

The Act of 21 October 2016 on concession contract for works or services^{1), 2)}

Chapter 1

General provisions

Article 1

This Act specifies the rules and procedures for awarding concession contracts for works or services, hereinafter referred to as “the concession contract”, legal protection measures and the competent authorities with respect to matters addressed in this Act.

Article 2

For the purpose of this Act:

- 1) Concession documents - shall mean the documents issued by or referred to by the contracting authority, used to describe or determine elements of the concession contract or the concession award procedure, including notice on concession award procedure, hereinafter referred to as “concession notice”, a prior information notice, the call for competition, an invitation to submit tender, a description of the subject of the contract and other documents, including those relating to the presentation of documents by economic operators;
- 2) utilities activities - shall mean the activity of one of the activities referred to in Article 132 (1) of the Act of 29 January 2004 - Public Procurement Law (Polish Journal of Laws of 2015 item 2164, as amended³⁾), hereinafter referred to as "Public Procurement Law", or activities related to the provision of services specified in the Article 132 (3) of the Public Procurement Law;
- 3) concessionaire – shall mean an economic operator with whom the concession contract was concluded;
- 4) minimum requirements – shall mean the technical, physical, functional and legal requirements defined by the contracting authority in the concession documents, the tender must comply with;
- 5) a work – shall mean the construction work within the meaning of the Article 2 item 5d of the Public Procurement Law;

¹ This Act implements the provisions of Directive of the European Parliament and of the Council 2014/23/EU of 26 February 2014 on the award of concession contracts (OJ EU L 94, 28.3.2014, page 1; OJ EU L 114, 05.05.2015, page 24 and OJ EU L 307, 11.25.2015, page 9).

² Under the provisions of this Act the following Acts are amended: the Act on public roads of 21 March 1985, the Act on toll motorways and National Road Fund Act of 27 October 1994, the Act on maintaining cleanliness and order in municipalities of 13 September 1996, the Act on municipal services of 20 December 1996, the Rail Transport Act of 28 March 2003, the Act of 29 January 2004 - Public Procurement Law, the Act on liability for violation of public finance discipline of 17 December 2004, the Act on public-private partnership of 19 December 2008, the Act on supporting the development of telecommunications networks and services of 7 May 2010, the Act on the public transport of 16 December 2010, and the Act of 22 June 2016. amending the Act - Public Procurement Law and some other acts.

³ Amendments to the consolidated text of the said Act were announced in the Journal of Laws of 2016 items 831, 996, 1020, 1250, 1265, 1579 and 1920.

- 6) concession award procedure – shall mean the procedure commenced by the concession notice, the prior information notice, invitation to submit tender in order to select an economic operator to be awarded a concession contract;
- 7) works – shall mean execution, or both the design and execution, of works related to one of the activities referred to in Annex I of the Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, page 1, as amended), hereinafter referred to as "Directive 2014/23/EU" or of a work, or the performance, by whatever means, of a work corresponding to the requirements specified by the contracting authority;
- 8) electronic means of communication – shall mean electronic communication means within the meaning of the Act of 18 July 2002 on the provision of services by electronic means (Journal of Laws of 2013, item 1422; of 2015, item 1844; and of 2016, items 147 and 615) or fax;
- 9) services – shall mean any services other than works or supplies, specified in the Article 2, item 2 of the Public Procurement Law;
- 10) economic operators – shall mean natural persons, legal persons or organizational units not having legal personality, or a group of such persons or units that compete for a concession contract or have submitted tenders;
- 11) the contracting authority, shall mean:
 - a) an entity defined in the Article 3(1) item 1-3a of the Public Procurement Law,
 - b) entities other than those specified in items 1-3a of the Public Procurement Law, which separately or jointly, directly or indirectly through another entity, have a dominant influence over them, in particular:
 - hold more than half of the shares or stock or
 - control more than half of the votes attaching to stock issued by the undertaking;, or
 - have the right to appoint more than half of the members of their supervisory or managerial board,
 - if the contract is awarded for the purposes of exercising one of the activities referred to in Article 132,
 - c) entities other than those specified in points a and b, if the concession contract is awarded for the purposes of exercising one of the activities referred to in the Article 132, if such an activity is exercised on the basis of special or exclusive rights, defined in the Article 3(2) of the Public Procurement Law.

