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THE ANALYSIS OF PUBLIC PROCUREMENT FUNCTIONING IN THE SLOVAK REPUBLIC

Abstract. *The regulation in public administration in Slovakia is still an issue under development and formation. This article is focused on public procurement from the viewpoint of regulation, the system of which has often been one of the most significant constraints in its successful functioning. We dealt with the periods of 2000-2006 and 2007-2012, when the Act No. 25/2006 Coll. on public procurement became effective, and we compared public procurement systems in the given periods. We performed a comparative analysis of the functioning of the system during these periods in relation to its effectiveness and pointed at the problems of public procurement.*

Key words: *regulation; public procurement; fines; contracts; objections; appeal.*

JEL Classification: *H4, H41*

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АНАЛИЗ ФУНКЦИОНИРОВАНИЯ СИСТЕМЫ ГОСУДАРСТВЕННЫХ ЗАКУПОК В СЛОВАЦКОЙ РЕСПУБЛИКЕ

Аннотация. Система государственного регулирования в Словакии находится в процессе формирования и развития. В статье авторы сосредоточили внимание на вопросах государственных закупок с точки зрения регулирования и контроля, которые довольно часто являются одним из наиболее серьезных препятствий для успешного функционирования экономики. Исследование сфокусировано на двух периодах – с 2000-го по 2006-й год и с 2007-го по 2012-й год, когда в Словакии вступил в силу Закон № 25/2006 о системе государственных закупок. Проведен сравнительный анализ функционирования системы в эти периоды в контексте ее эффективности. Указаны проблемы государственных закупок.

Ключевые слова: контроль, государственные закупки, штрафы, контракты, запреты, обжалование.

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АНАЛІЗ ФУНКЦІОНУВАННЯ СИСТЕМИ ДЕРЖАВНИХ ЗАКУПІВЕЛЬ У СЛОВАЦЬКІЙ РЕСПУБЛІЦІ

Анотація. Система державного регулювання у Словаччині перебуває у процесі формування і розвитку. У статті автори зосередили увагу на питаннях державних закупівель з погляду регулювання та контролю, що доволі часто є однією із найбільш серйозних перешкод для успішного функціонування економіки. Дослідження сфокусовано на двох періодах – від 2000-го до 2006-го року та від 2007-го до 2012-го року, коли набув чинності Закон № 25/2006 про систему державних закупівель. Проведено порівняльний аналіз функціонування системи у ці періоди в контексті її ефективності. Вказано проблеми державних закупівель.

Ключові слова: контроль, державні закупівлі, штрафи, контракти, заборони, оскарження.

Received 18.06.2013

Introduction. Public procurement in the European Union is regulated by means of directives. Individual European Union member states are supposed to implement the EU directives in their legal regulations. The legislation implementation also concerns the Slovak Republic. Effective and transparent functioning of public procurement also affects public finance of the given state. The purpose of this article is to analyse the public procurement functioning and point out problematic issues within the public procurement regulation activities as well as opportunities for improvement.

Theoretical foundations. Regulation as a part of management according to *E. Waltz* (2003) represents a feedback on managed reality and provides managers an objective idea with

regard to managerial goals. It is a part of management.

Management is managing of organisations and is comprehended in different relations:

- executors of management are people (managers),
- management in its content is a broadly-focused general discipline,
- management can be applied at different organisational levels and in different activities with varied content,
- general purpose of management activities is to achieve success (prosperity) of an organisational unit or process [1, p. 9].

P. Kotler (2007) defines management as art and science [2, p. 43]. In a narrower sense, regulation is the fourth, i.e. the last sequential managerial function whose purpose is timely and economical finding, analysis and adoption of conclusions

regarding divergences which characterise the difference between a conclusion and its implementation in a managed process (Piga & Treumer, 2012) [3, p. 8]. Matrix display of management processes (Mackenzie, 1969) [4, p. 81] defines sequential and parallel functions, which, as Table 1 shows, form

Table 1

Matrix display of management processes			
Sequential/ Parallel functions	Analysis	Decision-making	Implementation
Planning	Organization	Selection and management of employees	Regulation

Source: [4, p. 81]

horizontal and vertical management in a unified whole.

