

# Modification of a public contract

## Abstract

This thesis deals with the admissibility of modifications of an obligation arising from a public contract. In the Czech legal system, this issue is primarily governed by Section 222 of Act No. 134/2016 Coll., on Public Procurement. However, the domestic regulation of this issue originates from EU directives, particularly Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

The aim of this thesis is to identify specific interpretative issues associated with this legal regulation, conduct an analysis to find solutions to these problems, evaluate the current legal regulation in terms of whether it adequately defines which changes to obligations under the contract are permissible, and potentially present considerations *de lege ferenda*.

In the first chapter, the topic of the thesis is generally placed in the context of public procurement, and then attention is paid to the general principles that apply to making changes to obligations under a public contract.

Subsequently, the second chapter contains an interpretation of the general clause that defines what is considered a substantial (and thus impermissible) change to obligations under a public contract. In this regard, it first addresses whether the list of substantial changes in the general clause is exhaustive or not. Then, the conditions of individual cases of substantial change are described in more detail.

Chapters three to five are devoted to specific exceptions defined by law, which determine when a change to obligations under a public contract is considered insubstantial and therefore permissible.

The third chapter focuses on changes to obligations under a public contract that the contracting authority can reserve in the procurement documentation. In this regard, the individual conditions of the possible types of reserved changes are first defined and described. Subsequently, an interpretation is provided concerning the review in the situation when the contracting authority makes a reservation that does not meet these individual conditions.

The fourth chapter deals with the individual statutory exceptions for non-substantial changes to the content of the obligation (i.e. *de minimis* changes, changes consisting of necessary additional performances, changes resulting from unforeseen circumstances and

changes in the form of the substitution of items within construction works) and an interpretation of their individual conditions.

The fifth chapter concerns the admissibility of changes consisting of a change in the subject of the obligation under a public contract, both changes in the person of the supplier, which the legal regulation directly anticipates, and changes consisting of a change in the person of the contracting authority and the expansion or reduction of the subjects of obligations, which are not explicitly specified by the legislation.

In the sixth and seventh chapters, special attention is subsequently paid to certain types of changes where it may be difficult to assess their admissibility in practice. The sixth chapter first contains an interpretation of the admissibility of qualitative changes to obligations under a public contract (i.e. changes that cannot be financially quantified). The seventh chapter then analyses in more detail the specifics of changes that arise as a result of legal facts other than the agreement of the parties to the contract.

**Keywords: Public procurement, contract modification, substantial modification**