



## Promoting Social Considerations into Public Procurement Procedures for Social Economy Enterprises

Matrix explaining how social considerations have been embedded in the Czech law transposing Directive 24/2014/EU

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**Article 18.2 of the Directive ► Article 89 par. 4 of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)**

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 18-2 is not especially transposed into national legislation. The PPA for instance does not even particularly mention ILO Conventions refer to in Annex X. of the Procurement Directive. The only provision foreseen is article 89 that does not fully reflect Directive 24/2014/EU.</p> <p><b>Art. 89</b></p> <p>(4) In the case of a public service contract or a public works contract, the contracting authority may indicate, in the procurement documents, the administrative body or other entity from which economic operators may obtain information on duties that follow from legal regulations governing the protection of employees and working conditions, environmental protection, taxes, fees or other similar pecuniary performances that are applicable at the place where the services or works are to be provided and that are related to these services or works; the economic operator shall take such information into account when drafting its tender and shall state this fact in the tender.</p>	<p>Vide also: Exclusion grounds according to Art. 56 and 57 of the Procurement Directive Government Resolution No. 531/2017 that recommends the procurers to focus on environmental, social and ethical aspects of the procurement. It is not legally binding and there are no figures foreseen. Neither is there a reporting or monitoring system.</p> <p>SDG No. 12.7 in the Czech Republic 2030 Strategic document</p>	<p>The Article allows the procurers to make a reference to the respective public authority, which may clarify the conditions or public duties (incl. environmental protection, employment issues, labour conditions) for the bidders.</p> <p>This type of cooperation might help to mitigate the risks of breach of the duties stipulated by the legislation and might be of use especially in case of innovative approach (or new sustainability requirement) or might be helpful especially for bidders from abroad.</p>	<p>Laws covering labour and social issues:</p> <p>309/2006 Coll. (on health and safety)</p> <p>262/2006 Coll. (labour code)</p> <p>435/2004 Coll. (on employment)</p> <p>Laws covering environmental issues:</p> <ul style="list-style-type: none"> <li>▪ 254/2001 Coll. (on waters)</li> <li>▪ 201/2012 Coll. (on air quality protection)</li> <li>▪ 185/2001 Coll. (on wastes)</li> <li>▪ 334/1992 Coll. (on soil protection)</li> </ul>
<p><b>Open questions</b></p>	<p>The Czech legislation does not fully reflect on Procurement Directive in this respect. The duty of the bidder to comply with environmental and social conditions are mainly covered by special legislation and has very little to do with tender procedures (except for cases described in matrices for Art. 56, 57, 69 of the Procurement Directive).</p> <p>Lack of proper regulation in this field might result in lack of interest of the procurers in the actual conditions in their supply chain/ Since there are no special measures how to guarantee the compliance with all necessary provisions and duties, the Procurers have to make use of the instruments in hand (such as Conditions according to Art. 70 of the Procurement Directive)</p>		
<p><b>Example of application from the national level (where applicable)</b></p>	<p>Prague 2 Borough used <u>similar</u> (to Art. 89 of PPA) approach within contract management of a contract already awarded. Together with its bidder/contracting partner they contacted Prison Service and achieved involvement of several convicts into work on public contract (maintenance of public areas).</p>		

Děčín City cooperated with local Employment Office and Trade Organisation.

Most City and Kadaň Town cooperated with Government Agency for Social Inclusion and created their strategies that involved using public procurement as a tool to help disadvantaged people to get to work. This, however speaks more about strategic approach.

Lesy ČR (national forestry trust) – used special conditions for fulfillment of the contract in their effort to monitor the workers and their safety and working conditions in the forests.

Generally it shows up, that in case, the Procurer faces severe risks in their future tender or contract, they are much more willing to try to find solutions to the actual problem in cooperation with respective national authorities.

**Article 20 of the Directive ► Article 38 of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)**

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>(1) If so stipulated by the contracting authority in the contract notice or in the invitation to tender in a simplified below-threshold procedure, only an economic operator operating a sheltered workshop where at least 50 % of its total number of employees are disabled workers under the employment law may participate in the procurement procedure.</p> <p>(2) The fact that the economic operator employs at least 50 % of disabled persons out of the total number of its employees in a sheltered workshop under Section 38 (1) shall be indicated in its tender along with a certificate from the Employment Office of the Czech Republic; the average adjusted number of employees for the calendar quarter preceding the commencement of the procurement procedure shall be conclusive.</p> <p>(3) The fulfilment of conditions set out in Section 38 (1) may not be proven by other persons. In the event of joint participation in a procurement procedure each participant shall prove the fulfilment of the conditions set out in subsection (1) separately.</p>	<p>Also PPA (Atr. 37, par. 6)                      “The contracting authority may reserve the right to participate in procurement procedure to certain economic operators pursuant to Section 38.”</p>	<p>The article allows the tenderers to reserve the right to participate in procurement procedure to certain economic operators (employing people with health disabilities in at least 50 % of its staff). The reservation covers all types of contracts potentially (regardless of the subject matter or thresholds). The reservation covers the tender procedure only and does not apply to the fulfillment of the contract.</p>	<p>Act. No. 435/2004 Coll. (also EmplA), On employment, as amended (esp. Art. 78 and 81)</p>
<p><b>Open questions</b></p>	<p>The terminology of both laws (PPA and EmplA) differs and there are some practical issues has not been aligned yet. No legal contest so far though.</p> <p>The terminology does not serve European level neither in terminology and definitions, nor in limits (30 per cent on European level, 50 per cent on national level). No legal contest so far though.</p> <p>The Czech legislation does not reflect on paragraph 2 of the Article.</p> <p>There is no guarantee, that the contract will be carried out by the business in hand and that the effort of the procurer will lead to an actual social benefit.</p> <p>There have been several cases, that resulted in bad publicity on this instrument.</p> <p>Amendment of this article is being planned.</p>		
<p><b>Example of application from the national level (where applicable)</b></p>	<p>National procurement authority (<a href="http://www.compet.cz">www.compet.cz</a>) used this method in the tender for cleaning and maintenance services.</p> <p>Ministry of Labour and Social Affairs (<a href="http://www.mpsv.cz">www.mpsv.cz</a>) used this method together with art. 37 par. 1 PPA to guarantee, a real social benefit was accomplished (case study in English available on <a href="http://www.sovz.cz/en">www.sovz.cz/en</a>).</p>		

