

## **KRS: New Rules for Procurement by Tendering**

**The new Civil Code has changed the rules for procurement by tendering from 15<sup>th</sup> March 2014, the expert of Kovács Réti Szegheő Attorneys at Law said to origo. Pursuant to the new tendering rules, the contracting entity is obliged to conclude the contract if the invitation to tender says that bids are expected from multiple persons and the contract will be concluded with the bidder complying with the eligibility criteria and submitting the most favourable bid, stressed Dr. Arvid Hauck.**

The tendering model is fairly simple: the company wishing to procure invites the economic operators to submit their bids and the economic operators will submit their bids in competition with one another in the hope to win the contract.

It has long been a common practice of some companies to force competition between the bidders for a major contract but the specific rules of the competition have not been laid down in law, the expert of Kovács Réti Szegheő Attorneys at Law explained.

The use of tenders is typical in public procurement procedures as all contracting entities who are subject to the public procurement law are required to conduct nearly all their procurements in a similar manner but under much more stringent and specific conditions.

The tendering procedure set forth in the new Civil Code can of course be used by contracting entities as well, provided the value of the public procurement is below a specified limit.

### **Tender rules defined by the contracting entity**

While the process of public procurement is defined by strict and precise rules, the tender procedure included in the new Civil Code will be determined by the procuring entity itself.

Pursuant to the new tendering rules, the contracting entity is bound to conclude the contract if the invitation to tender says that bids are expected from multiple persons and the contract will be awarded to the bidder who meets the eligibility criteria and submits the most favourable bid.

The obligation to contract can be excluded in the invitation to tender, so the contracting entity may decide in the knowledge of the bids whether to conclude a contract or not, dr. Arvid Hauck pointed out.

The bidders may change or withdraw their bids until the submission closing date and are bound by their bid from the submission closing date to 30 days following the announcement of the results.



## **Security**

Contracting entities are allowed to demand security from the bidders as an eligibility criterion for participating in the tender procedure. The law does not specify the types of security but the most common types used in practice include bank guarantee and the deposit of a certain amount of money.

If the bidder has given security during the tender procedure and withdraws his bid during the binding period, he will lose the deposit; otherwise, the security must be returned when the tender procedure is over.

The contracting entity can evaluate the bids freely. It can either choose the best overall bid or opt to evaluate the bids solely on a bid price basis. Unlike in the case of public procurement, the contracting entity is not required to disclose the evaluation criteria or explain on what basis the winning bidder has been chosen.

If, however, the tender is restricted to the bid price and the bidders submit their bids with knowledge of the other bidders' bids, the contract will be concluded for the best price with the announcement of the winner, warned dr. Arvid Hauck.

## **Nearly unlimited freedom to the procurement entity**

The tendering provisions are rather reticent and give nearly unlimited freedom to the procurement entity to define the tendering rules, evaluate the bids and select the winning bid.

Although the model is very similar to public procurement, the lack of strict rules that do not allow deviations may cause that the fairness of the competition and the transparency of the procedure by far cannot be guaranteed at the same level.