

CONTRACTORS AND CONTRACTING AUTHORITIES IN THE CZECH REPUBLIC AND SLOVAKIA: WORK WITH REGISTERS

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- The transparency of contractors is monitored in connection with public sector contracts.
- Contractors registered in the Register have a greater chance of success in the procurement procedure.
- Contracting authorities must be active in determining information about contractors.

CZECH REPUBLIC

In procurement procedures, the ownership structure of the selected contractor must be determined for the purpose of assessing whether there is a potential conflict of interest – a situation where the interests of persons involved in the course of the procurement procedure or that have or may have an impact on the outcome of a procedure threaten their impartiality or independence in connection with the procurement procedure. Such an interest means an interest in gaining a personal advantage or in reducing the property or other benefit of the contracting authority.

1. OBLIGATIONS OF CONTRACTORS

The amendment of the AML Act [1] introduced the obligation to register data on the beneficial owners in the Beneficial Ownership Register maintained by the Commercial Court (the "Register"). The selected contractor, which is a legal entity registered in the Commercial Register, is obliged upon request of the contracting authority to submit required information and documents evidencing the relationship of the beneficial owners to the selected contractor. Failure to submit them is penalised by exclusion of the participant from the procurement procedure. It is irrelevant whether the contractor or beneficial owner is from the Czech Republic or a different country.

2. OBLIGATIONS OF CONTRACTING AUTHORITIES

When selecting the winning tenderer, the contracting authority shall proceed according to Section 122 of the Public Procurement Act [2] and prior to concluding the contract shall determine information about the beneficial owners in the Register, which it shall consult via remote access. The information found in the Register will then be included in the public procurement documentation. If the contracting authority is unable to determine the beneficial owner of the selected contractor (or all required data), it shall ask the contractor to submit an extract from a register similar to the Register [3] or to notify the identification data of all persons who are its beneficial owner and submit relevant documents.

3. CONCLUSION

Contracting authorities should prepare for the fact that in the beginning of 2018, data on the beneficial owners of contractors will not always be listed in the Register and will have to be requested.

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[1] Act No. 253/2008 Coll., on Certain Measures against the Legalisation of Proceeds from Crime and the Financing of Terrorism

[2] Act No. 134/2016 Coll., on Public Procurement

[3] Similar register – e.g. Slovak Register of Public Sector Partners

SLOVAKIA

On 1 February 2017, the Act on the Register of Public Sector Partners entered into force, which provides for the **obligation of separate registration for persons identified as public sector partners**. Public sector partners are generally understood to be entities that are in a contractual relationship with a state or a state institution, or are holders of special licences. The aim of the law is to make the ownership structures more transparent and at the same time to expose state officials in ownership and organisational structures.

1. OBLIGATIONS OF PUBLIC SECTOR PARTNERS

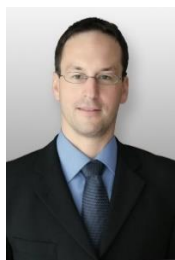
A public sector partner is required to identify its **final beneficiary**. Following initial identification, the verification of the identity of the final beneficiary of the public sector partner must be performed repeatedly, always as at 31 December, upon a change of the final beneficiary, when signing the contract or performing the contract above the established value (if verification has not been carried out in the last 6 months).

Registration in the Register of Public Sector Partners as well as any verification of the identification of the final beneficiary of a public sector partner must be done **through a so-called authorised person, who may be *inter alia* a lawyer**.

2. CONSEQUENCES OF NON-COMPLIANCE WITH THE REGISTRATION OBLIGATION

- public sector entities have the **right to withdraw** from existing contracts that give rise to the provision of funds or assets, or **are not entitled to conclude new contracts**;
- in the case of obligated persons under special regulations (licence holders), the failure to comply with the registration obligation is a **reason to cancel the respective special business permits or for not issuing new permits**.

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