**Article 40 of the Directive ► Article 33 of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)**

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>The contracting authority may conduct market consultations with experts or economic operators with a view to preparing procurement documents and informing economic operators of its plans and requirements, provided that it does not distort competition; provisions of Section 211 (1) apply by analogy.</p>	<p>None</p>	<p>The article allows the tenderers to organize market consultation. It does not specify the process and only foresees the application of basic principles of PPA and publicity according to Art. 211 (PPA).</p>	<p>Commercial Code (its parts concerning the issues of business secret).</p>
<p><b>Open questions</b></p>	<p>Lack of definition and guidance leads to uncertainty. The procedure relies on the initiative of the procurers. There is some fear amongst procurers remaining concerning the transparency and equality principles. The bidders are slowly getting on board. Some of them are reluctant when it comes to join open communication with the procurer. No legal contests so far.</p>		
<p><b>Example of application from the national level (where applicable)</b></p>	<p>PMC have already been conducted i.a. by following institutions:                      Ministry of Agriculture and it's subordinate corporations                      Ministry of Labour and Social Affairs                      Masaryk University</p>		

**Article 42(1) of the Directive ► Article 89 par. 1 letter a) Article 93 of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)**

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p><b>Art. 93</b>  <b>Accessibility criteria</b>                      (1) Where the subject-matter of the public contract is intended for use by natural persons, the contracting authority shall take account of the accessibility of the subject-matter of the public contract to people with disabilities when setting the technical specifications, unless it is made impossible by objective circumstances.                      (2) Where binding requirements for accessibility to people with disabilities are governed by a regulation of the European Union, the contracting authority shall lay down the respective technical specifications by reference to such regulation.</p> <p><b>Art. 89 par. 1 letter a)</b>                      (1) Technical specifications mean requirements for the properties of the subject-matter of the public contract which the contracting authority shall define by                      a) setting parameters expressing performance or functional requirements and describing the purpose or needs that are to be fulfilled,                      b) reference to standards or technical documents, or                      c) reference to labels.</p> <p>There is also Art. 80 par. 1 which mentions admissibility in the context of technical qualification.</p>	<p><b>Government Decree No. 173/2016 Coll., on conditions for purchases of vehicles</b>                      This decree is legally binding and it sets basic criteria for purchases of vehicles.</p> <p>It is based on Directive of EP and Council 2009/33/ES</p>	<p>The Article 93 mentions issues of admissibility of the subject matter of the tender in technical specification section.                      The provision is actually almost exact copy of the Article of the Procurement Directive.                      The methods of setting the technical specifications is described at Art. 89.</p>	<p>183/2006 Coll. (Construction Order) and subordinate executive norms, standards and prescriptions</p> <p>198/2009 Coll. (anti-discrimination law)</p>
<b>Open questions</b>	Requirements covering the admissibility of premises and services by people with special needs are often set by general legislation (Building regulations for instance) without a need to be specifically described in PPA.		
<b>Example of application from the national level (where applicable)</b>	Admissibility requirements were used for instance for purchases of vehicles for public transportation. When procuring for constructions of new buildings or reconstructions the technical standards on admissibility have to be taken into account.		

**Article 43 of the Directive ► Art. 89 par. 1 letter a), Article 94 of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)**

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p><b>Art. 89</b>                      (1) Technical specifications mean requirements for the properties of the subject-matter of the public contract which the contracting authority shall define by                      a) setting parameters expressing performance or functional requirements and describing the purpose or needs that are to be fulfilled,                      b) reference to standards or technical documents, or                      c) reference to labels.</p> <p><b>§ 94</b>  <b>Labels</b>                      (1) If the contracting authority requires the supplies, services or works to have specific environmental or social characteristics, it may request, in the procurement documentation, the submission of a specific certificate attesting that the relevant works, services or supplies meet the required characteristics provided that                      a) the label requirements only concern criteria which are linked to the subject-matter of the contract,                      b) the labels are appropriate to define characteristics of the works, supplies or services that are covered by the subject-matter of the contract,                      c) the label requirements are based on objectively verifiable and non-discriminatory criteria,                      d) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate,                      e) the labels are accessible to all interested parties, and                      f) the label requirements are set by a person over which the economic operator applying for the label cannot exercise a decisive influence.                      (2) The contracting authority shall accept another appropriate label that confirms that the supplies, services or works meet equivalent label requirements.                      (3) Where an economic operator had demonstrably no possibility of obtaining and submitting the requested or equivalent label, the contracting authority shall accept other appropriate means of proof attesting that the supplies, services or works meet the label requirements or specific requirements specified in the procurement documents, such as a technical dossier from the manufacturer.</p>	<p><b>Government Decree No. 173/2016 Coll., on conditions for purchases of vehicles</b>                      This decree is legally binding and it sets basic criteria for purchases of vehicles.</p> <p>It is based on Directive of EP and Council 2009/33/ES</p> <p>Since 2000 there have been three Government Resolutions (720/2000, 654/2010 and 531/2017) recommending Procurers to buy eco-labelled products and services via procurement.</p>	<p>Art. 94 allows the tenderers to rely on labels when defining technical specifications for the tender.</p> <p>The conditions for the certification scheme are basically the same as the conditions described in Art. 43 par. 1 of the Procurement Directive. Only difference is in letter a) of the Directive which splits in letter a) and b) in the Czech version.</p> <p>The Procurer can use only certain criteria covered and not the whole label.</p> <p>The labels used usually cover food, wood and wood-based products, apparel.</p> <p>The Czech wording covers the version of the Procurement Directive.</p> <p>In practice: When it comes to services which do not tend to be labelled, there is a chance to require labels indirectly – cleaning services (prior GPP Criteria on cleaning services) with a demand to use eco-labelled cleaning products.</p>	<p>-</p>

