

Competition increasing aspects of proposed amendment to the Act on Public Procurement

Act CXLIII of 2015 significantly changed the provisions regarding public procurement due to the new EU public procurement directives. The Bill currently submitted has already taken the practical experiences of the period passed since the entry into force of the new law into account. The most essential objective of the amendment is the expansion of competition and the tightening control over the use of public funds.

The Bill expands the Act on Public Procurement to the procurements reaching HUF 1 million but still below the threshold of procurements in the interest of controllability, as well as reasonable and effective spending of public funds. The contracting authorities would already be required to ask for at least three bids. This way, the assessment of the market and the most economical conclusion of contracts would be applied as general legislative requirement also in case of minor procurements.

In order to increase the competition, the Bill foresees the limitation of application of negotiated procedures without notice and the significant decrease of the number of procurements with the participation of one tenderer.

The changes of great importance for the practice would be introduced with the modification of thresholds in the national procedure. The threshold would decrease from HUF 18 million to HUF 15 million in case of supplies and services above which the public procurements must be announced publicly.

The submission of the proposal for the amendment of the law on the central budget is also linked to this matter. According to the amendment, minor procurements would be fundamentally simplified. In case of supplies and services, the thresholds applicable for national procurements (not for public service provider contracting authorities) would be increased from HUF 8 million to HUF 15 million, in case of works from HUF 15 million to HUF 25 million, and in case of service concessions from HUF 25 million to HUF 30 million. The increase of national thresholds applicable for public procurement is justified by that the strict procedural constraints on public procurement procedures would create disproportional burden on the contracting authorities in case of minor procurements.

The amendment of the Public Procurement Act would maintain the opportunity for the process of procurements not announced publicly only for works. This type of procurement procedure would be applied up to the amount of HUF 300 million in the future. At the same time, the number of economic operators to be invited for the tender in the procedure would be increased to 5 in order to expand the



competition. The contracting authority would be required to regularly change the identity of economic operators to be invited. At the same time, the proposal simplifies this procedure by releasing the contracting authority from the obligation to ensure the opportunity for completion on divers occasions.

The contracting authority would be required to publicly disclose the invitation to tender, the documents of public procurement and the tender opening protocol on its website or in the Public Procurement Database in order to ensure publicity and transparency. Based on the foregoing, it would become public following the tender opening as to who have actually made a bid in the procedure. Based on the foregoing, it would become public following the tender opening as to who have actually made a bid in the procedure.

The contracting authority would be allowed to send invitation to tender only to economic operators that are capable of performance and professionally reliable. The contracting authority would be required to prepare for the procedure accordingly. Thus, in this type of procedure, it would not be mandatory to specify eligibility criteria.

In conclusion, the submitted amendment aims to simplify procurements taking into account the increase of competition.