Regulation is closely connected to planning. There can be no regulation without objectives and plans. Carried out work – regulation has to be measured with regard to defined criteria determined by means of planning. Practical regulation at present is predominantly focused on evaluation of the process or implementation of plans. However, it deals with the evaluation of accuracy of defined plans in a smaller extent. Defining of plans is a responsibility of organisational management – top management, who do not like evaluating the level of their own work, respectively do not create room for its evaluation by other employees. However, regulation is not purposeless. The purpose of evaluation is to find, respectively reveal bottlenecks in the work carried out, which will be implemented in repeated or reproduced working processes. Regulation basically reveals bottlenecks in planning and implementing plans, it checks the level of implementation of knowledge from different characteristics of an object or a whole. Results of the regulation provide further information on different processes and regularities. The key principle of regulation should be G. C. Lichtenberg's statement: «Always ask: how can it be done better?» The functions of regulation (regulation process) are:

- monitoring of actual development of the managed object and finding of a final result,
- comparison of actual development with the development determined by the management subject, finding of possible divergences from a certain development as well as their reasons,
- drawing of conclusions for further decision-making aiming at the elimination of undesired divergences and their causes, and at changing of a prior decision if it proves to be inappropriate in the regulation process, using knowledge on the causes of positive divergences. The regulation process enables to get information on the dynamic balance between a desired state and a reality.

Regulation is a necessary part of a state's economic development support, and is incorporated in a certain model of its functioning (Soskin, 2011) [5]. Regulation of inputs in state and self-government organisations in Slovakia is carried out by the Office for Public Procurement. It operates the information system of electronic public procurement and makes it accessible in line with law and European Union regulations so that malpractice does not occur in public contracts assignment (Hunja 2003) [6, p. 19]. Public procurement of the European Union has undergone various developments in the sphere of legislation, which formed relationships between the law and the right, and public procurement is becoming an efficient tool of public purposes enhancement (Piga & Treumer, 2012) [3] and, following the progress, an opportunity to incorporate and implement further aspects in public procurement, e.g. social aspects. (Caranta 2010) [7]. Public procurement is an attractive sphere not only within the European Union or the USA but also in Southern Africa, where possibilities of electronic public procurement implementation are being examined (Migra 2010) [8].

Analysis of Regulation Activities in Public Procurement in Public Administration

The sphere of public procurement in the Slovak Republic as the first of countries with transforming economy was legislative-

ly regulated already in 1994 by the Act No. 263/1993 Coll. on public procurement of goods, services and public works. The given legal norm was effective from 1st January 1994 to 31st December 1999. Another norm, partially regulating the sphere of public procurement was the Act No. 263/1999 Coll., effective to 31st December 2003, and Act No. 523/2003 Coll., effective to 1st February 2006. The Act No. 25/2006 Coll. on public procurement in Slovakia became effective on 1st February 2006 (Pavle, Karas & Kamanec, 2013) [9, p. 5]. This act has been amended 25 times, particularly in line with the updates of European Union regulations, which provide a complex view not only of public procurement but also of laws which formed public procurement and other regulation forms in the public sector of the European Union (Bovis, 2013) [10, p. 357]. The comparison of laws from 1994 to 2012 shows the following: The need of the creation of a legal norm, i.e. an act on public procurement resulted from the fact that individual public administration units acquired different inputs (goods, services, buildings), and it was necessary to ensure an effective exertion of financial means. There were 3 acts, but mainly the fourth, i.e. the last act includes the European Union directive implementation and ensures transparent public procurement, besides others also operation and accessibility of the information system of electronic public procurement, as well as elaboration of methods for public procurers regulating precise rules for the public procurement of software products in public administration.

Financial regulation plays a crucial role in the sphere of public procurement. It is carried out by regulation authorities in line with the Act No. 502/2001 Coll. on financial regulation and internal audit as amended. The purpose of financial regulation is to ensure:

- economic, effective and efficient public administration,
- observation of binding legal regulations by a regulated subject,
- observation of economy, effectiveness and efficiency in public finance management,
- timely and reliable information provision to a public administration managing authority regarding the level of public finance management and executed financial operations.

