

Note:

The English translation of the Act of 29 January 2004 – Public Procurement Law is provided by the Polish Public Procurement Office (PPO) solely for information purposes. The PPO takes no responsibility for the accuracy and completeness of this translation. The Polish language version published in the Journal of Laws (Dziennik Ustaw) should be considered the only authentic text of the Act.

Act of 29 January 2004 - Public Procurement Law (Journal of Laws of 2013, item 907, 984, 1047, 1473, of 2014 item 423, 768, 811, 915, 1146 and 1232) – consolidated text prepared by the Public Procurement Office.

The provisions marked green entered into force on October 19, 2014.

**ACT
of 29 January 2004
PUBLIC PROCUREMENT LAW**

**TITLE I
GENERAL PROVISIONS**

**Chapter 1
Subject of regulation**

Article 1.

This Act specifies the rules and procedures for awarding public contracts, legal protection measures, control of the award of public contracts and the competent authorities with respect to matters addressed in this Act.

Article 2.

For the purpose of this Act:

- 1) **price – shall mean price within the meaning of Article 3 para. 1 point 1 and para. 2 of the Act of 9 May 2014 on information on prices of goods and services (Journal of Laws, item 915);**
 - 1a) life cycle of a product – shall mean all the possible subsequent stages of life cycle of a given product i.e.: research, development, design, production, repair, modernization, change, maintenance, logistics, training, testing, withdrawal and disposal;
 - 2) supplies – shall mean the acquiring of things, rights and other possessions, in particular on the basis of contracts for purchase, supply, rental or lease;
 - 2a) dynamic purchasing system – shall mean a time-constrained electronic process of awarding public contracts having as their subject-matter generally available supplies purchased under contracts for purchase or generally available services;
 - 3) head of the contracting authority – shall mean a person or body, who - in accordance with the provisions, statute or agreement in force – is entitled to manage the contracting authority, with the exclusion of the plenipotentiaries established by the contracting authority;
 - 4) [repealed]

-
- 5) the best (most advantageous) tender – shall mean either the tender providing the most advantageous balance of price and other criteria relating to the subject-matter of the contract or the tender with the lowest price; in the case of public contracts within the scope of creative or research activities where the subject-matter of the contract cannot be established in advance in an univocal and comprehensive way, the best tender shall mean the tender providing the most advantageous balance of price and other criteria relating to the subject-matter of the contract;
 - 5a) sensitive works – shall mean construction works for security purposes involving, requiring or containing classified information;
 - 5b) sensitive equipment – shall mean equipment used for security purposes involving, requiring or containing classified information;
 - 5c) sensitive service – shall mean services used for security purposes involving, requiring or containing classified information;
 - 5d) a work – shall mean the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfill an economic or technical function.
 - 6) tender for lot – shall mean a tender providing, in accordance with the content of the specification of essential terms of the contract, for the performance of a part of the contract (lot);
 - 7) variant (tender) – shall mean a tender providing, in accordance with the terms of specified in the specification of essential terms of the contract, for a method of the performance of the contract other than that specified by the contracting authority;
 - 7a) contract award procedure – shall mean the procedure commenced by means of public contract notice or by sending an invitation to tender or by sending an invitation to negotiations in order to select the tender of an economic operator with whom public contract will be concluded, or – in the case of a single-source procurement – to negotiate the terms of that contract;
 - 8) works – shall mean execution, or both the design and execution, of works specified in provisions issued under art 2c or the execution, by whatever means, of a work corresponding to the requirements specified by the contracting authority.
 - 8a) military equipment – shall mean equipment specifically designed or adapted for military purposes and intended for use as an arm, munitions or war material;
 - 8b) crisis situation shall be understood as:
 - a) war,
 - b) armed conflict,
 - c) any situation in which a harmful event has occurred or is inevitably likely to occur which clearly exceeds the dimensions of harmful events in everyday life and which endangers the life and health of people, or has a substantial impact on property values, or requires measures in order to supply the population with necessities;
 - 9) public funds – shall mean public funds within the meaning of provisions on public finances;
 - 9a) framework agreement – shall mean an agreement concluded between the contracting authority and one or a bigger number of economic operators for the purpose of establishing the conditions concerning the public contracts to be

awarded within a given period, in particular with reference to the prices and, if necessary, envisaged quantities;

- 9b) subcontract – shall mean a written contract for pecuniary interest having as its subject matter services, supplies or works constituting part of the public contract concluded between economic operator selected by the contracting authority and other entity (subcontractor) and in case of public contracts for works also between the subcontractor and further subcontractor or between further subcontractors;
- 10) services – all services other than construction works or supplies and which constitute the services specified in provisions issued under art. 2a or art. 2b;
- 11) economic operators – shall mean natural persons, legal persons or organisational units not having legal personality, who compete for the award of a contract, have submitted their tenders or concluded a public procurement contract;
- 11a) civil purchases – shall mean contracts other than contracts specified in art. 131a para. 1 covering the procurement of non-military products, works or services for logistical purposes.
- 12) contracting authorities – shall mean natural persons, legal persons or organisational units not having legal personality, obliged to apply this Act;
- 13) public contracts – shall mean contracts for pecuniary interest concluded between an contracting authority and an economic operator, having as their subject-matter services, supplies or works.

Article 2a.

The Prime Minister shall determine, by means of a regulation, the list of services of priority and non-priority nature, taking into account the provisions of the Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and the Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

Article 2b.

The Prime Minister shall determine, by means of a regulation, a list of priority and non-priority services, taking into account provisions of the directive of the European Parliament and of the Council 2009/81/EC of the 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defense and security, and amending Directives 2004/17/EC and 2004/18/EC.

Article 2c.

The Prime Minister shall determine, by means of a regulation, a list of works taking into account directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, and directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004

coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

Article 3.

1. This Act shall apply to public contracts, hereinafter referred to as "contracts", awarded by:

- 1) the public finance sector units within the meaning of provisions on public finances;
- 2) state organisational units not having legal personality, other than those specified in item 1;
- 3) legal persons, other than those specified in item 1, established for the specific purpose of meeting needs in the general interest, not having industrial or commercial character, if the entities referred to in these provisions and in items 1 and 2, separately or jointly, directly or indirectly through another entity:
 - a) finance them in more than 50%, or
 - b) have more than half of shares or stocks, or
 - c) supervise their managerial board, or
 - d) have the right to appoint more than half of the members of their supervisory or managerial board;
- 3a) associations of the entities referred to in items 1 and 2, or entities referred to in item 3;
- 4) entities other than those specified in items 1-3a, if the contract is awarded for the purposes of exercising one of the activities referred to in Article 132, if such an activity is exercised on the basis of special or exclusive rights, or if the entities referred to in items 1-3a, separately or jointly, directly or indirectly through another entity, have a dominant influence over them, in particular:
 - a) finance them in more than 50 %, or
 - b) have more than half of the shares or stocks, or
 - c) have more than half of the votes resulting from the shares or stocks, or
 - d) supervise their managerial board, or
 - e) have the right to appoint more than half of the members of their managerial board;
- 5) entities other than those specified in items 1 and 2, if all of the following circumstances occur:
 - a) more than 50% of the value of the contract awarded by them is financed from public funds or by the entities referred to in items 1-3a,
 - b) the value of a contract is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8,
 - c) the contract subject-matter is works comprising the activities in the field of overland and maritime engineering, construction of hospitals, sport, recreation and leisure centres, school buildings, facilities used by the universities or buildings used by the public administration or services connected with such works;

6) [repealed];

7) entities with which concession for works contract was concluded under the Act of 9 January 2009 on concession for works or services, insofar as they award contracts for the purpose of the execution of that concession.

2. Special or exclusive rights within the meaning of para. 1 item 4 shall be rights granted by a law or an administrative decision consisting in the reservation for one or more entities of the performance of a specific activity where complying with the conditions for obtaining such a right as regulated by separate provisions does not result in obligation of the granting that right.

3. The entities, referred to in para. 1, when granting funds in financial support to a project, can make the granting dependent on the application of the principles of equal treatment, fair competition and transparency when spending the funds.

Article 4.

This Act shall not apply to:

1) contracts awarded pursuant to:

- a) special procedure of an international organisation different from the one provided for in the Act,
- b) international agreements relating to the stationing of troops to which the Republic of Poland is a party, if such agreements provide for contract award procedures other than those provided for in this Act,
- c) an international agreement concluded between the Republic of Poland and one or more states non being a Member of the European Union, concerning the implementation or execution of a project by the parties to that agreement, if that agreement provides for contract award procedures other than those provided for in this Act;

2) contracts of the National Bank of Poland related to:

- a) the exercise of tasks concerning the implementation of the financial policy, in particular contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments,
- b) the trading of securities issued by the State Treasury,
- c) the management of internal and external debt,
- d) the issue of currency and the administering of that currency,
- e) accumulation of foreign exchange reserves and management of those reserves,
- f) accumulation of gold and precious metals,
- g) the operation of bank accounts and conduct of bank financial settlements;

2a) contracts of National Economy Bank related to:

- a) the exercise of tasks concerning the performance of tasks referring to handling of funds established, entrusted or transferred to National Economy Bank under separate acts as well as referring to conducting government programmes, in part concerning:

-
- running of bank accounts, conducting cash settlement and conducting activities on the interbank market,
 - raising financial resources in order to provide cash flow, financing the activity of handled funds and programmes as well as refinancing of credit action,
 - b) concerning the transactions on the interbank market referring to management of the state debt;
 - c) related to the banking business of the National Economy Bank, which concerns:
 - opening and maintaining bank accounts, conduct financial settlements and activities in the interbank market,
 - raising funds to ensure financial liquidity and credit refinancing.
- 3) contracts where the subject-matter of the contract includes:
- a) arbitration or conciliation services,
 - b) services of the National Bank of Poland,
 - c) [repealed],
 - d) [repealed],
 - e) research and development services and provision of research services, which are not wholly remunerated by the contracting authority or those where the benefits do not accrue exclusively to the contracting authority for its use in the conduct of its own affairs,
 - f) [repealed],
 - g) purchase, development, production or co-production of programmes for broadcasting in radio, television or the Internet,
 - h) purchase of broadcasting time,
 - i) purchase of property rights and other rights to real estates, in particular lease and rental rights,
 - j) financial services related to the issue, sale, purchase or transfer of securities or other financial instruments, in particular when related to transactions aimed at obtaining financial resources or capital for the contracting authority;
 - k) supply of rights for emission of greenhouse gases and other substances, units of certified reduction of emissions and reduction emission units, within the meaning of regulations on the trade of rights for emission of greenhouse gases and other substances into the atmosphere;
 - l) services of the National Economy Bank with reference to banking services for the entities, referred to In Article 3 para. 1 item 1 and 2, except for self government bodies;
- 4) employment contracts;
- 4a) [repealed];
- 5) contracts classified as “confidential” or “strictly confidential” under provisions of the act on protection of classified information, or if this is required in view of significant national security interest or protection of public security;

-
- 5a) contracts, in the course of implementation of development cooperation, awarded by military units within the meaning of provisions on terms of use or residence of Armed Forces of the Republic of Poland outside country borders, if their value is less than amounts specified in provisions issued under Article 11 para. 8;
- 5b) contracts concerning production or trade of an arm, munitions or war material provided for in art. 346 of the Treaty on the Functioning of the European Union if this is required by primary national security interest, and the award of contract without the application of the Law will not negatively influence competitive conditions on the internal market with reference to products which are not exclusively intended for military purposes;
- 6) contracts for services awarded to another contracting authority, referred to in Article 3 para. 1 items 1-3a, which by means of an act or administrative decision has been granted with the exclusive right to render those services;
- 7) allocation of subsidies from public funds, if these subsidies are allocated pursuant to acts;
- 8) contracts and contests where their value does not exceed the equivalent in PLN of EUR 30 000;
- 8a) contracts for supplies or services used exclusively for the purpose of research, experiment, study or development, which do not serve the conduct by contracting authority of quantity production to establish commercial viability or to recover the costs of research and development, if their value is less than the amounts specified in provisions issued pursuant to art. 11 para. 8;
- 8b) contracts for supplies or services in the field of cultural activities related to organization of exhibitions, concerts, competitions, festivals, shows, theatrical performances, cultural education initiatives or the collection of library or museum materials, if those contracts are not used to provide the contracting authority with fixed assets for its current use in the conduct of its affairs and their value is less than the amounts specified in provisions issued pursuant to art. 11 para. 8;
- 8c) contracts for supplies or services in the field of educational activities related to the collection of handbooks, educational materials and practice books in school libraries as referred to in the Act of 7 September 1991 on the education system (Journal of Laws of 2004 No. 256, item 2572 as amended), if those contracts are not used to provide the contracting authority with fixed assets for its current use in the conduct of its affairs and their value is less than the amounts specified in provisions issued pursuant to art. 11 para. 8;**
- 9) [repealed]
- 10) contracts, where the main purpose is:
- a) permission for the contracting authorities to put the public a telecommunications networks at the disposal, or
 - b) exploitation of public telecommunications networks, or
 - c) provision of public telecommunications services by means of public telecommunications network.
- 11) purchase of supplies, services or works from the central purchasing body or from the economic operators selected by the central purchasing body.
- 12) concessions for works and concessions for services under the Act of 9 January 2009 on Concession for Works or Services.

-
- 13) contracts awarded to budget economy unit by the public authority performing the functions of a founding body of that unit, if the following conditions are met jointly:
- a) the major part of the activity of a budget economy unit concerns performing of public functions on behalf of that public authority;
 - b) the public authority exercises the control over the budget economy unit, corresponding to control exercised over its own units not having legal personality, in particular involving the impact on strategic and individual decisions referring to management of affairs of the unit;
 - c) the subject-matter of the contract falls within the scope of the basic activity of the budget economy unit determined in accordance with Article 26 para. 2 item 2 of the Law of 27 August 2009 on public finances (Journal of Laws No. 157, item 1240 as amended¹);
- 14) contracts awarded by the Minister of Justice or organizational units of the Prison Service to prison workplaces operated as state-owned enterprises or budget economy units, if the following conditions are met jointly:
- a) the contracts are awarded in order to employ imprisoned persons,
 - b) the value of the contract is less than the amounts specified in provisions issued pursuant to art. 11 para. 8,
 - c) a substantial part of the activity of prison workplaces relates to tasks performed on behalf of the Minister of Justice or organizational units of the Prison Service,
 - d) the subject matter of contract falls within the core activity of the prison workplace.

Article 4a.

[repealed]

Article 4b.

1. The PPL does not apply to contracts provided for in art. 131a para. 1:

1) subject to:

- a) specific procedure pursuant to an international agreement in which the Republic of Poland is one of the parties and concluded with one or several non-EU states, or an agreement made on ministerial level,
 - b) specific procedure pursuant to an international agreement in which the Republic of Poland is one of the parties, or an agreement made on ministerial level relating to the stationing of troops and concerning undertakings regardless of their seat or place of residence,
 - c) specific procedure of an international organization if procurement must be awarded by the Republic of Poland in accordance with those procedure;
- 2) in cases where the application of PPL would oblige the contracting authority to supply information the disclosure of which is contradictory to the essential national security interests;
- 3) contracts for the purpose of intelligence purposes;

¹ The amendments to the mentioned Act were published in the Journal of Laws of 2010 No. 28 item 146, No. 96 item 620, No. 123 item 835 and No. 152 item 1020)

-
- 4) awarded in the framework of a cooperative programme based on research and development, conducted jointly by the Republic of Poland and at least one other EU member state for the development of a new product and, where applicable, the later phases of the whole or part of the life-cycle of this product;
 - 5) contracts awarded in a non-EU state, including for civil purchases carried out when forces are deployed, and forces mainly tasked with security protection, in cases where operational needs require them to be conducted with economic operators located in the area of operations;
 - 6) awarded by the government of the Republic of Poland to the government of another country and relating to:
 - a) supplies of military equipment or sensitive equipment,
 - b) works and services directly linked to such equipment, or
 - c) works and services for specific military purposes or sensitive works or services;
 - 7) financial services, with the exception of insurance services.

2. The contracting authority may not use the rules, procedures, programmes, arrangements or contracts in the field of defence and security as provided for in art. 4 point 5 and in art. 4b para. 1 in order to avoid the application of the Act..

3. In the case of contracts, as provided for in para. 1 point 4, the contracting authority, after commencing the programme, is obliged to inform the European Commission on the part of costs on research and development relating to general costs of the cooperative programme, on the agreement on cost sharing and on the contracts planned for each of the member states.

Article 4c.

The Council of Ministers shall determine, by means of a regulation, upon request of the Minister of National Defence and a Minister of Interior, in consultation with a Minister of Treasury, a Minister of Foreign Affairs and Minister of Economy, a mode of conduct in assessing whether essential national security interest occurs, in consideration of the obligation of the proper application of the art. 346 of the Treaty on functioning of the European Union and the need to ensure the security of military equipment supplies as well as proper performance of repairs of the military equipment owned.

Article 5.

1. To contract award procedures where the subject-matter are non-priority services, specified in provisions issued under Article 2a and 2b, the provisions of the Act regarding the time limits for submission of requests to participate in a procedure or time limits for submission of tenders, obligation to demand deposit, obligation to demand documents certifying the fulfillment of conditions for participation in the procedure, prohibition to determine contract award criteria on the basis of the economic operator's characteristics as well as preconditions for the selection of negotiated procedure with publication, competitive dialogue and electronic bidding shall not apply.

1a. [repealed]

1b. In the case of contract award procedures where the subject-matter of contract are legal services in form of legal representation before courts, tribunals or other ruling authorities or legal assistance with regard to legal representation, or – when it is required for protection of important rights or interests of the State Treasury – the provisions of the Act regarding preconditions for selection of negotiated procedure without publication and

preconditions for selection of single-source procurement shall not apply.

2. If the contract includes at the same time services referred to in para. 1 and other services, supplies or works, provisions relating to the subject-matter of the contract with the largest share in the given contract in terms of value shall be applicable to the award of the contract.

3. The contracting authority may not combine other contracts with services, referred to in para. 1, with the intention of avoiding the application of contract award procedures specified in this Act.

Article 5a.

1. If the value of a contract, referred to in art. 5 para. 1, is less than the amounts provided for in provisions issued under art. 11 para. 8, the contracting authority may award a contract after the conduct of a procedure specified in para. 2-4.

2. The contracting authority shall award a contract in a transparent, objective and non-discriminatory manner.

3. The contracting authority shall place on the entity page of the Public Information Bulletin, and if there is no entity page of the Public Information Bulletin, on its own webpage, a contract notice, which contains the necessary information due to circumstances of its award, in particular:

1) the time limit for submission of tenders that considers the time limit necessary for preparation and submission of a tender;

2) a description of the subject matter of a contract and the determination of the size or scope of a contract;

3) contract award criteria.

4. Immediately upon the award of a contract, the contracting authority shall place on the entity page of the Public Information Bulletin, and if there is no entity page of the Public Information Bulletin, on its own webpage, the information on the award of a contract, stating the name (s) or the name of the entity with which the contract was concluded. In case of failure to award a contract, the contracting authority shall forthwith place on the entity page of the Public Information Bulletin, and if there is no entity page of the Public Information Bulletin, then on its own webpage, the information on failure to award a contract.

Article 6.

1. If a contract includes simultaneously the provision of supplies and services, or works and services, the award of the contract shall be regulated by provisions relating to the subject-matter of the contract with the largest share in the given contract in terms of value.

2. If a contract includes simultaneously the provision of supplies and services consisting in the sitting or installation of the supplied article or other good, provisions relating to supplies shall apply to the award of such a contract.

3. If a contract includes simultaneously works and supplies necessary for their execution, provisions relating to public works shall apply to the award of such a contract.

4. If a contract includes simultaneously services and works necessary for their execution, provisions relating to services shall apply to the award of such a contract.

Art. 6a.

In case of tender for lots, the contracting authority may apply provisions appropriate for the value of the lot, if the value of the lot is less than the PLN equivalent of EUR 80 000 for supplies and services and less than the PLN equivalent of EUR 1 000 000 for works, under the condition that the total value of those lots is less than 20% of the contract value.

Chapter 2

Principles of award of contracts

Article 7.

1. Contracting authorities shall prepare and conduct contract award procedures in a manner ensuring fair competition and equal treatment of economic operators.

2. Actions connected with the preparation and conduct of contract award procedures shall be performed by persons ensuring impartiality and objectivity.

3. Contracts shall be awarded only to economic operators chosen in accordance with the provisions of this Act.

Article 8.

1. Contract award procedures shall be public.

2. The contracting authority may limit the access to information connected with the award procedure only under the circumstances specified in this Act.

3. Information, which is regarded as a business secret, within the meaning of provisions on combating unfair competition, shall not be disclosed, if not later than within the time limit for submission of tenders or requests to participate in a procedure, the economic operator stipulated that it shall not be shared and demonstrated that reserved information remains a business secret. The economic operator may not stipulate that the information, referred to in Article 86 para. 4, shall not be disclosed. The provision shall apply accordingly to design contests.

4. Where justified by protection of privacy or public interest, the contracting authority is entitled to not disclose:

1) personal data, in case of contract awarded under art. 67 para. 1 point 1. letter b

2) the amount of remuneration, in case of contract awarded under art. 67 paragraph. 1 point 1 letter c

- contracts for supplies or services in the field of cultural activities related to organization of exhibitions, concerts, competitions, festivals, shows, theatrical performances, cultural education initiatives or the collection of library or museum materials, if those contracts are not used to provide the contracting authority with fixed assets for its current use in the conduct of its affairs as long as the economic operator, prior to signing the procurement contract stipulated that the data may not be shared.

Article 9.

1. Contract award procedures shall be conducted in writing, subject to the exceptions specified in this Act.

2. Contract award procedures shall be conducted in Polish.

3. In particularly justified cases the contracting authority may agree on the submission of a request 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.

Article 10.

1. The primary procedures for awarding contracts are open tendering and restricted tendering.

2. Contracting authority may award contracts by 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 this Act.

Chapter 3 Contract notices

Article 11.

1. Notices referred to in this Act:

1) shall be placed in the Public Procurement Bulletin available on the portal of Public Procurement Office, hereinafter referred to as the "PPO";

2) shall be published in the Official Journal of the European Union if they are dispatched to the Publications Office of the European Union.

2. [repealed]

3. [repealed]

4. The notice placed in the Public Procurement Bulletin may be modified by the contracting authority by placing the notice on the modification of the notice in the Public Procurement Bulletin, which contain in particular the date of the modified contract notice and its number.

5. The contracting authority may place the contract notice in Public Procurement Bulletin, the publication of which is not mandatory due to the contract value.

6. The Prime Minister shall determine, by means of a regulation, the standard forms of notices to be placed in the Public Procurement Bulletin, taking into consideration the types of notices and value of contract or the design contest.

7. Notices to be dispatched to the Publications Office of the European Union shall conform to the standard forms laid down in the Commission Regulation (EC) No. 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council (OJ L 257 of 1.10.2005, p. 1), if

the contract or design contest value exceeds the amounts provided for in the provisions issued under para. 8 below.

8. The Prime Minister shall determine, by means of a regulation, the value thresholds of contracts and design contests which require the dispatch of a notice to the Publications Office of the European Union, taking into consideration the applicable provisions of the Community law.

Article 12.

1. The notices are placed in Public Procurement Bulletin by electronic means using the standard forms available on the PPO portal.

2. Notices shall be dispatched to the Publications Office of the European Union in writing, by fax or by electronic means, and in cases provided for in the Act - by electronic means in accordance with the form and procedures indicated on the website, referred to in para. 3 of Annex VIII to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts or in para. 3 of Annex XX to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, hereinafter referred to as the “website referred to in the directive”.

3. The contracting authority is required to prove:

- 1) that the notice was placed in the Public Procurement Bulletin, and in particular shall keep the proof thereof;
- 2) that the notice was published in the Official Journal of the European Union, and in particular shall keep the proof thereof.

4. The notice published in the Official Journal of the European Union may be modified by the contracting authority by dispatching the Notice for additional information, information on incomplete procedure or corrigendum to the Publications Office of the European Union by electronic means in accordance with form and procedures indicated on the website specified in the Directive.

5. The contracting authority may 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.

Art. 12a.

1. 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 contracting authority shall 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.

2. If the modification, referred to in para. 1, is essential, in particular concerns the description of the subject-matter, size and range of contract, contract award criteria, conditions for participation in the contract award procedure or method used for the evaluation of fulfilment of those conditions, the contracting authority shall extend the time limit for submission of requests to participate in contract award procedure or time limit for submission of tenders to additional time indispensable to make changes in requests or tenders, however in

contract award procedures where the value is equal to or exceeds the amounts specified in provisions issued under Article 11 para. 8, the time limit:

- 1) for submission of tenders shall not be less than 22 days - from the date of dispatch of modification of the contract notice to the Publications Office of the European Union - in case of open tendering;
- 2) for submission of requests to participate in the contract award procedure shall not be less than 30 days, and in the event of extreme urgency for the award of a contract not less than 10 days from the date the modification of the contract notice is dispatched to the Publications Office of the European Union – in case of restricted tendering or negotiated procedure with publication.

3. After the modification of the contract notice is placed in the Public Procurement Bulletin or dispatch to the Official Journal of the European Union, the contracting authority shall forthwith place the information on the modification in its seat and its website.

Article 13.

1. The contracting authority, immediately following the approval or adoption of a financial plan according to the provisions, statute or agreement that the contracting authority is obliged to follow, and in the case of contracting authorities 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, hereinafter referred to as the “buyer’s profile”, a prior information notice about contracts or framework agreements envisaged for the following 12 months, the value of which:

- 1) for works – is equal or exceeds the threshold amount defined in the provisions issued under Article 11 para. 8, resulting in the mandatory dispatch of works contract notices to the Publications Office of the European Union;
- 2) when totalled for supplies of value equal to or exceeding the threshold amounts defined in the provisions issued under Article 11 para. 8 within a given group provided for in the Regulation (EC) No. 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (OJ L 340 of 16.12.2002, p. 0001-0562, Official Journal of the European Union - Polish Special Edition, chapter 6, table 7, page 3 as amended²⁾), hereinafter referred to as the “Common Procurement Vocabulary”, is equal or exceeds the PLN equivalent of EUR 750 000;
- 3) when totalled for services of value equal to or exceeding the threshold amounts defined in the provisions issued under Article 11 para. 8 within a given category 1-16 defined in Annex II to the Common Procurement Vocabulary, is equal or exceeds the PLN equivalent of EUR 750 000.

2. The notice referred to in para. 1 may be posted by contracting authority on the buyer’s profile after dispatching a notice on the buyer’s profile to the Publications Office of the European Union by electronic means in accordance with the form and procedures indicated on the website referred to in the directive.

3. The provisions of para. 1 shall not apply to planned contracts for services referred to in Article 5 para. 1 nor to planned contracts awarded by a procedure other than open tendering, restricted tendering, negotiated procedure with publication or competitive dialogue.

²⁾ This Regulation was amended by Commission Regulation (EC) No. 2151/2003 of 16 December 2003 amending Regulation (EC) No. 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (OJ L 329 of 17.12.2003, p. 1-270).

TITLE II
AWARD PROCEDURES

Chapter 1

Contracting authority and Economic Operators

Article 14.

Provisions of the Act of 23 April 1964 – the Civil Code (Journal of Laws of 1964 No 16 item 93 as amended³) shall apply to actions undertaken by the contracting authority and economic operators in the contract award procedure, unless provisions of this Act provide otherwise.

Article 15.

1. Contract award procedures shall be prepared and conducted by the contracting authority.

2. The contracting authority may entrust the preparation or the conduct of award procedures, to its own organisational unit or to a third party.

3. The authorities referred to in para. 2 shall act as plenipotentiaries of the contracting authority.

Article 15a.

1. The central purchasing body may prepare and conduct contract award procedures, award contracts or conclude framework agreements for contracting authorities of government administration if such contracts are connected with the activities of more than one contracting authority.

2. Contracting authorities in government administration may award contracts under a framework agreement concluded by the central purchasing body if this is provided for in the framework agreement.

3. The central purchasing body may perform the activities referred to in para. 1, also for the purposes of other contracting authorities.

4. The Prime Minister may appoint the central purchasing body from among government administration bodies or organizational units which are subordinate to or supervised by them.

³ The amendments to the mentioned Act were published in the Dz. U. of 1971 No. 27, item 252, of 1976 No. 19 item 122, of 1982 No. 11 item 81, No. 19 item 147 and No. 30 item 210, of 1984 No. 45 item 242, of 1985 No. 22 item 99, of 1989 No. 3 item 11, of 1990 No. 34 item 198, No. 55 item 321 and No. 79 item 464, of 1991 No. 107 item 464 and 115 item 496, of 1993 No. 17 item 78, of 1994 No. 27 item 96, No. 85 item 388 and No. 105 item 509, of 1995 No. 83 item 417, of 1996 No. 114 item 542, No. 139 item 646 and No. 149 item 703, of 1997 No. 43 item 272, No. 115 item 741, No. 117 item 751 and No. 157 item 1040, of 1998 No. 106 item 668 and No. 117 item 758, of 1999 No. 52, item 532, of 2000 No. 22 item 271, No. 74 item 855 and 857, No. 88 item 983 and 114 item 1191, of 2001 No. 11 item 91, No. 71 item 733, No. 130 item 1450 and 145 item 1638, of 2002 No. 113 item 984 and 141 item 1176, of 2003 No. 49 item 408, No. 60 item 535, No. 64 item 592 and No. 124 item 1151, of 2004 No. 91 item 870, No. 96 item 959, No. 162 item 1692, No. 172 item 1804 and No. 281 item 2783, of 2005 No. 48 item 462, No. 157 item 1316 and No. 172 item 1438, of 2006 No. 133 item 935 and No. 164 item 1166, of 2007 No. 80 item 538, No. 82 item 557 and No. 181 item 1287, of 2008 No. 116 item 731, No. 163 item 1012, No. 220 item 1425 and 1431 and No. 228 item 1506; of 2009 No. 42 item 341, No. 79 item 662 and No. 131 item 1075 and of 2010 No. 40 item 222.

5. The Prime Minister may obligate its subordinate organizational units, by order, to obtain certain types of contracts from the central purchasing body or from economic operators selected by the central purchasing body, and to award contracts on the basis of a framework agreement concluded by the central purchasing body, and to define the scope of information to be provided by such units to the central purchasing body as necessary to conduct the procedure, and the mode of cooperation with the central purchasing body.

6. All provisions applicable to the contracting authority shall likewise apply accordingly to the central purchasing body.

Article 16.

1. Contracting authorities may conduct a procedure and award a contract jointly by appointing from among themselves the contracting authority entitled to conduct an award procedure and award the contract on their behalf.

2. [repealed]

3. The Minister in charge of a section of the government administration may appoint, by order, from among organisational units subordinate to or supervised by the Minister, a competent contracting authority with respect to the conduct an award procedure and the award of contracts on behalf of these units, and may also obligate such units to obtain certain types of contracts from the indicated central purchasing body or from economic operators selected by the central purchasing body, and to award contracts on the basis of a framework agreement concluded by the central purchasing body.

4. A unit of territorial self-government executive body may appoint by a regulation from among the subordinated local government organisational units the competent organisational unit with respect to the conduct of an award procedure and the award of contracts on behalf of these units.

5. Provisions relating to the contracting authority shall apply respectively to the contracting authorities referred to in para. 1.

Article 17.

1. Persons performing actions in connection with the conduct of award procedures shall be subject to exclusion, if:

- 1) they are competing for a contract;
- 2) remain in matrimony, consanguinity or affinity in direct line or consanguinity or affinity in indirect line up to the second degree, or is related due to adoption, legal custody or guardianship with economic operator, his legal deputy or members of managing or supervisory bodies of economic operators competing for a contract;
- 3) during the three years prior to the date of the start of the contract award procedure they remained in a relationship of employment or service with the economic operator or were members of managing or supervisory bodies of economic operators competing for a contract;
- 4) remain in such legal or actual relationship with the economic operator, which may raise justified doubts as to their impartiality;

-
- 5) have been legally sentenced for an offence committed in connection with contract award procedures, bribery, offence against economic turnover or any other offence committed with the aim of gaining financial profit.

2. Persons performing actions in connection with a contract award procedure shall provide a written statement, under the pain of penal liability for making false statements, about the absence or existence of the circumstances referred to in para. 1.

3. Actions in connection with the contract award procedure undertaken by a person subject to exclusion after they became aware of the circumstances referred to in para. 1 shall be repeated, except for the opening of tenders and other factual actions having no influence on the outcome of the procedure.

Article 18.

1. The head of the contracting authority shall be the person responsible for the preparation and conduct of the contract award procedure.

