TRANSPARENCY OF THE PUBLIC PROCUREMENT SYSTEM IN THE CZECH REPUBLIC
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Content

MAIN FINDINGS ................................................................................................................................................. 4
1. The role of transparency in reducing corruption .......................................................................................... 4
1.1 The limits of transparency .......................................................................................................................... 6
2. Goals and methods of analysis ...................................................................................................................... 7
3. Fundamental problems of public procurement transparency in the Czech Republic .................................. 8
4. Formulating the information standard for public contracts .......................................................................... 9
4.1 The transparency of individual phases of public procurement .................................................................. 9
4.2 The point of view of an information standard .......................................................................................... 10
4.3 The information standard by public procurement phase ......................................................................... 11
4.4 Limits for small-scale public contracts (SSPC) .......................................................................................... 16
5. Analysis of impact of APP amendment on transparency of public procurement system .......................... 19
6. Shortcomings of ISVZUS .............................................................................................................................. 21
6.1 Searching for information ......................................................................................................................... 21
6.2 Differing terminology ............................................................................................................................... 21
6.3 Absence of cohesion between forms ........................................................................................................ 23
6.4 Publication of results of simplified below-threshold procedures ............................................................. 24
6.5 Incompleteness of data published in ISVZ ............................................................................................. 25
6.6 Voluntary publication of small-scale contracts in ISVZ ........................................................................ 26
REFERENCES ....................................................................................................................................................... 28
MAIN FINDINGS

- The transparency of public procurement is only meaningful if information about all key phases of the contract’s procurement and realisation are actively made public, i.e. from the defining of the request for tender through the realisation of the subject and handover for use.
- The existing legal treatment only requires the contracting authority to publish basic information about the declaration of the contract, the selection of the supplier and the price offered.
- The submitted amendment to the law significantly increases the standard for information in the public procurement system by adding a new responsibility for contracting authorities to publish information on tenders before the contract is announced, information about the contract concluded and subsequent changes to it, as well as information about the final price of the contract.
- The proposed amendment also counts on substantially reducing the limit for small-scale contracts, making the public procurement market more transparent, as it is in other EU states, and limiting the willfulness of contracting authorities in issuing public contracts.
- The fundamental instrument for public oversight – the public contract information system – is difficult for users to use and understand and can present a barrier to more effective public oversight.
- There is a significant number of contracting authorities in the Czech Republic that voluntarily declare small-scale contracts via the official information system. This behaviour proves that reducing the limits for small-scale contracts need not necessarily present a disproportionate additional administrative burden for contracting authorities.

1. The role of transparency in reducing corruption

In considerations on the issue of corruption, transparency is unconditionally regarded as a key instrument for effective prevention of corrupt behaviour. The majority of experts agree that the level of transparency in general and in the public sector in particular has a significant influence on the level of corruption in society.

Generally speaking, in the public sector transparency is understood to mean the clarity of the decision-making process, i.e. that the affected parties have access to the relevant information in real time. The concept of transparency also encompasses the principle of equal and unrestricted access to all essential information about public decision-making.¹

In order to understand the role of transparency in preventing corruption during public procurement, it is necessary to mention in particular the economic and social viewpoint of the importance of transparency for the level of corruption.

From an economic viewpoint the actors are acting rationally (*homo economicus*) and take the risks and costs of corrupt transactions into consideration. Corruption is an illegal act and problem-free fulfilment of a corrupt agreement must take place in secrecy. Higher demands transparency of decision-making forces corrupt parties to expend more resources to keep the corruption secret.² The level of transparency thus influences the behaviour of the actors in corruption, and when this level is high, corruption is not always economically viable.

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¹ Transparency International ČR: Corruption and Anti-Corruption Policy in Public Administration, Prague 2008, 212 pgs, pg. 61
This rational view of the motivation of individuals to act corruptly is shared by economist Robert Klitgaard, who is the author of the corruption formula: 

\[ \text{corruption} = \text{monopoly} + \text{discretion} - \text{accountability and transparency}. \]

A low level of transparency thus opens up a greater field of operations for illegal activities and motivates public officials to carry out corrupt transactions, with public tenders no exception.

From a social viewpoint, higher transparency shows itself in a greater level and intensity of public control. Better access to information allows the agents of public oversight (e.g., the media, civic society organisations, experts, entrepreneurs on the public contract market), who stand outside the contracting authority's organisation and do not have exclusive access to information, to more effectively watch over regularity, economy and adherence to the public interest in public procurement. From this perspective, high transparency also allows the general political representation to watch over the work of the public servants in charge of issuing and implementing public contracts. They can watch whether contracts fulfil the stipulated goals and whether the expenditures made correspond to the public need.

Transparency also significantly disrupts the social system of corruption as it reduces the exclusivity of the information required to carry out corrupt transactions. Access to privileged information and the sharing thereof means a comparative advantage compared to uninvolved players, strengthening the ties of corruption and increasing the likelihood of benefiting from corruption. If key information is available to everyone, the functionality of corruption ties is weakened and contenders for contracts need no longer have a reason to enter into corrupt transactions, while the delegated contract administrators are no longer able to offer preferential information for a corrupt transaction. This role of transparency is crucial for the proper functioning of the public contract market.

In the context of public contracts, transparency is understood to mean the possibility for all interested parties to access information and understand the current means and processes by which the contracts are being issued, implemented and managed. Transparency is the central characteristic of an effective public procurement system and is characterised by:

- well-defined regulations and procedures for the bidding process and contract implementation
- clear, standardised tender documents
- bidding and tender documents containing complete information about the selection of a supplier and the contract

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4 In the English original Corruption = monopoly power + discretion by officials – accountability the term accountability is understood as a collective meaning also including transparency. Without transparency no accountability could be defined or enforced.
7 Here we have in mind those parties that directly take part in the public procurement process (suppliers, contracting authorities, other authorities) or whom the contract affects for certain reasons and who are following it according to their capacity (public interest groups, experts, entrepreneurs, political representatives, the media, NGOs).
1.1 The limits of transparency

The demands for transparency in the public procurement system and its function in preventing corruption bring with them certain limitations that influence the formulation and implementation of the transparency policy for public contracts.

Balance between the costs and benefits of transparency

In formulating the framework of information in the interest of greater transparency, it is necessary to distinguish the balance presented between different possible anti-corruption instruments as well as their limitations. In shaping and implementing instruments of transparency, the tension should be fine-tuned between the requirements for sufficient transparency and accountability in public procurement on the one hand and the fact that these innovations should not endanger the economic effectiveness of public procurement on the other. To put it simply, the tools of transparency should not overburden the administrative capacity of the contracting authority for issuing and implementing contracts. Otherwise there will be rational opposition on the part of the contracting authority and its employees to observe the higher information standards.

Asymmetry of information

Just as when acquiring goods or services on the regular market, there is also an asymmetry of information on the public contract market. This can especially be encountered between contract administrators and suppliers, where the suppliers have greater knowledge of the product, service or work to be provided and can use this asymmetry to their advantage (profit). On the other hand there is a similar asymmetry between the contract administrators and the general public or political representatives. Administrators can take advantage of their greater knowledge about the contract to conceal potential failures or manipulation and the public or political representation have less potential to effectively monitor the work of the authorised administrators. In general, both forms of asymmetry are most prominent for technically complicated and far-reaching contracts, where the effect of public oversight will likely be reduced.

