Transaction Costs, Outsourcing, and the Public Procurement Review Process in the Czech Republic and Slovakia

Markéta Šumpíková¹, Ina Ďurčeková²

Abstract

Public procurement is a crucial activity undertaken by the public sector. However, public procurement entails a wide range of transaction costs. While many papers focus on the ex-ante transaction costs, it is equally important to evaluate the types of ex-post transaction costs. The disputes stemming from conflicts between procuring authorities and proposers often bring additional costs to both parties. One of the ways to ensure that the procuring authority wins the dispute is using the services of an external law firm to represent the procuring authority in the review process. The aim of the paper is to examine the extent of the use of external law services in the public-procurement review process by procuring authorities and proposers in Slovakia and in the Czech Republic. The focus is also on the impact the use of external law firms in the review process may have on the length of the review process and the outcome of the dispute. Our results suggest that while the use of the external law firm may lead to a higher success rate of the review process on the side of a procuring authority, the same does not apply to proposers. There were no conclusive findings regarding the impact of the outsourcing on the length of the review process.

Keywords

transaction costs, outsourcing, public procurement, complaints, review, supervisory authority, rationality.

JEL codes: D73, D02, H57, L51

1 The College of Regional Development and Banking Institute – AMBIS, Czech Technical University Prague, Czech Republic.

2 Matej Bel University, Banská Bystrica, Slovakia.

Introduction

Public-procurement cost evaluation is considered to be important for both the public and the private sectors. From the private-sector perspective, the procurement optimisation at the company level is rational. On the public-sector side, the measurement of the transaction costs as part of the evaluation of the regulatory system is also rational. The reduction of these costs can lead to several macroeconomic benefits, such as the decrease of public debt from the point of view of public institutions. There are several studies focused on the impact of macroeconomic indicators on public debt (e.g. Knapkova et al. 2019). Ex-post transaction costs for both the public and the private sectors include expenses spent on the services of external law firms in the review process as public procurement itself.

The main reason contracting authorities may decide to use the outsourcing of procurement administration instead of handling the administration in-house is that the procurer does not have the institutional capacity to handle procurement. This means that the contracting authority may not have sufficient expertise in the area of public procurement needed to prepare a high-quality tender. Komakech (2016) emphasises the unique skillset public-procurement professionals should possess. It is crucial for procurement specialists to have contract-management skills, knowledge of public-procurement regulations and other skills. However, the contracting authority does not always have such a professional at their disposal in-house. Thus, they appoint an external expert to execute the tender process for them (European Commission 2017). The use of procurement agents provides several benefits, such as:

- the procurement agents minimise information asymmetry,
- they reduce risks,
- they provide professionalism,
- they contribute to the advancement of international practices (Asian Development Bank 2013).

However, even though the use of an external firm has many benefits, it also brings several risks, such as:

- violation of the competition law,
- violation of the public procurement law,
- conflict of interest or other types of fraud (European Commission 2017).

Even though the use of an external procurement agent may affect the outcome of the public procurement, there has not been a lot of research in this field of study. One of the few studies focused on this issue was conducted by Placek et al. (2019b), who studied the impact of several factors on the length of the award procedure in the Czech Republic. Among these factors, they also examined the effect of outsourcing the administration of the tender. They found that the use of outsourcing

of administration in the process of public procurement shortens the tender process by 6 days on average. Thus, it seems like the use of external experts may be a crucial factor of the procurement procedure.

In our paper, the main focus is on the use of procurement agents in the area of the public-procurement review process. The tenderers tend to file a complaint if the tendering documents are not comprehensible and therefore prevent them from preparing a tender or if the tenderers were unfairly excluded from the competition. Complaints may lead to corrections of the mistake by the award office as well as to the maintenance of the legal protection from a procedural point of view (Meyer-Hofmann 2012). Complaint and appeal mechanisms are crucial to detecting bribery, fraud and corruption and the appropriate system of public procurement review is an effective tool used to achieve transparency, honesty and equal competition (Patraş 2016; Tvaronavičiene et al. 2016).

However, disputes stemming from the procurement process lead to a waste of valuable resources, such as time and increased transaction costs for contractors and procuring authorities. In the case of a dispute, the procurement process must be postponed until the decision is carried out, which could lead to severe time delays and an additional increase of transaction costs. The disputes also lead to financial costs, such as penalties and compensation for economic losses (Ko and Liao 2013). The OECD (2000) also states that the number of complaints should not be used as a measure of efficiency of the remedies system, since few complaints may stem from good compliance as well as from the fact that tenderers may be afraid to start a dispute out of fear of future repercussions. In the case of the Czech Republic the number of complaints decreased significantly from 2016 to 2017 (to 50 %) due to the extreme increase of bail the complainant has to deposit on the review authority bank account (according to new procurement law No. 134/2016 Coll.).

