Regulation of the Prime Minister of 22 March 2010 on the rules regarding the procedure for examining the appeals (Journal of Law, No. 48, item 280)

Pursuant to Article 198 (1) of the Act of 29 January 2004 – Public Procurement Law (Journal of Law of 2007 No. 223, item 1655, as amended), it is decreed as follows:

Chapter 1
Common rules

§1. The regulation determines the rules of conduct when examining appeals, defining in particular formal requirements of the appeal, the manner for its lodging by electronic means, as well as procedure with the lodged appeal.

§2. Whenever the regulation refers to:

1) Chamber – the National Appeal Chamber is meant;
2) Chairman of the Chamber – the Chairperson of the National Appeal Chamber is meant;
3) Adjudication panel – the adjudication panel of the Chamber is meant;
4) PPO - the Public Procurement Office is meant;
5) the Act – the Act of 29 January 2004 – Public Procurement Law is meant.

§3. The provisions referring to the hearing shall apply to sessions, where the participation of parties, witnesses or experts is admissible.

Chapter 2
Formal requirements of an appeal, initial and preparatory actions

§ 4.1. An appeal shall contain:

1) name and surname or business name and place of residence or seat, telephone or fax number, e-mail address of the appellant as well as the name and surname of the plenipotentiary (plenipotentiaries);
2) name and surname or business name and place of residence or seat, telephone or fax number, e-mail address of the awarding entity;
3) indication of the object of a contract;
4) indication of a number of contract notice, voluntary ex-ante transparency notice, contract award notice, design contest notice or design contest award notice in case of their publication in Public Procurement Bulletin or the Official Journal of the European Union;
5) indication of the actions or of nonfeasance of the awarding entity, challenged as incompliant with the provisions of the Act;
6) presentation of charges;
7) request as to the resolution of the appeal
8) indication of factual and legal circumstances justifying the appeal and evidence thereof;
9) signature of the appellant or plenipotentiary (plenipotentiaries);
10) list of attachments

2. The appeal shall contain:

1) a proof of payment of the registration fee in the required amount;
2) a proof of submission of the copy of appeal to the awarding entity;
3) an extract from National Register of Criminal Records, plenipotentiary or other document certifying the authorization to represent the appellant.
§ 5. The appeals together with attachments as well as notification of entry to the appeal procedure by the economic operator, done by electronic means, with a secure electronic signature verifiable using a valid qualified certificate (qualified signature) as well as other papers submitted in such a manner in this case, are to be submitted by means of electronic correspondence box of the Chamber, available at the PPO website.

§ 6. An appeal lodged shall forthwith be entered in the computer data base of the Chamber and in the register of appeal cases being assigned with a file reference number.

§ 7. Except for lodging the appeal and notification of entry to the appeal procedure by economic operator, the correspondence directed by the parties and participants to the Chamber in the course of appeal procedure as well as the correspondence directed by the Chamber, which may be sent by fax, electronic means. In case of correspondence sent by fax or electronic means it shall be surmised that the day of dispatch of correspondence by fax or electronic means is the day of delivery, if the correspondence was dispatched forthwith also in written form.

§ 8.1. An appeal together with attachments and the copy of documentation of contract award procedure, as well as other papers submitted in the case as well as papers submitted by the Chamber with reference to the lodged appeal shall constitute the files of appeal case.

2. The files of appeal case shall be made available to the parties and the participants of the appeal procedure or other subjects at their request at the seat of the Chamber, on the date set with the Chamber, on the stipulation that the information is not confidential by law, and until the publication of daily case list, the information on the adjudication panel set for examination of the appeal is not made available.

§ 9. If the appeal contains formal deficiencies in the procedure, in particular within the scope referred in § 4. 1 point 5-8, or does not include documents, referred to in § 4. 2, the Chairman of the Chamber calls upon the appellant to remove formal deficiencies of the appeal within 3 days under the pain of return of the appeal.

§ 10.1. In case no formal deficiencies are found in the appeal, in particular within the scope referred to in Article 180 par. 3 of the Act, and that the appeal contains documents referred to in § 4. 2, the Chairman of the Chamber calls upon the awarding entity to submit forthwith copy of the documentation of contract award procedure certified by the head of the awarding entity or authorized person to be in conformity with the original, except for requests to participate in the procedure or tenders of the economic operators, to whom the charges contained in the appeal to not apply.

2. The Chairman of the Chamber may refrain from the call, referred to in § 10.1, or call to supplement the documentation within a given scope, in the case of prior submission to the Chamber by the contracting authority copies of the documentation of contract award procedure public or in the case when the submission of full documentation is irrelevant.