The element of time

The true value of information in the decision-making and implementation process is often dependent on the current moment and after a certain time it can become quite worthless. This is doubly true for public procurement mechanisms, as the main steps of the process are usually legally binding and, in the case of error, can only be reversed with great difficulty. For this reason it is necessary to take time into account when formulating an information standard, to make sure the published information still has a real value for the decision-making processes of the involved parties.

The perspective of European law

In defining the space for increasing transparency in the public procurement process it is also necessary to take into account the requirements laid down by European law, as European Union member states must conform to these requirements in their legislation. The fundamental procedural rules are stipulated in three directives, with each addressing public contracts issued in a specific sector of the market. In generally it can be said of all of them that they govern the procurement...
process up to the selection of the supplier. The directives are supplemented by several regulations that set out the aspects of the procurement process in more detail, such as the cut-offs for above-threshold procurement, standard forms, and the common procurement vocabulary (CPV). The main difference between the two types of legal act consists of the fact that while a regulation directly and generally binds member states on a certain matter, directives are binding only in terms of an established goal. It is however left to the individual state what means are used to achieve that goal. At the European level, information about public contracts is published in a supplement to the Official Journal of the EU (known under the name Tenders Electronic Daily, or "TED"). It is operated by the Office for Official Publications of the European Communities. Contracting authorities can publish individual announcements in TED either directly through the Office for Official Publications of the European Communities or through an operator of a domestic public procurement information system. The obligation to publish at the European level applies only to above-threshold procurement.

**These general preconditions apply for the publishing of information in European law:**

1. notices and their content may not be published at the domestic level before they are sent to the European Commission
2. notices published at the domestic level must not contain different information from that contained in notices destined for the European level

### 2. Goals and methods of analysis

**Goals**

- **To identify the main causes (barriers) of the low transparency of public contracts in the Czech Republic's system.** The system is considered to include the collection of formal regulations and officially published mechanisms by which the publication of public procurement information is ensured.
  - which information important for the desired transparency is not accessible in the system of public contracts?
  - whether and in what way EU law limits greater transparency?
  - what is the minimum obligation for contracting parties to inform on public contract tendering and the implementation process set down by the Act on Public Procurement Act?
- **To propose a concrete information model for the issuing and realisation of contracts from the perspective of free access to information.**
- **To evaluate the level of accessibility of data in the public contract information system and to identify any barriers that limit effective public oversight.**

**Methods used**

To analyse the causes of the low level of transparency and formulate the desired information model, we used an analysis of documents (PPA and other legal and implementing regulations – EU directives and regulations, methodologies for editing data in the public contract information system) and studies from academic sources.

For evaluating the level of accessibility of data in the information system we use a secondary data analysis (statistics from the Czech Ministry for Regional Development) and also draw on a statistical analysis of the Official Site of Public Contracts – Publishing Subsystem (hereinafter ISVZUS\(^\text{12}\)) performed by CERGE-EI, which contains a total of 49 402 forms for the years 2006–2010.

3. Fundamental problems of public procurement transparency in the Czech Republic

The transparency mechanisms for public procurement are defined by the array of norms that determine what information is to be made public and in what manner. In the Czech Republic the transparency of public contracts is primarily determined by Act No 137/2006 Coll., on Public Procurement (hereinafter the APP), which defines the scope of information obligations for the contracting authority (which information; when, how and for which contracts it is to be published). Secondarily there is also Act No 160/1999 Coll., on Free Access to Information, which gives anyone the right to obtain further information that the contracting authority is not obliged to publish. This act does not however ex-ante determine the scope of available information necessary for the bidders and public oversight bodies at the moment the tendering process is begun, but entitles them to request information of a public character. The essential obligatory mechanism for publishing information in the Czech Republic is ISVZUS, which allows systematic and central publishing of information and remote unlimited access via the internet.

In the conditions in the Czech Republic it is possible to identify the following areas of low or zero transparency in the issuing and implementation of public contracts. Contracts for which there is no legal obligation to publish any information make up a significant portion of the contracts on the public contract market. In 2010 such contracts made up 44% of the total financial resources put into public contracts. The majority of this volume was comprised of so-called "small-scale public contracts" (hereinafter SSPC), to which none of the provisions of the APP apply, nor are they subject to any information obligation.

Contracting authorities generally do not inform the public or the market of planned public contracts ahead of time. The creation of public projects thus often takes place in an isolated environment without the advisable supervision of the professional and general public over the establishing of public needs and the subject and conditions of the tender. The absence of equal access to basic information about future contracts reduces the ability of suppliers to properly prepare for the public contract and increases the risk of manipulation of contracts in the form of the provision of key information to preferred suppliers. The level of official preliminary notification about planned contracts is very low. For example, of the total of 2,918 above-threshold contracts in 2009, prior notice was only provided for 160 of them (5.5%).

Information on the course of the bidding procedure is not generally publically accessible. It is thus not possible to effectively watch over the contracting authority’s actions from the outside, in particular whether they chose the truly most economically advantageous offer. Also not generally accessible is basic information about the result of a public contract. The information obligatorily published in the information system is the selected supplier and the price of their bid. In practice however it is quite frequent that changes are made to the contract’s parameters and price during implementation. Completed contracts are therefore not subjected to general public control of whether they correspond to the original intention and fulfil the promised functions. The situation is likely similar for the voluntary publication of information about SSPCs on the websites of contracting authorities. For example, on the basis of a study of the 70 largest municipalities in the Czech Republic in 2008, an average of 41.2% of cities informed about the declaration of SSPCs, 12.3% of cities informed about the course of the bidding, and 2.1% of cities informed about the conclusion of the bidding.

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4. Formulating the information standard for public contracts

4.1 The transparency of individual phases of public procurement

In order to identify the desirable level of transparency for public contracts it is useful to first lay out the corruption risks in terms of the individual phases of the whole procurement process and realization of the public contract (Fig. 1).

![Fig. 1: Phases of the public procurement process](Transparency Int. 2006)

During the individual phases of the public procurement process, the below corruption risks can occur, which also determine the reasons for setting the desired level of transparency. Naturally, with respect for the corruption formula presented in Chapter 1, transparency cannot be the sole, all-encompassing tool for reducing the risk of corruption. It is just as important to establish a system of individual accountability, rules for decision-making, division of decision-making powers among multiple subjects, internal and external oversight, etc. In light of the nature and goals of this analysis we shall however focus only on the area of transparency, which can significantly eliminate certain general corruption risks.

General corruption risks in the public procurement process

- **Needs assessment phase**: the planned investments are not necessarily evaluated well economically. The price of work, services or goods can be inflated to the advantage of a certain supplier. The needs themselves can also be purposefully defined impractically and a completely purposeless and senseless project can be demanded only in order to provide profit to a selected supplier.

