



# TENDERIO

Improving SME's access to public procurement

## Guide to country specific elements on public procurement: Czech Republic



Co-funded by the COSME  
programme of the European Union

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# Guide to country specific elements on public procurement: Czech Republic

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## TENDERIO

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## LIST OF ACRONYMS

Acronym	Title
CPO	Central Procurement Organisation
CPV	Common Procurement Vocabulary
EM	Electronic Marketplace
ESPD	European Single Procurement Document
EU	European Union
LVC	Low Value Contracts
MEAT	Most Economically Advantageous Tender
NEN	Nation Electronic Tool (NEN – Národní elektronický nástroj)
SME	Small and Medium – sized Enterprise
PPA	Public Procurement Act
UTC	Under Threshold Contracts
UVO	Office for Public Procurement
VAT	Value Added Tax

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*Within this concept, a series of national guides on public procurement was developed for Czech Republic, Estonia, Greece, Ireland, Latvia, Lithuania, Portugal, Slovakia, Spain and United Kingdom targeting to support in particular SMEs who are interested in participating in public procurement processes in EU Member States and need to know more regarding the national procedures.*

*National guides are available in the project's official website: [www.tenderio.com](http://www.tenderio.com)*

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## Executive Summary

The current guide aims to support European SMEs to access the Czech public procurement market. In particular, it presents data and specific elements of public procurement in the Czech Republic along with the procedures to be followed in order to submit a bid for a Czech public contract.

The overall size of public procurement in Czech Republic reaches around 2-15 billion euro annually. However, as you can see in the Table 1, the year over year value change substantially. Small-scale public procurement currently dominates with around three quarter share on the total number of awards. Over one third of tenders is for electronics, 8% for cars, 4% for construction.

The Czech procurement practices were modernized with a new law 134/2016, which implements the current EU directives on public procurement. However, language can be a barrier, since English version of documents is rare and even the electronic communication tools do not support other language than English.



## 1 Introduction

The current guide was elaborated under the activities of the TENDERIO project. TENDERIO project is funded by the COSME program of the European Union (Grant Agreement No 739966) and aims to increase SMEs' access to public procurement in EU.

This guide is addressed to SMEs and to any other economic operator interested in participating in Czech public contracts and wishes to know more about the public procurement procedures in Czech Republic.

Chapter one, introduces the scope and the content of this guide and lays out the concept within which it was developed.

The second chapter focuses on the potential of EU public procurement market, emphasizing the performance of European SMEs' in the cross-border procurement contracts and briefly presenting the key points of the new EU legislative framework (2014) on public procurement.

Moreover, the third chapter sets light on the current status of public procurement in the Czech Republic. In particular, it provides an overview of the public procurement framework in Czech Republic along with a summary of key data regarding the Czech market size, i.e. the size of public procurement, most common products and services tendered, or the most common type of award.

Chapter four, briefly comments on the national procedures of public procurement in the Czech Republic. More specifically, it includes information regarding:

- the contracting authorities;
- the award procedures;
- the eligibility of the potential bidders;
- the publication of the contracts notices;
- the time limits for the submission of an offer;
- the bid's submission and the bid's evaluation procedure;
- the award criteria;
- the complaints and the prejudicial objections.

In addition, the fifth chapter lists key points for the SMEs that are interested in submitting offers in Czech public contracts. The guide concludes with a reference on how TENDERIO platform could support European SMEs in applying for a public contract abroad.



## 2 General Information on public procurement in EU

According to European Commission, the term “Public Procurement” refers to the process by which public authorities, such as government departments or local authorities, purchase work, goods or services from companies, i.e. the building of a state school, purchasing furniture for a public prosecutor's office, contracting cleaning services for a public university etc<sup>1</sup>.

### *Public procurement market in EU*



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Every year nearly 2 trillion euros are paid in Europe for public contracts, i.e. 14% of EU GDP.



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At least 250.000 public authorities conduct public procurements annually.



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Public authorities are the major buyers in sectors such as energy, transport, waste management, social protection and the provision of health or education services.



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The estimated value of general government expenditures on works, goods, and services -excluding utilities- has increased by 4,2% in 2015. Almost all EU Member States increased their expenditure on public contracts between 2014 to 2015<sup>2</sup>.



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The estimated value of tenders published in the Tenders Electronic Daily<sup>3</sup> (TED) in 2015 was 450.21 billion euros which stands for 6.9% more than it was in 2014.

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Overall, the public procurement represents a substantial portion of the EU economy offering lot of opportunities and innovation prospects for the European SMEs.

### *European SMEs' participation in cross-border procurement*

The term “cross-border procurement” refers to a procedure by which a public contract in a Member State is partly or fully performed by firms located in another EU Member State.

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<sup>1</sup> <http://ec.europa.eu/growth/single-market/public-procurement/>, 2017

<sup>2</sup> DG GROW G4, 2016. *Public Procurement Indicators 2015*.

<sup>3</sup> The online version of the 'Supplement to the Official Journal' of the EU, dedicated to European public procurement.



SMEs account 99,8% of the registered enterprises in Europe (20,8 million SMEs) and they are considered to be the backbone of the EU28 economy. European SMEs could participate in procurements across borders either directly or indirectly through its local subsidiaries (Figure 1). However, the past years the overall participation of European SMEs in public procurement across borders is considered to be low.