The aim of the paper is to examine the extent of the use of external law services in the public procurement review process by procuring authorities and proposers in Slovakia and in the Czech Republic. The focus is also on the impact the use of external law firms in the review process may have on the length of the review process and the outcome of the dispute.

Literature review

The idea of transaction costs was brought into the analysis of economic behaviour by R. H. Coase (1937). He showed that transaction costs play a critical role in firms' origin, because they are hierarchical organisations saving costs of market transactions. He considered them to be a reason for the origin of firms, to operate on the lower level of transaction costs compared to the market arrangements. The relation of the transaction costs to the public sector was then broadly analysed by Coase's follower Williamson (1981).

Akerlof (1970) described transaction costs as “dishonesty” costs. He illustrated the dishonesty of doing business in less developed countries, which is more difficult because of the high level of distrust causing the transaction costs to rise. There are higher transaction costs not only in the private business sphere, but the situation of distrust induces the higher transaction costs in public procurement as well, linked to public procurement preparation, contract creation and the post-contracting behaviour of the suppliers.

The comprehensive foreign research of the correlation between transaction costs and opportunistic behaviour was provided, e.g., by Hill (1990). The study on incentives and transaction costs in public procurement based on microdata from Russia (Balaeva et al. 2018) reported that the average overall costs of public procurements in Russia came in at about 1 % of the total value of concluded contracts, but with a quite different amount (6.6 to 8.1 %) for small purchases.

An interesting broader approach to regulation, the reform of public utilities, and the complex problems of governance based on Williamson’s transaction costs approach was provided by Tadelis (2009, 2012).

The influence of the transaction costs in the pre-contracting (ex-ante) phase is broadly analysed mainly in Brown and Potoski (2002, 2003). They concluded that the key factors causing the rise of the external production transaction costs are both the low measurability of outputs (outcomes) and an assets specificity (highly specific assets usually lead to the monopsony dependence of the contractor on the supplier).

Bajari and Tadelis (2001) reported on the dependency between the decision/selection criteria and transaction costs in the case of building public procurements. The higher tendency of contractors towards lower transaction costs ex ante may significantly increase on-going and ex-post transaction costs. The other important factors are price design (fixed price or surcharge to the proven costs) and the project characteristics (simple reparation compared to a comprehensive complex project with a high uncertainty level).

The European Commission (2011) elaborated a very comprehensive study (and probably the most comprehensive of all) on the public procurement transaction costs. From 7,300 inquiries they reported that the total transaction costs of the public procurement in the EU are 1.4 % of the contract value and the main part (3/4) of this cost is borne by the private sector.

In the Czech and Slovak literature, the problem of the transaction costs in public procurement is systematically tested and investigated by Pavel (2007, 2013, 2018). He defined transaction costs related to the public procurement as costs bonded with the given contract realisation besides the production costs (2007). He also divides transaction costs in terms of time to: (i) preliminary, (ii) current, (iii)

consecutive. According to this author, transaction costs are incurred by both public and private sectors in the process of public procurement.

Table 1
Transaction Costs of the Private/Public Sector in Public Procurement

Time	EX-ANTE	DURING	EX-POST
Sector			
Public sector	Preparing public procurement documentation Announcing public procurement Cost of outsourced services (for experts used – legal, technical, etc.)	Explanations	Complaints solving costs Legal cases costs Costs incurred by hiring new supplier if first contract fails Price increase if the first contract fails
Private sector	Preparing bid Purchases to be able to fulfil qualification criteria Guarantees	Communication	Complaints costs Legal solutions costs

Source: own design, based mainly on Pavel and Vitek (2016)

In 2009 Pavel and Sicakova-Beblava brought evidence from the Czech and Slovak municipalities that the measurability of the contract outcomes is usually considered by the municipalities, but the assets specificity is not. Pavel (2013) concluded that the ex-ante transaction costs of projects supported by the Czech Operational Programme Environment are 0.72 % of the contract value on average.

According to the European Commission (2016), the public procurement market size was 14 % of GDP in the Czech Republic (the same part as in the UK). This represents approximately 26.5 bil. EUR in the Czech Republic.