- **Preparation phase/process design**: the competition conditions are purposely set ahead of time to suit the preferred supplier; competition is thus practically impossible or severely limited. Such manipulation can naturally also be carried out through invited consultants or mandataries who represent the contracting authority in the proceedings. In particular for more extensive and technically demanding projects it is difficult to monitor and evaluate to what extent the competition conditions are discriminatory.

- **Contractor selection/award phase**: the risk that the deciding party will be influenced by various kickbacks, bribes or conflicts of interest. These risks grow if the evaluating criteria allow for subjective or even "arbitrary" interpretation and the whole background of the selection process is not made public.

- **Contract implementation phase**: the selected supplier can compensate the costs of bribes in two possible ways: (i) by lowering the quality of the work or providing incorrect or differing parameters for the project or (ii) wrongfully increasing the price or changing the conditions of delivery. Usually done in the form of a secret agreement between the supplier and the inspector checking fulfillment of the contract.
• **Final accounting and audit:** the accountant or inspector can be influenced to report erroneously on the resolution of debts and commitments in the interest of the supplier, e.g. that contractual penalties are not charged for poor or late delivery, etc.

The corruption risks will thus generally grow in cases where there is limited access to information; the expectation of the interested parties that the competition will be open is not fulfilled; supervision and monitoring during the bidding and implementation is ineffective, limited or completely absent; the final accounts for the whole project are unclear.  

4.2 The point of view of an information standard

An information standard is understood in this analysis as a fundamental concept of transparency that is based on the above defined role of transparency in eliminating the corruption risks and which reflects possible limitations in its implementation. A **basic function of the standard is to cover the information needs of involved parties who do not have access to exclusive information about contracts in the individual phases of the public procurement process.** In light of the current high level of information and communications technology, the condition of *free and publicly accessible information* on the whole public procurement process is understood to mean that all the information listed below is to be made accessible on the internet without any kind of restriction (e.g. needing to register, pay a fee, etc.). The condition of easy access to information should also be met by creating a central space (web portal) for the publication of this information. The definition of this standard in this analysis is governed by the perspectives:

- **information needs:** the minimum of information necessary for public oversight
- **timeline:** the time that it is pragmatic to publish information
- **relevant information for publishing:** a list of information and documents that have a key informational value for the purpose of public oversight; in identifying the relevant information and documents we primarily draw on the types of information defined in the APP with respect for the minimal added administrative burden for the contracting party of generating a new type of information
- **relation to European law:** in formulating this standard it is necessary to stick to European law, which is the baseline for the national treatment of public procurement and establishing the information obligations; the information one is obliged to provide may not go below the level of European law
- **space:** this aspect relates generally to all phases of the information standard, where it is ideal to publish all the information and documents defined below in one place (a web portal) in the interest of easy access to information. **In the Czech Republic this is the Official Site of Public Contracts** which is operated by the official public authority. If the systematic publication of all information in one place would lead to disproportionate costs for administration and technical design of the system, a compromise could be found in the form of central publishing of at least the information on planned and announced contracts.

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17 In the Czech Republic this is the Official Site of Public Contracts – Publishing Subsystem, which is operated by Czech Post [http://www.isvzus.cz/usisvz/](http://www.isvzus.cz/usisvz/).
4.3 The information standard by public procurement phase

**Phase 1: Definition of needs for future contract**

This includes the decision-making processes about the public needs, goals and purpose of a public project, the ways in which they will be fulfilled and the corresponding coverage through public funds. The result is an investment project with a specified concept of the subject matter of the contract, the expected scope and the planned deadline for implementation.

**Information needs:**
- **general information on the planned contract makes it possible:**
  - To inform the public that the contracting authority is planning to launch a certain project at a certain moment. The public has the opportunity to consider whether the planned project is in line with the public interest and public needs. To a certain extent they can thereby eliminate the risk of realising pointless or inappropriate investment projects, particularly for projects where the information asymmetry is not as pronounced.
  - To inform the potential circle of suppliers about the planned public contract sufficiently ahead of time to ensure greater participation of bidders in the competition for the contract, to the indisputable economic advantage of the contracting authority. The risk of clientelism and corruption with the distribution of preferential information on planned projects is also reduced.

**Timeline:**
The information should be made public at the moment when it is highly likely that the contract will be realised. This is typically following the approval of the subject, scope, allocated funds and expected announcement and realisation dates of the contract.

### Relevant information to be disclosed:
- specification of the public contract (brief specification of the subject and scope)
- expected date of announcement and realisation

### Deadline for disclosure:
- immediately following approval of budget funding for realisation of the contract

### Relation to European law:
- publication of the given information is unrestricted
- appearance of preliminary notification is firmly set by the prescribed form (regulation...)

**Note:** In order to maintain the trust of candidates for contracts, it is important to only publish those investment projects that are highly likely to be officially announced. Otherwise these investment projects may not be taken seriously, which could have a negative effect on the level of participation in public contract competitions.

**Phase 2: Preparation of selection procedure**

The second phase contains all the steps connected to preparation of the tendering documentation (exact definition of the subject, scope and quality of the contract, deadlines, qualification prerequisites, evaluation criteria, etc.) as well as the selection of the bidding procedure and official announcement of the public contract.

**Information needs:**
- basic information on the announced public contract (official number, type of contract by subject and value, type of bidding procedure)
This serves as a basic identifier of the specific public contract that allows one to search out further information about the contract or to ask the contracting authority for additional information. It provides an overview of the basic parameters of the contract, allowing interested parties to monitor the adequacy of the choice and observance of the conditions for bidding procedures.

- **information on the basic evaluation criteria** (lowest offer/economic merit of offer):
  Important information for a transparent selection of supplier. It allows effective oversight of the regularity of the bid evaluation process and selection of the most advantageous offer from the point of view of both the suitability of the criteria in relation to the subject of the contract and whether they are observed over the course of the competition.

- **information on representation of the contracting authority in the procedure** (name of surrogate representative):
  The APP allows a contracting authority to be represented by a different body in a procurement procedure. This third party (mandatory) can significantly influence the course of the whole public contract through their actions in one or more of the phases of the public procurement process. For this reason information about the potential representation of the contracting authority in the proceedings is an important fact for public oversight. If there is a third party representative, it is necessary to know who that subject is and to check their potential bias toward applicants for the contract in providing services to the contracting authority.

- **bidding documentation**:
  Allows interested parties from the public to discover detailed information about the declared public contract, which primarily serves to:
  - evaluate the practicality of the demanded subject and scope of the contract, including the expected cost
  - evaluate the appropriateness of the evaluation criteria used in terms of the demanded subject and whether the criteria are properly weighted
  - evaluation of the appropriateness of the qualification requirements for the demanded subject and whether they are not potentially discriminatory and whether the principle of equality is observed
  - inform about the further parameters of the contract that are important for subsequent oversight of implementation and completion of the contract subject such as delivery deadline, quality, etc.

**Timeline:**
All information on the announced public contract must be available on the day of announcement – the start of the bidding process, so that all potential contenders have equal access to a maximum of information about the contract.