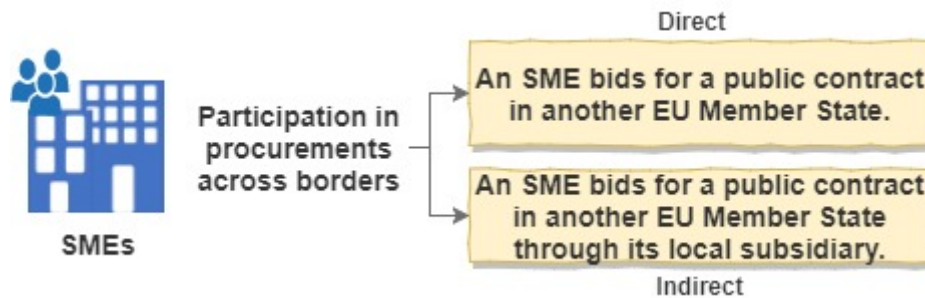


Figure 1: How European SMEs can participate in cross border public procurements

The share of European SMEs in direct cross-border procurement accounts for 27% in terms of number of awards and 24,5% in terms of the value of awards, which is significantly lower compared to their contribution to the European GDP (58%)<sup>4</sup>.



The share of European SMEs in indirect cross-border procurement is estimated at 3% both in terms of number and value of awards<sup>5</sup>.

### **Obstacles to SMEs' participation in cross-border procurement**

The low level of SMEs' participation in cross-border procurement the past years was due to (Figure 2):

<sup>4</sup> European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, 2017. *Measurement of impact of cross-border penetration in public procurement.*

<sup>5</sup> European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, 2017. *Measurement of impact of cross-border penetration in public procurement.*



**Figure 2: Main obstacles that SMEs face when they participate in cross-border public procurement**

Despite the fact that SMEs are facing difficulties in their participation to cross-border public procurement, however the contracting authorities/entities see high potential in cross border contractors as they could benefit by having a better choice in terms of quality and price and by concluding contracts when there is absence or limited availability of suppliers at national level.



European Commission has introduced legislative measures to improve SMEs' access to public contracts, aiming to open up national public procurement markets and increase the levels of cross-border public procurement.

### **Legislative Framework**

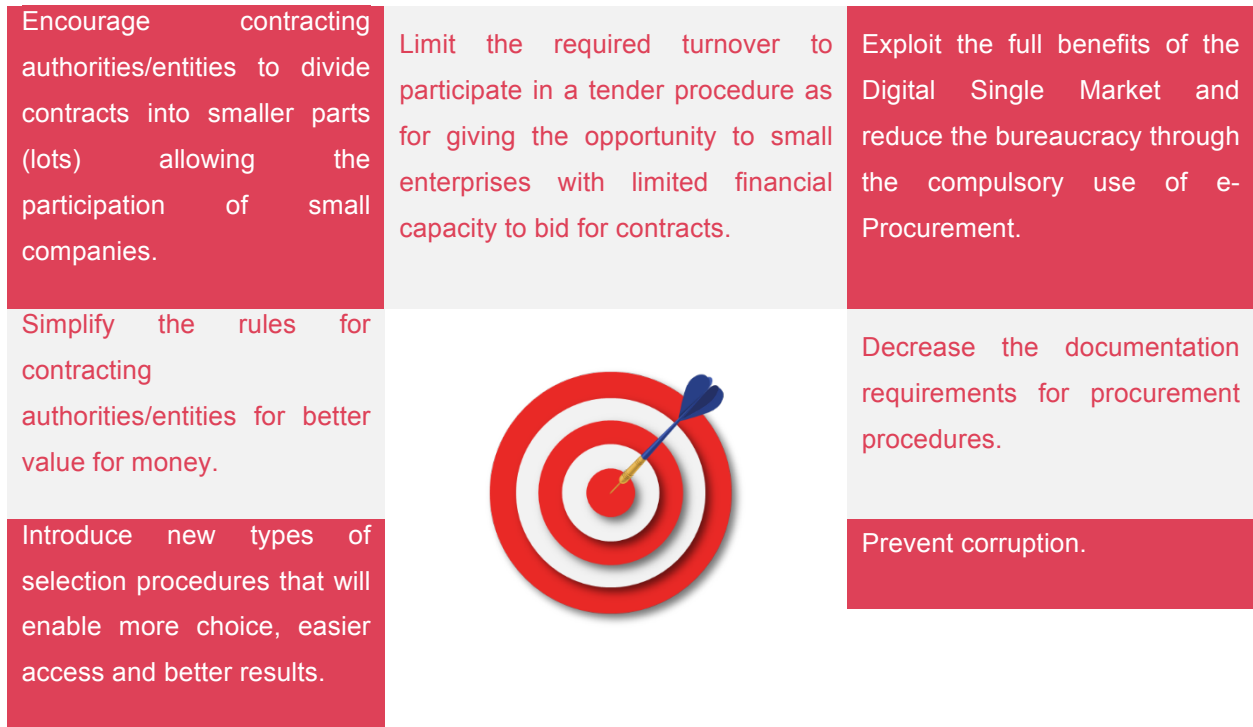
In 2014, the EU Parliament and the European Council introduced a new common legislative framework on public procurement and concessions aiming to simplify the procedures and encourage the SME's to access public contracts and concessions contracts. The reform included the following directives:

- 2014/23/EU on the award of concession contracts;
- 2014/24/EU on public procurement;



- 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors.

More specifically the new EU directives aim to (Figure 3):



**Figure 3: Objectives of the new EU directives on public procurement**

The reform of public procurement legislation reduces the bureaucracy and makes public procurement in Europe more efficient within a single market facilitating that way the SMEs' participation in public contracts.



### 3 Public Procurement in Czech Republic

The overall size of public procurement in Czech Republic reaches around 2-15 billion euro annually. However, as you can see in the Table 1, the year over year value change substantially.

YEAR	Number of contracts	Amount in CZK
2011	29 098	68,8 bln
2012	41 326	227,4 bln
2013	58 002	354,7 bln
2014	65 553	308,7 bln
2015	67 516	299,6 bln
2016	66 572	419,4 bln
2017 (10 months)	38 095	292 bln

Table 1 Number of public contracts 2011-10/2017

In 2016 there was a year-on-year decrease in the volume of tenders financed mainly from the contracting authority's own resources (from 43% to 22%), while the share of contracts financed from public budgets and state funds (from 22% to 38%) increased. This is probably the result of an improving public budget situation. The share of EU funded contracts, which indicates the slow start of projects under the new programming period, also significantly decreased (from 22% to 11%).

