Procurement and its Rules in the Programming Period 2007–2013 under the Operational Program Education for Competitiveness in the Czech Republic

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Abstract: The paper is focused on procurement within the Operational Programme Education for Competitiveness (OPVK) during the programming period 2007 - 2013. The introductory part contains a brief description of the OP and its integration between regional policy objectives. The study deals with the procurement process in general and, afterwards, in the specific OP environment. It also describes the process of performing control of public contracts (ex-ante and ex-post) and their results, as well as an overview of the most common errors identified during the inspections with a brief analysis of their causes and proposing measures to eliminate them. Another part focuses on the issue of ineligible expenses caused by mistakes in public procurement. The final section provides a closer look at public procurement for the current programs in the period 2014 – 2020.

Key words: Procurement · European Social Fund · Public contracts · Ineligible expenses

JEL Classification: H27 · R58

1 Introduction

The issue of public procurement plays a significant role during the implementation of projects financed both from the EU and from the national sources, and is one of the possible risks threatening the smooth progress of their implementation. The main objective of this paper is to describe the process of procurement and control on the example of the Operational Programme Education for Competitiveness financed by the European Social Fund. The paper briefly analyses the legislative framework for procurement at national and EU level. Simultaneously, it describes in detail the process of checking procurement by the grant provider, and in relation to recipients of the subsidy or the Office for the Protection of Competition, as well as to the management of financial institutions. Based on the results of carried out checks, the authors describe the most common errors and their possible causes. At the same time, brief suggestions for their elimination are outlined. Another aim of this research is a comparison between a methodological framework for public procurement during the previous and current programming period, for example, operational program Education for Competitiveness and Operational Programme Research, Development and Education.

2 Objectives and Methodology

From the methodological point of view this research is based on three fundamental principles: description of the environment within the process of procurement in chosen EU member states, and at the same time on a detailed description of its follow-up process in the Czech Republic, especially on the part of the grantor – here the Ministry of Education of the Czech Republic. Furthermore, this research is based on the results obtained from the analysis of data collected on behalf of the grantor during the implementation of the Operational Programme Education for Competitiveness. The data about the compliance with legislation rules in all reliable projects of the chosen Operational Programme were collected on the basis of 626 ex-ante or 4,696 ex-post controls on procurement under the implemented projects. The reports about these controls were provided by the competent department of the Ministry of Education in spring 2016. On the basis of collected data and their evaluation in relation to the ineligibility of expenditure on the basis of the errors found in the control of public procurement the mostly done errors are described. Simultaneously, research is also focused on a comparison of procurement rules under the previous and current programming period.

3 Research results

The procurement process

The legislative framework is based on two levels of legislation, both at the European Union level (EU Procurement Directive) and at the national levels (Public Procurement Act and the Mandatory procurement procedures). Public contracts are awarded in accordance with both above mentioned documents. As part of the research, the Czech public
procurement was compared with the situation in the legislation on public procurement in the Slovak Republic, in Germany, and in Sweden. Based on this comparison we can say that Czech law is logically closest to the Slovak one. Our law regulates the rules for awarding contracts below the thresholds. On the other hand, an entirely different approach can be seen in the case of Sweden, where it is actually very easy to simply implement the EU directives on public procurement without additional legislation for contracts covered by this Directive. Another different approach to the implementation of EU directives on public procurement can be found in Germany, which does not create special rules for awarding contracts, but only for its integration into the existing Act against Restraints of Competition.

Furthermore, concerning the relationship between the risk of corruption in procurement and procurement funding source it was found that for contracts financed by the EU, the risk of corruption increases. Conclusions that are based mainly on the study "Are EU funds and corruption risk? The impact of EU funds on grand corruption in Central and Eastern Europe" by authors Fazekas, Chvalkovská, Skuhrovč, Tóth and King (2014). The study examined the impact of the European funds on the environment according to a higher risk of corruption in public procurement during the period 2009–2012 in the Czech Republic, Hungary and the Slovak Republic. The study results suggest that the provision of financial resources from the EU funds significantly increases the risk of corruption in selected countries. The same conclusion, i.e. that EU funds are a higher risk of corruption in public procurement, was confirmed by other studies, for example by Mariniello and Coviello (2013) or Fazekas and Tóth (2015).

Implementation of procurement procedures within the OP

One aim of this research was to describe the development of procurement environment; particularly the way of implementing mandatory procedures to control documents in the Operational Programme was checked. It was introduced on the basis of the development of the rules for public procurement within the particular versions of the Manual for Beneficiaries. Throughout the programming period has been granted a total of 8 versions of the Manual for Beneficiaries (7 versions in the period 2008-2012), while procurement rules went through major or minor changes. Clearly, for the particular recipient while implementing the multiple projects financed by the OP, these changes could cause some complications. It was necessary to take account of that version of the Handbook for the recipient which was valid for this or that project.

