PUBLIC TENDERS FOR INNOVATIVE SOLUTIONS:

METHODOLOGY FOR CONTRACTING AUTHORITIES

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Objective and Focus of the Methodology

This Methodology is primarily aimed at contracting authorities of public tenders and their employers who participate in tender procedures. That is to say, all those who have an opportunity to influence the form and method of the tender procedure, and specifically how the state will invest public funds. If we are able to make decisions in public tenders with similar motives that influence us when purchasing goods, services, or construction work in our personal lives, we can shift the field of public tenders forward. Any step forward means more efficient spending of a significant amount of public funds.

The Methodology is not only a description of the formal procedure for public tenders for innovation. Its knowledge is essential for application, but without an understanding of the factual background it will only be a procedure taken out of context. Therefore, the Methodology is a document that, among other things, contributes to deliberating about why and how we can better award public tenders when striving to obtain innovative solutions in appropriate situations.

In the first part, the Methodology explains the concept of sustainability and, within the framework of responsible public tenders, addresses the amendment to Act 134/2016 Coll., on the awarding of public tenders, as amended (hereinafter referred to as the "Act"), which came into effect on 1 January 2021, and introduced new wording to the principles of public tenders. This is followed by a description of the application of Article 6(4) of the Act in the area of innovation.

The next part of the Methodology is focused on explaining the concept of innovation and the awarding of public tenders for innovations. It mentions important aspects of innovative procurement in general and its risks. It also deals with three tender procedures that are suitable for awarding public tenders for innovations, i.e., an innovation partnership procedure, a competitive dialogue procedure, and a small-scale public tender with a negotiated procedure (hereinafter referred to as "SSPT negotiation-type"). Each of these tender procedures are described in detail in separate attachments to this Methodology. Finally, examples are given of good practice implemented by the Technology Agency of the Czech Republic (hereinafter referred to as "TA CR").

Sustainability and the New Principle in Article 6 of the Act

"When the last tree has been cut down, the last fish caught, the last river poisoned, only then will we realise that one cannot eat money." Cree Indian prophecy

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs [1].

The Seven Generations Principle

For the original inhabitants of the Americas, sustainability meant the following: decisions we make today should result in a sustainable world seven generations into the future.[2] The purpose was not to fulfil a concept, but rather a natural way of living. We, as the majority of people of the current generation, make decisions every day, by which we are not able to ensure the conditions for life even for the next generation, i.e., to our children. They are decisions on three levels; personal, local, and global. All levels are important, and the global level of decision-making is beyond the reach of most of us. However, as a contracting authority, we are able to influence decisions at the local level, which is a great opportunity. Developing an innovative solution that is more sustainable than the available options that we know of can be one way of introducing positive change.

Three Pillars of the New Principles of Awarding Public Tenders Pursuant to Article 6 of the Act

In the case of public tenders, it is important to respect the current knowledge that we have as a society. At present, there is no doubt that when investing public funds, it is not entirely necessary to buy whatever is the cheapest. We need to obtain the product, service, or construction work at the highest quality for the lowest possible financial value. Quality is also influenced by the impact such a purchase has on society, the environment, and the economy of the country. At the same time, it is important to consider the life cycle of the purchase, i.e., the future costs associated with

1 Various elements of sustainability are dealt with in the extensive Brundtland Commission Report, available from e.g.: https://www.are.admin.ch/are/en/home/media/publications/sustainable-development/brundtland-report.html

2 Source e.g.: http://www.7generations.ca/about/seven-generations/

the purchase. If the contracting authority is able to meet these requirements, then this is responsible procurement.[3]

On 1 January 2021, an amendment to the Act entered into force, which changed Article 6 and incorporated three new pillars on which responsible procurement should be built. These are a social pillar, an environmental pillar, and an innovative pillar. This Methodology will not address the environmental and social pillar in detail, as it does not thematically fall under it, but it will mention the legal regulation in the Act and refer to other sources.

