Public Procurement Legal Review Experience in the Czech Republic

Iveta Pospíšilíková
the Director of the 2nd Instance Decision-Making Department
The Office for the Protection of Competition, Czech Republic
Intro: How the Review Works in the Czech Republic

National authority:

Office for the Protection of Competition

- decides in two instances

- 2nd instance only confirms the 1st instance decision or abolishes the decision and returns the case back (principle of incomplete appeal)

Courts:

Regional Court in Brno

Supreme Administrative Court
Types of Procedures

Ex officio:

- Imposition of corrective measures
- Imposition of fines for administrative delicts (breach of the Act on Public Procurement)

Application for review proceedings:

- Deposit
- Imposition of corrective measures

Complaints: no fee, no guarantee of procedure commencement
Trends: Responsible Public Procurement

Since 1/2021 an amendement to the Public Procurement Act:

The contracting authority should adhere to the principles of *socially and environmentally responsible as well as innovative procurement*.

Statistics:

6 % of interviewed contracting authorities haven’t implemented yet

45 % implement occasionally

47 % implement regularly

2 % implement systematically due to internal strategy
Preferred areas of responsible procurement:

- Enviroment friendly solutions: 91%
- Work conditions improvement: 87%
- Fair conditions throughout the supplier chain: 86%
- Support for small and medium-sized enterprises: 80%
- Educational and retraining support: 47%
- Ethical purchasing: 40%
- Circular economy: 34%
- Support for employment and disadvantaged people: 33%
Even More Statistics

Key barriers:

- **Safe and formally correct solution**: 91%
- **Uncertainty in grant projects**: 80%
- **Insufficient support of the contracting authority**: 73%
- **Fear of rising prices**: 73%
- **Lack of national policy and training – law sets rules, but there is neither a strategy nor a plan**: 66%
- **Fear of unprepared market**: 66%
- **Methodical support is based only on a transitional platform**: 53%
- **Ambiguity of responsibility within the contracting authority – low motivation**: 53%
Case Study /1

Case No. ÚOHS-P0136/2021/VZ

– reconstruction of a primary school

The contracting authority required and evaluated positively that the supplier had employed disabled workers in the past as well as its commitment to employ unexperiences workers in order to provide them with professional experience.
Case Study /2

Case No. ÚOHS-R0028/2022/VZ, 26. 4. 2022 – 10 hydrogen buses

- the contracting authority required a list of significant supplies: at least 1 hydrogen bus in previous 15 years delivered in EEA or Swiss Conf.

- the petitioner argued that this condition was discriminatory (only 2 suppliers)

- The chairman of the Office pronounced:
  • list of significant supplies is generally relevant, however 1 bus in 15 years may be a random delivery not necessarily proving the experience
  • the hydrogen technology is not new and there may be more suppliers that are able to deliver hydrogen buses
  • the market is a developing one and such condition would result in a permanent advantage for suppliers who have already delivered a hydrogen bus
  • the condition is discriminatory considering all circumstances
Shift in the Way of Evaluation in General

- the lowest price
- fixed price and quantified (objective) evaluation criteria
- fixed price and subjective evaluation criteria
- fixed price and mixed (subjective and objective) evaluation criteria
- mixed model – price and subjective evaluation criteria
Case Study /3

Case No. ÚOHS-R0073/2020/VZ, 3. 7. 2020 – meal vouchers

- Evaluation criterion: number of contractors (restaurants etc.)

- Evaluation criteria must comply with the public procurement principles

- Criteria must be justified

  - relation to the subject of the public contract
  - justification of economic advantage
Best Value Approach

- Importance of preliminary market consultations
- Key role of the intended purpose of the contract
- Evaluation criteria (limited importance of price)
- Bid evaluation – two envelopes system - evaluation of quality followed by evaluation of price
- Verification of claimed qualities (professionality, risk prevention, advanced solution)
Frequently Used Methods

- Meet the buyer
- Preliminary market consultations
- Negotiated procedures
- Communication during PP procedure
- Communication after termination of PP procedure
- Communication during the contract performance
Thank you for your attention.

Köszönöm a figyelmet.

Iveta Pospíšilíková
iveta.pospisilikova@uohs.cz