

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\(^{14}\) For simplification, the graph does not include the tender dialog, the item not published and not reported in advance.


\(^{16}\) European Commission, March 2011: Public procurement in Europe. Cost and Effectiveness. p. 15

\(^{17}\) Definition of an open tender is partially different by individual EU countries depending on the national legislation.

\(^{18}\) MMR statistics do not include modern tools of economic procurement, e.g. an electronic auction.
We can lay a hypothesis with the following wording:
Is it possible to achieve more efficient process of public procurement (in the sense of lower transaction costs) through reduction of transaction costs?

To confirm or reject the hypothesis, it is necessary to define unambiguously the term “efficient procurement process” and its objective assessment. The author of this article understands it as a process through which both economic goals of allocation of public funds are achieved (i.e. namely compliance with 3E principles), and social objectives can be met (reduction of a corruptible environment) and through that, he presents hereby his opinion for discussion to the specialists community.

Besides, it is necessary to decompose individual transaction costs and through those components to identify possibilities of their influencing, resp. reduction. The author is simultaneously aware that the “cheapest” tender procedures from the point of view of the contracting authority and the bidder might not necessarily mean the most efficient competition (if only in relation with preparation of the whole tender by the contracting authority or preparation of the bid by the bidder, and reflection of man/hour units into the quality on both sides.

As to the research, there would be the possibility of collection of primary data for verification of the above provided hypotheses with the use of an interview method through closed, as well as open questions. The target group included a selected sample chosen using randomised stratified method from authorities of the public administration and self-administration and bidders in the CR from among SMEs).

Another supporting source of primary data could come from structured interviews with representatives of contracting authorities and bidders.

**Conclusion**

In relation with an effort to spend public funds on purchases of goods and services efficiently, it seems advisable to perform a relevant analysis of costs of tender proceedings themselves by their type with an effort to decompose in the best way individual components of the transaction costs on the part of contracting authorities and bidders. Depending on the found facts, it is advisable to put through constructive criticism the legislative specification of the tender process in view of exactly defined rules for procurement on the part of contracting authorities and suppliers by the type of tender procedures, this with the primary objective to make the whole process “cheaper\(^{20}\)” in tender procedures. One of possible barriers against participation of a public tender might be the excessive costs resulting from requirements of contracting authorities as to proving of qualification criteria, i.e. preparation of documents to document qualification (basic and professional qualification criteria). An adjustment of selected provisions defining the method for proving of basic and professional qualification criteria for the most transparent types of tender procedures would result in lower costs of suppliers’ participation in tenders for public contracts, and therefore in a higher average number of bids per one tender proceedings.

**Acknowledgements**

This paper was completed with support within IGA project No 19/2013 “Identification of transparency factors in tender proceedings pursuant to Act No 137/2006 Coll., On Public Contracts“

**Sources**


\(^{20}\) The author means reduction of the transaction costs in man/hour units, therefore also reduced duration of a tender in number of days of its duration.