

# **Indirect discrimination against contractors in public tenders**

## **ABSTRACT**

This thesis deals with the legal regulation of public procurement and focuses on the issues of indirect discrimination of contractors in public tenders and the fact that some economic operators cannot participate in procurement procedures due to unjust obstacles to competition laid down by the contracting authorities. One of the main principles of procurement, principle of non-discrimination is described in detail with a use of opinions of stated by the national courts, the Court of Justice of the European Union and in the decisions of the Office for the Protection of Competition in particular. The author of the thesis tries to describe the means of indirect discrimination that occurred in the past procurement procedures within the area of European Union. Discriminatory behavior of the contracting authorities is captured in a comprehensible way and the author shows practical examples to the reader. That all helps to illustrate why the contracting authority's specific behavior was not in compliance with the rules set out in public procurement. It is the analysis of the decision-making practice of the Office for the Protection of Competition, case-law of the national courts and the European Court of Justice that provides an insight into how the principle of non-discrimination should be considered by the contracting authorities. This thesis deals with such behavior of the contracting authorities, in which they violate basic principles of procurement and legal regulation. In addition to the principle of non-discrimination, it describes the principles of transparency, equal treatment and proportionate manner, which are important in relation to the main topic of the thesis. It further demonstrates their interdependence. Specific problems included in this thesis are a non-proportional definition of the minimum level of qualification to the subject of a public contract, setting discriminatory technical specifications that cause undue competitive advantage of a certain economic operator, non-dividing of public tenders into lots, and for further example, setting out discriminatory conditions for participation in procurement procedure. Author tries to draw attention to the danger of combining several discriminatory requirements at the same time. The last part of the thesis is providing basic overview of the protection against irregular practices of contracting authorities.

## **Key words:**

Indirect Discrimination, Economic operator, Qualification, Technical specifications, Principles of procurement