2. Other persons shall be also responsible for the preparation and conduct of the contract award procedure to the extent to which they have been entrusted with actions related to the conduct and preparation of the contract award procedure. The head of the contracting authority may entrust the performance of actions reserved for him, which are specified in this Chapter, to the employees of the contracting authority.

3. Where the preparation and conduct of the contract award procedure is reserved under separate provisions to a body other than the head of the contracting authority, the provisions relating to the head of the contracting authority shall apply to that body respectively.

Article 19.

1. The head of the contracting authority shall appoint a tender committee for the conduct of an award procedure, hereinafter referred to as the “tender committee”, where the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8.

2. Where the contract value is less than the amounts specified in the provisions issued under Article 11 para. 8, the head of the contracting authority may appoint a tender committee. The provisions of this Chapter shall apply accordingly.

3. Tender committee may be of a permanent character or be appointed for a particular procedure.

Article 20.

1. The tender committee is an auxiliary team of the head of the contracting authority appointed to evaluate the fulfilment of the conditions for participation by economic operators in a contract award procedure and to examine and evaluate tenders.

2. The head of the contracting authority may also entrust the tender committee with actions related to the conduct and preparation of a contract award procedure other than those specified in para. 1. The provisions of this Chapter shall apply accordingly.

3. The tender committee shall, in particular, submit to the head of the contracting authority proposals to exclude an economic operator, reject a tender and to select the most

advantageous tender, and also, to the extent referred to in para. 1, shall make a request to cancel the contract award procedure.

Article 21.

1. Members of the tender committee shall be appointed and recalled by the head of the contracting authority.

2. The tender committee shall be composed of at least 3 persons.

3. The head of the contracting authority shall specify the organisation, composition, working procedure and scope of duties of members of the tender committee to ensure its efficient operation, individualisation of responsibility of its members for performed actions and transparency of its work.

4. If the performance of specific actions in connection with the preparation and conduct of a contract award procedure requires special knowledge, the head of the contracting authority may at its own initiative or at the request of the tender committee appoint experts. The provisions of Article 17 shall apply accordingly.

Article 22.

1. Eligible to compete for a contract shall be 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.

2. The contracting authority may 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 within the meaning of the regulations on occupational and social rehabilitation as well as on employment of the disabled or relevant provisions of the European Union Member States or the European Economic Area Member States.

3. The description of the manner of the fulfilment of conditions, referred to in para. 1, shall be included in the contract notice or – in the case of procedures where the publication of a contract notice is not required – in the invitation to negotiate.

4. The description of manner of the fulfilment of conditions, referred to in para. 1, should be related to the subject-matter of contract and should be proportional to the subject-matter of contract.

5. The conditions provided for in para. 1 and the description of description of manner of the fulfilment of conditions aim at verification whether the economic operator in question 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.

Article 23.

1. Economic operators may compete for a contract jointly.
2. In the event referred to in para. 1, economic operators shall appoint a plenipotentiary to represent them in the contract award procedure or in the procedure and conclusion of a public procurement contract.
3. The provisions relating to economic operators shall apply respectively to the economic operators referred to in para. 1.
4. If a tender submitted by economic operators, referred to in para. 1, has been selected, the contracting authority may request prior to the conclusion of a public procurement contracts, an agreement resolving cooperation between those economic operators.

Article 24.

1. Excluded from contract award procedures shall be:
 - 1) [repealed];
 - 1a) [repealed];
 - 2) economic operators against whom the winding up procedure has been started or whose bankruptcy has been declared, except for economic operators who, upon bankruptcy declaration, entered into a composition approved by a valid court decision, unless such a composition provides for payment to the creditors by a liquidation of the assets of the bankrupt entity;
 - 2a) The contracting authority shall exclude from the contract award procedure the economic operator, that during the three years prior to the commencement of a procedure, culpably violated professional duties in a serious manner, in particular when the economic operator, as a result of deliberate action or gross negligence, failed to perform or improperly performed a contract, what the contracting authority is able to demonstrate by any means of evidence, if the contracting authority foresaw such a possibility of excluding the economic operator in the contract notice, in specification of essential terms of a contract or in invitation to negotiate. The contracting authority shall not exclude from the contract award procedure the economic operator that proves it has taken specific technical, organizational and personnel measures that are to prevent culpable and serious violations of professional duties in the future and has repaired the damage caused by a breach of professional duties or has committed itself to repair them.
 - 3) economic operators who are in arrears with payment of taxes, charges or social insurance or health insurance premiums, with the exception of cases where they have been legally exempted, their outstanding payments have been deferred or divided into installments or the execution of a decision of a competent authority has been stopped in its entirety;
 - 4) 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;

5) registered partnership whose partner has 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;

6) 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, 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;

7) 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, 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;

8) legal persons whose active member of the managing body has 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;

9) 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;

10) economic operators being natural persons who have been validly sentenced for an offense referred to in art. 9 or art. 10 of the Act of 15 June 2012 on the effects of delegating work to foreigners unlawfully residing on the territory of the Republic of Poland (Journal of Laws item. 769) - for a period of 1 year from the effective date of judgment;

11) 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 in art. 9 or art. 10 of the Act of 15 June 2012 on the effects of delegating work to foreigners unlawfully residing on the territory of the Republic of Poland (Journal of Laws item. 769) - for a period of 1 year from the effective date of judgment.

2. Excluded from contract award procedures shall also be:

1) economic operators who directly performed actions in connection with the preparation of the conducted procedure, with the exception of actions taken during technical dialogue as provided for in art. 31a para. 1, or when preparing a tender used persons performing those actions, unless the participation of such economic

operators in the procedure does not distort fair competition; this provision shall not apply to economic operators being awarded with a contract under Article 62 para.1 item 2 or art. 67 para. 1 item 1 and 2;

2) 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, or within the time limit referred to in Article 46 para. 3, or have not agreed to the extension of the period during which they must maintain their tenders;

3) economic operators who provided false information have impact or might have impact on the outcome of the procedure being conducted;

4) those who failed to evidence the fulfilment of conditions for participation in the procedure;

5) as part of the same capital group, within the meaning of the Act of 16 February 2007 on competition and consumer protection (Journal of Laws No. 50, item 331 as amended⁴), 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.

3. The contracting authority shall forthwith inform the economic operator about exclusion from the award procedure providing factual and legal grounds, subject to Article 92 para. 1 item 3.

4. The tender of an excluded economic operator shall be considered rejected.

Article 24a.

[repealed]

Article 24b.

1. The contracting authority shall ask the economic operator for clarification, within a set deadline, explanations concerning the connections referred to in art. 24 item 2 point 5 that exists between entrepreneurs in order to assess whether the conditions for exclusion of economic operator exist.

2. When evaluating the explanations, the contracting authority shall take into account objective factors and, in particular, the influence of connections referred to in art. 24 item 2 point 5 existing between entrepreneurs on their actions in the contract award procedure and observance of fair competition rule.

3. The contracting authority shall exclude from contract award procedure any economic operators who failed to present clarifications and any economic operators who failed to present a list referred to in art. 26 item 2d.

⁴ The amendments to the mentioned Act were published in the Journal of Laws of 2007 No. 99 item 660 and No. 171 item 1206; of 2008 No. 157 item 976, No. 223 item 1458 and No. 227 item 1505; of 2009 No. 18 item 97 and No. 157 item 1241 and of 2011 No. 34 item 173

Article 25.

1. In contract award procedures the contracting authority may request from economic operators only declarations and documents necessary to conduct procedures. Declarations and documents proving:

- 1) that they satisfy the conditions for participation in the procedure;
 - 2) that the tendered supplies, services and works satisfy the requirements specified by the contracting authority
- the contracting authority shall indicate in the contract notice, specification of the essential terms of contract or in the invitation to tender.

2. The Prime Minister shall determine, by means of a regulation, the types of documents which the contracting authority may require from the economic operator and the forms in which such documents may be provided, taking into account the fact that instead of a document a declaration made before a relevant body might 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 might constitute proof of clean criminal record, and a certificate issued by body authorized for quality control might constitute a confirmation that the supplies, services or works offered meet the requirements set by the contracting authority, and likewise taking into account that the forms of such documents should make it possible to award contract using electronic means and they should guarantee proper protection of classified information in case of contracts requiring such information, connected with it or including it, in a manner determined in provisions on protection of classified information.

Article 26.

1. Where the value of the contract is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority shall request from the economic operators documents proving that they satisfy the conditions for participation in the procedure.

2. Where the value of the contract does not exceed the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority may request from the economic operators documents proving that they satisfy the conditions for participation in the procedure.

2a. The economic operator, at the contracting authority's request and within the scope specified by the same, is required to prove, accordingly, 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 the conditions referred to in Article 22 para. 1 and lack of grounds to exclude the economic operator due to non-fulfilment of conditions referred to in Article 24 para. 1.

2b. The economic operator may rely on knowledge and experience, technical potential, personnel capable of performing the contract, financial or economic abilities of other entities, regardless of the legal nature of its relations with such entities. In such a case, the economic operator is required to prove to the contracting authority that it will have at its disposal the resources necessary to perform the contract, in particular by presenting for this purpose a written commitment of those entities to place the necessary resources at the economic operator's disposal for the purpose of contract performance.

2c. If, for a justified reason, the economic operator is unable to present documents regarding financial and economic standing as required by the contracting authority, the economic operator may present another document which sufficiently confirms the fulfilment of the condition described by the contracting authority.

2d. Along with a request or a tender, the economic operator shall submit a list of bodies belonging to the same capital group as provided for in art. 24 item 2 point 5, or an information that they do not belong to any capital group. Provisions of para. 3 and 4 shall apply.

2e. The entity that has committed itself to place the resources at the economic operator's disposal in accordance with paragraph. 2b, is jointly liable with the economic operator for the damage of contracting authority resulting from failure to provide resources, unless it bears the blame for the failure to provide resources.

3. The contracting authority shall call on economic operators who did not submit declarations or documents, referred to in Article 25 para. 1, or the economic operators who did not submit plenipotentiaries, or the economic operators who submitted declarations or documents referred to in Article 25 para. 1, 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 contracting authority, 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 contracting authority, not later than on the day when the time limit for submission of the requests to participate in the contract award procedure expires.

4. The contracting authority shall fix a time limit for explanations referring to documents and declarations, referred to in Article 25 para. 1.

5. [repealed]

Article 27.

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

2. If the contracting authority or the economic operator provides statements, requests, notifications and information by fax or by electronic means, either party at the request of the other party shall acknowledge the receipt immediately.

3. The selected method for providing statements, requests, notifications and information may not restrict competition; the written form shall be always permissible unless the Act provides otherwise.

4. The contracting authority may require in a contract notice, the requests to participate in a contract award procedure to be sent by fax, to be confirmed in writing or in electronic form with a secure electronic signature verifiable using a valid qualified certificate.

5. The information about the submission of the request to participate in a contract award procedure may be made by telephone prior to the expiry of the time limit for submission of the request to participate in a contract award procedure. The request shall be deemed as made within the time limit if the request has been sent in writing to the contracting authority, prior to the expiry of the time limit for the submission of requests to participate in

the award procedure and the contracting authority has received it not later than within 7 days from the expiry of the time limit for submission of such requests.

Article 28.

[repealed]

Chapter 2
Preparation of a procedure

Article 29.

1. The subject-matter of the contract should be described in an unequivocal and exhaustive manner by means of sufficiently precise and comprehensive wording, taking into consideration all requirements and circumstances which could influence the preparation of a tender.

2. The subject-matter of the contract shall not be described in a manner which could restrict fair competition.

3. The subject-matter of the contract shall not be described by reference to trade marks, patents or origin unless this is justified by the nature of the subject-matter of the contract or where the contracting authority cannot otherwise describe the subject-matter of the contract with sufficient precision, provided that such references are accompanied by the words “or equivalent”.

4. In description of the subject-matter of contract, the contracting authority may determine the contract performance requirements referring to:

1) staffing:

a) unemployed or juvenile persons for work preparation, referred to in provisions on promotion of employment and labor market institutions,

b) disabled, referred to in provisions on labor and social rehabilitation and employment of disabled persons,

c) other, than provided for in letter a or b, referred to in provisions on social employment

- or appropriate provisions of member states of European Union or European Economic Area;

2) establishing of training fund, within the meaning of provisions on promotion of employment and labor market institutions, where payment of the employers shall constitute at least quadruple amount of the lowest payment provided for in those provisions;

3) increase of payments of employers to the benefit of training fund, within the meaning of provisions on promotion of employment and labor market institutions, up to the amount provided for in item 2;

4) employment under a contract of employment by the contractor or subcontractor of persons performing activities in the course of contract for works or services where this is justified by the subject matter or the nature of these activities.

Article 30.

1. The contracting authority shall describe the subject-matter of contract using technical and qualitative characteristics complying with the Polish Standards transposing European harmonised standards or with the standards of the European Economic Area member states transposing those standards.

2. In the absence of Polish Standards transposing European harmonised standards or the standards of the European Economic Area member states transposing those standards, the following standards shall be taken into consideration (in order):

- 1) European technical approvals;
- 2) common technical specifications;
- 3) international standards;
- 4) other technical reference systems provided for by the European standardisation bodies.

3. In the absence of Polish Standards transposing European harmonised standards or the standards of the European Economic Area member states transposing those standards and in the absence of the approvals, specifications, standards and systems referred to in para. 2, the following standards shall be taken into consideration (in order):

- 1) Polish Standards;
- 2) Polish technical approvals;
- 3) Polish technical specifications.

4. When describing the subject-matter of the contract with the use of standards, approvals, technical specifications and systems of references, referred to in para. 1 - 3, the contracting authority shall be required to indicate, that it admits the solutions equivalent to those described ones.

5. The economic operator, when citing the solutions equivalent to the one described by the contracting authority, shall be required to point out, that its tendered supplies, services and works meet the requirements specified by the contracting authority.

6. The contracting authority may not describe the subject-matter of contract on the basis of the provisions of para. 1-3 if it provides a precise description of the subject-matter of contract by indicating the functional requirements. Such requirements may include a description of environmental impact.

7. In describing the subject-matter of contract, the names and codes provided for in the Common Procurement Vocabulary shall be used.

Article 31.

1. The contracting authority shall describe the subject-matter of a public works contract using design documentation and technical specification of the execution and acceptance of works.

2. Where the subject-matter of contract involves the design and execution of works within the meaning of the Act of 7 July 1994 - Construction Law, the contracting authority shall describe the subject-matter of the contract using a functional and utility programme.

3. The functional and utility programme shall include the description of the works where the designation of the finished works, as well as the technical, economic, architectural, material and functional requirements to be complied with, are indicated.

4. The competent Minister in the field of construction, local and spatial planning and housing shall specify by a regulation the detailed scope and form of:

- 1) design documentation,
- 2) technical specification of the execution and acceptance of works,
- 3) functional and utility programme

- having regard to the type of works, as well as the names and codes of the Common Procurement Vocabulary.

Article 31a.

1. Before commencing a contract award procedure, the contracting authority may conduct technical dialogue seeking for advice or for information necessary for preparation of the description of the subject-matter of contract, specification of essential terms of contract or specification of conditions of contract.

2. Technical dialogue should be conducted in a manner ensuring fair competition and equal treatment of potential economic operators and their solutions.

Article 31b.

The contracting authority shall place an information on the intention to conduct technical dialogue and on its subject on their webpage.

Article 31c.

The contracting authority shall place an information on application of technical dialogue in a contract notice to which the technical dialogue pertains.

Article 32.

1. The value of the contract shall be determined on the basis of the total estimated remuneration of the economic operator, excluding the tax on goods and services, determined by the contracting authority with due diligence.

2. The contracting authority may not split up a contract into lots or understate its value with the intention of avoiding the application of this Act.

3. When the contracting authority envisages the award of supplementary contracts referred to in Article 67 para. 1 items 6 and 7 or Article 134 para. 6 item 3 and 4, supplementary contracts shall be considered in the calculation of the value of the contract.

4. If the contracting authority allows for the possibility of submitting tenders for lots or awards the contract in lots, where each of those lots constitutes the subject-matter of a separate procedure, the value of the contract shall be the aggregate value of all those lots.

5. Where a separate, financially independent organisational unit of the contracting authority awards a contract in connection with its own activities, the value of the awarded contract shall be calculated separately from the value of contracts awarded by other financially independent organisational units of that contracting authority.

6. The value of a dynamic purchasing system shall be the total value of contracts included in this system which the contracting authority intends to award over the period of the duration of the dynamic purchasing system.

7. The value of a framework agreement is the total value of contracts which the contracting authority intends to award over the period of duration of the framework agreement.

Article 33.

1. The value of public works contract shall be determined on the basis of:

- 1) investor's cost calculation, made at the stage of preparation of the design documentation, or on the basis of the envisaged cost of works specified in the functional and utility programme - where the subject-matter of the contract involves works within the meaning of the Act of 7 July 1994 Construction Law;
- 2) envisaged cost of design work and the envisaged cost of works specified in the functional-utility program - where the subject-matter of the contract involves the design and execution of works within the meaning of the Act of 7 July 1994 Construction Law.

2. In calculating the value of a public works contract, the contract value must include also the value of supplies needed to carry out the works, which the contracting authority makes available to the economic operator.

3. The competent Minister in the field of construction, local and spatial planning and housing shall specify by a regulation:

- 1) methods and basis for preparing investor's cost calculations;
- 2) methods and basis for calculation of envisaged costs of design work and envisaged costs of works specified in the functional and utility programme

- taking into consideration technical, technological and organisational data which influence the contract value.

Article 34.

1. The basis for calculating the value of a contract for recurring services or supplies shall be the total value of contracts of the same type:

- 1) awarded over the previous 12 months or in the previous budget year, taking into account the quantitative changes of the purchased services or supplies and the average annual index of consumer prices (ICP) of products and services forecasted for a given year, or
- 2) which the contracting authority intends to award within 12 months following the first delivery of such services or supplies.

2. The choice of the basis for calculating the value of contracts for recurring services or supplies shall not be made with the aim of avoiding the application of the provisions of this Act.

3. Where the contract is awarded:

-
- 1) for the indefinite duration, the contract value shall be the value determined taking into account of a 48-month time period of the contract performance;
 - 2) for a determinate duration:
 - a) not exceeding 12 months - the contract value shall be the value determined taking into account the time of its duration;
 - b) exceeding 12 months – the contract value shall be the value determined taking into account the time of its duration, and in case of contracts for supplies acquired on the basis of rent, lease or leasing, along with a final value of the subject-matter of the public procurement contract.

4. Where the contract covers banking services or other financial services, the value of the contract shall be banking fees, charges, interests and other similar services.

5. Where the contract for services or supplies provides for option clauses, the basis for calculating the contract value shall be the biggest possible scope of that contract inclusive of the option clauses.

Article 35.

1. The contract value shall be calculated not earlier than 3 months prior to the date of the start of a contract award procedure where the subject-matter of the contract covers supplies or services and not earlier than 6 months prior to the date of the start of a contract award procedure in the case of works.

2. If the circumstances having influence on the calculation of the contract have changed after that calculation was made, the contracting authority shall make a change in the calculation prior to the start of the award procedure.

3. At least once in two years the Prime Minister shall specify, by means of a regulation, the average exchange rate of PLN against EUR constituting the basis for converting the value of contracts, taking into account the average exchange rate announced by the European Commission in the Official Journal of European Union.

Article 36.

1. The specification of essential terms of the contract shall include at least:

- 1) name (company name) and address of the contracting authority;
- 2) procedure for awarding the contract;
- 3) description of the subject-matter of contract;
- 4) time limit for contract performance;
- 5) conditions for participation in the procedure and description of the method used for the evaluation of the fulfillment of those conditions;
- 6) information concerning declarations and documents to be provided by economic operators to confirm the fulfilment of the conditions for participation in the procedure;
- 7) information on the manner of communication between the contracting authority and economic operators as well as of dispatch of declarations and documents, indication of persons authorised to communicate with the economic operators;

-
- 8) deposit requirements;
 - 9) time limit during which an economic operator must maintain its tender;
 - 10) description of the manner of the tender preparation;
 - 11) date and place of the submission and of the opening of tenders;
 - 12) description of the method of the price calculation;
 - 13) description of criteria which the contracting authority will apply in selecting a tender, specifying also the importance of particular criteria and method of evaluation of tenders;
 - 14) information concerning formalities which should be met following the selection of a tender in order to conclude a public procurement contract;
 - 15) requirements concerning the security on due performance of the contract;
 - 16) provisions of essence to the parties which will be introduced into the concluded public procurement contract, general terms of the contract or model contract, if the contracting authority requires the economic operator to conclude a public procurement contract with it on these terms;
 - 17) information on legal protection measures available to an economic operator during the contract award procedure.

2. Unless the Act provides otherwise, the specification of the essential terms of the contract shall also include:

- 1) description of the lots if the contracting authority admits the submission of tenders for lots;
- 2) the maximum number of economic operators with whom the contracting authority shall conclude a framework agreement if the contracting authority envisages to conclude a framework agreement;
- 3) information about the envisaged supplementary contracts as referred to in Article 67 para. 1 items 6 and 7 or Article 134 para. 6 item 3 and 4, if the contracting authority envisages the award of such contracts;
- 4) description of the method for submitting variants if admitted by the contracting authority and the minimum requirements to be met by variants;
- 5) the e-mail or website address of the contracting authority, if the contracting authority admits communication by electronic means;
- 6) information concerning foreign currencies in which settlements between the contracting authority and the economic operators can be made, if the contracting authority envisages to settle contracts in foreign currencies;
- 7) if the contracting authority envisages an electronic auction:
 - a) information about the envisaged selection of the best tender with the use of electronic auction,
 - b) requirements on the registration and identification of the economic operators, including technical requirements for computer devices,
 - c) information on which contract award criteria shall be used in the electronic auction;
- 8) the amount of reimbursement of the participation costs in the award procedure, if the contracting authority admits it.

-
- 9) if the contracting authority provides for the requirements, referred to in Article 29 para. 4, listing in particular of:
 - a) number of persons, referred to in Article 29 para. 4 item 1, and period of required employment of these persons,
 - b) manner of providing documents of employment of persons, referred to in Article 29 para. 4 item 1, or establishing or increasing training fund,
 - c) right to control by the contracting authority of fulfillment by the economic operator of the requirements, referred to in Article 29 para. 4, and sanctions for not fulfillment of these requirements,
 - d) types of activities necessary to perform the contract, to which the requirements of employment under a contract of employment by the contractor or subcontractor of persons performing the activities in the course of contract performance is applicable.
 - 10) information on obligation to execute the essential parts of a contract by the economic operator itself, if the contracting authority makes such reservation in accordance with Article 36a para. 2;
 - 11) in case of contract for works:
 - a) requirements concerning subcontract having works as its subject matter, which non-fulfillment causes reservations or objection submitted by the contracting authority, if the contracting authority determines such requirements;
 - b) information on subcontracts having as its subject-matters supplies and services which, due to the value or subject matter of these supplies or services, do not fall under obligation of submission to the contracting authority, if the contracting authority specifies such information;
 - 12) the percentage value of the last part of remuneration for execution of contract for works, if the contracting authority determines such value, in accordance with Article 143a para. 3.

3. In contract award procedures where the value is less than the amounts specified in provisions issued under Article 11 para. 8, the specification of essential terms of contract may not include the information referred to in para. 1 items 6, 8 and 15.

4. [repealed]

5. [repealed]

Article 36a.

1. The economic operator may entrust the execution of part of a contract to subcontractor.

2. The contracting authority may stipulate the obligation of personal execution by the economic operator of:

- 1) essential (key) parts of a contract for works or services;
- 2) sitting and installation works under contract for supplies.

3. The reservation, referred to in para. 2, is not effective to the extent to which the economic operator relies on resources of another entity, under rules specified in Article 26 para. 2b, in order to prove the fulfillment of conditions, referred to in Article 22 para. 1.

Article 36b.

1. The contracting authority may require from the economic operator to indicate parts of a contract that it intends to subcontract or to provide names (company names) of subcontractors whose resources the economic operator relies on under rules specified in Article 26 para. 2b, in order to prove the fulfillment of conditions for participation in the procedure referred to in Article 22 para. 1.

2. If a change of or resignation from a subcontractor refers to the entity on whose resources the economic operator relied upon under rules specified in Article 26 para. 2b, in order to prove the fulfillment of conditions for participation in the procedure referred to in Article 22 para. 1, the economic operator is obliged to prove to the contracting authority that another proposed subcontractor or economic operator alone fulfills them in no less degree than required during the contract award procedure.

Article 36c.

When preparing and conducting the contract award procedure the contracting authority may use the exemplary standard forms of procurement contracts, rules of procedure and other documents, referred to in art. 154 point 10, applied when awarding a contract.

Article 37.

1. Specification of essential terms of the contract shall be provided free-of-charge, subject to Article 42 para. 2.

2. The contracting authority may provide the specification of essential terms of the contract on its own website from the day, on which the contract notice is placed in the Public Procurement Bulletin or published in the Official Journal of European Union until the expiry of the time limit for submission of tenders, subject to Article 42 para. 1.

Article 38.

1. The economic operator may request the contracting authority to explain the contents of the specification of essential terms of the contract. The contracting authority shall provide such explanation immediately, but not later than:

- 1) 6 days before the expiry of the time limit for submission of tenders,
- 2) 4 days before the expiry of the time limit for submission of tenders – in a restricted tendering and negotiated procedure with publication, in the event of extreme urgency for the award the contract,
- 3) 2 days before the expiry of the time limit for submission of tenders – if the value of the contract is less than the amounts specified in the regulations issued under Article 11 para. 8,

— provided that the request for explanation of the contents of specification of essential terms of the contract was received by the contracting authority not later than by the end of the day, on which passes half of the time limit allowed for submission of tenders.

1a. If the request for explanation of the contents of specification of essential terms of contract was received after the end of the time limit for such requests as referred to in Article 38 Para. 1, or when the request pertains to clarifications already given, the contracting authority can either give clarifications or disregard the request.

1b. The extension of the time limit for submission of tenders shall not affect the run of the time limit for requests as referred to in Article 38 para. 1.

2. The contracting authority shall provide the text of the queries along with the explanations at the same time to all the economic operators who have received the specification of essential terms of contract, without disclosing the source of the query, and shall post it on its website if the specification is available on this website.

3. The contracting authority may arrange a meeting of all the economic operators to dispel any doubts concerning the contents of the specification of essential terms of contract and post likewise on its website an information concerning the date of the meeting if the specification is on the website; in that case, information shall be prepared containing all specification queries made during that meeting and the answers to such queries without disclosing the source of the queries. Information from the meeting shall be immediately provided to the economic operators who have received the specification of essential terms of contract and shall be posted on the website if the specification of essential terms of contract is placed on the website.

4. In justified cases, the contracting authority may, prior to the expiry of the time limit for the submission of tenders, modify the content of the specification of essential terms of contract. This modification shall be immediately provided to all the economic operators who have received the specification of essential terms of contract, and it shall be posted on the website of the contracting authority if the specification is available on this website.

4a. If the modification of specification of essential terms of contract in contract award procedure under open tendering leads to modification of the contract notice, the contracting authority:

1) shall place the notice on the modification of the notice in the Public Procurement Bulletin, if the contract value is less than the amounts specified in the provisions issued under Article 11 para. 8;

2) shall dispatch the Notice for additional information, information on incomplete procedure or corrigendum to the Publications Office of the European Union by electronic means in accordance with form and procedures indicated on the website specified in the Directive, if the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8.

4b. Without prejudice to exceptions envisaged in the Act, the modification of the specification of essential terms of contract after the expiry of the time limit for the submission of requests to participate in the contract award procedure under restricted tendering, negotiated procedure with publication, which lead to modification of the content of contract notice, is inadmissible.

5. [repealed]

6. If due to the modification of the content of specification of essential terms of contract which does not lead to the modification of the content of the contract notice an additional time is necessary to make changes to the tenders, the contracting authority shall extend the time limit for the submission of tenders, and shall notify it to the economic operators who have received the specification of essential terms of contract, and shall likewise

post this information on its website if the specification is available on this website. The provision of para. 4a shall apply accordingly.

7. [repealed]

Chapter 3

Procedures for awarding public contracts

Section 1

Open tendering

Article 39.

Open tendering means contract award procedures in which, following a public contract notice, all interested economic operators may submit their tenders.

Article 40.

1. In open tendering the contracting authority commences an award procedure by placing the contract notice in a place accessible to the public in its seat and on its website.

2. Where the value of the contract is less than the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority shall place the contract notice in the Public Procurement Bulletin.

3. If the contract value exceeds the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority shall dispatch a contract notice to the Publications Office of the European Union.

4. [repealed]

5. The contracting authority may place the contract notice also in a different manner than set out in Article 40 para. 1–3, in particular in a national daily or periodical.

5a. The contracting authority may, after having published the contract notice in the Public Procurement Bulletin or dispatching the contract notice to the Publications Office of the European Union, directly notify the commencement of the contract award procedure to the economic operators known to the contracting authority, if those economic operators provide supplies, services or construction works, which are the subject-matter of the contract within their business activities. The provision of para. 6 item 2 shall apply accordingly.

6. The contract notice placed or published, accordingly, in a place accessible to the public in the seat of the contracting authorities, on websites referred to in para. 1, in a national daily or periodical or in any other manner:

- 1) shall not be placed or published prior to the day, on which the notice is placed in Public Procurement Bulletin, and in the case referred to in para. 3, prior to the day of its dispatch to the Publications Office of the European Union;
- 2) shall not contain information other than the one placed in Public Procurement Bulletin, and in the case referred to in para. 3, other than the information dispatched to the Publications Office of the European Union;
- 3) shall contain information about the day the contract notice is to be placed in the Public Procurement Bulletin, and in the case referred to in para. 3, on the day of its dispatch to the Publications Office of the European Union.

Article 41.

The contract referred to in Article 40 para. 1 shall contain at least:

- 1) name (company name) and address of the contracting authority;
- 2) type of the contract award procedure;
- 3) the website address where the specification of essential terms of contract is posted;
- 4) definition of the subject-matter of contract and of the volume or scope of the contract, stating whether it is possible to submit tenders for lots;
- 5) information concerning the possibility of submitting variants;
- 6) contract execution date;
- 7) conditions for participation in the procedure and description of the method used for the evaluation of the fulfillment of those conditions;
- 8) information concerning the deposit;
- 9) criteria for evaluation of tenders and their significance;
- 10) place and time limit for submission of tenders;
- 11) time limit during which a economic operator must maintain his tender;
- 12) information on the intention to conclude a framework agreement;
- 13) information on the intention to establish a dynamic purchasing system including the website address where additional information concerning the dynamic purchasing system shall be posted;
- 14) information on the envisaged selection of the best tender with the use of electronic auction including the address of the website where the electronic auction shall be held.
- 15) information on supplementary contracts, referred to in Article 67 para. 1 item 6 and 7 or Article 134 para. 6 item 3 and 4, if the contracting authority envisages the award of such contracts.

Article 42.

1. The specification of essential terms of contract shall be made available on the website from the day, on which the contract notice is placed in Public Procurement Bulletin or published in the Official Journal of European Union until the expiry of the time limit for submission of tenders.

2. the contracting authority shall provide, at the request of economic operator, the specification of essential terms of contract within 5 days. The fee, which the contracting authority may demand, may only cover printing and delivery costs.

Article 43.

1. Where the value of the contract is less than the amounts specified in a provisions issued under Article 11 para. 8, the contracting authority shall fix the time limit for submission of tenders taking into consideration the time necessary for preparation and

submission of tender, however, in case of contracts for supplies or services, the time limit shall not be less than 7 days from the day, on which the contract notice is placed in the Public Procurement Bulletin, and in case of contracts for works- not less than 14 days.

2. If the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, the time limit for the submission of tenders shall not be less than:

- 1) 40 days - from the day of dispatch of the contract notice to the Publications Office of the European Union by electronic means with the use of the standard form and procedures indicated on the website referred to in the directive;
- 2) 47 days - from the day of dispatch of the contract notice to the Publications Office of the European Union, in other way than specified in item 1.

3. If the contract value is equal to or exceeds the amounts specified in a provisions issued under Article 11 para. 8, and the information on the contract was included in the prior information notice, provided that the prior information notice contained all the information required for that notice, within the scope, such information is accessible at the date of publication of such notice and provided further than the notice was dispatched for publication to the Publications Office of the European Union or posted on the buyer's profile at least 52 days and not more than 12 months prior to the date of dispatch of the contract notice, the contracting authority may fix a time limit for submission of tenders not less than:

- 1) 22 days - from the day of dispatch of the contract notice to the Publications Office of the European Union by electronic means with the use of the form and procedures indicated on the website referred to in the directive.
- 2) 29 days - from the day of dispatch of the contract notice to the Publications Office of the European Union, in other way than specified in item 1.

