

Abstract

Issues regarding selected conditions for participant exclusion in public procurement proceedings

This dissertation deals with issues surrounding specification of conditions for participant exclusion in public procurement proceedings with special focus on the condition contained in section 48(5)(d) of Act No. 134/2016 Coll., on public procurement procedure (“PPP”).

The issue presented by the condition for exclusion in section 48(5)(d) PPP, which states that the contracting authority may exclude a participant from the procedure on grounds of unsuitability, relates to how this is achieved in practice according to the rules and principles of the PPP and the regulation of the quality of competition (unfair competition). This dissertation draws attention to the limitations of section 48(5)(d) PPP and its application, and critically analyses and evaluates its subject.

According to the current jurisprudence of the Office, the exclusion of a participant can often be unsuccessful due to a confusing interpretation of the rules of its application. The Office for the protection of competition has stated that for a successful exclusion of a participant under section 48(5)(d) PPP, the contracting authority must satisfy an evidential burden and prove that a misconduct by a reliable supplier has occurred. This dissertation answers the questions of what general conditions must be met and how the subsequent procedure operates when excluding a participant under section 48(5)(d) PPP with regard to the jurisprudence of the Office and consideration of *de lege ferenda*.

The dissertation also explores the practical question of which instruments are available for contracting authorities to successfully exclude a participant from procurement proceedings. The author analyses these instruments with special focus on their ability to satisfy the legal test and their advantages and disadvantages.

Lastly, the dissertation focuses on the comparison of legal regulation relating to the exclusion of a public procurement participant under Act No. 137/2006 Coll., on public procurement, as amended, and under Act No. 134/2016 Coll., on public procurement procedure, and its critical analysis.

Keywords: Public procurement, procurement proceedings, exclusion of a procurement participant