

Responsible public procurement focused on non-monetary performance by the public contracting authority

Abstract

The aim of this work is, from the point of view of the practical contracting authority and the demand side of the relevant market, to approach the topic of responsible public procurement, which is still the subject of extensive professional but also completely layman's discussion. Above all, through the prism of more than 10 years of practical experience as a public contractor, I respond to the current legislative anchoring of the principles of responsible public procurement in the applicable legislation of the Czech Republic. These are the principles of socially and environmentally responsible public procurement and requirements for innovative solutions in the procurement of commodities.

Focusing on my practical positive and negative experiences from the procurement process, I analyze in more detail the specific ways of using the principles of responsible public procurement in the daily activities of public contractors. The application of the principles of responsible procurement is not always only a real benefit for the contracting authority, while the effort must be not to restrict economic competition and preserve the other basic principles of the procurement procedure.

The rigorous work is divided into five chapters. In the first chapter, I define the concept of responsible public procurement and the individual principles of responsible public procurement and their relationship to other basic principles of public procurement. I also present the historical context of responsible public procurement at the international level, in the law of the European Union and in the law of the United Kingdom of Great Britain and Northern Ireland. I separately analyze the development in the Czech Republic and the current valid and effective legislation of the Czech Republic.

The second chapter contains the specific decision-making practice of the Office for the Protection of Economic Competition and the jurisprudence of administrative courts and the Court of Justice of the European Union. Furthermore, my work contains examples of good practice in the application of the principles of responsible public procurement in the countries of the European Union, including the Czech Republic and the United Kingdom of Great Britain and Northern Ireland. Examples of bad practice were also not left out as a possible guide for other contracting authorities, what is better to avoid in the procurement procedure. Even on my practical mistakes and mistakes realized historically in the process of public procurement, I try to alert other contracting authorities to the pitfalls of the entire researched issue.

The key chapter is the third chapter dealing with non-monetary performance by the contracting public authority. These are cases where the contracting authority does not provide financial performance, but non-monetary performance, e.g. in the form of an advertising or marketing campaign. Here I try to show how the contracting authority can take full advantage of responsible public procurement for these types of public procurement.

The penultimate chapter provides an evaluation of the current legal regulation of responsible public procurement, including a critical perspective. The last chapter contains proposals de lege ferenda.

The work tries to summarize the basic information about the principles of responsible public procurement and thematize the main benefits of their application in public investment for the contracting authority and the whole society. At the same time, the effort was to show the risks of their inappropriate or illegal use in procurement procedures and to establish for sure that added value in the form of responsible public procurement is not and cannot be the basic purpose and goal of the legal regulation of public procurement. In this way, the efficient, economical and efficient spending of public funds and the provision of the widest possible economic competition must remain effective.

Key words:

- Public procurement
- Responsible public procurement
- Non-monetary performance