The Office for Public Procurement is a subject registered in the register of organisations monitoring the public procurement in the SR. It is a central authority of public administration in this sphere. Its role is to ensure that the public procurement policy in the Slovak Republic is implemented transparently in competitive environment, while non-discrimination principles are observed. Public procurement is a process including all purchases carried out by central, regional and local authorities of state administration and self-government, public institutions and authorities, private companies under the state ownership or state control, and under certain circumstances also private companies doing business in the sphere of water management, power engineering, transport and telecommunications. Public procurement policy has to constantly create and enhance in society conditions for effective and economical exertion of public financial means, creating a significant part of state budget expenses. Public procurement in the life of each society represents an important process, as a great amount of public finance is used through it. Since means used in public procurement are the money of tax payers, this process is monitored and often criticised. The reason for criticism is predominantly laic unfamiliarity with the public procurement process as well as negatively publicized activities of the Office for Public Procurement as a state administration authority, whose competences include an obligation (find, analyse and correct) to solve problems occurred in this process. Public procurement is one of the most monitored spheres not only by states which have created conditions for the free movement of goods, works or services but also by states trying to achieve the same level aiming at joining the European structures.

The Comparison of 2000-2012 Researches

The public procurement processes are predominantly focused on solution of the classic problem of technical ineffectiveness in public administration, which manages public finance much less effectively than the private sector. It is estimated in

the developed world that a working system of public procurement enables savings of approximately 10-15% of sources for the purchases of goods, services and public works. Pre-conditions of effective functioning of the public procurement system under our conditions was defined by OECD (Organization for Economic Cooperation and Development) in 1997. Even though the data yearly provided in the public procurement processes evaluation is quite optimistic in the SR at the first sight, actual state of the public procurement system in the Slovak Republic is still complex. From the viewpoint of the system of state ad public services, public procurement has a negative impact on predominantly insufficient adoption of the two key principles – the principle of ethics and the principle of professionalism. We selected three indicators in our analysis and carried out a comparison of findings for the period of 2000-2012. They are:

- a/ procurement methods,
- b/ submitted exceptions,
- c/ the number of posed fines and their financial value.

Ad a/ Procurement Methods – are procedures used in the public procurement process on the basis of valid law. The term «public procurement method» has been deleted from public procurement. In line with the present legal regulation, law only distinguishes the procedures in public procurement, while the original method classification with open competition, restricted competition, negotiation procedure with publication, negotiation procedure without publication and competition of proposals has been substituted by four basic public procurement procedures by the new law: (1) open competition, (2) restricted competition, (3) negotiation procedure and (4) competitive dialogue.

In the evaluation of **procurement methods**, we can state that the situation in procurement started to change more significantly not sooner than in 2005. There was a higher share of competitive methods in 2005, and the share of negotiation procedure without publication (NPWP) decreased. With regard to stricter conditions of the usage of negotiation procedure without publication, as the Act No. 25/2006 Coll. on public procurement implies, the key part of the methods is in open competition. Table 2 shows an increasing trend in public procurement each year as well as a structure changes, where the restricted competition only represents 10.56% a year on average. The reason for the given changes is that the National Council of SR approved an amendment to the Act on public procurement No. 91/2012 Coll., which became effective on 9th March 2012, which changed the legal limits for open competition, restricted competition, negotiation procedure with publication, competitive dialogue, concession, competition of proposals and the procedure of subliminal contract assignment. The following table clearly shows a structure change of adopted procurement methods.

The summary of public procurement methods in the structure between 2000 and 2012 in the SR is shown in the following *Table 2*.

In the assessed period, procurers predominantly used open competition in the selection of suppliers, which contributed to an increase in the transparency of the public procurement process. The second most often used procedure until 2006 was the negotiation procedure without publication, without contracts concluded on the basis of framework agreements. On the grounds of a statement by Fair-Play Alliance, this type of pro-

curement was a weakness in public procurement, as it was a way how to assign a contract to an applicant chosen in advance, and to avoid the organisation of administratively demanding open competition. It is the least transparent non-competitive public procurement method, where the procurer addresses businesses directly. Up to a half of contracts in Slovakia was directly assigned in 2003. A way of public procurement in the form of e-auction was implemented by an amendment to the Act on public procurement dated 1st April 2011. The key indicator is the amount of savings, i.e. the difference between a resulting amount after a competition and a planned price. E-auctions achieved 12% savings on average, while procurements without this method only recorded 6% savings against their planned price. The aforementioned implies that e-auctions bring prices approximately 6% lower than classical procurement on average.

