

Abstract

The method of entering into a contract in public tenders according to Act. No. 134/2016 Coll. is a civil contractual process with a high degree of formalization and legal regulation. This makes it different from the general contractual process in civil law.

The first chapter of this thesis is devoted to the analysis of public tenders in terms of setting up the legal framework. It goes into a conclusion that contractual process in public tender is part of the civil law with the subsidiary use of civil law rules, especially the Civil Code.

The second chapter deals with a contractual process in a public tender itself. The process is divided into two phases – a precontractual phase and contractual phase. The precontractual phase includes procedures of the public tender that determine the clarification of content of the contract and the range of contractors. The contractual phase contains mainly the actual entering into a contract with successful tenderer. The chapter describes the specificity of the contractual process in a public tender since the announcement of the tender up to the actual entering into a contract. These specificities are introduced in relation to the open procedure being used in upper-tier mode. At the end of the chapter, there is a comparison with other types of proceedings and there are listed differences from the open procedure. The chapter considers several interesting questions and tries to find answers to them. One of these questions is the nature of the contract in terms of adhesion contract method.

The third chapter discusses the possibility of changing the contract concluded in a public tender. It is built upon the contractual process that is analyzed in the second chapter and extends it with the possibility of making changes after the conclusion of the contract is made. Since the development of legal options for changing the contract took place mainly at the level of EU case-law, the key judgments of EU Court of Justice are introduced with their importance for legal theory. Subsequently, the third chapter introduces the current legislation at EU level. Finally, it also develops options for changing the contract in a public tender in the Czech legal environment, started in the 90s to the current form of the law on public tender.

This thesis is processed in view of currently valid legislation, ie. especially Act no. 134/2016 Coll. and the procurement directives from 2014. In several places, there is also a comparison of current legislation with the historic one.