Article 44.

The economic operator shall attach to his tender a declaration that he satisfies the conditions for participation in the award procedure, and where the contracting authority requires so, he shall also submit documents confirming the fulfilment of those conditions.

Article 45.

1. The contracting authority shall require the economic operators to pay a deposit where the value of the contract is equal to or exceeds the expressed in PLN equivalent of the amounts specified in the provisions issued under Article 11 para. 8.

2. The contracting authority may require the economic operators to pay a deposit where the value of the contract is less than the amounts specified in the provisions issued under Article 11 para. 8.

3. The deposit shall be paid prior to the final date for submission of tenders.

4. The contracting authority shall define the amount of the deposit, however not more than 3 % of the contract value.

5. If the contracting authority admits tenders for lots or awards contract in lots, it shall define the deposit amount for each lot. The provisions of para. 4 shall apply accordingly.

5a. If the contracting authority envisages the award of supplementary contracts, referred to in Article 67 para. 1 item 6 and 7 or Article 134 para. 6 item 3 and 4, the

contracting authority shall estimate the value of the deposit for the value of the main contract. The provisions of Article 4 shall apply accordingly.

6. The deposit may be paid in one or several of the following forms:

- 1) cash;
- 2) bank sureties or guarantees of collective savings-loan fund, however the surety of collective savings-loan fund is always a financial surety;
- 3) bank guarantees;
- 4) insurance guarantees;
- 5) sureties given by entities, referred to in Article 6b para. 5 item 2 of the Act of 9 November 2000 on Establishment of Polish Agency for Enterprise Development (journal of laws of 2007 No. 42 item 275; of 2008 No. 116 item 730 and 732 and No. 227 item 1505 and of 2010 No. 96 item 620).

7. A deposit paid in cash shall be paid by a bank transfer to a bank account indicated by the contracting authority.

8. A deposit paid in cash shall be kept by the contracting authority in a bank account.

Article 46.

1. The contracting authority shall return a deposit to all economic operators immediately upon the selection of the best tender or cancellation of the procedure, except for the economic operator whose tender has been selected, subject to Article 46 para. 4a.

1a. The deposit of that economic operator whose tender has been selected shall be returned by the contracting authority immediately upon conclusion of the procurement contract and provision of a security on due contract performance, if requested.

2. The contracting authority shall return the deposit immediately upon request of the economic operator who withdrew its tender prior to the expiry of the time limit for submission of tenders.

3. The contracting authority may request a new deposit from the economic operators, whose deposit was returned based on the para. 1, if as a result of the final resolution the appeal its tender was selected the best (most advantageous). The economic operators shall pay a deposit within the time limit fixed by the contracting authority.

4. If the deposit was paid in cash, the contracting authority shall return it together with interest resulting from the bank account agreement where it was kept, less the cost of bank charges for maintaining the account and commission for the transfer of money to the bank account indicated by the economic operator.

4a. The contracting authority shall retain the deposit together with interest, if the economic operator in response to the call, referred to in Article 26 para. 3, due to reasons attributable to it, neither submitted documents or declarations, referred to in Article 25 para. 1, plenipotentiaries, a list of entities belonging to the same capital group, referred to in art. 24 para. 2 point 5, or the information stating that it is not part of the same capital group, nor gave the consent to correct the error, referred to in art. 87 para. 2 point 3, what resulted in inability to select the most advantageous tender submitted by the economic operator.

5. The contracting authority shall retain the deposit together with interest, if the economic operator whose tender has been selected:

-
- 1) refused to sign the public procurement contract on terms specified in the tender;
 - 2) failed to produce the required security on due performance of the contract;
 - 3) the public procurement contract could not be signed due to a fault on the part of the economic operator.

Section 2 Restricted tendering

Article 47.

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.

Article 48.

1. Article 40 shall apply accordingly to the start of a restricted procedure.
2. The contract notice, referred to in Article 47, shall include at least the following:
 - 1) name (company name) and address of the contracting authority;
 - 2) type of contract award procedure;
 - 3) description of the subject-matter of the contract providing information concerning the possibility of submitting tenders for lots;
 - 4) information concerning the possibility of submitting variants;
 - 5) contract execution date;
 - 6) conditions for participation in the procedure and description the method used for the evaluation of the fulfilment of those conditions; as well as the weight of those conditions;
 - 7) information about declarations and documents to be delivered by economic operators to prove the fulfilment of the conditions for participation in the award procedure;
 - 8) number of economic operators to be invited to submit their tenders;
 - 8a) description of an objective and non-discriminatory manner of selecting economic operators that will be invited to submit their tenders when the number of economic operators meeting the conditions for participation in the contract award procedure exceeds the number specified in the contract notice;
 - 9) information on a deposit;
 - 10) criteria for evaluation of tenders and their relative weightings;
 - 11) place and time limit for submitting requests to participate in the award procedure;
 - 12) website address where the specification of essential terms of contract is posted, if the contracting authority posts the specification on the website;
 - 13) information on the intention to conclude a framework agreement;

14) information on the envisaged selection of the best tender with the use of electronic auction including the address of the website where the electronic auction shall be held.

15) information on supplementary contracts, referred to in Article 67 para. 1 item 6 and 7 or Article 134 para. 6 item 3 and 4, if the contracting authority envisages the award of such contracts.

Article 49.

1. If the contract value is less than the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority shall fix in the contract notice a time limit for submission of requests to participate in a procedure taking into consideration the time necessary for preparation and lodging of the required documents, however the time limit may not be less than 7 days from the day, on which the contract notice is placed in the Public Procurement Bulletin.

2. If the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, the time limit for submitting requests to participate in a restricted tendering procedure may not be shorter than:

- 1) 30 days – from the day the contract notice is dispatched to the Publications Office of the European Union by electronic means with the use of the form and procedures posted on the website referred to in a directive;
- 2) 37 days – from the day the contract notice is dispatched to the Publications Office of the European Union in other way than referred to in item 1.

3. In the event of extreme urgency for the award of a contract the contracting authority may, in the cases referred to in para. 2, fix a shorter time limit for the submission of requests to participate in a restricted tendering procedure, however not shorter than:

- 1) 10 days - from the day the contract notice is dispatched to the Publications Office of the European Union by electronic means with the use of the form posted on the website referred to in a directive;
- 2) 15 days - from the day the contract notice is dispatched to the Publications Office of the European Union by fax.

Article 50.

1. The economic operator shall attach to his request to participate in contract award procedure a declaration that he satisfies the conditions for participation in the award procedure, and where the contracting authority requires so, he shall also submit documents confirming the fulfilment of those conditions.

2. In case of lodging the request to participate in contract award procedure of a value less than the amounts specified in provisions issued under Article 11 para. 8 after the expiry of the time limit, the contracting authority shall forthwith return the request. In case of contract award procedures of a value equal to or exceeding the amounts specified in provisions issued under Article 11 para. 8, the contracting authority shall forthwith notify it to the economic operator and shall return the request after the expiry of the time limit for lodging the appeal.

Article 51.

1. The contracting authority shall invite tenders from economic operators satisfying the conditions for participation in the procedure in such a number, as specified in the contract notice, which shall ensure competition and shall not be less than 5 and not more than 20.

1a. The contracting authority shall immediately inform the economic operators satisfying the conditions for participation in the procedure about the results of the assessment of compliance with such conditions and the received compliance scores.

2. If the number of economic operators meeting the criteria for participation in the procedure exceeds the number specified in the contract notice, the contracting authority shall invite economic operators selected in an objective and non-discriminatory manner to submit their tenders. Economic operators who have not been invited to submit the tenders shall be deemed excluded from the contract award procedure.

3. Where the number of economic operators satisfying the conditions for participation in the procedure is less than specified in the contract notice, the contracting authority shall invite all economic operators satisfying those conditions to submit tenders.

4. Along with the invitation to tender, the contracting authority shall provide the economic operators with the specification of essential terms of contract and shall indicate the day and place of publication of the contract notice as referred to in Article 47. The provisions of Article 36 para. 1 items 5 and 6 shall not apply.

Article 52.

1. Where the contract value is less than the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority shall fix a time limit for submission of tenders taking into consideration the time necessary to prepare and submit a tender, however, this shall not be less than 7 days from the date of dispatch of the invitation to tender for supplies and services, and not less than 14 days for works.

2. If the contract value is equal to or exceeds the amounts defined in the provisions issued under Article 11 para. 8, the time limit for the submission of tenders may not be shorter than 40 days from the date the invitation to submit tenders is dispatched.

3. If the contract value is equal to or exceeds the amounts specified in provisions issued under Article 11 para. 8, and the information on the contract was included in the prior information notice, provided that the prior information notice contained all the information required for that notice, within the scope, such information is accessible at the date of publication of such notice and provided that the notice was dispatched for publication to the Publications Office of the European Union or posted on the buyer's profile at least 52 days and not more than 12 months prior to the date of dispatch of the contract notice, the contracting authority may fix a time limit for submission of tenders not shorter than 22 days.

4. If the contract value is equal to or exceeds the amounts defined in the provisions issued under Article 11 para. 8 and in the event of extreme urgency for the award of a contract, the contracting authority may fix time limit for submission of tenders, however not shorter than 10 days.

5. The contracting authority may fix the time limits, referred to in para. 2, 5 days shorter, if the specification of essential terms of contract is available on its website not later than from the day of publication of the contract notice in the Official Journal of the European Union until the expiry of the time limit for the submission of tenders.

Article 53.

The provisions of Article 45 and 46 shall apply to restricted tendering.

Section 3

Negotiated procedure with publication

Article 54.

Negotiated procedure with publication means contract award procedures in which, following a public contract notice, the contracting authority shall invite economic operators admitted to participate in the contract award procedure to submit initial tenders not containing prices, negotiate the terms, and then invite them to submit the tenders.

Article 55.

1. The contracting authorities may award contracts by negotiated procedure with publication if at least one of the circumstances listed below has occurred:

- 1) during the prior award procedure under open tendering, restricted tendering or competitive dialogue all the tenders have been rejected and the original conditions of the contract are not substantially altered;
- 2) in exceptional circumstances, where the nature of the supplies, services or works or the entailed risks make prior pricing impossible;
- 3) the specific characteristics of the services to be procured cannot be established in advance in such a way so as to enable the selection of the best tender under the procedure of open or restricted tendering;
- 4) the subject-matter of the contract is works carried out purely for the purpose of research, experiment or development, and not to provide profits or to recover any incurred research and development costs;
- 5) the contract value is less than the amounts specified in the provisions issued under Article 11 para. 8.

2. [repealed]

Article 56.

1. In commencing a negotiated procedure with publication, the provisions of Article 40 and of Article 48 para. 2 shall apply accordingly.

2. For the submission of the requests to participate in a negotiated procedure with publication, the provisions of Article 49 and 50 shall apply accordingly.

Article 57.

1. The contracting authority shall immediately inform the economic operators who submitted requests to participate in a procedure on the results of compliance assessment and about the received compliance scores.

2. The contracting authority shall invite to submit initial tenders the economic operators who comply with the participation requirements; in a number provided for in the contact notice that ensures fair competition, not less than 3, however in the case where the

value of the works contract is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, not less than 5. The provisions of Articles 82-84, Article 89 para. 1 items 1-3, 5, 8 and Article 93 para. 1 items 1, 6-7 and para. 2-4 shall apply accordingly.

3. If the number of economic operators meeting the criteria for participation in the procedure exceeds the number specified in the contract notice, the contracting authority shall invite economic operators selected in an objective and non-discriminatory manner to submit their tenders. All economic operators who have not been invited to submit an initial tender shall be deemed as excluded from the contract award procedure.

4. If the number of economic operators who comply with the participation requirements is less than that provided for in the notice, the contracting authority shall invite to submit initial tenders all the economic operators who have complied with the requirements.

5. Along with the invitation to submit initial tenders, the contracting authority shall provide the specification of essential terms of contract. The provisions of Article 36 para. 1 items 5, 6, 9, and 11 shall not apply.

6. The contracting authority shall fix a time limit for the submission of initial tenders taking into account the time necessary to prepare and submit an initial tender, however this time limit may not be shorter than 10 days from the date of invitation to submit initial tenders.

Article 58.

1. The contracting authority shall invite to negotiations all the economic operators whose initial tenders are non-rejectable, indicating the date and place of publication of the contract notice.

2. The contracting authority shall conduct negotiation to supplement or to make more precise the description of the subject-matter of contract or the conditions for the public procurement contract.

3. The negotiations shall be confidential. Without the other party's consent, neither party may disclose any technical nor business information connected with the negotiations.

4. Any requirements, explanations and information or documents related to the negotiations shall be provided to the economic operators on equal terms.

Article 59.

1. After conducting the negotiations, the contracting authority may supplement or make more precise the specification of essential terms of contract only insofar as it was the subject of the negotiations.

2. The change referred to in para. 1 may not result in a substantial modification of the subject-matter of contract or of the initial terms of contract.

Article 60.

1. The contracting authority shall invite the economic operators with whom it conducted the negotiations to submit their tenders. The provisions of Article 45 and 46 shall apply.

2. The invitation to tender shall at least contain information about:

-
- 1) place and date for the submission and for the opening of tenders;
 - 2) required deposit;
 - 3) time limit during which an economic operator must maintain its tender.

3. The contracting authority shall fix a time limit for the submission of tenders taking into account the time necessary to prepare and submit the tender; however that time limit shall not be shorter than 10 days from the date the invitation to tender is made.

4. In the event of any changes referred to in Article 59 para. 1, made by the contracting authority, along with the invitation to submit tenders, the contracting authority shall provide the specification of essential terms of contract or shall place it on its website, if the specification is available on this website.

Section 3a

Competitive dialogue

Article 60a.

Competitive dialogue means contract award procedure in which, following a public contract notice the contracting authority conducts a dialogue with selected economic operators, and then invites them to tender.

Article 60b.

1. The contracting authority may award a contract by competitive dialogue if the following conditions are all met:

- 1) in particular, due to the complex nature of the contract, and in particular when it is not possible to describe the subject-matter of the contract in accordance with Articles 30 and 31 or to objectively define the legal or financial conditions of contract performance, it is not possible to award contract by the open tendering procedure or restricted tendering procedure;
- 2) the price is not the only criterion of the selection of the best tender.

2. [repealed]

Article 60c.

1. To commence the competitive dialogue procedure, the provisions of Article 40 and Article 48 para. 2 shall apply accordingly, however the contract notice shall also include:

- 1) a description of needs and requirements of the contracting authority defined in a way that enables the economic operators to prepare for participation in the dialogue, or an information on the manner of obtaining such a description;
- 2) information on the value of reward for the economic operators who, during the dialogue, presented the solutions which constitute the basis for submission of tenders, if the reward is envisaged by the contracting authority.

1a. If due to the complexity of contract it is not possible, at this stage of the procedure, to determine the weight of contract award criteria, the contracting authority shall place in the

contract notice the contract award criteria in a descending order of importance. Provisions of art. 48 para. 2 point 10 shall not apply.

2. For submission of requests to participate in the dialogue, the provisions of Article 49 para. 1 and 2 and Article 50 shall apply accordingly.

Article 60d.

1. The contracting authority shall immediately inform the economic operators who have submitted requests to participate in a procedure about the results of the assessment of their compliance with the participation requirements and about their compliance scores.

2. The contracting authority shall invite to competitive dialogue the economic operators who comply with the participation requirements; in a number specified in the contract notice which shall ensure competition, not less than 3, however in the case where the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, not less than 5.

3. If the number of economic operators meeting the criteria for participation in the procedure exceeds the number specified in the contract notice, the contracting authority shall invite economic operators selected in an objective and non-discriminatory manner to participate in a dialogue. All economic operators who have not been invited to participate in the dialogue shall be deemed as excluded from the contract award procedure.

4. If the number of economic operators who comply with the participation requirements is less than that provided for in the notice, the contracting authority shall invite to participate in the dialogue all economic operators who have complied with the requirements.

5. The invitation to participate in the dialogue shall include at least:

- 1) information about the date and place of publication of the contract notice;
- 2) description of the needs and requirements of the contracting authority specified in a manner that allows the economic operators preparation to participate in a dialogue, or information concerning the way of obtaining such description;
- 3) information about the place and date of the start of the dialogue.

6. All requirements, explanation and information or documents connected with the dialogue shall be provided to the economic operators on equal terms.

7. The conducted dialogue shall be confidential and may concern all the aspects of the contract. Without the other party's consent, neither party may disclose any technical nor business information connected with the dialogue.

Article 60e.

1. The contracting authority conducts the dialogue until it is capable of determining – by comparing the solutions proposed by the economic operators, if necessary – the solution(s) that best meet(s) its needs. The contracting authority shall immediately inform the participating economic operators about the conclusion of the dialogue.

2. Prior to the invitation to tender, the contracting authority may make changes to the technical and qualitative requirements concerning the subject-matter of contract which are the subject of the dialogue.

3. Along with the invitation to submit tenders based on the solutions proposed during the dialogue, the contracting authority shall provide the specification of essential terms of contract. The provisions of Article 36 para. 1 items 5 and 6 shall not apply.

4. The contracting authority shall fix a time limit for the submission of tenders, taking into account the time necessary to prepare and submit the tender, however the time limit may not be shorter than 10 days from the date the invitation to submit tender is made. The provisions of Articles 45 and 46 shall apply.

Section 4

Negotiated procedure without publication

Article 61.

Negotiated procedure without publication means contract award procedures in which the contracting authority negotiates the terms of the contract with economic operators of his choice and subsequently invites them to submit their tenders.

Article 62.

1. The contracting authorities may award their contracts by negotiated procedure without publication, if at least one of the following circumstances has occurred:

- 1) during the prior award procedure under open or restricted tendering no request to participate in the procedure has been submitted, no tenders has been submitted or all the tenders have been rejected pursuant to the Article 89 para. 1 item 2 in view of the incompatibility with the description of the subject-matter of contract, and the original terms of the contract are not substantially altered;
- 2) the design contest referred to in Article 110 has been held, the prize of which consisted in the invitation of at least two authors of the selected contest projects to participate in negotiations without publication;
- 3) the subject-matter of the contract is products manufactured purely for the purpose of research, experiment or development, and not to provide profits or to recover research or development costs incurred;
- 4) due to a previously unforeseeable extreme urgency for the award of a contract not resulting from the events brought about by the contracting authority, the time limits provided for open tendering, restricted tendering or negotiations with publication may not be observed.

2. Where the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, which require a dispatch of a contract notice for supplies or services to the Publications Office of the European Union, the contracting authority informs the PPO President about launching the procedure, within 3 days from its start, stating factual and judicial justification of a procedure for awarding a contract.

2a. Immediately after the selection of the best (most advantageous) tender, the contracting authority may place in the Public Procurement Bulletin or dispatch to the Publications Office of the European Union respectively, the notice of intention to conclude a contract, containing as a minimum:

-
- 1) name (business name) and address of the contracting authority,
 - 2) specification of the subject-matter of the contract as well as the size or scope of the contract;
 - 3) justification for selecting the negotiated procedure without publication;
 - 4) name (business name) or name and surname as well as the address of the economic operator whose tender was selected.

3. If the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8 the contracting authority shall, prior to commencing the negotiating procedure without publication under para. 1 item 1, dispatch information about the cancellation of the procedure to the European Commission, provided that the European Commission requested for it.

Article 63.

1. The contracting authority shall commence a negotiated procedure without publication dispatching the invitation to negotiate to economic operators of his choice.

2. The invitation to negotiate without publication shall include at least:

- 1) name (company name) and address of the contracting authority;
- 2) description of the subject-matter of the contract including information concerning the possibility of submitting tender for lots;
- 3) information concerning the possibility of submitting variants;
- 4) contract completion date;
- 5) conditions for participation in the procedure and description the method used for the evaluation of the fulfillment of those conditions;
- 6) indication of a contract award procedure and legal basis thereof;
- 7) criteria for evaluation of tenders and their weightings;
- 8) place and time limit for negotiations with the contracting authority.

3. The contracting authority shall invite to negotiate a sufficient number of economic operators to ensure competition, which shall not be less than 5, unless due to a very specialist nature of the contract there are less economic operators capable of performing the contract, however the number shall not be less than 2.

4. In the case referred to in Article 62 para. 1 item 1 the contracting authority shall invite to negotiate at least those economic operators who submitted tenders under open or restricted tendering. The provisions of para. 3 shall apply.

Article 64.

1. The contracting authority shall fix a time limit for submission of tenders taking account of the time necessary to prepare and submit a tender.

2. When inviting to tender the contracting authority may require economic operators to provide a deposit. The provisions of Article 45 para. 3-8 and Article 46 shall apply accordingly.

3. The contracting authority shall dispatch the specification of the essential terms of the contract together with the invitation to tender. The provisions of Article 36 para. 1 item 5 shall not apply.

Article 65.

In negotiated procedure without publication, the provisions of Article 58 para. 3 and 4, and of Article 60 para. 1 and 2 shall apply accordingly.

Section 5

Single-source procurement

Article 66.

1. Single-source procurement means contract award procedures in which the contracting authority awards a contract after negotiations with only one economic operator.

2. Having commenced the procedure, the contracting authority may place in the Public Procurement Bulletin or dispatch to the Publications Office of the European Union respectively, the notice of intention to conclude a contract, containing as a minimum:

- 1) name (business name) and address of the contracting authority,
- 2) specification of the subject-matter of the contract as well as the size or scope of the contract;
- 3) justification for selecting single-source procurement;
- 4) name (business name) or name and surname as well as the address of the economic operator to whom the contracting authority intends to award a contract.

Article 67.

1. The contracting authorities may award their contracts by single-source procurement procedure only if at least one of the following circumstances has occurred:

- 1) supplies, services or works may be provided by only one economic operator:
 - a) for technical reasons of objective character,
 - b) for reasons connected with protection of exclusive rights, resulting from separate provisions,
 - c) in the case of the award of contracts in the field of creative and artistic activities;
- 1a) subject matter of contract are things produced exclusively for the purpose of research, experiment, study or development, which do not serve the conduct by contracting authority of quantity production to establish commercial viability or to recover the costs of research and development, and which may only be manufactured by one economic operator;

-
- 2) the design contest referred to in Article 110 has been held, in which the prize consisted in the invitation for the author of the selected contest project to negotiate under the single-source procurement procedure;
 - 3) due to an exceptional situation, not resulting from events brought about by the contracting authority, there is a need for prompt execution of the contract, and the time limits provided for other procedures may not be observed;
 - 4) during successive award procedure of which at least one was conducted under open or restricted tendering no request to participate in the procedure has been submitted, no tenders has been submitted or all the tenders have been rejected pursuant to the Article 89 para. 1 item 2 due to their incompatibility with the description of the subject-matter of contract, and the original terms of the contract are not substantially altered;
 - 5) where a hitherto economic operator of services or works is awarded additional contracts not included in the main contract, which in total do not exceed 50% of the value of that contract, are necessary for its proper performance and their execution became necessary as a result of unforeseeable circumstances, if :
 - a) for technical or economic reasons the separation of an additional contract from the main contract would require incomparably high costs to be incurred or
 - b) the completion of the main contract is conditional upon the performance of the additional contract;
 - 6) in the case of the award, within 3 years from the award of the main contract, to the hitherto economic operator of services or works of supplementary contracts constituting not more than 50% of the main contract value and involving the repetition of the same type of contracts, if the main contract was awarded under the open or restricted tendering procedure and the supplementary contract was provided for in the contract notice for the main contract and is in conformity with the subject-matter of the main contract;
 - 7) in the case of the award, within 3 years from the award of the main contract, to the hitherto economic operator of supplies, of supplementary contracts constituting not more than 20% of the main contract value and involving the expansion of supplies, if the change of economic operator would make it necessary to purchase items of different technical parameters, what would result in technical incompatibility or disproportionately serious technical difficulties in use and supervision, if the main contract was awarded under the open or restricted tendering procedure and the supplementary contract was provided for in the contract notice for the main contract and is compliant with the subject-matter of the main contract;
 - 8) it is possible to award a supply contract on particularly advantageous terms, in connection with the winding-up procedure of the business activity of another entity, enforcement proceedings or bankruptcy proceedings;
 - 9) supplies contracts shall be made at a commodity exchange within the meaning of the regulations on commodity exchanges, including the commodity exchange of other member states of the European Economic Area;
 - 10) the contract is awarded by a Polish mission abroad within the meaning of the foreign service regulations, and its value is less than the amounts specified in the provisions issued under Article 11 para. 8;

11) the contract is awarded for the own needs of a military unit within the meaning of the regulations on the rules of deployment or stay of Armed Forces of the Republic of Poland abroad, and the value of the contract is less than the amounts specified in the provisions issued under Article 11.8.

2. Where the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, which require a dispatch of a contract notice for supplies or services to the Publications Office of the European Union, the contracting authority informs the PPO President about launching of a procedure, within 3 days from its start, stating factual and judicial justification of a procedure for awarding a contract.

3. The provision of para. 2 shall not apply in the case of contracts awarded under para. 1:

1) item 1 Letter a, where the subject-matter of the contract is:

- a) supply of water via a water network system or disposal of sewage to the sewage network system,
- b) supply of gas from the gas mains,
- c) supply of heat from the heat network,
- d) [repealed],
- e) electricity, heat and gas fuels transmission and distribution services;

2) item 3, in order to reduce the consequences of a random incident caused by unforeseeable external factors, in particular when there is a threat to life or health of people, or a threat of damage of considerable size;

3) items 8 and 9.

4. The contracting authority may waive the application of art. 19-21, art.24 para. 1 point 2 and 3, and art. 68 para. 1 in the case of contracts awarded pursuant to para. 1 point 1 letter b and c and point 2 as well as contracts, referred to in para. 3.

In the case of the award of contracts based on the para. 1 item 1 letter b, c and item 2, as well as contracts, referred to in para. 3, the contracting authority may not apply the provisions of Article 19-21, 24 para. 1 - 3 and Article 68 para. 1.

5. The contracting authority may refrain from applying provisions of art. 27, art. 68 para. 2, art. 139 in case of contracts awarded pursuant to para. 1 point 9.

6. The contracting authority may not apply provisions of art. 68 para. 2 in case of awarding contracts for creative or artistic activity under para. 1 point 1 letter b or c.

Article 68.

1. Along with the invitation to negotiation, the contracting authority shall dispatch information necessary to conduct the procedure, including provisions that are important for the parties, which shall be inserted in the content of the public contract, general terms of contract or the standard form of the contract. The provisions of Article 36 para. 1-3 and Article 37 and 38 shall not apply. The provisions of Article 36a and Article 36b shall apply accordingly.

2. At the latest upon the conclusion of the public procurement contract, the economic operator shall submit a declaration that it complies with the participation requirements, and if the contract value is equal to or exceeds the amounts specified in the provisions issued under

Article 11 para. 8, it shall also provide documents to prove such compliance. The provisions of Article 25 shall apply accordingly.

Section 6
Request-for-quotations

Article 69.

Request-for-quotations means contract award procedures in which the contracting authority sends a request-for-quotations to economic operators of his choice and invites them to submit tenders.

Article 70.

The contracting authority may award a contract under the request-for-quotations procedure, if the subject-matters of the contract are generally available supplies or services of fixed quality standards, where the contract value is less than the amounts specified in the regulation under Article 11 para. 8.

Article 71.

1. The contracting authority shall commence a request-for-quotations procedure by inviting such a number of economic operators, providing supplies or services being the subject-matter of the contract within their business activities, which ensures competition and the choice of the best tender, not less than 5.

2. Along with the invitation to tender, the contracting authority shall provide the specification of essential terms of contract. The provisions of Article 36 para. 1 items 8 and 15 shall not apply.

Article 72.

1. Each of the economic operators may propose only one price and shall not change it. Prices shall not be negotiable.

2. The contracting authority shall award a contract to the economic operator who offered the lowest price.

Article 73.

The provisions of Article 44 and Article 64 para. 1 shall apply accordingly to the request-for-quotations.

Section 7
Electronic bidding

Article 74.

1. Electronic bidding means contract award procedures in which using a form available on the website allowing to enter the necessary data on-line, economic operators shall submit successive more advantageous tenders (bid increments), subject to automatic classification.

2. The contracting authority may award a contract under electronic bidding procedure, where the contract value is less than the amounts specified in the provisions issued under Article 11 para. 8.

Article 75.

1. The contracting authority shall commence an electronic bidding procedure by placing a contract notice in Public Procurement Bulletin, on its website and on the site where the bidding is to be conducted.

2. Notice about the electronic auction, referred to in para. 1, shall contain at least:

- 1) name (company name) and address of the contracting authority;
- 2) indication of a contract award procedure;
- 3) description of the subject-matter of the contract;
- 4) requirements concerning registration and identification of economic operators, including technical requirements of IT equipment;
- 5) manner of proceeding during electronic bidding, and in particular the minimum bid increment;
- 6) information about the number of stages of the electronic bidding and their duration;
- 7) time-limit for the submission of requests to participate in the electronic bidding;
- 8) the opening date of the electronic bidding and the date and terms of its closing;
- 9) conditions for participation in the procedure and description the method used for the evaluation of the fulfillment of those;
- 10) information on declarations and documents to be provided by the economic operators to confirm compliance with the conditions for participation in the procedure;
- 11) time limit during which a economic operator must maintain his tender;
- 12) contract completion date;
- 13) requirement concerning security on due performance of the contract;
- 14) provisions essential to the parties to be incorporated into the contents of the concluded procurement contract or general terms of the procurement contract, or standard contract, if the contracting authority shall require from the economic operators to conclude a procurement contract on such terms;
- 15) website address where the electronic bidding is to be conducted.

Article 76.

1. The contracting authority shall fix a time limit for the submission of requests to participate in the electronic bidding, which shall not be less than 7 days from the date of the notice.

2. The contracting authority shall allow all economic operators complying with the conditions for participation in the procedure to participate in the electronic bidding and shall invite them to tender, specifying in the invitation the time limit during which the economic operator with the lowest price must maintain his tender.

3. The contracting authority may require the economic operators to pay a deposit within a time limit specified by him, not later, however, than prior to the expiry of the opening date of the electronic bidding. The provisions of Article 45 and 46 shall apply accordingly.

4. The contracting authority shall open the electronic bidding within the time limit specified in the notice, which however shall not be less than 5 days as from the date on which the invitation to tender was dispatched to economic operators.

Article 77.

From the moment of opening till the closing of the electronic bidding the contracting authority and economic operators shall submit requests, declarations and other information by electronic means of communication.

Article 78.

1. Tenders shall be submitted in electronic form.

2. Tenders submitted by economic operators shall be subject to automatic classification based on price.

3. An economic operator must maintain his tender submitted in the course of a bidding until another economic operator submits better tender.

Article 79.

1. The electronic bidding may be a one-stage or multi-stage procedure.

2. The contracting authorities may, if they had made an appropriate reservation in the notice, following the end of each stage of the electronic bidding, not qualify to the next stage those economic operators who have failed to submit new (bid increments), informing them of the fact forthwith.

3. During each stage of the electronic bidding the contracting authority shall dispatch, on a current basis, to all economic operators information about the position of their tenders, the number of economic operators participating in each stage of the bidding, as well as their quotations, however, information allowing identification of economic operators shall not be disclosed until the closing of the electronic bidding.

Article 80.

1. The contracting authority shall close an electronic bidding:

-
- 1) within the time limit specified in the notice;
 - 2) if no new bid increments are submitted by the period specified in the notice, or
 - 3) following the end of the last stage specified in the notice.

2. Directly following the closing of the electronic bidding the contracting authority shall provide the name (company name) and address of the economic operator whose tender has been chosen at the website address indicated in the notice.

3. The contracting authority shall award the contract to the economic operator who offered the lowest price.

Article 81.

The provisions of Articles 36-38, Articles 82-92 shall not apply to the electronic bidding.

Chapter 4

Selection of the best tender

Article 82.

1. An economic operator may submit one tender.

2. The tender shall, under the pain of nullity, be submitted in writing or if the contracting authority agrees, in electronic form with a secure electronic signature verifiable using a valid qualified certificate.

3. The contents of the tender should correspond to the contents of the specification of essential terms of the contract.

Article 83.

1. The contracting authority may permit the possibility of submitting variants, where the price is not the only award criterion.

2. The contracting authority may permit the possibility of submitting tenders for lots, where the subject-matter of the contract is divisible.

3. In the case, referred to in para. 2, the economic operator may submit tenders for one or more lots, unless the contracting authority specified the maximum number of lots for which one economic operator may submit his tenders.

Article 84.

1. An economic operator may change or withdraw his tender prior to the expiry of the time limit for submission of tenders.

