

Comparison of European trends with the State of Czech Law development for awarding public works contracts

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TO EUROPEAN TRENDS

It is well known that the EC law in the area of awarding public works contracts has gone through many changes recently.

Within the EU, the need to simplify the legal regulation with the use of new electronic possibilities was intensely felt.

When compiling the relevant directives, it was at the same time stated that the general principles for awarding would be kept, i.e. securing the transparency and equal treatment. Assigning public orders should secure that the order is obtained by the subject that offers the best quality while keeping the lowest possible cost on the part of the awarder.

The new European regulation should at the same

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time also determine the so-called competition dialogue of the awarder and the tenderer, which would consist in the determination of contract conditions.

Within the EU, the following main directions for formulating the new regulations were outlined:

- determination of competition dialogue (competition dialogue should have been determined for especially complicated contracts)
- introducing electronic awarding (which would also make it possible to shorten the whole process of awarding)
- making it possible for the awarders not to have only a realisation contract, but also so-called "framework contracts", on whose basis the realisation contracts would be signed
- simplifying the clauses on technological specifications
- determination of the values of contracts for simpler application.

For the realisation of the outlined directions, the new EC guidelines were issued, which led to the issue of new legal regulation in the Czech Republic, i.e. to the issue of Act No. 137/2006 Coll., effective from July 1st 2006.

European awarding directives regulate in detail the procedures for awarding the public works contracts exceeding the limit; with the public works contracts below the limit, however, they limit themselves to the anchoring of the principle of transparency and no discrimination in the awarding procedure. Our legal regulation up to now as well as the new one elaborates in detail the procedures for awarding the contracts below the limit and tries to keep the balance between the transparency and proportionality principles. With the contracts below the limit, a special simplified kind of procedure is stated in the new law.

PRINCIPLES OF THE NEW LAW

- efforts to simplify and clarify the law as a whole,
- efforts to remove the problems up to now and to take into account practical experience when applying Act No. 40/2004 Coll.,
- clarification of basic notions,
- more detailed specification of the individual awarding procedures,
- introducing the subjects providing postal services among the sector awarders,

- introducing the possibility to award with the help of common purchasing subjects,
- determining the possibility of signing framework contracts also for public awarders (not just for the sector ones),
- determined competition dialogue – proceedings determined for especially complex contracts, making it possible for the awarder to obtain an innovative solution to the given project in the situation when he himself is for objective reasons not able to specify exactly the mode of realisation of the public works,
- enabling electronic process of awarding.

We think that the issuing of the new act on the awarding of public works contract may be welcome. However, the fact that this happens only shortly after the issuing of the previous Act will have negative effects. We namely think that the practice needs around three years to "intake" a new legal regulation.

Simultaneously with the new regulation of public works contracts, the new act on the public-private partnership is issued (the concession act). This law contains a really large number of references to the act on public works contracts. Therefore there was also the possibility to consider the issuing of both amendments in a single regulation, but this was not done.

SUBDIVISION OF THE ACT

The Act incorporates the relevant regulations of the European Communities¹ and regulates

- procedures for the award of public works contracts,
- competition on the design,
- supervision regarding the compliance with this act
- conditions of keeping and the function of the list of qualified suppliers and of the system of certified suppliers.

The Act is subdivided into eight parts and has three appendices.

The first part – general clauses – is devoted to the Regulated Subject, the Awarder of the public works contract, the Central awarder, the Relevant activity, Concurrence of the activities, Principles of the procedure for the awarder, Public works contract (and public works contract for supplies, construction work, and services and the public works contract according to its estimated value), Definition of the notions; it

¹ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. Directive 2005/75/EC of the European Parliament and of the Council of 16 November 2005 correcting the Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

also deals with exceptions and business competition connected with the output in the relevant activity.

The second part regulates the Awarding procedure, its kinds and conditions for the use of some procedures, including the competition dialogue and the simplified procedures for the contracts below the limit.

The third part regulates special procedures in the awarding process.

The fourth part regulates the competition on design.