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**Relevant information to be disclosed:**
- serial number of contract, title of contract, date of announcement
- type of tendering procedure as per the APP
- expected value of contract
- type of contract by expected value: above-threshold/below-threshold/small-scale
- type of contract by subject: goods/services/construction work
- representation of contracting authority in proceedings: if so – name of representative
- base evaluation criterion: lowest offer/economic advantage of offer
- deadlines for participation in proceedings (submission of bid or participation request)
- tender documentation (if it cannot be published in whole by technical means then at least the whole text portion of the tender documentation)
- qualification prerequisites for participation in the competition, if not included in the tender documentation

**Deadline for disclosure:**
- at the moment the public contract is announced
Relation to European law:
- nothing inhibits the proposed scope of information from being published
- the prescribed form for publishing information does not however have a space for an electronic link to the tender documentation. The publishing thereof is not obligatory, but the directive does count on it being made public electronically and supports this with the possibility of reducing the competition deadline in such cases.

Phase 3: Selection of supplier

The third phase covers those tasks connected to receiving bids, checking them in terms of completeness and fulfilment of all the qualifications, evaluating the offer and determining the winner.

Information needs:
- information about invited candidates
  Some tendering procedures allow the contracting authority to invite only a preferentially limited circle of candidates for the contract. Information about the invitation allows supervision of whether at least the legally stipulated number of candidates received the call and which candidates were invited. Whether, for example, the same number of companies is always approached. It also allows the public to assess the relevance of the number of candidates approached in terms of the subject of the contract for award procedures where the invitation is not legally stipulated, e.g. for exemptions from the law like SSPCs, for which there are no legal restrictions and yet the contracting authority can apply elements of competition.
- information on evaluation of offers:
  For effective oversight of the correctness of the competition, it is necessary to publish complete information about the whole course of the competition, i.e. the number of applicants, the number of candidates evaluated that met the qualifications, the value of their offers, the subsequent ranking of bids, the make-up of the evaluation committee. With this information it is possible to effectively monitor:
  - whether the competition honoured the equality of participants and prohibition of discrimination
  - whether a disproportionate number of applicants were disqualified = qualifications set too high
  - whether the applicants who did not meet the qualifications were also evaluated = lax control of qualification prerequisites
  - whether the stipulated competition criteria were observed
  - what offers were submitted, i.e. the amount of the bids and other values for the competition criteria
  - whether the relation between the values of the individual bids and the final ranking was transparent and clear
  - whether any of the evaluation committee members were biased toward certain candidates
- information about the winning offer:
  Immediately accessible information on the winner of the competition and their bidding price is necessary for comparison with the actual supplier with whom the contracting authority concludes a contract (see next phase). It is not an automatic rule that the offer with the best evaluation is selected, for example because of lack of cooperation from the applicant in concluding a contract. The effectiveness of public oversight is thus much higher than when this information remains "buried" in the documentation on the evaluation of offers.

Timeline:
Information on this phase of the process should be publicly available once all actions associated with the evaluation of offers are completed. The parameters of the individual bids should definitely not be publicly known before the evaluation is completed due to the risk of bid rigging (collusion between
suppliers, particularly in cases where the parameters of offers can be changed during the course of the evaluation, for example in electronic auctions. On the other hand it is desirable for all the actors of public oversight to have information on the result of the bid evaluation available before a contract is signed with the selected supplier in order to be able to react in time to potential irregularities in the tendering procedure, for example by alerting oversight bodies that can stop a contract from being concluded. If errors in the evaluation are discovered after a contract is made with the supplier, it is much more difficult to invalidate the contractual relationship. External actors of public oversight should have the same opportunity to react to the potential irregularity of the choice as the affected bidders have according to the current APP (a 15-day deadline for submitting objections to the decision of the contracting authority).

**Relevant information to be disclosed:**
- identification of invited candidates (number, name, company ID)
- number of offers received (or requests for participation)
- report on assessment and evaluation of offers (list of offers assessed, list of offers disqualified along with the reason, description of method of evaluating remaining offers with rationale, result of evaluation of offers, description of evaluation of offers in all evaluation criteria and data on make-up of evaluation committee – Section 80 of the APP)
- best evaluated offer (name of company, company ID, price)

**Deadline for disclosure:**
- immediately following the conclusion of evaluation, or at the moment when the contracting authority announces the selection of the best offer to the affected candidates and allows them their 15-day limit for submitting objections to the decision

**Relation to European law:**
- nothing inhibits the proposed scope of being information from being published

**Phase 4: Realisation of project**

This phase begins with a contract being concluded with the selected supplier and ends when implementation of the contract is completed.

**Information needs:**
- **Information about the selected supplier:**
The selected supplier need not always be the same as the offer with the best evaluation. For this reason it is necessary to publish information about the supplier actually selected and thus allow easy comparison and identification of potential problems in the phase of supplier selection, e.g. that the winning candidate did not sufficiently cooperate in concluding a contract or the contracting authority had a different opinion in the ranking of offers than the evaluating committee.
- **information about the proportion of subcontractors:**
Contracts are often not realised solely by the selected supplier, but also by a number of other subcontractors who were not part of the offer evaluation. Information on the proportion of subcontracts is thus very important for monitoring implementation of the contract. This can help, for example, identify the unfortunate practice where the selected supplier is actually only an intermediary and plays a minimal role in the overall job of realising the contract.
- **information on the contract concluded:**
Access to complete information on the contract conditions guarantees the possibility of effectively monitoring the fulfilment of the obligations of both contracting parties during implementation of the subject of the contract. This information is also important for evaluating the course of the bidding process, as it is possible to check whether the parameters of the contract correspond to the parameters laid out in the tendering documents.
- **information on changes to the contract conditions:**
Complete information on any amendments to the contract allows oversight of whether these amendments are proper, i.e. whether objectively previously unknown circumstances warranting amendments to the contract took place or whether they are the fault of poor quality tendering documentation. Publication of information about amendments to the contract lowers the risk of amendments being concluded groundlessly.

Timeline:
This array of information should be freely available publicly immediately following the signing of the contract or associated amendments in order that all interested parties have current information on the contractual conditions and changes thereof at their disposal.

Relevant information to be disclosed:
- selected supplier (name of company, company ID, price in contract)
- contract with supplier
- existence of amendments to contract (yes/no)
- amendments to contract concluded in connection with implementation of the contract
- current price of contract (in connection with amendments about the contract price)
- information about the extent of work carried out by subcontractors

Deadline for disclosure:
- immediately after the contract or contract amendment is signed with the supplier; update the current price of the contract immediately on the basis of amendments.

Relation to European law:
- according to the prescribed form the contracting authority is obliged to make the selected supplier public.
- other demands for information are not addressed by European law.

Phase 5: Completion of implementation and handover of contract subject
This is the final phase of the whole process, where the subject of the public contract is put into use, all contractual obligations are settled and the contracting authority should carry out an evaluation or audit of the whole contract.

Information needs:
- information on the final price of the contract:
The final price is an important piece of information for external evaluation of the success of the contract. It can be an important indicator of failure by the contracting authority (supplier) or a sign of undesirable manipulations over the course of the bidding or implementation process.
- information on the level of adherence to the original contract parameters:
Aside from the final price, the parameters of the contract can also contain other criteria for realisation of the public contract, for example the level of quality, delivery deadlines, functions, deadlines for removing flaws, etc.