<p>(4) The contracting authority may require that only some of the characteristics confirmed by the label are met.</p> <p>(5) Where the label also attests to characteristics that are not linked to the subject-matter of the public contract, the contracting authority shall not require the label but may request a proof of technical characteristics by reference to individual specifications of that label that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.</p>			
<p><b>Open questions</b></p>	<p>The development of using this tool is limited because of lack of knowledge among respective staff. It would really help them to have an easy assessment system to get information if the product or service in hand is available on the market (like: Kompass Nachhaltigkeit in Germany). Such a system helps procurers and also bidders. The first ones can test if there is a group of products or services meeting their requirements available, the other ones can easily find solutions for the demands of the public authorities.</p> <p>The market of certified products is not really well developed in the Czech Republic in certain areas which might constitute a barrier.</p> <p>There is also a question of comparability of individual labels/label schemes and assessment mechanism in case of a bid with goods with no label. If the bidder fails to submit labelled products or services (and submits those without label), the testing of the compliance of products or services with labelling schemes might represent a big barrier for fast and easy tendering which might discourage procurers from using it in the future.</p> <p>The market might be not prepared for the use of the criteria represented by labels. Therefore it occurs to be handy to engage with the market prior to the respective tender and possibly to even create a simple guideline for the bidders (as a part of the tender documents). Even a short information on greenwashing or other malpractices might be useful.</p> <p>Possible unwillingness of the market to meet labels when bidding in public tenders might be lowered down if the procurer starts with demanding only certain amount of labelled products and services. It is up to the bidder then, how to reach the lowest price even with delivering labelled goods in a certain amount.</p>		
<p><b>Example of application from the national level (where applicable)</b></p>	<p>Masaryk University Textile purchase (fair wear)</p> <p>MoLSA Textile purchase (fair wear or defined proof that Annex X of the Procurement Directive (ILO Conventions) has been met in the production)</p> <p>MoLSA Conference Catering (fair trade and “organic”)</p> <p>MoLSA Paper purchase (FSC paper certification)</p> <p>Třebíč Town (fair trade)</p> <p>South Moravian Region (fair trade)</p> <p>Prague 8 Borough (FSC wood certification)</p>		

**Article 46 of the Directive ► Article 35, Article 78, Article 101, Article 217 of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)**

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p><b>Art. 35</b> The contracting authority may divide a public contract into several lots, provided that it will not thus circumvent its duties laid down by this Act. Where the contracting authority awards several lots of a public contract within one procurement procedure, it shall determine the extent of these lots and set the rules for the participation of economic operators in the individual lots and for the awarding of these lots</p> <p><b>Art. 78</b> <b>Economic qualification criterion and its proof</b> (4) Where a public contract is divided into lots, the contracting authority shall set the requirement for economic qualification for each lot separately. The contracting authority may, however, set the economic qualification requirement by reference to groups of lots in the event that the selected economic operator is awarded several lots to be performed at the same time.</p> <p><b>Art. 101</b> <b>Division of public contracts into lots</b> (1) Where the contracting authority, in the procurement documents, subdivides a public contract into lots, it shall proceed separately for each lot when selecting the economic operator, unless otherwise provided below. (2) The contracting authority shall indicate, in the contract notice or in the invitation to submit requests to participate pursuant to Section 58 (5), whether the economic operator may submit tenders for one lot, for several lots or for all of the lots. (3) Where tenders may be submitted for several lots, the contracting authority may limit, in the contract notice or the invitation to submit requests to participate, the number of lots to be awarded to one participant. In that case, the contracting authority shall define the criteria for the selection of lots that may be awarded to the participant, to which would otherwise under the rules for evaluation be awarded several lots.</p>	<p>Government Resolution No. 531/2017 that recommends the procurers to focus on environmental, social and ethical aspects of the procurement. It is not legally binding and there are no figures foreseen. Neither is there a reporting or monitoring system.</p> <p>SDG No. 12.7 in the Czech Republic 2030 Strategic document</p>	<p>Art. 35 allows the tenderers to divide tenders into lots. Of course division of the purchase to individual contracts in order to lower the price virtually and to avoid stricter regime of the procedure, is prohibited.</p> <p>Art. 101 describes how the Procurer should proceed when dividing contracts into lots – including possibilities to limit the number of bids or tenders/lots awarded per capita.</p> <p>Art. 78 par. 4 covers economic qualification criteria for contracts divided. Such criteria should be examined for each lot individually. The same applies to the financial security.</p> <p>Article 217 prescribes the Procurer to reason why he has not divided the contract into lots in the final report (only).</p> <p>There is no obligatory division of contract prescribed in Czech legislation. However there are decisions of administration and of courts as well, which describe failure to split tenders into lots as discrimination practice.</p>	<p>Art. 138 to 142 PPA Dynamic Purchasing System</p>

<p>(4) Where several lots may be awarded to one participant, the contracting authority may set rules, in the contract notice or in the invitation to submit requests to participate, to determine which lots it reserves to be potentially awarded to one participant.</p> <p><b>Also Art. 217, par. 2, letter m) of PPA</b></p> <p>(1) The contracting authority shall draw up a written report with regard to each procurement procedure.</p> <p>(2) The written report shall contain at least [...]</p> <p>m) where the contracting authority does not divide an above-threshold public contract into lots, it shall indicate the justification of such procedure, unless it has already indicated it in the procurement documents, and [...]</p>			
<p><b>Open questions</b></p>	<p>In general, there is a culture of prejudice against dividing the tender (some procurers regard any kind of division in procurement for prohibited) in the Czech Republic.</p> <p>In Děčín City Case Study the city procured city waste management (regular collection of trash) and “sběrný dvůr” (on daily basis operated collection site for public) in separated tenders. In different cases both of these services are being tendered in one contract. The question of individual and independent nature of the subject matter of contract might constitute a complicated riddle for the procurer. It requires thorough knowledge of the market and available bidders.</p> <p>No current disputes regarding division of contracts into lots .</p>		
<p><b>Example of application from the national level (where applicable)</b></p>	<p>National procurement authority (<a href="http://www.compet.cz">www.compet.cz</a>) and courts in the Czech Republic repeatedly claimed, that failure to divide a contract into lots might constitute discrimination against small entrepreneurs and represents the breach of PPA and the basic principles of public procurement.</p> <p>Also dividing contracts in the course of time (in form of Dynamic Purchasing Systems) might help small businesses to get interested in deliveries.</p> <p>Forestry services for TS Havlíčkův Brod. In this very case one of the lots was awarded to SME which was also a social enterprise at the same time.</p>		

