

Public procurement of territorial self-government in Slovakia as a postulate for the security management of municipalities and regions

Державні закупівлі територіального самоврядування в Словаччині як постулат для управління безпекою муніципалітетів і регіонів

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Purpose: The article deals with the issue of important elements creating a healthy competitive environment in the public sector with the formulation of the same principles and conditions for all participants, such as the transparency of the public procurement process, non-discrimination, and ensuring equal conditions for applicants for public contracts, as well as efficiency and security in the payment of public financial operations.

Method: empirical method, abstraction, analysis of statistical data, descriptive analysis.

Findings: the proposed principle of four eyes, which guarantees the principle of economy, efficiency, effectiveness, and expediency through the execution of financial control by more than one person.

Paper type: theoretical.

Key words: security, regional self-government, local municipality, public procurement, financial control.

Мета роботи: Стаття присвячена питанню важливих елементів створення здорового конкурентного середовища в державному секторі з формулюванням однакових принципів та умов для всіх учасників, таких як прозорість процесу державних закупівель, відсутність дискримінації та забезпечення рівних умов для претендентів на публічні контракти, а також ефективність і безпека в оплаті державних фінансових операцій.

Метод дослідження: емпіричний метод, абстрагування, аналіз статистичних даних. Описовий аналіз.

Результати дослідження: запропонований принцип чотирьох очей, який гарантує принцип економії, ефективності, результативності та доцільності шляхом здійснення фінансового контролю кількома особами.

Тип статті: теоретична.

Ключові слова: безпека, регіональне самоврядування, місцеве самоврядування, державні закупівлі, фінансовий контроль.

1. Introduction

Adjectives such as transparent, efficient, effective, economically spent financial means for managing public goods and services have now become established not only in the vocabulary of politicians, public officials, elected representatives, but also civil activists, the non-profit sector, or even ordinary laymen and "civilians". What was once neglected even in the highest spheres of state management, today we commonly find it in the functioning of a traditional household. It is precisely to the public imperatives such as the aforementioned transparency, efficiency, efficiency and economy that nowadays, in a modern century, the concept of security is added more and more urgently. It is this that completes the overall security profile, that the resources necessary for the functioning of areas such as health care, education, defense, road communications, the environment and many others, coming mainly from the wallets of citizens and entrepreneurs, will be safe even in the hands of the ruling set and will be spent to the maximum extent possible for the purposes, for which there was a societal demand in the country. In this contribution, we will briefly focus on the principles of public procurement as a modern tool for the protection and security of financial processes in the public sector.

When spending money coming from "below", i.e. from people and business entities who

contribute a significant amount of their productivity to the common system in the form of taxes and other forms of levies, it is necessary to talk about how public self-government, the state and the nearest territorial unit to citizen, will treat his financial "deposit" and in what form will he provide a service or product that the market will not take care of with its mechanisms as a priority. A citizen wants, and of course has the right, to watch how the common property belonging de facto to the entire society, or to the given territory, is spent down to the last cent. If this process of spending public funds is visible, clear, clear, communicated, traceable and no one can doubt that these funds were spent in the most appropriate way, we are talking not only about transparency, as many processes are popularly called nowadays, but also about the security of financial operations. Thus, the finances arrive safely from their "suppliers" to their "consumers" without even the smallest amount of money being lost along the imaginary "path". So much for a layman's view at the beginning of the professional chapter, which we inevitably have to devote to the well-established phrase "public procurement" when it comes to the security of public finances and financial operations in public administration. It is appropriate to briefly recall the genesis of public procurement principles in Slovakia in modern history. The sphere of public procurement is a closely watched area, since, together with the associated characteristics of the free movement of goods, services, labor and capital, it is financial operations that create, their security and transparency create an environment for competition within the common internal market and, together with them, guarantee balanced and sustainable growth, higher employment and social care, a higher standard of living and quality of life, as well as economic and social cohesion.

2. Results and Discussion

Public procurement of territorial self-government in Slovakia as a postulate for the security management

As stated in the explanatory report of the Public Procurement Act (2015), after the change in Slovakia's relations with the market economy after 1989, there was a need to normatively adapt the legislation when spending state or self-governing funds in the management of tasks by departments connected to the state or local budget. Thus, in 1993, new public procurement procedures were established by Act No. 263/1993 Coll. on public procurement of goods, services and public works. Since it was a novelty in the provision of public financial operations, the legislator was inspired by the model of commercial law at the UN (UNCITRAL) when creating the legislation. The new legal regulation of spending public funds caused complications from the very beginning, therefore, in connection with the period of transition to a market economy, a rather simple form of the regulation with a focus on the basic standards of public procurement was recommended. The goal was to fulfill the "best value for money" theory. This is mainly possible in a competitive environment with the formulation of the same principles and conditions for all participants, such as the transparency of the public procurement process, non-discrimination and ensuring equal conditions for applicants, as well as efficiency and security in the payment of public financial operations.