The regulation on the protection against incorrect procedures of the awarder is contained in the fifth part.

The sixth and seventh parts contain clauses on the list of qualified suppliers, the system of certified suppliers, list of foreign suppliers, and common clauses (especially on the publication of the communication between the awarder and supplier).

The act ends with transitional and concluding clauses in the eighth part.

Appendices 1 and 2 contain the lists of services liable to publication in the Official Journal of the European Communities (Appendix 1) and the list of services not liable to this publication (Appendix 2). Appendix 3 bears the title Construction works according to § 9 par. 1 letter a) of the Act (to be understood of this Act). The clause of § 9 par. 1 letter a) cited at the same time states that if the construction works fall within the categories stated in Appendix 3, then this is also a public works contract for construction work.

Applicability of the act is determined by the given group of people.

AWARDERS

The awarder of the public works contract for the purposes of this law is a public, subsidized, or sector awarder.

The public awarders are

- a) **The Czech Republic²**
- b) **institution receiving contributions from the State Budget,**
- c) **territorial self-governing unit or an institution receiving contributions from the State Budget, where the territorial self-governing unit acts as a promoter**
- d) **another legal entity, if**
 1. it was founded or promoted with the purpose of fulfilling the needs of public interest that are not of industrial or commercial nature, and
 2. it is financed mostly by the state or another public awarder, or it is owned or controlled

by the state or another public awarder, or the state or another public awarder appoints more than half of the members in it statutory, administrative, supervision, or control organ.

The subsidized awarder is a legal entity or a natural person that awards a public works contract of which more than 50 per cent is paid with the money provided by a public awarder, which is done through another person in the following cases

- a) public works contract for construction works whose estimated value is over the limit, i.e. corresponds with the minimum financial limit stated in § 12 par. 4 and the object of this public order
 1. is the realisation of construction work related to one of the activities stated in Appendix 3, or it
 2. is the realisation of construction works according to § 9 concerning healthcare facilities, sports facilities, facilities for leisure time and relaxation, schools, administrative buildings, or
- b) public works contract for the services related to the public works contract for construction work according to the letter a), whose estimated value is also over the limit and corresponds at least to the financial limit stated in § 12 par. 3 letter b).

For the purposes of signing a contract with a subcontractor, such supplier that had not been awarded a public works contract by a public awarder is not considered to be a subsidised contractor.

When awarding a public works contract, the subsidised contractor proceeds according to the clauses of this act valid for a public awarder even in the cases when the awarder simultaneously fulfils the prerequisites for being classified into another category of awarder according to par. 2 or par. 6 (§ 2 of the act).

A sector awarder is a person performing one of the relevant activities according to § 4 (in § 4, some concrete relevant activities in the individual branches are given, i.e. in the gas manufacture, heating plants, power engineering, water supply industry, activities related to the water supply industry, activities related to the operation of transportation networks, activities related to providing reserved postal services, other services and activities listed performed while using a geographically delimited territory), if

- a) this relevant activity is performed on the basis of a special or exclusive right, or
- b) the awarder can directly or indirectly exercise

² Act No. 219/2000 Coll. on the property of the Czech Republic and its representation in legal relationships as amended.

the dominant influence; the awarder applies the dominant influence in the following cases

1. he has the majority of his votes at disposal himself³ or on the basis of an agreement with another person, or
2. he nominates or votes for more than a half of the members of the statutory, administrative, supervisory, or controlling body.

If the public awarder exercises one or more relevant activities according to § 4, the clauses of the act relating to the sector awarder apply for him as well under the assumption that the public works order must be awarded in connection with a relevant activity of one public awarder (§ 2 par. 7).

Even several awarders are considered to be a single awarder for the purposes of this law (stated under § 2 par. 2, 3 or 6), if they associate or in other way join in order to coordinate the procedure directed towards the awarding of a public works contract (further only as "association of awarders"). In such a case, the awarders are obliged to sign a written contract before the commencing of the awarding procedure, in which they arrange their mutual rights and obligations related to the awarding procedure and determine the manner of negotiation in the name of the participants of the association of awarders. If a public or subsidised awarder is participating in the association of awarders, the clauses of the act valid for a public awarder apply for this association of awarders; this does not interfere with the clause in par. 7 (§ 2 par. 8).