In the Figure 4, proportion of public procurement number of contracts in Czech Republic is divided by industry. In the current year 2017 (data until July) the biggest portion is taken by Electronics, the second biggest identified industry in public tenders with 8.2% is the automotive. Around 4% goes to construction works.



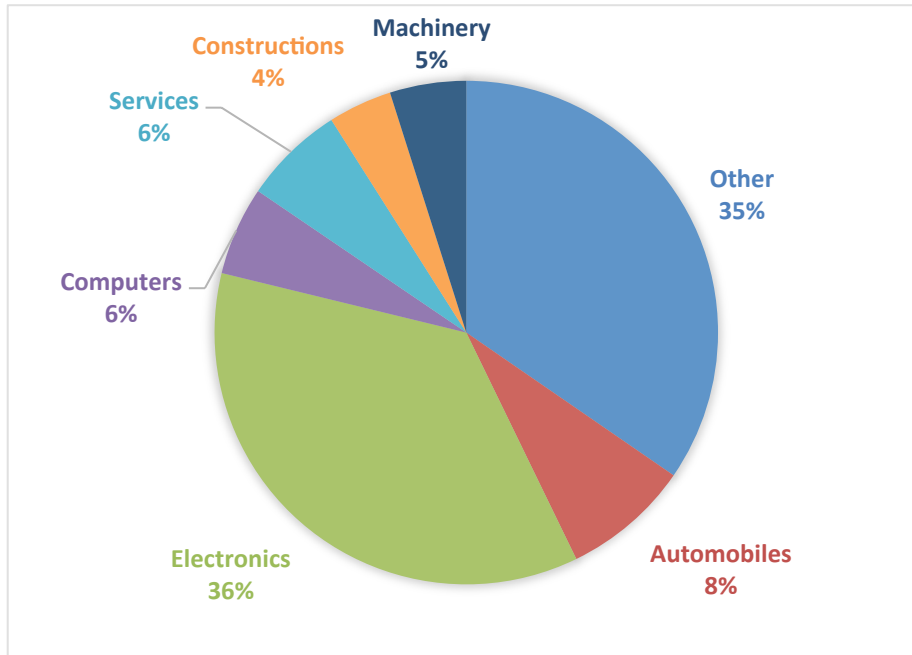
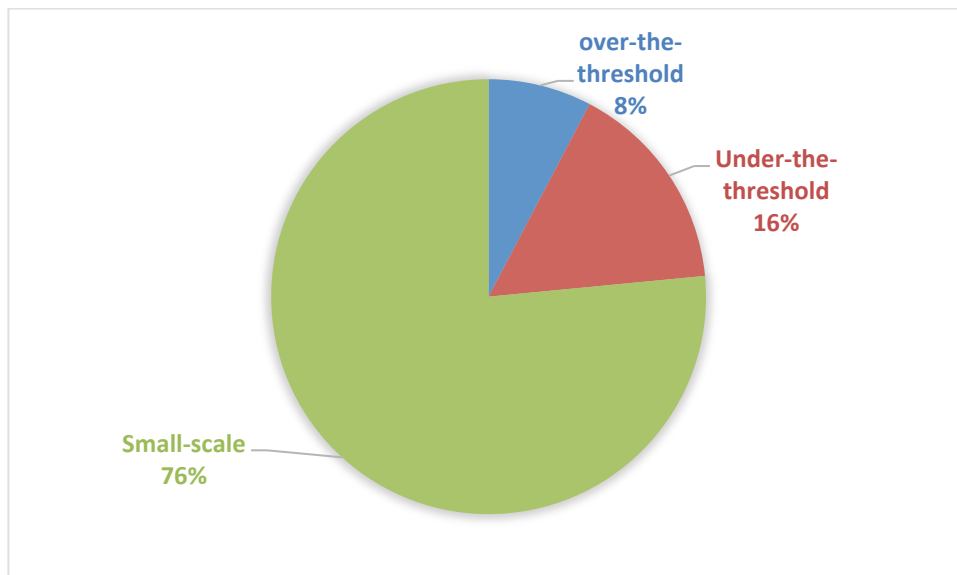


Figure 4 Proportion of public procurement by industry

The next graph shows which type of procurement is mostly used in Czech Republic up until July 2017. Small-scale public procurement currently dominates with its 76.6% followed by under-the-threshold procurement with 15.8% and over-the-threshold public procurement is represented only by 7.7%. The types of procurements according to thresholds are explained in Section 4.



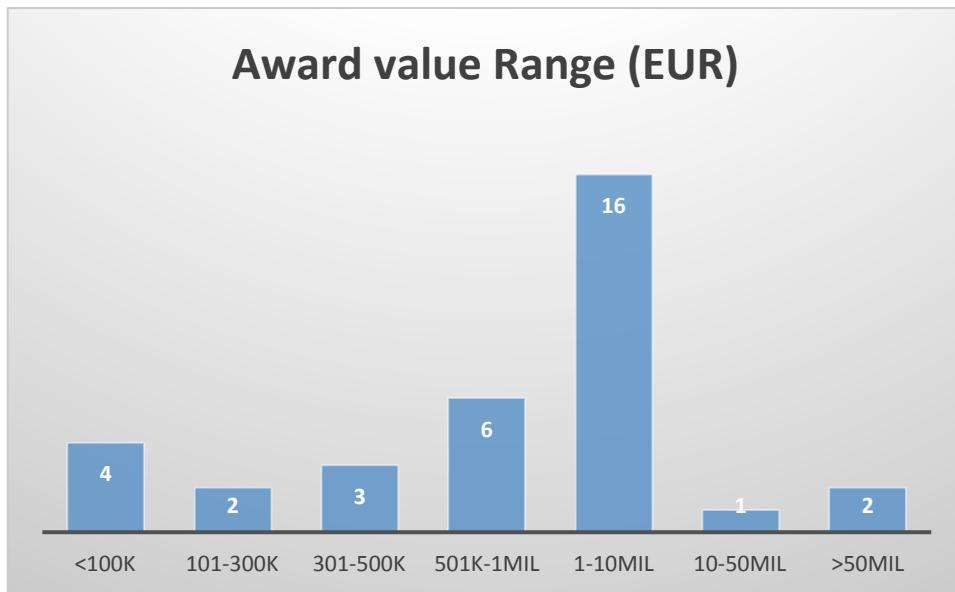
**Figure 5 Number of public contracts by value**

