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## **A C T**

### **AMENDING THE PUBLIC PROCUREMENT ACT (ZJN-3A)**

#### **Article 1**

In the introductory sentence of paragraph four of Article 67 of the Public Procurement Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 91/15), the word "contracts" shall be followed by the words "and a framework agreement" and the word following the word "shall" shall be pluralised. In indent two, the phrase "or a framework agreement" shall be added after the word "contract". Indent three shall be amended to read as follows:

"- in the cases of public contracts that are not included in paragraph one of Article 67a, a resolutive condition which is satisfied when the contracting entity is familiar with the fact that the court issued a final decision establishing a breach of obligation referred to in paragraph two of Article 3 of this Act by the contractor or its sub-contractor when the contracting entity is familiar with the fact that the competent state authority established at least two violations by the contractor or its sub-contractor concerning remuneration for work, working hours, rests or performance of work under civil-law contracts during the execution of the contract despite the existence of elements of employment relationship or concerning illegal employment for which the contractor or its sub-contractor have been fined for this offence. The resolutive condition shall be satisfied when at least six months have passed between the date of taking notice of the violation and the expiry date of the contract and, when the contract involves a sub-contractor, also when a violation is established, and the contractor fails to substitute or replace the sub-contractor within 30 days of the date of taking notice of the violation. In the case that a resolutive condition is satisfied, the contract shall be deemed to be terminated on the date of conclusion of a new contract for public procurement, and the contracting entity shall commence a new contract award procedure without delay, but no later than within 30 days of the date of taking notice of the violation. If the contracting entity fails to initiate a new contract award procedure, the contract shall be deemed to be terminated on the thirtieth day from the date of taking notice of the violation."

#### **Article 2**

A new Article 67a shall be added after Article 67 to read as follows:

#### **"Article 67a**

#### **(Special provision for public contracts for the performance of support activities by the contracting entity)**

(1) The contracting entity shall comply with the provisions of this Article in the case of a public contract for services which are covered by CPV codes 50700000-2 to 50760000-0, 55300000-3 to 55400000-4, 55410000-7 to 55512000-2, 55520000-1 to 55524000-9, 60100000-9 to 60183000-4, 70330000-3, 79713000-5, 90600000-3 to 90690000-0 and

90900000-6 to 90919300-5 and the contract or the framework agreement is concluded for a minimum of one year.

(2) In the performance of a contract or a framework agreement in the cases referred to in paragraph one of this Article, the contractor shall periodically, every six months after the conclusion of the contract or the framework agreement, check the compliance with one or more of the following circumstances:

(a) if the contractor or sub-contractor has failed to settle any mandatory levies or other financial non-tax liabilities under the act governing financial administration that are collected by the tax authority in accordance with the regulations of the country in which the economic operator is established or the regulations of the contracting authority's country if the value of these outstanding past-due liabilities amounts to EUR 50 or more on the day of verification. A contractor or sub-contractor shall also be considered not to comply with its obligations as referred to in the preceding sentence if, by the date of verification, it has not submitted all the withholding tax returns for income from the employment relationship for the period of five years preceding the date of verification;

(b) if the contractor or sub-contractor is disqualified from the award process on grounds of being in the register of economic operators with negative references;

(c) if in the last three years before the verification date the competent authority of the Republic of Slovenia or of another Member State or of a third country established at least two violations by the contractor or its sub-contractor concerning remuneration for work, working hours, rest periods or performance of work under civil-law contracts despite the existence of elements of employment relationship or concerning illegal employment for which the contractor or its sub-contractor has been fined for this offence by a final decision or by several final decisions.

(3) The contracting entity shall verify compliance with the conditions referred to in the preceding paragraph by means of data obtained from public records. If the contractor or its sub-contractor is a legal entity established in another Member State or in a third country, the contractor shall, notwithstanding the preceding paragraph, send the contracting entity, within five days of the end of each six-month period following the conclusion of the contract or of the framework agreement, a certificate issued by the competent authority of the other Member State or third country confirming that two conditions referred to in points (a) and (c) of the preceding paragraph have not been met. If a Member State or a third country does not issue such certificates or if such certificates do not include all the cases referred to in points (a) and (c) of the preceding paragraph, they may be replaced by an affidavit or, where no such affidavit is issued by a Member State or a third country, by a statement by a specific person before a judicial or administrative body, before a notary public, or before a competent professional or commercial organisation in the home country of the person concerned or in the economic operator's country of establishment. If a contractor established in another Member State or in a third country fails to submit the certificate referred to in this paragraph within five days of the end of each six-month period following the conclusion of the contract or of the framework agreement, the contractor or the sub-contractor shall be deemed to be in the same position as if the conditions referred to in paragraph two of this Article were fulfilled.