2. In a contract award procedure of a value less than the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority shall forthwith return the tender, which was submitted past deadline. In contract award procedure of a value equal to or exceeding the amounts specified in the provisions issued under Article 11 para. 8, , the contracting authority shall forthwith inform the economic operator that the tender was

submitted past deadline and shall return the tender after the expiry of time limit for lodging the appeal.

Article 85.

1. 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:

- 1) 30 days – if the contract value is less than the amounts specified in the provisions issued under Article 11 para. 8;
- 2) 90 days – if the contract value is equal to or exceeds the PLN equivalent of EUR 20 000 000 for works, and of EUR 10 000 000 for supplies and services;
- 3) 60 days – if the contract value is different than that specified in items 1 and 2.

2. The economic operator may at its own initiative or at the request of the contracting authority extend the time limit during which his tender must be maintained, though the contracting authority may only once, at least 3 days prior to the expiry of the time limit during which the economic operator must maintain his tender, request the economic operators to give their consent to extend this time limit by an indicated period, which however shall not be longer than 60 days.

3. Refusal to give consent, referred to in para. 2, shall not result in the forfeiture of the deposit.

4. The extension of the time limit during which the economic operator must maintain his tender shall be admissible only with simultaneous extension of the validity period of the deposit or, if not possible, with contribution of a new deposit for the extended time limit during which the economic operator must maintain his tender. If the time limit during which the economic operator must maintain his tender is extended after the best tender was selected, the obligation to provide the new deposit or the extension its validity shall apply only to that economic operator whose tender has been selected.

5. The period, during which a economic operator must maintain his tender, shall commence with the expiry of the time limit for submission of tenders.

Article 86.

1. The contents of tenders shall not be disclosed prior to the opening of tenders.

2. The opening of tenders shall be public and shall take place directly following the expiry of the time limit for their submission; however, the final date for the submission of tenders shall be the date on which they are opened.

3. Directly prior to the opening of tenders the contracting authority shall state the amount they intend to allocate to finance the contract.

4. During the opening of tenders the names (company names) and addresses of economic operators shall be given as well as information included in the tenders concerning the price, time limit for the completion of the contract, period of guarantee and terms of payment.

5. The information, referred to in para. 3 and 4, shall be dispatched to economic operators who were absent during the opening of tenders upon their request.

Article 87.

1. During examination and evaluation of tenders the contracting authority may require explanations of the tenders' contents submitted by the economic operators. Negotiations between the contracting authority and the economic operator concerning the submitted tender and, subject to para. 1a and 2, any changes in the contents thereof shall not be admissible.

1a. In course of the examination and evaluation of tenders in a competitive dialogue procedure, the contracting authority may require from the economic operators to specify, improve tenders and provide additional information, however either the essential changes in tenders or the changes of the requirements specified in the specification of essential terms of contract shall be admissible.

2. The contracting authority shall correct in the text of the tender:

- 1) obvious misprints,
 - 2) obvious computational errors considering the calculation consequences of the conducted modifications,
 - 3) other errors which result in inconsistency with specification of essential terms of contract but do not cause essential modifications of the tender
- and shall forthwith inform the economic operator whose tender has been corrected.

Article 88.

[repealed]

Article 89.

1. The contracting authority shall reject a tender, if:

- 1) it is not in conformity with this Act;
- 2) its content is inconsistent with the specification of essential terms of contract, without prejudice to Article 87 para. 2 item 3;
- 3) its submission is an act of unfair competition within the meaning of the provisions concerning the combating of unfair competition;
- 4) contains an abnormally low price in relation to the subject-matter of the contract;
- 5) has been submitted by a economic operator excluded from the award procedure or one that was not been invited to tender;
- 6) contains computational errors in the calculation of prices;
- 7) within 3 days from the submission of notification, the economic operator did not agree to the correction of a error, referred to in Article 87 para. 2 item 3;
- 8) is not valid under separate provisions.

2. [repealed]

Article 90.

1. If the price of tender appears to be abnormally low in relation to the subject matter of a contract and raises doubts of the contracting authority as to the possibility of performing the subject matter of a contract in accordance with requirements specified by the contracting authority or resulting from separate provisions, in particular, if the price is lower by 30% of the contract value or the arithmetic average of prices of all submitted tenders, the contracting authority shall ask for clarification, including the submission of evidence regarding the elements of tender having an impact on the price level, in particular as regards:

1) the economy of the method of contract performance, technical solutions chosen or the exceptionally favorable conditions for performance of contract available to economic operator, originality of the economic operator's design, labour costs, which value used for determining the price shall not be lower than the minimum wage established under art. 2 para. 3-5 of the Act of 10 October 2002 on the minimum wage (Journal of Laws No. 200, item. 1679 as amended);

2) public aid granted under separate provisions.

2. The obligation to determine that the tender does not comprise an abnormally low price lies with the economic operator.

3. The contracting authority shall reject a tender submitted by an economic operator who failed to provide explanations or where the evaluation of explanations confirms that the submitted offer contains an abnormally low price with regard to the subject-matter of the contract.

4. If the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority shall inform the PPO President and the European Commission about the rejection of tenders which, according to the contracting authority, contained abnormally low prices because of state aid granted and the economic operator did not prove that such aid was in compliance with the provisions concerning state aid proceedings within the time limit fixed by the contracting authority.

Article 91.

1. The contracting authority shall select the best tender on the basis of contract award criteria laid down in the specification of essential terms of the contract.

2. Contract award criteria shall be price or price and other criteria linked to the subject matter of a contract, in particular quality, functionality, technical parameters, environmental aspects, social aspects, innovative aspects, service, period of contract performance and operating costs.

2a. The price criterion may be used as the sole contract award criterion, if the subject matter of a contract is commonly available and has established quality standards, subject to art. 76 para. 2, and in the case of contracting authorities, referred to in art. 3 para. 1 points 1 and 2, when they additionally determine in the annex to the record of contract award procedure, how the costs to be incurred throughout the use phase of the subject matter of contract have been considered in the description of the subject matter of a contract.

3. Contract award criteria shall not pertain to the characteristics of the economic operator, and in particular to its economic, technical or financial credibility.

3a. If a tender has been submitted, the selection of which would result in a tax liability on the contracting authority under the regulations on the intra-community purchasing of

goods, the contracting authority shall, in order to evaluate such a tender, add the value added tax (VAT) payable under the applicable regulations to the tender price.

4. Where the best tender cannot be selected as two or more tenders represent the same balance of price and other contract award criteria, the contracting authority shall choose from among those tenders the one with a lower price.

5. Where the price is the only award criterion in a contract award procedure and it is impossible to select the best tender as tenders with the same price have been submitted, the contracting authority shall call upon the economic operators to submit additional tenders within a specified period.

6. When submitting additional tenders economic operators shall not submit tenders with higher prices than those submitted previously.

7. Immediately after the selection of the best tender, however within the time limit not less than 14 days, the contracting authority shall offer rewards to the economic operators who during the dialogue presented the solutions which constitute the basis for submission of tenders, if such rewards are provided by the contracting authority.

8. The Prime Minister shall determine, by means of a regulation, other than the price mandatory contract award criteria in respect of certain types of public contract , guided by the need to implement EU legal provisions and considering the specific nature or purpose of a public contract.

Article 91a.

1. Where the procedure is conducted by open tendering, restricted tendering or negotiated procedure with publication under Article 55 para. 1 item 1, the contracting authority, after evaluation of the tenders, shall hold an electronic auction to select the best tender if such an electronic auction was provided for in the contract notice, and if at least three non-rejectable tenders have been submitted. The provisions of Article 91 para. 4-6 shall not apply.

2. The provisions of para. 1 shall not apply in the case of contracts for artistic or scientific activity.

3. The criteria for tender evaluation in an electronic auction shall be only those provided for in the specification of essential terms of contract, making possible the automatic evaluation of the tender without any interference of the contracting authority, indicated among the criteria based on which the tenders were evaluated prior to commencing the electronic auction.

4. Electronic auction shall be a one-stage procedure.

Article 91b.

1. The contracting authority shall invite by electronic means all the economic operators who have submitted non-rejectable tenders to participate in an electronic auction.

2. In the invitation referred to in para. 1, the contracting authority shall inform the economic operators about:

- 1) ranking places and scores of their tenders;
- 2) minimal values of the bid increments in the electronic auction;
- 3) date of the opening of the electronic auction;

-
- 4) date and terms of the closing of the electronic auction;
 - 5) the manner for evaluation of tenders in the electronic auction.

3. The opening date of the electronic auction may not be shorter than 2 working days from the date of dispatching the invitation referred to in para. 1.

4. The tender evaluation method in an electronic auction should include the recalculation of the bid increments into tender evaluation scores taking into account the score received prior to the opening of the electronic auction.

Article 91c.

1. During an electronic auction, economic operators use a form posted on the website for entering the necessary data through a direct connection with the website to make successive, more advantageous bid increments which are subject to automatic evaluation and classification. The provisions of Article 82 para. 1 and 2, Articles 83 and 84, and Articles 86-89 shall not apply.

2. Bid increments, under the pain of nullity, must have a secure electronic signature verifiable using a valid qualified certificate.

3. During an electronic auction, the contracting authority shall provide each of the economic operators on an ongoing basis with information about the ranking place of its respective tender and its score as well as of the score of the best tender. Until the electronic auction is closed, no information shall be disclosed that can make it possible to identify the economic operators.

4. The tender of an economic operator ceases to be binding insofar as it has made a better tender during the electronic auction. The period in which the tender must be maintained shall not be interrupted.

5. The provisions of Article 77, Article 80 para. 1 items 1 and 2, and para. 2 shall apply accordingly.

Article 92.

1. After selection of the best (most advantageous) tender, the contracting authority shall forthwith inform the economic operators who submitted tenders about:

- 1) the selection of the best tender, stating the name (company name) or name and surname, seat or place of residence and address of the economic operator, whose tender was selected, justification for its selection, as well as names (company names) or names and surnames, seats or places of residence and addresses of the economic operators who submitted their tenders, as well as the scoring of tenders in every tender evaluation criterion and the total score.
- 2) the economic operators whose tenders were rejected stating factual and legal grounds;
- 3) the economic operators who were excluded from the contract award procedure stating factual and legal grounds - if the contract is awarded in open tendering, negotiated procedure without publication or request- for- quotation;
- 4) the time limit, set in accordance with Article 94 para. 1 or 94 para. 2, after which the public contract can be concluded.

2. Immediately after the selection of the best tender, the contracting authority shall post the information referred to in para. 1 item 1, on its website and in a publicly accessible location in its own seat.

Article 93.

1. The contracting authority shall cancel a contract award procedure, if:

- 1) subject to items 2 and 3, no tender has been submitted or no request to participate in the procedure from a non-excludable economic operator has been received;
- 2) less than two non-rejectable tenders have been submitted in the request-for-quotations procedure;
- 3) in a procedure under electronic bidding, fewer than two requests to participate in electronic bidding have been made, or no tender has been submitted;
- 4) the price of the best tender or a tender with the lowest price exceeds the amount which the contracting authority can allocate to finance the contract, unless the contracting authority is able to increase that amount up to the price of the best tender;
- 5) in the cases referred to in Article 91 para. 5 additional tenders with the same price have been submitted;
- 6) a material change in the circumstances has occurred which causes the conduct of the procedure or the execution of the contract to be no longer in the public interest and which could not have been foreseen earlier;
- 7) the award procedure is encumbered with irreparable defect which prevents the conclusion of a valid public procurement contract.

1a. The contracting authority may cancel the contract award procedure if the funds deriving from the EU budget or non-refundable funds from the aid provided by the EFTA Member States, which the contracting authority intended to assign to finance the whole or part of the contract, were not granted to the contracting authority, and the possibility of cancellation of the contract award procedure based on that ground was provided for in:

- 1) the contract notice – in the procedure conducted under open tendering, restricted tendering, negotiated procedure with publication, competitive dialogue or electronic bidding, or
- 2) invitation to negotiations – in the procedure conducted under negotiated procedure without publication or single-source procurement, or
- 3) invitation to tender – in the procedure conducted under request-for-quotations.

1b. The contracting authority may cancel the contract award procedure if funds to finance research and development contracts, which the contracting authority intended to assign to finance the whole or part of the contract, were not granted and the possibility of cancellation of the contract award procedure based on that ground was provided for in:

- 1) the contract notice – in the procedure conducted under open tendering, restricted tendering, negotiated procedure with publication, competitive dialogue or electronic bidding, or
- 2) invitation to negotiations – in the procedure conducted under negotiated

procedure without publication or single-source procurement, or

3) invitation to tender – in the procedure conducted under request-for-quotations.

2. If the contracting authority allows the possibility of submitting tenders for lots, the provisions of para. 1 shall apply accordingly to the cancellation of the procedure for the award of lots.

3. About the cancellation of the procedure, the contracting authority shall notify simultaneously all economic operators who:

- 1) competed for the award - in the event of cancellation of a procedure prior to the final date for submission of tenders,
- 2) submitted tenders - in the event of cancellation of a procedure after the final date for submission of tenders

- providing factual and legal grounds.

4. In the event of the cancellation of a contract award procedure due to the fault of the contracting authority, economic operators who submitted non-rejectable tenders shall be entitled to claim reimbursement of the justified costs of participation in the procedure, and in particular, the costs incurred for the preparation of their tenders.

5. In the case of a cancellation of the contract award procedure, at the request of an economic operator who competed for the contract, the contracting authority shall inform about the start of another procedure which concerns or includes the same subject-matter of contract.

Article 94.

1. The contracting authority shall conclude a public procurement contract, subject to Article 183, within the time limit:

- 1) not less than 10 days from the day on which the information on the selection of the best tender was dispatched,, if the information was dispatched in the manner specified in Article 27 para. 2, or 15 days – if it was dispatched in any other manner, if the contract value is equal to or exceeding the amounts specified in the provisions issued under Article 11 para. 8;
- 2) not less than 5 days from the day on which the information on the selection of the best tender was dispatched,, if the information was dispatched in the manner specified in Article 27 para. 2, or 10 days – if it was dispatched in any other manner, if the contract value is less than the amounts specified in the provisions issued under Article 11 para. 8;

2. The contracting authority may conclude a public procurement contract prior to the expiry of the time limits, referred to in para. 1, if:

1) in case of contract award procedure:

A) under open tendering only one tender was submitted,

B) under restricted tendering, negotiated procedure with publication and competitive dialogue only one tender was submitted and in case of exclusion of the economic operator, the time limit for lodging the appeal against this action, or, as a result of the lodged appeal, the Chamber issued a decision or a judgement or decision that ended the appeal procedure; or

2) the contract refers to contract award procedure under negotiated procedure without publication, within dynamic purchasing system or under framework agreement; or

3) in contract award procedure of a value less than the amounts specified in the provisions issued under Article 11 para. 8, none of the tenders was rejected and:

a) in the case of open tendering or request-for-quotations, no economic operator was excluded,

b) in the case of a restricted tendering, negotiated procedure with publication, competitive dialogue and electronic bidding – the time limit for lodging the appeal against the exclusion of economic operator expired or, or, as a result of the lodged appeal, the Chamber issued a decision or a judgement or decision that ended the appeal procedure; or

4) if the contract award procedure is conducted under electronic bidding, except for the case of exclusion of economic operator, the time limit for lodging the appeal in this respect has not yet expired or, or, as a result of the lodged appeal, the Chamber has not yet issued a decision nor a judgement which ends the appeal procedure.

3. If the economic operator whose tender was selected refuses to conclude a contract or fails to provide the required security on due performance of the contract, the contracting authority may select the best tender from among the remaining tenders without their re-evaluation unless the circumstances, referred to in Article 93 para. 1, occur.

Article 95.

1. If the value of the contract or of the framework agreement is less than the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority shall immediately, after the conclusion of the public procurement contract or the framework agreement, place a contract award notice in the Public Procurement Bulletin

2. If the value of the contract or of the framework agreement is equal to or exceeds the amounts defined in the provisions issued under Article 11 para. 8, the contracting authority shall, immediately upon concluding a public procurement contract or a framework agreement, dispatch a contract award notice to the Publications Office of the European Union.

3. The contracting authority may dispatch contract award notice if the contract was awarded on the basis of framework agreement.

4. In the case of awarding contracts under a dynamic purchasing system, the contracting authority may depart from dispatching the contract notices as referred to in para. 2 and dispatch contract award notices once in every three months.

Chapter 5

Record of contract award procedure

Article 96.

1. In the course of the conduct of an award procedure the contracting authority shall prepare a written record of the contract award procedure, hereinafter referred to as the "record", which shall include at least:

- 1) description of the subject-matter of the contract;
- 2) information on the contract award procedure;
- 3) information on economic operators;
- 4) price and other essential elements of the tender;
- 5) indication of the selected tender or tenders.

2. Tenders, opinions of experts, declarations, information from the meeting referred to in Article 38 para. 3, notifications, requests, other documents and information submitted by the contracting authority and economic operators and the public procurement contract, shall constitute annexes to the record.

2a. If before commencing a contract award procedure, a technical dialogue has been conducted, an information on conducting a technical dialogue, on participants of this technical dialogue and on the influence technical dialogue had on the description of subject-matter of contract, specification of essential terms of contract and conditions of contracts shall constitute a part of the record.

3. The record together with annexes attached thereto shall be open to the public. The annexes to the record shall be made available after the best tender is selected or after the procedure is cancelled, however, tenders shall be made available from the moment of their opening, initial tenders shall be made available from the day of invitation to submit tenders, and requests to participate in the procedure shall be made available from the day of notification of the results of assessment of fulfilment of the conditions for participation in the procedure.

4. [repealed]

5. The Prime Minister shall specify by a regulation:

- 1) standard record form and the scope of additional information to be included in the record, having regard to the contract value, contract award procedure and aiming to ensure the possibility of submitting comments on the contents of the record by persons performing actions in connection with the conduct of a contract award procedure;
- 2) manner and form in which the record together with its annexes is to be made available to the persons concerned, having regard to the requirement to ensure the public nature of award procedures.

Article 97.

1. The contracting authority shall keep the record together with its annexes for a period of 4 years from the closing date of the contract award procedure in a manner which shall guarantee its inviolability.

2. The contracting authority shall return to economic operators whose tenders were not chosen, upon their request, any plans, designs, drawings, models, samples, patterns, computer applications and similar materials submitted by them.

Article 98.

1. The contracting authority shall prepare an annual report about the conducted contract award procedures hereinafter referred to as the "report".

2. The contracting authority shall dispatch the report to the PPO President by 1 March of each year following the year to which the report refers.

3. [repealed]

4. The Prime Minister shall determine, by means of a regulation, scope of information to be included in the report, its standard form and a manner of its transmission, taking into account requirements concerning content of a report submitted to the European Commission, including type of contracting authority, country of origin of selected economic operator, value of awarded contracts, types of contract and types of contract award procedures and legal grounds therefor, and if their value is equal to or exceeds the PLN equivalent of 20,000,000 Euro for works or 10,000,000 Euro for supplies and services, also a method of contract performance, and taking into account the obligation to present the European Commission with the information on: number and total value of contracts awarded on the basis of exclusion of the obligation to apply the PPL as provided for in art. 4 points 1-2, 6, 7 and 10-13 and art. 136-138, total value of awarded contracts on the basis of exclusion of the obligation to apply the PPL as provided for in art. 4 point 8.

TITLE III SPECIFIC PROVISIONS

Chapter 1 Framework agreements

Article 99.

The contracting authority may conclude a framework agreement after conducting the procedure governed by the relevant rules concerning the awarding of contracts by open tendering, restricted tendering or negotiated procedure with publication.

Article 100.

1. A framework agreement is concluded for a period not longer than 4 years, however the agreement may be concluded for a longer period of time for reasons related to the subject-matter of contract and to the particular interests of the contracting authority.

2. The contracting authority shall notify forthwith to the PPO President the fact of concluding a framework agreement for a period longer than 4 years, stating the value and the subject-matter of contract as well as factual and judicial justification.

3. A framework agreement shall be concluded with:

- 1) one economic operator, if concluding a framework agreement with a bigger number of economic operators would be disadvantageous to the contracting authority for technical or organizational reasons;
- 2) at least three economic operators, unless a smaller number of economic operators have submitted non-rejectable tenders.

4. The contracting authority may not use a framework agreement to restrict competition.

Article 101.

1. The contracting authority awards a contract under a framework agreement:

- 1) to the economic operator, with whom the contracting authority concluded a framework agreement on conditions not less advantageous than the ones specified in the framework agreement; the provisions of Article 68 para. 1 shall apply accordingly;
- 2) to the economic operators, with whom a framework agreement was concluded, by inviting them to submit their tenders; the provisions of Article 45 and 46, Article 60 para. 2, Article 64 para. 1 and 3 as well as Article 92 shall apply accordingly.

2. When awarding the contract, as referred to in para. 1, the contracting authority may change the terms of the contract with regard to terms specified in a framework agreement, provided that this change is not essential. The contracting authority shall not change the criteria for evaluation of tenders provided for in the framework agreement.

3. The tender submitted as a result of invitation, referred to in para. 1 item 2, shall not be less advantageous than the tender submitted in the framework agreement procedure.

4. The provisions of Article 26, Article 169 para. 2 shall not apply to contracts based on the framework agreement.

Chapter 2 Dynamic purchasing system

Article 102.

1. The contracting authority may set up a dynamic purchasing system and to award contracts under the system, applying the relevant rules concerning the awarding of contracts by open tendering unless the provisions of this Chapter provide otherwise.

2. A dynamic purchasing system shall be set up for a period not longer than 4 years, however the system may be set up for a longer period of time for reasons related to the subject-matter of contract and to the particular interests of the contracting authority.

3. The contracting authority shall notify within 3 days to the PPO President the fact of setting up a dynamic purchasing system for a period longer than 4 years, stating the value and the subject-matter of contract as well as factual and judicial justification.

4. The contracting authority may not use a dynamic purchasing system to restrict competition.

Article 103.

1. In a procedure conducted in order to set up a dynamic purchasing system and in a contract award procedure under dynamic purchasing system, the contracting authority and the economic operators shall dispatch declarations, documents, requests, notices, invitations and other information by electronic means.

2. In the procedures referred to in para. 1, tenders must be submitted, under the pain of nullity, by electronic means with a secure electronic signature verified by a valid qualified certificate.

3. The notices are placed in the Public Procurement Bulletin by electronic means with the use of the form posted on the portal of the PPO, and dispatched to the Publications Office of the European Union by electronic means with the use of the form posted on the website referred to in a directive.

Article 104.

1. From the day on which the contract notice is placed in the Public Procurement Bulletin or published in the Official Journal of the European Union, the contracting authority shall make available on its website the specification of essential terms of contract and information about the dynamic purchasing system, in particular:

- 1) definition of the subject-matter of contract included in the scope of the dynamic purchasing system;
- 2) duration of the dynamic purchasing system;
- 3) envisaged dates for awarding contracts;
- 4) technical requirements for telecommunications and computer devices necessary to ensure communication between the contracting authority and the economic operators, including the submission of tenders.

2. The specification of essential terms of contract and the information referred to in para. 1 shall be available on the website throughout the duration of the dynamic purchasing system.

Article 105.

1. In order to participate in a dynamic purchasing system the economic operators may submit tenders, hereinafter referred to as “indicative tenders”, throughout the duration of the dynamic purchasing system. The provisions of Articles 45 and 46, Article 82 para. 1 and 2 and Articles 83 – 86 shall not apply.

2. The economic operator shall together with the indicative tender submit a declaration of compliance with the requirements to participate in a contract award procedure and, if the contracting authority requests to submit documents proving compliance with those requirements also such documents.

3. An indicative tender may be updated at any time by submitting a new indicative tender. In case of updating of the indicative tender, the provision of para. 2 shall not apply.

4. The contracting authority shall evaluate indicative tenders within 15 days of their receipt.

5. The contracting authority shall immediately inform the economic operator about its admission to participate in a dynamic purchasing system or about its refusal to admit it to participate, providing factual and legal grounds for such refusal.

6. The contracting authority may extend the time limit referred to in para. 4, however within the extension period it may not commence a procedure to award a contract under a dynamic purchasing system.

Article 106.

1. Prior to commencing a procedure to award a contract under a dynamic purchasing system, the contracting authority shall post a simplified contract notice on its website. The provisions of Article 40 para. 2-6 shall apply accordingly.

2. A simplified contract notice shall contain at least:

- 1) date and place of publication of the notice concerning the setting up of the dynamic purchasing system;
- 2) name (company name) of the contracting authority;
- 3) description of the subject-matter of contract and volume or scope of contract;
- 4) address of the website on which the specification of essential terms of contract and the information referred to in Article 104 para. 1 are available;
- 5) time limit for the submission of indicative tenders.

3. Prior to the publication of a simplified contract notice the contracting authority may modify the content of the specification of essential terms of contract. The contracting authority shall forthwith inform all the economic operators, admitted to participate in the dynamic purchasing system, about the modification, and the information shall also be posted on its website. The provisions of Article 38 para. 4 and 6 shall not apply.

Article 107.

1. In response to a simplified contract notice, an economic operator who was not previously admitted to participate in a dynamic purchasing system shall make an indicative tender within the time limit fixed by the contracting authority, which shall not be less than 15 days from the day on which the contract notice was placed in the Public Procurement Bulletin or dispatched to the Publications Office of the European Union.

2. The contracting authority shall evaluate indicative tenders forthwith. Article 105 para. 5 shall apply.

Article 108.

1. The contracting authority shall commence a contract award procedure under the dynamic purchasing system by inviting all the economic operators admitted to participate in the system to submit tenders forthwith upon completing the evaluation of indicative tenders.

2. The contracting authority shall fix a time limit for the submission of tenders, taking into account the time necessary to prepare and submit the tender.

Article 109.

1. Tenders submitted in a contract award procedure under a dynamic purchasing system shall be evaluated solely on the basis of the criteria provided for in the specification of essential terms of contract as referred to in Article 104.

2. A tender submitted by an economic operator in a contract award procedure under a dynamic purchasing system may not be less advantageous than the indicative tender.

3. The economic operator shall provide documents proving its compliance with the conditions for participation in the contract award procedure if so requested by the contracting authority in the invitation to tender.

Chapter 3

Design contest

Article 110.

A design contest is a public promise, in which by means of a public notice the contracting authority promises a prize for the execution and transfer of rights to the design selected by the jury, in particular in the fields of spatial planning, town planning, architecture and construction, and data processing.

Article 111.

1. The prize of a design contest may be:

- 1) in money or in kind;
- 2) an invitation to negotiate under the negotiated procedure without publication for at least two authors of selected contest projects or
- 3) an invitation to negotiate under the single-source-procurement procedure for the author of the selected contest project.

2. In the cases referred to in para. 1 items 2 and 3, the subject-matter of contract shall be the comprehensive development of a design contest project.

3. The value of a design contest shall be the value of prizes.

4. The value of a design contest, in which the prize consists in the invitation to participate in the contract award procedure, shall be the value of the contract and of additional prizes where the contracting authority provided for such prizes.

5. For the purposes of the calculation of the design contest value, the provisions of Article 35 shall apply accordingly.

Article 112.

1. Design contests shall be organised by contracting authorities. The provisions of Article 15 para. 2 and Article 18 shall apply accordingly.

2. The head of the contracting authority shall appoint a jury and set forth the rules concerning its organisation, composition and working procedure.

3. The jury shall be composed of at least 3 persons appointed and recalled by the head of the contracting authority.

4. Article 17 shall apply accordingly to members of the jury.

5. The jury shall be composed exclusively of persons having the qualifications enabling them to evaluate the submitted designs, and where specific provisions require from participants in the contest particular professional authorisations to execute the design, at least a third of the jury members, including its chairman, must likewise hold the required authorisations.

Article 113.

1. The jury is an auxiliary team of the head of the contracting authority appointed to evaluate compliance of participants in the design contest with the requirements laid down in

the Rules of Procedures for the design contest, to evaluate the designs and to choose the best design.

2. The jury shall in particular prepare information about the designs, justification of the design contest's result, and also, to the extent referred to in para. 1, lodge a request to cancel the design contest.

3. In terms of the issues referred to in para. 1 and 2, the jury shall be independent.

4. The head of the contracting authority may entrust the jury with tasks related to the preparation and conduct of the design contest other than those defined in para. 1.

Article 114.

The head of the contracting authority or a person authorised by the same shall supervise the jury in terms of the design contest's compliance with the provisions of this Act and with the Rules of Procedures for the design contest and shall in particular:

- 1) cancel the design contest;
- 2) approve the result of a design contest.

Article 115.

1. The contracting authority shall place the design contest notice in a publicly available location in its seat and on its website.

2. A design contest notice shall contain at least:

- 1) name (official address) and address of the contracting authority;
- 2) definition of the subject-matter of design contest;
- 3) requirements to be complied with by design contest participants, however if the design contest prize consists in an invitation to participate in negotiations by a negotiated procedure without publication to be issued to at least two authors of selected contest projects or an invitation to participate in a single-source procurement procedure for the author of the selected contest project, the provisions of Article 22 shall apply accordingly;
- 4) criteria for evaluating contest projects along with the weightings of those criteria;
- 5) information on how the Rules of Procedure for the design contest can be obtained;
- 6) time limit for submitting designs;
- 7) type and value of prizes.

3. Where the value of a design contest is less than the amount provided for in the provisions issued under Article 11 para. 8, the contracting authority shall place the contract notice in the Public Procurement Bulletin.

4. If the value of a design contest is equal to or exceeds the amount provided for in the provisions issued under Article 11 para. 8, the contracting authority shall dispatch a design contest notice to the Publications Office of the European Union.

5. For dispatching design contest notices, the provisions of Article 40 para. 5 and 6 shall apply accordingly.

Article 116.

1. The contracting authority shall conduct the design contests under the Rules of Procedure established by itself.

2. The Rules of Procedure for a design contest shall in particular specify:

- 1) name and surname or name (company name) and address and place of residence (seat) of the contracting authority;
- 2) form of the design contest;
- 3) detailed description of the design contest subject-matter;
- 4) maximum envisaged total cost of performing the work based on the contest project;
- 5) In the cases referred to in Article 111 para. 1 items 2 and 3, the scope of the detailed preparation of the contest project which is the subject-matter of a contract awarded by a negotiated procedure without publication or by single-source procurement procedure;
- 6) information about the declarations and documents to be provided by the participants in the design contest to prove their compliance with the relevant requirements, the provisions of Article 25 shall apply accordingly;
- 7) means of communication between the contracting authority and the participants in the contest, and means of dispatch declarations and documents;
- 8) place and time limit for the submission of the requests to participate in the design contest;
- 9) scope of content, form and method of presentation of the contest project;
- 10) place and time limit for submitting contest projects by the admitted participants;
- 11) criteria for evaluation contest projects, together with their weightings;
- 12) composition of the jury;
- 13) type and value of prizes;
- 14) time limit for the awarding (payment) of the prize and, in the cases referred to in Article 111 para. 1 items 2 and 3, for the invitation to participate in a negotiated procedure without publication or in a single-source procurement procedure;
- 15) amounts reimbursed for the preparation of the contest projects if the contracting authority plans to reimburse such costs;
- 16) provisions concerning the transfer of financial copyright to the selected contest project including a detailed specification of the areas of use of the contest projects, and in the cases referred to in Article 111 para. 1 items 2 and 3 also the essential provisions to be included in the contract;
- 17) manner of public announcement of the result of the design contest;
- 18) manner of providing explanations concerning the Rules of Procedure for the design contest;

19) information on legal protection measures available to design contest participants.

3. The contracting authority shall provide the design contest participant with the Rules of Procedure for the design contest within 5 days from the date of the submission of a request to provide it. The admissible price to be charged for the Rules of Procedure for the design contest may only cover the costs of its printing and provision to the participants.

4. In communication between the contracting authority and the design contest participants, the provisions of Article 27 shall apply accordingly.

Article 117.

1. A design contest may be organized as a one-stage or a two-stage procedure.

2. In a two-stage design contest, the first stage involves the selection of study projects complying with the requirements set forth in the Rules of Procedure for the design contest. At the second stage the jury shall evaluate designs based on the study projects selected at the first stage applying the criteria laid down in the Rules of Procedure for the design contest.

Article 118.

1. Participants in the design contest may be natural persons, legal persons and organisational units not having legal personality.

2. Where specific provisions require that the participants in the design contest should have professional authorisations to execute a contest project, the participants may only be natural persons having the required authorisations or entities using natural persons having the required authorisations.

3. Participants may take part in the design contest jointly. The provisions relating to a participant in a design contest shall apply respectively to participants taking part jointly.

Article 119.