The new wording of Article 6(4) of the Act is as follows:

Article 6(4) of Act 134/2016 Coll., *"The contracting authority is obliged, when proceeding pursuant to this Act and drafting tender requirements, evaluating tenders, and selecting the supplier, to comply with the principles of socially responsible procurement, environmentally responsible procurement and innovations within the meaning of this Act, where possible given the nature and the purpose of the contract. The contracting authority is obliged to duly justify its steps."*

Social Pillar

This pillar motivates contracting authorities to take into account social aspects and the impact on society when awarding public tenders. *"By purchasing wisely, public authorities can promote employment opportunities, decent work, social inclusion, accessibility, design for all, ethical trade, and seek to achieve wider compliance with social standards."*[4]

"Socially responsible procurement is a procedure according to this Act, in which the contracting authority is obliged to take into account, for example, job opportunities, social inclusion, decent working conditions and other socially relevant aspects associated with a public tender."

For more information on the social pillar, we recommend visiting the Socially Responsible Public Procurement website of the Ministry of Labour and Social Affairs (hereinafter referred to as the "MLSA"):

https://www.sovz.cz

Environmental Pillar

This is a pillar where the contracting authority takes into account the environmental impact of what is being purchased. The provisions of Article 28(q) of the Act state that:

3 More information on responsible procurement is available from https://www.sovz.cz/.

4 Commission Communication "Buying Social - A Guide to Taking Account of Social Considerations in Public procurement (2nd edition)", p. 5, available from https://op.europa.eu/cs/publication-detail/-/publication/cb70c481-0e29-4040-9be2-c408cddf081f

"Environmentally responsible procurement is a procedure according to this Act in which the contracting authority is obliged to take into account, for example, the impact on the environment, sustainable development, the life cycle of the product, service, or construction work and other environmentally relevant aspects associated with the public tender."

The main criteria for assessing the environmental impact are set out in the Rules for the Application of a Responsible Approach in the Awarding of Public Contracts and Government and Local Government Purchases. This does not provide a complete list and varies according to the subject of the public tender. The criteria for individual sectors are covered in more detail by the European Commission within the framework of Green Public Procurement. Here it is possible to find specific criteria, for example, for the purchase of computer technology, textile material, cleaning services, and many other things. [5]

Further information and documents on green procurement can be found on the previously mentioned link to the MLSA website in the "Zdroje OVZ" section:

https://www.sovz.cz/zdroje/

Innovative Pillar

The provisions of Article 28(r) of the Act state that innovation means, *"Implementation of a new or significantly improved product, service, or procedure related to the subject of a public tender."*

If the contracting authority awards a public tender and takes into account the innovative pillar pursuant to Article 6(4) of the Act, then it should initially answer the following three questions:

1. **Can the solutions available on the market satisfy my need?**
2. **If the product, service, or construction work is available on the market, is it of sufficient quality and with satisfactory parameters?**
3. **If I am faced with a problem, do I know the most effective solution and is this solution available on the market?**

Not every public tender is suitable for tendering innovative solutions. Such public tenders will be in the minority on an overall scale, and it is fine to use an open procedure and only deal with the above questions by justifying "YES" answers. On the other hand, there are a number of public tenders where an innovative solution would be appropriate, but the contracting authority is afraid of the unknown, so it prefers to use a more traditional tender procedure and only buys what it can directly obtain on the market.

5 https://ec.europa.eu/environment/gpp/index_en.htm

If the contracting authority answers "NO" to any of the three questions, it would be appropriate to consider awarding a public tender for innovation and using one of the recommended types of tender procedures.

Innovation

Innovation does not always mean a new technology, but generally it is a solution (either a product, process, or a combination thereof) that is new and improved in some way. This improvement means a benefit to the end users it reaches. There are several precise definitions of innovation. Importantly, the new product or process is not yet available on the market, or it is only available in small quantities, and early adopters are still testing its properties.

Article 2(1) of Act 130/2002 Coll., on the support of research, experimental development and innovation from public funds (hereinafter referred to as the "Act on the support of R&D") defines innovation as, *"The implementation of new or substantially improved products, procedures, or services into practice..."*

The OECD Oslo Manual defines innovation as a new or improved product or process (or a combination thereof) that differs significantly from previous products or processes and that has been made available to potential users (product innovation) or used within a production process (process innovation).[6] **Therefore, innovation is a new or improved product, process, or a combination thereof, which differs significantly from previous products or processes, and which has been made available to end users.**

It is, therefore, essential that in order for a new idea, model, method, or prototype to be considered an innovation, it must be applied. This means that at the final stage it must be implemented and made available to users.