Statistics from the [Tenderio Benchmarking Tool](#) (years 2012-2015, covering only tenders published by EU institutions and agencies, excl. national and regional tenders) show following data (Table 2): Most common winning countries in EU tenders in Czech Republic is France on the first place, Czech Republic itself on the second place and the third place with 4 won EU tenders took Spain and UK. Germany, Italy and Sweden won only 1 EU tender.

Country	Contract Awards
France	11
Czech Republic	10
Spain	4
UK	4
Germany	1
Italy	1
Sweden	1
Unspecified	2

**Table 2 The number of foreign winners, Tenderio Benchmarking Tool 2012-2015**

In Czech Republic, the award value mostly oscillated within the range 1-10 million euros, the second common award value ranged between 501,000 and 1 million euros. The least common award value within years 2012-2015 was within the range 10-50 million euros.



**Figure 6 Award value range (EUR), Tenderio Benchmarking Tool 2012-2015**



Overall 13 tenders received 0-1 offers and the same number of tenders received 2-5 offers. Only 5 tenders received 6-10 offers and no tender received more than 10 offered, as you can see in Table 3:

Number of Offers				
0-1	2-5	6-10	>10	N/A
13	13	5	0	3

**Table 3 Number of offers received, Tenderio Benchmarking Tool 2012-2015**

The most common type of contract in EU tenders in Czech Republic were services and it was contracted 31 times. Supply as a type of contract was used only 3 times.

Type of contract		
Services	Supply	Work
31	3	0

**Table 4 Number of tenders vs. Type of contract, Tenderio Benchmarking Tool 2012-2015**

The criteria which were used for EU tenders in Czech Republic were either the lowest price or the most economical offer. The most economical offer was chosen in these tenders 27 times compared to the lowest price criterion which was chosen only 6 times during the period between years 2012 and 2015 (Table 5):

Criteria	
Lowest Price	Most Economical
6	27

**Table 5 Number of contracts vs. evaluation criteria**



## 4 National Procedures on Public Procurement

The new EU legal framework for public procurement rules was implemented by the law 134/2016 Sb (Public Procurement Act), which replaced an older law 137/2006 Sb.

### 4.1 Contracting Authorities & Contracting Entities

The contracting authority in the Czech Republic are the **Czech Republic** itself, the **Czech National Bank**, a **public contributory organization**, a **territorial self-governing unit** or its **contributory organization** or **another legal entity** if it was established or set up to meet the needs of public interest and at the same time does not have an industrial or commercial character.

The contracting authority is also a **legal person who uses more than 200 000 000 CZK** (circa EUR 7,7 million EUR) or more than 50% of the funds provided from the budget of the public contracting authority or from the budget of the European Union to cover over-limit or under-threshold public contracts. The contracting authority may also be the one who submits the sectoral public contract.

A specific contracting authority is also the **Central Contracting Authority**. Centralized awarding is based on the fact that it carries out a procurement procedure in which deliveries or services are procured and subsequently transferred to one or more contracting entities at a price not higher than that for which they were acquired. An example is the situation where office supplies for all ministries are purchased by the Ministry of Finance as the central contracting authority.

### 4.2 Threshold amounts

Type of contracts (services, products, works, supplies)	Lowest Threshold Amount	Covered by law
In the case of public supply or service contracts, contract of a small scale are those whose estimated value is equal to or less than CZK 2 000 000. In the case of construction work it is significantly higher, namely 6 000 000 CZK.	Small-scale public contract - expected value <ul style="list-style-type: none"> <li>• under 2 000 000 excluding VAT for supplies and services</li> <li>• below 6 000 000 excluding VAT for construction work</li> </ul>	The Public Procurement Act
Under-threshold public procurement exceeds the above-mentioned values set for small-scale contracts, but at the same time it does not reach the values set for over-limit public contracts.	Under-the-threshold public procurement - services and supplies anticipated value <ul style="list-style-type: none"> <li>- Under 3 395 000 for the contracting authority: Czech Republic</li> <li>- Under 5 244 000 without VAT for the contracting authority: territorial self-governing unit</li> <li>- Below 10 489 000 for the contracting entity: sectoral contracting authority</li> </ul>	The Public Procurement Act



An over-limit public contract is a contract that is equal to or exceeds the limits set by Government Decree No. 172/2016 Coll., On setting limits for the purposes of the Public Procurement Act and varies according to the type of the contracting authority.	Over-the-threshold public procurement - construction work - estimated value below 131 402 000 excluding VAT for all types of contracting entities	Government Decree No. 172/2016 Coll., Laying down limits for the purposes of the Act on Public Procurement
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Table 6 Threshold amounts vs laws that cover them



The thresholds are regularly updated. Please use the current version of the Czech The Public Procurement Act for reference.

### 4.3 Award procedures

The Public Procurement Act distinguishes and modifies the **following types of procurement procedures**:

- Open procedure, Narrower procedures,
- Negotiated procedure with publication
- Negotiated procedure without publication
- Management of competitive dialogue (terminological change compared to the competitive dialogue)
- Simplified under-threshold management

Award procedure	Description
Open procedure	The main and most frequently used contracting type. The contracting authority will invite an unlimited number of suppliers (tenderers) to submit their bids. The contracting authority in the open procedure must not bargain on the tenders submitted with the supplier.