The contracting authority shall fix a time limit for submission of requests to participate in the design contest with regard to the time period necessary to submit the required documents. However, this time limit shall not be less than:

- 1) 7 days from the day on which the design contest notice was placed in the Public Procurement Bulletin;
- 2) 21 days from the day on which the design contest notice was dispatched to the Publications Office of the European Union – if the value of the design contest is equal to or exceeds the amounts provided for in the provisions issued under Article 11 para. 8.

Article 120.

1. The contracting authority shall allow participants complying with the requirements laid down in the Rules of Procedure for the design contest to participate in the design contest, and shall invite them to submit their designs.

2. Participants who fail to meet the requirements laid down in the Rules of Procedure for the design contest shall be subject to exclusion.

3. The provisions of Article 26 para. 3 and 4 shall apply accordingly to the evaluation of requests to participate in a design contest.

Article 121.

1. Subject to para. 2, participants in the design contest shall submit their contest projects together with information on the envisaged aggregate cost of execution of the subject-matter of a contest project.

2. Participants in the design contest shall submit their contest projects without the information referred to in para. 1 if it is not possible to define the costs owing to the specific nature of the subject-matter of the contest project.

3. The contents of the contest projects shall not be disclosed to the jury until the expiry of the time limit for submission of contest projects.

4. The contracting authority ensures that it must not be possible to identify the authors of submitted contest projects until the jury selects the winner of the design contest.

Article 122.

1. The jury shall evaluate the contest projects according to the criteria laid down in the design contest notice. Article 87 para. 1 shall apply accordingly.

2. The jury shall resolve the design contest by selecting one or more winning contest projects out of all the contest projects.

3. The jury shall identify all submitted projects, after the resolution of the design contest or after its cancellation.

Article 123.

1. The contracting authority shall, immediately following the resolution of the design contest, notify participants about the results and granted scores, giving the name and surname or company name, address and place of residence (seat) of the successful author of the selected contest project or of the authors of selected projects.

2. The record shall be made concerning the work of the jury.

Article 124.

The contracting authority shall cancel the design contest where no request to participate in the design contest or no contest project has been submitted, and in the case referred to in Article 111 para. 1 item 2 - at least two contest projects, or where the design contest has not been resolved. The provision of the Article 93, para. 1, items 6 and 7 shall apply accordingly to the cancellation of the design contest.

Article 125.

According to the time limit specified in the Rules of Procedure for the design contest, which shall not however be less than 15 days from the date of the final resolution of the design contest, the contracting authority shall release (pay out) the prize, and in the cases referred to in Article 111 para. 1 items 2 and 3 - respectively invites to negotiate under the negotiated procedure without publication or single-source-procurement procedure.

Article 126.

1. Where the value of the design contest is less than the amounts provided for in the provisions issued under Article 11 para. 8, the contracting authority shall place a notice on the results of the design contest in the Public Procurement Bulletin, immediately following the resolution of the design contest.

2. Where the value of the design contest is equal to or exceeds the amounts defined in the provisions issued under Article 11 para. 8, following the resolution of the design contest, the contracting authority shall dispatch a notice on the results of a design contest to the Publications Office of the European Union.

Article 127.

1. The contracting authority shall keep the documentation of the design contest for a period of 4 years from the date of its final resolution, in a manner guaranteeing its inviolability.

2. The contracting authority shall return contest projects, which have not been selected, to the participants of the design contest upon their request.

Chapter 4

Award of contracts by the concessionaire of works

Art. 128. (repealed).

Art. 129. (repealed).

Art. 130. (repealed).

Article 131.

1. The entity with whom the concession contract for works was concluded based on the Act of 9 January 2009 on Concessions for Works or Services, hereinafter referred to as “the concessionaire”, who is the contracting authority as defined in Art. 3 para. 1 item 1-3a and 5, is obliged to apply the provisions of the Act to contracts awarded resulting from the performance of concession.

2. When awarding works contracts resulting from the execution of the concession, the value of which is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, the concessionaire, who is not an contracting authority within the meaning of Article 3 para. 1 items 1-3a and 5, shall:

- 1) apply the provisions of this Act concerning:
 - a) contract notice,
 - b) calculation of the value of the works contract,
 - c) time limits for submission of requests to participate in procedure in accordance with Article 49 para. 1 and 2, and time limits for submission of tenders, referred to in Article 52 para. 2;
- 2) conduct the procedure in compliance with the rules referred to in Article 7 para. 1;

3) may not apply the provisions referred to in item 1 if at least one of the circumstances referred to in Article 62 para. 1 and Article 67 para. 1 applies.

3. The provisions of para. 2 shall not apply to the award of contracts to entities belonging to the same capital group within the meaning of the Act of 16 February 2007 on competition and consumer protection, to entities with whom the concessionaire has concluded an agreement in order to compete jointly for a concession and to entities on whose resources the concessionaire relied on, according to art. 18 para. 3 of the Act of 9 January 2009 on concessions for works and services, when competing for a concession.

4. The concessionaire, on request of contracting authority, shall conclude a sub-contract with another entity constituting at least 30% of the concession.

5. Agreements concluded between economic operators in order to compete jointly for a concession, agreements concluded with entities belonging the same capital group within the meaning of the act of 16 February 2007 on competition and consumer protection, as well as agreements with entities on whose resources the concessionaire relied on according to art. 18 para. 3 of the Act of 9 January 2009 on concessions for works and services, when competing for a concession, do not constitute a subcontract.

6. Along with a tender a concessionaire shall submit a list of entities belonging to the same capital group within the meaning of the Act of 16 February 2007 on competition and consumer protection and shall update it if any changes arise as regards the relations between the concessionaire and these entities.

Chapter 4a

Contracts in the field of defence and security

Article 131a.

1. Provisions of the present chapter apply to public contracts awarded by contracting authority referred to in art. 3 para. 1 point 1-4, hereinafter referred to as “contracts in the field of defence and security”, if the subject-matter of such a contract includes:

1) deliveries of military equipment, including all the parts, components and subassemblies;

2) deliveries of sensitive equipment, including all parts, components and subassemblies;

3) works, supplies and services directly connected with the equipment mentioned in point 1 and 2, and all its components and subassemblies connected with life-cycle of this product;

4) works and services for special military purposes or sensitive works and services.

2. Provisions of the present chapter also apply to contracts including simultaneously contracts in the field of defence and security and other contracts, to which the provisions of the act apply, if the award of one contract is objectively justified.

3. The act shall not apply to contracts including simultaneously contracts in the field of defence and security and other contracts, excluded from the application of the Act, , if the award of one contract is objectively justified.

4. In order to avoid the application of procedures stipulated in the act, the contracting authority may not aggregate other contracts with contracts in the field of defence and security.

Article 131b.

The act shall not apply to contracts in the field of defence and security for supplies and services if the contract value is less than the amounts specified in provisions issued under art. 11 item 8.

Article 131c.

1. The contracting authority, immediately following the approval or adoption of a financial plan according to the provisions, statute or agreement, and in the case of contracting authorities which do not prepare financial plans – once a year, may dispatch to the EU Publications Office or place in a “buyer’s profile”, a prior information notice on contracts or framework agreements to be awarded under restricted tendering, negotiated procedure with publication or competitive dialogue. The provisions of art. 13 para. 2 and art. 52 para. 3 shall apply accordingly.

2. In the notice, referred to in para. 1, the following information shall be included:

- 1) for works – basic characteristics of contracts and framework agreements for works, which the awarding intended for awarding;
- 2) for supplies – aggregated value of contracts or framework agreements for supplies, broken down by product groups, within each product group defined in the Common Procurement Vocabulary, which the contracting authority plans to award in the next 12 months;
- 3) for services – aggregated value of contracts and framework agreements, in each service category defined in the Common Procurement Vocabulary, which the contracting authority plans to award in the next 12 months.

Article 131d.

1. Solely economic operators having their seat or place of residence in one of the EU Member States, the European Economic Area or in a country with which the European Union or the Republic of Poland entered into an international agreement concerning these contracts may apply for a contract in the field of defence and security.

2. The contracting authorities may specify in the contract notice that economic operators from countries other than those specified in para. 1 may compete for a contract in the field of defence or security.

Article 131e.

1. Excluded from contract award procedures in the field of defence and security are:

- 1) economic operators, referred to in art. 24 para. 1 points 2-9 and para. 2;
 - 1a) The contracting authority shall exclude from the contract award procedure in the field of defence and security such economic operator, that during the three years prior to the commencement of a procedure, culpably violated

professional duties in a serious manner, in particular when the economic operator, as a result of deliberate action or gross negligence, failed to perform or improperly performed a contract, what the contracting authority is able to demonstrate by any means of evidence, if the contracting authority foresaw such a possibility of excluding the economic operator in the contract notice, in specification of essential terms of a contract or in invitation to negotiate. Art. 24 para. 2 a second sentence shall apply.

2) economic operators being natural persons, a registered partnership, a professional partnership, a limited partnership, a limited joint-stock partnership or legal persons whose respectively such person, partner or member of the board, general partner, active member of a managing body has been validly convicted for:

a) terrorist crime referred to in art. 115 § 20 of the act 6 June 1997 – Criminal Code (Journal of Laws No. 88, item 553 as amended⁵),

b) a crime referred to in art. 165a of the act of 6 June 1997 – Criminal Code;

3) economic operators not being natural persons, a registered partnership, a professional partnership, a limited partnership, a limited joint-stock partnership or legal persons if respectively such a person, partner or member of the board, general partner, active member of a managing body:

a) infringed upon the obligations concerning security of information security or security of supply due to performance, non-performance, or incorrect performance of contract;

b) mislead as to the circumstances being the basis for recognizing that the economic operator fulfils the conditions for participation in the contract award procedure or recognizing the lack of grounds for exclusion from the procedure due to the lack of fulfilment of conditions;

4) economic operators being natural persons, a registered partnership, a professional partnership, a limited partnership, a limited joint-stock partnership or a legal person if with respect to such a person, partner or member of the board, general partner, active member of a managing body, or due to the action or failure to act, a decision on withdrawal of security clearance was taken, referred to in art. 33 para. 11 of the Act of 5 August 2010 on protection of classified information (Journal of Laws No. 182, item 1228);

5) economic operators that infringed upon their obligations concerning security of information or security of supply, or that have been found not to possessing the credibility necessary to exclude the threat to national security, also in a

⁵ Amendments to this act were published in the Journal of Laws of 1997 No. 128 item 840, of 1999 No. 64, item 729 and No. 83 item 931, of 2000 No. 48 item 548, No. 93 item 1027 and No. 116 item 1216, of 2001 No. 98 item 1071, of 2003 No. 111 item 1061, No. 121 item 1142, No. 179 item 1750, No. 199 item 1935 and No. 228 item 2255, of 2004 No. 25 item 219, No. 69 item 626, No. 93 item 889 and No. 243 item 2426, of 2005 No. 86 item 732, No. 90 item 757, No. 132 item 1109, No. 163, item 1363, No. 178, item 1479 and No. 180, item 1493, of 2006 No. 190, item 1409, No. 218, item 1592 and No. 226 item 1648, of 2007 No. 89 item 589, No. 123 item 850, No. 124 item 859 and No. 192 item 1378, of 2008 No. 90 item 650, No. 122 item 782, No. 171 item 1056 No. 173, item 1080 and No. 214, item 1344 of 2009 No. 62 item 504, No. 63 item 533, No. 166 item 1317, No. 168 item 1323, No. 190 item 1474, No. 201 item 1540, No. 206 item 1589, of 2010 No. 7 item 46, No. 40 item 227 and 229 No. 98 item 625 and 626, No. 125 item 842, No. 127 item 857, No. 152 item 1018 and 1021, No. 182 item 1228, No. 225 item 1474 and No. 240 item 1602, of 2011 No. 17 item 78, No. 24 item 130, No. 39 item 202, No. 48 item 245, No. 72 item 381, No. 94 item 549, No. 117 item 678, No. 133 item 767, No. 160 item 964, No. 191 item 1135, No. 217 item 1280, No. 233 item 1381 and No. 240 item 1431 and of 2012 item 611.

manner other than by means of a decision on withdrawal of industrial security clearance referred to in art. 66 of the Act of 5 August 2010 on protection of classified information;

6) economic operators with their seat or place of residence in a country other than the countries referred to in art. 131d para. 1, subject to art. 131d para. 2.

2. Upon request and within the scope indicated by the contracting authority, the economic operator is obliged to prove respectively, no later than on the day of submitting the requests to participate in the procedure or submitting tenders, that they meet the requirements referred to in art. 22 para. 1 and that there are no grounds for exclusion on the basis of failing to meet the requirements stipulated in para. 1.

3. Information constituting grounds for loss of credibility of the economic operator, indicating the possibility of their loss of ability to protect classified information that is subject to protection in line with the provisions on protection of classified information.

4. The contracting authority may retract from justifying the decision on exclusion if the information received from entities relevant for national internal and external security constitute a reason for excluding the economic operator due to a threat to national security, constitutes classified information and the revealing party reserved that the information included in the document shall not be revealed.

5. The contracting authority may waive the obligation to exclude from the contract award procedure such economic operators, to whom the grounds for exclusion laid down in art. 24 para. 1 point 2 or 3 apply, if appropriate reservation has been provided for in the contract notice.

Article 131f.

1. The contracting authority shall present the economic operator competing for a contract f in the field of defence and security all the classified information necessary to perform a contract on condition that the economic operator guarantees to keep the classified information secret in a manner determined in provisions on protection of classified information.

2. The contracting authority shall inform the economic operator on their responsibility to protect classified information received in the course of contract award procedure in the field of defence and security and after its conclusion, in a manner determined in provisions on protection of classified information.

3. The contracting authority shall oblige the economic operator to inform their sub-contractors on their obligation to protect classified information which they received in the course of contract award procedure in the field of defence and security and after its completion in a manner determined in provisions on protection of classified information.

Article 131g.

1. In order to guarantee security of classified information the contracting authority shall determine, in specification of essential terms of contract or in contract notice, all the requirements connected with performance of contract in the field of defence and security. The contracting authority may determine in description of the subject-matter of contract in particular:

-
- 1) commitment from the economic operator and subcontractor to safeguard the confidentiality of all classified information in their possession or coming to their notice throughout the duration of the contract and after termination of the contract in the field of defense and security in a manner determined in provisions on protection of classified information;
 - 2) a commitment from the economic operator to obtain the commitment from other subcontractors to which it will subcontract during the execution of the contract to safeguard the confidentiality of all classified information in their possession or coming to their notice throughout the duration of the contract and after termination of the contract in the field of defense and security in a manner determined in provisions on protection of classified information;
 - 3) a commitment from the economic operator to supply forthwith information on new subcontractors, including their name and seat as well as information which enable the contracting authority to determine that each of them possesses the capabilities required to safeguard the confidentiality of the classified information to which they have access or which are produced when carrying out their subcontracting activities;
 - 4) right to verify or dismiss employees of the economic operator what are to participate in contract performance, both at the stage of contract award procedure as well as contract performance if this is required by protection of basic national security or is necessary to raise the security level of performed contracts.

2. In order to guarantee the security of supply, the contracting authority shall determine in description of the subject-matter of contract placed in specification of essential terms of contract or in the contract notice, the requirements connected with performance of contract in the field of defence and security. The contracting authority may determine in description of the subject-matter of contract in particular:

- 1) commitment of the economic operator to supply the documentation demonstrating to the satisfaction of obligations regarding the export, transfer and transit of goods associated with the contract in the field of defense and security, including any supporting documentation received from the EU Member State concerned;
- 2) commitment of the economic operator to determine restrictions on the contracting authority regarding disclosure, transfer or use of the products and services or any result of those products and services, which would result from export control or security arrangements;
- 3) commitment of the economic operator to supply the documentation demonstrating that the organization and location of provided supplies allows it to comply with the requirements of the contracting authority concerning security of supply set out in the contract documents, and a commitment to ensure that possible changes in its supply during the execution of the contract will not affect adversely compliance with these requirements;
- 4) commitment of the economic operator to secure the capacity to perform the contract in case of additional needs required by the contracting authority as a result of a crisis, according to agreed terms and conditions;
- 5) commitment of the economic operator to supply the documentation received from the national authorities of the economic operator regarding the fulfillment of additional needs required by the contracting authority as a result of a crisis;

6) commitment of the economic operator to carry out the maintenance, modernization or adaptation of the supplies covered by the contract;

7) commitment of the economic operator to inform forthwith the contracting authority of any change in its organization, supply performance or industrial strategy that may affect its obligations to that contracting authority;

8) commitment of the economic operator to provide the contracting authority, according to agreed terms and conditions, with all specific means necessary for the production of spare parts, components, assemblies and special testing equipment, including technical drawings, licenses and instructions for use, in the event that it is no longer able to provide these supplies.

3. In the description of subject-matter of contract, the contracting authority may determine the requirements connected with performance of contract in the field of defence and security, connected with subcontracting, which refer to:

1) indication in the tender, the share of the contract to be subcontracted, the names of subcontractors along with the subject-matter of the subcontracts for which they are proposed - in case the economic operator is not obliged by the contracting authority to select subcontractors under the procedure provided for in this chapter;

2) forthwith indication of any change occurring at the level of subcontractors during the execution of the contract,

3) application of procedure for selection of subcontractors, provided for in this chapter, for all or selected parts of contract that the contracting authority intends to subcontract;

4) conclusion of subcontracts with other bodies, under art. 131p para. 1.

4. Determination in the description of subject-matter of contract, as referred to in para. 2, may not result in Obligation of economic operator to obtain a commitment from authorities of EU Member State that would prejudice that Member State's freedom to apply, in accordance with relevant international or EU law, its national export, transfer or transit licensing criteria.

Article 131h.

1. The contracting authority may award the contract in the field of defence and security under restricted tendering or negotiated procedure with prior publication. The contracting authority may award a contract in the field of defence and security under competitive dialogue, negotiated procedure without publication or single-source procurement in circumstances stipulated in present chapter and, in the case referred to in art. 74 para. 2, also under electronic bidding.

2. In cases referred to in para. 1, first sentence, the contracting authority may select the most advantageous tender by means of electronic auction. Provisions of art. 91a-91c shall apply respectively.

3. Contracts in the field of defence and security may be awarded under competitive dialogue in following circumstances:

1) it is not possible to award a contract under restricted tendering or negotiated procedure with publication when due to particular complex nature of contract, it is not possible to describe the subject-matter of contract under art. 30 and 31 or to define objectively the legal or financial conditions of contract performance;

2) price is not the only criterion of the selection of the most advantageous tender.

4. When awarding a contract in the field of defence and security under negotiated procedure with publication or under competitive dialogue, the contracting authority may determine in the contract notice or specification of essential terms of contract that the procedure will take place in successive stages to which the contracting authority shall invite those economic operators whose tenders received the highest number of points by applying the award criteria set for the most advantageous tender

5. Contracts in the field of defence and security may be awarded under negotiated procedure without publication if at least one of the following circumstances occurs:

1) in contracts for products manufactured purely for the purpose of research and development, with the exception of quantity production to establish commercial viability or recover research and development costs;

2) in procedures previously conducted under limited tendering, negotiated procedure with publication or competitive dialogue, no request to participate in the procedure was lodged, no tender was submitted or all tenders were rejected under art. 89 para. 1 point 2 due to their incompliance with description of the subject-matter of contract, and initial terms of contract have not been significantly altered;

3) due to extreme urgency to award a contract resulting from a crisis, the periods, including the shortened periods, laid down for restricted tendering and negotiated procedure with publication cannot be complied with;

4) due to extreme urgency to award a contract resulting from reasons not attributable to the contracting authority, which could not have been foreseen, the time-limits, including the shortened time-limits, for restricted tendering or negotiated procedure with publication cannot be complied with;

5) the subject-matter of contract for supplies or services is intended for research and development services, other than the services referred to in art. 4 point 5b;

6) in case of contracts related to the provision of air and maritime transport services for the armed forces of the Republic of Poland, as well as forces responsible for security protection participating in foreign missions, if the contracting authority has to procure such services from economic operators that guarantee the validity of their tenders only for such short periods that the time-limit for restricted tendering or the negotiated procedure with publication, including the shortened time-limits, cannot be complied with; or

7) in procedures previously conducted under limited tendering, negotiated procedure with publication or competitive dialogue, all tenders were rejected on condition that initial terms of contract have not been significantly altered, and the contracting authority include in present procedure all the economic operators that submitted tenders in the previous procedure conducted under restricted tendering, negotiated procedure with publication or competitive dialogue.

6. Contracts in the field of defence and security may be awarded under single-source procurement if at least one of the following circumstances occurs:

1) circumstances referred to in art. 67 para. 1 letter 1 and b, point 5, 8 and 9;

2) due to crisis, the immediate execution of contract is required and the time-limit, including the shortened time-limits for restricted tendering or the negotiated procedure with publication cannot be complied with; or

3) due to exceptional circumstances not attributable to the contracting authority, which could not have been foreseen, the immediate execution of contract is required and the time-limit, including the shortened time-limits for restricted tendering or the negotiated procedure with publication cannot be complied with;

4) for additional supplies by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance, the length of such contracts shall not exceed 5 years; 5) within 5 years from the award of main contract, the current provider of services or works is awarded a complementary contract of the same type as the main contract on condition that the main contract was awarded under restricted tendering negotiated procedure with publication or competitive dialogue and the complementary contract was provided for in the contract notice for the main contract and is conforms as to subject-matter of contract with the basic procurement.

7. In exceptional circumstances determined by taking into account the expected service life of any delivered items, installations or systems, and the technical difficulties which a change of supplier may cause, to contracts awarded under single-source procurement under:

1) para. 6 point 4 – the requirement that the length of such contract shall not exceed 5 years, does not apply ;

2) para. 6 point 4 – the requirement that the contract shall be awarded within 5 years from the award of the main contract, does not apply.

Article 131i.

1. When awarding a contract in the field of defence and security, the contracting authority may conclude a framework agreement after having conducted the procedure, by applying respectively all provisions concerning the award of contracts under restricted tendering, negotiated procedure with publication or competitive dialogue.

2. Framework agreement shall be concluded for a period not exceeding 7 years.

3. A framework agreement may be concluded for a term exceeding seven years, in exceptional circumstances determined by taking into account the expected service life of any delivered items, installations or systems, and the technical difficulties which a change of supplier may cause.

4. In case of concluding a framework agreement for a term exceeding 7 years, the contracting authority shall include in the contract award notice the justification of the exceptional circumstances referred to in item 3.

5. Art. 101 shall apply.

Article 131j.

1. When awarding a contract in the field of defence and security under restricted tendering, negotiated procedure with publication or competitive dialogue, the contracting authority shall invite to submit tenders, initial tenders or to participate in dialogue the

economic operators meeting the conditions for participation in procurement procedure in a number indicated in the contract notice guaranteeing competition, however not less than 3.

2. If the number of economic operators meeting the conditions for participation in procurement procedure is 1 too low to guarantee real competition, the contracting authority may:

- 1) suspend the procedure and republish contract notice specifying, under provisions on deadlines for submission of requests to participate, a new deadline for submission of requests respectively under restricted tendering, negotiated procedure with publication or competitive dialogue, and notifying it to economic operators that meet conditions for participation in a procedure; or
- 2) cancel the procedure and commence new contract award procedure.

3. In case referred to in para. 2 point 1, the contracting authority shall invite to participate in the procedure all the economic operators that responded to first or second contract notice and meet the conditions for participation in the procedure.

Article 131k.

1. In case of contracts in the field of defence and security, the contract award criteria include price or price and other criteria relating to subject-matter of contract, in particular criteria referred to in art. 91 para. 2 or such criteria as life-cycle costs, cost-effectiveness, after-sales service and technical assistance, security of supply, interoperability and operational characteristics defined in specification of essential terms of contract. Provisions of executive acts issued under art. 91 para. 8 do not apply to contracts in the field of defence and security.

2. When awarding a contract in the field of defence and security under limited tendering, negotiated procedure with publication, competitive dialogue, or negotiated procedure without publication, the contracting authority shall determine in specification of essential terms of contract the contract award criteria along with their description, order of importance and manner of tender evaluation.

Article 131l.

1. The contracting authority may:

- 1) reject a bid based on grounds for rejection referred to in art. 89 para. 1,
- 2) cancel the procedure based on grounds for cancellation of procedure referred to in art. 93 para. 1 and 1a

- on condition that they were determined in the contract notice and specification of essential terms of contract in a unequivocal and exhaustive manner guaranteeing fair competition and equal treatment of economic operators.

2. The economic operator may apply to contracting authority for explanation of grounds for rejection of a tender or cancellation for a procedure determined by the contracting authority in the contract notice and specification of essential terms of contract.

3. In case of rejection of a tender due to reasons referred to in para. 1 point 1, provisions of art. 92 shall apply respectively.

4. The cancellation of a procedure due to grounds, referred to in para. 1 point 2, shall be notified to by the contracting authority to economic operators that:

- 1) competed for a contract – in case of cancellation of procedure prior to the deadline for submission of tenders,
 - 2) submitted tenders – in case of cancellation of procedure after the deadline for submission of tenders
- providing factual and legal justification.

Article 131m.

1. The contracting authority may oblige the economic operator to conclude a subcontract, by specifying in the contract notice the range of values, comprising a minimum and maximum percentage of the value of contract in the field of defence and security that shall constitute a subcontract.

2. When the provisions of this chapter refer to subcontract, it shall be understood as a written contract for pecuniary interest concluded for the purposes of carrying out the contract in the field of defence and security between successful economic operator and at least one other entity.

3. The total value of subcontracts that the economic operator is obliged to conclude cannot exceed 30% of the contract awarded to economic operator.

4. Each percent of subcontracting falling within the range referred to in para. 1 shall be considered to fulfill the subcontracting requirements that the economic operator is obliged to subcontract.

5. The economic operator, upon request of the contracting authority, shall determine in their tender the part of contract they intend to subcontract in order to meet the subcontracting requirements.

6. The economic operator shall award subcontract within a percentage value of the procurement in the field of defence and security which the contracting authority requests.

7. Subcontracting the contract does not release the economic operator from their responsibility towards the contracting authority for performance of a contract in the field of defence and security.

Article 131n.

1. The economic operator obliged to conclude a subcontract, referred to in art. 131m para. 1, shall commence a procedure for selection of subcontractor by publishing a subcontract notice. The economic operator shall apply provisions on contract notices respectively.

2. In subcontract notice the economic operator shall describe the method for evaluation whether subcontractors have met relevant conditions.

3. Provisions of para. 1 shall not apply in case of fulfilling at least one of the premises for awarding a contract under negotiated procedure without publication, single-source procurement referred to in art. 131h para. 5–7.

4. The economic operator may place in the Public Procurement Bulletin or submit to the EU Publications Office a notice on the intention to conclude a subcontract of the part of

the contract in the field of defence and security of the value less than the amounts provided for in provisions issued under art. 11 para.8.

Article 131o.

The economic operator may also fulfil requirements of the contracting authority concerning selection of subcontractor by concluding a framework agreement on subcontracting.

Article 131p.

1. In the tender, the economic operator may suggest that part of the contract in the field of defence and security, exceeding the value range as provided for in art. 131m. para. 1, will be implemented by subcontracting.

2. In the case, referred to in para. 1, the economic operator shall indicate in the tender, upon request of contracting authority, part of contract that they intend to subcontract and shall provide names (company names) of subcontractors if they have been selected.

Article 131r.

1. In the course of contract award procedure in the field of defence and security or during the execution of a contract in the field of defence and security, the contracting authority may refuse to give their consent for concluding a contract with a subcontractor proposed by the economic operator if such a subcontractor fails to meet the criteria for participation in the procedure determined for the economic operator.

2. In order to assess the fulfilment of conditions by the subcontractor, referred to in para. 1, the description of subject-matter of contract in the procedure for selection of the economic operator shall be applied, taking into account description of the subject-matter of subcontract.

3. The contracting authority shall notify the economic operator of the grounds for refusal to give consent for concluding a subcontract, indicating the conditions for participation in the procedure, which the proposed subcontractor failed to meet.

4. Provisions of art. 131s para. 1, referring to grounds for exclusion, shall apply to subcontractors.

Article 131s.

1. Provisions of art. 32-35 shall apply respectively to determining the subcontract value.

2. Provisions of art. 131n para. 1-3 and art. 131o do not apply to entrusting the execution of part of the contract in the field of defence and security awarded to economic operator if the value of subcontract is less than the amounts specified in provisions issued under art. 11 item 8.

3. In the case, referred to in para. 2, the economic operator, when concluding a subcontract, shall apply the principles of the Treaty on the functioning of the European Union, in particular equal treatment, fair competition and transparency.

Article 131t.

The economic operator shall not award a subcontract, if:

- 1) none of the subcontractors participating in the procedure for selection of subcontractors meets the participation criteria or
 - 2) none of the tenders submitted by subcontractors participating in the procedure for selection of subcontractors meets the requirements specified in subcontract notice
- and this may cause that the economic operator will fail to meet the requirements resulting from the contract in the field of defence and security.

Article 131u.

1. The following subjects shall not be considered subcontractors:

- 1) any subject over which the successful economic operator may exert a dominant influence, whether directly or indirectly, or any subject which can exert a dominant influence on the successful economic operator or which, as the successful economic operator, is subject to the dominant influence of another subject as a result of ownership, financial participation or the rules which govern it due to the fact that :
 - a) it holds more than half of shares or stocks of the subject being under its dominant influence, or
 - b) it holds more than half of votes attached to shares or stocks issued by the subject, or
 - c) is entitled to appoint more than half of the management or supervisory body of this subject;
- 2) group of subjects established for the purpose of being awarded part of the contract of economic operator;
- 3) a subject related to the group, referred to in point 2 in a manner specified in point 1.

2. The economic operator shall indicate in the tender a list of subjects that shall not be considered as subcontractors and shall update it if changes in the relationship between the parties occur.

Article 131v.

In contract award procedure in the field of defence and security:

- 1) as to provision of an information, the provisions of art. 8 para. 3, art. 51 para. 1a, art. 57 para.1, art 60d para. 1, art. 92 and art. 93 para. 3 and 5 apply respectively, however, the contracting authority may refuse to provide information if its disclosure could impede law enforcement or would be contrary to public interest, in particular to interest related to defence and security or if it might harm the lawful commercial interests of economic operators or might prejudice fair competition between them;
- 2) the economic operator may present a different document certifying in sufficient manner the fulfilment of condition specified by the contracting authority, if for justified reason, the economic operator cannot present documents concerning their knowledge, experience and technical potential or personnel capable of performing a contract;

3) subjects participating in it may become familiar with classified information in the reading room of secret office of contracting authority on condition that they possess a security clearance according to provisions on protection of classified information.

Article 131w.

1. The contracting authority may provide advance payment for performance of contract in the field of defence and security, if:

- 1) such a possibility was envisaged in the contract notice or in the specification of essential terms of contract, or
- 2) economic operator was selected under negotiated procedure without publication or single-source procurement.

2. The contracting authority may provide advance payments for performance of contracts in the field of defence and security awarded under negotiated procedure without publication or single-source procurement, if:

- 1) the amount of single advance payment does not exceed 25% of the remuneration of economic operator;
- 2) the rules for providing advance payments were specified in the invitation to negotiations and remain unaltered in the course of execution of a contract.

3. Provisions of art. 151a, para. 4-7 shall apply respectively.

Chapter 5

Utilities contracts

Article 132.

1. The provisions of this Chapter shall apply to contracts awarded by the contracting entities, referred to in Article 3 para. 1 item 3, and by their associations as well as by contracting entities, referred to in Article 3 para. 1 item 4, hereinafter referred to as “utilities contracts”, subject to Article 3 para. 1 items 5, if the contract is awarded for the purpose of performing one of the following types of activities:

- 1) exploring, prospecting for or extracting gas, oil and its natural derivatives, brown coal, hard coal and other solid fuels;
- 2) the management of airports, maritime or inland ports and their provision to air, sea and inland carriers;
- 3) the creation of networks intended to provide public services connected with the production, transmission or distribution of electricity, gas or heat or supply of electricity, gas or heat to such networks or management of such networks;
- 4) the creation of networks intended to provide public services connected with the production or distribution of drinking water or supply of drinking water to such networks or management of such networks;
- 5) the operation of networks providing public services in the field of transport by railway, tramway, trolley bus, cable or with the use of automatic systems;
- 6) the operation of networks providing public services in the field of bus transport;

7) the provision of postal services.

2. The awarding entities awarding the contracts referred to in para. 1 item 4 shall apply the provisions of this Chapter also to the award of contracts related to sewage systems and waste water treatment, and to the activities related to obtaining drinking water.

3. The contracting entities awarding the contracts referred to in para. 1 item 7 shall apply the provisions of this Chapter also to contracts related to the provision of the following services: management of postal services, transmission of coded documents using electronic means of communication, management of address databases, transmission of registered electronic mail, financial, philatelic and logistical services, particularly the transportation of commodity shipments and their confectioning and storage.

