

Public Procurement Legal Review Experience in the Czech Republic

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Intro: How the Review Works in the Czech Republic

National authority:

Office for the Protection of Competition

- decides in two instances
- 2nd instance only confirms the 1st instance decision or abolishes the decision and returns the case back (principle of incomplete appeal)



Courts:

Regional Court in Brno

Supreme Administrative Court

Types of Procedures

Ex officio:

- Imposition of corrective measures
- Imposition of fines for administrative delicts (breach of the Act on Public Procurement)

Application for review proceedings:

- Deposit
- Imposition of corrective measures



Complaints: no fee, no guarantee of procedure commencement

Trends: Responsible Public Procurement

Since 1/2021 an amendment to the Public Procurement Act:

The contracting authority should adhere to the principles of *socially and environmentally responsible as well as inovative procurement*.

Statistics:

6 % of interviewed contracting authorities haven't implemented yet

45 % implement occasionally

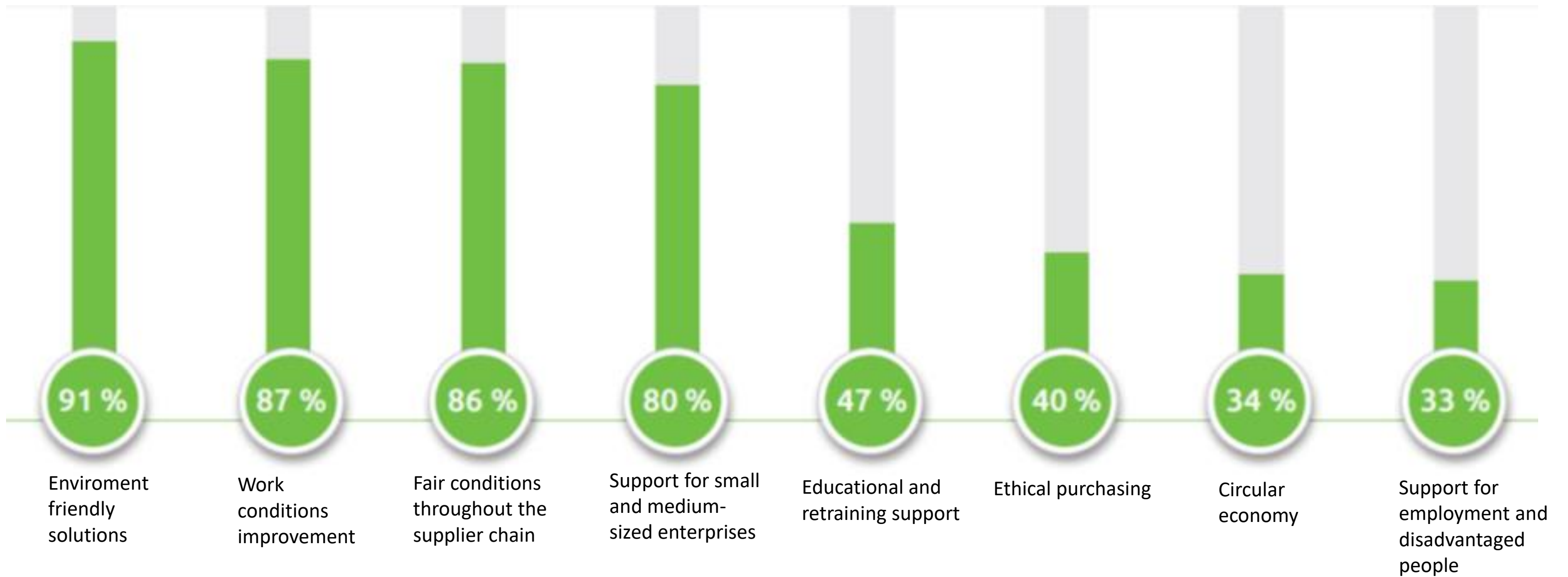
47 % implement regularly

2 % implement systematically due to internal strategy



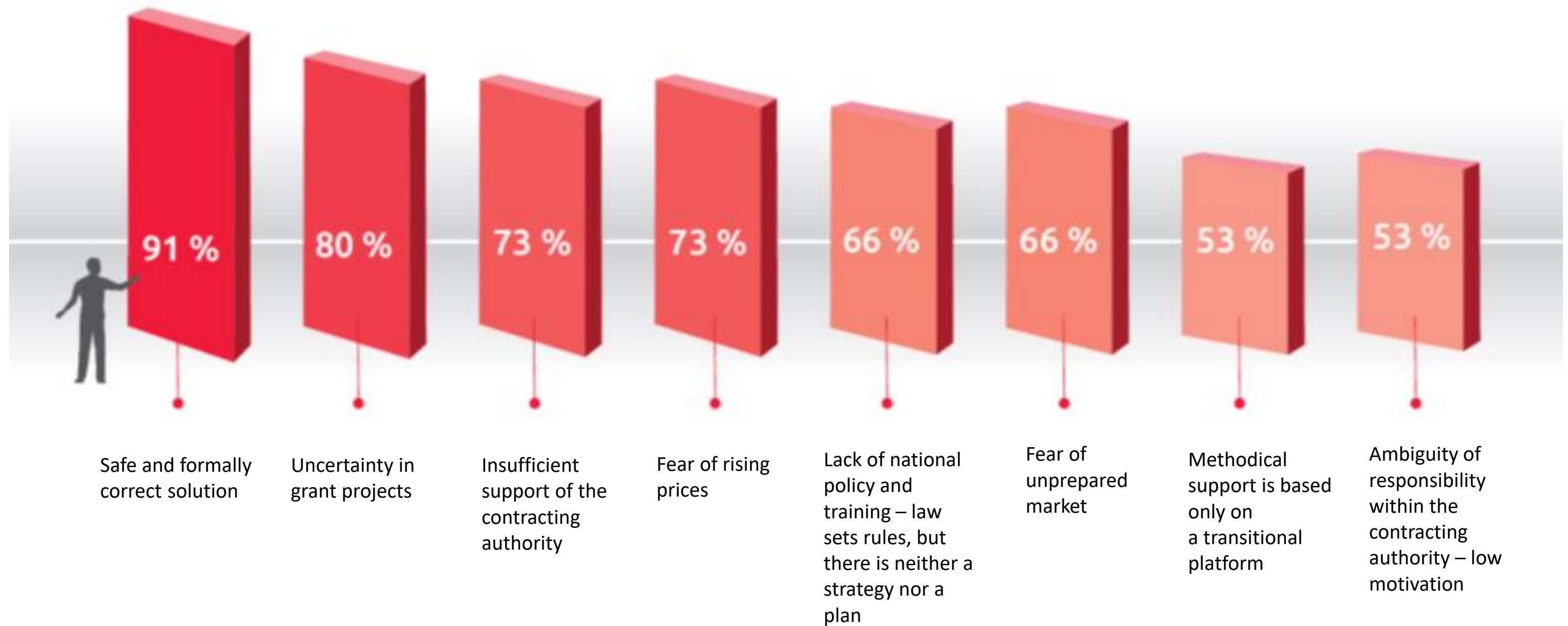
More Statistics

Preferred areas of responsible procurement:



Even More Statistics

Key barriers:



Case Study /1

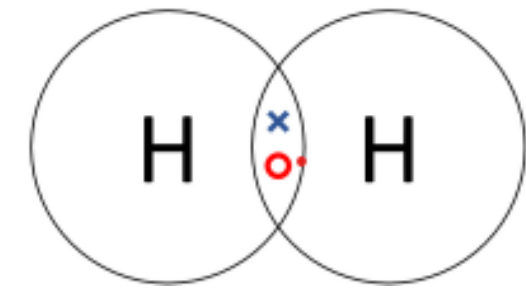
Case No. ÚOHS-P0136/2021/VZ

– reconstruction of a primary school



The contracting authority required and evaluated positively that the supplier had employed disabled workers in the past as well as its commitment to employ unexperiences workers in order to provide them with professional experience.

Case Study /2



Case No. ÚOHS-R0028/2022/VZ, 26. 4. 2022 – 10 hydrogen buses

- the contracting authority required a list of significant supplies: at least 1 hydrogen bus in previous 15 years delivered in EEA or Swiss Conf.