Characteristics of innovation are:

- Novelty
- Improvements
- Making something available to potential users (e.g., contracting authorities)
- None or only a small amount available on the market

6 OECD Oslo Manual 2018, p 31, available from https://www.oecd.org/science/inno/2367614.pdf

One of the ways of achieving innovation is through research and development. *"R&D may or may not be part of the activity of innovation, but it is one among a number of innovation activities. These activities also include the acquisition of existing knowledge, machinery, equipment and other capital goods, training, marketing, design, and software development."*[7] R&D is not a condition for achieving innovation, only one of the possible paths to it.

Public Tenders for Innovative Solutions

"Let's do the slightest thing. However, let's do it the best way we can do" Tomáš Baťa

Public tenders are used for the purchase of services, goods, or construction works from public funds, i.e., from taxpayers' money. Public tenders are an opportunity for the state to influence the economic development of the country by defining demand and an opportunity to shape the market. If the contracting authority supports the development of an innovative product, then this product can take its place on the market and benefit other buyers or motivate competitors to improve their products.

Determination of CPV Codes

Although the determination of CPV code is a formal matter, it may serve as grounds for applying the following exemption. Article 14 of the EU Directive on Public Procurement[8] and Article 29(r) of the Act state that the Directive (and therefore the process established by the Act) shall only apply to public service contracts for research and development which are covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2, and 73430000- 5, provided that both the following conditions are fulfilled:

a) The benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, and;

b) The service provided is wholly remunerated by the contracting authority.

This means that if the user of the result of the public tender is not only the contracting authority or the service is paid for by the contracting authority and another entity, then the above

7 OECD Fracsati Manual 2015, p 60, available from https://www.oecd-ilibrary.org/docserver/9789264239012-en.pdf?expires=1664175308&id=id&accname=guest&checksum=C16DF392969E0AF0BE8277DD8488C031

8 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

exemption applies to the situation and the contracting authority is not obliged to award such a public tender according to the Act.

Names of the above CPV codes relating to the exemption	Other relevant CPV codes related to the area of R&D
73000000-2 Research and development services and related consultancy services	73100000-3 Research and experimental development services
73120000-9 Experimental development services	73110000-6 Research services
73300000-5 Design and execution of research and development	73111000-3 Research laboratory services
73420000-2 Pre-feasibility study and technological demonstration	73112000-0 Marine research services
73430000-5 Test and evaluation	73200000-4 Research and development consultancy services
	79315000-5 Social research services

Application of Article 6(4) in the Area of Innovation

If, based on the application of the principle according to Article 6(4) in innovative pillar part, the contracting authority determines that:

- The goods, services, or construction works available on the market do not meet the needs of the contracting authority; or

- The quality or parameters of the goods, services, or construction works available on the market do not meet the needs of the contracting authority; or

- The contracting authority faces a problem and does not know which solution would be the most suitable,

then they shall proceed with a decision to announce a tender procedure for a public tender for innovations. The announcement of such a tender procedure may mean[9]:

- Buying a research and development process that will lead to an innovative solution - the contracting authority describes its need, prompting businesses and researchers to develop innovative products, services, or construction work process, which do not yet exist on the market;

9 Guidance on public procurement of innovation, p 5, available from https://ec.europa.eu/info/policies/public-procurement/tools-public-buyers/innovation-procurement_en

- Buying an outcome of research and development - the contracting authority acts as an early adopter and buys a product, service, or construction work process that is new to the market and contains substantially novel characteristics; or
- Buying both of the options mentioned above – the contracting authority invests in research and development in order to subsequently buy the outcome as the first adopter.

For the contracting authority, this may mean that e.g., after the end of the tender procedure and the signing of the contract, the research and development become the subject of performance, which the contracting authority requests and oversees for the entire duration. After the end of this research and development, the outcome goes to the contracting authority that implements it i.e., commences using it.

