

SUMMARY

Over the last two decades, the use of groups of economic operators (consortia and outsourcing) has become an essential and important formula for carrying out public procurement procedures.

Consortia in public procurement are a form of cooperation in which several or more independent entities, usually with different specialisations and competences, pool their resources and skills in order to meet the selection criteria imposed by the organisers of the procedure, to bid jointly for a public contract and then to perform the task under the contract awarded.

The formula of using the potential of a third party, which essentially serves the same purposes as a consortium, consists in a non-tendering entity, which is not a party to the public contract, providing the skills that the tenderer lacks in exchange for receiving part of the contract for its execution (or, in pathological situations, only as part of the so-called "trade in references").

The immediate motive for the selection and treatment of the issues dealt with in the dissertation is the observation of joint tenders for public contracts, in which no uniform legal and interpretative rules have been developed so far. In Polish law, no monographic study has been devoted to considerations in this area, and there is little journalistic output in other formats. Therefore, the aim of this thesis is to clarify a number of issues related to the competitiveness of public procurement, which is to be promoted by both of the aforementioned cooperation models.

The problems of the thesis are presented in five chapters.

The first chapter presents the theoretical background to the institution of public procurement and the role of contracting authorities and economic operators in the procurement process. The key concepts related to public procurement are discussed, in particular the existence of the institution of a group of economic operators.

The second chapter presents the EU rules on consortia in public procurement, including the institution of reliance on third party resources. In this respect, the basic provisions of Directive 2014/24/EU on the organisation, functioning and liability of consortia are analysed. The jurisprudence of the Court of Justice of the EU on the subject of joint procurement is also discussed, including the judgment of 26/09/2014 in the Luxone Srl case on the question of the immutability of the composition of a consortium during a procurement procedure.

The third chapter is devoted to national legislation on consortia, with particular emphasis on the role of this legal instrument in public procurement. It examines issues relating to the formation of a consortium, its operation and the liability of its members, comparing it with a civil partnership.

The fourth chapter, which is the key chapter from the point of view of the research presented, focuses on identifying the differences between the consortium institution and an economic operator's reliance on the resources of third parties. It discusses the principles of aggregating the potential of the consortium members, the economic operator and the third party providing it with its resources, as well as the issue of the economic operator's use of the experience gained within a group. An in-depth analysis of the Esaprojekt judgment and the current provisions of the Public Procurement Act has been carried out on the basis of the conclusions drawn from this judgment.

In the fifth chapter, the peculiarities of the operation of consortia in different types of procurement procedures are highlighted.

Finally, conclusions and recommendations for practice and further research on the issue of consortia are presented.

The aim of this dissertation is to enrich the debate on consortia in public procurement in Poland and to provide practical guidelines for all those interested in this form of cooperation in the public and private sectors.