Article 133.

1. This Act shall apply to the awarding of utilities contracts where the contract value is equal to or exceeds the amounts provided for in the provisions issued under Article 11 para. 8.

2. The contracting entities which award utilities contracts shall be also obliged to include in the report, referred to in Article 98, information concerning awarded utilities contracts, the value of which is less than amounts provided for in the provisions issued under Article 11 para. 8.

3. To utilities contracts, the art. 24 para. 1 item 10 and 11, art. 100 para. 2 and art.102 para. 3 does not apply.

Article 134.

1. The contracting entity may award a utilities contract by open tendering, restricted tendering or by a negotiated procedure with publication. The provisions of Article 55 shall not apply.

2. The contracting authority may conclude a framework agreement after conducting the procedure, applying accordingly the regulations relating to the award of contracts by open tendering, restricted tendering or by a negotiated procedure with publication. The provisions of Article 55 shall not apply.

3. In a restricted tendering procedure or a negotiated procedure with publication, the contracting authority may fix:

- 1) a time limit for the submission of requests to participate in a procedure, which is not shorter than:
 - a) 22 days from the day of dispatch of the contract notice to the Publications Office of the European Union by electronic means or fax,
 - b) 37 days from the day of dispatch of the contract notice to the Publications Office of the European Union in other manner than the one referred to in letter a,
 - c) 15 days from the day of dispatch of the contract notice to the Publications Office of the European Union by electronic means in line with form and procedures specified on the website, referred to in a directive;
- 2) a time limit for the submission of tenders that is not shorter than 10 days, taking into account the time required to prepare and submit a tender;

-
- 3) any time limit for the submission of tenders, provided that all the economic operators who will be invited to submit tenders, agreed on this.

3a. In case of essential changes in the contract notice, in particular referring to description of the subject-matter, size or scope of the contract, contract award criteria, conditions for participation in the procedure or the manner how the fulfilment of those conditions will be assessed, the contracting authority shall extend the time limit for submission of requests to participate in the procedure by the time needed to make changes in the requests, provided that the time limit for submission of requests to participate in the procedure shall not be less than 15 days from the day on which the change in the contract notice was submitted to the Publications Office of the European Union. The provision of Article 12a para. 2 item 2 shall not apply.

4. In the case referred to in para. 1, the contracting authority may select the best tender using an electronic auction.

5. A utilities contract may be awarded by a negotiated procedure without publication:

- 1) where any one of the circumstances referred to in Article 62 para. 1 applies;
- 2) in a previously conducted negotiated procedure with publication where no request to participate in a procedure have been submitted, no tenders have been submitted, or all tenders have been rejected based on the Article 89 para. 1 item 2 due to their inconsistency with the description of the subject-matter of contract, and the original terms of contracts have not been substantially altered.

6. A utilities contract may be awarded by single-source procedure:

- 1) where one of the circumstances referred to in Article 67 para. 1 items 1 – 5 as well as 8 and 9, occur;
- 2) where it is possible to award a contract for a price that is much lower than the market price owing to particularly advantageous circumstances existing for a very limited period of time only;
- 3) where in the case of award, within 3 years of the award of the main contract, to the hitherto economic operator of works, of supplementary contracts constituting not more than 50% of the main contract value and involving the repetition of the same type of contracts, if the main contract was awarded under the open tendering procedure, restricted tendering procedure or negotiated procedure with publication and the supplementary contract was provided in a contract notice for main contract and concerns the subject-matter of the contract described therein.
- 4) in the case of the award, within 3 years of the award of the main contract, to the hitherto economic operator of supplies, of supplementary contracts accounting for not more than 50% of the main contract value and involving the extension of supplies, if the change of economic operator would make it necessary to purchase items of different technical parameters, what would result in technical incompatibility or disproportionately serious technical difficulties in use and supervision, if the main contract was awarded under the open or restricted tendering procedure and the supplementary contract was provided for in the specification of essential terms of the contract for the main contract and concerns the subject-matter of the contract described therein.

Article 134a.

1. The contracting authority may establish a system for qualification of economic operators to which only those economic operators will be allowed who meet the conditions specified by the contracting authority in the contract notice referring to a specific category of utilities , and enter them to a list of qualified economic operators.

2. The qualification system of economic operators is established for a given period in a manner that allows the economic operators to submit requests to participate in the procedure and its update throughout the duration of the system.

Article 134b.

1. In order to establish a qualification system of the economic operator, the contracting authority shall submit a notice on establishment of qualification system for a publication in the Official Journal of the European Union .

2. If the qualification system of economic operators is established for a period longer than 3 years, a notice on establishment of a qualification is subject to annual publication in the Official Journal of the European Union.

3. The notice on establishment of qualification system of economic operators shall be made available at the website of contracting authority throughout the duration of the system.

Article 134c.

1. The economic operators applying for admittance to the qualification system of economic operator shall submit a request together with a declaration that they meet the criteria specified by the contracting authority in the notice on establishment qualification system of economic operators and, if the contracting authority requests so, they shall present documents confirming that these criteria have been met.

2. No later than within 6 months from submitting a request, the contracting authority shall select economic operators admitted to the qualification system.

Article 134d.

1. The contracting authority shall inform forthwith an economic operator on admitting or refusal to admit it to the qualification system stating the factual and legal justification.

2. Economic operators admitted to the qualification system of economic operators shall be entered into the list of qualified economic operators under appropriate category of utilities established and updated by the contracting authority throughout the duration of the system.

3. Economic operators admitted to qualification system are not obliged to submit documents certifying that they meet the criteria specified in the notice on establishment of qualification system in the course of subsequent award procedures covered by this system if the submitted documents are up-to-date within the meaning of separate provisions.

Article 134e.

1. The contracting authority may commence contract award procedure for utilities under restricted tendering or negotiated procedure with publication by placing a notice on establishment of qualification system of economic operators under art. 134b para. 1.

2. In case, referred to in para. 1, economic operators admitted to qualification system in a specific utilities sector, shall be considered as admitted to participate in contract award procedure.

Article 135.

1. At least once a year, the contracting authority may either dispatch to the Publications Office of the European Union, or post on its buyer's profile, a periodic indicative notice about the utilities contracts or framework agreements planned within the next 12 months, the value of which:

- 1) for works – is equal to or exceeds the amount provided for in the provisions issued under Article 11 para. 8 which requires that a works contract notice should be dispatched to the Publications Office of the European Union;
- 2) for supplies – when totalled up within a given group of the Common Procurement Vocabulary, subject to Article 133 para. 1, is equal to or exceeds the PLN equivalent of EUR 750 000;
- 3) for services – when totalled up within category 1 - 16 defined in Appendix 3 to the Common Procurement Vocabulary, subject to Article 133 para. 1, is equal to or exceeds the PLN equivalent of EUR 750 000.

2. The contracting authority may post the notice referred to in para. 1 on the buyer's profile after dispatching a notice on the buyer's profile to the Publications Office of the European Union by electronic means with the use of the form and procedures posted on the website referred to in the directive.

3. The provisions of para. 1 shall not apply to any planned contract for services, referred to in Article 5 para. 1, or to any planned contract to be awarded in a procedure other than open tendering, restricted tendering, negotiated procedure with publication.

4. If the contract notice was enclosed in a prior information notice about contracts envisaged for the following 12 months, dispatched or posted at "buyer's profile" at least 52 days prior to the dispatch of the contract notice to the Publications Office of the European Union, the contracting authority may fix in the open tendering the time limit for submission of tenders not less than:

- 1) 24 days – from the day the contract notice is dispatched to the Publications Office of the European Union by electronic means with the use of the form and procedures posted on the website referred to in a directive;
- 2) 31 days – from the day the contract notice is dispatched to the Publications Office of the European Union in other way than referred to in item 1.

5. The periodic indicative notice about planned utilities contracts may include a call for competition. In that case, the contracting authority, when awarding a contract by restricted tendering or by a negotiated procedure with publication, may choose not to publish the contract notice.

6. In the event referred to in para. 5, the contracting authority shall invite the economic operators who, after the publication of the periodic indicative notice, informed the contracting authority of their interest in participating in the procedure, to confirm that interest, and at the same time providing information about the time limit for the submission of the requests to participate in the procedure.

7. The provisions of Article 48 para. 2 shall apply accordingly to the invitation referred to in para. 6.

Article 136.

1. The Act shall not apply to utilities contracts for services or works awarded to, and in case referred to in Article 3 para. 1 item 3 or 4 to utilities contracts for supplies if they are granted to:

- 1) entities with which the contracting entities prepare the annual consolidated financial reports within the meaning of accounting regulations,
- 2) entities in which the contracting entities hold over half of the shares or interests, hold more than half of the votes resulting from the shares or stocks, control the managing body or are entitled to appoint over half of the members of their supervisory or management body,
- 3) entities which hold over half of the contracting entities shares or interests, hold more than half of the votes resulting from the awarding entities shares or stocks, control its managing body or are entitled to appoint over half of the members of their supervisory or management body,
- 4) entities who together with the contracting entity are subjected to the influence of another entity as specified in item 3

- if at least 80% of the average income of these entities generated over the previous 3 years by providing services, supplies or performing works came from providing services, supplies or performing works for the contracting authority or entities referred to in items 1-4.

Where the period of business activity is shorter than three years, income generated over the total period of business activity plus the projected income for the remaining part of the three-year period shall be taken into account.

2. This Act shall not apply to utilities contracts for services or works awarded by an entity established by the contracting entities for the purposes of jointly performing the activity referred to in Article 132:

- 1) to one of those contracting entities or
- 2) to an entity related to one of those contracting entities as defined in para. 1, if at least 80% of the average income of this entity generated over the previous 3 years by providing services or performing works came from services rendered to, or works performed for, the related entities as referred to in para. 1.

3. The Act shall not apply to utilities contracts awarded to an entity established by the contracting entities for the purposes of jointly performing the activity referred to in Article 132 by one of the contracting entities, provided that this entity was established for a period of at least 3 years, and the document on the basis of which it was established provides that the contracting entities shall remain its members throughout this period.

4. Upon the request of the European Commission, the contracting authority shall dispatch information in the scope, as referred to in para. 1 – 3.

5. Where more than one of the entities referred to in para. 1 provides the same or similar services, or performs the same or similar works for the contracting authority, the total income generated by those entities by providing services or performing works shall be taken into account.

Article 137.

1. The Act shall not apply to utilities contracts awarded for the purposes of performing an activity consisting in providing gas or heat to the networks referred to in Article 132 para. 1 item 3, if:

- 1) the production of gas or heat is a necessary consequence of conducting an activity other than that described in Article 132 and
- 2) the purpose of the provision of gas or heat is only to utilize the production for economic purposes, and it does not exceed 20% of the economic operator's average turnover over the period of the previous three years, including the year in which the contract is awarded.

2. The Act shall not apply to utilities contracts awarded for the purposes of performing an activity consisting in providing electricity to the networks referred to in Article 132 para. 1 item 3, if:

- 1) the production of electricity is necessary to conduct an activity other than that defined in Article 132 and
- 2) the provision of electricity is dependent solely on own consumption, and it does not exceed 30% of the total production over the period of the previous three years, including the year in which the contract is awarded.

3. The Act shall not apply to utilities contracts awarded for the purposes of performing an activity consisting in providing drinking water to the networks referred to in Article 132 para. 1 item 4, if:

- 1) production of drinking water is necessary to conduct an activity other than that defined in Article 132 and
- 2) the provision of drinking water is solely dependent on own consumption, and does not exceed 30% of the total production over the period of the previous three years, including the year in which the contract is awarded.

Article 138.

1. The Act shall not apply to utilities contracts awarded for the purposes of resale or lease the subject-matter of contract to third parties, provided that the contracting authority does not have a special or exclusive right to sell or lease the subject-matter of contract, and other entities may sell or lease it without restrictions and on the same conditions as the contracting authority.

2. The Act shall not apply to utilities contracts if awarded for the purposes of granting a concession for works, if such concessions are granted for the purpose of performing the activity referred to in Article 132.

3. The Act shall not apply to utilities contracts if awarded for the purposes of performing the activity referred to in Article 132 outside of the European Union, provided that no network or area located within the European Union is used for such performance.

4. Upon the request of the European Commission, the contracting authority shall dispatch information in the scope, as referred to in para. 1 and 2.

Article 138a.

1. The contracting authorities conducting the activity referred to in Article 132 para. 1 items 1 and 3 shall not apply this Act to award utilities contracts for supplies of electricity, gas fuels or heat and fuels used to generate energy.

2. The contracting entities conducting the activity referred to in Article 132 para. 1 item 4 shall not apply this Act to award contracts for supplies of water.

3. The contracting authority conducting the activity referred to in Article 132 para. 1 item 6 based on special rights shall not apply this Act if regular transportation services may be also provided by other carriers in the same area and on the same conditions.

Article 138b.

1. When awarding a utilities contract, the head of the contracting authority may choose not to appoint a tender committee.

2. When choosing not to appoint a tender committee, the head of the contracting authority shall specify a manner of conducting the procedure that ensures efficient awarding of contracts, individual responsibility for the performed tasks and transparency of the work

Article 138c.

1. The contracting authority may:

- 1) request the economic operators to keep any information provided under the contract award procedure confidential;
- 2) demand that the economic operators should provide documents other than those listed in the provisions issued under Article 25 para. 2 to prove their compliance with the participation requirements if necessary to evaluate such compliance;
- 3) choose not to request a deposit or a security on due contract performance;
- 4) in the case of a supply contract, reject a tender in which the proportion of commodities originating either from the member states of the European Union or from other states with which the European Community has concluded agreements on the equal treatment of entrepreneurs does not exceed 50%, if this requirement is provided for in the specification of essential terms of contract;
- 5) refrain from the obligation of excluding from the contract award procedure such economic operators being a subject of exclusion under Article 24 para. 1 item 1, 2 or 3, if such a provision was placed in the specification of essential terms of contract.

2. Where the most advantageous tender cannot be selected as two or more tenders with the same price or representing the same balance of price and other contract award criteria have been submitted, and in the specification of essential terms of contract the rejection of the tender has not been included in accordance with para. 1 item 4, the contracting authority shall choose the tender, which could not be rejected under the provisions of para. 1 item 4. Prices stated in the tenders are equal, provided that the difference between the price of the most advantageous tender and the prices of other tenders, which could not be rejected under the provisions of para. 1 item 4, does not exceed 3%.

Article 138d.

[repealed]

Article 138e.

[repealed]

Article 138f.

1. The contracting entities who, in accordance with the published decision of the European Commission operate on a competitive market access to which is not restricted shall not apply the provisions of this Act. This provision shall apply accordingly in the case where the European Commission fails to issue the decision within 7 months from the day of receiving the request, as referred to in para. 2.

2. After analysing the relevant market, the competent authority, acting either on its own initiative or at the request of the contracting authority, may lodge an application to the European Commission to rule that the contracting entities conducting the activity referred to in Article 132 operate on a competitive market access to which is not restricted.

3. The competent authority shall analyse the market in terms of the relevant activity and prepare the application in accordance with the requirements laid down in the Decision of the European Commission of 7 January 2005 concerning the detailed rules for applying the procedure envisaged in Article 30 of Directive 2004/17/EC of the European Parliament and Council on the coordination of procedures for the award of public contracts in the water, energy, transport and postal services sectors (OJ L 7 of 11.01.2005, p. 7). This application shall be harmonised with the President of the Office for Competition and Consumer Protection and with the PPO President.

4. The Council of Ministers shall indicate, by a regulation, the competent authorities to make the applications referred to in para. 2, taking into account the type of activity and the scope of operation of the relevant authorities and the competent authority's knowledge of the functioning of the relevant market in terms of a given activity.

**TITLE IV
PUBLIC PROCUREMENT CONTRACTS**

Article 139.

1. Public procurement contracts, hereinafter referred to as "procurement contracts" shall be regulated by the provisions of the Act of 23 April 1964 - Civil Code, unless the provisions of this Act provide otherwise.

2. A procurement contract shall, under the pain of nullity, require a written form, unless separate provisions require particular form.

3. Procurement contracts shall be open and shall be made accessible pursuant to rules laid down in the provisions concerning public information.

Article 140.

1. The scope of economic operator's performance resulting from the procurement contract shall be identical with the commitment undertaken in the tender.

2. [repealed]

3. The contract shall be made void in the part which exceeds the subject-matter of contract specified in the specification of essential terms of contract.

Article 141.

The economic operators, referred to in Article 23 para. 1, shall be jointly responsible for the execution of the public contract and provision of security on due performance of the contract.

Article 142.

1. A procurement contract shall be concluded for a definite duration.

2. The contracting authority may conclude a public contract, having as its subject-matter periodical or continuous services, for a period longer than 4 years, if the performance of a contract results in lower costs of the performance of contract for a longer period of time than the costs of the performance of contract in 4 year-period or it is justified by the payment capacity of the contracting authority or the scope of envisaged outlays and the period necessary for repayment.

3. If the contract value, referred to in para. 2 is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority informs the PPO President about the intention of concluding a contract for a longer period than 4 years within 3 days from the start of a procedure giving factual and legal justification.

4. The provisions of para. 3 shall not apply to contracts on:

- 1) credit and loan;
- 2) bank account, if the contract period does not exceed 5 years;
- 3) insurance, if the contract period does not exceed 5 years;
- 4) [repealed];
- 5) provision of public transport services.

5. The contract concluded for a period longer than 12 months, shall contain provisions on rules for suitable modification of remuneration rates payable to the economic operator, in case of change in:

- 1) the rate of tax on goods and services,
- 2) the amount of minimum wage determined under Art. 2 para. 3-5 of the Act of 10 October 2002 on the minimum wage,
- 3) the rules on social insurance or health insurance or the rate of social security or health insurance contributions

- if these changes will affect the cost of contract performance by the economic operator.

Article 143.

1. Contracts may be concluded for indefinite duration, if the contract subject-matter is the supply of:

- 1) water via the water and sewage network or disposal of sewage to such a network;
- 2) [repealed]
- 3) gas from the gas grid;
- 4) heat from the heat distribution network;
- 5) license for software.

1a. Contracts may also be concluded for indefinite duration where the contract subject-matter are services of transmission and distribution of electricity or natural gas.

- 1) electrical energy from the power network;

2. Article 142 para. 3 shall not apply

Article 143a.

1. In case of work contracts with the date of execution longer than 12 months, if the contract provides for a payment:

1) of remuneration payable to economic operator in parts – the condition for payment by the contracting authority of the second and subsequent parts of due remuneration for accepted works is the presentation of proof of payment of due remuneration to subcontractors and further subcontractors, referred to in art. 143c para. 1, involved in execution of works.

2) The total remuneration payable to economic operator after execution of whole works - the contracting authority is obliged to provide for advance payments, however granting of subsequent advance payments by the contracting authority requires presentation by the economic operator of proof of payment of due remuneration to subcontractor and further subcontractor, referred to in art. 143c para. 1, involved in execution of part of a contract, for which the advance payment was granted.

2. In case of failure of economic operator to provide all the proofs of payment, referred to in para. 1, suspended shall be accordingly:

- 1) payment of due remuneration for accepted works,
- 2) subsequent advance payments

- in part equal to the sum of amounts resulting from non-provided proofs of payment.

3. In case referred to in para. 1, point 1, the contracting authority may specify in specification of essential terms of contract the percentage value of the last part of remuneration, which may not be more than 10% of the remuneration payable to economic operator.

Article 143b.

1. The economic operator, subcontractor or further subcontractor of contract for works contract intending to conclude a subcontract, having works as its subject matter, is obliged during the execution of contract for works, to submit to contracting authority a draft of

subcontract, whereas subcontractor or further subcontractor is required to enclose consent of the economic operator for conclusion of a subcontract, which contest is in accordance with the draft subcontract.

2. The time limit for payment of remuneration to subcontractor or further subcontractor provided for in the subcontract may not be more than 30 days from the date of delivery of the economic operator, subcontractor or further subcontractors of the invoice or receipt confirming the execution of supply, service or work assigned to subcontractor or further subcontractor.

3. the contracting authority, within the time limit specified in accordance with art. 143d para. 1 point 2 shall submit written reservations to the draft of subcontract, having works as its subject matter:

- 1) if it does not fulfill the requirements set out in specification of essential terms of contract;
- 2) if it provides for time limit for payment of remuneration longer than specified in the para. 2.

4. Failure to submit written reservations to submitted draft of subcontract, having works as its subject matter, within the time limit specified in accordance with art. 143d para. 1 point 2 shall be deemed acceptance of the draft subcontract by the contracting authority.

5. The economic operator, subcontractor or further subcontractor of contract for works shall submit to the contracting authority a certified true copy of the subcontract, where works are its subject matter, within 7 days from the date of its conclusion.

6. The contracting authority, within the time limit specified in accordance with art. 143d para. 1 point 2, shall submit a written objection to subcontract, where works are its subject matter, in cases referred to in para. 3

7. Failure to submit a written objection to submitted subcontract, where works are its subject matter, within the time limit specified in accordance with Art. 143d para. 1 point 2 shall be deemed acceptance of the subcontract by the contracting authority.

8. The economic operator, subcontractor or further subcontractor of contract for works shall submit to the contracting authority a certified true copy of the subcontract, where supplies or services are its subject matter, within 7 days from the date of its conclusion, except for subcontracts of the value less than 0,5% of the contract value in public procurement and subcontracts, where its subject matter has been indicated by the contracting authority in the specification of essential terms of contract, as not falling under this obligation. The exemption referred to in the first sentence does not apply to subcontracts of a value of more than 50 000 PLN. The contracting authority may specify a lower value, of which the obligation to submit a subcontract shall apply.

9. In case, referred to in para. 8, if the date of payment of wages is longer than specified in the para. 2, the contracting authority shall inform the economic operator thereof and summons it to make changes in the contract under the pain of payment of contractual penalty.

10. The provisions of para. 1-9 shall apply accordingly to changes in the subcontract.

Article 143c.

1. The contracting authority shall directly pay due remuneration to a subcontractor or further subcontractor that entered into subcontract for works accepted by the contracting authority, or that entered into subcontract submitted to contracting authority, having supplies

or services as its subject matter, in case of evasion of payment respectively by the economic operator, subcontractor or further subcontractor of contract for works.

2. The remuneration, referred to in para. 1, applies only to claims arising after acceptance by the contracting authority of the subcontract, having works as its subject matter, or after the submission of a certified true copy of the subcontract, having supplies and services as its subject matter.

3. Direct payment covers only due remuneration without interests, payable to subcontractor or further subcontractor.

4. Before making direct payment, the contracting authority is obliged to allow the submission by the economic operator of written comments on the legitimacy of direct payments of wages to subcontractor or further subcontractor, referred to in para. 1. The contracting authority shall inform on the time limit for submission of comments, not less than seven days from delivery of this information.

5. In case of submission of comments, referred to in para. 4, within the time limit specified by the contracting authority, the contracting authority may:

1) not make direct payment of wages to subcontractor or further subcontractor if the economic operator demonstrates lack of justification for such payment or

2) deposit to court the amount needed to cover the remuneration of subcontractor or further subcontractor if there is substantial doubt of the contracting authority as to the amount of the due payment or to the entity to whom payment is due, or

3) make the direct payment of remuneration to subcontractor or further subcontractor if the subcontractor or further subcontractor demonstrates the legitimacy of such payment.

6. In case of direct payment to subcontractor or further subcontractor, referred to in para. 1, the contracting authority shall deduct the amount of paid remuneration from remuneration payable to the economic operator.

7. The need for multiple direct payments to subcontractor or further subcontractor, referred to in para. 1, or the need for direct payment in the amount of more than 5% of the contract value may constitute grounds for withdrawal from the contract by the contracting authority.

8. The provisions of art. 143a-143d do not infringe rights and obligations of the contracting authority, economic operator, subcontractor and further subcontractor deriving from provisions of art. 647₁ of the Act of 23 April 1964 - Civil Code.

Article 143d.

1. The contract for works includes, in particular, provisions relating to:

1) the obligation of economic operator to submit to the contracting authority of the draft of subcontract, having works as its subject matter, as well as draft of its modification, and a certified true copy of the subcontract, having works as its subject matter;

2) an indication of the time limit for submission by the contracting authority of reservations to the draft of subcontract, having works as its subject matter, and to draft of its modification or of objections to the subcontract, having works as its subject matter, and to its modifications;

3) obligation of economic operator to submit a certified true copy of concluded subcontracts, having supplies or services as their subject matter, and their modification;

4) rules for payment of remuneration to economic operator, conditional upon presentation of proof of payment of due remuneration to subcontractors or further subcontractors;

5) time limit for payment of remuneration to subcontractor or further subcontractor;

6) rules of subcontracting with further subcontractors;

7) the amount of contractual penalties due to:

a) non-payment or untimely payment of remuneration to subcontractors or further subcontractors,

b) failure to submit for acceptance to contracting authority of a draft of subcontract, having works as its subject matter, or the draft of its modification,

c) failure to submit a certified true copy of a subcontract or its modification,

d) lack of modification of the subcontract as regards the time limit for payment.

2. In cases referred to in para. 1 points 1 and 3 and art. 143b. 5 and 8, the submitter may certify a true copy of the subcontract.

Article 144.

1. 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, unless the contracting authority envisaged the possibility of conducting such a modification in the contract notice or specification of essential terms of contract and determined the terms of such modification.

2. The modification of the procurement contract done in breach of para. 1 above shall be null and void.

Article 144a.

1. The PPO President may apply to the court for invalidation of:

1) the part of the contract, referred to in Article 140 para. 3;

2) modification of the contract done in breach of Article 144 para. 1;

3) contracts, referred to in Article 146 para. 1.

2. The authorisation, referred to in Article 144a para. 1, shall expire after 4 years from the day, on which the contract was concluded or modified.

Article 145.

1. In the event of a material change of circumstances which causes that the execution of the procurement contract is no longer in the public interest, and which could not have been foreseen at the time of concluding the contract, the awarding entities may renounce a contract within a period of 30 days from the date on which they became aware of these circumstances.

2. In the case referred to in para. 1, the economic operator may demand remuneration due for the performed part of the procurement contract.

Article 146.

- 1.** A procurement contract shall be null and void if the contracting authority:
 - 1) used the negotiated procedure without publication or single-source procurement in breach of provisions of the Act;
 - 2) failed to place the contract notice in the Public Procurement Bulletin or submit it to the Publications Office of the European Union;
 - 3) conclude the contract in breach of provisions of Article 94 para. 1 or Article 183 para. 1, if this prevented the National Appeals Chamber from examining the appeal before the conclusion of a contract;
 - 4) prevented the economic operators who were not admitted to participate in a dynamic purchasing system so far from submitting indicative tenders or prevented the economic operators who were admitted to participate in a dynamic purchasing system from submitting tenders in a contract award procedure conducted under framework of that system;
 - 5) awarded a contract under framework agreement prior to the expiry of the time limit, as referred to in Article 94 para. 1, in breach of Article 101 para. 1 item 2;
 - 6) used the request-for-quotation in the breach of provisions of this Act.
- 2.** A procurement contract shall not be subject of annulment, if:
 - 1) in case, referred to in para. 1 item 1, the contracting authority had reasonable grounds to believe that it acts in compliance with the Act and the contract was concluded respectively 5 days after the notice of intention to conclude a contract was placed in Public Procurement Bulletin or 10 days after such notice was published in Official Journal of the EU; or
 - 2) in cases, referred to in para. 1 item 4 and 5, the contracting authority had reasonable grounds to believe that it acts in compliance with the Act, and the contract was concluded after the expiry of the time limit fixed in Article 94 para. 1.
- 3.** The annulment of the contract shall be in effect from the moment of its conclusion, subject to Article 192 para. 3 item 2 letter b.
- 4.** Due to reasons, referred to in para. 1 and 6, the annulment of a contract may not be requested under Article 189 of the Code of Civil Procedure of 17 November 1964 (Journal of Laws No. 43, item 296 as amended⁶).

⁶) The amendments to this Act were published in Journal of Laws of 1965 No. 15 item 113; of 1974 No. 27, item 157; and No. 39, item 231; of 1975: No. 45, item 234; of 1982: No. 11, item 82; and No. 30, item 210; of 1983: No. 5, item 33; of 1984: No. 45, item 241 and 242; of 1985: No. 20, item 86; of 1987: No. 21, item 123; of 1988: No. 41, item 324; of 1989: No. 4, item 21; and No. 33, item 175; of 1990: No. 14, item 88; No. 34, item 198; No. 53, item 306; No. 55, item 318; and No. 79, item 464; Dz. U. of 1991: No. 7, item 24; No. 22, item 92; and No. 115, item 496; of 1993: No. 12, item 53; of 1994: No. 105, item 509;] of 1995: No. 83, item 417; of 1996: No. 24, item 110; No. 43, item 189; No. 73, item 350; and No. 149, item 703; of 1997: No. 43, item 270; No. 54, item 348; No. 75, item 471; No. 102, item 643; No. 117, item 752; No. 121, item 769 and 770; No. 133, item 882; No. 139, item 934; No. 140, item 940; and No. 141, item 944; of 1998: No. 106, item 668; and No. 117, item 757; of 1999: No. 52, item 532; of 2000: No. 22, item 269 and 271; No. 48, item 552 and 554; No. 55, item 665; No. 73, item 852; No. 94, item 1037; No. 114, item 1191 and 1193; No. 122, item 1314, 1319 and 1322; of 2001: No. 4, item 27; No. 49, item 508; No. 63, item 635; No. 98, item 1069, 1070 and 1071; No. 123, item 1353; No. 125, item 1368; and No. 138, item 1546; of 2002: No. 25, item 253; No. 26, item 265; No. 74, item

5. The provision of para.1 shall not exclude the contracting authority's option to request the annulment of contract under Article 70⁵ of the Act of 23 April 1964 - Civil Code.

6. The PPO President may apply to the court for annulment of contract if the contracting authority acted or failed to act in breach of provision of the Act, what had or might have influenced the outcome of the procedure.

Article 147.

1. The contracting authority may request the economic operator to provide security on due performance of the contract, hereinafter referred to as „security”.

2. The security shall serve to cover the claims in respect of non-performance or improper performance of the contract.

3. [repealed]

4. [repealed]

Article 148.

1. The security may be provided at the economic operator's choice in one or several of the following forms:

- 1) cash;
- 2) bank sureties or guarantees of collective savings-loan fund, however the surety of collective savings - loan fund is always a financial surety;
- 3) bank guarantees;
- 4) insurance guarantees;
- 5) sureties granted by entities, referred to in Article 6b para. 5 item 2 of the Act of 9 November 2000 on the establishment of the Polish Agency for Enterprise Development.

2. With the approval of the contracting authority a security may be provided also:

- 1) bills of exchange with the surety of bank or collective savings-loan fund;
- 2) by establishing a pledge on securities issued by the State Treasury or unit of territorial self-government;

676; No. 84, item 764; No. 126, item 1069 and 1070; No. 129, item 1102; No. 153, item 1271; No. 219, item 1849; and No. 240, item 2058; of 2003: No. 41, item 360; No. 42, item 363; No. 60, item 535; No. 109, item 1035; No. 119, item 1121; No. 130, item 1188; No. 139, item 1323; No. 199, item 1939; and No. 228, item 2255; of 2004: No. 9, item 75; No. 11, item 101; No. 68, item 623; No. 91, item 871; No. 93, item 891; No. 121, item 1264; No. 162, item 1691; No. 169, item 1783; No. 172, item 1804; No. 204, item 2091; No. 210, item 2135; No. 236, item 2356; and No. 237, item 2384; of 2005: No. 13, item 98; No. 22, item 185; No. 86, item 732; No. 122, item 1024; No. 143, item 1199; No. 150, item 1239; No. 167, item 1398; No. 169, item 1413 and 1417; No. 172, item 1438; No. 178, item 1478; No. 183, item 1538; No. 264, item 2205; and No. 267, item 2258; of 2006: No. 12, item 66; No. 66, item 466; No. 104, item 708 and 711; No. 186, item 1379; No. 208, item 1537 and 1540; No. 226, item 1656; and No. 235, item 1699; of 2007: No. 7, item 58; No. 47, item 319; No. 50, item 331; No. 99, item 662; No. 106, item 731; No. 112, item 766 and 769; No. 115, item 794; No. 121, item 831; No. 123, item 849; No. 176, item 1243; No. 181, item 1287; No. 192, item 1378; and No. 247, item 1845; of 2008: No. 59, item 367; No. 96, item 609 and 619; No. 110, item 706; No. 116, item 731; No. 119, item 772; No. 120, item 779; No. 122, item 796; No. 171, item 1056; No. 220, item 1431; No. 231, item 1547; No. 234, item 1571; and of 2009: No. 26, item 156; No. 67, item 571; No. 69, item 592 and 593; No. 131, item 1075; and No. 179, item 1395 and No. 216 item 1676 and of 2010 No. 3 item 13, No. 7 item 45, No. 40 item 229, iNo. 108 item 684 and No. 109 item 724.

