

Variations and other changes to public contracts under FIDIC standard forms

Abstract

This thesis deals with variations and other change institutes according to the FIDIC Red Book (hereinafter referred to as „CONS“) enforced under the Act No. 134/2016 Coll., On Public Procurement, as amended. The main aim of this thesis is to analyze the possibility to effectively implement complex construction projects in the Czech legal environment, especially with regard to the fact that individual complex construction projects deal with, in their implementation phase, the necessity to change the work, the price for the work, but also the time of completion and handover of a work due to unforeseeable or unforeseen circumstances. The law of public procurement, with reference to the principles of free competition and, in order to ensure the effectiveness of the management of public funds, limits the possibility of the public contract modifications by means of the doctrine of the substantial and non-substantial modification. Large construction projects often exceed the estimated value of the public contract by more than 100 %, which puts a great deal of pressure on the correct and lawful subsumption of changes under the legal grounds of modifications of the contract according to section 222 of the Act on Public Procurement.

The thesis is divided into four chapters. The first chapter defines the construction project and its specifics and the most typical changes that occur during the implementation phase of long-term construction projects. The second chapter analyzes selected change institutes under the CONS and other provisions that affect the price of the work and the time of completion and handover of the work. In this chapter, the author outlines the limits of variation works with reference to foreign case law and literature. The third chapter outlines the basic principles of public procurement law in relation to the modification of the public contract and deals with the jurisprudence of the Court of Justice of the European Union, which formulated the doctrine of substantial and non-substantial modification and subsequently analyzes the most problematic parts of the repealed Act No. 137/2006 Coll., On Public Procurement. The above-mentioned findings are further developed in the fourth chapter, which deals with the subsumption of individual change institutes and changes according to the CONS, arising after the conclusion of the public contract, under individual reasons for modification of public contracts according to the Public Procurement Act. Finally, this chapter points to possible weaknesses or unclearness of the legal regulation in relation to the public contracts implemented under the CONS in the public procurement regime.

Klíčová slova: Variations, CONS, public procurement