The negotiated procedure with publication	This award procedure is the contracting authority entitled to use, for example, in situations where the requirements of the contracting entity cannot be satisfied without modification in the market for available supplies or if the tender is an innovative solution or the contract cannot be awarded by the contracting authority without prior negotiations with the suppliers. The Contracting Authority invites an unlimited number of suppliers to submit an application to participate in this call for tenders. The invited bidders will submit a tender, on the basis of which the contracting authority deals with the specific conditions of the contract for performance of the public contract. This is a tender procedure in which the contracting authority is entitled to modify or supplement the terms of reference in the course of negotiations.
The negotiated procedure without publication	Used only in exceptional cases. This is the least formalized procurement procedure, but it is supervised by the public procurement supervisor. In a negotiated procedure without publication, the contracting authority directly invites one or more suppliers to negotiate on the possibilities of fulfilling the public contract.
Competitive dialogue procedure	The contracting authority, on the basis of the notice announcing the opening of the invites an unlimited number of tenderers to apply to participate in this call for tenders and to prove their qualifications. After assessing the qualifications of the tenderers, the contracting authority will invite those tenderers to participate in the competitive dialogue in order to find one or more appropriate solutions for the performance of the public contract. Once the solution has been found, the contracting authority will invite all tenderers originally invited to submit tenders to the tendering procedure, with the tenderer's choice of these solutions to be respected.
Simplified under-the-threshold procedure	The tendering procedure shall be launched by a call for tenders on the contracting entity's profile and, where appropriate, by the submission of a call for tenders for the execution of a under-threshold public contract by at least five different contractors. However, the contracting authority has the obligation to accept and evaluate the tender of the contractor who has not been invited to tender.

Beyond the above-mentioned procedures, the Public Procurement Act newly introduces the process of innovation partnership, concession procedure and tender procedure under the simplified regime.

The **innovation partnership procedure** is, in the sense of the PPA, a new type of procurement procedure



which the contracting authority is entitled to use in cases where the contracting authority has a need to develop innovative supplies, services or works and their subsequent purchase and acquisition. These are deliverables that cannot be satisfied by solutions available at the time of the contracting authority's demand.

Under the **simplified scheme**, the contracting authority is authorized to award public contracts for social services and other services listed in Annex 4 in the PPA. This award procedure shall be initiated by the contracting authority either by sending the prior notice in the event that it invites the supplier to express a prior tender interest, or by sending a notice of the opening of the award procedure.

The contracting authority is entitled to negotiate with the tenderers in this type of tendering procedure and is entitled to change the terms of reference following these negotiations. The contracting authority is also entitled to set different rating criteria than the PPA sets for over-limit public contracts.

#### **4.4 Who is eligible to participate?**

The Public Procurement Act in Czech Republic defines a supplier as a person who offers a supply of services, works or construction works. A branch office is also considered a supplier.

Supplier needs to have a certain **qualification** in order to participate in public procurement. Qualification is dealt with in detail in Sections 50-66 of the Public Procurement Act. Achieving qualifications is therefore one of the prerequisites for the tenderers bidding process in the evaluation phase. The contracting authority will require evidence of only such qualifications that are directly related to the subject matter of the contract. The contracting authority may require proof of these qualification requirements only from the person of the supplier and not from the manufacturer or subcontractor. What requirements to be met by the contracting authority for the fulfillment of the qualification are known to the tenderer from the notice or call for tenders and in detail in the qualification or tender dossier. The contractor must demonstrate in the open and simplified under-the-threshold procedure the fulfillment of the qualification within the time limit for the submission of tenders.

The Qualification Institute regulates the law separately for the contracting authorities, also for territorial self-governing units, and the sectoral contracting authorities. Public authorities are generally more demanding, and the whole procurement is obligatorily laid down in the law as opposed to very loose adjustment in the case of award by a sectoral contracting authority which, for example, does not have an obligation to meet the qualification in an open procedure.

The law in Czech Republic, in line with the European award directive, distinguishes four basic types of **qualification assumptions**:

- basic qualification prerequisites;



- professional qualification prerequisites;
- economic and financial qualification prerequisites;
- technical qualification prerequisites.

When awarding a public contract by a contracting authority, the law makes a distinction between under-threshold and over-limit public contracts. In the case of a under-threshold public contract, the public contracting authority has the obligation to require proof of only the **basic and professional qualifications**, and it is sufficient to substantiate the basic qualification requirements only with an affidavit in contrast to the individual documents. It is therefore for him to consider whether he will require some economic and financial and technical qualifications with regard to the subject matter of the public contract

#### **Tenders Publication (where/how)**

### **4.5 Publication of public contract notice**

Tender publication is announced in:

- an information system of public procurement (under-threshold and over-limit public procurement),
- Official Journal of the European Union (over-limit public contracts).

The publication of the announcement covers, to varying degrees, all types of procurement procedures (open procedure, restricted procedure, negotiated procedure with publication, negotiated procedure without publication, competitive dialogue, simplified sub-threshold procedure) and special procedures in the procurement procedure (advance notice, Contract, dynamic purchasing system).

The Contracting Authority is obliged to publish the relevant explanation of the tender dossier within 3 days on the profile of the Contracting Authority. The Contracting Authority is also entitled to make an explanation of the tender dossier itself and also to amend or supplement the tender dossier if the deadline for submitting requests to participate or tenders has not yet expired. If the contracting authority changes of the tender dossier may have an impact on a potential group of tenderers, the contracting authority will extend the time limit for the submission of tenders or requests for participation by its original duration.