3) by establishing a registered pledge, in accordance with the principles laid down in the provisions concerning registered pledges and the pledge register.

3. An economic operator shall remit security to be provided in cash by bank transfer to a bank account indicated by the contracting authority.

4. In the event of a deposit made in cash an economic operator may agree to count the amount of the deposit towards the security.

5. In the event of a cash security the contracting authority shall keep it on a bank account bearing interest. The contracting authority shall return security provided in cash together with interest resulting from the bank account agreement on which it has been kept less the cost of its operation and bank commission for transfer of funds to the economic operator's bank account.

Article 149.

1. In the course of the execution of procurement contract the economic operator may change the form of security to one or several of those referred to in Article 148 para. 1.

2. With the approval of the contracting authority the economic operator may change the form of the security to one or several of those referred to in Article 148 para. 2.

3. The change of the form of security shall be made preserving its continuity and without decreasing its amount.

Article 150.

1. The amount of the security shall be determined on a percentage-wise basis in relation to the aggregate price quoted in the tender or the maximum nominal value of the contracting authority's commitment under the contract, if unit price or unit prices have been quoted in the tender.

2. A security shall be fixed at 2 to 10% of the price quoted in the tender or the maximum nominal value of the contracting authority's commitment under the contract.

3. If the time for the completion of the contract exceeds one year, the security, with the consent of the contracting authority, may be established by deductions from dues for the already performed part of supplies, services or works.

4. In the case, referred to in para. 3, an economic operator shall be required to contribute at least 30% of the security amount on the date of the contract.

5. The contracting authority shall pay the amounts deducted to the bank account on the same day on which it pays invoices.

6. In the case, referred to in para. 3, payment of the full amount of the security shall be done not later than by the end of the first half of the period for which the contract was concluded.

Article 151.

1. The contracting authority shall return the security within 30 days of the completion of the contract and acknowledgement by the contracting authority as duly performed.

2. The amount retained to secure claims for warranty for defect shall not exceed 30% of the amount of the security.

3. The amount referred to in para. 2 shall be returned not later than on the 15th day following the expiry of the period of warranty for defect.

Article 151a.

1. The contracting authority may grant an advance payment for performance of the contract, if such possibility was envisaged in the contract notice or in the specification of essential terms of contract, subject to para. 2.

2. An advance payment may be granted, if:

1) the contract is financed with the participation of:

a) funds from the European Union budget,

b) non-refundable funds from the aid granted by the EFTA Member States,

c) non-refundable funds other than listed in Article 151a para. 2 item a or b, derived from foreign sources, or

2) works are subject matter of a contract, with consideration of art. 143a para. 1 point 2.

This restriction shall not apply to local government units as well as their associations or any other units from the public finance sector, where the founding body or supervising body is a local government unit.

3. The awarding party cannot give an advance payment if the economic operator was selected by negotiated procedure without publication or in a single-source procedure.

4. The contracting authority can give subsequent advance payments provided that the economic operator evidences that it has performed the contract within the value of the advance payments received earlier.

5. The contracting authority can request from the economic operator to provide a security on the advance payment in one or more forms as listed in Articles 148 para.1 and 2.

6. The contracting authority shall request security on the advance payment if the anticipated value of advances exceeds 20% of the value of economic operator's remuneration.

7. If there is a request to provide security on the advance payment, the contract shall specify also the form or forms of the security on the advance payment, the value of the security as well as the manner how it should be provided and returned. The contract may provide possibility to change the form of the security on the advance payment in the course of performance of that contract.

8. The provisions of para. 2–4 and 6 shall not apply to the awarding entities referred to in Article 3 para. 1 point 2–7.

TITLE V PRESIDENT OF THE PUBLIC PROCUREMENT OFFICE (PPO PRESIDENT)

Chapter 1

Scope of activities

Article 152.

1. The PPO President is a central government body competent for matters concerning public contracts.
2. The PPO President shall be subordinate to the Prime Minister.
3. The PPO President shall be assisted in his work by the PPO.
4. The organisation of the PPO shall be defined by a statute issued by the Prime Minister by an order.

Article 153.

1. The PPO President shall be appointed by the Prime Minister from among persons selected in open and competitive recruitment. The Prime Minister shall recall the PPO President.

2. The PPO President may be a person who:

- 1) has higher education (title of Master or equivalent);
- 2) is Polish citizen;
- 3) enjoys all public rights;
- 4) has not been validly convicted of an offence committed intentionally or intentional treasury offence;
- 5) has managerial competences;
- 6) has at least 6 year work experience, including at least 3 year work experience on managerial position;
- 7) has education and knowledge in matters which fall within the competences of PPO President.

3. The information on recruitment for the post of PPO President shall be announced by placing the information in a place accessible to the public in the seat of PPO and in Public Information Bulletin of the PPO and Public Information Bulletin of the Chancellery of Prime Minister. The information shall include:

- 1) name and address of the Office;
- 2) name of the post;
- 3) requirements for the post resulting from the legal provisions;
- 4) range of tasks performed at the post;
- 5) indication of the required documents;
- 6) time limit and place for the submission of documents;
- 7) information on the method and recruitment techniques.

4. The time limit, referred to in para. 3 item 6, shall not be less than 10 days from the day on which the information was published in Public Information Bulletin of the Chancellery of the Prime Minister.

5. The recruitment for the post of PPO President shall be conducted by the unit, formed by the Head of the Chancellery of the Prime Minister with authorization of the Prime

Minister, which consists at least of 3 persons, whose knowledge and experience shall guarantee the selection of the best candidates. In course of recruitment procedure, the work experience, knowledge necessary to perform the tasks at the recruited post and managerial competences of the candidate shall be assessed.

6. The assessment of the knowledge and managerial competences, referred to in para. 5, shall be conducted on request of the unit by the independent person not being the unit member, who possess the appropriate qualifications to conduct such assessment.

7. The member of the unit or the person, referred to in para. 6, are obliged to keep the information concerning persons, which was obtained in course of recruitment secret.

8. In the course of recruitment, the unit shall select no more than 3 candidates, who shall be presented to the Head of the Chancellery of the Prime Minister.

9. The report from the recruitment shall be prepared, which contains:

- 1) name and address of the Office;
- 2) name of the recruited post and the number of candidates;
- 3) names, surnames and addresses of not more than top 3 candidates ordered based on the level of fulfillment of requirements specified in the recruitment notice;
- 4) information on the applied recruitment methods and techniques;
- 5) justification of the selection or the reasons for non-selection of candidates;
- 6) composition of the unit.

10. The result of the recruitment shall be announced forthwith by placing the information in the Public Information Bulletin of the Office and Public Information Bulletin of the Chancellery of Prime Minister. The information on results of recruitment shall contain:

- 1) name and address of the Office;
- 2) name of the recruited post;
- 3) names and surnames of the selected candidates along with their place of residence under provisions of the Civil Code or the information on non-selection of candidate.

11. Placement in the Public Information Bulletin of the Chancellery of Prime Minister of the recruitment notice and the notice on results of the recruitment shall be free of charge.

Article 154.

The PPO President:

- 1) prepares drafts of normative acts on public contracts;
- 2) takes decisions on individual issues stipulated in this Act;
- 3) issues by electronic means the Public Procurement Bulletin, where all the notices provided for in this Act are placed;
- 4) [repealed];
- 5) keeps and publishes on the PPO website a list of organisations authorised to submit legal protection measures;
- 5a) [repealed];
- 6) ensures the functioning of the system of legal protection measures;

-
- 7) prepares training programmes, organises and encourages training in the field of public procurement;
 - 8) prepares and disseminates standard criteria for assessment of the substance of the training;
 - 9) [repealed]
 - 10) prepares and disseminates exemplary standard forms of public procurement contracts, rules of procedures and other documents used when awarding public contracts;
 - 11) watches over observance of the public procurement system rules and in particular carries out controls of the contract award process within the scope stipulated in this Act;
 - 12) disseminates the principles of professional ethics of persons performing tasks within the public procurement system;
 - 13) aspires to provide uniform application of the procurement provisions, considering the judicature of courts and the Constitutional Court, in particular dissemination of decisions of the National Appeal Chamber, courts and Constitutional Court which refer to public procurement;
 - 14) maintains international co-operation on issues relating to public contracts;
 - 15) analyses the functioning of the system of public contracts;
 - 16) prepares and presents to the (Polish) Council of Ministers and to the European Commission annual reports on the functioning of public procurement system, including information on performance of task, referred to in point 10;
 - 17) presents to the Prime Minister an annual information on the functioning of the National Appeal Chamber, which considers the problems resulting from the adjudication;
 - 17a) presents to the Prime Minister not less than once every three years a plan on the manner of performing the tasks, referred to in point 10, for the next years;
 - 18) proposes candidates for the post of Chairman and Vice-chairman of the National Appeal Chamber;
 - 19) puts forward a motion to appoint the disciplinary agent of the National Appeal Chamber;
 - 20) carries out activities which refer to e-Procurement;
 - 21) delivers to the European Commission, every year by the 31st March, the decisions passed by the National Appeal Chamber in the previous year with regard to appeals concerning contract award procedures, where the contract was not annulled due to important public interest, referred to in Article 192, together with the justification.

Article 154a.

1. The entry on the list, referred to in Article 154 para. 5, can be applied for by the entities which operate under the regulations on:

- 1) chambers of commerce;
- 2) crafts;

-
- 3) professional self-government for certain entrepreneurs;
 - 4) employers' organisations;
 - 5) **professional self-governments for architects and construction engineers.**

2. The PPO President conducts the entry on the list, refusal of entry or the deletion from the list by means of administrative decision.

Article 154b.

[repealed]

Article 155.

1. The PPO President shall perform the tasks provided for in this Act with the assistance of no more than two Vice-Presidents.

2. The Vice-Presidents of the PPO shall be appointed by the Prime Minister from among persons selected in open and competitive recruitment at the request of the PPO President. The Prime Minister shall recall the Vice-Presidents of the PPO at the request of the PPO President.

3. The unit which conducts the recruitment for the posts, referred to in para. 2, shall be appointed by the PPO President.

4. To the manner of conducting recruitment for the posts, referred to in para. 2, the provisions of Article 153 para. 2-11 shall apply accordingly.

Article 156.

[repealed]

Chapter 2

Public Procurement Council

Article 157.

1. The Public Procurement Council shall hereby be established, hereinafter referred to as the "Council", which is an advisory and consultative body of the PPO President.

2. The Council shall in particular:

- 1) express its opinions on particularly important matters of the public contracts system presented to it by the PPO President;
- 2) give its opinion on normative acts concerning public contracts;
- 3) give its opinion on the annual reports of the PPO President concerning the functioning of the public contracts system;
- 4) establish the principles of professional ethics of persons performing tasks specified in this Act within the public contracts system;
- 5) **[repealed]**

Article 158.

1. The Council shall be composed of 10 to 15 members appointed by the Prime Minister.
2. Parliamentary groups, national self-government organisations and national entrepreneurs' organisations shall be in particular entitled to offer candidates.
3. The Prime Minister shall appoint members of the Council from among persons who:
 - 1) are Polish citizens;
 - 2) enjoy all public rights;
 - 3) have not been convicted of an offence committed in connection with a contract award procedure, bribery or any other offence committed in order to gain a financial benefit;
 - 4) have the knowledge and authority guaranteeing proper performance of the Council's tasks.
4. The Prime Minister shall appoint from among the persons, referred to in para. 1, the Chairman of the Council. The Council shall appoint the Vice-Chairman of the Council from among its members.
5. Members of the Council are entitled to remuneration for participation in the Council's works.
6. The proceedings of the Council shall be regulated by the Rules of Procedure adopted by the Council.

Article 159.

1. The term of office of the Council shall expire together with the term of office of the PPO President.
2. Membership in the Council shall expire in the event of expiry of the term of office of the Council, death of its member, his dismissal or resignation.
3. The Prime Minister shall recall a member of the Council if he ceased to satisfy one of the conditions referred to in Article 158 para. 3, and at the request of the PPO President in the event of:
 - 1) failure to fulfil the obligations of a Council's member;
 - 2) loss of authority guaranteeing proper performance of the Council's tasks;
 - 3) illness preventing him from carrying out the functions of a member of the Council.

Article 160.

1. The PPO provides assistance to the proceedings of the Council.
2. The Prime Minister shall specify, by a regulation, the amount of remuneration of the Chairman, Vice-Chairman and other members of the Council, taking into consideration performed functions and the scope of duties of the Chairman, Vice-Chairman and other members of the Council.

Chapter 3
Control of the award of contracts
Section 1
General provisions

Article 161.

1. The PPO President shall control the award of contracts.
2. The objective of controls is to prove the conformity of contract award procedures with the Act.
3. The control shall be conducted in the seat of the PPO, however control of contract award procedures concerning documents that include classified information with a “confidential” or “strictly confidential” clause, might be conducted at the seat of contracting authority.
4. The commencement of the control may be preceded by the explanatory proceeding in order to establish whether there is a justified presumption that the provisions of the Act were violated in course of the contract award procedure what might have influenced results of the award procedure.

Article 162.

1. The PPO employees shall be excluded from participation in control procedure, if they:
 - 1) participated in the procedure being the subject of control or actions directly connected with their preparation on the part of contracting authority or economic operator;
 - 2) remain in matrimony, actual relationship, consanguinity or affinity in direct line or consanguinity or affinity in indirect line up to the second degree, or is related due to adoption, legal custody or guardianship with the person acting on the part of contracting authority or economic operator in the procedure being controlled, his legal deputy or members of managing or supervisory bodies of legal persons competing for the contract, which is the subject of control;
 - 3) during three years prior to the date of the start of the award procedure being the subject of control remained in a relationship of employment or freelance agreement with the contracting authority or economic operator or was a member of managing or supervisory bodies of legal persons competing for the controlled contract;
 - 4) remain in such legal or actual relationship with the person acting on the part of the contracting authority or economic operator in the procedure being the subject of control, which may raise justified doubts as to their impartiality.
2. The employee of the PPO shall inform the PPO President about reasons of his exclusion from the participation in a control.

3. The PPO President shall decide on the exclusion of the employee by means of a decision.

Article 163.

1. In course of the explanatory proceeding or control, the PPO President may:

1) request from the head of the contracting authority to submit the contract award procedure documentation which is certified by the head of the contracting authority to be in conformity with the original;

2) request from the head of the contracting authority or from its employees and other subjects written explanations in cases concerning the subject of control;

3) ask for the expert's opinion, if the establishment or the assessment of the actual state of the case or conduct of other control activities requires specific knowledge.

2. The expert shall be entitled to remuneration covered by the PPO President, in the amount determined in accordance with provisions of the Chapter 2 title III of the Act of 28 July 2005 on the court costs in civil cases (Journal of Laws of 2010, No. 90 item 594 as amended⁷).

3. The factual state of the case shall be based on the whole evidence gathered in the course of the explanatory proceeding and control, in particular based on the award procedure documentation, explanation of the head and employees of the contracting authority, expert's opinions and explanations of other subjects.

Article 164.

1. Following the control a control report shall be prepared.

2. The control report shall include in particular:

1) name (company name) and address of the contracting authority;

2) date of commencement and end of a control;

3) names of persons performing the control;

4) indication of the contract award procedure, which was the subject-matter of the control;

5) information on findings of breaches.

Section 2

Ad hoc control

Article 165.

1. The PPO President shall commence an ad hoc control ex officio or on request in case of justified presumption, that in course of the contract award procedure a breach of the provisions of the Act appeared, which might have influenced the result.

⁷ The amendments to consolidated version of this Act were published in Journal of Laws of 2010 No. 152 item 1016 and No. 197 item 1307 and of 2011 No. 92 item 531, No. 106 item 622, No. 149 item 887, No. 163 item 981 and No. 240 item 1431

2. The ad hoc control may be commenced not later than within 4 years from the day of the end of the contract award procedure. If the control is commenced before the conclusion of public contract, the provisions of Article 169 para. 3, Article 170 para. 2 and 4, and Article 171 para. 1, 3 and 5 shall apply.

3. The PPO President shall inform the applicant on the commencement of the ad hoc control or on the refusal of commencement of ad hoc control, indicating the justification of the lack of circumstances, as referred to in para. 1.

4. The PPO President commence an ad hoc control on request of the management authority, referred to in provisions on the National Development Programme, in provisions on rules of development policy and in provisions on implementation of cohesion policy programmes in the 2014-2020 financial perspective or in provisions on support for rural development by the European Agricultural Fund for Rural Development, or in provisions on social assistance, hereinafter referred to as “the management authority”, if based on the justification of request, there is a justified presumption that in course of contract award procedure the breach of provisions of the Act appeared, which might have influenced its outcome.

Article 166.

1. The end of the ad hoc control shall be the submission of information on the result of ad hoc control, which contains in particular:

- 1) description of the contract award procedure, which was the subject-matter of the control;
- 2) information on confirmation of breach or lack of breach.

2. In case of reservations, as referred to in Article 167 para. 1, the end of the ad hoc control shall be the submission to the contracting authority of information on the final resolution of reservations.

Article 167.

1. The contracting authority shall have the right to make justified reservations to the PPO President within 7 days from the submission of information on the result of ad hoc control.

2. The PPO President shall examine the reservations within 15 days from the date of their receipt. In case of not admitting reservations, the PPO President shall dispatch those reservations for an opinion to the National Appeal Chamber.

3. The National Appeal Chamber composed of 3 members shall prepare an opinion on the reservations in form of resolution, within 15 days from the date of their receipt.

4. The opinion of the National Appeal Chamber is binding for the PPO President.

5. The PPO President shall forthwith inform the head of the contracting authority about the final examination of the reservations.

6. Article 188 shall apply accordingly to the members of the National Appeal Chamber who examine the reservations.

Article 168.

In case of disclosed breach of the provisions of this Act, the PPO President may:

- 1) [repealed];
- 2) impose a financial penalty referred to in Title VII;
- 3) apply to the court for the annulment of procurement contract in its entirety or in part.

Article 168a.

In case of disclosure of breach of the Act constituting a violation of public finance discipline, the President of PPO notifies the competent agent for public finance discipline of the breach of public finance discipline.

Section 3

Ex-ante control of contracts co-financed from the EU funds

Article 169.

1. The provisions of this Section shall apply to contracts or framework agreements co-financed by the EU funds.

2. The PPO President shall conduct control of the awarded contracts prior to the conclusion of contract (ex-ante control), if the value of contract or framework agreement for:

- 1) works - is equal to or exceeds the PLN equivalent of EUR 20 000 000;
- 2) supplies or services - is equal to or exceeds the PLN equivalent of EUR 10 000 000.

3. The submission of the copy of the contract award procedure documentation to the PPO President shall commence the ex-ante control.

4. On request of the management authority, the PPO President may refrain from conducting ax-ante control, if based on the assessment of the management authority, the contract award procedure was conducted in accordance with provisions of the Act. The PPO President shall forthwith dispatch such an information to contracting authority and to applicant.

Article 170.

1. The contracting authority shall forthwith, after the National Appeal Chamber passes its judgement or decision which ends the appeal procedure, with regard to the selection of the best tender, or after the expiry of the time limit for lodging the appeal, but prior the conclusion of contract, submit to the PPO President the copies of the documentation of contract award procedure, confirmed by the contracting authority's manager to be in conformity with the original, for the purposes of conducting a ad-hoc control.

2. The contracting authority shall forthwith inform the PPO President about appeal or complaint being lodged after dispatch of the documentation for ex- ante control. The PPO President shall refrain from conducting the ex- ante control until the National Appeal

Chamber passes the judgement or decision which ends the appeal procedure, without prejudice to Article 183 para. 2.

3. In case of tender for lots where the value of separate lots is less than the amounts, as referred to in Article 169 para. 2, The PPO President may refrain from conducting control, and shall notify it to the contracting authority immediately after the receipt of the copy of documentation, as referred to in para. 1.

4. The start of ex-ante control shall suspend the time limit during which an economic operator must maintain his tender, until the end of control.

Article 171.

1. The end of an ex-ante control shall be the submission to the contracting authority of the information on the result of the control, which contains in particular:

- 1) description of the contract award procedure, which was the subject-matter of the control;
- 2) information on confirmation of breach or lack of breach.
- 3) post control recommendations – if in course of the control the cancellation of the procedure or removal of the confirmed breaches was found legitimate.

2. In case of making reservations, as referred to in Article 171 a, the submission to the contracting authority of the information on the final resolution of reservations shall end the control procedure.

3. The submission of information on control results shall occur not later than within 14 days from the day of submission of the documentation, as referred to in Article 163 para. 1, and in case of the highly complicated control- not later than within 30 days from the day of submission of the documentation, as referred to in Article 163 para. 1.

4. Until the submission of the information, as referred to in para. 1, the contract shall not be concluded.

5. The head of the contracting authority, shall inform in writing the PPO President on the manner of performing post control recommendations.

Art. 171a.

The contracting authority shall have the right to make justified reservations to the PPO President within 7 days from the submission of the information on the control results. The provisions of Article 167 para. 2-6 shall apply accordingly.

Chapter 4 National Appeal Chamber

Article 172.

1. The National Appeal Chamber hereinafter referred to as the “Chamber” shall be established by the PPO President and shall be competent for the examination of the appeals lodged in contract award procedures.

2. The bodies of the Chamber are:

-
- 1) Chairman;
 - 2) Vice-chairman;
 - 3) General Assembly composed of the members of the Chamber.
- 3.** The Chairman of the Chamber conducts the works of the Chamber, in particular:
- 1) represents the Chamber outside;
 - 2) presides over the General Assembly;
 - 3) fixes the dates of sessions of adjudication panels and orders the joint examination of the appeals;
 - 4) appoints the adjudication panel of the Chamber for examination of the appeal, including its Chairman;
 - 5) supervises the efficiency of the Chamber's work;
 - 6) submits to the PPO President, the annual information on the functioning of the Chamber considering the problems resulting from the adjudication, after it is passed by the General Assembly.
- 3a.** The Chairman of the Chamber shall define, by means of a regulation, the internal operational code of conduct of the Chamber.
- 4.** The General Assembly of the Chamber:
- 1) prepares and passes the annual information on functioning of the Chamber considering the problems resulting from the adjudication;
 - 2) appoints the composition of the disciplinary court;
 - 3) examines the appeal against the decision of the disciplinary court;
 - 4) examines and gives opinion other subject matters submitted by the PPO President or raised by members of General Assembly.
- 5.** The PPO President calls the General Assembly of the Chamber at least two times a year, and at written request of at least half of its members or the chairman of the disciplinary court within 14 days of the date it was put forward. The resolutions of the General Assembly are passed by a majority vote in the presence of at least half of the Chamber's composition; in case of equal number of votes, the Chairman of the Chamber has a casting vote.

Article 173.

1. The composition of the Chamber consists of no more than 100 members appointed and dismissed by the Prime Minister from among persons satisfying the requirements, referred to in para. 2, who obtained the best results in qualifying procedure.

2. A person eligible to become member of the Chamber::

- 1) is a Polish citizen;
- 2) has higher law education;
- 3) has full legal capacity to enter into legal transactions;
- 4) enjoys all public rights;
- 5) has an unblemished reputation;
- 6) has not been validly convicted of offences committed intentionally;

-
- 7) has minimum 5 year work experience in public administration or at the positions connected with giving legal advice, preparing legal opinions, preparing drafts of legal acts as well as acting before courts and offices.
 - 8) is at least at the age of 29.

3. Chairman and Vice-chairman of the Chamber shall be appointed for a three-year term of office by the Prime Minister upon request of PPO President from among Chamber members having security clearance for access to classified information with a “strictly confidential” clause or who submitted a statement of consent for verification procedure referred to in art. 22 para.1 point 2 of the Act of 5 August 2010 on protection on classified information, which aims at establishing whether the person, subject to verification, provides a guarantee of confidentiality. Art. 174 para. 5 shall apply respectively to dismissal of Chairman and Vice-chairman of the Chamber before the expiry of their term of office.

3a. The Prime Minister dismisses the Chairman and Vice-chairman of the Chamber in case of a refusal to issue of withdrawal of security clearance referred to in the Act of 5 August 2010 on protection of classified information.

4. The employment relationship is established based on the appointment and date fixed in the appointment act. The PPO President shall perform actions within the labour law concerning the members of the Chamber. In matters concerning the employment relationship of the members not regulated by this Act, the provisions of the Act of 26 June 1974 - Labour Code (Journal of Laws of 1998 No. 21 item 94 as amended⁸) shall apply accordingly.

5. Prior to undertaking their responsibilities, the members of Chamber are obliged to take an oath before the Prime Minister by repeating the following words: „I hereby solemnly swear to diligently fulfil the duties of the member of Chamber, to act being guided by the principles of dignity and honesty”; the oath can be ended with “so help me God”. The members of the Chamber confirm the taking of the oath by subscribing their signatures thereto.

6. The basis for determining the base remuneration for the Chairman and the Vice-chairman, as well as the other members the Chamber is the multiple base amount determined in the budget act for the given year, pursuant to Article 9 para. 1 item 2 of the Act of 23 December 1999 on the remuneration in the state-budget sector and on amending certain acts (Journal of Laws No. 110 item 1255, as amended⁹) for the employees of the state-budget sector referred to in Article 5 item 1 letter a) of that Act;

7. The members of the Chamber are entitled for seniority anniversary reward, starting from the 6th year of work, which amounts to 5% of the monthly base remuneration and increases 1% after each year of work, until it reaches 20% of the monthly base remuneration.

8. The members of the Chamber are entitled for anniversary reward, which amounts to:

⁸ The amendments to the consolidated text of this Act were published in the Journal of Laws of 1998 No. 106 item 668 and No. 113 item 717, of 1999 No. 99 item 1152, of 2000 No. 19 item 239, No. 43 item 489, No. 107 item 1127 and No. 120 item 1268, of 2001 No. 11 item 84, No. 28 item 301, No. 52 item 538, No. 99 item 1075, No. 111 item 1194, No. 123 item 1354, No. 128 item 1405 and 154 item 1805, of 2002 No. 74 item 676, No. 135 item 1146, No. 196 item 1660, No. 199 item 1673 and No. 200 item 1679, of 2003 No. 166 item 1608 and No. 213 item 2081, of 2004 No. 96 item 959, No. 99 item 1001, No. 120 item 1252 and No. 240 item 2407, of 2005 No. 10 item 71, No. 68 item 610, No. 86 item 732 and No. 167 item 1398 and of 2006 No. 104 item 708 and No. 133 item 935, No. 217 item 1587 and No. 221 item 1615; of 2007 No. 64 item 426, No. 89 item 589, No. 176 item 1239, No. 181 item 1288 and No. 225 item 1672; of 2008 No. 93 item 586, No. 116 item 740, No. 223 item 1460 and No. 237 item 1654; of 2009 No. 6 item 33, No. 56 item 458, No. 58 item 485, No. 98 item 817, no. 99 item 825, No. 115 item 958, No. 157 item 1241 and No. 219 item 1704 and of 2010 No. 105 item 655.

-
- 1) 75% of the monthly remuneration- after 20 years of work;
 - 2) 100% of the monthly remuneration- after 25 years of work;
 - 3) 150% of the monthly remuneration- after 30 years of work;
 - 4) 200% of the monthly remuneration- after 35 years of work;
 - 5) 300% of the monthly remuneration- after 40 years of work;
 - 6) 350% of the monthly remuneration- after 45 years of work.

9. The work period, which entitles for anniversary reward, includes all the previous employment periods and other periods, if they, in view of separate provisions, are to be included in the work period, which determines the employee rights. The provisions on anniversary reward, referred to in provisions on the public office employees, shall apply accordingly to evaluation and payout of anniversary reward.

10. The Prime Minister shall determine by means of a regulation, the multiple base amount, referred to in para. 6, considering the function performed by a member of the Chamber and the fact, that the multiplicity of the base amount cannot be less than 4,5.

11. The organizational- technical support and accountant service for the Chamber are provided by the Office.

Article 174.

1. The membership in the Chamber cannot be joined with:

- 1) mandate of the Member of Parliament or Senator,
- 2) a mandate of the councillor, borough leader (mayor, president of the city) or the membership in board of poviats or voivodships;
- 3) a membership in regional clearing chamber or self governmental appeal bodies;
- 4) membership of a political party or performance of political function.

2. The Chamber members may not:

- 1) take up additional employment and other paid work, except for the work as teaching staff, academic teacher or a research worker if it is less than the full time work at this position, if this employment does not interfere with the duties as a member of the Chamber;
- 2) perform business activity individually or together with other persons, as well as manage such activity or be a representative or plenipotentiary in conducting such activity;
- 3) be a member of board, a supervisory board or an audit committee or plenipotentiary of commercial companies;
- 4) be a member of foundation board, which performs business activity;
- 5) own more than 10% of stocks or shares which accounts for more than 10% of the seed capital of such commercial companies..

3. A member of the Chamber shall submit to the PPO President by 31 March of each year a statement on:

- 1) currently pending penal procedures against him together with information about the subject-matter of these procedures;

-
- 2) his financial standing as for 31 December of the previous year by using accordingly the form, specified in provisions on restriction of performing economic activities by persons performing public functions.

4. Membership in the Chamber shall expire in the event of the death of its member or his dismissal.

5. The Prime Minister shall recall the member of the Chamber in case of:

- 1) loss of Polish citizenship;
- 2) loss or restriction of capacity to enter into legal transactions;
- 3) loss of the public rights;
- 4) loss of authority which gave a guarantee of the correct fulfilment of responsibilities of a member of the Chamber;
- 5) valid conviction for an offence committed intentionally or intentional tax fraud;
- 6) expiry of the 6 month period of suspension, referred to in Article 176 para. 1;
- 7) the disciplinary sanction resulting in exclusion from the composition of the Chamber;
- 8) failure to submit one the statements, referred to in para. 3;
- 9) refusal to take an oath;
- 10) failure to take the post within the time limit specified in the act of appointment
- 11) motion of dismissal put forward by the member of Chamber.

6. The members of the Chamber, within the scope of the responsibilities provided for in the Act, exercise the right to the legal protection for the public functionaries.

7. The members of the adjudication panels of the Chamber are independent and bound solely by the provisions of the binding law.

Article 175.

1. The members of Chamber are liable for the disciplinary responsibility for breach of the duties and professional dignity.

2. The disciplinary penalties are:

- 1) admonition;
- 2) dismissal from the performed function;
- 3) exclusion from the composition of the Chamber.

3. The penalty, referred to in para. 2 item 2, means the inability to perform the function of Chairman, Vice-chairman, Disciplinary agent or a member of disciplinary court for 3 years.

4. In disciplinary matters concerning the members of the Chambers, the following bodies are authorized to give a ruling:

- 1) in the first instance- disciplinary court in composition of 5 members of the Chamber, appointed by the General Assembly form among the members of the Chamber;

2) in the second instance- General Assembly of the Chamber.

5. The disciplinary agent acts as the prosecutor before the disciplinary court. The Prime Minister at the request of the PPO President shall appoint a disciplinary agent from among the members of the Chamber for the 3-year term of office. The disciplinary agent may be dismissed at any time and performs its duties until the new disciplinary agent is appointed.

6. The disciplinary ruling issued in the second instance may be appealed before the appeal court- industrial and national insurance tribunal, competent for the seat of the Office, within 14 days from the date of submission of the ruling together with the justification. There is no complaint for annulment against the decision of the appeal court.

7. The detailed course of the disciplinary proceeding and selection of adjudication panel of the disciplinary court are specified in the rules of procedure passed by the General Assembly of the Chamber.

Article 176.

1. The Prime Minister shall suspend the member of the Chamber in his rights and obligations in case of accusation of committing the offence intentionally or intentional tax fraud.

2. The suspension period, referred to in para. 1, shall last until the end of the criminal proceedings, however not more than 6 months.

3. During the suspension period, the member of the Chamber has the right to receive half of the remuneration.

Article 176a.

1. The members of the Chamber are selected by qualifying procedure, which consists of:

- 1) a written exam in theoretical and practical knowledge of the contract award procedure rules
- 2) an interview.

2. The notice on qualifying procedure for the members of the Chamber is issued by the Prime Minister at the request of the PPO President, if the increase in composition of the Chamber is needed.

3. The notice, referred to in para. 2, is placed in the Public Information Bulletin of the Office and Chancellery of the Prime Minister, as well as in the national daily.