**Article 56 of the Directive ► Article 48 and Article 85 of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)**

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p>Article 48</p> <p><b>Exclusion of a participant from a procurement procedure</b></p> <p>(5) The contracting authority may exclude a participant from the procurement procedure on grounds of unsuitability provided that it demonstrates that</p> <p>a) the performance offered by the economic operator would result in a failure to comply with the duties set out in provisions of environmental, social and labour law or collective agreements relating to the subject-matter of the public contract.</p> <p>(8) The contracting authority shall exclude a selected economic operator from participation in the procurement procedure provided that the contracting authority finds out that there are grounds for exclusion pursuant to subsection (2) or that it may prove that there are grounds for exclusion pursuant to paragraphs a) b) c) of subsection (5).</p> <p>Also Art. 85 par. 2 and 3</p> <p><b>Requirement for proving subcontractor's qualification</b></p> <p>(2) Where a subcontractor fails to prove the fulfilment of the qualification criteria required by the contracting authority or where the contracting authority proves that there are grounds for unsuitability of a subcontractor pursuant to Section 48 (5), the contracting authority may request such a subcontractor to be replaced. In that case, the economic operator shall replace the subcontractor before the end of a reasonable time limit set by the contracting authority. The contracting authority may extend this time limit or excuse the economic operator's default.</p> <p>(3) Where the subcontractor has not been replaced pursuant to subsection (2) and the procurement procedure has not been terminated in the meantime, the contracting authority may exclude the participant from the procurement procedure.</p>		<p>Art. 48 entitles the Procurer to exclude a bidder (the best bid) from the tender on grounds of well-established suspect of breaching social or environmental duties. In case of a winning bidder the PPA gives the Procurer no choice but to exclude him from the tender.</p> <p>According to Art. 85 it does not only apply to the bidders themselves, but can affect their freedom of choice of a subcontractor – if there is a well-established doubt about the subcontractor complying with his social and environmental duties, the Procurer is entitled to seek replacement of the subcontractor in hand in the course of tender procedure and is even entitled to exclude the bidder from the tender if he fails to replace the subcontractor in hand.</p>	<p>Lots of applicable laws covering labour conditions, health and safety, air protection, water protection, waste management...</p> <p>Potentially: Private-law regulation of unfair competition in the Civil Code.</p>
<p><b>Open questions</b></p>	<p>The general regulation of bids assessment and tender award does has been described in several articles of the Czech PPA. It, however, does not contain any specific regulations of sustainability issues. The overall technical side of assessment and award does not seem to be relevant for SPP. When it comes to the basic evaluation, there is no difference or specific process (or regulation) regarding use of sustainability criteria.</p> <p>There is no specific procedure allowing the procurer “not to award” the tender to the best bidder on grounds of breaching Article 18(2) principles. The only way for a procurer not to make a contract with this kind of unreliable provider is to exclude them from the tender according to Art. 57 of the Directive (Art. 48 par. 5 of the Czech PPA irrespectively). Also – in the course of the tender procedure: if the breach of Ar. 18(2) principles applies to a subcontractor, the procurer may seek replacement or is even entitled to</p>		

	<p>exclude the main contractor for not performing required replacement.</p> <p>The possibility to exclude a bidder has to rely on strong evidence. It does seem to put a massive burden on procurers.</p> <p>This measure constitutes an emergency break for the cases of the most obvious breach of laws. If there was a better system of cooperation of public authorities to rely on (regarding sharing relevant data), there might be a better chance not to award the tender to a bidder, who gets advantage via avoiding some duties even in the less alarming cases (not just in the most alarming ones).</p> <p>A chance to exclude a bidder from the tender is rather theoretical and requires in-depth research on procurer's side. Although there is a chance to seek assistance of the competent authorities (employment office, labour inspection, etc.) it seems to be too much of an effort for the Procurer.</p>
<p><b>Example of application from the national level (where applicable)</b></p>	

**Article 57 of the Directive ► Article 48, Article 74, Article 75 par. 2, Article 76 of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)**

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p><b>Art. 48</b>  <b>Exclusion of a participant from a procurement procedure</b>                      2) The contracting authority may exclude a participant from a procurement procedure provided that the data, documents, samples or models submitted by the participant</p> <ul style="list-style-type: none"> <li>a) do not meet the award criteria or the participant has not submitted them within the prescribed time limit,</li> <li>b) have not been explained or supplemented by the participant upon request made pursuant to Section 46, or</li> <li>c) do not correspond to reality and have had or can have an influence on the assessment of the conditions for participation or on the fulfilment of the evaluation criteria.</li> </ul> <p><b>Art. 74</b>  <b>Basic qualification</b>                      (1) An economic operator shall not be qualified if it</p> <ul style="list-style-type: none"> <li>a) was convicted by final judgement in the country of its registered seat of a crime specified in Annex No. 3 to this Act or another similar crime pursuant to the law of the country of its registered office in the past five years preceding the commencement of the procurement procedure; expunged convictions are disregarded,</li> <li>b) has outstanding tax arrears registered in tax records in the Czech Republic or in the country of its registered office,</li> <li>c) has outstanding arrears in respect of payments and penalties of public health insurance in the Czech Republic or in the country of its registered office,</li> <li>d) has outstanding arrears in respect of payments and penalties of social security contributions and contribution to the national employment policy in the Czech Republic or in the country of its registered office,</li> <li>e) is in liquidation<sup>24</sup>), has been declared insolvent<sup>25</sup>), in respect of whom the receivership has been imposed under another legal regulation<sup>26</sup>) or it is in a similar situation pursuant to the law of the country of its registered office.</li> </ul> <p>Art. 75 par. 2</p> <p><b>Proof of basic qualification</b>                      (1) The economic operator shall prove that it fulfils the basic qualification requirements in relation to the Czech Republic by submitting</p>		<p>Art. 75 sets the minimum necessary qualification of the bidder. Payments of public charges/commissions (taxes, health insurance, social security) are integral part of this basic and no-negotiable qualification criteria. Compliance with this requirement is proved by acknowledgment issued by the respective public authorities) – it does not have to have a form of an administrative decision.</p> <p>According to the Art. 48, if the (otherwise winning) bidder does not meet obligations set (including qualification criteria), he has to be excluded from the tender.</p> <p>Art. 76 assumes a chance to satisfaction which will prevent the bidder from being excluded.</p>	<p>Act. No. 280/2009 Coll., tax order (and collateral tax legislation)</p> <p>Act. No. 589/1992 Coll., social security commissions</p> <p>Act. No. 592/1992 Coll., public health insurance commissions</p> <p>Act. No. 269/1994 Coll., register of punishments</p>

a) a copy of an entry in the Criminal Records in respect of Section 74 (1) a),  
 b) a confirmation from a relevant tax office in respect of Section 74 (1) b),  
 c) a written affirmation regarding excise duty in respect of Section 74 (1) b),  
 d) a written affirmation in respect of Section 74 (1) c),  
 e) a confirmation from a relevant district social security administration in respect of Section 74 (1) d),  
 f) a copy of an entry in the Commercial Register, or a written affirmation in the event that the economic operator is not incorporated in the Commercial Register, in respect of Section 74 (1) e).