Also any other association or other joint activity of the awarder with a natural person or a legal entity that is not an awarder with the purpose of awarding a public works contract is considered as awarder (according to § 2 par. 2, 3 or 6). Clause in § 2 par. 8 third sentence is to be used in a similar way.

A central awarder is the public awarder who performs the centralised awarding, consisting in

- a) for the other awarders, he purchases supplies or services that are objects of public works contracts, which he further sells to other awarders for a price that is not higher than the purchasing price of the supplies and services, or
- b) sells the awarding procedure and awards a public works contract for supplies, services or construction work to the account of other awarders.

Before the start of the centralised awarding, the awarders and the central awarder are obliged to sign a written contract in which they arrange their mutual

rights and obligations related to the centralised awarding procedure (§ 3 par. 1).

The central awarder performs the centralised awarding according to § 3 par. 1 according to the clauses of this act valid for the public awarder. If, however, he performs the centralised awarding exclusively for sector awarders or on their account, he proceeds according to the clauses of this act that are valid for sector awarders.

If during the procedure according to § 3 par. 1, this act is breached, it is the central awarder who is responsible for breaching the law, unless such breaching of the law was a result of an activity of negligence of the awarder on whose account the centralised awarding was performed.

If the public works contract was awarded in compliance with this act by the central awarder, it holds that the public works contract was awarded in compliance with this act also with respect to the awarder for whom the centralised awarding was performed.

According to the legal regulation stated in Act No. 40/2004 Coll., as amended, it was a problem if there was a concurrence and the relevant person complied with the conditions for both the public awarders and the sector awarders, or the contract in question was for a different contract than for the sector one with the sector awarder. At the same time, there were various explanations of this. This is improved in the new regulation (§ 5 of the Act).

By concurrence of activities, it is meant that the object of the awarded public works contract is related to the execution of a different activity as well as to the execution of a different activity of the awarder (§ 5 par. 1).

The existing problem of concurrence is solved in the new act to the benefit of the awarder and opts for a more favourable solution for the awarder.

In the case of concurrent activities:

- a) the public awarder proceeds according to the clauses of this law valid for a sector awarder only in the cases when the object of the public works contract is related especially with the relevant activity performed by a public awarder, in other cases or when it cannot be objectively determined whether the object of the public order is connected especially with the execution of the relevant activity, the public awarder proceeds according to the clauses of this act valid for the public awarder,
- b) the sector awarder does not proceed according to this act, if the object of the public works contract is related especially to its different activi-

³ E.g. § 12 par. 1 of Act No. 77/2002 Coll. on the joint stock company České dráhy (Czech Railways), the state organisation Správa železniční dopravní cesty (Railway Infrastructure Administration) and on the change of Act No. 266/1994 Coll. on railways as amended, and Act No. 77/1997 Coll., on the state company as amended.

ty than the execution of the relevant activity; in the opposite case or when it cannot be determined objectively whether the object of public works contract is related especially with the execution of a different activity, the sector awardee proceeds according to the clauses of this act valid for the sector awardee.

SMALL-SIZE CONTRACTS, CONTRACTS BELOW AND ABOVE THE LIMIT

By a small-size public works contract we mean such public works contract whose estimated value will not reach in the case of a public works order on supplies or public works order on services CZK 2 000 000 without value added tax or, in the case of public works contract for construction work, CZK 6 000 000 without value added tax.

The small-size contracts are not regulated in detail by the legal norm. The rule of transparency and non-discrimination, however, holds for them as well.