3. The original documentation of contract award procedure together with requests to participate in award procedure or tenders submitted in the course of contract award procedure shall be submitted by the awarding entity to the Chamber no later than prior to the opening of the hearing.

§ 11. If the appeal meets the formal requirements, the Chairman of the Chamber shall designate by means of an order the adjudication panel and the date of the session in order to take necessary formal legal and check actions

§ 12.1. In case of joint examination of the appeals, the appointment of the adjudication panel, occurs under the file reference number of the first registered appeal.

2. If another appeal is lodged, being the subject of joint examination together with the appeal, in case of which the adjudication panel has already been appointed, the Chairman of the
Chamber when deciding on the joint examination of the appeals, shall refer them for examination by the adjudication panel, appointed in accordance with §12.1.

§ 13.1. The necessary formal legal and check actions are taken by the adjudication panel at closed session.

2. Depending on the factual findings, the adjudication panel, in particular:
   1) calls the appellant to correct or complement the appeal;
   2) issues a decision respectively on the return or rejection, or on dismissal of the appeal procedure, or on consideration or dismissal of the objection;
   3) calls the participant of the appeal procedure, who entered the appeal procedure on the side of the awarding entity, to make a statement concerning the objection, as to the full recognition of charges within 3 days from the day of receipt of the summons under the pain of dismissing the appeal procedure.
   4) may inform about the entry of other economic operator to appeal procedure and refer to awarding entity or the appellant to make a statement concerning the objection as to the entry of other economic operator.
   5) refers the appeal for examination on the session with participation of parties, witnesses or experts
   6) refers the appeal for examination on the hearing.

3. In case of joint examination of appeals, if the adjudication panel decides on the session, that at least one of the appeals is subject to rejection or at least one appeal was withdrawn, rejects that appeal or dismisses the appeal procedure as to the withdrawn appeal, and the remaining appeal or appeals refers for the hearing. To appeals examined jointly, the provisions referring to examination of single appeal shall apply respectively.

4. Referring the appeal for examination at the hearing, the adjudication panel in justified cases may put forward a justified motion to the Chairman of the Chamber for the appointment of 3 person adjudication panel.

§ 14. Sessions and proceedings shall be held at the seat of the Office. The Office shall provide support services, in particular:

1) appeal reporter for the hearing;
2) court room which allows public examination of appeal or appeals;
3) performance of other activities necessary for proper and efficient run of the hearing or session;
4) archive room to which appeal case files are submitted after the appeal procedure is closed.

§ 15. The adjudication panel shall fix, in agreement with the Chairman of the Chamber, the date of the hearing.

2. The notification of the date and place of the hearing shall be submitted to the parties and participants of the appeal procedure with confirmation of receipt at least three days before the date of the hearing.

3. The notification of the date and place of the hearing shall be also submitted to witnesses and experts, if the adjudication panel decided on the admissibility of the evidence given by the witnesses or expert’s opinion, and the appearance of witness or expert in the hearing in necessary.

4. The submission of a notification, referred to in Paragraph 2, shall also apply to a notification sent by fax to the parties and participants of the appeal procedure, if they
confirmed its receipt. The Chairman of the Chamber shall forthwith submit the notification also in writing.

§16.1. If the member of the appointed adjudication panel fails to appear or is excluded from participating in the examination of an appeal, or for other justified reasons, the hearing shall be adjourned, subject to §16.2. The provisions of §15 shall apply respectively.

2. If the Chairman of the Chamber learns about contumacy or exclusion from participation in the case of the member of appointed adjudication panel, prior to the date of the hearing, the new member of the adjudication panel shall be appointed. If the new member of adjudication panel agrees to participate in the hearing on the set date, the hearing shall not be adjourned.

Chapter 3

Hearing

§17.1. The list of appeal cases referred for examination in the hearing, including the adjudication panel in those cases (daily case list), shall be made public prior to the beginning of the hearing no sooner than on the day, which was set for the examination of appeals included in the list, by placing it at the seat of the Chamber in the publicly accessible place, on the website of the Chamber, by the door of the courtroom, where the examination of the appeal is to be conducted, without informing about the composition of the adjudication panel on the internet website.

2. The list of appeal cases, referred to in par. 1, shall also include announcement of adjourned rulings in complicated cases.

§18. Directly prior to the opening of the hearing, the reporter calls the case indicating the names and surnames or business names of the parties, as well as the case reference number.

§ 19. 1. A hearing shall be held in the Polish language.

2. A party or participant in the appeal procedure having no command of the Polish language shall appear at the hearing accompanied by a sworn interpreter.