(2) The contracting authority is not obliged to apply the ground for exclusion of a participant from the procurement procedure even if the participant failed to meet the basic qualification requirements provided that

a) the exclusion of the participant would make it impossible to award the public contract in this procurement procedure and  
 b) an urgent public interest, including, but not limited to, public health and protection of the environment, requires the public contract to be performed.

**Art. 76**  
**Renewal of suitability of a participant**

(1) A participant may prove that in spite of having failed to meet the basic qualification criteria under Section 74 or the fact that there are grounds for its unsuitability pursuant to Section 48 (5) and (6) it has renewed its suitability to participate in the procurement procedure provided that it proves to the contracting authority in the course of conducting the procurement procedure that it has adopted sufficient corrective measures. This does not apply to the period for which the participant is serving a sentence of prohibition to perform public contracts or participate in concession award procedures that has been imposed on the participant by final judgement.

(2) The corrective measures may include, but are not limited to,

a) a payment of amounts due or underpayments,  
 b) full compensation for harm caused by the commission of a crime or by misconduct,  
 c) an active collaboration with authorities performing investigation, oversight, supervision or review, or  
 d) an adoption of technical, organisational or personnel preventive measures against crime or misconduct.

(3) The contracting authority shall assess whether it considers the corrective measures adopted by the participant sufficient to renew the suitability of the economic operator with regard to the gravity and the specific circumstances of the crime or other misconduct.

(4) Where the contracting authority arrives at the conclusion that the suitability of the participant has been renewed, it shall not exclude this participant from the procurement procedure and if the participant has already been excluded it shall cancel a previous exclusion of this participant from the procurement procedure.

<b>Open questions</b>	The possibility to be able to prove the breach of laws on the side of the Procurer (if we do not mention qualification, which is a bit easier to control) is very demanding and not really likely to be performed.
<b>Example of application from the national level (where applicable)</b>	None identified

**Article 67 of the Directive ► Article 114-119 of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)**

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p><b>Economic advantageousness of tenders</b></p> <p><b>Art. 114</b></p> <p>(1) The contracting authority shall stipulate in the procurement documents that tenders will be evaluated on the basis of their economic advantageousness.</p> <p>(2) The economic advantageousness of tenders shall be evaluated on the basis of the most advantageous price-quality ratio, including the ratio between life-cycle costing and quality. The contracting authority may also evaluate the economic advantageousness of tenders on the basis of the lowest tender price or the lowest life-cycle costing.</p> <p>(3) The contracting authority shall not establish the economic advantageousness solely on the basis of the lowest tender price</p> <p>a) in a competitive dialogue procedure or an innovation partnership procedure, or</p> <p>b) in the case of a public service contract listed in</p> <p>1. division 71 of the main vocabulary of the single classification system, or</p> <p>2. category 1 or 5 according to Annex No. 4 to this Act.</p> <p><b>Rules for evaluation of tenders</b></p> <p><b>Art. 115</b></p> <p>(1) In the procurement documents, the contracting authority shall lay down rules for the evaluation of tenders that shall include</p> <p>a) evaluation criteria,</p> <p>b) the method of evaluation of tenders under the individual criteria and</p> <p>c) weighting or another mathematical relation among the criteria.</p> <p>(2) Where the contracting authority is not objectively able to establish the weighting or another mathematical relation among the individual evaluation criteria, it shall indicate them in a decreasing order of the importance attributed to them.</p> <p>(3) Unless the contracting authority stipulates otherwise, the decisive element for evaluation of tenders shall be</p> <p>a) a price exclusive of value added tax where the contracting authority is a value added tax payer,</p> <p>b) a price inclusive of value added tax where the contracting authority is not a value added tax payer.</p>	<p>A government decree regarding methods for Life Cycle Cost is foreseen by the Art. 118 par. 3 PPA. The decree has not been created.</p>	<p>The articles regulate the award criteria, their content and definition. Those have to be set in tender documents, must be clear, non-discriminatory and in line with core principles of public procurement.</p> <p>The provisions in hand almost copy the regulations of the Procurement Directive. There are only few services, which cannot be awarded upon the lowest bid-price only.</p> <p>The article 116, par. 2 allows Procurers to use also environmental, social or innovation criteria for the assessment of the best bid (with no further specification).</p> <p>Emphasis was put also on Life Cycle Costs. This approach yet needs to be developed and tested.</p>	<p>-</p>

**Quality criteria**

**Art. 116**

(1) In order to evaluate the economic advantageousness of a tender on the basis of quality, the contracting authority shall define criteria that express qualitative, environmental or social aspects linked to the subject-matter of the public contract.

(2) The quality criteria may include, but are not limited to,

- a) technical merit,
- b) aesthetic and functional characteristics,
- c) user accessibility,
- d) social, environmental and innovative characteristics,
- e) organisation, qualification or experience of persons assigned to performing the public contract where the quality of the persons assigned can have a significant impact on the quality of the performance of the contract,
- f) after-sales services including technical assistance, or
- g) delivery conditions and delivery period or period of completion.

(3) The quality criteria shall be defined so that tenders can be compared on their basis and so that the fulfilment of the criteria can be verified. Contractual terms aimed at corroboration of obligations of an economic operator or payment conditions shall not be set as quality criteria.

(4) The contracting authority may also set a fixed price and evaluate solely the quality of the proposed performance.

(5) The quality criteria are presumed to be linked to the subject-matter of the public contract if they are related to any stage of the life cycle of the subject-matter of the public contract.

**Life-cycle costing**

**Art. 119**

Life-cycle costing shall cover the tender price and may cover

a) costs, borne by the contracting authority or other users in the course of the life cycle of the subject-matter of the public contract, which may cover, including, but not limited to,

- 1. other costs relating to acquisition ,
- 2. costs relating to use of the subject-matter of the public contract,
- 3. maintenance costs, or
- 4. end of life costs, or

b) costs imputed to environmental externalities linked to the subject-matter of the public contract at any time during its life cycle, provided their monetary value can be