The table expresses the orientation values as to when the public works contract is above the limit, it states the given limits

AWARDERS	SUPPLIES AND SERVICES	CONSTRUCTION WORK
The Czech Republic, state organisations receiving contributions from the state budget, for the Czech Republic - Ministry of Defence, this limit holds only on the goods according to the statutory instrument	4 290 000,- Kč with services with the exception according to the law	165 288 000,- Kč
Territorial self-governing unit or an organisation receiving contributions from the state budget whose promoter is the territorial self-governing unit and the so-called other legal entity, for the Czech Republic - Ministry of Defence for the goods that is not determined by the legal statutory instrument	6 607 000,- Kč with services, the more detailed definition is contained in the act	165 288 000,- Kč
Sector awardee	13 215 000,- Kč	165 288 000,- Kč

By a public works contract below the limit we mean such a public works contract whose estimated value in the case of public works contract for the supplies or a public works contract for the services is at least CZK 2 000 000 without value added tax or in the case of public works contract for construction work at least CZK 6 000 000 without value added tax and does not reach the set financial limit. With these contracts, the awardee asks 5 suppliers to participate.

By a public works contract above the limit we mean a contract above the stated limits (see the table).

SUPPLIER, INTERESTED PERSON, APPLICANT

Act No. 137/2006 Coll. in § 17 called Definition of some other notions defines, for the purposes of the act, the notions of **supplier, interested person, and applicant** and uses these notions further in its clauses (similarly to the previous regulation).

Supplier is a natural person or a legal entity that

- a) supplies goods,
- b) provides services, or
- c) executes construction work if its residence, place of business, or permanent residence is in the Czech Republic, or
- d) a foreign supplier.

Applicant is a supplier, who filed in an application in the awarding procedure.

Interested person is a supplier, who, in the stated period of time, filed in an application to

- a) participate in the short-listed procedure,
- b) participate in the action procedure with publication or
- c) participate in the competition dialogue,
- d) or a supplier that was asked to take part in the action procedure without publication by the awardee,
- e) submit the preliminary offer in a dynamic purchasing system,
- f) submit the offer in a simplified proceedings for contracts below the limit,

- g) submit the offer for the proceedings on the basis of a framework contract, or
- h) verify the interest in participating in the case of awarding procedure started by the publication of a regular preliminary announcement.

SUPPLIES, SERVICES, CONSTRUCTION WORK

The contracts are classified in compliance with the preceding legal regulation into

- supplies,
- services,
- construction work.

Public works contract is a contract executed on the basis of the contract between the awarder and one or more suppliers, whose subject is the provision of paid-for supplies or services or the paid-for execution of construction work. The public order that must be awarded by the awarder according to this act has to be executed on the basis of a written contract. Thus what we said in the part dealing with the regulation according to Act No. 40/2004 Col. holds also here.

Public works contract for supplies is the public works contract whose subject is the obtaining of an item (further only "goods"), and especially purchasing the goods, purchasing the goods in instalments, renting the goods or leasing the goods with the right of subsequent purchase – see § 8 par. 1.

Public works contract for supplies is also the public work contract whose object is, apart from obtaining goods according to § 8 par. 1 also providing the service consisting in placing, assembly, or putting such goods into operation, unless these activities are not the essential purpose of the public works contract, but are necessary for the fulfilment of the public works contract (§ 8 of the Act).

Public works contract for construction work (§ 9) is the public works contract whose object is

- a) execution of construction work pertaining to one of the activities stated in Appendix 3,
- b) execution of construction work according to letter a) and the project or engineering activities related to it, or
- c) execution of a building that is a result of the construction or assembly work, or also the related project or engineering activities and that is as a whole able to fulfil an independent economic or technological function.

Public works contract for construction work is also the public works contract whose object is, apart from

fulfilment according to paragraph 1, also providing the supplies or services necessary for the execution of the public works contract by the supplier.

Public works contract for construction work is considered to be also the construction works obtained with the use of mediating or similar services that will be provided to the awarder by another person.

Public works contract for services (§ 10) is a public works contract that is neither a public works contract for the supplies nor a public works contract for construction works.