Information on the final price and final parameters of the subject of the contract can testify to:
- the poor preparation of the public contract: underestimation (overestimation) of the costs, improperly configured competition conditions where the best offer was not selected
- poor control of the public contract: mistakes were not detected in time and rectification was not extracted
- poor quality of supplier work: supplier was not capable of fulfilling contractual obligations, e.g. they provided lower quality, did not meet deadlines for delivery or removal of defects
- deliberate manipulation of tender or contract conditions, for example where the contracting authority arranges for a lower price with the supplier ahead of time and subsequently
compensates for it with extra work and a higher final price

Publishing of this information has a preventative effect on both contracting authority and supplier, getting them to observe the original parameters of the contract based on the competition.

**Relevant information to be disclosed:**
- final price of contract
- document evaluating supplier's work: quantitative expression of deviation (+/-/0) of final value of competition criteria from values in supplier’s original offer. For qualitative criteria a verbal evaluation will be made.

**Deadline for disclosure:**
- immediately following the completion of deliveries and services or putting the work into use

**Relation to European law:**
- form contains obligatory entry for “final price of contract”. This information does not however mean the final price of the contract after realisation, but the winning bid.
- other demands for information are not addressed by European law.

4.4 Limits for small-scale public contracts (SSPC)

Setting up an information standard and transparency for the public procurement system in the Czech Republic is closely tied to dealing with the key problem of high limits of the expected value for small-scale public contracts.

**Figure 1**

**Limits for small scale public contracts in selected countries of EU**

<table>
<thead>
<tr>
<th>Country</th>
<th>Construction</th>
<th>Goods &amp; Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>CR</td>
<td>80 192</td>
<td>240 577</td>
</tr>
<tr>
<td>CR (amendment)</td>
<td>40 800</td>
<td>120 000</td>
</tr>
<tr>
<td>Slovenia</td>
<td>10 000</td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>10 000</td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>13 888</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td>5 888</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>4 888</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>66 792</td>
<td></td>
</tr>
</tbody>
</table>

0 50 000 100 000 150 000 200 000 250 000 300 000

Note: source TI ČR 2009 Data are for the year 2008, with the exception of Slovakia (2011). Data for C.R. (amended) contain the newly proposed limits from the amendment to the APP through 31 December 2013 (situation as of May 2011).

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The graph records the limits for public contracts according to their expected value for which the national legislation does not prescribe a specific method of procurement. In the Czech Republic these limits are some of the highest in the EU, meaning that a large number of contracts on the Czech public procurement market are without any specific regulation, which has a negative impact on their transparency (see graph 2).

**Figure 2**

<table>
<thead>
<tr>
<th>Year</th>
<th>Proportion of contracts published in ISVZ (% of total value of public contract market)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td><img src="image" alt="Proportion of contracts published in ISVZ" /></td>
</tr>
<tr>
<td>2007</td>
<td><img src="image" alt="Proportion of contracts published in ISVZ" /></td>
</tr>
<tr>
<td>2008</td>
<td><img src="image" alt="Proportion of contracts published in ISVZ" /></td>
</tr>
</tbody>
</table>

Source: Comparative statistics of the Regional Development Ministry (MMR)

The values show that roughly half of all contracts in the Czech Republic are made out outside the information system, meaning without the possibility for systematic monitoring of the declared contract. The majority of contracts in this group are SSPCs due to the high financial limits, while the rest are other exemptions from the APP according to Section 18.

In 2010 the proportion of SSPCs fell to 34.9\%, with the proportion of exemptions totalled 9.3\% of the total volume of CZK 567 billion including VAT.\(^{19}\)

**Impact of amendment to APP**

The presented amendment to the APP proposes reducing the current limits for small-scale contracts from the original CZK 2 million for goods and services and 6 million for construction work to CZK 1 million for goods and services and CZK 3 million for construction work, effective through 31 December 2013. After that date a single boundary of CZK 1 million for all types of contract is proposed.\(^{20}\)

Reduction of the limits would cause a greater proportion of contracts to be subject to the current and newly implemented information obligations for contracting authorities and would correct the current regrettable practice where a large portion of the public contract market is completely without public oversight. Through this proposal a greater proportion of SSPCs would come under public supervision and the issuing of such contracts would be regulated by the APP, including the possibility to apply corrective measures, oversight and sanctions if the tendering principles are violated.

Nonetheless it is clear from a comparison with foreign models of treating minimum limits for small-scale public contracts (see graph 1) that the newly proposed financial limits still have certain reserves. We can, for example, draw inspiration from Slovakia, which has a very closely related and comparable public procurement system. As of February 2011\(^{21}\) a new limit was introduced there for

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\(^{20}\) Section 12 of the proposed government act amending Act No 137/2006 Coll., on Public Procurement, as amended (Parliamentary Print No 370).

"below-threshold" contracts, which must be published in the Vestník veřejného obstarávání (an analogue to the Czech ISVZ). These are contracts with an expected value exceeding EUR 10 000 for goods and services and EUR 20 000 for construction work.22 The main argument against reducing the limits is usually the increase in administrative and economic burden to organise tendering procedures for smaller public contracts where the costs for a selection procedure would be greater than the savings arising from competition among a greater number of suppliers. This argument is not necessarily applicable for the function of transparency however. This need also not be true if lawmakers came up with an alternative solution for a special simplified form of tendering procedure for the lower limit of contracts that would be simpler in terms of administration than the existing types of procedure.

Setting limits for SSPCs
In setting up the desirable limits for SSPCs, we can arise from the recommendations of the National Economic Council (NERV).23 NERV proposes reducing the current limits for SSPCs (CZK 2 million for goods and services, CZK 6 million for construction work) to a single boundary of CZK 1 million. It also recommends creating a special type of contract with a value between CZK 300 000 and 1 million that would use a simplified type of tendering procedure in order not to excessively increase the administrative burden for issuing smaller contracts. The results of these contracts would however be obligatorily published. This measure would significantly increase the transparency of the Czech market and bring our public procurement system more in line with the standard practice of other EU states. The measure would however require substantial increases in the capacities of the oversight body – the Office for the Protection of Competition (ÚOHS).