Awarding Public Tenders for Innovations

If the contracting authority finds the award of a public tender for innovations for the given subject to be the most appropriate and expedient option, it should proceed in the following steps:

- Description of the problem or need
- Market analysis
- Preliminary market consultation
- Determining the type of tender procedure
- Tender dossier
- Qualification requirements
- Evaluation criteria
- Negotiations on variants
- Intellectual property rights
- Contract for the performance of a public tender

Description of Problem or Needs

At the beginning, it is sufficient to describe the problem or need that the contracting authority has only very generally. If the contracting authority is looking for a solution to its problem, then it only describes the problem, not what solution it expects. If the parameters or quality of the goods,

services, or construction works available on the market do not satisfy the contracting authority, it only describes why they are not sufficient for the contracting authority. The description shall not include, for example, the technical specification of the requested product, construction project, or a detailed specification of the requested services. Based on this general description, the performance of a market analysis shall follow.

Market Analysis

The market analysis should be performed by experts, either employees of the contracting authority or external contractors. It should primarily be based on research, negotiations with potential suppliers and the opinion of an authorised expert[10]. In terms of the scope of the EU Directive, on which the Act is based, the internal market is the EU market, not the market of the Czech Republic. Knowledge of the field relating to the public tender and the market itself is important. It is essential to describe how the available options are unable to meet the needs of the contracting authority. It is possible that innovative solutions that could satisfy the needs of the contracting authority or solve a specified problem are already being developed on the market or are newly available, and it is possible to tender for them. Otherwise, the analysis shall confirm that there is no possibility to buy goods, services, or construction works for the needs of the contracting authority on the current market. In such a case, the contracting authority shall begin preparing a preliminary market consultation.

Preliminary Market Consultation

Preliminary market consultation is regulated in Article 33 of the Act as follows: "*The contracting authority shall be authorised to conduct market consultations with experts or suppliers with the aim of preparing tender conditions and informing the supplier of its intentions and requirements, as long as this does not disrupt economic competition".*

Preliminary market consultation can take several forms (e.g., physical meetings, online discussions, etc.) and have several objectives. The main objectives include informing potential suppliers about the intention to tender and clarifying the terms of reference. The contracting authority may conduct a preliminary market consultation either with potential suppliers only or with experts only or invite both groups at the same time. Three principles are important from the point of view of the principles of the Act:

a) Open invitation – participation should not be conditional on e.g., experience and should not be aimed at a limited and pre-selected group of participants.

10 Methodology for awarding small-scale public tenders, p. 3, available from https://portal-vz.cz/metodiky-stanoviska/metodiky-k-zakonu-c-134-2016-sb-o-zadavani-verejnych-zakazek/metodiky-specialni-k-zadavacim-rizenim/metodiky-obecne/

b) Openness to possible solutions – the contracting authority shall not specify what solution it expects and is open to offers from possible suppliers. The discussion afterwards may be very beneficial for the contracting authority as well.

c) Minutes of meetings – it is important to record the course of the consultation.

The contracting authority may organise several preliminary market consultations. Their benefit for the contracting authority should be confirmation of the correctness of the market analysis and a closer understanding of what solution would be most suitable for them. Based on this information, it is also possible to determine which tender procedure the contracting authority will initiate and what its conditions for participation will be. It is advisable to publish the minutes in an anonymous form, it is also possible to refer to them as part of the terms of reference.

Determining the Type of Tender Procedure

Tender procedures suitable for public tenders for innovations are procedures in which negotiations are allowed. Without allowing negotiations, it is not possible to discuss the parameters of the offered solutions and modify them to the needs of the contracting authority. This Methodology recommends as the most appropriate procedure for innovation partnership pursuant to Article 70 et seq. of the Act, a competitive dialogue procedure pursuant to Article 68 et seq. of the Act, and a SSPT negotiation-type procedure pursuant to Article 27 and 31 of the Act. How and when to use specific tender procedures are specified in the appendices hereto.

Tender Dossier

The tender dossier for public tenders for innovations is not as specific as it is for other public tenders. If the contracting authority goes into too much detail regarding the requirements for the outcome and the requirements for the technical specifications, it may subsequently limit its options and discriminate against a solution that may be beneficial for the contracting authority.

On the other hand, quality criteria must be clearly defined. It is possible to include, for example, requirements for the impact on the environment, requirements for the impact on human health, social aspects, lifespan, and life-cycle costing defined in Article 117 of the Act, etc. This may also be one of the themes of the preliminary market consultations.

