

Press Release

Survey: 90% of respondents agree with the cancellation of the obligation to rescind a public contract, if only one bid is received

Prague, 13 April 2014 – 9 of 10 approached contracting authorities and public procurement suppliers agree with the cancellation of the obligation to rescind a public contract, if only one bid is received. Those are the results of a survey among public, sector and subsidised public authorities and among public procurement suppliers carried out by Ambruz & Dark Deloitte Legal. The survey took place exactly a month after the technical amendment to the Public Procurement Act had become effective on 6 March 2015.

“The increase of the limit for extra work from 20% to 30% from the value of the original public contract was one of the frequently discussed topics. In addition to this change, also a rule for the admissibility of this work became softer. While according to the previous legal regulation such work had to be objectively unforeseeable beforehand, nowadays a contracting authority has to prove that such work was not foreseeable at the time of the award of the original public contract while exercising due care,” Ondřej Chmela, attorney at Ambruz & Dark Deloitte Legal, commented on the survey results.

Almost half (47%) of the approached respondents agree with the increase of the extra work limit, on the other hand one third (33%) of the addressees think that increasing the limit will only result in wasting public money. 13% of the addressees would suggest that the limit be increased by up to 50% of the value of the original public contract for each individual change, as allowed by the European Directive.

Regarding a change of the condition for the foreseeability of work from objective unforeseeability to unforeseeability while exercising due care, 67% of public procurement suppliers are afraid that the change in the language of the Act will result in additional interpretation difficulties and 13% stated that, in fact, they did not understand this change.

In the event of newly implemented evaluation options (evaluation of the impact of the public contract performance on the possibility to employ persons who have difficulty accessing the labour market and evaluation of the persons effecting the quality of the public contract performance), 50% of contracting authorities stated that they would use the new evaluation options based on the practical experience of other contracting authorities with the application of the new evaluation options or based on the decision of the Office for the Protection of Competition on these criteria.

“Even with respect to the possible lack of clarity regarding the interpretation of the new evaluation options and problematic assessment of non-numeric public procurement criteria, primarily contracting authorities are rather sceptical concerning the application of these new developments to a wider extent,” Ondřej Chmela added.

Several parts of the technical amendment concern the elimination of the provisions from previous amendments, in particular from the so-called transparency amendment of 2012. In this regard, the current technical amendment is related to the technical amendment of 2013,

which also eliminated or modified the provisions implemented by the transparency amendment. In particular, these changes include the already mentioned cancellation of obligatory rescission of public contracts in case a contracting authority received one bid or the cancellation of the so-called list of evaluators in which case, according to the original thoughts of the Ministry for Local Development, specially trained evaluators recorded in the list of the Ministry were to sit on evaluation committees.

Expectations from the new Public Procurement Act

The technical amendment ushers in big changes to be prepared in the area of public procurement regulation. Next April, at the latest, an entirely new Act on Public Tenders is to become effective as a result of the above-mentioned EU Directive to replace the current Public Procurement Act.

The respondents also commented on the expectations they have from the Act on Public Tenders. 40% of these respondents evaluate the current legal regulation as disorganised and unclear and 30% think that the process of public contract awarding is needlessly administratively demanding.

“Most people engaged in the public procurement process on the part of contracting authorities and suppliers criticise, on a long-term basis, the administrative burden connected to each public contract. It is not a coincidence that the amendment to the Public Procurement Act appeared on the list of the worst legislative endeavours within the Act of the Year survey. The administrative burden and the complexity of the process which the EU Directive does not even require from us in many cases has, last but not least, also economic effects – the preparation of the bid is very expensive for a supplier and the process of the purchase of goods and services is often so complicated for a contracting authority that it must hire external advisors for the administration of the public contract,” Ondřej Chmela added.

27% of contracting authorities and suppliers expect a decrease in the administrative demands of the tender procedure from the new Public Procurement Act and 32% hope that the Act be more concise and transparent.

“The current complex Act, in less than 9 years since it’s been in effect, has been amended twenty times, a fact which does not contribute to its transparency. In many cases new developments are implemented and then immediately cancelled again by the following amendment. An extensive decision-making practice of the Office for the Protection of Competition must also be taken into account, interpreting a number of the Act’s provisions in a way that is considerably surprising for the contracting authorities. The contracting authorities often do not even have an inkling on how they should solve individual non-standard situations. No wonder that the contracting authorities especially expect transparency and stability from the new Act,” Ondřej Chmela summarised.

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