<table>
<thead>
<tr>
<th>Transparency of public contracts by expected value:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• all public contracts issued according to the Act on Public Procurement should fulfil the information standard defined above</td>
</tr>
<tr>
<td>• for contracts under these limits, there would be an obligation to publish the contract and any contractual amendments</td>
</tr>
</tbody>
</table>

22 According to Section 99 (2) of Act No 25/2006 Coll., on Public Procurement.
## 5. Analysis of impact of APP amendment on transparency of public procurement system

<table>
<thead>
<tr>
<th>Phase of process</th>
<th>Type of relevant information</th>
<th>the APP</th>
<th>the amendment of the APP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>obligation</td>
<td>deadline for disclosure</td>
</tr>
<tr>
<td>1. needs assessment phase</td>
<td>Specification of the future contract (brief description of the subject matter)</td>
<td>voluntary</td>
<td>max. 12 months, min. 52 days before the contract notice</td>
</tr>
<tr>
<td></td>
<td>Estimated date of the notification</td>
<td>voluntary</td>
<td>yes</td>
</tr>
<tr>
<td>2. preparation of selection procedure</td>
<td>Basic information on contract: evidence number; date of notice; identification of contracting authority</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td></td>
<td>Description of contract: title, type of contract, estimated value, type of procedure</td>
<td>yes</td>
<td>within 12 days after the contract notification</td>
</tr>
<tr>
<td></td>
<td>Conditions for participations</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td></td>
<td>Award criteria</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td></td>
<td>Competition deadlines</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td></td>
<td>Tender documentation</td>
<td>voluntary</td>
<td>yes</td>
</tr>
<tr>
<td>3. contractor selection/award phase</td>
<td>List of invited participants (number, names, ID)</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td></td>
<td>Number of offers received</td>
<td>yes</td>
<td>within max. 48 days after the contract</td>
</tr>
<tr>
<td></td>
<td>Report on Assessment and Evaluation of Tenders</td>
<td>no</td>
<td>partly</td>
</tr>
<tr>
<td></td>
<td>The best evaluated offer</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td>4. contract implementation phase</td>
<td>Information on supplier (Name, ID, price)</td>
<td>yes</td>
<td>within max. 48 days after the contract</td>
</tr>
<tr>
<td></td>
<td>Proportion of subcontract</td>
<td>voluntary</td>
<td>yes</td>
</tr>
<tr>
<td></td>
<td>Contract information (full written contract)</td>
<td>no</td>
<td>yes</td>
</tr>
<tr>
<td></td>
<td>Information on changes in contractual conditions (full contract amendment)</td>
<td>no</td>
<td>yes</td>
</tr>
<tr>
<td>5. Final accounting and audit</td>
<td>Final contract price</td>
<td>no</td>
<td>yes</td>
</tr>
<tr>
<td></td>
<td>Final evaluation of the contract implementation</td>
<td>no</td>
<td>no</td>
</tr>
</tbody>
</table>

**Notes:**
* Specification of future public contract (brief description of subject) – in practice this corresponds to the use of the prior information notice of Sections 86-88 of the APP
* This is information published in ISVZUS (according to the APP amendment the “Public Contract Journal – publishing subsystem”) or on the contracting entity’s profile.
* According to the APP amendment the following information will be on the contracting authority’s profile:
  - economic reasoning for the public contract
  - the contract with the supplier and any amendments
  - the final price for fulfillment
  - notice of initiation of a simplified below-threshold procedure
The table is based on an evaluation of the content of the information system about public contracts in the Czech Republic – ISVZUS and the profiles of contracting authorities, which contracting authorities are obliged to edit with information about public contracts according to the provisions of the APP and European Commission regulation.

From comparing the scope of required information (see Appendix) in the current APP and in the proposed amendment to the APP it is clear that the amendment would, if approved and put into force, give a considerable boost to transparency of public contracts:

1) The deadlines for publishing information will be significantly shortened, particularly in the case of information about the selection of a supplier from 48 days to 15 days from the conclusion or change to a contract. This will better satisfy the demand for access to information in real time.

2) The information that must be published will be expanded considerably to include (i) information on planned public contracts (obligatory prior information notice of above-threshold and below-threshold public contracts), (ii) information about the details of the procurement procedure (text section of the tendering documentation) and (iii) information about the implementation of the contract (the wording of the contract and any amendments; the final price for realising the contract).

3) Contracts on the fulfilment of small-scale public contracts with a value of over CZK 500 000 will also be published on the contracting authority’s profile.

4) The contracting authority will be obliged to publish the economic reasoning for the public contract on its profile (reasoning for the subject of the contract and technical qualification prerequisites) within 3 working days of the official notice being published.

All changes contained in the amendment to the APP significantly contribute to increasing the transparency of the public procurement process.

On the other hand, some problems in the transparency of the public procurement system are only partially addressed by the amendment:

- **From the spatial point of view of the information standard, central access to all important information has not been satisfactorily addressed, particularly in terms of the launch of the bidding process.** This refers to the notice of contracts in the simplified below-threshold regime, which will be published on the contracting authority’s profile in a decentralised manner. This will make effective searching out of business opportunities difficult for suppliers and for overall monitoring of the public contract market.

- There will still be no **Report on Assessment and Evaluation of Offers** freely and publicly available, which is a key document for oversight of the supplier selection process. Compared to the current situation the amendment partially opens up the process for evaluation of submitted offers by requiring the contracting party to publish a written report on every public contract according to Section 85 of the APP. This report does not however contain information on the method of evaluating offers. An alternative would be to distribute a document on the Report on Assessment and Evaluation of Offers put together according to Section 80 of the APP.

- **The relationship between the APP and Act No 106/1999 Coll., on Free Access to Information, has not been satisfactorily addressed.** The APP amendment disproportionately interferes with the rights of citizens to free access to information by once and for all forbidding citizens the right to information on the content of applicant’s bids in Section 146c (a) of the APP without even assessing the legally protected information in concrete cases.\(^{24}\) Here we have in mind in particular sensitive information important for public oversight: (i) on the list of statutory bodies and their members and (ii) on the current list of owners for joint-stock companies for which their nominal value exceeds 10 % of their base capital.\(^{25}\)

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\(^{24}\) This is likely predominantly due to the protection of trade secrets.

\(^{25}\) Section 68 (3) of the amendment to the APP.
6. Shortcomings of ISVZUS

This refers to a number of shortcomings that are not directly connected to the legal treatment of public contracts but which influence the actual transparency of the system and can influence the possibilities for public control. They can thus cause barriers for effective monitoring and public oversight over the awarding of contracts.

In and of itself, the information content of the system cannot guarantee the actual transparency of public contracts. It depends on the way in which information is edited and published, what user functions the system offers, i.e. especially the sorting of information, search parameters, statistical indicators, etc. For a complete analysis of transparency it is thus fitting to briefly analyse the information system from a user’s perspective as well.

6.1. Searching for information

Information in the ISVZUS is clearly sorted into information for contracting authorities and information for suppliers. The most useful links for the public and suppliers are the contract calendar, the winning suppliers, the profiles of contracting authorities, etc. When searching in the contract archive it is very useful to sort them by various versions of the Act on Public Procurement (2006, 2004, 1994). The basic identifier for contracts is always its serial number, which is practical for searching out all information about a specific contract. For searching out a certain group of contracts it is useful to sort between declared and awarded contracts – i.e. by the type of forms used, also by the type of procedure, the subject of the contract, by the contracting authority or supplier, the price limit of the contract, etc. The various ways of sorting also correspond to a wide range of search options. The search form contains both basic and advanced options, where various filters can be combined so the user can find the most precise array of contracts. From a user’s perspective, the sorting and searching of information is of high quality.

6.2 Differing terminology

The informative value of the system is reduced by the unclear use of terminology and the complicated system of individual forms.

The first hindrance is the use of different terminology in the information system than that established in the APP, as can be seen in Tables 1 and 2.

