

Information about Polish public procurement system
of relevance to contractors applying for public procurement contracts in Poland

Current public procurement system of Poland is based on the Act of Public Procurement Law (PPL) adopted on 29th January 2004, with further amendments. English translation of the Act is available at <http://www.uzp.gov.pl/cmsws/page/?F;370> .Polish central government body competent for matters concerning public contracts is the President of the Public Procurement Office, which is assisted in his work by the Public Procurement Office (<http://www.uzp.gov.pl>, English version at <http://www.uzp.gov.pl/cmsws/page/?F;356>. Entities obliged to follow PPL are different types of the public finance sector units. Such awarding entities are obliged to award contracts according to the rules of fair competition and equal treatment of economic operators, impartiality and objectivity of persons preparing and conduction procedures specified in the act of the Public Procurement Law.

General rules

In principle, contract award procedures are transparent, with few justified cases pointed out in the PPL (like for instance business secret). Procedures are conducted in writing and in Polish language. In particularly justified situations the awarding entity may agree on the submission of a requests to participate in contract award procedures, statements, tenders and other documents also in a language commonly used in international trade or in a language of the country in which the contract is awarded.

The relations between awarding entity and economic operator in the course of award procedure are regulated by the provisions of the act of Civil Code, unless provisions of the PPL provide otherwise. Persons performing actions in connection with the conduct of award procedures are subjected to exclusion.

The PPL is applied to the contract above 30 000 Euro.

Procedures

The principal procedures for awarding contracts are open tendering and restricted tendering. Open tendering means contract award procedures in which, following a public contract notice, all interested economic operators may submit their tenders. Restricted tendering means contract award procedures in which, following a public contract notice, economic operators submit requests to participate in a contract award procedure, and tenders may be submitted by economic operators invited to submit their tenders.

Awarding entity may award contracts by the mean of other procedures (negotiated procedure with publication, competitive dialogue, negotiated procedure without publication, single-source procurement procedure, request-for-quotations procedure or by electronic bidding procedure) only under the circumstances specified in the Public Procurement Law act.

Notices

Procedure starts with the publication of the contract notice that (depending on the value of the contract) is placed in the Public Procurement Bulletin available on the portal of Public

Procurement Office of Poland <http://bzpl.portal.uzp.gov.pl/index.php?ogloszenie=browser> and/or dispatched to the Publications Office of the European Union for the publication in the Official Journal of the European Union. The “Supplement to the Official Journal of the European Union” dedicated to European public procurement is called the Tenders Electronic Daily (TED) and it is available online at <http://ted.europa.eu/TED/main/HomePage.do>.

The dispatch of a notice to the Publications Office of the European Union is obligatory if the contract or design contest value exceeds the amounts indicated in *the Regulation of the Prime Minister of 23 December 2013 on the value threshold of contracts and design contests which imposes an obligation of dispatching the notices to the EU Publications Office*, Journal of Laws, item. 1735, <http://www.uzp.gov.pl/cmsws/page/?F;370>), recalled here as “the European threshold”. Currently, contract notices are submitted to the EU Publications Office, if the value of contracts awarded by public finance sector awarding entities are equal to or exceeds PLN equivalent of EUR 134 000 – for supplies or services and EUR 5 186 000 – for works (for other related thresholds, see the Regulation). As the PPL apply to contracts and contests above the EUR 30 000 the notices in the Public Procurement Bulletin include contracts equal or above 30 000 and below the European threshold.

However, the awarding entities may also place in the Public Procurement Bulletin or dispatch to the Publications Office of the European Union a notice, the publication of which is not mandatory because of the value of a contract or design contest.

In case of modification of the contract notice placed in the Public Procurement Bulletin or published in the Official Journal of the European Union, the awarding entity has to extend the time limit for submission of requests to participate in contract award procedure or the time limit for submission of tenders to the additional time indispensable to make changes in requests or tenders, if necessary (for more see PPL, Article 12).

Prior information notice

The prior information notice informs in advance economic operators about procurement plans of awarding entities. The awarding entity, immediately following the approval or adoption of a financial plan according to the provisions, statute or agreement that the awarding entity is obliged to follow, and in the case of awarding entities which do not prepare financial plans – once a year, may dispatch to the Publications Office of the European Union or post on its own website in a separate section for procurement (so called “buyer’s profile”) a prior information notice about contracts or framework agreements envisaged for the following 12 months (for more see PPL, Article 13). The notice may be posted by awarding entity on the buyer’s profile after dispatching a notice of buyer’s profile to the Publications Office of the European Union.