4. The notice shall include:

- 1) information on the number of persons to be appointed in the given qualifying procedure;
- 2) time limit and place for collecting the applications; however the time limit shall not be less than 30 days of the date of the notice;
- 3) list of the documents to be enclosed to the application for the member of the Chamber;
- 4) The date of the qualifying procedure, referred to in para. 1;
- 5) minimum number of points to be obtained.

5. In order to the conduct the qualifying procedure for the members of the Chamber, the Prime Minister appoints the qualifying committee, which consists only of persons whose knowledge and experience in the field of rules for conducting contract award procedures as well as authority guarantee the correct and impartial conduct of the contract award procedure.

6. If in qualifying procedure the minimum number of points is received by a smaller number of persons than the limit specified in the notice, referred to in para. 4 item 1, the Prime Minister shall call the supplementary qualifying procedure for the members of the Chamber within 30 day of the end of the previous qualifying procedure. The provisions of para. 1-5 shall apply.

7. The Prime Minister specifies by means of a regulation of the manner of conducting the qualifying procedure, referred to in para. 1-6, the manner of appointing the qualifying committee, as well as the scope of the qualifying procedure, taking into consideration the need to ensure objective verification of candidate's theoretical and practical preparation, the efficient conduct of the appeal procedure and the fact that documents containing information subject to personal data protection and in particular the information from the National Register of Criminal Records may be required to confirm a candidate's compliance with the conditions referred to in Article 173 para. 2.

Chapter 5

[repealed]

TITLE VI

LEGAL PROTECTION MEASURES

Chapter 1

Common provisions

Article 179.

1. Legal protection measures specified in this Title 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 this Act by the contracting authority.

2. Legal protection measures against the contract notice and specification of essential terms of contracts shall be also available to organisations entered in the list, referred to Article 154 item 5.

Chapter 2

Appeal

Article 180.

1. An appeal shall only be admissible against actions incompliant with the Act, performed by the contracting authority in the course of contract award procedure or against failure to act which the contracting authority is bound to perform under this Act.

2. If the value of contract award procedure is less than the amounts specified in provisions issued on the basis of the Article 11 para. 8, the appeal shall solely be admissible against actions:

- 1) choice of the negotiated procedure without publication, single-source procurement and request for quotation;
- 2) description of the method used for the evaluation of the fulfilment of conditions for participation in the contract award procedure;
- 3) exclusion of the appellant from the contract award procedure;
- 4) rejection of tender of appellant.

3. The appeal should indicate the contracting authority's action or failure to act which is challenged as incompliant with the Act, contain a brief summary of the charges, define the demand and indicate the factual and legal circumstances which justify the lodging of the appeal.

4. The appeal should be lodged with the President of the Chamber in writing or by electronic means with a secure electronic signature verifiable using a valid qualified certificate.

5. The appellant should dispatch a copy of the appeal to the contracting authority before the expiry of the time limit for lodging the appeal, so that the contracting authority is able to become familiar with the appeal before the end of that time limit. It is implied that the contracting authority might become familiar with the appeal before the end of the time limit for filing the same, if a copy thereof was sent before the expiry of the time limit for filing, by one of the means defined in Article 27 para. 2.

Article 181.

1. The economic operator or the participant of design contest may, within the time limit for lodging an appeal, inform the contracting authority of the action taken by the contracting authority incompliant with the Act or against failure to act which the contracting authority is bound to perform under this Act against the provisions of the Act or failure to act which the contracting authority was obligated to take under the Act, both subject of appeal under Article 180 para. 2.

2. If the provided information is found admissible, the contracting authority shall repeat the action or take the omitted action, notifying this to the economic operators in the manner provided for that action in the Act.

3. Against the actions, referred to in para. 2, the appeal shall not be lodged, subject to Article 180 para. 2.

Article 182.

1. The appeal should be lodged:

- 1) within 10 days from the date of dispatch of information on the contracting authority's action subject of appeal was sent, if the information was dispatched in the manner specified in Article 27 para. 2, or within 15 days – if it was dispatched in any other manner, in case of contracts with the value equal to or exceeding the amounts specified in provisions issued under Article 11 para. 8;

2) within 5 days from the date of dispatch of information on the contracting authority's action subject of appeal was sent, if the information was dispatched in the manner specified in Article 27 para. 2, or within 10 days – if it was dispatched in any other manner, in case of contracts with the value less than the amounts specified in provisions issued under Article 11 para. 8;

2. The appeal against the contract notice, and if the procedure is conducted under open tendering procedure, also against the specification of essential terms of contract shall be lodged within:

1) 10 days from the date of publication of contract notice in the EU Official Journal of the EU or publication of the specification of essential terms of contract on the website – if the value of the contract is equal to or exceeding the amounts specified in the provisions issued under Article 11 para. 8;

2) 5 days from the day on which the contract notice was placed in the Public Procurement Bulletin or publication of the specification of essential terms of contract on the website – if the value of the contract is less than the amounts specified in the provisions issued under Article 11 para. 8.

3. Appeal against actions other than those specified in para. 1 and 2 shall be lodged:

1) in the case of contracts with value equal to or exceeding the amounts specified in provisions issued under Article 11 para. 8 – within 10 days from the date on which one have become or with due diligence may have become aware of the circumstances constituting the basis thereof,

2) in the case of contracts with value less than the amounts specified in provisions issued under Article 11 para. 8 – within 5 days from the date on which one have become or with due diligence may have become aware of the circumstances constituting the basis thereof.

4. If the contracting authority failed to publish the notice of intention to conclude the contract or, in spite of such obligation, failed to dispatch to the economic operator a notice of selection of the best tender, or failed to invite the economic operator to submit a tender within a dynamic purchasing system or a framework agreement, the appeal shall be lodged not later than within:

1) 15 days from the date on which the contract award notice was placed in the Public Procurement Bulletin and published in the EU Official Journal, and in the case of a contract awarded under negotiated procedure without publication, single-source procurement or request-for-quotations – publication of the contract award notice together with justification;

2) 6 months from the conclusion of contract, if the contracting authority:

a) failed to publish the contract award notice in the EU Official Journal; or

b) published in the EU Official Journal the contract award notice which does not contain justification for awarding the contract under negotiated procedure without publication or single-source procurement;

3) 1 month from the conclusion of contract, if the contracting authority:

a) failed to place contract award notice in the Public Procurement Bulletin; or

b) placed in the Public Procurement Bulletin contract award notice which does not contain the justification for awarding the contract under negotiated procedure without publication or single-source procurement or request-for-quotations.

5. In case of appeals lodged against the contract notice or the specification of essential terms of contract, the contracting authority may extend the time limit for submission of tenders or time limit for submission of requests.

6. In case of appeals lodged after the expiry of the time limit for submission of tenders, the period during which the economic operator must maintain his tender shall be suspended until the judgment is passed by the National Appeal Chamber.

Article 183.

1. In case of appeal being lodged, the contracting authority may not conclude a contract until the Chamber passes its judgment or decision which ends the appeal procedure, hereinafter referred to as “ruling”.

2. The contracting authority may put forward a motion to the Chamber in order to revoke the ban on conclusion of contract, referred to in para. 1. The Chamber may revoke the ban on conclusion of a contract, if non conclusion of a contract might cause a negative effects for public interest, in particular in the field of defense and security, exceeding the benefits related to the necessity of protecting of all interests, with reference to which a possibility of sustaining a loss due to actions conducted by the contracting authority in contract award procedure occurs.

3. The motion referred to in para. 2 shall be examined by the adjudication panel of the Chamber, appointed to examine the appeal. The provisions of Article 188 para..3 –7 shall apply.

4. The Chamber examines the motion, referred to in para. 2, at closed session by means of a resolution, not later than within 5 days from the date when the motion is put forward. The decision of the Chamber shall not be subject of complaint.

5. The Chamber shall discontinue, by means of a decision, the procedure launched as a result of the filing of the motion, referred to in para. 2, if examining the appeal became groundless, in particular due to:

- 1) the Chamber passing its ruling before the motion is examined;
- 2) withdrawal of the motion.

6. The motion, referred to in para. 2, may be put forward by the contracting authority in writing, by fax or electronic means.

Article 184.

The contracting authority calls upon the economic operators, under the pain of exclusion from the procedure, not later than 7 days prior to the expiry of the deposit, to prolong the validity of the deposit or to pay a new deposit for a period necessary for the security of the procedure until the conclusion of the contract. after the final examination of the protest. If the appeal was lodged after the selection of the best (most advantageous) tender, the call is addressed only to that economic operator whose tender was selected as best (most advantageous).

Article 185.

1. The contracting authority shall forthwith dispatch, not later than within 2 days from the date of receipt, a copy of appeal to all other economic operators who participate in the contract award procedure, and if the appeal refers to the content of contract notice or

provisions of specification of essential terms of contract, shall also place it also on the website, where the contract notice is placed or specification is made available, calling upon the economic operators to access the appeal procedure.

2. The economic operator expresses the accession to the appeal procedure within 3 days of the date of receipt of the copy of appeal, indicating the party, on whose side it accesses, and the interest in obtaining the adjudication in favour of the accessed party. The notification of accession to shall be submitted to the President of the Chamber in writing or by electronic means with a secure electronic signature verifiable using a valid qualified certificate., and a copy thereof shall be dispatched to the contracting authority and to the economic operator who lodged the appeal.

3. The economic operators who accessed the appeal procedure become the participants of the appeal procedure if they have interest in the appeal being adjudicated in favour of one of the parties.

4. The contracting authority or the appellant may file an objection against the accession of another economic operator not later than by the time when the hearing is opened. The Chamber sustains the objection if the objecting party lends credence that the economic operator has no interest in obtaining the adjudication in favour of the party it accessed; otherwise, the Chamber shall dismiss the objection. The decision on sustaining or dismissing the objection may be issued by the Chamber at closed hearing. The decision on sustaining or dismissing the objection shall not be subject of complaint..

5. The actions of a participant of the appeal procedure shall not stand in contradiction to actions and declarations of the party, he chooses to support, with the proviso for the submission of an objection, referred to in Article 186 para. 3, filed by a participant who joined the procedure at the contracting authority's side.

6. The appellant and the economic operator summoned in accordance with para. 1 shall not subsequently use legal remedies with regard to the actions of the contracting authority performed in accordance with the judgement passed by the Chamber or the court or under Articles 186 para. 2 and 3.

7. Appeal procedures shall be regulated by appropriate provisions of the [Polish] Code of Civil Procedure of 17 November 1964 on the court of arbitration, unless this Act provides otherwise.

Article 186.

1. The contracting authority may file a reply to the appeal. The reply to the appeal should be filed either in writing or expressed orally in the minutes.

2. If the contracting authority recognises in its entirety the charges presented in the appeal, the Chamber may decide to discontinue the procedure in a closed hearing without the presence of the parties and the participants in the appeal procedure, who have joined the proceedings at the side of economic operator, provided that no economic operator joined the appeal procedure on the contracting authority's side within the provided time limit. In such a case, the contracting authority shall perform, repeat or revoke the actions in the contract award procedure as demanded in the appeal.

3. If a participant of the appeal procedure who joined the procedure on the contracting authority's side does not file an objection as to the full recognition of the charges presented in the appeal by the contracting authority, the Chamber discontinues the procedure and the contracting authority shall perform, repeat or revoke the in the contract award procedure as demanded in the appeal.

4. If a participant in the appeal procedure who joined the procedure on the contracting authority's side files an objection as to the full recognition of the charges presented in the appeal, the Chamber shall examine the appeal.

5. The objection should be filed either in writing or expressed orally in the minutes.

6. Costs of appeal procedure:

1) in the circumstances, referred to in para. 2, are cancelled mutually;

2) in the circumstances, referred to in para. 3:

a) are incurred by the contracting authority if the contracting authority recognised in full the charges presented in the appeal after the hearing was opened,

b) are cancelled mutually if the contracting authority recognised in full the charges presented in the appeal before the hearing was opened;

3) in the circumstances referred to in para. 4, shall be incurred by:

a) the appellant, if the appeal was dismissed by the Chamber,

b) the objecting party, if the appeal was recognised by the Chamber.

Article 187.

1. The appeal shall be examined if:

1) there are no formal shortcomings;

2) the registration fee was paid.

2. The registration fee shall be paid by the end of the time limit for appeal at the latest, and the proof of payment shall be enclosed with the appeal.

3. If the appeal cannot take a formal course due to failure to meet the formal requirements, in particular those referred to in Article 180 para. 3, failure to submit the plenipotentiaries or failure to pay the registration fee, the President of the Chamber shall summon the appellant, under the pain of return of the appeal, to correct or complete the appeal or to submit the proof of payment of the registration fee within 3 days of the date of receipt of the call. A wrong indication of the appeal or any obvious inaccuracy shall not be an impediment for the appeal to take its course and be examined by the Chamber.

4. In the summons, referred to in para. 3, the President of the Chamber advises that in the event of the failure to correct or complete the appeal or to enclose the proof of the payment of the registration fee within 3 days, the appeal shall be returned.

5. If a summons, referred to in the first sentence of para. 3, is served on the appellant earlier than 3 days prior to the end of the time limit for lodging of the appeal, the appellant may supplement the proof of payment of registration fee by the end of the time limit for the lodging the appeal at the latest.

6. If the registration fee is not paid within the time limit, referred to in para. 2, and after the ineffective expiry time limit, referred to in para. 3 and 5, the President of the Chamber shall return the appeal by means of decision. A returned appeal shall not exert any effect, provided for by the Act with reference to lodging the appeal with the President of the Chamber. The return of the appeal shall be notified to the contracting authority by the President of the Chamber by means of a copy of the decision.

7. If the failure to meet the formal requirements or failure to submit plenipotentiaries is stated by the adjudication panel of the Chamber, the provisions of para. 1–6 shall apply with the proviso that the competences of the President of the Chamber are vested in the adjudication panel of the Chamber.

8. The appellant can withdraw the appeal until the hearing is closed; in this case, the Chamber shall discontinue the appeal procedure. If the appeal is withdrawn before the opening of the hearing, the appellant shall be refunded 90% of the registration fee.

Article 188.

1. The appeal shall be examined by the Chamber, in a panel composed of a single member. The Chairman of the Chamber may order the case to be examined by a panel of three members, if it is found advisable due to the particular complexity or a precedential nature of the case. In such a case, the Chairman of the Chamber shall appoint the presiding member of the adjudication panel from among the appointed members.

2. The Chamber's adjudication panel, hereinafter referred to as the "adjudication panel", shall be appointed by the Chairman of the Chamber in an order considering date of receipt of the appeals, from the list of the Chamber members arranged alphabetically – the list is open to the parties to the appeal procedures. Exception from this order is admissible only due to illness of a Chamber member or for another important reason, which shall be stated in an order on appointment of composition the adjudication panel.

3. The change of appointed adjudication panel may occur only for reasons, referred to in para. 2 sentence 2.

4. The member of the adjudication panel shall notify in writing to the Chairman of the Chamber the circumstances, referred to in para. 2 sentence 2.

5. The member of the adjudication panel or the party of the appeal procedure shall notify to the Chairman of the Chamber the circumstances justifying the exclusion of the appointed member, in particular when there are factual or legal circumstances which may raise justified doubts as to that member's impartiality. The exclusion of a member of the Chamber or the refusal of exclusion is resolved by the Chairman of the Chamber by means of a decision which shall not be a subject of complaint.

6. If the circumstances, referred to in para. 5, pertain to the Chairman of the Chamber, his exclusion or refusal of the same shall be resolved by the Prime Minister.

7. In case of circumstances, referred to in para. 5 and 6, the Chairman shall appoint other member of the adjudication panel from the alphabetical list of the members of the Chamber.

Article 189.

1. The Chamber examines the appeal within 15 days from the date of its submission to the Chairman of the Chamber. The Chairman of the Chamber may order a joint examination of the appeals, which were lodged in the course of the same contract award procedure or refer to the same actions of the contracting authority.

2. The Chamber shall reject the appeal if it states that:

- 1) the provisions of the Act do not apply in the case in question;
- 2) the appeal was lodged by an unauthorised entity;

-
- 3) the appeal was lodged after the expiry of the time limit set in the Act;
 - 4) the appellant invokes only those circumstances which were the subject of resolution by the Chamber in case of another appeal pertaining to the same procedure, lodged by the same appellant;
 - 5) the appeal pertains to action, which was performed by the contracting authority in accordance with the judgement passed by the Chamber or court or – if the charges contained in the appeal were recognised – performed in accordance with the demand contained in the appeal;
 - 6) in the procedure where the value of the contract is less than the amounts specified in provisions issued under Article 11 para. 8, the appeal pertains to actions other than defined in Article 180 para. 2;
 - 7) the appellant failed to dispatch to the contracting authority a copy of the appeal in accordance with Article 180 para. 5.

3. The Chamber may reject the appeal in a closed session. Should the Chamber consider this necessary, it may permit the parties, witnesses or experts to participation in the session.

4. If no grounds for rejection are found, the Chamber sets the case for a hearing.

5. The Chamber shall examine the appeal in an open hearing.

6. At request of the party or ex-officio, the Chamber closes the hearing for the public in full or in part, if a secret information protected by separate legal provisions, other than the classified information within the meaning of provisions on the protection of classified information, might be disclosed while examining the appeal. In such a case, the hearing is open only for the parties concerned and their plenipotentiaries.

7. The Chamber shall examine the appeal in a closed hearing, if when examining the appeal a classified information within the meaning of provisions on protection of classified information might be revealed.

8. In the case referred to in para. 7, the Chamber may decide on examination of an appeal in a closed hearing due to essential interest of one of the parties.

9. In case of lodging the appeal concerning the award procedure in the field of defence and security that includes classified information in its documentation, the PPO President, upon request of the Chairman of the National Appeal Chamber, in order to ensure the protection of classified information, shall indicate a place for appeal examination by the National Appeal Chamber.

Article 190.

1. The parties and participants in the appeal proceedings are under obligation to adduce evidence in support of facts they derive legal consequences from. Evidence in support of their statements or against the statements of opposite party can be presented by the parties and the participants in appeal procedure until the hearing is closed.

1a. The burden of proof that the tender does not comprise an abnormally low price lies with:

- 1) the economic operator that submitted it, being a party or participant in the appeal procedure;

2) the contracting authority, if the economic operator that submitted the tender is not the participant of the appeal procedure.

2. The Chamber may admit a proof not indicated by a party.

3. Documents, statements of witnesses, expert opinions and depositions of the parties shall in particular be regarded as evidence.

4. The Chamber may appoint an expert from among persons entered in the list of court experts, maintained by the president of the competent district court, if the determination of the factual state of the case requires special knowledge. The expert shall be entitled to remuneration in the amount determined in accordance with provisions of the Chapter 2 title III of the Act of July 28 2005 on the court costs in civil cases.

5. Generally known facts and facts known ex officio shall not require the support of evidence. Evidence shall not be required in the case of facts admitted in the course of the procedure by the opposing party, if the Chamber considers that this admission raises no doubts as to its conformity with the actual state of affairs.

6. The Chamber shall refuse to examine the evidence if facts on which they are based have already been confirmed by other evidence or if they have been adduced only for the purpose of causing delay.

7. The Chamber shall assess the credibility and power of evidence at its own discretion, on the basis of a comprehensive examination of the collected material.

8. If the contract was concluded, the Chamber can conduct explanatory proceedings in order to establish the grounds for invalidation of the contract, imposing a financial penalty or shortening the term of contract.

9. The members of the Chamber shall keep confidentiality of classified information and other information included in the documents presented by parties and participants of the appeal procedure and subjects accessing the appeal procedure and shall act in the appeal procedure in line with defence and security interests.

Article 191.

1. The president of the adjudication panel shall close the hearing after having heard the evidence and having given the floor to the parties, or if in the opinion of the Chamber the case has been clarified enough.

2. When passing the judgement, the Chamber shall take as the basis the state of affairs determined in the course of the procedure.

3. The Chamber shall re-open a closed hearing if new circumstances material to the resolution of the appeal have been disclosed thereafter.

4. A judgment may only be issued by the adjudication panel before which the appeal proceedings took course.

Article 192.

1. The Chamber issues a judgement on the dismissal or admission of an appeal. In all other cases the Chamber issues decisions.

2. The Chamber shall admit the appeal, if it states the breach of the provisions of the Act which had or may have an essential influence on the result of the contract award procedure.

3. When recognising the appeal, the Chamber may:

- 1) if the public contract has not been concluded – demand performance or repetition or demand cancellation of action performed by the contracting authority; or
- 2) if the public contract has been concluded and one of the prerequisites, referred to in Article 146 para. 1, occurs:
 - a) invalidate the contract; or
 - b) invalidate the contract with regard to the unfulfilled obligations and impose a financial penalty in justified cases, in particular when return of benefits provided, under the contract being subject to invalidation, is impossible; or
 - c) impose a financial penalty or rule the shortening of the duration of contract if important public interest, in particular in the field of defense and security, requires that the contract is maintained; or
- 3) if the contract was concluded in circumstances permitted by the Act – state the violation of the provisions of the Act.

4. When adjudicating under para. 3 item 2, the Chamber shall consider all important circumstances, including the significance of violation, the contracting authority's conduct and the consequences of invalidation of contract.

5. The important public interest, within the meaning of para. 2 item 3 letter c, does not refer to economic interest directly linked to the contract concerned, encompassing in particular consequences of the costs incurred due to a delay in performance of a contract, costs resulting from the launching of a new procurement procedure, costs resulting from the change of the economic operator performing the contract and costs of legal obligations resulting from invalidation of contract. Economic interest in maintaining the contract's validity may be considered as an important public interest only where the invalidation of the contract would cause disproportionate consequences.

6. The Chamber shall not order the conclusion of a contract.

6a. The Chamber cannot invalidate a contract if this could constitute a significant threat to a broader defence and security programme necessary from the viewpoint of security interests of the Republic of Poland.

7. The Chamber may not adjudicate on any charges which were not included in the appeal.

8. In case, referred to in second sentence of Article 189 para. 1, the Chamber may pass a joint ruling in cases regarding the lodged appeals.

9. In the judgment and in the decision ending the appeal procedure the Chamber settles the issue of the costs of the appeal procedure.

10. The parties shall bear the costs of the procedure appropriately to the results thereof, subject to Article 186 para. 6.

Article 193.

The financial penalties, referred to in Article 192 para. 3 item 2 letter b and c, are imposed on the contracting authority of up to 10% of the amount of economic operator's remuneration provided for in the concluded contract, taking into account the type and scope of violation as

well as the amount of economic operator's remuneration provided for in the concluded contract, for which the penalty is being adjudicated.

Article 194.

When stating a violation of Article 94 para. 1 or 94 para. 2 or Article 183 para. 1, which was not connected with violation of any other provision of the Act, the Chamber imposes on the contracting authority a financial penalty in the amount of up to 5% of the economic operator's remuneration provided for in the concluded contract, taking into account all important circumstances related to the award of the contract.

Article 195.

1. The financial penalty shall be paid to the bank account of the Public Procurement Office within 30 days of the day, on which the ruling of the Chamber or the court imposing financial penalty becomes binding.

2. The Chairman of the Chamber or respectively the president of the court, which examined the complaint against the Chamber's ruling, shall forthwith dispatch to the PPO President a copy of the effective ruling on the imposition of financial penalty, in case of court ruling – together with a copy of the Chamber's ruling being the subject of complaint. The PPO President is the creditor within the meaning of the provisions of the Act on execution proceedings in administration.

3. The Chamber's ruling issued on grounds of Article 192 para. 3 item 2 letter b or c shall become effective respectively on the day of expiry of the time limit for lodging the complaint, or on the day the court passes a judgement dismissing the complaint – as a result of examination of the complaint against the Chamber's ruling.

4. The ruling of the court, which examines the complaint against the Chamber's ruling on the imposition of financial penalty, becomes effective on the day it is passed.

5. In case of expiry of the time limit, referred to in para. 1, the financial penalty is subject to exaction under provisions on the enforcement proceedings in administration.

6. In case of untimely payment of the financial penalty, no interest is collected.

7. The incomes from financial penalties constitute the State budget revenues.

Article 196.

1. The Chamber shall announce its ruling after closing the hearing in an open session and expresses orally the motives for its ruling. Absence of the parties shall not prevent the announcement of the ruling.

2. In a complex case, the Chamber can adjourn the announcement of the ruling for not more than 5 days. In the decision on the adjournment of the announcement of the ruling, the Chamber shall set the date of the announcement of the same. If the announcement was adjourned, it can be delivered either by the president of the adjudication panel or by a member of the adjudication panel, designated by the Chairman of the Chamber.

3. The Chamber shall prepare a justification for the ruling *ex officio*.

4. The justification of the judgement shall contain the identification of factual grounds for the resolution, including the state of facts which the Chamber recognized, evidence on which the Chamber relied and the reasons why it found other evidence not credible and

deprived it of probative force, as well as the indication of legal grounds for the judgement, including reference to the law provisions.

5. The copies of the ruling together with justification shall be dispatched to the parties and participants in the appeal procedure or to their plenipotentiaries, within 3 days of the announcement of the ruling or – if there was no announcement – within 3 days of the day, on which the decision was passed.

6. The Chamber may correct, by means of a decision, misprints or computational errors or other obvious errors committed in the ruling. In such a case, the president of the adjudication panel shall place on the original of the ruling a note of its correction. The Chairman of the Chamber shall deliver forthwith to the parties and participants in the appeal procedure, or their plenipotentiaries, copies of the corrected ruling together with a copy of the decision on correction.

Article 197.

1. The ruling of the Chamber, after its enforceability is stated by the court, is equally binding as the court's decision. The provisions of Article 781 para. 2 of the Act of 17 November 1964- Civil Procedure Code shall apply accordingly.

2. The enforceability of the Chamber's ruling is stated by the court at the request of the party. The party is obliged to enclose to its request the original or a copy of the Chamber's ruling certified by the Chairman of the Chamber.

3. The court states the enforceability of the Chamber's ruling by a warrant of execution.

Article 198.

The Prime Minister shall define by means of a regulation:

- 1) the rules of procedure concerning the examination of appeals specifying in particular the formal requirements concerning the appeal, manner for lodging the appeal by electronic means, actions with the appeal being lodged, preparation of hearing taking into consideration the need to ensure efficient organisation of the hearing, fast course of appeal procedures and the open nature of hearings;
- 2) the amount and manner for collecting appeal registration fees as well as type of costs in appeal procedure and rules for allocation of costs, considering the diversified amount of the registration fee which depends on the value and type of contract, as well as legitimacy of the reimbursement of the costs to the party, necessary for the appropriate pursuit of rights and appropriate legal protection.

Chapter 3

Complaint to the court

Article 198a.

1. The parties and participants of the appeal procedure may complain to the court against the Chamber's ruling.

2. Unless the provisions of this Chapter provide otherwise, in the proceedings pending as a result of a lodged complaint, the provisions of the Code on Civil Procedure of 17 November 1964 on the appeal shall apply accordingly.

Article 198b.

1. The complaint should be lodged with the district court court competent for the seat or place of residence of the contracting authority.

2. The complaint should be lodged through the Chairman of the Chamber within 7 days of the day, on which the Chamber's ruling was submitted, dispatching simultaneously its copy to the complaint's opponent. Submitting the complaint in a postal facility of an operator appointed within the meaning of the Act of 23 November 2012 – Postal Law (Journal of Laws item 1529) shall be considered as lodging thereof.

3. The Chairman of the Chamber shall transfer the complaint together with the files of the appeal procedure to the competent court within not more than 7 days from the date of its receipt.

4. Within 21 days of the day, on which the ruling was passed, a complaint may also be lodged by the PPO President. The PPO President may also join the pending procedure. The provisions of the Code on Civil Procedure of 17 November 1964 on public prosecutor shall apply accordingly to the actions taken by the PPO President.

Article 198c.

The complaint should meet the requirements provided for submissions and contain the indication of the ruling complained against, a quotation of charges, a brief summary of their justification, identification of evidence, as well as a motion for repealing the ruling or for changing the ruling in full or in part.

Article 198d.

In the procedure pending due to the lodged complaint, the demand stated in the appeal shall not be extended nor new demands shall be brought.

Article 198e.

1. The court, at a closed session, shall reject a complaint lodged after the expiry of the time limit or a complaint inadmissible for any other reasons as well as a complaint, where the shortcomings were not supplemented by the party on time.

2. If the party has not completed an action in proceedings for reasons not attributable to that party, the court – at the request of that party – shall restore the time limit. The decision in this matter may be passed at closed session.

3. The submission with the request for restoration of the time limit should be filed with the court within 7 days of the day, on which the reason for not having met the time limit ceased.

Article 198ea.

The burden of proof that the tender does not comprise an abnormally low price lies with:

- 1) the economic operator that submitted it, being a party of the procedure or intervener;

-
- 2) the contracting authority, if the economic operator that submitted the tender is neither the party of the procedure nor intervener.

Article 198f.

1. The court shall forthwith examine the complaint, however not later than within 1 month of the day, on which the complaint was received by the court.

2. The court shall dismiss the complaint by means of a judgement, if the complaint is unjustified. If the complaint is recognised, the court shall change the challenged ruling and rule, by means of a judgement, on the merits of the case, whereas passing a decision in all other matters. The provisions of Articles 192–195 shall apply accordingly. The provision of Article 386.4 of the Code of Civil Procedure of 17 November 1964 shall not apply.

3. If the appeal is rejected or grounds for discontinuation of the procedure occur, the court repeals the judgement or changes the decision and rejects the appeal or discontinues the procedure.

4. The court cannot adjudicate on any charges which were not the subject matter of the appeal.

5. The parties shall bear the costs of procedure in accordance with the outcome of the procedure; when determining the amount of costs in the ruling, the court shall also take into account the costs incurred by the parties in connection with the examination of the appeal.

Article 198g.

1. The court's judgement or decision that ends the procedure in the case shall not be a subject of revocation complaint. This provision shall not apply to the PPO President.

2. The provisions on the Prosecutor General, specified in Part I, Book I, Title VI, Section V a of the Code of Civil Procedure of 17 November 1964, shall apply accordingly to actions taken by the PPO President.

TITLE VII

LIABILITY FOR BREACH OF PROVISIONS OF THIS ACT

Article 199.

The provisions of this Title are not applicable to the awarding entities, referred to in Article 3 para. 1 items 1, 2 and 5.

Article 200.

1. The contracting authority who:

- 1) awards a contract:

- a) infringing the provisions of this Act which refer to prerequisites for the application of types of contract award procedures: negotiated procedure without publication, single-source procurement or request-for-quotations,
- b) without the required notice;

-
- c) without applying this Act;
 - 2) [repealed]
 - 3) [repealed]
 - 4) modifies the concluded contract infringing upon the provisions of this Act
- shall be subject to a financial penalty.

2. Awarding entities shall also be subject to a penalty in the following cases:

- 1) where the requirements to participate in a contract award procedure as defined by the contracting authority distort fair competition,
 - 2) where the contracting authority describes the subject-matter of contract in a way that restricts fair competition,
 - 3) where the contracting authority conducts a contract award procedure in breach of the rule of openness,
 - 4) where the contracting authority fails to comply with the respective time limits fixed for in this Act,
 - 5) where the contracting authority excludes an economic operator from the contract award procedure in breach of the provisions of the Act governing the preconditions for such exclusion,
 - 6) where the contracting authority rejects a tender in breach of the provisions of the Act governing the preconditions for such rejection,
 - 7) where the contracting authority selects the best tender in breach of the provisions of this Act
- if such a breach has an impact on the outcome of the contract award procedure.

Article 201.

1. The amount of the financial penalty, referred to in Article 200, shall be determined depending on the contract value.

2. Where the contract value:

- 1) is less than the amounts specified in the provisions issued under Article 11 para. 8 - the financial penalty shall be PLN 3 000;
- 2) is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, but is less than EUR 10 000 000 for services and supplies and EUR 20 000 000 for works - the financial penalty shall be PLN 30 000;
- 3) is equal to or exceeds the expressed in PLN equivalent of EUR 10 000 000 for services and supplies and EUR 20 000 000 for works - the financial penalty shall be PLN 150 000.

Article 202.

1. The financial penalty shall be imposed by the PPO President by an administrative decision.

1a. The PPO President shall not impose the financial penalty, if due to infringement of provisions of the Act, the financial penalty was imposed by the Chamber or a court.

2. The decision to impose a financial penalty shall not be issued with the clause of immediate enforceability.

Article 203.

1. The financial penalty constitutes the revenue of the state budget.

2. Financial penalties shall be subject to collection under the provisions concerning execution proceedings in administration with regard to the execution of duties of pecuniary nature.

TITLE VIII

AMENDMENTS TO THE EXISTING PROVISIONS

Articles 204 to 219 – omitted.

TITLE IX

INTERIM AND FINAL PROVISIONS

Articles 220 to 227 – omitted.