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The devil is in the detail – how to conduct a procurement procedure in accordance with the new Hungarian Procurement Act and the requirements of the contracting authority

In respect of public procurement procedures, thorough preparation for the procedure is of major importance since it will essentially affect the possibility for tenderers to participate, the time needed to conduct, and the outcome of, the procurement procedure, as well as the quality of the performance, and last but not least, it may lead to more efficient cooperation with the authorities. There are often obstacles in the course of the accomplishment of the project which could have been avoided by thorough preparation.

The preparation for a procurement procedure is a sensitive issue since the contracting authority applying narrowly defined selection criteria is able to privilege a tenderer. Subjective selection requirements that cannot be met by other candidates unreasonably narrow competition. The controlling authority has a special responsibility for filtering out such anomalies. The main objective of a procurement procedure is to enable the contracting authority to enter into contracts under the most favourable conditions. . Poorly defined requirements may interfere with the interests of the contracting authority who would not be able to realize his intended project since it needs to have the best experts and high-quality products for the implementation of the project. The main goal of the preparation stage is to harmonise these two aspects.

The new Hungarian Procurement Act stipulates the preparation rules in several sections and highlights the importance of thorough preparation. Under the new Procurement Act, the tender documents must enable the economic operator to submit a technically sufficient, feasible and cost-effective tender. The contracting authority must endeavour to provide for conditions to facilitate high-quality performance also considering environment protection and sustainability, as well as to prevent subsequent amendments to contract.

The first and one of the most important elements of the preparation stage is to determine the estimated value of procurement based on which the procedural order to be applied will be selected. It is of particular importance because the provisions governing public contracts whose value reaches the EU threshold are more severe than the provisions in the national procedures. The selection of the procedural order can provide an opportunity for the contracting authority to misuse this situation. The determination of the estimated value should not be conditional upon the funds available to the contracting authority. The estimated value and the financial means available to the contracting authority are often the same amount in practice, however, constitute fundamentally different terms.



The estimated value is a notional sum stipulated under market conditions but the available financial means are real funds not necessarily reflecting market conditions. A realistic evaluation is important since it is meaningless and uneconomical to conduct a procurement procedure if the contracting authority does not have the funds to perform under market conditions. The controlling authorities strictly monitor the methods of the calculation of the estimated value and in this regard often request further information at the beginning of the procedure.

Providing a non-exhaustive list of examples, the evaluation of the estimated value is stipulated in the new act supplying several methods to the tenderer.

In relation to thorough preparation, we would like to highlight the new section providing for the object of the procurement. Under this section, the contracting authority shall make the procurement documents available at the beginning of the procedures comprising several stages.

Stipulating the practise of the controlling authorities, the legislator properly emphasises the liability of the contracting authority. The thorough preparation of the procedure facilitates cooperation with the controlling authorities, saving public money and precious time, as well as improving transparency and promoting competition.