Later, the law was no longer sufficient in its original legal arrangement, and so in 1998 an initiative was launched for a revised law on public procurement, this time based on the directives of the European Communities regulating the field of public procurement. The reason for processing the renewed rules on public procurement was also the need to approximate Slovak law with EU legislation. New Act No. 263/1999 Coll. on public procurement marked a significant shift in the application of public procurement rules in conjunction with principles valid in modern Europe. The resulting rules began to be adopted in state budgetary and contributory organizations, special purpose funds, cities and municipalities with their own institutions, health insurance companies and other public institutions. in which a public-law

entity (state or local government) in the form of legal entities had influence and they did business in the field of water management, energy, transport and telecommunications. In the context of the aforementioned law, a central body – the Public Procurement Office – was established in 2000, which acquired competences for the management of public and concession procurement, for the supervision of public procurement and the resolution of objections against the procedure of the contracting authority. At the same time, the office started creating a list of entrepreneurs and preparing professionally qualified persons in a specific field called public procurement. Already in 2001, the law was amended due to the need to modify the rules and expand the services that until then were exempt from public procurement. It was mainly about the sub-threshold procurement of items / orders with low value ("small value contracts"). However, an important milestone of this amendment was to contribute to the goal of the National Anti-Corruption Program. The next modernization of the law came in 2003, which amended the interpretation of the contracting authority through the basic characteristics that these departments and companies had to fulfill, also changed the expression of the terms applicant and interested party, which were previously defined by the term entrepreneur in the sense of the Commercial Code, which was considered discriminatory against participants public procurement from other countries. Public procurement procedures have been accelerated in narrower tenders and negotiation procedures, which the contracting authority can use in special cases when he was pressed for time. Relatively quickly, on January 1, 2004, a new legal regulation replacing the previous law on public procurement entered into force. All current EU directives affecting the sphere of public procurement have already been implemented here. At that time, the approximation of Slovak law with the law of the European Communities was one of the requirements for Slovakia's entry into the EU, which still contributes to the country's successful integration into European and world economic structures.

Such legal regulation (2004) allowed procuring entities to proceed with the selection of the contractual party also by means of joint procurement, again specified the definition of the procuring entity, at the same time established the value of the expected price of the subject of procurement, the conditions for the participation of bidders, such as proving their financial and economic status or technical capability.

According to the aforementioned explanatory report of the current law (2015), public procurements are announced in a different way by contracting authorities from the classic sector and contracting authorities from special sectors (for example, water management, energy, transport and postal services), they now have richer options for choosing public procurement procedures, such as management of own qualification systems of eligible legal or natural persons with whom they can enter into a contract in an efficient manner as needed. The principles of concluding concession contracts used with the same public procurement procedures as for contracts for the implementation of construction works were also reflected in the Public Procurement Act. A significant innovation was also the creation of a new way of solving revision procedures, i.e. a new institute for processing requests for correction, that is, proceedings on objections or the performance of control, which is carried out in three-member or five-member commissions with the participation of external members as well. The comprehensive regulation of public procurement subsequently came in Act no. 25/2006 Coll. and its later amending regulations, which coordinated the procedures for awarding public contracts for works, supply of goods and services in the so-called classic sector and also in the already mentioned special sectors such as energy and transport. In 2014, the European Parliament made significant changes in the legislation (directives) governing the sphere of public procurement, on the basis of which the member states had the obligation to implement new rules in national legal acts during a certain transitional period and thus ensure the efficiency and acceleration of public procurement processes through mandatory computerization, greater

flexibility, reduction of the administrative burden, easier access of small and medium-sized enterprises to the market, support for the use of public procurement as a key tool for the fulfillment of environmental and social policy goals, and also through the introduction of greater legal certainty in the application of individual institutes.