Qualification Requirements

Since the suppliers of innovative products, services, and construction works may often be start-up companies or small and medium-sized enterprises that are not frequent participants in public tenders, it is a good idea to establish the qualification requirements with this fact in mind. A major limitation for these potential participants may be the requirement for experience as a legal entity.

On the contrary, one of the qualification requirements may be, for example, a requirement for the number of people in the team and their knowledge of the field.

Evaluation Criteria

Pursuant to the Act, it is not permissible to use only the price as an evaluation criterion for a public tender for innovations using a competitive dialogue procedure or innovation partnership procedure (see Article 114(3)(a) of the Act). If the contracting authority awards a small-scale public tender negotiation-type, it is beneficial to proceed in a similar manner. It is best to use a combination of price criteria, quality criteria, and life-cycle costing criteria. However, the detailed determination of the criteria will depend on the subject of the public tender.

The evaluation criteria for a public tender for innovation will always be largely subjective. However, this is not an obstacle if it is possible to assign a point evaluation to the criteria and then transparently justify it. One of the criteria should be fulfilling the need/solving the problem of the contracting authority.

Negotiations

The types of tender procedures suitable for public tenders for innovations assume that the contracting authority will negotiate with the participants in the procedure. It is advisable to invite experts who know the market or other qualified persons for these negotiations. It is important **not to disclose confidential information from other preliminary tenders to other participants** and to respect all the principles of Article 6 of the Act.

Intellectual Property Rights

Intellectual property rights apply to the outcome. At the most general level, two possibilities may be defined. The intellectual property rights shall be given to the contracting authority or shall be given to the supplier.

In the first case, the disadvantage is preventing the supplier from further developing and innovating the outcome. The second case may mean increased future costs for the contracting authority. Pursuant to Article 72(3) of the Act, in the innovation partnership procedure, there is an obligation to include in the tender dossier the rules according to which intellectual property rights will be governed. The form of intellectual property rights should also be part of the performance contract.

Intellectual Property Rights in Public Tenders and IT Procurement

In the case of IT procurement, the regulation of intellectual property rights may be divided into the following situations:

a) The contracting authority will pay for the rights to use the software in the form of a license, i.e., the right to use the work in a specific way. This option may have the advantage of obtaining updates or basic maintenance of the supplied solution (sometimes included in the price of the license or alongside it). This is ideal in the case that the contracting authority has an already existing third-party product modified for their IT solution.

b) The contracting authority procures the solution, i.e., pays for its development or modifications of existing products, and resolves the rights to use the work in such a way that they remain with the supplier and the contracting authority consumes the work as a service for a certain period of time. The advantage of this approach is the possibility of participating in the sale of the developed solution to third parties (the supplier will pay the contracting authority a percentage of the sale of the solution).

c) The contracting authority has a solution created so that the rights (how these rights are governed) are on its side. This approach is based on the assumption that if the solution to the IT procurement is to be implemented as its development (often on a turnkey basis), it is sufficient to have its source codes available to the contracting authority as a guarantee of future maintenance and further development. At first glance, the benefit of this approach raises the question of the ability of the contracting authority to use these source codes in the future ("Will I be able to do it?", "Do I know what the documentation for the IT solution should look like?", etc.).

It may seem that the issue of rights is complex, but this only applies to textual formulations in work contracts. In principle, deciding on the method of use is simple, even if the contracting authority does not avoid consultations with experts while deciding.

Contract for the Performance of a Public Tender

Public tenders for innovations carry with them different risks than, for example, buying stationery from a catalogue. It is necessary to eliminate these possible risks and include at least the following in the contract:

- The final and agreed requirements that the contracting authority sets in the tender dossier and subsequently negotiates with the selected supplier during the course of negotiations;
- Penalties for failure to meet these requirements and the possibility of withdrawing from the contract, e.g., during the research and development process, if it does not lead to the desired outcome;
- Reasonable payment conditions (small and medium-sized enterprises may often be suppliers of innovative solutions and without reasonable payment conditions they may not be able to afford to participate); and

- Settlement of intellectual property rights, see the previous point (already stipulated in the tender dossier).

When awarding public tenders for innovations, it should be emphasised that the contract is one of the themes for negotiation and may be discussed during the preliminary market consultation.