<p>determined; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.</p> <p><b>Method used for the assessment of life-cycle costs</b></p> <p><b>Art. 118</b></p> <p>(1) Where the contracting authority assesses tenders using a life-cycle costing approach, it shall indicate in the procurement documents the data to be provided by the participants and the method which the contracting authority will use to determine the life-cycle costing on the basis of those data.</p> <p>(2) To calculate the costs pursuant to Section 117 b), the contracting authority shall use a method that is</p> <p>a) based on objectively verifiable and non-discriminatory criteria,</p> <p>b) accessible to all economic operators, and</p> <p>c) based on data that can be provided by the economic operators with reasonable effort.</p> <p>(3) The government may issue a decree setting common methods used for the assessment of the life-cycle costs and the scope of their use.</p>			
<p><b>Open questions</b></p>	<p>The overall focus on exclusive lowest-bid price criteria (80 % of tenders) is changing in a rather slow way. There is a very common objective to preconception about environmentally or socially more beneficiary bids to have to cost more. There is also no way how to compare the savings (brought by the social or environmental benefits) with (eventual) surplus of bid-price. If there was a clear mechanism how to calculate the savings (benefits) for using low carbon criteria or socially more beneficiary award criteria, the procurers might be willing more to leave the exclusive lowest-bid price approach.</p> <p>There is on-going question of the balance between the selection criteria according to the national regulations regarding public expenses. There is also a problem with establishing quality and with the fact, that lowest bid-price criteria is very clear and transparent one (which is hard to put to contest too).</p> <p>Since the procurers usually lack strategy-documents of their purchasing activities and there is neither a national policy nor an action plan setting goals to be achieved, the Procurers cannot rely on any document, which might justify their effort to set non-monetary award criteria (link their practices to internal instruction).</p> <p>Still the biggest problem in this issue is non-objective criteria. Since there are several Czech procurers willing to apply Dutch Best Value Method in the Czech Republic, they expose their tenders to the contest.</p>		
<p><b>Example of application from the national level (where applicable)</b></p>	<p>Děčín City (case study attached, employment award criteria used)</p> <p>Litvínov Town – waste management tender (use of environmental award criteria)</p> <p>Masaryk University (textile purchase with focus on sustainability)</p>		

**Article 69 of the Directive ► Article 48 par. 5, Article 113 of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)**

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p><b>Article 113</b></p> <p>(1) The contracting authority shall assess whether the tender price is abnormally low before sending the notice of the selection of an economic operator.</p> <p>(2) In the procurement documents, the contracting authority may determine</p> <p>a) the price or costs that it will consider to be an abnormally low tender price,</p> <p>b) the method of determining an abnormally low tender price.</p> <p>(3) The case under subsection (2) does not preclude the contracting authority from assessing the tender price or costs as an abnormally low price even in cases other than those stipulated in paragraph a) or paragraph b) of subsection (2).</p> <p>(4) The contracting authority shall request the participant to explain its method of setting the abnormally low tender price in writing. The request for explanation of the abnormally low price shall be considered a request pursuant to Section 46, and it may be supplemented and made repeatedly. In the request for explanation of an abnormally low price, the contracting authority shall request the participant to confirm that</p> <p>a) when performing the public contract it will ensure the compliance with duties arising from legal regulations related to the subject-matter of the public contract as well as from labour legislation and collective agreements in respect of the employees that will take part in the performance of the public contract, and</p> <p>b) it has not obtained unjustified state aid.</p> <p>(5) In the explanation of the abnormally low price, the participant shall confirm the facts under subsection (4). The participant may also justify the abnormally low price mainly by referring to</p> <p>a) the economics of the manufacturing process, of the services provided or of the construction method,</p> <p>b) the technical solutions used or any exceptionally favourable conditions available to the participant for the performance of the public contract, or</p> <p>c) the originality of the work, supplies or services.</p> <p>(6) The contracting authority shall assess the explanation of the abnormally low price. The contracting authority shall exclude the participant if the explanation of the abnormally low price shows that</p> <p>a) the tender price is abnormally low because of a breach of the duties stipulated in paragraph a) of subsection (4),</p>	<p>Government Resolution No. 531/2017 that recommends the procurers to focus on environmental, social and ethical aspects of the procurement. It is not legally binding and there are no figures foreseen. Neither is there a reporting or monitoring system.</p> <p>SDG No. 12.7 in the Czech Republic 2030 Strategic document</p>	<p>The article describes the procedure in case of abnormally low bid price. In that case the Procurer asks for reasoning and the respective bidder is obliged to explain the low bid and especially prove, that neither labour or social rights nor environmental regulations will be violated. Otherwise the tenderer is allowed to exclude the bidder from the tender. This exclusion, however, is not an obligation of the Procurer (this does not fit the Art. 69 par. 3 of the Procurement Directive).</p>	<p>Act. No. 320/2001 Coll., on financial controlling</p> <p>Act. No. 128/2000 Sb., on municipalities</p> <p>Act. No. 129/2000 Sb., on regions</p> <p>Act. No. 130/2000 Sb., on the Capital City Prague</p> <p>Act. No. 218/2000 Sb., on national budget regulations</p> <p>Act. No. 219/2000 Sb., on national property</p> <p>Act. No. 250/2000 Sb., on local budget regulations</p>

<p>b) the tender price is abnormally low because of state aid and the participant is unable to prove, upon a request by the contracting authority, that the state aid has been provided in compliance with EU legislation; where the participant is excluded for this reason, the contracting authority shall inform the European Commission of this fact, or</p> <p>c) it does not contain confirmation of the facts stipulated in subsection (4).</p> <p><b>Art. 48</b></p> <p>(4) The contracting authority may exclude a participant from the procurement procedure provided that the tender submitted by the participant contains an abnormally low tender price that has not been justified by the participant.</p>			
<p><b>Open questions</b></p>	<p>There have been several problems with public funds related to the issue. The national Procurement Authority issued several decisions regarding the possible reasoning of ALBP by a statement of the bidder relying on a possibility of public financial support (for instance a support for the employers of disadvantaged workers).</p> <p><i>Decision No. ÚOHS-R226/2014/VZ- 22995/2015/321/BRy from August 14th, 2015</i></p> <p><i>Decision No. ÚOHS-S496,497/2011/VZ -17874/2011/510/Krk from April 13th, 2012</i></p> <p><i>Decision No. ÚOHS-S12/2013/VZ- 11730/2013/521/VČe from June 24th, 2013</i></p> <p>Abnormality of the bid-price requires deeper level of knowledge of the market on the Procurer's side. In case of MoLSA (maintenance and cleaning services) it was very handy to get in touch with the professional association to get information about the level of HR costs in comparison to the overall price of the service purchased.</p> <p>If the abnormally low bid price was not clarified, the Procurer should decide, weather to exclude the bidder or not. If he decides to do so, he will have to have a good reasoning, why he did not choose the lowest bid price and therefore did not save public budget.</p>		
<p><b>Example of application from the national level (where applicable)</b></p>	<p>MoLSA (cleaning services)</p> <p>Chomutov Town (demanding disclosure of the structure of the bid price – especially with respect to HR costs)</p>		