During the finalization of this dissertation thesis, specifically with effect from April 1, 2022, the amended Act on Public Procurement No. 343/2015 Coll., which substantially changes the customary quotas and principles. Considering this law as a guarantor of the transparency and safety of the implementation of financial operations in the public administration, as well as in the procedures of economic transactions of the Košice-Západ district, we will discuss it in the following lines. However, due to the extensive legislation and the highly specialized issue, we will mention only some essential provisions. Law on Public procurement refers to the awarding of contracts for the supply of goods, contracts for the execution of construction works, contracts for the provision of services, tenders for proposals, the awarding of concessions for construction works, the awarding of concessions for services and administration in public procurement. However, it does not apply to some acts of public goods such as arbitration proceedings, acquisition of existing buildings real estate rental, civil protection services, services related to the issue and purchase of securities, audiovisual services, security and protection of state interests, and the like. The law considers an economic entity to be a natural person, a legal entity or a group of such persons that delivers goods to the market, carries out construction work or provides a service. An interested party is an economic entity that is interested in participating in public procurement, but a bidder is an economic entity that has already submitted an offer. Concessionaire is defined by law as an entity with which the contracting authority concluded a concession contract, and a subcontractor is an entity that concluded a written remuneration contract with the successful bidder (concessionaire) for the performance of a certain part of the contract or concession. A framework contract is a written agreement between one or more procuring entities on the one hand and one or more bidders on the other, which determines the terms of awarding contracts during its validity, especially with regard to the price and expected quantity of the subject of the contract. In its introductory terms, the law also remembers the preservation of two aspects. The first is the social aspect related to the subject of the contract, which can lead to a positive social impact, in particular to the creation or support of the creation of job opportunities, to dignified, fair and satisfactory working conditions, the inclusion of disadvantaged, endangered or excluded persons and groups in social relations, the increase availability and usability of goods, services and construction works for disabled persons, ethical and fair trade, ensuring the growth of the economy based on knowledge and innovation, the sustainability of resources and social and territorial cohesion, increasing the responsibility of suppliers in relation to the interests of society, especially by integrating socially beneficial activities into the activity of the supplier and cooperation with its activities by affected entities or mitigating the consequences of economic and social lagging at least developed districts. The second aspect is the environmental aspect, related to the reduction of negative impacts through procured goods, construction works or services on the environment, contributes to the protection of the environment, supports adaptation to climate change or supports sustainable development, for example through the reduction of air, water, soil pollution, forest protection or the use of renewable resources. For the purposes of this Act, a contract is a remuneration contract concluded between one or more procuring entities on the one hand and one or more successful bidders on the other, the subject of which is the delivery of goods, the execution of construction works or the provision of a service. At the same time, an order for the delivery of goods means the purchase, leasing, installments or rental of goods with the option of purchase, as well as activities connected with the placement and assembly of goods. A concession for services or construction works is a contract of the same type, with the difference that the

consideration for services or construction works is either the right to use the service or building for an agreed time or this right is associated with monetary payment. the subject of which is the delivery of goods, the execution of construction works or the provision of services. At the same time, an order for the delivery of goods means the purchase, leasing, installments or rental of goods with the option of purchase, as well as activities connected with the placement and assembly of goods. A concession for services or construction works is a contract of the same type, with the difference that the consideration for services or construction works is either the right to use the service or building for an agreed time or this right is associated with monetary payment. the subject of which is the delivery of goods, the execution of construction works or the provision of services. At the same time, an order for the delivery of goods means the purchase, leasing, installments or rental of goods with the option of purchase, as well as activities connected with the placement and assembly of goods. A concession for services or construction works is a contract of the same type, with the difference that the consideration for services or construction works is either the right to use the service or building for an agreed time or this right is associated with monetary payment.

Let's also add financial limits important for the law on public procurement. The order can be above the limit, below the limit or with a low value depending on its expected value. The expected value of the contract above the limit is equal to or higher than the financial limit established by a generally binding legal regulation determined by the Public Procurement Office. A below-limit civil contract awarded by a public procurement entity is a contract whose estimated value is lower than the financial limit determined by the authority (that is, lower than the limit of an over-limit contract) and at the same time equal to or greater than

- €100,000 if it is a contract for the supply of goods other than food and a contract for the provision of a service other than some specific services (for example, postal or medical services) valid for state authorities;

- €180,000, if it is a contract for the supply of goods other than food and a contract for the provision of a service other than specific services valid for local self-government bodies.

- €400,000, if it is a contract for the provision of specific services (their calculation can be found in Annex No. 1 of the Public Procurement Act),

- €300,000, if it is a contract for construction works.

A contract with a low value awarded by a public contracting authority is either a contract for the supply of goods other than food, the provision of a service or the execution of construction works, the estimated value of which is lower than the financial limit stated in the previous paragraph and at the same time equal to or higher than €10,000 during the calendar year or during its validity contract, if the contract is concluded for a period longer than one calendar year, or if it is a contract for the supply of food, the estimated value of which is lower than the financial limit of an over-limit contract (that is, the highest one, the limit of which is determined by a binding regulation of the Public Procurement Office) and at the same time the same or higher than €10,000 during a calendar year or during the validity of the contract, if the contract is concluded for a period longer than one calendar year.