- the petitioner argued that this condition was discriminatory (only 2 suppliers)
- The chairman of the Office pronounced:
 - list of significant supplies is generally relevant, however 1 bus in 15 years may be a random delivery not necessarily proving the experience
 - the hydrogen technology is not new and there may be more suppliers that are able to deliver hydrogen buses
 - the market is a developing one and such condition would result in a permanent advantage for suppliers who have already delivered a hydrogen bus
 - the condition is discriminatory considering all circumstances

Shift in the Way of Evaluation in General



the lowest price

fixed price and quantified (objective) evaluation criteria

fixed price and subjective evaluation criteria

fixed price and mixed (subjective and objective) ev. criteria

mixed model – price and subjective ev. criteria

Case Study /3

Case No. ÚOHS-R0073/2020/VZ, 3. 7. 2020 – meal vouchers



- Evaluation criterion: number of contractors (restaurants etc.)

- Evaluation criteria must comply with the public procurement principles

- Criteria must be justified
 - relation to the subject of the public contract
 - justification of economic advantage

Best Value Approach

- Importance of preliminary market consultations
- Key role of the intended purpose of the contract
- Evaluation criteria (limited importance of price)
- Bid evaluation – two envelopes system - evaluation of quality followed by evaluation of price
- Verification of claimed qualities (professionalism, risk prevention, advanced solution)



Frequently Used Methods

- Meet the buyer
- Preliminary market consultations
- Negotiated procedures
- Communication during PP procedure
- Communication after termination of PP procedure
- Communication during the contract performance



Thank you for your attention.

Köszönöm a figyelmet.

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