Public Procurement- a Long Way Round

„ - Dear friends, we are in trouble“,- one respectable Professor of Mykolas Romeris University once told referring to the laws of Lithuania. Although the question of the most important sore points remains at the level of discussion, one of the segments floundering in today‘s Lithuanian legal system is public procurement. In many areas, especially in the economy sector, corruption is highlighted as a result of increasing criticism from businessmen. Inadequate and one – sided terms, the overflow of undisclosed bargains and political pressure upon the organizers are generally raised issues.

In fact, public procurement is a process that affects not only the participating parties but also the third parties for some reason or other. Therefore it is vitally important to hold the field against the perverted fairness and respect the rules of business. Strictly speaking about public procurement, where all interested parties are allowed to put forward a proposal, one of the most disputable stages is determination of public procurement terms. These terms is the main measure of selection, defined by the contracting company, considering needs and potential difference. Procurement terms involve qualification requirements, technical indicators and other criterions used to identify the suppliers. For this reason such rules must be formulated precisely, clearly and without respect of persons in order not to lead the supplier astray. Unfortunately, these days the opposite trend is noticed: in many cases terms of the competition are illogical, unclear, number of the requirements is unreasonably large or small. Thus the contracting company helps its *protege* to win by providing more favourable conditions. The best example could be seen in building trade. When announcing the terms of the procurement, contracting company conceals they would like to get building reconstruction project, not a wholy new structure. In fact, this requirement is revealed only to the *protege* and it leads to become winner of the competition. In such way contracting company takes the chance to use legal rules on its own account. However, terms of the procurement is not often so clearly illegal that the suppliers would be sure they can appeal to Public Procurement Office (PPO). Moreover, lack of legal knowledge and procedural information leads to the standstill. On numerous occasions the winner stays unknown and other participants do not exercise their right to ask the contracting company for information about the winner and reasons for certain choice.

Another barrier to smooth process is the result of the competition. The winner is entitled to pursue a scheme and provide service/supply goods/do the work. Yet if the contract is invalidated according to the criterions mentioned above, the question of legal fate of the contract and further action of the parties has no answer. Legal position of the parties becomes even more difficult whereas legal proceedings related to this kind of legal violations usually last a long period of time. In addition, it is not clear how the circumstances of the parties will change during such period of time although nowadays in business environment it must be taken into consideration. We do not know whether it would be useful to over- simplify the algorithm of actions as there is a fact of illegality. The problem could be simply solved providing clearer legal consequences in cases when such fact proves out. It is likely that preliminary guidelines could protect the parties from undesirable impacts and to insure against possible damage. On the other hand, a detailed study and analysis would be key factors in this process.

Corrupt practices also comes in view as concerns undisclosed bargains. „Undisclosed bargains- an exception to the rule“ - we find in legal documents. Objective grounds for undisclosed bargains are the following: particular urgency, technical and artistic reasons, reasons related to the protection of exclusive rights that means the goods, services or work could be offered by only one supplier, as well as situations, in which any proposals for an open, restricted or

competitive dialogue were not received, all proposals were not acceptable or not fully met the requirements set out in the documents and the initial terms are not changeable etc. These cases can be found in the Law on Public Procurement (LPP)[1]. Still, contracting companies seem to have their own laws. The Prime Minister Andrius Kubilius already approved the proposal that provides undisclosed bargains could be executed only after the assent of PPO. However, no effective actions are done yet. The decision is simple *prima facie*, but we cannot forget that the balance between the legitimate use of undisclosed bargains and abuse can be hard to find as we are playing with such abstract concepts as „protection of rights“ or „particular urgency“. Of course, every lawyer is well aware of the relativity of the concept of law, but certain limits could be drawn anyway. In practice it is often referred to as "closed list". The mission of the legislature in this case is to minimize ambiguities in order to eliminate gaps of abuse. Changes in the regulation and precise definitions should be immediate government steps dealing with this issue.

The supervising authorities apparently failed so far to solve the issues discussed. At the beginning of the year some amendments to LPP came into force[2]. With this action the area of PPO control was extended. However, the established rules are inadequate as the PPO, contracting companies and suppliers simply don‘t recognize the visible change. The proposal to go further in this direction by strengthening the supervisory mechanism on principle is correct, just as effective means of preventing corruption and more centralized process of procurement. Under the current procedures the ministries and other institutions are allowed to choose whether to implement centralized or independent procurement. Defined and justified is the calling offering to delete this freedom of choice. In fact, claiming that such step would help to solve the problems mentioned above is drawn from already implemented solutions. Many supporters of the centralized procurement argue that it would facilitate the solution of control mechanism and generally require much less money from the state budget than allocating funding to individual institutions.

In conclusion, endless debates on the procurement lead Lithuania to seek new starting points from today's situation. The problems found are numerous and decisions only a few, but every effort is made. The issues discussed are important not only aiming to improve the legal system, but for the participants of the procurement to pay attention as well. Who else if not those affected by the legal loopholes in the legislature could find the best alternative solutions.

[1] Law on Public Procurement http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=268778
[2] Amendments of LPP: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389869&p_query=&p_tr2=;
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=389851;
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