(4) When a condition referred to in paragraph two of this Article has been complied with, the contracting entity shall notify thereof the contractor or a party to the framework agreement within five days. If the condition referred to in paragraph two of this Article is complied with by the contractor, the contracting entity shall commence a new contract award procedure without delay and, but no later than within 30 days of the expiry of the verification period referred to in paragraph two of this Article, except in the case of a framework agreement concluded with more than one economic operator. If the condition referred to in paragraph two of this Article is complied with by the sub-contractor, the contractor may replace the sub-contractor within ten days of receipt of the notification referred to in paragraph one of this Article in accordance with Article 94 of this Act when the replacement does not represent a significant amendment

to the contract. If the contractor fails to propose a new sub-contractor to the contracting entity within ten days of receipt of the notification or if the contracting entity rejects the timely proposed new sub-contractor in accordance with Article 94 of this Act, the contracting entity shall commence a new contract award procedure without delay, but no later than within 45 days of the expiry of the verification period referred to in paragraph two of this Article.

(5) The contract and the framework agreement referred to in paragraph one of this Article shall include a provision that the contract or the framework agreement are to be concluded with a resolutive condition which is, when the conditions referred to in paragraph two of this Article are met and in accordance with the provisions of the preceding paragraph, is met on the date of conclusion of a new contract or framework agreement. If a framework agreement is concluded with more than one economic operator, the resolutive condition shall apply to the economic operator that meets the condition referred to in paragraph two of this Article. In such a case, the resolutive condition shall be satisfied on the thirtieth day following the verification of compliance with the conditions referred to in paragraph two of this Article.

(6) The contracting entity may also act in accordance with this Article in the event of public contracts not included in paragraph one of this Article. In such a case, the resolutive condition shall be included in the contract or framework agreement."

### **Article 3**

Point b of Article 75 shall be amended to read as follows:

"(b) if, in the last three years before the expiry of the deadline for the submission of tenders or applications, the competent authority of the Republic of Slovenia or of another Member State or of a third country establishes at least two violations by the contractor or its sub-contractor concerning remuneration for work, working hours, rest periods or performance of work under civil-law contracts despite the existence of elements of employment relationship, or concerning illegal employment for which the contractor or its sub-contractor have been fined for this offence by a final decision or by several final decisions."

### **Article 4**

In paragraph ten of Article 77, the words "subject to the tenderer's agreement, data from the criminal records of individuals, the criminal records of legal entities," shall be deleted, and the words "insolvency proceedings" shall be followed by the words "records of the inspectorate responsible for labour"; the word "references" shall be followed by the words "subject to the tenderer's agreement, also data from the criminal records of individuals and the criminal records of legal entities,"; the word "security" shall be followed by the words "or if reasons exist for terminating the contract or the framework agreement under this Act"; and the words "and records of the inspectorate responsible for labour" shall be deleted.

In the first sentence of paragraph eleven, the word "procurement" shall be followed by the words "and the performance of public contracts or framework agreements". In paragraph two, the words "in accordance with the act governing public procurement in the fields of defence and security" shall be followed by the words "or for purpose of verification pursuant to Article 67a of this Act"; the word "records" shall be followed by the words "or the grounds for terminating the contract pursuant to Article 67a"; and the word "bidder" shall be followed by the words "and/or the contractor or its sub-contractor". In the paragraph six, the comma after the word "persons" and the word "conduct or decide on public procurement procedures" shall be deleted. Sentence eight shall be modified to read "Data collected on compliance with the conditions for cooperation or non-existence of the grounds for exclusion under this Act or under the act governing public procurement in the fields of defence and security shall be stored until the award decision becomes final, and data collected on the existence of the grounds for terminating the contract or the framework agreement under this Act shall be stored for two

years after the end of validity of the contract or of the framework agreement, whereupon they shall be deleted."

#### **Article 5**

A new sentence shall be added at the end of paragraph four of Article 84, to read as follows: "In a public service contract referred to in paragraph one of Article 67a of this Act, the contracting entity shall procure such services in line with the principles of socially responsible public procurement including social criteria."

### **TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 6**

##### **(Regulations based on this Act)**

The minister responsible for public procurement shall harmonise the rules referred to in paragraph 12 of Article 77 of this Act within 60 days of its entry into force.

#### **Article 7**

(1) Contract award procedures for which notices were sent for publication before the date of application of this Act shall be carried out in accordance with the regulations applicable to date.

(2) Public contract award procedures in which the publication of contract notices is not required shall be carried out in accordance with the regulations applicable to date if invitations to tender were sent to economic operators before the date of application of this Act.

(3) Notwithstanding paragraphs one and two of this Article, the contractor, in accordance with the provisions of this Act, may alter the contract documents and/or the particulars of the published notice of the public contract and award the contract if the time limit for the submission of tenders has not yet expired.

(4) Notwithstanding the provisions of the preceding paragraphs, the provisions of Article 67a of this Act shall also apply to the contracts concluded before the entry into force of this Act.

#### **Article 8**

This Act shall come into force on the thirtieth day following its publication in the Official Gazette of the Republic of Slovenia and shall start to apply seven months after its entry into force.