Risks/Disadvantages Associated with Public Tenders for Innovations

The most common risks/disadvantages are:

- Estimation of costs– to determine the expected value, the contracting authority should use its previous experience with a similar or the same subject of performance in classic public tenders, which are not possible here;
- Uncertain outcome – in the case of research, development and innovation, the outcome is not clearly predictable;
- Lack of experience in negotiating during tender procedures – administrators of public tenders usually do not have experience, for example, in negotiating with suppliers;
- Lack of experience with innovations and the subsequent subsumption of themes that are not innovations as a result (e.g., software development is not automatically an innovation); and
- Greater time demands.

Elimination of Risks and Disadvantages

The aforementioned risks and disadvantages may be eliminated as follows:

- Estimation of costs – the contracting authority determines the maximum possible value for the entire tender procedure based on its budget and market analysis. Based on market analysis and preliminary market consultations, it may then determine whether one or more suppliers shall participate in the solution and its development (in the case of an innovation partnership procedure) and verify whether its estimate is realistic;
- Uncertain outcome– the uncertainty of the outcome will always be present at least to a minimal extent. Expert supervision, high-quality preparation for negotiations with suppliers, a detailed specification of the required quality and the legal protection of the contracting authority included in contract for the performance of the public tender may help eliminate this disadvantage;

- Lack of experience with negotiations during tender procedures – the only possible way to gain experience is to announce these tender procedures. The contracting authority may start, for example, by announcing a SSPT negotiation-type. It is important to have experts from the field who know the market well, either internal employees or external experts, and initially a lawyer, present during these negotiations. A predetermined objective of the negotiations and sufficient knowledge of the required quality of the solution are also essential;
- TA CR will try to provide additional information on the awarding of public tenders for innovations and will open up the theme of innovations in more detail; and
- Greater time demands will be present for public tenders for innovations for several reasons and must be taken into account.

Knowledge of risks and disadvantages is important for correctly establishing the conditions of the tender procedure. However, the risks should not deter the contracting authority from announcing a public tender for innovations if an innovative solution is suitable for the given subject of performance. The benefits that the contracting authority will get from the innovative result are significant. Therefore, TA CR will try to support contracting authorities in announcing public tenders for innovations by sharing other experiences, training, and online discussions.

"The greatest mistake you can make in life is to be continually fearing you will make one."

Elbert Hubbard

Examples of Good Practice

Three public tenders will be presented in this Methodology as examples of good practice. TA CR acted as the contracting authority for all three public tenders, but due to the fact that they were public tenders in the BETA programme[11], the outcomes of the public tenders subsequently went to another body of the state administration, for which the tender was held. This body of the state administration will be referred to in the text as a the "user of the outcome".

11 More information about the programme is available at: https://www.tacr.cz/programy-a-souteze/b2/

Innovation Partnership Procedure

Solution for the Processing, Analysis, and Assessment of Energy Statistical Data

In this public tender, the contracting authority had the task of selecting a supplier who would solve the problem with the enormous processing of data on the input forms for the Energy and Regulatory Office (hereafter referred to as "ERO"), which would be the user of the outcome. These activities were performed in Excel tables, which were no longer sufficient for their purpose. The solution to the problem was an information system for the processing, analysis, and evaluation of statistical data.

After the decision was made that the public tender would be announced as an Innovation Partnership, the allocated funds were increased so that more partners (suppliers) could potentially be evaluated during the development phases. The contracting authority had 4,500,000 CZK available for the entire tender procedure. Subsequently, the contracting authority performed a market analysis, and a preliminary market consultation took place. The contracting authority decided to proceed in the tender procedure based on the following stages:

Stage 1 – Evaluation of Applications for Participation

The contracting authority stated that a supplier who has implemented software solutions in the last five years in the role of software architect and implementer, and has experience in the development, integration, and deployment of database or cloud solutions, is qualified. It also required that the people working on the project have the appropriate expertise. Participants submitted applications for participation. Based on an evaluation of qualifications according to the submitted applications, three participants were selected, who were first invited to participate in negotiations with the contracting authority and then submit preliminary tenders.