If we consider the most common combination - the contracting authority (not the sectoral or subsidized) and the standard procurement procedures - a small scale public procurement, simplified under-threshold procedures, open-ended procedures in the under-threshold and above-limit, the basic information sources for searching for public contracts in the Internet are:

- Public Procurement Bulletin - [www.vestnikverejnychzakazek.cz](http://www.vestnikverejnychzakazek.cz)
- Contractor profiles - [Www.vestnikverejnychzakazek.cz/en/Searching/ShowPublicPublisherProfiles](http://Www.vestnikverejnychzakazek.cz/en/Searching/ShowPublicPublisherProfiles)
- Electronic Marketplace - [Www.portal-vz.cz/en/Information-systems-and-electronics-news/NIPEZ-EI-trziste-](http://Www.portal-vz.cz/en/Information-systems-and-electronics-news/NIPEZ-EI-trziste-)



[verejne-spravy](#)

- EU Official Journal (TED) - [Www.ted.europa.eu](http://www.ted.europa.eu)

#### 4.6 Time limit of submitting an offer for a public contract

The Public Procurement Act in Czech Republic sets different time limits according to whether it is an over-limit or under-threshold public procurement and in some cases also redefines the length of period depending on the type of public contract. A basic overview of the deadlines for submission of tenders or requests to participate according to the type of award procedure is given in the following table:

Type of award procedure	Minimum time limit for submission of tenders / requests to participate Over-limit public contracts	Minimum time limit for submission of tenders / requests to participate Under-the-threshold public procurement
<b>Open procedure</b>	22 working days for bidding	15 working days for bidding for supply / service 20 working days for bidding for a public procedure for construction works
<b>Restricted procedure</b>	22 business days for submission of requests to participate 19 business days for submitting a bid	15 business days for submission of requests to participate 15 business days for submitting a bid
<b>Procedure with publication</b>	22 business days for submission of requests to participate 19 business days for submission of preliminary bids	15 business days for submission of requests to participate 15 business days for submission of preliminary bids
<b>Simplified under limit procedure</b>		11 business days for submitting a bid

Table 7 Timescales

The Public Procurement Act also sets out the conditions under which the minimum periods may be shortened by the contracting authority.

#### 4.7 Public Contract Notice Contents

A typical Tender specification has five sections:



**Section 1: "CONTRACTING AUTHORITY"**

- Name;
- Contact details;
- Type of authority;

**Section 2: "SUBJECT"**

- name;
- basic type (construction works, goods, services);
- description;
- location;
- value;
- evaluation criteria;

**Section 3: "LEGAL, FINANCIAL AND TECHNICAL INFORMATION"**

- financial and technical requirements

**Section 4: "PROCEDURE"**

- type of procedure;
- deadlines;

**Section 5: "ADDITIONAL INFORMATION"**

- Appeal authority

## 4.8 How to submit the tender

When a contracting authority/entity publishes a contract notice, any interested candidate may prepare and submit an offer.

The interested bidder should check if he is an eligible candidate and make sure that he does not fall under the exclusion criteria. Then he could start collecting all the relevant to the contract notice documents as well as search for partners/consultants (especially in his first attempt). Finding local partners/consultants would help him overpass barriers related to the language or other bureaucratic specificities.

Throughout the bid's preparation the bidder should prepare his offer ensuring that his bid focuses on the



requirements set out in the specifications and that his experience is well documented.

#### **4.8.1 What are the specific elements that a bid must include**

The notice or call for tenders usually includes only the basic and short-listed public procurement details, details of which the contractor learns from the tender dossier. In addition to the Public Procurement Act, the tender dossier is the second core document under which the tenderer must proceed to succeed in a public tender. The tender dossier shall not be in conflict with the law, the actual diction of the law shall be specified in relation to a specific public contract. Section 44 (3) of the PPA calculates the minimum content requirements of this documentation, but in practice it is much more extensive.

The tender must include the documents required by the contracting authority in the tender dossier. The PPA places an obligation on the contracting authority to require the supplier to submit the data, documents, or samples that are relevant to the evaluation of the offers. The contracting authority is also obliged to request the submission of documents and information relevant to the evaluation of the tenders by the contracting authority.

According to PPA, the contracting authority has the option in the offer to request the submission of information about the property structure of the supplier and his subcontractors. In addition, the contracting authority is entitled to request, in particular, the submission of documents or, where appropriate, samples, or a successful test result for the assessment of the supplier's qualification or offer.

As a matter of principle, the tender, as well as all the other documents submitted by the contracting authority, are to be submitted in the Czech language or in the Slovak language, which is equated to the Czech language. There are two exceptions to this rule. The contracting authority has the possibility to set a different language in the tender specifications for the award of public contracts, but the Czech language cannot be ruled out. In addition, higher education diplomas may also be submitted in Latin as a result of the latest amendment to the law.

The supplier is only entitled to submit one tender to the contracting authority. If the same contractor would bid more, or would participate in multiple joint tenders as a joint supplier, the contracting authority would have to exclude all such bids from the evaluation. The bid submitted by the supplier may also not contain variants (if the contracting authority does not accept it), it must be submitted in writing and must be submitted electronically or in a sealed marked envelope bearing the name of the public contract that is secured against manipulation.

#### **4.8.2 Where you submit the tender**

As of 21 June 2017, the procurement infrastructure in Czech Republic is undergoing substantial changes. All e-markets for public tenders are being phased out and the new National Electronic Tool (NEN – Národní



elektronický nástroj <https://nen.nipez.cz/>) is an optional alternative electronic marketplace for the procurers and since 1 June 2018 it will be an obligatory tool for public procurers to use for majority of public tenders. NEN is an integrated portal for both procurers and suppliers, which administrates the whole process of tenders. The two current e-markets remain operational on a commercial basis (August 2017).

Currently, all tenders besides the smallest can be found in the PP Bulletin, which contains the contact information for bidders. The communication always conducted electronically in the cases, where the procurer is then Czech state, or a central procurer. All other procurers may in some cases use non-electronic communication. As of October 2017, Czech state and central procurers have to use NEN. Other public procurers may use NEN, or one of the two licensed electronic marketplaces (<https://www.gemin.cz/> and <https://www.tendermarket.cz>), which are operated on a commercial bases (winning contractor has to pay a fee). The commercial marketplace are still popular with procurers, due to their higher user friendliness. Since June 2018, all public procurers will be obliged to use electronic communication via NEN. However, the existence of – NEN have been plagued by both technical and legal scandals and number of postponements. Therefore, the October 2018 deadline may not be final.