<table>
<thead>
<tr>
<th>Table 1: Differing terminology for types of tendering procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ISVZ publishing subsystem</strong></td>
</tr>
<tr>
<td>open</td>
</tr>
<tr>
<td>restricted</td>
</tr>
<tr>
<td>accelerated restricted</td>
</tr>
<tr>
<td>competitive dialogue</td>
</tr>
<tr>
<td>negotiated with call for participation in competition</td>
</tr>
<tr>
<td>accelerated negotiated</td>
</tr>
<tr>
<td>negotiated without call for participation in competition</td>
</tr>
</tbody>
</table>
"negotiated with call for participation in competition" and in item VI.2) "Other information" of the form Notice of Contract the information is given: "this refers to a simplified below-threshold procedure"

issuing of contract without prior publication of notification of contract in Official Journal of the European Union (in cases listed under points k) and l) in Annex D)

simplified below-threshold procedure (Section 38)

these are services under Annex 2 of Act No 137/2006 Coll. (List of services not subject to publication in the Official Journal of the European Union) or the contract does not fall under the jurisdiction of Directive 2004/18/EC

There are even greater differences in the use of individual forms to publish information. The information system offers a total of 16 types of forms to choose from; the 12 listed below directly relate to public procurement operations.

**Table 2: Differing terminology for forms in ISVZ and operations according to the APP**

<table>
<thead>
<tr>
<th>form on ISVZUS</th>
<th>operation according to APP</th>
<th>contracting authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>notice of preliminary information</td>
<td>prior information notice (Title 3, Chapter I)</td>
<td>public</td>
</tr>
<tr>
<td>contract notice</td>
<td>contract notice for publication (§ 26, 1 a)</td>
<td>public</td>
</tr>
<tr>
<td>notice on awarding of contract</td>
<td>contract award notice (§ 83)</td>
<td>public</td>
</tr>
<tr>
<td>periodic indicative notice – public services</td>
<td>periodic indicative notice published by sector contracting entity (§ 87)</td>
<td>sector</td>
</tr>
<tr>
<td>contract notice – public services</td>
<td>contract notice for publication (§ 26, 1 a)</td>
<td>sector</td>
</tr>
<tr>
<td>notice on profile of buyer</td>
<td>prior information notice published on the contracting entity profile (§ 86)</td>
<td>public and sector</td>
</tr>
<tr>
<td>simplified contract notice as part of dynamic purchase system</td>
<td>simplified contract notice (§ 95)</td>
<td>public and sector</td>
</tr>
<tr>
<td>notice of public competition for a specific performance</td>
<td>design contest notice (§ 104)</td>
<td>public and sector</td>
</tr>
<tr>
<td>results of public competition for specific performance</td>
<td>results of design contest (§ 107, (3))</td>
<td>public and sector</td>
</tr>
<tr>
<td>notification of voluntary ex ante transparency</td>
<td>possibility of publishing a notice expressing its intention to conclude a contract (§ 86, (4); § 146 (2))</td>
<td>public</td>
</tr>
<tr>
<td>group of notices on awarding of contracts on the basis of framework agreement</td>
<td>sending of grouped notices (§ 83 (2))</td>
<td>public and sector</td>
</tr>
</tbody>
</table>

It is apparent from the given differences that full-fledged use of the system requires a good understanding of the APP as well as of the templates for the individual forms and the methodological
instructions for filling them out. Without such knowledge it is practically impossible to find one's bearings in the information system. The differing terminology can therefore be a barrier to more effective public oversight.

6.3 Absence of cohesion between forms

A great barrier to the transparency of public contracts is the lack of linking between certain forms in the information system. Due to this it is not possible to work with all the relevant information about a contract even though the information is contained in the system.

First and foremost this refers to the lack of any link between the originally issued contract and contracts issued for subsequent goods, services or construction work in the form of a negotiated procedure without publication (according to Section 23 of the APP). It is not always possible to determine from the information system with certainty whether the fulfilment of the original contract was expanded in some way. While one can search by, for example, the name of the contract, contracting authority, contract winner, etc., it is not one hundred percent guaranteed that the subsequent contracts will be found. It depends for example on the number of contracts for a given authority, i.e. whether the user can only find the proper contract for extra work among a large number of procedures without publication. It also often depends on whether the names correspond between the original and subsequent contract.

Second of all there is often a lack of any link between the forms "notice of contract" (launch of tendering procedure) and "notice on awarding of contract" (result of tender). The absence of a link between information about the launching of a procedure and the result represents a serious problem for effective oversight, as there is no possibility for retroactive control and monitoring of whether the original qualification prerequisites and competition deadlines are observed or whether it is not possible to find the result of a procedure to match the original launch. At the same time, the system counts on forms being connected and at the end of a form the contracting authority can list related forms for the launch or result of a procedure in the section "other related forms".

| Table 3: Lack of links between forms between issuing of contract and notice of contract |
|-----------------------------------------------|-----------------|------------------|
| type of procedure                            | number of contracts | missing notices  |
| open                                         | 23,920           | 37.9%            |
| restricted                                    | 1,715            | 55.9%            |
| accelerated restricted                        | 86               | 77.9%            |
| negotiated with publication                   | 13,855           | 98.1%            |
| accelerated negotiated                        | 22               | 77.9%            |
| competitive dialogue                          | 26               | 19.2%            |

Note:
*Negotiated procedures with publication contains a total of 62.6 % of notices on the result of a simplified below-threshold procedure.

According to Section 26 of the APP, the contracting authority initiates the award procedure by sending out a notice on the launch of the tendering procedure (notice of contract form) to the ISVZ in the case of an open procedure, restricted procedure, negotiated procedure with publication or a competitive dialogue.

In the remaining cases – negotiated procedure without publication, simplified below-threshold procedure and an invitation to submit tenders in a procedure based on a framework agreement – procedures are initiated on the day a written call is sent to the parties interested in the contract without publication on ISVZ.
The data in Table 3 show that there is a noticeable lack of connection for procedures where the contracting authority is obliged to announce their initiation on the ISVZ according to the APP. Specifically, the absence of links between notices is significant for open (37.9 %) and restricted procedures (55.9 %) and can only be explained by the lack of discipline of contracting bodies when inputting data into the ISVZ.

It is surprising that there is an almost complete absence of contract notices for negotiated procedures with publication. This discrepancy can be explained by the fact that notices on the result of a simplified below-threshold procedure are recorded in the system as results of negotiated procedures with publication. Simplified below-threshold procedures, the notification of which is predominantly published on the contracting authority's profile, make up 62.6 % of all reported results. The remainder of the missing notices on initiation of a negotiated procedure with publication (about 35 %) could be caused in part by lack of discipline on the part of contracting authorities or by using the provisions of the APP stating that a contracting authority need not publish a notice on initiation of a procedure in the ISVZ.\(^\text{26}\)

The detected shortcomings do not mean that contract notices are not published in the system as prescribed by the law to such a great extent, but that they are not listed in connection with the notification on the result of the contract, which considerably reduces the effectiveness of public oversight.

### 6.4 Publication of results of simplified below-threshold procedures

The publication of data on simplified below-threshold procedures is quite untransparent overall and lacks a central concept, as the following table shows.