In Pavel and Vitek (2016) the transaction costs on the side of the public sector and the direct transaction costs on the side of private firms are estimated with rather pessimistic findings. They estimated that these two (out of more) categories of transaction costs represent about 1.5 % of GDP (approximately 3 bil. EUR) – this equals the estimated savings (difference between estimated and contractual price).

Support for the very high level of indirect transaction costs was provided by Plaček et al. (2016). They show that the probability of review procedures is relatively high in the Czech Republic – almost 1.5 % of all open tenders are subject to revisions by the regulator (Office for Protection of the Competition). The total amount of fees by the regulator for procurement mistakes was 72 million CZK (almost 3 million EUR) in 2014, and the total amount of financial cautions from firms (cautions are necessary to start the revision procedure by the regulator) was 130 million CZK. The relatively very high percentage (20 %) of complaints were confirmed by the

regulator as appropriate. Together with the relatively high proportion of cancelled tenders it causes the direct and indirect costs increase and the ineffective resource allocation on both the public and private sector sides, having a very negative impact on the procurement system at the end.

There are only rare additional attempts to measure the volume of the public procurement transaction costs in the domestic area. Man et al. (2014) estimated the ex-ante public sector transaction costs at 1.8 % of the contract value. Dufek (2013) attempted to specify the average transaction costs of one proposal on the level of 2,489 CZK, the weighted average relative transaction costs at 0.25 % of the contract value and the total transaction costs of public procurement in the Czech Republic on the level of 6 billion CZK. In Šumpikova et al. (2016) the private sector transaction costs in the public procurement process are estimated on the basis of 47 private building companies. They show that the rate of the bid-preparation transaction cost compared to the total value of the contract is likely related to the company size. Micro firms estimated the rate below 5 %, while big companies around 15 %.

Grega and Nemec (2015) stated that the impact of competitiveness on the results of the public procurement is very important in Slovakia. Besides that, they also proved the high importance of the usage of the lowest-price criteria and the EU funds co-financing in the final procurement price setting.

Authors in Mikušová Meričková and Nemec (2013) examine a link between contracting performance and the quality of contract management in Slovakia. They concluded that contracting does not always produce the expected positive results. They bring the evidence that a key factor determining success in contraction is competitive selection, but non-competitive selection of suppliers prevails in Slovakia.

Interesting findings based on the comprehensive research were provided by Grega et al. (2019) on Slovak data. According to this paper, there is significant agreement between suppliers and contractors that the two main factors causing inefficiencies are excessive bureaucracy and corruption or other ethical shortcomings. It is shown that insufficient competition, and the excessive use of the lowest price criterion for selecting winning bids, add further inefficiencies. Savings are greatest when there are between 6 and 8 bidders. E-auctions generally produce larger savings than more traditional methods, but Slovak procurement procedures are costly, compared to most other EU states.

Plaček et al. (2019a) analysed the factors influencing time delays in the awarding of public sector contracts in the Czech Republic and the United Kingdom. They tested a bias between time delays and (H1) the type of contracting authority, (H2) the estimated value of public contract, (H3) the type of procurement procedures and (H4) the choice of the bid evaluation criterion. Although there are no direct transaction costs calculations and H4 was rejected for the UK, the paper shows that almost all tested factors significantly influence the length of procurement procedure and thus the transaction costs.

Tvaronavičiene et al. (2016) state that even though the Review Directive (Directive 2007/66/EC) sets the main requirement for the public procurement disputes resolution system for the EU member states, each country has its own system for public procurement review. Even though these differences help each country to retain discretion, it also prevents equal competition in the market. Thus, it is difficult to compare the review systems of two different EU countries (such as Slovakia and the Czech Republic), considering their differences. However, in this paper, we will try to compare the transaction costs stemming from public procurement reviews of these two countries, while pointing out their differences.

This paper deals with the transaction costs of the public procurement arisen from the public procurement reviews. The correctness of the public procurement assignment is reviewed by the Office for the Protection of the Competition in the Czech Republic and the Office of Public Procurement in Slovakia. The analysis focuses on two selected aspects of the public procurement review transaction costs, namely on the length and outcomes of the review in connection to participation of the external law firms in the review process. We try to find out whether it is rational to hire external law firms to accelerate the review process and to ensure the positive outcome. The law firms' services will probably be costlier than in-house staff work, so the rationalisation of this strategy may consist in decreasing or even eliminating the dispute for contractors.