A specific below-limit contract is, for example, in the field of defense and security, the estimated value of which is lower than the financial limit of an over-limit contract and at the same time equal to or higher than €300,000 for the supply of goods and provision of services, or €800,000 for construction works.

Let's also define the concept of expected value of the contract (VOC). This is determined as a price without value added tax (VAT) in order to determine the public procurement procedure according to financial limits. The procuring entity shall determine the expected value of the contract based on data on contracts for the same or comparable subject of the contract. If the procuring entity does not have sufficient data, it will determine the estimated value based

on a market survey with the required performance, a preparatory market consultation, the use of a price development tracking system or based on data obtained in another appropriate way. The expected value of the contract is valid at the time of sending the public procurement notice. Contractors must comply with the principle of equal treatment, the principle of non-discrimination of economic entities, the principle of transparency, the principle of proportionality, the principle of economy and efficiency. The awarding of contracts and concessions must not be carried out with the intention of illegally applying an exception to the Public Procurement Act or distorting economic competition by unreasonably favoring or disadvantaging certain economic entities. The procuring entity can conclude a contract or a framework agreement in particular with a tenderer who is obliged to register in the register of public sector partners. At the same time, the term "final user of benefits" from a public contract is increasingly being mentioned, which must not be any representative of defined departments of the state administration and territorial self-government (however, the mayor of a village or district is not mentioned in this prohibition). The law remembers certain exceptions, especially in the case of an emergency and extraordinary situation, when the provisions mentioned in the previous lines do not have to be applied and at the same time the procedures of direct negotiations are fulfilled.

One of the most important tools for ensuring the safety and transparency of financial operations in the public administration in the procurement of goods and services is the electronic platform, i.e. the information system of the public administration, which serves to ensure the awarding of orders for the supply of goods, for the execution of construction works and for the provision of services, on registration of these orders, as well as to ensure related activities. The administrator of the electronic platform is the Government Office of the Slovak Republic. In secure electronic "trading" in public administration, communication understood as the exchange of information in public procurement in written form, through electronic means, is also important. Devices used for electronic communication, as well as their technical characteristics, must not be discriminatory, they must be generally available and connectable with generally used information and communication technology products. The concept of confidential information is equally important to the security of public financial operations in public procurement, which for the purposes of this law can be designated exclusively as trade secrets, technical solutions and designs, instructions, drawings, project documentation, models, the method of calculating unit prices or the method of price calculation and patterns. At the same time, during the public procurement process, there must not be a conflict of interests, i.e. a situation where an interested person can influence the result or course of awarding a contract, has a direct or indirect financial, economic or personal interest that can be considered a threat to his impartiality and independence. The concept of confidential information is equally important to the security of public financial operations in public procurement, which for the purposes of this law can be designated exclusively as trade secrets, technical solutions and designs, instructions, drawings, project documentation, models, the method of calculating unit prices or the method of price calculation and patterns. At the same time, during the public procurement process, there must not be a conflict of interests, i.e. a situation where an interested person can influence

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The law defines the procedures that procuring entities and bidders can use for over-the-limit contracts, such as public tender, narrow tender, negotiation procedure with publication, competitive dialogue, innovative partnership, or direct negotiation procedure. These are the most common terms that we identify, for example, in large national projects such as the construction of highways or hospitals. Each of the mentioned methods has an extensive regulation of principles and characteristics anchored in the law, which we will not discuss further in this thesis in terms of the topic raised.

