



Legal Protection in Public Procurement Procedures

Goran Kitić, advisor

Ministry of Finance, Public Assets Directorate



Legal Protection in Public Procurement Procedures

- Pre-auditing procedure – contracting authority
- Auditing procedure – National Review Commission
- Judicial procedure

Parties to a procedure (case)

- Pre-auditing procedure
 - Economic operator or defender of public interest
- Auditing procedure and judicial procedure
 - Economic operator or defender of public interest
 - Contracting authority

Selected tenderer may take part in any procedure.



Legal protection of public interest


- Defenders of public interest
 - Ministry of finance
 - Court of Audit of the Republic of Slovenia
 - Competition protection office
 - Anti-corruption commission

Active Legitimation

- Any individual:
 - interest in the award of a contract
 - damage
- Defender of public interest

Consequences of Submitting an Audit Claim

- contracting entity may continue the public contract award procedure but may not
 - conclude a contract,
 - suspend the procedure,
 - reject all tenders,
 - initiate a new procedure
- Exceptions:
 - Urgency of the contract
 - Individual contract within a framework agreement or dynamic purchase system



Suspension of procurement procedure

- The applicant may submit a proposal to the contracting authority for the suspension of the procurement procedure.
- Suspension of further activities in the procurement process until a final decision of the contracting authority or the National Review Commission on the request.
- Purpose: The National Review Commission shall examine the impact of continuing the procurement procedure on the effectiveness of legal protection

Contracting authority proposal

- Contracting authority may propose to:
 - conclude a contract
 - suspend the procedure,
 - reject all tenders,
 - initiate a new procedure
- Decision of National Review Commission depends on:
 - overriding reasons relating to the public, defense and security interests
 - potential harm and benefit of individuals concerned by the contract.

Pre-auditing procedure


- Lodging: in writing with the contracting authority
- Time limits
- A preliminary test of the audit claim
- Expression of personal views of selected tenderer
- Decision-making; time limits
- Continuation of legal protection after pre-auditing procedure

Auditing procedure

- Start of an auditing procedure
- A preliminary test of the audit claim
- Collection of procedural material
- Explanations, opinions and other documents
- Facts; finding, assessment
- Clarification meeting
- Expert advice, independent professionals and experts
- Time limits for decision
- Decision

Judicial procedure

- Nullity (voidness) of the contract:
 - any person that has any legal interest
 - defender of public interest
- temporary suspension and temporary order to suspend execution of the contract



Grounds for nullity of the contract

- Result of a criminal offense of a contracting authority
- No procurement procedure performed
- The conditions for a negotiated procedure with or without prior publication are not met
- Contracting authority failed to publish a contract notice
- Contracting authority failed to consider a standstill period
- Substantial deviation of a contract



Preservation of the contract

- overriding reasons relating to the public, defense or security interests
- economic interest: only in exceptional circumstances where the consequences of the annulment of the contract could lead to disproportionate consequences for the functioning of the contracting authority or the state.
- Costs due to delays in performing the contract
 - new procurement procedure
 - replacement of the contractor

Consequences of nullity

- imposition of criminal proceedings
- Returning of what was received (monetary compensation)
- Procurement procedure
- Compensation

Costs

- Pre-auditing procedure, auditing procedure
 - Tax
 - Other expenses
- Tax:
 - 750 EUR
 - 1.500 EUR
 - 1% of value (max. 10.000 EUR)
- Tax refund