Methodology, data and methods used in the paper

The analysis conducted within the paper is focused on various aspects of the review process of public procurement in Slovakia and the Czech Republic with the emphasis on the use of external legal services by the procuring authority and the proposer within the review process. Our focus is on the review process in these countries in the two most recent concluded periods – the years 2017 and 2018. The data for the Czech Republic was obtained from the Office for the Protection of the Competition in the Czech Republic, while the data for Slovakia was obtained from the Office of Public Procurement in Slovakia. As we discussed in the previous text, the review systems work differently in various countries, even within the European Union. Thus, it is crucial to specify the similarities and differences of review systems in Slovakia and the Czech Republic.

In the Czech Republic, the review decisions are published in the form of qualitative data on the Office website in a pdf format, but their texts are unstructured. More than 11.5 thousand decisions are available in this way. Thus, specific data mining is needed to get any statistically tested data. We tried to prepare a full-text search programme, but it is more complicated and time-demanding than we expected. For that reason, we decided to manually mine data from randomly selected sample of 70 outsourced and 70 non-outsourced decisions from the years 2017 and

2018. Considering the smaller size of Slovakia in comparison to the Czech Republic, it is understandable that the number of complaints proposed each year is smaller in Slovakia. Therefore, even though we used the random sample of 140 reviews for each year under review in the Czech Republic, we decided to analyse all decisions made by the Office of Public Procurement in Slovakia in 2017 and 2018.

In both countries under review, both the procuring authority and the proposer (complainant) can outsource the review process to an external legal firm. Even though procuring authorities use this option fairly often in both countries, the proposers use outsourcing more frequently in the Czech Republic. Therefore, some differences in methodology are used when comparing the review process of Slovakia and the Czech Republic. While in Slovakia, we only focus on the external representation of the procuring authority (stemming from the fact that there were very few cases where it was specifically stated that the proposer outsourced the legal services to an external firm – specifically in two cases in 2017 and in three cases in 2018), in the Czech Republic we compare the use of external experts on both sides, the procuring authority and the proposer, as well. It is therefore important to point out that the outsourced reviews in the Czech Republic refer to outsourcing by either the procuring authority or the proposer. This means that the non-outsourced decisions were not outsourced by either party, while the outsourced decisions may have been outsourced by the procuring authority, the proposers or both at the same time. However, outsourced reviews in Slovakia only refer to the outsourcing of the legal services by the procuring authority.

The differences in the methodology stemming from the differences between the review systems of Slovakia and the Czech Republic are summarised in the following table.

Table 2
Methodology used to gather data in Slovakia and the Czech Republic

	Slovakia	Czech Republic
Analysed years	2017, 2018	2017, 2018
Sample	All decisions made by the Office of Public Procurement in 2017 (154 decisions) and 2018 (181 decisions)	Randomly selected sample of 70 outsourced and 70 non-outsourced decisions for each year of 2018 and 2017.
Outsourcing analysed within the paper	Outsourcing of legal services of procuring authorities	Outsourcing of legal services of both procuring authorities and proposers

Source: authors.

The acquired qualitative data was transformed into quantitative data, and it was statistically tested whether there are some relations or not at all. The main variables analysed within the paper are the use of an external legal firm by a procur-

ing authority (and/or by a proposer in case of the Czech Republic) in the review process, the use of an external legal firm by a procuring authority in the process of preparation of a public procurement tender, the length of the review process and the outcome of the review process.

Table 3

Total number of public procurement review decisions on complaints made in Slovakia and in the Czech Republic in 2017 and 2018 (1st instance)

	2017	2018
Slovakia	154 (152)	181 (178)
Czech Republic (1 st instance)	216 (140)	259 (140)

Note: number of decisions analysed within the paper is denoted in parentheses (.)

Source: authors.

Table 3 shows the total number of review decisions made in Slovakia and the Czech Republic in 2017 and 2018. The aggregate numbers are provided to determine the share of outsourced reviews on the total number of reviews made in a country. However, the subsequent research is focused on the analysis of a random selection of reviews in the Czech Republic and all reviews in Slovakia (with the exception of 2 reviews in 2017 and 3 reviews in 2018 for which the data was not available and thus could not be evaluated).