**Article 70 of the Directive ► Article 37, par. 1 letter d) of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)**

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p><b>Article 37</b>                      (1)The contracting authority may lay down the conditions for participation in the procurement procedure as</p> <ul style="list-style-type: none"> <li>a) qualification conditions,</li> <li>b) technical specifications defining the subject-matter of the public contract, including conditions for the treatment of industrial or intellectual property rights created in connection with the performance of the public contract,</li> <li>c) business terms or other contractual conditions relating to the subject-matter of the public contract, or</li> <li>d) special conditions for the performance of the public contract, including, but not limited to, conditions regarding the environmental impact of the subject-matter of the public contract, social consequences resulting from the subject-matter of the public contract, the economic sphere or innovations.</li> </ul>	<p>Government Resolution No. 531/2017 that recommends the procurers to focus on environmental, social and ethical aspects of the procurement. It is not legally binding and there are no figures foreseen. Neither is there a reporting or monitoring system.</p> <p>SDG No. 12.7 in the Czech Republic 2030 Strategic document</p>	<p>The article (it's letter d) allows the procurers to set criteria/conditions for the contract which reflect on environmental, social or innovation aspects (including employment, working conditions of the respective workers and so on). Such criteria have to be met by each and every potential bidder. Otherwise the bid might be excluded from the tender.</p>	<p>Not possible to establish – individual criteria may differ and there is no way how to identify all the possibly relevant regulations. The main areas of interest cover labour conditions, health and safety issues, air protection, water protection, soil protection, packaging, waste management...</p>
<p><b>Open questions</b></p>	<p>Connection with the contract subject matter has to be observed. There have been some Procurers who focused on connection of the condition with the bidder directly. This interpretation was not correct, as the Procurement Authority later also stated in it's decision (vide below). It means that the conditions should be considered met if any commercial operator concerned (typically subcontractor) is responsible for it (regardless its position in a supply chain).</p> <p>The conditions have to be met during the whole contract duration (or the relevant period). This affects the contract management rather than just the tendering procedure. Since the PPA only applies to the tendering procedures, there is no direct regulation of the contract duration contained in it.</p> <p>There is no further legal binding specification on how to implement social or environmental criteria into tenders (there are only government recommendations, methodologies prepared by MoLSA and MEnv and European GPP web-page). Those are not obligatory.</p> <p>Especially when talking about social and employment issues, a clear legal regulation might be more encouraging for the tenderers and could ease a solution to collateral issues such as personal data protection (since the procurer should demand proving of fulfillment of conditions regarding employment issues, there are personal data issues to be anticipated).</p>		
<p><b>Example of application from the national level (where applicable)</b></p>	<p>Cleaning Services - Ministry of Labour and Social Affairs (case study available here: <a href="http://sovz.cz/wp-content/uploads/2018/09/sovz_case_studies_uklid-na-mpsv_en.pdf">http://sovz.cz/wp-content/uploads/2018/09/sovz_case_studies_uklid-na-mpsv_en.pdf</a>)</p> <p>Kadaň Town, including Decision of The Office for the Protection of Competition No. ÚOHS-S0734/2016/VZ-04395/2017/543/MŠI from February 7th, 2017 (case study in Czech available here: <a href="http://sovz.cz/wp-content/uploads/2018/05/sovz_case_studies_kadan_180122.pdf">http://sovz.cz/wp-content/uploads/2018/05/sovz_case_studies_kadan_180122.pdf</a>)</p> <p>Forestry work – Lesy ČR (case study available here: <a href="http://sovz.cz/wp-content/uploads/2018/09/sovz_case_studies_lesy_en.pdf">http://sovz.cz/wp-content/uploads/2018/09/sovz_case_studies_lesy_en.pdf</a>)</p>		

**Article 71 of the Directive ► Article 85, Article 105, Article 106 of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)**

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p><b>Article 85</b>  <b>Requirement for proving subcontractor's qualification</b>                      (1) The contracting authority may require a participant to submit documents proving the basic qualification pursuant to Section 74 and professional qualification pursuant to Section 77 in respect of its subcontractors. In that case, the contracting authority is obliged to set the scope of the required qualification criteria in the procurement documents along with the means of their proof and potential sanctions for the failure to replace a subcontractor pursuant to subsection (2).                      (2) Where a subcontractor fails to prove the fulfilment of the qualification criteria required by the contracting authority or where the contracting authority proves that there are grounds for unsuitability of a subcontractor pursuant to Section 48 (5), the contracting authority may request such a subcontractor to be replaced. In that case, the economic operator shall replace the subcontractor before the end of a reasonable time limit set by the contracting authority. The contracting authority may extend this time limit or excuse the economic operator's default.                      (3) Where the subcontractor has not been replaced pursuant to subsection (2) and the procurement procedure has not been terminated in the meantime, the contracting authority may exclude the participant from the procurement procedure.</p> <p><b>Article 105</b>  <b>Subcontracting</b>                      (1) In the procurement documents, the contracting authority may request that the participant in its tender                      a) indicates any share of the contract that it intends to subcontract, or                      b) includes a list of subcontractors, where they are known to the participant, and indicates which share of the public contract will be subcontracted to each of these subcontractors.                      (2) In the case of a public service contract, a public works contract or a public supply contract involving a siting or installation, the contracting authority may request in the procurement documents that significant activities within the public contract, as determined by the contracting authority, be performed directly by the selected economic operator.                      (3) With regard to public works contracts and public service contracts to be provided at a facility under the direct oversight of the contracting authority, the selected economic</p>	<p>Government Resolution No. 531/2017 that recommends the procurers to focus on environmental, social and ethical aspects of the procurement. It is not legally binding and there are no figures foreseen. Neither is there a reporting or monitoring system.                      SDG No. 12.7 in the Czech Republic 2030 Strategic document</p>	<p>Art. 105 sets the basic rules for subcontracting in public procurement                      Art. 106 stipulates that the Procurer is entitled to set conditions for transferring due payments directly to subcontractors. It, however, fails to set the mechanism itself, despite the Directive stipulating, that the member state <i>should</i> do so.                      The fulfillment of rules according to Art. 18 par. 2 of the Directive is capable of influencing the bidder in the tender. Since there is no direct relationship between the Procurer and the Subcontractor, and since the bidder can only be responsible for his own actions (and not of the actions of his contracting partner) the law relies on responsibility of the bidder to choose the right subcontractor and to evaluate his approach to his legal obligations regarding social matters and environment – as a part of his qualification (Art. 48 par. 5 letter a) of PPA. Bidder who fails to provide a subcontractor who is respecting his obligations, might (under certain conditions) be excluded</p>	<p>89/2012 Coll., civil code (<i>cession and intercession in private contracts</i>)</p>