Central and joint procurement

Except for awarding entities themselves, the central purchasing body may prepare and conduct contract award procedures, award contracts or conclude framework agreements for awarding entities of government administration if such contracts are connected with the activities of more than one awarding entity. Awarding entities may also conduct a procedure and award a contract jointly by appointing from among themselves the awarding entity entitled to conduct an award procedure and award the contract on their behalf.

Tender committee

The tender committee is an auxiliary team of the head of the awarding entity appointed to evaluate the fulfilment of the conditions for participation by economic operators in a contract award procedure and to examine and evaluate tenders. The head of the awarding entity shall (above the thresholds) and may (below the thresholds) appoint a tender committee for the conduct of an award procedure. The tender committee, in particular, submits to the head of the awarding entity proposals to exclude an economic operator, reject a tender and to select the most advantageous tender, and also, makes a request to cancel the contract award procedure.

Conditions to compete for a contract

Eligible to compete for a contract are economic operators who meet the conditions related to:

- 1) authorisations to perform specific activities or actions, if such authorisations are required by the law;
- 2) knowledge and experience;
- 3) appropriate technical potential and personnel capable of performing a contract;
- 4) economic and financial standing.

The description of the manner of the fulfilment of such conditions has to be included in the contract notice or in the invitation to negotiate. Such description should be related to the subject-matter of contract and should be proportional to the subject matter of contract.

The conditions and the description of manner of their fulfilment are to verify whether the economic operator is able to perform the contract in a correct manner. In case of contract award procedures having as their subject-matter supplies requiring sitting or installation work, the provision of services or the execution of works, the contracting entity may evaluate the ability of economic operators to perform the contract in a correct manner in particular with regard to their reliability, qualifications, efficiency and experience. The awarding entity may also stipulate in the contract notice that only those economic operators may compete for a contract whose employed staff is in over 50% composed of disabled persons.

Economic operators may compete for a contract jointly. Then, they appoint a plenipotentiary to represent them in the contract award procedure or in the procedure and conclusion of a public procurement contract.

Documents and declarations required from economic operators

In contract award procedures the awarding entity may request from economic operators only declarations and documents necessary to conduct procedures. Declarations and documents – proving that economic operators satisfy the conditions for participation in the procedure and that the tendered supplies, services and works satisfy the requirements specified by the awarding entity – are indicated by the awarding entity in the contract notice, specification of the essential terms of contract or in the invitation to tender. *The Regulation of the Prime Minister of 19 February 2013 on the types of documents which may be requested by the awarding entity from the economic operator and forms in which these documents may be submitted* (Journal of Laws, item 231, in English available at <http://www.uzp.gov.pl/cmsws/page/?F:370>) specifies such documents. Instead of a document required, declaration made before a relevant body may also constitute a proof of fulfillment of conditions for participation in a contract award procedure, in particular information from the

National Register of Criminal Records as a proof of clean criminal record, and a certificate issued by body authorized for quality control as a confirmation that the supplies, services or works offered meet the requirements set by the awarding entity.

Where the value of the contract is equal or above European thresholds the awarding entity has an obligation to request from the economic operators documents proving that they satisfy the conditions for participation in the procedure. When the value of the contract is below, the request is not mandatory. The economic operator is required to prove, not later than on the date set for submission of requests to participate in the procedure or the date set for submission of tenders, the fulfilment of such conditions and lack of grounds to exclude the economic operator due to non-fulfilment.

Exclusions from contract award procedures

According to the PPL (for all details see PPL, Article 24), excluded from contract award procedures are:

- economic operators who caused damage by failing to perform a contract or by performing a contract improperly;
- economic operators with whom the given awarding entity has cancelled or terminated a contract or withdrawn there from due to circumstances for which the responsibility is borne by the economic operator;
- economic operators against whom the winding up procedure has been started or whose bankruptcy has been declared;
- economic operators who are in arrears with payment of taxes, charges or social insurance or health insurance premiums;
- natural persons, who have been validly sentenced for an offence committed in connection with a contract award procedure, offence against the rights of people performing paid work, offence against the environment, for bribery, for an offence against economic turnover or for any other offence committed with the aim of gaining financial profits, as well as for treasury offence or an offence of participation in organized crime group or in a union aimed at committing an offence or treasury offence;
- registered partnership whose partner has been validly sentenced for an offence committed in connection with a contract award procedure, and other offences as pointed out in above bullet;
- professional partnership whose partner or member of the management board has been validly sentenced for an offence committed in connection with a contract award procedure and other offences as pointed out above;
- limited partnership and limited joint-stock partnership whose general partner has been validly sentenced for an offence committed in connection with a contract award procedure, and other as above;
- legal persons whose active member of the managing body has been validly sentenced for an offence committed in connection with a contract award procedure and other offences;
- collective entities, with respect to whom a court has issued a decision prohibiting them from competing for contracts under the provisions concerning the liability of collective entities for tort under the liability to penalty;

- economic operators being natural persons who have been validly sentenced for an offense referred to delegating work to foreigners unlawfully residing on the territory of the Republic of Poland - for a period of 1 year from the effective date of judgment;
- economic operators being registered partnership, professional partnership, limited partnership, limited joint-stock partnership or legal person, whose shareholder, partner, active member of the managing body has been validly sentenced for an offense referred to delegating work to foreigners unlawfully residing on the territory of the Republic of Poland - for a period of 1 year from the effective date of judgment;
- economic operators who directly performed actions in connection with the preparation of the conducted procedure;
- economic operators who have not provided a tender deposit by the expiry of the time limit for tender submission, for the extended period during which they must maintain their tenders, and when necessary in other cases;
- economic operators who provided false information that have impact or might have impact on the outcome of the procedure being conducted;
- those who failed to evidence the fulfilment of conditions for participation in the procedure;
- economic operators who as part of the same capital group, submitted separate tenders or submitted separate requests to participate in the same contract award procedure unless they prove that the connections between them would not lead to imbalance of fair competition between economic operators in contract award procedure.

The awarding entity has to inform the economic operator about exclusion from the award procedure providing factual and legal grounds, and as a result the tender of an excluded economic operator is considered rejected.

Subcontracting

An economic operator may rely on knowledge and experience, technical potential, personnel capable of performing the contract or financial abilities of other entities. In such a case, the economic operator is required to prove to the awarding entity that it will have at its disposal the resources necessary to performing the contract, in particular by presenting to this end a written commitment of those entities whereby they undertake to put the necessary resources at the economic operator's disposal for the time of their use in performance of the contract.

If, for a justified reason, the economic operator is unable to present documents regarding financial and economic standing as required by the awarding entity, the economic operator may present another document which sufficiently confirms the fulfilment of the condition described by the awarding entity. Along with a request or a tender, the economic operator shall submit a list of bodies belonging to the same capital group, or an information that they do not belong to any capital group.

Elements of the procedure of relevance to economic operators

The awarding entity calls on economic operators who did not submit declarations or documents, or the economic operators who did not submit plenipotentiaries, or the economic operators who submitted declarations or documents that contain errors or those who submitted defective plenipotentiaries to supplement the documents in a defined time limit unless, despite the supplement, the tender of the economic operator is rejected or the cancellation of the procedure is necessary.

The declarations or documents, submitted on request of the awarding entity, shall confirm that the economic operator satisfies the conditions for participation in the award procedure and shall confirm the fulfilment by supplies, services or works of conditions specified by the awarding entity, not later than on the day when the time limit for submission of the requests to participate in the contract award procedure expires.

The awarding entity shall fix a time limit for submission of explanations referring to documents and declarations.

In award procedures, the awarding entity and the economic operators shall provide statements, requests, notifications and information in writing, by fax or by electronic means, as selected by the awarding entity.

The document containing the most important information of relevance to economic operators is the specification of essential terms of the contract. The specification of essential terms of the contract, in principle, is provided free-of-charge. The economic operator may request the awarding entity to explain the contents of the specification of essential terms of the contract. The awarding entity shall provide such explanation immediately (with some deadlines specified in PPL, Article 38).

Tenders and selection process

An economic operator may submit one tender. The tender is, under the pain of nullity, submitted in writing or if the awarding entity agrees, in electronic form with a secure electronic signature verifiable using a valid qualified certificate. The contents of the tender should correspond to the contents of the specification of essential terms of the contract. The awarding entity may allow for submission of variants, where the price is not the only award criterion.

