



SK Legal Alert

February 2022

Weinhold Legal

Amendment to the Public Procurement Act

Approval of the Amendment and its Objectives

Last year, the National Council of the Slovak Republic approved an amendment to Act no. 343/2015 Coll. on Public Procurement (“**Amendment**”), which is aimed at quickening and to simplifying public procurement procedures from the point of view of the rights of the interested candidates, participants and other concerned persons, revising the scope of the transposition obligation in relation to European Union directives as well as to improve the control of public procurement through the automation of the award and the evaluation of public contracts and by ensuring the efficient collection and analysis of price data.

Changes in Individual Fields

Simplification of Procedures

ELIMINATION OF NATIONAL GOLDPLATING

National gold-plating represents rules which go beyond European Union rules. The Amendment applies these rules in the field of public procurement to business entities receiving business subsidies, relieving them from public procurement supervision by the Office for Public Procurement (“Office”).

ADJUSTMENT OF FINANCIAL LIMITS

Current legislation sets the limit for small value contracts (in Slovak: “*zákazky malého rozsahu*”) in respect of which procedures under the Procurement Act do not apply at EUR 5,000. The Amendment increases this limit to EUR 10,000, with the increase being explained as a response to the requirements arising from the Recovery and Resilience Plan for Slovakia.

In addition, low value contract (in Slovak: “*zákazka s nízkou hodnotou*”) limits are being increased in the following way:

- From EUR 70,000 to EUR 100,000 in case of a contract for the supply of goods and services to state authorities,
- From EUR 70,000 to EUR 180,000 in case of a contract for the supply of goods and services for self-government,
- From EUR 180,000 to EUR 300,000 in case of procurement of construction works.

In spite of these increases, the obligation to publish contracts above EUR 70,000 and EUR 180,000 in other cases as well as the obligation to communicate electronically if the limits of EUR 70,000 and EUR 180,000 are exceeded will be maintained.

ESTABLISHMENT OF A CENTRAL PROCUREMENT ORGANIZATION FOR STATE ENTERPRISES

Public procurement procedures should be also simplified and optimised by the Central Procurement authority for state bodies. At present, this task is partially covered and secured by the Slovak Ministry of Interior, which carries out energy purchases for state administration. Due to the ongoing discussion on the final scope of tasks and competences of the Central Procurement Authority, the Amendment only creates a precondition for the creation of this authority. Details on the scope of its activities will be subsequently regulated by a government regulation.

In addition to the above-mentioned changes the Amendment simplifies the procedures in the form of more flexible legislation on exclusion from the public procurement procedures in the event of suspicion of the existence of agreements restricting competition, enabling the submission of electronic copies



SK Legal Alert

February 2022

Weinhold Legal

(scans) in an application for participation in public procurement or in the form of enabling the conclusion of contracts with the next participants in the order if the previous participant does not cooperate, without limitation to the first 3 participants, which applies under the current legislation.

Process Shortening

EXTENSION OF SCOPE OF EXCLUDED OBJECTIONS

Current legislation excludes objections in the event of sub-threshold contracts and low value contracts or in the event of security contracts with certain estimated value. The Amendment expands exclusion of objections for construction work with an estimated value of less than EUR 80,0000 and sub-threshold concession award procedure (in Slovak: "*postup zadávania podlimitnej koncesie*").

In addition, the amendment prohibits the filing of a manifestly unfounded objection. For the purposes of the amendment, a manifestly unfounded objection is an objection which clearly serves to abuse the right or to arbitrarily and unsuccessfully apply or defend the right, or to lead to unreasonable delays in the proceedings to review the acts of the auditee. Anyone who violates the prohibition to file a manifestly unfounded objection will be liable for damages caused.

SHORTENING OF THE PROCEDURES CONNECTED TO THE REVIEW OF THE CONTROLLED PARTY ACTIONS

According to the current legislation, the contractor is entitled to submit a proposal to modify the reference to the Council of the Office in the event the contracting authority does not comply with such a request from contractor. However, as of entry into force of the Amendment the contractor will submit this proposal to the Office itself. This is a return to the previous model of single-instance proceedings at the Office associated with the possibility of judicial review. According to the explanatory report, the model set up in this way, which is intended

to shorten the duration of public procurement, appears to be appropriate in terms of its effectiveness and at the same time sufficient in terms of protecting the rights of the participants in the proceedings.

Transparency Increase

SINGLE ELECTRONIC PLATFORM

The Amendment introduces an obligation to carry out all sub-threshold and low value contracts using a single electronic platform managed by the Government Office of the Slovak Republic ("Government Office") and publicly accessible through a single access point on the Government Office's website.

According to the current legislation, two such electronic means are operated, namely electronic marketplace (EKS) and information system for public procurement (IS EVO). These two means will be merged in order to create the single electronic platform.

Moreover, the Amendment introduces an obligation to publish an intention to award a low value contract on this newly created platform.

Professionalization

The Amendment aims at professionalization of the public procurement through centralization of public purchases and joint public procurement, which are already part of the applicable legislation and newly introduced institute of a professional guarantor.

The professional guarantor should be the person overseeing the course of public procurement. The public contracting authority (in Slovak: "*verejný obstarávateľ*"), the contracting authority (in Slovak: "*obstarávateľ*") and the person obliged to act as a public contracting authority (in Slovak: "*osoba povinná postupovať ako verejný obstarávateľ*") will, with certain

SK Legal Alert

February 2022

Weinhold Legal

exceptions, be obliged to perform activities in public procurement through a professional public procurement guarantor. Among the activities that this guarantor will perform will be, for instance, an assessing compliance with contract or concession valuation rules, assessment of the conditions for participation and criteria for evaluation of tenders, assessment of eligibility of conditions for a change of contract, framework agreement and concession contract, co-operation in elaborating the description of the subject of the contract and the conditions for performance of the contract, ensuring the elaboration of documents necessary to make the tender, carrying out actions aimed at announcing the public procurement, ensuring communication with economic operators after the public procurement announcement and many others.

According to the amendment, a professional guarantor is a natural or legal¹ person registered in the list of professional guarantors who meets the following prerequisites for registration in the list of professional guarantors:

- (a) the integrity of the applicant,
- (b) successful completion of an examination or professional experience in public procurement,
- (c) an application for registration with the list of professional guarantors.

Effectiveness of the Amendment

Most of the provisions of the amendment will be effective as of **31 March, 2022**, with the exception of the provisions regarding obligations:

- the exclusive use of the electronic means entered in the list of electronic means maintained by the Office for electronic

communication in public procurement, which will enter into force on 1 August, 2022 and

- the performance of public procurement activities through the aforementioned professional guarantor, which will take effect from 31 March, 2024.

© 2021 Weinhold Legal
All rights reserved

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v.o.s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

For further information, please contact the partner / manager you are usually connected to.



Tomáš Čermák
Managing Associate
tomas.cermak@weinholdlegal.com



Karin Konečná
Attorney at Law
karin.konecna@weinholdlegal.com

¹ A legal person may act as a professional guarantor if at least one person authorised to act on its behalf is entered in the list of professional