Ad b/ Submitted exceptions are among corrective measures in the public procurement process. In case an applicant assumes that they were aggrieved in the public procurement procedure, or that insufficiencies contradicting the public procurement regulation according to law occurred in it, they can seek compensation in two ways. The first way of remedying is the Request for remedy, which can be submitted for reasons enumerated by the law. If remedy is not obtained, they can use the second way – exception to law violation, also only for reasons defined by the law. Submission of exceptions always has to follow the Request for remedy. This activity is related to regulation by the Office for Public Procurement, and 2 phases of its execution can be seen – the period between 2000-2006 and 2007-2012, when the Act No. 25/2006 Coll. on public procurement became effective. Legislative changes also reflected in submitted exceptions, as *Table 3* shows.

Exceptions submitted between 2000 and 2012 are graphically shown in *Fig*.

The graph shows that the greatest number of exceptions was submitted at the Office for Public Procurement in 2003. The reason for this fact is the Act No. 263/1999 Coll. on public procurement, which enabled to submit an exception to conditions defined in notifications of calls for tenders. Their number was decreasing from this year to 2011. The lower number of submitted exceptions from 2004 was caused by legislation valid from 1st January 2004. Only 388 exceptions were submitted at the Office for Public Procurement in 2006. The low number of submitted exceptions is a result of a deposit payment as a condition of the proceedings initiation according to the Act No. 25/2006 Coll. on public procurement.

According to the results of carried out analysis, exceptions mostly affected the following spheres between 2006 and 2012: conditions defined in notifications of calls for tenders; conditions defined in tender documentation or other documents provided within the term for offer submission; conditions in the call for offer submission; selection of applicants in the restricted competition or in the negotiation procedure with publication; exclusion of a tendered or applicant; result of offers assessment.

Ad c/ Posed fines. The office for Public Procurement is entitled according to the Act on public procurement to decide within the first-instance proceedings on posing a fine for a violation of the Act on public procurement. The conducted analysis implied that the Office for Public Procurement did not carry out

An overview of public procurement methods (in numbers)

Table 2

The type of procedure	The number of procedures for a year												
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Open competition	2,982 (65.16%)	3,900 (49.27%)	5,256 (53.08%)	4,512 (54.77%)	4,315 (57.93%)	4,922 (59.43%)	1,609 (54.39%)	955 (66.36%)	1,133 (65.79%)	1,240 (66.14%)	969 (50.61%)	1,328 (68.98%)	1,298 (64.14%)
Restricted competition	190 (4.15%)	343 (4.34%)	313 (3.16%)	324 (3.94%)	398 (5.34%)	563 (6.80%)	153 (5.17%)	94 (6.53%)	137 (7.96%)	258 (13.76%)	667 (34.83%)	354 (18.39%)	465 (22.97%)
Negotiation procedure with publication	54 (1.18%)	73 (0.92%)	80 (0.81%)	85 (1.03%)	68 (0.92%)	48 (0.58%)	28 (0.95%)	37 (2.58%)	51 (2.96%)	31 (1.65%)	31 (1.61%)	24 (1.25%)	29 (1.43%)
Negotiation procedure without publication, without contracts executed on the basis of framework agreements	1,350 (29.51%)	3,600 (45.47%)	4,253 (42.95%)	3,317 (40.26%)	2,667 (35.81%)	2,748 (33.19%)	1,168 (39.49%)	353 (24.53%)	401 (23.29%)	346 (18.45%)	248 (12.95%)	219 (11.38%)	232 (11.46%)
Overall	4,576 (100%)	7,916 (100%)	9,902 (100%)	8,238 (100%)	7,448 (100%)	8,281 (100%)	2,958 (100%)	1,439 (100%)	1,722 (100%)	1,875 (100%)	1,915 (100%)	1,925 (100%)	2,024 (100%)

Source: Our own elaboration according to [11]

Table 3

An overview of submitted exceptions between 2000 and 2012

Submitted exceptions	The number of submitted exceptions for year												
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
	508	1,245	1,642	1,688	1,105	1,135	388	208	227	230	277	435	484

Source: Our own elaboration according to [11]