Stage 2 – Negotiations with Participants

Each of the three participants negotiated with the contracting authority. Negotiations took place with each participant separately, within one day. After the negotiations, one participant decided not to continue with the tender procedure, because its solution would exceed the estimated value of the public tender. The other two participants submitted preliminary tenders adjusted according to the negotiations that the contracting authority evaluated.

Stage 3 – Establishment of an Innovation Partnership and Implementation in Phases

The contracting authority decided that the two remaining participants had submitted the most suitable tenders and established an innovation partnership with both suppliers (hereafter referred to as the "partners") and signed an agreement on the establishment of an innovation partnership with each of them. The innovation partnership was divided into two development phases and an

IT system implementation phase. A separate contract was concluded between the contracting authority and the partners for each phase. After the end of Stage 3, a contract for was concluded with partner 1 for Phase 1 and a contract for Phase 1 with partner 2. The Phase 2 was continued only with one partner.

Phase 1 - Demonstration of the possible solution. During this phase, both partners worked for four months on the design of the solution. The phase ended with an IP termination notice and call for submission of tenders for Phase II. After this, the first round of negotiations took place, in which the tenders of the partners were clarified. Subsequently, during the second round of negotiations, the number of partners was reduced so that only one partner was invited to Phase 2. The criteria for reducing the number of suppliers were the technical solution, the objectivity of the analysis, the time capacity of the people working on the project, and the price. Both partners received financial remuneration for participating in Phase I according to a predetermined allocation.

Phase 2 – The selected partner began the development of the information system under the supervision of the contracting authority - regular inspection days as stated in the contract.

Phase 3 – Implementation of the new IT system. The implementation will be performed out by the ERO as the user of the IT system, which was already assumed when the public tender was announced.

The information system is currently successfully being developed.

Competitive Dialogue Procedure

In 2017, the Ministry of the Environment approached TA CR with the problem of how to determine the expected composition of waste. The matter was discussed, and it was decided that a competitive dialogue procedure would be appropriate for finding a solution.

In 2018, TA CR announced a public tender entitled “Forecasting waste production and determining the composition of municipal waste”. The main objective of the public tender to develop a software tool and Methodology for forecasting the development of waste production in the Czech Republic, e.g., to determine the composition of mixed municipal waste from municipalities. The forecast will help the Ministry of the Environment have a better opportunity to influence the recycling and reuse of waste so that the Czech Republic approaches the European standard.

The competitive dialogue procedure was divided into stages, similar to the innovation partnership procedure.

Stage I – Evaluation of Applications for Participation

The contracting authority stated that a supplier that can document the expertise of the people in the research team through CVs and proof of education (e.g., from the field of statistics, programming in open tools, etc.) is qualified. It was also necessary to provide a document proving the competence of the person to collect waste samples according to legal regulations.

Six participants submitted applications for participation. Based on the qualifications, the three participants who achieved the highest point rating in the process of reducing the number of participants were invited to the competitive dialogue.

Stage 2 – Competitive Dialogue

This stage was divided into phases according to the planned negotiations. In each phase of this Stage, negotiations between the contracting authority and each participant took place individually, with the aim of finding the most suitable solution and modifying the parameters of the project framework so that the assignment leads to a successful outcome. During the negotiations, the participants first presented answers to questions previously known by the contracting authority and then discussed them with the contracting authority. The number of phases was not limited in advance and depended on the success of the individual phases.

Stage 3 – Submission of Tenders and Decision to Begin Implementing the Public Tender

After the end of the competitive dialogue, the contracting authority invited the participants to submit tenders, which it assessed and evaluated on the basis of their economic advantage (quality 70% and price 30%). An agreement for the performance of the public tender was signed with the selected participant and implementation began under the supervision of the contracting authority. Based on the agreement, the contracting authority organised regular inspection days with the supplier.

The outcome was successfully completed, and the system was developed to the satisfaction of the Ministry of the Environment, which it now owns.

SSPT Negotiation-Type Procedure

A relatively interesting problem was solved by the Ministry of Foreign Affairs when dealing with the condition of German graves on Czech territory. The condition of the graves of German citizens who lived here in the past is very bad. The graves are in a devastated and dishevelled state.

The tender was announced as a SSPT negotiation-type procedure. The outcome of this public tender was to be a specialised map documenting the current situation, a proposal for an approach to the mentioned issue, and a proposal for measures that will be taken to determine a subsidy for municipalities and associations for possible rehabilitation or reconstruction of the graves.

