

Specifics of the contracting process for award of the public contract

Abstract

The rigorous thesis deals with legal regulation of the special contracting process that serves as grounds for awarding the public contract. The aim of the thesis is to perform an analysis of particular acts, which occur in connection with conclusion of a contract in the procurement procedure. The author looks at this significantly formalist process, which serves to allocate public funds, from the perspective of legislation of concluding contracts as defined in the Civil Code and tries to indicate relevant differences, but also similar elements of the described regulations.

In the first part of the work, the classification of the legal regulation of public procurement within the system of law is first performed and the consequences that result from this fact are outlined. Subsequently, an analysis of the public procurement basic principles is performed with a focus on their influence during the contracting process. Connected to these leading ideas, the author is answering the question of whether they can also be found within the scope of general private law legislation in some form.

The next part of the presented work is devoted to the acts, which, albeit they precede the commencement of the procurement procedure, often have a fundamental impact on its proper course. The second part also provides an explication of which individual type of procurement procedures can be considered to be the closest to the general legislation of concluding contracts according to the Civil Code.

The principal part of the work is the third and the fourth part. The subject of these parts is the analysis of the contracting process itself, which is divided into the pre-contracting and the contracting phase. In relation to the commencement of the procurement procedure, the opening of tenders, the possible exclusion of participants and many other acts which take place within the procurement procedure, the author finds some parallels and highlights the most important specifics of the compared legislations. One of the fundamental specifics of the contracting process for an award of the public contract can be considered a fact, that it is not possible to accept an offer within the meaning of general legislation of concluding contracts on the ground of the submitted tender in procurement procedure. For awarding the public contract, the offer has to be submitted in fact twice. In addition, within so called contracting process in narrower meaning, the position of the offeror and addressee may differ *ad hoc*. At the end of the penultimate part, attention is also placed on publication obligations, which are inseparably connected with the award of the public contract.

The subject of the fifth and last part is the theoretical subsumption of the public contract under particular types of the contract in the meaning of generally applied division. In the last part, the author focuses primarily on the potential adhesion character of the public contract and its possible consequences.