During this part of the research the legislative history of the Act on Public Contracts affecting significantly the process of contracts awarded under OP was described. There was also given a space to the question of applying the principles of 3E in public procurement, and concluded that they are often neglected. The Public Procurement Act explicitly formally mentions the 3E principle, because this law is aimed de facto only on process (formal) site procurement, see particularly § 6 of the Public Procurement Act. The contracting authority is obliged in proceeding under this Act to respect the principles transparency, equal treatment and non-discrimination, while it is the responsibility of the contracting authority to monitor the economic (content) side of the resources used by the contracting authority as establishes the Financial Control Act.

The process of checking public contracts within OP projects

During the implementation of the OP by the grant provider, a total of 626 ex-ante inspections of the terms were done, and a number of 4969 ex-post inspections of procurement, too. About 25% of all orders made within the OP was entered in one of the schemes provided for in the Public Procurement Act, esp. the open procedure, simplified sub-limit driving or entering a dynamic purchasing system or of the concluded framework agreements with several candidates. The remaining 75% of contracts were minor public contracts. The checks showed that almost half of the public procurement within the OP was wrong.

Based on data on conducted ex-post inspections the outputs of the checks were analysed, especially in relation to the importance of errors for different types of contracting authorities, such as high schools, middle schools and elementary schools. Based on the data obtained there can be traced obvious difference in the results of ex-post inspections among different types of schools. In the case of universities, the ineligibility of expenditure was observed in almost every tenth order, and in case of primary schools, it was in almost every fifth case.

The most common errors in public procurement within the OP

The most frequent errors were revealed in the context of the checks carried out on public contracts. Observed misconducts were categorized according to each stage of the procedure when they occurred.

The most common errors incurred prior to the commencement of tendering procedure were to categorize public contracts under the law or the Handbook according to the recipient limits. The other one was erroneous definition of the subject matter, e.g. using business names or using technical parameters favoring a particular company or manufacturer. Furthermore there was vaguely specified method of evaluation of tenders, the contracting authority evaluation criteria
and method of evaluation of tenders was not described sufficiently clearly and comprehensively to make the assessment process transparent. It was also not clear how the points will be allocated based on each individual criterium.

The most frequent errors arising during the procurement procedure were mainly errors in the process of assessing the bids from the perspective of non-compliance with the principles of equal treatment, and further errors in the process of evaluating the bids from the viewpoint of non-compliance with the principle of transparency, which is insufficient way of evaluating the tenders within the individual evaluation criteria.

Finally, the most frequent mistakes arose after the procurement procedure. In particular, the failure was in the publishing obligations of the contracting authority after the finishing of the tender procedure. After concluding the contract, this allowed substantial changes to the terms of the contract, and permitted failure to archiving of all relevant documents related to the procurement procedure.

We also described the circumstances of co-occurrence of these errors on the part of the recipient and the provider of the subsidy, which was followed by a brief proposal of appropriate measures for the possible reduction of errors in procurement, again, both by the provider and the subsidies payee. Grant recipient should place great emphasis on compliance with all the rules relating to public procurement, at the same time should not neglect the increasing competencies of its employees responsible for public procurement, also continuously monitor the decision-making practice of the authorities concerned with the public procurement. Finally, it is recommended to use specialized companies and specialists in the area of public procurement, especially for beneficiaries with limited experience with administration of procurement procedures.

On the provider side the priority should be to simplify mandatory procedures for the procurement of small scale. Within the OP the terms for contracts between the estimated value 200 000 - 2 000 000 CZK excl. VAT are not much different from the below-threshold simplified procedure (regime under the Public Procurement Act). Another important activity related to the subsidy should be the mandatory introduction of ex-ante control of the terms and conditions for all public contracts and the associated truly consistent check of the specifications before commencing a procurement procedure to detect possible errors. The must is also an ongoing publishing activity of methodological materials focusing on public procurement or mediation through methodological meetings with representatives of the beneficiaries in order to become familiar with rules for public procurement, to exchange practical experience, and to learn the most common errors detected during the checks. Another part of this research was devoted to the issue of ineligible expenditure and process irregularities of the OP. It included information on the rate of ineligible expenditure because of irregularities in public procurement which showed that ineligible expenses in public procurement formed the largest part of the total amount of ineligible expenditures (about 40%).

4 Conclusions - Procurement in the programming period 2014 – 2020

The final part of the analysis was devoted to the "new" law on public procurement and also to the rules for public procurement in the current programming period 2014–2020, in particular rules within the OP Science, Research and Innovations and their comparison with the previous programming period. It was found that in the current programming period, there were several positive steps, notably concerning the simplification of the procurement process. The unification of rules for the procurement of small scale across all operational programs was based on the concept of a uniform methodical environment.

Finally, we can say that even though the data only from OP projects where the grant provider was directly Ministry of Education through the Department of CERA were processed, we can outline conclusions that apply to the issue of procurement under the Structural Funds as such.

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References