In the SSPT negotiation-type procedure, the contracting authority proceeds in the same stages as in the previous two tender procedures, only with a lower level of formality.

Stage 1 – Evaluation of Applications for Participation

In order to prove the qualification, the contracting authority only required the expertise of the research team of persons, with CVs and proof of education. This was, for example, expertise in the field of political science or cartography. Three participants submitted applications for participation, and all met the given requirements and advanced to the next stage.

Stage 2 – Proceedings Divided into Phases

Stage 2 was intended for participants who have been invited to participate in negotiations. The stage was divided into several phases, and in each phase (round) the contracting authority negotiated with all the participants (with each one individually) with the aim of finding solutions suitable for the needs of the contracting authority and modifying the parameters of the project framework.

Stage 3 – Submission of Tenders and Decision to Begin Implementing the Public Tender

After the negotiations, only two participants submitted a tender. The contracting authority evaluated these tenders and selected one supplier with whom it signed a contract. The performance of the research is currently underway.

Attachments

Attachment 1 –Innovation partnership procedure

Attachment 2 – Competitive dialogue procedure

Attachment 3 –Small-scale public tender negotiation-type procedure

Sources

Czech

- Zákon č. 134/2016 Sb., zákon o zadávání veřejných zakázek, ve znění pozdějších předpisů *(Act 134/2016 Coll., on the awarding of public tenders, as amended)*

- Zákon č. 130/2002 Sb., zákon o podpoře výzkumu a vývoje z veřejných prostředků, ve znění pozdějších předpisů *(Act 130/2002 Coll., on the support of research, experimental development and innovation from public funds, as amended)*

- Důvodová zpráva návrhu Zákona č. 134/2016 Sb., zákon o zadávání veřejných zakázek, ve znění pozdějších předpisů *(Explanatory report of the draft Act 134/2016 Coll., on the awarding of public tenders, as amended, as amended)*

- Usnesení vlády České republiky (dále jen „Usnesení“) ze dne 24. července 2017 č. 531, o Pravidlech uplatňování odpovědného přístupu při zadávání veřejných zakázek a nákupech státní správy a samosprávy *(Resolution of the Government of the Czech Republic of 24 July 2017 No. 531, on the rules for the application of a responsible approach in the awarding of public tenders and procurement of the state administration and self-governing units)*

- Komentář k Zákonu o zadávání veřejných zakázek, Dvořák, Machurek, Šebesta, a kolektiv, nakladatelství C. H. Beck, 2017, 1. Vydání *(Commentary on Act 134/2016 Coll., on the awarding of public tenders, as amended, Dvořák, Machurek, Šebesta, et al., C.H. Beck publishing house, 2017, 1st edition)*

- Metodika pro inovační partnerství na služby veřejných zakázek VaV, Mgr. Pavel Slípek *(Methodology for innovation partnerships for R&D public procurement services, Mgr. Pavel Slípek)*

- Pravidla uplatňování odpovědného přístupu při zadávání veřejných zakázek a nákupech státní správy a samosprávy *(Rules for the application of a responsible approach in the awarding of public tenders and procurement of the state administration and self-governing units)*

- Odpovědné veřejné zadávání v kostce, Příručka odpovědného veřejného zadávání k novele ZZVZ od 1. 1. 2021 *(Responsible public procurement in a nutshell, Handbook of responsible public procurement to the amendment of Act 134/2016 Coll., on the awarding of public tenders from 1 January 2021)*

- Metodika zadávání veřejných zakázek malého rozsahu, Ministerstvo pro místní rozvoj ve spolupráci s EconLab z.s. a Oživení o.s. *(Small-scale public tender Methodology, Ministry of Regional Development in cooperation with EconLab z.s. and Oživení o.s.)*

Foreign

- OECD Fracsati Manual 2015

- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

- Guidance on Innovation Procurement (European Commission)

- OECD Oslo Manual

- Commission Communication “Buying Social - A Guide to Taking Account of Social Considerations in Public procurement (2nd edition)”

- Brundtland Commission Report

URL Links

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https://eafip.eu

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http://www.7generations.ca/about/seven-generations/