<p>operator is obliged to provide the contracting authority with identification data of the subcontractors involved in such works or services, where they are known to it, not later than within 10 working days from the receipt of the notice of the selection of the economic operator. Subcontractors who have not been identified under the first sentence and who will become involved in the performance of the public contract later, shall be identified before they commence the performance of the public contract.</p> <p>(4) In the procurement documents, the contracting authorities may also lay down the obligation pursuant to subsection (3) with regard to</p> <p>a) public supply contracts or public services contracts that are not referred to in subsection (3), or</p> <p>b) subcontractors at further levels of the supply chain.</p> <p>(5) The duty under subsection (3) or subsection (4) shall be considered to be fulfilled where these data are recorded in the construction daily log pursuant to another legal regulation.</p> <p><b>Article 106</b></p> <p><b>Payments to subcontractors</b></p> <p>In the procurement documents, the contracting authority may set conditions upon the public contract that when fulfilled shall transfer due payments directly to the subcontractor upon the subcontractor's request; without prejudice to other legal regulations.</p> <p>Also:</p> <p>Art. 48 par. 5 of PPA (exclusion grounds)</p> <p>Art. 79 par. 2 letter f) (supply chain management as a voluntary technical qualification criteria)</p>		<p>from the tender.</p>	
<p><b>Open questions</b></p>	<p>Several procurers have bad experience with payments in the supply chain, so they try to find a solution for late payments to the subcontractors (which might affect SME's and also social conditions of the workers involved).</p> <p>The national implementation of several rules is insufficient – the legislation does not describe how to approach direct payments (affecting liabilities or even VAT). The Procurers have to try to find their way to create systems for fair payments themselves (and even taking risks).</p> <p>The national legislation does not regulate any level of the “tier” of the sub-supplier. This may lead to certain level of legal uncertainty.</p> <p>Some Procurers try to develop a framework for monitoring of working conditions in the supply chain. Those Procurers stand at the very beginning but are motivated to move forward.</p>		
<p><b>Example of application from the national level (where applicable)</b></p>	<p>Královéhradecký Region (direct payments clause in the contract)</p> <p>VŠCHT – University of Chemistry and Technology (memorandum on fair conditions)</p> <p>Povodí Vltavy – national river trust (transparent account of the bidder)</p> <p>Lesy ČR – national forestry trust (memorandum with a list of employees in hand)</p>		

**Article 74-76 of the Directive ► Article 129 of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)**

Text of the article	National implementing provisions (if relevant)	What the article means	Interaction with other national laws
<p><b>Article 129</b></p> <p>(1) The contracting authority shall apply the light regime to public contracts, including concession contracts under Section 174, for social and other specific services listed in Annex No. 4 to this Act. This applies even to the cases where the public contract provides for services not listed in this Annex provided that their estimated value is lower than the estimated value of the services listed in Annex No. 4 to this Act.</p> <p>(2) During the public procurement process under the light regime, the contracting authority shall proceed pursuant to this Book and shall also apply books one, two and ten to thirteen.</p> <p>(3) The contracting authority may commence a procurement procedure under the light regime by sending</p> <p>a) a prior information notice for publication in the manner specified in Section 212 where, by such notice, it invites economic operators to express their preliminary interest, or</p> <p>b) a contract notice for publication in the manner specified in Section 212 provided that the procedure is not a concession procedure.</p> <p>(4) Economic operators shall express their preliminary interest in writing.</p> <p>(5) Provisions of sections 96 to 99 apply to the procurement documents and award criteria by analogy. In the procurement documents, the contracting authority may set out individual rules that govern above-threshold procurement procedure.</p> <p>(6) Under the light regime, the contracting authority may also define other criteria for the qualification of economic operators than those specified in Book Four; provisions of sections 76 and 81 to 88 apply by analogy.</p> <p>(7) The contracting authority shall determine the conduct of the procurement procedure with regard to the specific characteristics of the services being awarded. The contracting authority may hold negotiations with the participants. The contracting authority may alter the award criteria during the procurement procedure provided that this does not violate the principles defined in Section 6. However, the altered award criteria shall still meet the conditions for the light regime.</p> <p>(8) When selecting the economic operator, the contracting authority may take into account quality criteria such as the need to ensure quality,</p>		<p>The article sets an opportunity for any public authority to use a specific flexible procedure while procuring specified services (Listed in Annex IV of the PPA).</p> <p>The procurer is allowed to use regulations for above-threshold tender, but generally he has much wider freedom in choosing instruments.</p> <p>The procurer is expressly allowed to use his own qualification criteria. The procurer can also change the conditions in the course of the tender. Naturally, basic procurement principles must remain upheld.</p> <p>The process might be used for combined subject matters, if the price of the subject matter described in the Annex IV prevails.</p>	

<p>continuity, accessibility and comprehensiveness of services, the innovativeness of solutions, the contribution for users or sustainability criteria for social services.</p> <p>(9) The contracting authority shall inform all participants of the selection of the economic operator along with a justification of this selection.</p> <p>(10) The contracting authority shall send the contract award notice for publication in the manner described in Section 212 within 30 days or, in the case of a concession procedure, within 48 days</p> <p>a) from the conclusion of the contract, or</p> <p>b) from the end of each quarter where the contracting authority sends grouped notices.</p>			
<p><b>Open questions</b></p>	<p>In many cases services as specified by the Regulation and Annex IV of the PPA are not subject to public procurement in the Czech Republic (some of them rather tend to be provided by public institutions directly). The use of this specific procedure is therefore not very frequent.</p>		
<p><b>Example of application from the national level (where applicable)</b></p>			

<b>Article 77 of the Directive ► Article NONE of Act. No. 134/2016 Coll., On Public Procurement, as amended (also PPA)</b>			
<b>Text of the article</b>	<b>National implementing provisions (if relevant)</b>	<b>What the article means</b>	<b>Interaction with other national laws</b>
none	none	-	none
<b>Open questions</b>	The Czech Republic does not allow the tenderers to use this exact regulation. There is a general reservation of contracts according to Art. 20 only		
<b>Example of application from the national level (where applicable)</b>	none		