Public works contract for services is also the public works contract whose object is apart from providing services also

- a) providing the supply according to § 8, if the estimated value of the services provided is not higher than the estimated value of the supply provided, or
- b) execution of construction work according to § 9, unless these works are an essential purpose of the public works contract, but their execution is necessary for the fulfilment of the public works contract for services.

Services are divided into categories determined in Appendices No. 1 and 2.

If the object of the public works contract is the provision of the services stated in Appendix 1 as well as in Appendix 2, the estimated value of the services stated in the relevant Appendix is of decisive importance when determining whether the public works contract is according to Appendix 1 or 2.

AWARDING AND AGENDA PROCEDURES

The law regulates the following kinds of awarding procedures

- a) open procedure (§ 27),
- b) short-list procedure (§ 28),
- c) agenda procedure with publication (§ 29),
- d) agenda procedure without publication (§ 34),
- e) competition dialogue (§ 35),
- f) simplified procedure for contracts below the limit (§ 38).

The kinds of awarding procedure according to e) and f) may be used by a public awarder.

The use of agenda proceedings is easier for the awarder. The new legal regulation makes their use wider in a certain way.

The overview of the agenda procedures is given in the form of a table (the text of the law is shortened).

Use of the agenda procedures with publication

acc. to § 22 par. 4	in the case of sector awarders
acc. to § 22 par. 1	in the previous open procedure, short-list procedure, or a competition dialogue, only insufficient or unacceptable offers were filed in. Note: the law at the same time states examples when the awarder is not obliged to publish the agenda procedures with publication.
acc. to § 22 par. 3	in exceptional cases, if it can be, with regard to the nature of the supplies, services, or construction work or the risks connected with them, justifiably expected that the offer prices of the applicants will not be comparable, in the case of public works contracts for services, especially insurance, banking, investment, or project services or auditing, interpreting, legal or other similar services, if the nature of the service does not enable a sufficiently exact determination of the subject of public works contract in advance so that it was possible to state the procedures determined by this act for an open or short-list procedure, especially with regard to the establishment of evaluation criteria, or in the case of public works contracts for construction work, if the construction work performed exclusively with the purpose of research and development, and not with the purpose of profit or paying for the expenses related to research and development
acc. to § 22 par. 5	public awarder may award a public works contract in agenda procedure with publication also without fulfilling the conditions stated in par. 1 to 3, if it concerns public works order for services stated in Appendix No. 2.

Use of the agenda procedures without publication

acc. to § 23 par. 1 a)	in the previous open procedure, short-list procedure, or agenda procedure with publication, no offers were filed.
acc. to § 23 par. 1 b)	in the previous open procedure, short-list procedure, or agenda procedure with publication, only unsuitable offers were filed according to § 22 par. 1 letter a)
acc. to § 23 par. 1 c)	no applications were filed for the participation in short-list procedure or agenda procedure with publication
acc. to § 23 par. 4 a)	public works contract may be fulfilled for technological or artistic reasons, for the reasons of protection of exclusive rights or for the reasons following from the special legal regulation only by certain supplier
acc. to § 23 par. 4 b)	it is necessary to award a public works contract in an extremely demanding case that was not caused by the awarder and his actions and which he could not foresee and for time reasons it is impossible to award the public works contract in another sort of the awarding procedure
acc. to § 23 par. 5 a)	the goods supplied is made only for the purposes of research and development, with the exceptions of the cases when the goods is produced in greater quantities in order to gain profit for the awarder or with the purpose of covering the costs of the awarder related with research and development
acc. to § 23 par. 5 b)	this concerns additional supplies of the same supplier, with whom the contract has been signed where they are determined as a partial substitution of the previous supply or as an enlargement of the contemporary extent of the supply, with the assumption that the change of a supplier would force the awarder to purchase goods of other technical parameters, which would result in incompatibility with the original supply or would mean inadequate technical problems during the operation and maintenance of the original supply, and this with the conditions given
acc. to § 23 par. 5 c)	these are supplies offered and purchased on the commodity markets
acc. to § 23 par. 5 d)	these are supplies purchase for exceptionally advantageous conditions from a supplier that is in liquidation, or from the bankruptcy trustee, counterbalancing trustee, or the trustee in the case of a supplier, on whose property bankruptcy was adjudicated or towards which settlement is possible or the forced settlement is confirmed or which is under official trusteeship
acc. to § 23 par. 5 e)	these are goods that have been purchase for a price much lower than the usual market price and significantly lower price is offered by the supplier only for a very short time; the public awarder is authorised to award the public works contract in agenda procedure without publication according to this letter only in the relationship towards the public works contract below the limit
acc. to § 23 par. 6	in the agenda procedure without publication, the awarder may award a public works contract for the services also in the case when it is awarded in connection with the competition for design