An economic operator may change or withdraw his tender prior to the expiry of the time limit for submission of tenders. An economic operator must maintain his tender until the expiry of the time limit specified in the specification of essential terms of the contract (however not longer than certain deadlines, as indicated in the PPL, Article 85).

The contents of tenders shall not be disclosed prior to the opening of tenders. The opening of tenders is public and takes place directly following the expiry of the time limit for their submission; however, the final date for the submission of tenders is the date on which they are opened.

During examination and evaluation of tenders the awarding entity may require explanations concerning content of the tenders submitted by the economic operators. Negotiations between the awarding entity and the economic operator concerning the submitted tender and any changes in the contents thereof are not admissible.

The awarding entity selects the best tender on the basis of tender evaluation criteria laid down in the specification of essential terms of the contract. Tender evaluation criteria are price or price and other criteria linked to the subject-matter of the contract, in particular quality, functionality, technical parameters, use of best available technologies with regard to the impact on the environment, exploitation costs, after-sales service and period of contract performance. Tender evaluation criteria cannot refer to the characteristics of the economic operator, and in particular to its economic, technical or financial credibility. *The Regulation of the Prime Minister of 10 May 2011 specifies other than the price mandatory tender evaluation criteria in respect of certain types of public contract* (Journal of Laws, No. 96, item 559, in English available at <http://www.uzp.gov.pl/cmsws/page/?F;370>).

In some cases, an electronic auction may be held to select the best tender (PPL, Article 91).

The awarding entity rejects, inter alia, a tender if it contains an abnormally low price in relation to the subject-matter of the contract.

After selection of the best (most advantageous) tender, the awarding entity informs the economic operators who submitted tenders about the selection of the best tender, the economic operators whose tenders were rejected, the economic operators who were excluded, the time limit, after which the public contract can be concluded.

Procurement contracts

After choosing the best tender the public procurement contract is to be concluded and performed. To procurement contracts provisions of the Civil Code of 1964 are applicable, unless the provisions of the PPL provide otherwise. Procurement contract has, under the pain of nullity, a written form, it is open and accessible to public and in principle, it is concluded for a definite duration. The awarding entity may request the economic operator to provide security on due performance of the contract that covers the claims in respect of non-performance or improper performance of the contract.

The PPO President runs, publishes and updates on the PPO website list of economic operators that caused damage by failing to perform a contract or by performing a contract incorrectly, if the damage was stated by the legally valid decision of the court, and deletes economic operators from the list.

In principle, any significant modification of provisions of the concluded contract with reference to the content of the tender, which was the basis for the choice of the economic operator, is prohibited, and if done are null and void.

Other specific provisions

The PPL provides some provisions for specific fields of public procurement such as: work-concessions, contracts in the field of defence and security (PPL, Chapter 4), as well as for utility contracts (PPL, Chapter 5), for more details see respective chapters. Also some particular forms of awarding the contracts like: framework agreement, contest, dynamic purchasing system and electronic auctions are regulated under the PPL.

Appeals

The National Appeal Chamber is competent for the examination of the appeals lodged in contract award procedures. Legal protection measures are granted to economic operators and participants of the design contest, as well as to other persons if they have or had interest in being awarded the contract and suffered or may suffer a damage as a result of the violation of the provisions of the PPL.

An appeal is admissible against actions in compliance with the PPL, performed by the awarding entity in the course of contract award procedure or against awarding entities' failure to act while being bound to perform under the PPL. The appeal is examined if there are no formal shortcomings and the registration fee was paid.

The Chamber issues a judgement on the dismissal or admission of an appeal. In all other cases the Chamber issues decisions. The Chamber admits the appeal, if it states the breach of the provisions of the PPL which had or may have an essential influence on the result of the contract award procedure.

The parties and participants of the appeal procedure may complain to the court against the Chamber's ruling. The complaint should be lodged with the district court competent for the seat or place of residence of the awarding entity. The complaint should be lodged through the Chairman of the Chamber. The court's judgement or decision that ends the procedure in the case is not a subject of revocation complaint.

Reports on the functioning of the public procurement system in Poland

Detailed reports (English version) on the functioning of the public procurement system in Poland, including data on the value of Polish public procurement market are available at: <http://uzp.gov.pl/cmsws/page/?F:378>