**Table 4: Records of simplified below-threshold procedures (SBTP)**

<table>
<thead>
<tr>
<th>type of procedure</th>
<th>number of SBTPs</th>
<th>representation</th>
</tr>
</thead>
<tbody>
<tr>
<td>negotiated without publication</td>
<td>236</td>
<td>2.58%</td>
</tr>
<tr>
<td>negotiated with publication</td>
<td>8682</td>
<td>95.00%</td>
</tr>
<tr>
<td>open</td>
<td>186</td>
<td>2.40%</td>
</tr>
<tr>
<td>restricted</td>
<td>21</td>
<td>0.23%</td>
</tr>
<tr>
<td>awarded w/o prior publication</td>
<td>9</td>
<td>0.10%</td>
</tr>
<tr>
<td>accelerated restricted</td>
<td>4</td>
<td>0.04%</td>
</tr>
<tr>
<td>accelerated negotiated</td>
<td>1</td>
<td>0.01%</td>
</tr>
</tbody>
</table>

According to the guidance documents\(^\text{27}\), a notice of the results of an award procedure is to be published as the result of a negotiated procedure with publication. In 5 % of cases that was not done, which distorts the statistics on the awarding of public contracts. It also shows that there are errors in the information system, which reduces the predicative value of the system.

**In light of the high level of simplified below-threshold procedures in the group of negotiated procedures with publication and the errors in their publication, it would be useful to record simplified below-threshold procedures in ISVZUS as an independent group of tendering procedures. The needs for separate records for these procedures is likely to grow in light of the**

\(^{26}\) The contracting authority need not publish a notifice of a negotiated procedure with publication if the tendering conditions have not changed fundamentally and in the preceding tendering procedure the offers were submitted in a time limit that fulfilled the conditions of Section 69 (5) of the APP (tender in written form) or which fulfilled the conditions of Section 149 (if submitted by electronic means).

\(^{27}\) Section IV of the Guidance Documents and Validation Rules for Filling Out the Contract Award Notice Form.
planned lowering of the limits for small-scale contracts, with contracting authorities likely to use simplified procedures more frequently than at present.

6.5 Incompleteness of data published in ISVZ

The real transparency of the system is also undermined by the incompleteness of the data published in the information system. As Table 5 shows, in practice not all key information on the tendering procedure is necessarily available.

Table 5: Incompleteness of data published in ISVZUS (in %)

<table>
<thead>
<tr>
<th>year</th>
<th>contracting authority company ID</th>
<th>company ID of supplier</th>
<th>expected value</th>
<th>winning price</th>
<th>selected supplier</th>
<th>type of procedure</th>
<th>evaluation criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>0.11</td>
<td>2.77</td>
<td>18.78</td>
<td>2.14</td>
<td>0.07</td>
<td>0.83</td>
<td>2.10</td>
</tr>
<tr>
<td>2007</td>
<td>0.18</td>
<td>4.25</td>
<td>18.75</td>
<td>1.35</td>
<td>0.10</td>
<td>2.01</td>
<td>2.45</td>
</tr>
<tr>
<td>2008</td>
<td>0.35</td>
<td>4.75</td>
<td>19.77</td>
<td>1.25</td>
<td>0.10</td>
<td>1.64</td>
<td>3.13</td>
</tr>
<tr>
<td>2009</td>
<td>1.39</td>
<td>7.96</td>
<td>24.04</td>
<td>1.70</td>
<td>0.28</td>
<td>1.69</td>
<td>2.16</td>
</tr>
</tbody>
</table>

Note: The number 2.16 means that of all the contracts issued in 2009, evaluation criteria were missing in 2.16 % of cases.

The incompleteness of the data is most marked with the expected value of the contract, which in 2009 reached a level of 24 %. The APP lays down the obligation for the contracting authority to establish the expected value of the contract before the procedure is begun, whereas according to the form for notification of a contract the contracting authority is only to specify the value of the contract if it is known. In 2009 the number of cases where the company ID of the supplier was not given also increased – to approximately 8 % of contracts.

The error rate for data about the evaluation criteria is infrequent yet existent, with the information missing between 2 and 3 % of cases. The absence of evaluation criteria could be caused by an error on the part of the contracting authority or the entity could have taken advantage of the option of referring to the criteria in the tendering documentation. Although the incompleteness of the data is by no means drastic, the values show that it is constantly present, which points to the fact that in a certain minimum of cases the control mechanisms, i.e. validation rules, are failing.

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28 According to Section 13 (1) of the APP.
29 Section IV.2.1 of the Guidance Documents and Validation Rules for Filling Out the Contract Notice Form.
6.6 Voluntary publication of small-scale contracts in ISVZ

An analysis of the data in ISVZUS from the point of view of transparency revealed a positive trend in the voluntary publication of information about small-scale contracts in the information system.

**Figure 3**

SSPC for services and goods in ISVZUS (in %)

<table>
<thead>
<tr>
<th>Year</th>
<th>Below-threshold</th>
<th>Above-threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>9.14</td>
<td>0.28</td>
</tr>
<tr>
<td>2007</td>
<td>5.23</td>
<td>16.08</td>
</tr>
<tr>
<td>2008</td>
<td>16.64</td>
<td>9.39</td>
</tr>
<tr>
<td>2009</td>
<td>22.57</td>
<td>7.59</td>
</tr>
<tr>
<td>2010</td>
<td>23.19</td>
<td>11.6</td>
</tr>
</tbody>
</table>

**Figure 4**

SSPC for constructions in ISVZUS (in %)

<table>
<thead>
<tr>
<th>Year</th>
<th>Below-threshold</th>
<th>Above-threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>24.86</td>
<td>0.11</td>
</tr>
<tr>
<td>2007</td>
<td>13.85</td>
<td>9.25</td>
</tr>
<tr>
<td>2008</td>
<td>11.48</td>
<td>11.7</td>
</tr>
<tr>
<td>2009</td>
<td>11.6</td>
<td>0.16</td>
</tr>
<tr>
<td>2010</td>
<td>14.93</td>
<td>0.16</td>
</tr>
</tbody>
</table>

During the monitored period of 2006–2010 a positive rising trend can be seen in the declaration of contracts for goods and services with a value of up to CZK 2 million on ISVZUS. In 2010 the volume of such contracts reached approximately 35 % of all contracts for goods and services published in the information system.

For construction work contracts with an expected value of up to CZK 6 million the trend is opposite, although over the past two years it has slowly increased to the level of around 15 % of all construction work contracts published in the information system in 2010.

The differences between the trends for goods and service contracts and construction work contracts can be explained by the higher limits for small-scale contracts for construction work compared to the other types of contracts in connection with the stipulation of the expected value. Contracting authorities are likely more sure in setting the expected values of construction contracts and thanks to the higher limits of up to CZK 6 million they do not need to declare contracts close to the legal limits in the information system as often. For goods and service contracts on the other hand, the contracting authorities are likely not as capable of exactly calculating the expected value and due to the lower legal limits they declare these contracts in the information system to be safe.
Regardless of the contracting authorities' various motives it is clear that for a large proportion of public contracts the contracting authorities are willing to declare small-scale contracts in the information system, which to a certain extent moderates the fears of critics that reducing the limits for small-scale contracts would lead to an abnormal administrative burden for publishing information about contracts and other administrative obligations related to declaring tendering procedures through the information system.
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Academic articles and literature:


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