acc. to § 23 par. 7 a)	additional construction work or additional services that have not been contained in the original conditions of awarding; the need for them originated as a result of objectively unpredictable circumstances and these additional construction works or additional services are necessary for the execution of the original construction work or for providing the original services with the stated assumptions
acc. to § 23 par. 7 b)	New construction work and in the case of public awarder also new services consisting in the construction works or services of the same or similar kind as in the original public works contract, and this on the basis of stated assumptions
acc. to § 23 par. 8 a)	Sector awarder is authorised for the awarding of a public works contract over the limit in the case were the contract is awarded for the purposes of research and development m but not with the aim of gaining profit with the purpose if reaching the profit by the awarder or payment of the costs of the awarder connected with the development, all this with a given pre-requisite
acc. to § 23 par. 8 b)	Sector awarder is authorised for the awarding of a public works contract over the limit in the case when it is a public works contract awarded on the basis of a framework.

Note: If a framework contract is signed by a public awarder, he proceeds according to § 92 and signs contract, or awards the public works contract according to the conditions of this clause.

The law newly constitutes the competition dialogue and the conditions for its use. **Public awarder may use the competition dialogue for awarding a public works contract with a very complicated fulfilment**, if the use of open procedure or short-list procedure is not possible with regard to the nature of the object of the fulfilment of the public works contract.

Public works contract with an especially complex object of fulfilment is considered to be such public works contract with which the public awarder is objectively not able to define exactly

- a) technological conditions according to the determined clause (§ 46 par. 4 and 5), or
- b) legal or financial requirements on the fulfilment of the public works contract

In the announcement of a competition dialogue, the public awarder announces the intention to award a public works contract to an unlimited number of suppliers in this awarding procedure; the announcement of competition dialogue presents a call for filing in the application for the participation in the competition dialogue and for proving the fulfilment of qualification.

Apart from the announcement, the public awarder is authorised to specify the needs, requirements, and other facts also in the documentation of the competition dialogue

The applicants file a written application for participation and prove the fulfilment of qualification until the stated deadline. For judging the qualification of the interested people, the public awarder asks the interested people who have shown the fulfilment of qualification to take part in the competition dialogue. If the public awarder limited the number of interested people in the announcement of competition

dialogue, he will ask to participate in the competition dialogue only those interested people that have been chosen in compliance with § 61. Public awarder may also state the maximum number of interested people to take part in the competition dialogue.

The public awarder is obliged to ask to participate in competition dialogue at least 3 interested people. If the public awarder received less than 3 applications for participation or less applications for participation than was stated in the announcement of the competition dialogue, the public awarder may ask to participate in the competition dialogue all the interested people who have filed the application for participation and proved the fulfilment of qualification to a full extent. This holds also in the case when the fulfilment of qualification was shown by less than 3 interested people.

The law newly also regulates the **simplified procedure for contracts below the limit** and the conditions of its use.

Public awarder may use the simplified procedure for contracts below the limit

- a) for awarding a public works contract for supplies below the limit or a public works contract for services below the limit
- b) or for public works contract for construction work below the limit, whose estimated value will not exceed CZK 20 000 000 without the value added tax.