Legal provisions that define who cannot participate in such public tenders also contribute to the safety of large financial operations (for example, due to conviction for a criminal offense, records of social and health insurance arrears, tax arrears, bankruptcy, etc.). From the point of view of the security of financial operations, the law also guides the financial and economic status of the applicant, who is to be paid a public "package" at the end of the process. It must be proven, as a rule, by submitting a statement from the bank, confirmation of liability insurance for damage caused during the performance of business activities, documenting a balance sheet or a statement of assets and liabilities, or an overview of the total turnover and, if appropriate, of the turnover achieved in the area in which the subject of the order concerns, for the last three economic years. The procuring agent evaluates the offers of the applicants based on objective criteria related to the subject of the contract, with the aim of determining the most economically advantageous offer for him. Such criteria must be non-discriminatory and must promote competition. The relationship with the subject of the contract means, in any phase of the life cycle of the product, construction or service, a relationship with the required goods, construction works or service. Offers are evaluated either on the basis of the best price-quality ratio, or the lowest price, or according to costs using the principle of cost-effectiveness of costs during the life cycle. Perhaps the most frequently chosen criterion for decision-making by public administration bodies is the approach of the best price-quality ratio – that is, price or cost and other criteria that include qualitative, environmental or social aspects related to the subject of the contract and which are mainly quality including technical contribution, aesthetic and functional properties, accessibility, solution complexity, social, environmental and innovative characteristics, trading and its conditions, organization, qualifications and experience of the bidder's employees, if quality these employees can have a significant impact on the level of performance, warranty and post-warranty service, technical assistance, delivery conditions (delivery date, delivery method, delivery period or completion date, etc. If it is, for example, a contract in the field of defense and security, we also count security delivery, interoperability and operational characteristics.

In order to assess the safety and effectiveness of funds spent in public administration, the law also recognizes the institute of objections, as a correction mechanism for any non-transparent economic relationship. Objections are authorized to be filed by the bidder or

interested party whose rights or protected interests were affected by the procedure of the contracting authority, or by a participant and another person whose rights or protected interests were affected by the procedure of this contracting authority. An objection can also be raised by a state administration body that certifies a legal interest in the matter, if the public administration body has been provided with financial resources for the delivery of goods, construction work or the provision of services from the European Union. Submission of objections must usually be preceded by delivery of a request for correction to the contracting authority. However, objections cannot be submitted for contracts for construction works, if the expected value of the order is lower than €800,000, in the case of sub-limit orders for the supply of goods or the provision of services, or in the case of low-value orders. Likewise, objections are not allowed for contracts for the supply of goods or the provision of services in the field of defense and security, if the expected value of the contract is lower than the financial limit of €300,000. At the same time, an obviously unreasonable objection is also prohibited, i.e. if it clearly serves to abuse the right or to the arbitrary and unsuccessful application of the right, or leads to unreasonable delays in the actions of the contracting authority. if the expected value of the contract is lower than the financial limit of €300,000. At the same time, an obviously unreasonable objection is also prohibited, i.e. if it clearly serves to abuse the right or to the arbitrary and unsuccessful application of the right, or leads to unreasonable delays in the actions of the contracting authority. if the expected value of the contract is lower than the financial limit of €300,000. At the same time, an obviously unreasonable objection is also prohibited, i.e. if it clearly serves to abuse the right or to the arbitrary and unsuccessful application of the right, or leads to unreasonable delays in the actions of the contracting authority.

3. Conclusions

In the recent history of modern public administration, it is a generally accepted trend that public administration is best implemented when it is as close as possible to the citizen. However, not everything can be managed systemically from the position of a minimal center – for example, a village or a city. Therefore, some competences were entrusted to the hands of regional self-governing bodies, which are constantly deepening to this day and have already been modified several times during their relatively short modern existence. And there will be several more, as there is a constant social and political debate about the nature and mission of the local, regional and state levels of public administration. In one breath, it is necessary to add that each competence is feasible only on the basis of adequate sources of financing, which come primarily from people and organizations of the private sector. Last but not least, these are also resources coming to the accounts of the local government from multinational grant schemes and European structural funds. In principle, however, the rule applies that what comes “from below” from the citizens is the most valuable, which the public administration entity manages with the highest priority and security. In the indicated sense, therefore, all institutions must necessarily pay attention to transparency, efficiency, effectiveness, economy, efficiency and increasingly also to the safety of spending financial resources in entrusted areas of development and life. The social climate is not always able to understand and accept the degree of belonging of the public administration with the degree of transparency and efficiency of the costs incurred. This is also about the right choice of security of financial operations and budgetary measures at different levels of local self-government.

Some of the important elements of the security of public economic operations fulfill the principles of risk elimination mentioned in this article and create a mechanism for a perfectly transparent system of drawing financial resources. Supervision of the security of financial operations – the aforementioned principle of four eyes, which guarantees the principle of economy, efficiency, effectiveness and expediency through the execution of financial control by more than

one person. The Institute of Public Procurement, which guarantees and supervises the fulfillment of the principles of transparency, equal treatment and non-discrimination of applicants and interested parties, as well as the principles of economy and efficiency in the use of financial resources. These elements together with other phenomena of modern public administration fulfill a set of measures, which, as a result, bring about the security of economic operations in the sphere of public administration.

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5. Competing interests

The authors declare that they have no competing interests.

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