



SIGMA

**Support for Improvement in Governance and Management
in Central and Eastern European Countries**

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CZECH REPUBLIC PUBLIC PROCUREMENT SYSTEM ASSESSMENT 2001¹

Public Procurement Legislation

The Public Procurement Law No. 199/1994 Coll. (PPL) became effective on 1 January 1995 and was thereafter amended six times. The most recent amendment (OJ 28/2000 Sb) came into force in June 2000 and expanded the scope of the law to include entities from the utilities sector, as well as introducing the requirement to publish tender announcements on the Internet (www.ihned.cz/ov). The PPL is based on the UNCITRAL Model Law.

The PPL covers all public sector entities, central, regional and local authorities, funded by the state or local budget. The law also covers state enterprises receiving funds or guarantees from the Government for the purpose of procurement. The law contains provisions that grant domestic suppliers a preference of a maximum of 10 per cent in tender evaluations. In addition, companies that employ more than 60 per cent disabled persons are granted a preference of a maximum of 20 per cent.

Open Tendering, with or without pre-qualification, is the preferred method according to the PPL. Open Tendering and Two-Stage Tendering are normally used when the contract value² exceeds Euros 135 000 for goods and services and Euros 540 000 for construction works. Other methods — Restricted Tendering, Simplified Award of Contract (similar to Request for Quotations), Small Scale Procurement (similar to Direct Procurement) — may be used in well-defined circumstances. Given the purchasing power in the country, it is highly likely that most procurement transactions will fall below the domestic thresholds. There are no guidelines or rules on how such transactions should be conducted.

The PPL provides for its surveillance to be carried out by the Office for Protection of Economic Competition, which may decide to suspend tender proceedings, invalidate an award decision or cancel the tender proceedings.

A draft “Act on Public Procurement and the Execution of Surveillance on Public Procurement” was recently approved (January 2001) by the Government and sent to Parliament. It is planned that it will enter into force by mid 2002. The aim is to fully harmonise the Czech legal framework to the Acquis by expanding the scope of the PPL to cover private utilities, dividing into two separate stages the evaluation of the supplier and its offer, including into the advertising rules the requirement to publish Prior Indicative Notices (PIN's), and harmonising with the Directives the award procedures and the circumstances when they can be used, including the full right to appeal to a Court of Law. It is planned to keep the national preferences clause until accession.

The PPL is not in full compliance with certain provisions of the Directives, and there will be a need for modifications in the future. However, it broadly complies with international standards in relation to open tendering and clear advertising rules.

[1999 and 2000 Baselines partially achieved]

1. At the request of the Commission, this assessment has been made on the basis of a rapid, desk review of information, especially of legal texts supplied by Candidate countries. Given the limited resources we did not have the opportunity systematically to corroborate the information independently *sur place* and can not reliably assess the extent of real implementation. For this reason we did not update the ratings, but for ease of reference we have provided the 2000 and 1999 ratings in brackets. *Pour mémoire*, the rating has four categories: baseline achieved; baseline substantially achieved; baseline partially achieved; baseline not achieved.
2. The Law specifies the contract value in the national currency.

Central Public Procurement Organisation (PPO)

The distribution of central responsibilities for work on public procurement has recently been clarified. The Ministry of Regional Development is responsible for the implementation of the existing PPL. The Ministry carries out a number of responsibilities and tasks usually associated with a traditional Public Procurement Department, but without having its mandate formally endorsed by law or decree. The Office for Protection of Economic Competition supervises procurement transactions both before and after contract signing.

The Public Procurement Department (PPD) in the Ministry of Regional Development has five employees; the Office for Protection of Economic Competition has 20 staff members responsible for public procurement surveillance work.

Current institutional capacity in the Ministry of Regional Development is not sufficient, taking into account the number of contracting entities and the large volume of procurement contracts. Implementation of a new PPL will require further enhancement of this capacity.

[1999 Baseline not achieved and 2000 Baseline partially achieved]

Complaints Review Procedures

The Office for Protection of Economic Competition monitors public procurement. It performs *ex ante* and *ex post* checks, reviews procedures employed by contracting entities, attends Tender Opening Commissions, collects statistics, and imposes sanctions.

The current control system is not robust enough to prevent corrupt behaviour and collusion in the award of public contracts.

The PPL gives the Office for Protection of Economic Competition power to decide to confirm the award decision, annul tender proceedings and request re-tendering, or invalidate an award decision and request the selection of a new contractor. During the complaints review procedure, tender proceedings are suspended. There is no provision for appeal of a decision to a Court, as required by the EC Directives.

Procedures and institutional arrangements for control of procurement operations need to be improved. Current complaints review procedures are not fully in compliance with the EC Directives and need to be revised in the future PPL.

[1999 and 2000 Baselines partially achieved]

Summary

The public procurement system in some respects meets EU requirements as well as other aspects of the baseline. Current law and procedures are inadequate in a number of respects — e.g. the use of domestic preference, the absence of rules for below-the-threshold transactions, complaints review procedures that allow for no appeal to a court. Continuing efforts to improve the efficiency of the public procurement system at the operational level are needed in order to ensure fair competition, professional handling of tenders, and to encourage the development of competition in the domestic market. Substantially enhanced central support for contracting entities and private sector operators is urgently required. These changes should be linked to the development of the procedures, information systems and staff development/training that will be required in order to implement the provisions of a new PPL. The presence of corruption and fraud in the awarding of public contracts needs to be seriously addressed by the Government.