#### **4.9 What are the key phases after submitting the bid**

The Figure 7 show the key steps after the bid was submitted by the bidder:





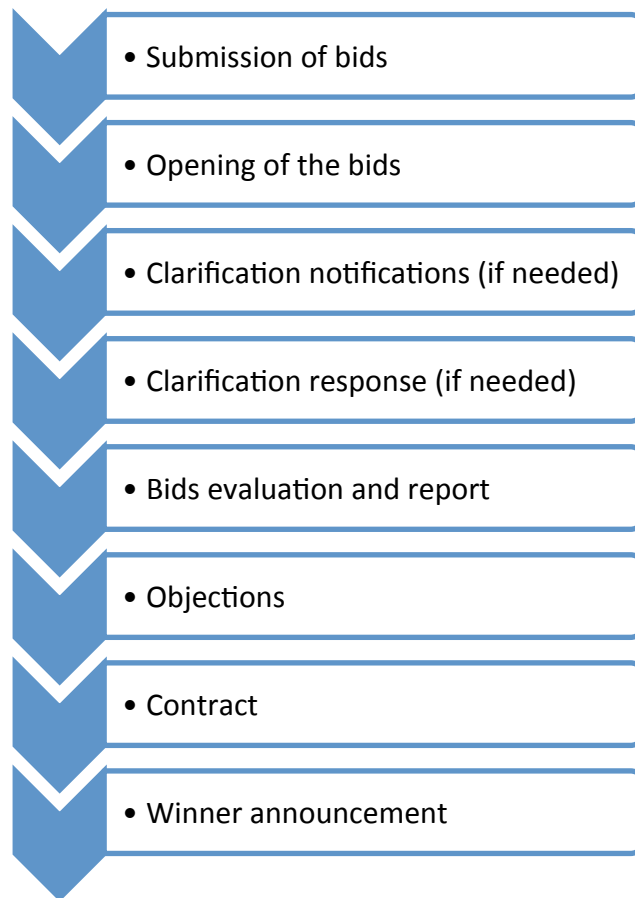


Figure 7: Key phases after submission of bid

### Opening envelopes with bids

According to PPA the contracting authority is not obliged to set up a commission for the opening of tender envelopes. When the envelopes are opened by the contracting entity, which may be attended by representatives of the suppliers who submitted the tenders, the contracting authority shall communicate the applicant's identification data and the data relating to the numerical criteria.

Tenders submitted electronically are made available and tenders are opened by the contracting authority without undue delay after the end of the deadline for submission of tenders. The contracting authority under the PPA verifies whether the bids were submitted within the deadline, whether they were authentic and whether the data message in question was not manipulated in the case of bids submitted electronically and, in the case of the tender offers, whether they were in a properly closed envelope.



For tenders submitted after the deadline for submitting tenders, as per the PP, they are treated as if they had not been submitted. When opening envelopes, the procuring entity issue a protocol for these submissions as well.

**Evaluation of the bid** – the bids are evaluated:

- according to the most appropriate ratio of the bid price and the quality of the offered performance,
- according to the most appropriate ratio of life cycle costs and quality,
- according to the bid price,
- according to lowest life cycle costs,
- According to the quality in the cases of the contracting authority fixed prices of the performance of the public contract.

See the section Contract award criteria & Bids' evaluation for further detail.

### **A finalization of the contract**

Contracting authority will request a selected supplier to submit originals or certified copies of documents proving fulfilment of the qualification of this supplier and documents on the actual owners of selected supplier and any other documents stipulated in the tender dossier.

After expiry of the period of the prohibition to conclude the contract, which is specified in § 246 of the PA, the contracting authority with the selected supplier will contract for performance of the public contract.

If the selected contractor does not conclude a contract for performance of a public contract with the contracting authority without any delay, the winner will be excluded from the award procedure and another supplier will be chosen in the order of the tenderer.

In the same way, another winner will be chosen if there is a conflict of interest. The conflict of interest is defined in § 44.

The contract is concluded between the selected supplier and the contracting entity and must comply with the tender specifications and the tender of the selected supplier. Furthermore, this agreement must be concluded in writing.

Since 2016, the new Act introduced higher flexibility into the process. Procurers can decide to change the order of some steps. For example, the clarification step may come after the evaluation of bids and only the winner is asked to clarify the its bid. This opens possibilities to make the procurement process faster, but also puts higher pressure on the procurers to run the process in legal and most effective way. Wrong decision in the process



may end up in no winner and the need to repeat the tender.

#### **4.10 Contract award criteria & Bids' evaluation**

The contracting authority is not obliged to appoint a commission, with the exception of public contracts whose estimated value exceeds CZK 300 million. However, if the Commission determines it, it continues to apply that the actions of the evaluation committee are acts of the contracting authority for which the contracting authority is responsible.

The bid is rated according to the criteria specified by the contracting authority in the tender specifications. The PPA changes the previously used terminology and does not already use the evaluation criteria, but imposes on the contracting authority the obligation to evaluate the offers according to the economic advantage.

However, this does not mean that the contracting authority cannot evaluate offers only on the basis of the bid price, except in the case of explicitly specified in PPA, e.g. in competitive dialogue proceedings or in innovation partnership proceedings: The contracting authority is entitled to evaluate the offers according to the economic advantage in the following ways:

- according to the most appropriate ratio of the bid price and the quality of the offered performance,
- according to the most appropriate ratio of life cycle costs and quality,
- according to the bid price,
- according to lowest life cycle costs,
- According to the quality in the cases of the contracting authority fixed prices of the performance of the public contract.