3. All documents shall be submitted in the Polish language, and if they are drafted in a foreign language, a party or participant of the appeal procedure who refers to them shall present their translation into Polish language certified by a sworn translator. In justified cases, the adjudication panel may request the translation into Polish language certified by a sworn translator.

§20. 1. A hearing shall be presided over by the chairman of the adjudication panel, who, in particular, opens the hearing, orders breaks, gives the floor to parties and participants of the appeal procedure, asks questions, allows to ask questions to the members of the adjudication panel, gives the wording to the record, closes the proceeding and announces the decision.

2. The chairman of the adjudication panel may give consent for recording of a hearing by means of image and sound recording devices, when there is a justified public interest and the important interest of the party or the participant of the appeal procedure does not stand in objection, and when the performance of these activities will not impede the hearing.

§21. 1. Following the opening of a hearing, the chairman of the adjudication panel shall check whether the parties and participants of the appeal procedure were properly informed about the date of the hearing and whether the plenipotentiaries of the parties and participants of the appeal procedure are authorized to appear on their behalf.

2. In case of stated contumacy of the party or participant of appeal procedure at the hearing and lack of evidence of effective submission of the notification of the date of hearing, the
chairman of adjudication panel shall adjourn the hearing and shall set, in agreement with the Chairman of the Chamber, new date of the hearing.

3. Contumacy of the party or participant of the appeal procedure, that were effectively notified of the date of the hearing, does not withhold the examination of the appeal.

§22.1. The chairman of the adjudication panel shall present the state of affairs with particular consideration of charges and requests presented in appeal.

2. The chairman of the adjudication panel shall give the floor first to the appellant, and then to the awarding entity.

3. When other economic operators effectively enter the appeal procedure on the side of the appellant or the awarding entity, the chairman of the adjudication panel shall give the floor to the economic operator after the appellant or the awarding entity based on established order.

4. In the case of joint examination of the appeals, the chairman of the adjudication panel shall give the floor to the appellants and the awarding entity as well as economic operators who entered the appeal procedure on their side. The order of the floor of the appellants and economic operators, who entered the appeal procedure, is established by the chairman of the adjudication panel taking account of the fact that the appellant takes the floor before the awarding entity, and the economic operators that entered the appeal procedure, take the floor after the party whose side they are on.

§23. The adjudication panel in the course of appeal procedure shall decide whether it is admissible to make the content of the appeal case documentation, which may contain information confidential by law, available to the parties and participants of the appeal procedure.

§24.1. The adjudication panel may obligate the parties and the participants of the appeal procedure to present documents or other evidence significant for the resolution of appeal.

2. The papers presented in the course of the appeal procedure by the parties and participants of the appeal procedure shall be submitted also in copy for the parties and participants of the appeal procedure.

§25.1. Admitting the evidence from the expert's opinion, the adjudication panel shall appoint the expert and describe the subject of opinion as well as adjourn the hearing until the opinion is prepared.

2. The Chairman of the Chamber, by means of an order, shall set the time limit for preparation of an opinion by the expert and perform organizational tasks relating to the appointment of an expert, in particular shall provide an expert with an officially certified copy of the decision of his appointment and copy of the documentation of the contract award procedure necessary for the preparation of the opinion together with officially certified copy of report from the hearing, in the course of which the ruling on the admissibility of the evidence from the expert's opinion was taken.

3. After the opinion was prepared by an expert, the adjudication panel in agreement with the Chairman of the Chamber shall set the date of the adjourned hearing and shall notify it to the parties and participants of the appeal procedure in a manner referred to in § 15.

4. Before setting the date of the adjourned hearing, the Chairman of the Chamber shall submit to the parties and participants of the appeal procedure an officially certified copy of the opinion prepared by an expert.

§26. In case of admitting the evidence in form of a witness's testimony, the chairman of the adjudication panel shall instruct the witness about penal liability for committing perjury.

§27. 1. The adjudication panel may adjourn a hearing, if it finds necessary to examine the evidence, which could not be examined within the fixed time limit or for other important reasons. The date of the hearing shall be set by in a manner referred to in § 15 accordingly.
2. In case referred to in (1), the chairman of the adjudication panel shall instruct the parties and participants of the appeal procedure about an obligation to appear on the set date without separate notification. The absent parties and participants of the appeal procedure shall be notified about the new date of the adjourned hearing in a manner referred to in § 15 accordingly.

§28. 1. Before closing a hearing, the chairman of the adjudication panel shall give the floor first to the appellant and then to the awarding entity. The provision of § 22 (3) shall apply accordingly.

