

Public Procurement needs to be not only efficient but also transparent

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Imagine running a medium-sized carpentry business in northeastern Slovakia. Besides selling your products to households or local companies, you also offer products to public institutions.

You regularly participate in tenders organized by municipalities or the regional government and offer quality products at competitive rates. You were thus successful on several occasions and have won a couple of public tenders that were organized in a fair and transparent way. As a result, after approximately a decade of running your own business and employing dozens of employees in the region, you can today count several schools or municipalities from the region among your customers.

In the second half of 2017 you suddenly noticed a significant decrease in the number of public tenders your company could participate in. Since all your resources are dedicated to your main business activity you were not aware of the sudden legislative changes that meant thresholds for low-value purchases of commonly accessible goods or services were increased from 20,000 EUR (+VAT) to 50,000 EUR (+VAT). In reality this meant that municipalities or regional public institutions that used to regularly call tenders were suddenly not obliged to do so and could award contracts of up to 50,000 EUR directly without a proper public tender. As a result, your company and probably many other similar businesses both from the region and throughout Slovakia were not able to compete for public contracts.

New Public Procurement Act
Fast forward several months and in May 2018, the Public Procurement Office presented its proposal to amend the Public Procurement Act. Besides adopting several measures which should, in principle, lower the administrative burden, the amendment also aimed to

significantly increase thresholds for low-value purchases.

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Such changes, proposed only months after the previous increase in 2017, mean that approximately 70% of all public procurements will fall under the scope of the new legislation. What is more disturbing, such a proposal came without any analysis of the effects of the recent changes. The only available data was provided by Transparency International and the results should have served as a warning. Increase in thresholds

in 2017 lead to (I) a significant decrease of average predicted savings (9,300 EUR vs 16,000 EUR) as well as a notably shorter time period for businesses to submit their offer (13 days vs. 20 days).

AmCham's position
AmCham strongly believes that new changes in public procurement should make the process not only more efficient but also transparent. At the early stage of the interdepartmental process we pointed to the risks of increasing thresholds for low-value purchases. We accepted the political reality and the fact that both the government and the municipalities advocated strongly for yet another increase which would obviously make life easier for the public sector. In order to unite a stronger voice of the business community, AmCham, together with majority of its partner business associations from the Rule of Law Initiative, suggested a compromise solution:

- Should the thresholds for low-value purchases increase again, ensure ex ante publishing of all tenders in one place (such as the Public Procurement Register)

This would ensure, among others:

- Fair competition for businesses
- Reasonable level of control of public institutions' spending

- More offers for municipalities/ public procurers in individual tenders
- Support for small and medium enterprises
- The system of public procurement to be more trustworthy

Such a compromise was presented to the Public Procurement Office and later on discussed at the governmental Economic and Social Council. Unfortunately, the government did not accept this proposal to make also low-value purchases more transparent and passed the legislation for parliamentary approval.

As a result, AmCham together with its Rule of Law partners turned its attention to the National Council. In early October, we organized a joint press conference, which was covered by several media including RTVS or TA3. We subsequently presented our case at the Parliamentary Economic Affairs Committee and called on the MPs to ensure the Public Procurement Act would find balance between efficiency and transparency.

On October 16, the Public Procurement Act amendment was approved – unfortunately without balancing the two principal public interests – efficiency and transparency. The negative effects will be borne mostly by small and medium businesses in the regions as shown in the example above.

| | Commonly accessible goods | Construction works | Hotel & cultural services |
|--------------------|---------------------------|--------------------|---------------------------|
| before June 2017 | 20,000 EUR* | 70,000 EUR | |
| June 2017 – now | 50,000 EUR | 150,000 EUR | 200,000 EUR |
| after January 2019 | 70,000 EUR | 180,000 EUR | 260,000 EUR |

*prices are excluding VAT