The law also regulates the introduction of a dynamic purchasing system. **For the purposes of awarding public works contracts, whose object is the obtaining common, generally accessible goods, services, or construction work, the awarder may introduce the dynamic purchasing system in the open proceedings.**

When introducing the dynamic purchase system and filing the suppliers into the dynamic purchasing system, the awarder proceeds in compliance with the rules of open procedure until the moment of awarding

the public works contracts in the dynamic purchasing system.

The prerequisite of the introduction of the dynamic purchasing system is the announcement of this fact in the announcement of the open procedure. The announcement of the open proceedings on the introduction of the dynamic purchasing system is a call for the preliminary offers. In the announcement of open proceedings about the introduction of the dynamic purchase system, the awardee will state also the Internet address, on which the awarding documentation is at disposal.

Dynamic purchasing system cannot be introduced for the purposes of signing framework contracts.

Dynamic purchasing system cannot last longer than 4 years, with the exceptions in cases adequately justified by the awardee. The awardee will provide the suppliers with unlimited, complete, and direct remote access to the awarding documentation from the announcement of the open procedure on the introduction of a dynamic purchasing system until the end of functioning of the dynamic purchasing system.

In the announcement of the open proceedings about the introduction of a dynamic purchasing system and in the awarding documentation, the awardee specifies at least the kind and object of the public works contracts that shall be awarded in the dynamic purchasing system, the conditions for entering the dynamic purchasing system, which must contain also the requirements for the qualification of the supplier; this holds for the sector awardee only when he asks for the proof of the fulfilment of qualification, evaluation criteria for awarding public works contracts in the dynamic purchasing system, if this is suitable with regard to the time difference of the awarding of public works contracts in the dynamic purchasing system, the information related to the dynamic purchasing system and the use of electronic equipment and the information on the filing of preliminary orders.

When introducing the dynamic purchasing system and awarding public works contracts in a dynamic purchasing system, both awardee and supplier use solely electronic means (according to § 149 of the Act).

The Act also regulates the **Electronic auctions**, namely the conditions and the scale of use and their running. This kind of auctions, however, will not be applied immediately, but gradually.⁴

CONCLUDING REMARK

If we are to attempt the comparison of the trends of the EC legal regulation with the new Czech legal regulation, i.e. with Act No. 137/2006 Coll., we may say that the main directions formulated by the EC legal regulation correspond with the principles stated for the new Act No. 137/2006 Coll.

The new act, however, is about a third greater in size than the previous legal regulation. For the common addressee, it will at the same time be difficult to find "bridges", i.e. the relations between the individual clauses that are related to each other, as they are scattered throughout the Act. The users may thus find professional publications, e.g. explanations and the text of the law with commentary, useful.⁵

To foreign people, we may then recommend also publications in the journal *Public Procurement Law Review*.⁶

SUMMARY

Within EU, the main directions for the formulation of the new regulation were outlined:

- determination of the competition dialogue (competition dialogue was to be determined for especially complex contracts)
- introduction of electronic awarding (which would also make it possible to shorten the whole awarding process)
- enabling the awarders not the sign only realisation contracts, but also the so-called "framework contracts", on whose basis the contracts concerning realisation would be signed
- simplification of the clauses on technological specifications
- determination of the value of the contracts for simplified proceedings.

If we are to attempt the comparison of the trends of the EC legal regulation with the new Czech legal regulation, i.e. with Act No. 137/2006 Coll., we may say that the main directions formulated by the EC legal regulation correspond with the principles stated for the new Act No. 137/2006 Coll.

⁴ On the electronic procedure for public orders, see the editorial interview with R. MARTÍNEK: Public works contracts elektronicky (Public Orders Electronically), *Konkursní noviny* No. 11/2006, p. 1.

⁵ See e.g. KRČ, R., MAREK, K., PETR, M.: Act on public orders with explanatory notes., Linde Praha, in print.

⁶ See e.g. KRČ, R.: The Czech Republic – Draft Legislation on Public Contracts, *Public Procurement Law Review*, No. 4/2006, pp. NA 123–NA 126.

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