2. Until the closing of the hearing, the parties, subjects raising the objection or their plenipotentiaries may submit a motion regarding the costs of the appeal procedure.

§ 29.1 When the parties are admitted to participate in the hearing, a report shall be taken thereof and the cost settlement of the appeal procedure shall be prepared.

2. The reports and cost settlement of the appeal procedure shall be signed by the chairman of the adjudication panel and reporter.

3. Correction of the report and cost settlement of the appeal procedure shall be made on request or ex officio.

4. The chairman of adjudication panel shall decide on the correction of the report and cost settlement of the appeal procedure. Having made a correction of the report, a note thereof shall be made in the report or in the cost settlement of the appeal procedure. A refusal of the correction of report of cost settlement of appeal procedure shall be expressed by the adjudication panel by means of a ruling, which shall not be subject to complaint.

Chapter 4
Rulings

§ 30.1. After the hearing is closed or the session is ended, the adjudication panel shall issue the ruling.

2. If the examination of the appeal is made in three person composition, the Chamber issues the ruling after the closed deliberation of the adjudication panel. The deliberation shall be presided over by the chairman of the adjudication panel.

3. The deliberation includes discussion and voting on the ruling to-be-issued and significant reasons for the adjudication. All members of adjudication panel shall participate in the voting, in order fixed by the chairman of the adjudication panel, with the chairman being the last to vote.

4. In case, referred to in par. 2, the ruling shall be adopted by majority of votes.

5. A member of adjudication panel, who voted different than the majority, may append a separate opinion to the issued ruling, making a note thereof next to his/her signature on the adjudication. The chairman of the adjudication panel, when issuing the ruling, shall inform about appending separate opinion.

6. A member of adjudication panel, who appended a separate opinion, shall prepare on a separate sheet a justification thereof within the time limit for preparation of justification of the ruling.

7. A separate opinion shall be enclosed with the appeal case documentation.

§ 31.1. The ruling shall be announced on the day, when the hearing was closed or the session was ended, subject to par. 2.

2. In complicated case, the adjudication panel may adjourn the announcement of the ruling, setting the date of its announcement.
§ 32. The announcement of the decision which ends the appeal procedure issued on a closed session shall be made by placing the sentence of the decision on the notice board in the seat of the Chamber, and the information on the announcement is placed on the PPO website. The copy of decision is submitted to the parties and participants of appeal procedure.

§ 33. During the announcement of the judgment, all present parties, except for the adjudication panel, shall be standing.

§ 34. 1. The ruling shall include:
   1) type of ruling (judgment, decision);
   2) place and date of issue;
   3) indication of adjudication panel, reporter, parties and participants of the appeal procedure;
   4) in case of decision, resolution on demands of the appellant or appellants or resolution on financial penalty, invalidation of the contract in its entirety or part or on breach of provisions of the Act;
   5) resolution as to the costs of appeal procedure;
   6) instruction about the possibility of lodging the complaint.

2. The ruling and the justification thereto shall be signed by the adjudication panel.

3. The signed original of adjudication together with justification shall be affixed with round official seal bearing the words "National Appeal Chamber”.

4. The copies of issued ruling together with justification thereto, depending on its name shall bear the seal: "Copy of the judgment " or "Copy of the decision" and the seal: "The original bears relevant signatures. Certified to be a true copy". Conformity of a copy to the original is certified by the Chairman or Vice-chairman of the Chamber or any other authorized member of the Chamber.

§ 35. In case of refusal to consider the motion on the correction of the ruling submitted by the parties or participant of the appeal procedure, the copy of the decision on the refusal to correct the ruling is submitted by the Chairman of the Chamber solely to the petitioner.

§ 36. 1. The Chairman or Vice-chairman of the Chamber or authorized member of the Chamber shall state the validity of the ruling ex officio or on request of the party or participant of the appeal procedure.

2. The note on validity of the ruling with indication of the date, when the ruling becomes valid and signature of the person announcing the validity of the ruling shall be made on the copy of the ruling.

§ 37. After the appeal procedure is closed, the Chairman of the Chamber shall submit files of the appealed case to the archive.

Chapter 5
Interim and final provisions

§ 38. To appeals referring to contract award procedures commenced from the 29 January 2010, the provisions included herein shall apply. The actions conducted under regulation, referred to in § 39 shall continue in full force and effect.

§ 39. The Regulation of the Prime Minister of 2 October 2007 on the rules regarding the procedure for examining the appeals (Journal of Law, No. 187, item 1327 and of 2008 No. 188, item 1156) shall be repealed.

§ 40. The Regulation shall enter into force on the day of its publication.

PRIME MINISTER