Even though the analysis is focused on several variables, an emphasis is put on the impact of the use of an external law firm to represent one of the parties in the outcome of the review process. There is a variety of decisions a supervisory authority can make to resolve a dispute between the proposer and the procuring authority in both Slovakia and the Czech Republic. For the purposes of this paper, we decided to divide these decisions into two categories: decisions favourable to a proposer and decisions favourable to a procuring authority. We realise that this distinction oversimplifies the range of decisions made by a supervisory authority, but this approach allows us to compare the impact the outsourcing of legal services has on the outcome of the review process in Slovakia and in the Czech Republic. Cases “won” by a procuring authority in our analysis include decisions made in favour of a procuring authority by the supervisory authority as well as cases in which the proposer gave up his claims or did not submit the required documents. Cases “won” by a proposer include decisions made in favour of a proposer by the supervisory authority as well as cases in which a procuring authority decided to revoke the public procurement altogether before the decision could be carried out.

Research Results and Their Discussion

The use of an external law firm is usually costlier than using in-house employees to take care of obligations stemming from the public procurement review process. However, since the contracting authorities as well as proposers use these services, this strategy should be rational if its use reduces the probability of losing a dispute or shortens the length of the review process.

Based on the abovementioned assumptions, two hypotheses were formulated:

H1: The use of the services of an external law firm by the contracting authority increases the likelihood that the review of the contract will end in favour of the contracting authority.

H2: The use of services of an external law firm leads to a shortened review period.

Table 4

The use of an external law firm in the process of public procurement review by procuring authority and/or proposer in Slovakia and in the Czech Republic in 2017 and 2018 (total numbers)

Country	Use of external law firm	2017	2018
Slovakia	Not outsourced by either party	119 (78.3 %)	147 (82.6 %)
	Outsourced by either party	33 (21.7 %)	31 (17.4 %)
	Outsourced by procuring authority	33 (21.7 %)	31 (17.4 %)
	Outsourced by proposer	N/A	N/A
	Outsourced by both parties	N/A	N/A
Czech Republic	Not outsourced by either party	83 (38.4 %)	98 (37.8 %)
	Outsourced by either party	133 (61.6 %)	161 (62.2 %)
	Outsourced by procuring authority	23 (10.6 %)	27 (10.4 %)
	Outsourced by proposer	80 (37.0 %)	101 (39.0 %)
	Outsourced by both parties	30 (13.9 %)	33 (12.7 %)

Source: authors.

The use of an external law firm to represent one of the interested parties is much more pronounced in the Czech Republic. While less than a quarter of all reviews were outsourced in Slovakia in 2017 (and even fewer in 2018), this share was

above 60 % in both 2017 and 2018 in the Czech Republic. There are several reasons that could explain this situation. First of all, documents published by the Slovak Office for Public Procurement do not specifically state when a proposer uses an external law representative in the review process. Therefore, we can only evaluate the number of reviews outsourced by the procuring authority, while the number for the Czech Republic is an aggregate of the outsourcing by both the procuring authority and the proposer. The higher share of outsourced reviews in the Czech Republic may also stem from the differences between the review systems in Slovakia and the Czech Republic.

While in Slovakia, we can only evaluate the outsourcing used by a procuring authority, in the Czech Republic, we can also compare the use of external law services by both procuring authorities and proposers. It is clear that the outsourcing of the public procurement review process in the Czech Republic is much more common on the side of the proposer. More than 35 % of the proposers used the services of an external law firm in both years under review, while this share was only 10 % for the procuring authorities. In roughly 13 % of all analysed cases, both parties decided to use an external law firm. We can also see that while there is a slight decrease in the use of outsourcing in Slovakia, these numbers are very consistent in the two monitored years in the Czech Republic, and there is not an obvious increase or decrease of outsourcing.

Figure 1
Comparison of the average length of the review process in Slovakia and the Czech Republic in 2017 and 2018 with regards to whether the process was outsourced by any party

Source: authors.

It is apparent that the review process, regardless of whether it is outsourced to an external law firm or not, takes longer in Slovakia. While the average time of the review process in Slovakia was above 140 days (147 days in 2017 and 140 days in 2018), the average length was much shorter in the Czech Republic (50 days in 2017 and 90 days in 2018). This could be caused by several reasons. Although the investigation of these reasons is not the goal of this paper, we assumed that this matter may to a certain extent be caused by the number of employees working under the supervisory authorities in each country. The shorter process length in the Czech Republic would be understandable if the average number of decisions per employee was lower in the Czech Republic and therefore they could process the complaints faster. However, this assumption was not confirmed, since these numbers were roughly the same in both countries (see Table 5). While the average number of decisions per employee in the Czech Republic was in fact lower in 2017, the same does not apply to 2018. Thus, there must be other matters causing the longer time of the review process in Slovakia. When we look separately at the length of outsourced and non-outsourced reviews, we cannot draw a consistent conclusion. While the non-outsourced reviews took shorter time in both years under review in the Czech Republic, the results are inconclusive for Slovakia. Even though one of our hypotheses was that the use of an external law firm leads to a shorter review period, it is not surprising that the outsourced reviews took longer. The use of an external firm means additional activities and costs on the contractor side, such as transfer of documents, study and preparation of the case. Moreover, the non-outsourced cases are dominantly represented by big cities, hospitals, ministries, public enterprises with important market power, all of which are represented by their own employees (law specialists).

