



March 2012

Selected changes in the legal regulation of the public contracts

1. Change related to the Act on Criminal Liability of Legal Entities

By the Act on Criminal Liability of Legal Entities (we dealt with this act in more detail in our Infoservice in December 2011) the Act on Public Contracts (i.e. act No 137/2006 Coll.) was also amended with the effect as of 1 January 2012, in the part related to fulfilment of the so called basic qualifications prerequisites. In case of economic operators (suppliers) – legal entities, the prerequisite of integrity has to be newly fulfilled also by the legal entity itself, i.e. not only by its statutory body (respectively by the members of its statutory body) as it was the case so far.

The supplier – legal entity is obliged to prove its integrity by an extract from the Criminal Register. The extract from the Criminal Register of a particular legal entity can be requested by anybody, i.e. not only by the legal entity whose extract from the Criminal Register is requested; such request can be filed in person or in writing at the address of the seat of the Criminal Register in Prague. As from May 2012 it should be possible to request this extract also at all contact points of public administration CzechPoint.

2. Change related to amendment to the Act on Employment

Under the amendment to the Act on Public Contract promulgated by act No 1/2012 Coll. with the effect as at 5 January 2012, the basic qualification prerequisite is fulfilled only by the supplier on whom no fine for enabling the performance of illegal work under the Act on Employment has been imposed within last 3 years. (We dealt with the tightening of sanctions for the so called illegal work in our Infoservice in February 2012). The supplier is obliged to demonstrate the fulfilment of this new basic qualifications prerequisite by a solemn declaration.

Under the joint opinion of the Office for the Protection of Competition and the Ministry of Regional Development, both above mentioned obligations apply only on the tender procedures that commenced after the effective dates of the subject amendments to the Act on Public Contracts (i.e., after 31 December 2011, respectively after 4 January 2012).

3. Changes promulgated by Act No. 55/2012 Coll.

Under No. 55/2012 Coll., a substantial amendment to the Act on Public Contracts was published in the Collection of Deeds. The majority of the changes become effective on 1 April 2012, some of the changes become effective only on 1 January 2014.

From the suppliers' perspective, following changes are of importance (by way of example):

- Cancellation of the so called economic and financial qualification requirements; instead of prove of fulfilment of these prerequisites, the tenderers will be obliged to submit a solemn declaration regarding their economical and financial capability to fulfil the public contract;
- Cancellation of the entitlement of the contracting entity to request the tenderers to submit the ISO certificate;
- In regard of the public supply contracts or public service contracts, cancellation of the entitlement of the suppliers, to demonstrate the fulfilment of the technical qualifications prerequisites – references (i.e. list of the principal deliveries effected or services provided by the supplier) by a solemn declaration; if it is not possible to obtain (other than a contracting authority) a certificate regarding delivery of the goods or provision of the services from a customer, the contracting entity may request submission of the contract with the customer and a document proving the supply;
- Introduction of the obligation of the supplier to submit, within 60 days of fulfilment of the contract to the contracting authority, a list of its sub-suppliers to whom the supplier paid more than 10 % of the total price of the contract; provided that the sub-supplier's legal form is that of a joint stock company (*akciová společnost*), the list of the owners of the shares whose total nominal value exceeds 10 % of the registered capital has to form an annex to this list; the obligation to submit the list of sub-suppliers does not apply on public contracts of small scope, i.e. up to CZK 1,000,000 in case of public supply contracts or public service contracts (*veřejná zakázka na dodávky* or *veřejná zakázka na služby*) or up to CZK 3,000,000 in case of public works contracts (*veřejná zakázka na stavební práce*).

Under the transitional provisions the changes of the Act on Public Contracts introduced by the subject amendment (i.e., by Act No. 55/2012 Coll.) shall apply only on the tender procedures that commenced after the effective date of this amendment (i.e., after 31 March 2012, respectively after 31 December 2014).