The contracting authority is required to specify in the tender dossier the rules for the evaluation of the tenders, namely the chosen evaluation criterion, the method of evaluating the bids in the individual criteria and the mathematical relationship between the criteria (such as the weighting of each criterion).

If the contracting authority chooses a quality criterion for the evaluation of tenders, it is required, within the meaning of the PPA, to "set criteria that express qualitative, environmental or social considerations linked to the subject matter of the public contract".

The PPA provides an incomplete list of quality criteria, such as aesthetic or functional features, user accessibility, delivery terms and conditions, and more. However, the quality criteria set by the contracting authority must be set in such a way as to allow for the comparability of the offers and the verifiability of the fulfillment of the criteria.

PPA newly introduces the criterion of economic qualification (Section 78 of PPA), according to which the



contracting authority may require that the minimum annual turnover of the supplier achieves the limits set by the contracting authority, at most for the 3 immediately preceding accounting periods. If the supplier is established later, it is sufficient if he submits his turnover figures for all the accounting periods since the entity was established. However, the condition of the minimum amount of annual turnover must not exceed twice the estimated value of the public contract. Economic qualification is also ruled out for architectural services.

PPA still does not allow the contracting authority to evaluate the contractual terms and conditions establishing the supplier's obligations and payment terms.

The contracting authority is obliged to prepare a tender evaluation report after the evaluation of the tenders, the details of which are specified in the PPA. The participant, whose offer has been evaluated by the contracting authority as the most economically advantageous, must be selected by the contracting authority for the award of a public service contract.

#### **4.11 Objections**

A supplier who is convinced that by the contracting authority procedure related to the award of a sub-contracting or above-limit public contract may occur the detriment, a reasoned objection to the contracting authority against the procedure can be raised.

In regards to the contracting authority's tendering procedure for the award of a small-scale public contract, the PPA does not allow the possibility of objection. The possibility of reviewing the tenderer's procedure is also linked to his obligation to keep the tender dossier for a period of 10 years after the conclusion of the contract or its change, including records which have been submitted electronically. Office for the Protection of Competition is the key authority in the oversight of the process of public procurement.

#### **Objections**

The PPA defines that in the tendering procedure for the allocation of over-limit and below-limit public contracts it is possible to object to all acts or omissions of the contracting authority in the award procedure, including the specification of the terms and conditions.

It is also possible to raise objections against the type of award procedure chosen by the contracting authority or the choice of the public procurement regime (above or below). The PPA also permits the possibility to object to the procedure of the contracting entity, which is in breach of the PPA to award a public contract outside the award procedure.

#### **Time limits for objection**



The Supplier is obliged to deliver the objections against the breach by the Contracting Authority within 15 days of the date on which the supplier became aware of the breach of the PPA, but no later than the time of conclusion of the contract. Objections to the conditions relating to qualification in proceedings where the deadline for submitting requests to participate is set to expire must be delivered by the end of that period.

Objections against the tender dossier must be delivered by the complainant to the contracting entity no later than by the end of this deadline for submitting tenders, provided that the time limit for the submission of tenders is set in the award procedure. In the negotiated procedure with publication, objections to the tender dossier must be submitted before the closing date for the submission of the preliminary tenders.

Objections against the decision of selection of the most appropriate bid or against the contracting authority's decision to exclude from participation in a procurement procedure must be delivered by the supplier to the Contracting Authority within 15 days of the date of receipt of the notice of the selection of the most appropriate tender or exclusion from participation in the award procedure. This deadline applies to all acts of the contracting entity communicated in documents which the contracting authority is obliged to publish or send to the complainant under the PPA.

Objection against	Limit
<b>breach by the Contracting Authority</b>	within 15 days
<b>qualification in proceedings</b>	Until expiration
<b>tender dossier</b>	Deadline for tender submission
<b>selection</b>	15 days of the date of receipt of the notice of the selection

**Table 8: Objection time limits**



## 5 Key points when you are submitting a tender in Czech Republic

- Make sure that you are an eligible candidate – check the requirements and the bidder's profile.
- Since 2018, bidders will have to provide information about the owner structure by registering into a (newly created) register of owners.
- Language can be a barrier, since English version of documents is rare and even the electronic communication tools do not support other language than English.
- When electronic communication is required, all documents have to be converted into electronic version before the signing of the contract.
- The main problematic types of public procurement in Czech Republic are the following:
  - public tenders for construction works.
  - supplies of information technology, where the subject is specifically identified by the mark or technical parameters of the particular product;
  - supplies of transport vehicles where the subject is specifically defined by the mark or the technical characteristics of the particular product;
  - contracts for liner construction;
  - soft projects: promotional and similar services, retraining courses, etc.
  - contracts for the acquisition of highly specialized supplies and services in the health sector;
  - contracts for the acquisition of highly specialized supplies and research services



## 6 What Tenderio offers

TENDERIO project is funded by the COSME program of the European Union (Grant Agreement No 739966) and aims to increase SMEs' participation in public procurement in EU through the development and the implementation of innovative activities that will inform, educate and support European SMEs to access international tenders.

TENDERIO helps SMEs to overcome the barriers that inhibit their participation in cross-border procurement, i.e. the language, the bureaucracy, the difficulties in finding local partners and the lack of knowledge about local tender procedures, by providing the following tools and services:

- a tender search engine which allows access to 1.500 new tenders in Europe every day;
- a benchmarking model on public procurement;
- national training sessions;
- business-to-procurers days and matchmaking opportunities;
- tailored coaching and mentoring services;
- e-conference and webinars on “how to win a tender abroad”.

Other services include a helpdesk, through which companies can access valuable information about specific tenders, country guides on public procurement, regular workshops, and an innovative “bidding laboratory” where guidance on developing successful bids is delivered.

TENDERIO also identifies possible partners and recommends expert consultancies to help you write bids and translate materials into the appropriate language for each offer.

Registration to Tenderio is free and is performed through the project's official website: [www.tenderio.com](http://www.tenderio.com)



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