Table 5

Average number of review decisions per supervisory authority employee in Slovakia and Czech Republic in 2017 and 2018

	2017	2018
Slovakia	1.2	1
Czech Republic (1 st instance)	0.9	1.1

Source: authors.

We can see that the number of “successful” disputes for a procuring authority was higher, regardless of whether the review process was outsourced or not (except for the year 2018 in the Czech Republic). However, the share of the lost cases was higher in the case of non-outsourced reviews (this phenomenon is especially pronounced in Slovakia). Thus, it seems like the use of an external law firm by a procuring authority does in fact lead to a higher success rate of disputes for a procurer.

Figure 2

Comparison of the outcomes of the review process (for the procurer) in Slovakia and Czech Republic in 2017 and 2018 with regard to whether the process was outsourced by the procuring authority

Note: “Won the dispute” means that the supervisory authority decided in favour of the procuring authority; “lost the dispute” means that the supervisory authority decided in favour of the proposer

Source: authors.

Even though it is not possible to compare the review process of Slovakia and the Czech Republic from the point of view of the proposer, since the data is not available for Slovakia, we decided to have a separate look at the outcomes of the review process from the point of view of the proposer in the Czech Republic, based on whether the proposer used an external law firm or not.

Our results suggest that the use of an external law firm by a proposer does not lead to a significantly higher rate of successful disputes for a proposer. The share of the reviews that the proposer won was lower in cases when the proposer decided to use an external firm (46 % in 2017 and 48 % in 2018) than when the proposer did not use external services (47 % in 2017 and 58 % in 2018). According to our research, the cases that were not outsourced by the proposer are usually for bigger companies that have their own well trained law specialists.

Figure 3

Comparison of the outcomes of the review process (for the proposer) in the Czech Republic in 2017 and 2018 with regard to whether the process was outsourced by the proposer

Note: “Won the dispute” means that the supervisory authority decided in favour of the proposer; “lost the dispute” means that the supervisory authority decided in favour of the procuring authority

Source: authors.

Table 6

The use of an external law firm by procuring authorities in the process of administrating a public procurement tender in Slovakia and Czech Republic in 2017 and 2018

		2017	2018
Slovakia	Outsourced public procurement	70 (46.1 %)	73 (41.0 %)
	Outsourced public procurement and public procurement review	32 (21.1 %)	31 (17.4 %)
Czech Republic	Outsourced public procurement	38 (27.1 %)	34 (24.3 %)
	Outsourced public procurement and public procurement review	17 (12.1 %)	15 (10.7 %)

Source: authors.

Based on our results, we also decided to examine the share of procuring authorities that decided to use the services of an external law firm in the process of a public procurement tender itself. We evaluated this on the sample of public procurements which the decisions were made on in 2017 and 2018, thus using the same

sample as in the previous analysis. It is clear that the procuring authorities use services of external law firms much more often in the process of public procurement tendering than in the process of public procurement review. This is especially pronounced in Slovakia, where procuring authorities used outsourcing of the review process only when they also outsourced the public procurement itself. Overall, they used the option to outsource the public procurement in over 70 cases in both years under review while they only used outsourcing of the review process in over 30 cases. Our results suggest that procuring authorities use the external law firms more often in the process of public procurement tendering.

Conclusions

The use of external law firms by procuring authorities and proposers in the public procurement review process is a costly activity. Thus, this strategy must bring both interested parties certain benefits for it to be efficient. The paper focused on the use of external law services by procuring authorities and proposers in Slovakia and the Czech Republic in 2017 and 2018 and its impact on the outcome and length of the review process.

