

Liability of economic operators jointly performing public contract under a consortium agreement

SUMMARY

A consortium agreement is an unnamed agreement obliging to act jointly in order to achieve the agreed objective, formed by the practice. The common objective within the public procurement system is a submission of a joint tender, and later a performance of the public contract. The lawmaker has allowed economic operators to apply for a joint public procurement on the basis of article 23 of Public Procurement Law. The subject of this paper is a liability of the consortium members in a relationship between the consortium and the contracting authority as well as in internal relations. The first aim is to demonstrate that the legal situation of the consortium member applying jointly with others for the award of a public contract is disadvantageous because of the limited instruments for reducing the risk of incurring liability for infringements caused by other entities. The second aim is to identify the contractual clauses which would restore to some extent the equilibrium of consortium members' positions to each other and in relation to the contracting authority. The object of the author's analysis is primarily a model of explicit and centralized consortium.

KEYWORDS: consortium, consortium agreement, liability of economic operators, public procurement