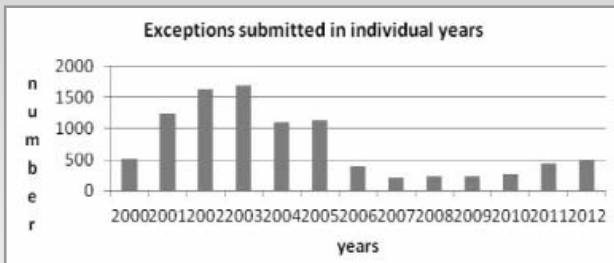


Fig. The number of exceptions submitted between 2000 and 2012

Source: Own research

tutions: Gelnica municipality, Roznava municipality, The Ministry of Environment Bratislava and Kralovsky Chlmec municipality.

To conclude, we can say that the analysis of public procurement functioning pointed out certain facts

solution of which can lead to the following: 1) enhancement of regulation activities within the Office for Public Procurement, particularly by providing a strong legislative basis. In the period of 2000-2005, legislation did not define precise and clear conditions of the public procurement process. 2006 was a turning point in the EU directives implementation, which are however permanently changing due to development of the environment; 2) an increase in fine rates for serious and repeated violations of the Act on public procurement; 3) the implementation of ex ante regulation, ensuring a higher extent of public procurement transparency; 4) setting up of a list of business entities who have already been posed a fine for a violation of the Act on pub-

An overview of fines posed between 2000 and 2012

Table 4

The amount of posed fines	An overview of posed fines in EUR											
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
	37,597	52,101	37,200	903,737	15,514	307,259	1,010,738	223,801	454,374	513,927	799,600	

Source: Our own elaboration according to [11]

any inspections of public procurement methods between 2000 and 2001, and thus could not pose any fines. Fines were posed by the Office for Public Procurement in cases when procurers did not satisfy neither of conditions of public procurement methods usage. Table 4 provides an overview of the amounts of fines posed between 2002 and 2012. The overview clearly shows that the greatest amount of fines at the time of effectiveness of the Act No. 523/2003 Coll. on public procurement (valid to 31st January 2006) was posed in 2004 and 2005, even though there is a substantial difference between the amounts of posed fines and their development.

Regulation in the analysed periods was carried out on the grounds of: supervision and regulation plans, suggestions from their authors or own suggestions of the Office for Public Procurement. However, fines for 2006 are disproportionately low compared to 2005, which was also evaluated very critically by the Fair-Play Alliance. The system of public procurement regulation represented one of the most significant obstacles to public procurement functioning until 2006. The analysis of regulation activities implies the most frequently occurred insufficiencies: incorrectly defined presumed contract value; inappropriate separation of the subject-matter of a contract aimed at avoiding a certain public procurement method; incorrectly defined guarantee; inappropriate selection criteria in restricted competition in order to reduce the number of applicants who will be invited to submit offers. However, reports on the activities of the Supreme Audit Office of the Slovak Republic clearly implied that law was very frequently violated upon inspections. In spite of this fact, the Office for Public Procurement only posed fines in 11 cases, which is hardly understandable. Since the Office for Public Procurement basically waived its right to pose fines it indirectly helped develop unlawful acting based on a feeling of impunity. It was also proved by an increasing number of justified exceptions every year until 2006. 2008 was a special year regarding fine posing from the viewpoint of its height – it was EUR 1,010,738. Out of the given amount, decisions on fine posing in the overall amount of EUR 603,535 were cancelled and remanded for new proceedings and decision on the grounds of decisions of the Office chairman on payment splitting. According to analysis carried out in 2012, the Office for Public Procurement posed fines in the amount of EUR 799,600, which is a large amount but is a feature of functioning regulation activities. Most fines were posed for the following insti-

lic procurement; 5) support of the electronisation of the public procurement process, particularly by means of e-auction system optimization; 6) the provision of information on public procurement to general public by means of holding seminars and trainings; 7) a legislative restriction or prohibition of price increases in individual contracts by means of contract amendments; 8) a legislative elimination of the possibility of pools (i.e. the avoidance of mutual agreements of applicants on a common strategy before their offers submission); 9) a proposal of a legislative obligation of financial audit for entities participating in the public procurement process.

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Received 20.06.2013