Two hypotheses were tested within the paper, one regarding the impact of outsourcing on the length of the review process and one regarding the impact of outsourcing on the outcome of the dispute. Our results suggest that while the use of an external law firm may increase the success rate of reviews in favour of the procuring authority, the same does not apply to proposers. Thus, it seems to be more rational for procuring authorities to use the services of external law firms than it is for proposers. Our research also shows that while the outsourced reviews took longer than the non-outsourced ones in the Czech Republic, the results for Slovakia were inconclusive. However, one of the important findings was that the average length of the review process (regardless of whether it was outsourced or not) is shorter in the Czech Republic than it is in Slovakia. The examination of causes that could explain this discrepancy was not the aim of this paper. However, we believe that this is an interesting issue that could be a topic of further research.

Acknowledgement

The preparation of this article was supported by the Czech Grant Agency, project 19-06020S, and by the Slovak Research and Development Agency, project APVV-17-0360, “Multidimensional Analysis of Significant Determinants of Public Procurement Efficiency with Emphasis on the Application of Health Technology Assessment in the Procurement Preparation Phase.”

References

- Akerlof, George A. 1970. "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism." *The Quarterly Journal of Economics* 84(3), 488–500.
- Asian Development Bank. 2013. *Outsourcing Procurement in the Public Sector*. Mandaluyong City: Asian Development Bank. <https://www.adb.org/sites/default/files/publication/30337/outsourcing-procurement-public-sector.pdf> (last accessed date at 25 July 2019).
- Bajari, Patrick and Steven Tadelis. 2001. "Incentives versus Transaction Costs: A Theory of Procurement Contracts." *RAND Journal of Economics* 32(3), 387–407.
- Balaeva, Olga, Andrei A. Yakovlev, Julia Rodionova and Daniil Esaulov. 2018. "Public Procurement Transaction Costs: A Country-Level Assessment Based on Microdata." HSE Working papers from National Research University Higher School of Economics, BRP 20/PSP/2018.
- Brown, Trevor L. and Michael Potoski. 2002. "The Influence of Transaction Costs on Municipal Government Choices about Alternative Modes of Service Provision." Working Paper, Bloomington: Indiana University. Available at https://localgov.fsu.edu/readings_papers/Service%20Delivery/Brown_Potoski_Transaction_Costs_and_Mode_of_Service_Provis_.pdf (last accessed at 28 July 2019).
- Brown, Trevor L. and Michael Potoski. 2003. "Transaction Costs and Institutional Explanations for Government Service Production Decisions." *Journal of Public Administration Research and Theory* 13(4), 441–468.
- Coase, Ronald H. 1937. "The Nature of the Firm." *Economica* 4(16), 386–405.
- Dufek, Luboš. 2013. "Measuring Private Transaction Costs of Public Procurement: Case of the Czech Republic." *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis* 61(2), 317–325.
- European Commission. 2011. *Public Procurement in Europe: Cost and Effectiveness*. Brussels: European Commission. Available at <https://publications.europa.eu/en/publication-detail/-/publication/0cfa3445-7724-4af5-8c2b-d657c-d690c03> (last accessed at 26 July 2019).
- European Commission. 2016. *Public Procurement: A Study on Administrative Capacity in the EU*. Available at http://ec.europa.eu/regional_policy/en/policy/how/improving-investment/public-procurement/study/ (last accessed at 31 July 2019).

- European Commission. 2017. "Fraud in Public Procurement: A Collection of Red Flags and Best Practices." Available at https://ec.europa.eu/sfc/sites/sfc2014/files/sfc-files/Fraud%20in%20Public%20Procurement_final%2020.12.2017%20ARES%282017%296254403.pdf (last accessed at 15 July 2019).
- Grega, Matúš and Juraj Nemec. 2015. "Factors Influencing Final Price of Public Procurement: Evidence from Slovakia." *Procedia Economics and Finance* 25(1), 543–551.
- Grega Matus, Marta Orviska, Juraj Nemec and Colin Lawson. 2019. "Factors Determining the Efficiency of Slovak Public Procurement." *NISPACEe Journal of Public Administration and Policy* 12(1), 43–68.
- Hill, Charles W. L. 1990. "Cooperation, Opportunism, and the Invisible Hand: Implications for Transaction Cost Theory." *The Academy of Management Review* 15(3), 500–513.
- Knapkova, Miroslava, Martin Kiaba and Samuel Hudec. 2019. "Impact of Macroeconomic Indicators on Public Debt in Slovakia." *Journal of Business Economics and Management* 20(4), 734–753.
- Ko, Chien-Ho and Hong-Sheng Liao. 2013. "Reducing Ineligible Contractor Disputes in Government Procurement: A Lesson from Taiwan." *KSCE Journal of Civil Engineering* 18(2), 409–418.
- Komakech, Robert Agwot. 2016. "Public Procurement in Developing Countries: Objectives, Principles and Required Professional Skills." *Public Policy and Administration Research* 6(8), 20–29.
- Man, Petr, Jitka Matějková, Radek Jurčík and Rudolf Heidt. 2014. "The Key Factors of Transparency of the Public Procurement in the Czech Republic." *Procedia Economics and Finance* 12, 379–386.
- Meyer-Hofmann, Bettina. 2012. "Public Procurement and PPP." In Michael Mütze, Thomas Sennf and Jutta C. Möller (eds). *Real Estate Investments in Germany*. Berlin: Springer, 229–250.
- Mikušová Meričková, Beáta and Juraj Nemec. 2013. "Contract Management and its Impact on Contracting Public Services: Slovak Republic." *Ekonomický časopis* 61(7), 690–699.
- OECD. 2000. "Public Procurement Review Procedures." Sigma Working Papers 30. <https://dx.doi.org/10.1787/5kml60w0qbvf-en>.
- Patraș, Mirela Violeta. 2016. "Critical Phases in the Process of Awarding Public Procurement Contracts: Romania Case Study." *Journal of Public Administration, Finance and Law* 8, 45–66.
- Pavel, Jan. 2007. *Ekonomické aspekty verejných zakazek*. Habilitation thesis. Brno: Masarykova univerzita.

- Pavel, Jan. 2013. *Veřejné zakázky a efektivnost*. Praha: Ekopress.
- Pavel, Jan. 2018. "Private Transaction Costs of Procurement and Factors Affecting Their Value" (in Czech). *Politická ekonomie* 66(1), 20–34.
- Pavel, Jan and Emilia Sičáková-Beblavá. 2009. "Testing the Validity of the Brown-Potoski Model in the Czech and Slovak Republics." *Prague Economic Papers* 18(4), 327–341.
- Pavel, Jan and Leoš Vítek. 2016. "Transaction Costs of the Czech Public Procurement." Paper presented at the IRSPM Hong Kong conference, 13–15 April 2016. Available at <http://programme.exordo.com/irspm2016/delegates/presentation/24/> (last accessed at 15 July 2019).
- Plaček, Michal, Martin Schmidt, František Ochraňa, Milan Půček. 2016. "Impact of Selected Factors Regarding the Efficiency of Public Procurement (the Case of the Czech Republic) with Emphasis on Decentralization." *Ekonomický časopis* 64(1), 22–36.
- Plaček, Michal, František Ochraňa, Martin Schmidt, Juraj Nemec and Milan Půček. 2019a. "The Factors Causing Delays in Public Procurement: The Czech Republic versus the UK." *Public Money & Management*. DOI: 10.1080/09540962.2019.1651034.
- Plaček, Michal, Martin Schmidt, František Ochraňa and Milan Půček. 2019b. "Factors Affecting the Lengths of Procedure in Public Procurement: The Case of the Czech Republic." *Prague Economic Papers* 28(3), 313–329.
- Šumpíková, Markéta, Filip Bušina, Matúš Grega, Juraj Nemec and Marta Orvíska. 2016. "Transaction Costs in the Public Procurement: Selected Findings in Czech and Slovak Conditions." MSED conference proceedings, University of Economics Prague. Available at https://msed.vse.cz/msed_2016/sbornik/toc.html (last accessed at 18 July 2019).
- Tadelis, Steven. 2009. "Incentives and Transaction Costs in Public Procurement." In Claude Menard and Michel Ghertman (eds). *Regulation, Deregulation, Reregulation*. Cheltenham, UK: Edward Elgar Publishing, 67–83.
- Tadelis, Steven. 2012. "Public Procurement Design: Lessons from the Private Sector." *International Journal of Industrial Organization* 30(2), 297–302.
- Tvaronavičienė, Agnė, Gintarė Žemaitaitienė and Tatjana Bilevičienė. 2016. "Ecosystem for Sustainable Entrepreneurship: Towards Smart Public Procurement Review Procedures." *Entrepreneurship and Sustainability Issues* 4(1), 39–52.
- Williamson, Oliver E. 1981. "The Economics of Organization: The Transaction Cost Approach." *The American Journal of Sociology* 87(3), 548–577.