Article 3

1. Based on the concession contract the contracting authority entrusts the concessionaire the execution of works or the provision and the management of services for remuneration.
2. In the case of entrusting the economic operator:

- 1) the execution of works – where the consideration for the works to be carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment (concession contract for works);
- 2) the provision and the management of services - where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of the contract or in that right together with payment (concession contract for services);
3. The concessionaire bears the economic risk related to the exploitation of a work or a service and the risks related to demand and supply.
4. The transfer of economic risk shall mean a situation in which, under normal operating conditions, the concessionaire is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession, and is exposed to market fluctuations, in particular - its estimated potential loss related to the execution of the concession contract may not be merely nominal or negligible
5. In assessing the economic risk the net present value of all investments, costs and revenues of the concessionaire are taken into account in a consistent and uniform manner.

Article 4

The provisions of the Act shall apply to concession contracts where the estimated value equals to or exceeds the PLN equivalent of EUR 30 000 determined using the average exchange rate of the Polish Zloty to Euro set out in provisions issued pursuant to the Article 35 (3) of the Public Procurement Law.

Article 5

1. The provisions of the Act shall not apply to concession contracts:
 - 1) which the contracting authority is obliged to award in accordance with procedures different from those laid down in this Act specified:
 - a) in an international agreement concluded between the Republic of Poland and one or more non-members of the European Union, on the implementation or exploitation of a project by the parties to this agreement,
 - b) by an international organization or international financing institution, if concessions are fully financed by an international organization or international financing institution, and in the case a concession is co-financed in more than 50% by that organization or institution - if the parties agreed on applicable concession award procedures other than the one provided for in the Act;
 - 2) in the field of defense and security:
 - a) subject to a specific procedure under an international agreement or arrangement concluded between the Republic of Poland and one or more states,

- b) subject to a specific procedure under an international agreement or arrangement concluded between the Republic of Poland and one or more states, relating to the stationing of troops and concerning undertakings regardless of their seat or place of residence,
 - c) subject to the specific procedural rules of an international organization if concession must be awarded by the Republic of Poland in accordance with those rules;
 - d) in cases where the application of the Act would oblige the contracting authority to supply information the disclosure of which is contradictory to the essential national security interests to the extent that their protection cannot be guaranteed in a different way than the award of the contract to the exclusion of provisions of the Act,
 - e) awarded in the framework of a cooperative programme between the Republic of Poland and at least one EU member state based on research and development, defined as any activity relating to fundamental research, applied research and development work, in particular including the realisation of technological demonstrators of devices demonstrating the performance of a new concept or a new technology in a relevant or representative environment, conducted jointly to develop a new product and, where applicable, at later phases of the whole or part of the life-cycle of this product;
 - f) awarded on behalf of the Republic of Poland to the government of another country, directly linked to:
 - sensitive equipment or military equipment within the meaning of the Article 2 points 5b and 8a of the Public Procurement Law,
 - works and services specifically for military purposes, or sensitive works and sensitive services; within the meaning of the Article 2 points 5a and 5c of the Public Procurement Law,
 - g) awarded in a non-EU member state, including civil purchases carried out when forces are deployed, and forces mainly tasked with security protection, in cases where operational needs require those concessions to be conducted with economic operators located in the area of operations;
- 3) contracts where the subject-matter of the contract includes:
- a) arbitration or conciliation services,
 - b) services of the National Bank of Poland,
 - c) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;
 - d) purchase, preparation, production or co-production of a programme or programme material intended for broadcasting, if intended for the purpose of provision of audio-visual or radio media services – awarded by suppliers of audio-visual or radio media services;
 - e) purchase of broadcasting time or programme from suppliers of audio-visual or radio media services,
 - f) legal services:

- representation in proceedings carried out by a lawyer, legal counsel or a foreign lawyer within the meaning of the Act of 5 July 2002 on legal assistance provided by foreign lawyers in the Republic of Poland (Journal of Laws of 2016, item 1874), in arbitration or conciliation, or before courts, tribunals, or other public authorities of a Member State of the European Union, third countries, or international courts, tribunals, or instances of arbitration or conciliation,
 - legal advice provided by a lawyer, legal counsel or a foreign lawyer within the meaning of the Act of 5 July 2002 on legal assistance provided by foreign lawyers in the Republic of Poland, in the scope of preparation of proceedings referred to in the first indent, or where it is highly probable that the case covered by the legal advice will become a subject of such proceedings,
 - notarization and authentication of documents,
 - legal services provided by plenipotentiaries or other legal services whose providers are appointed by a court or tribunal of a given Member State of the European Union, or appointed by virtue of law to carry out specific tasks supervised by such courts or tribunals,
 - which are connected with the exercise of official authority,
- g) financial services connected with the issue, sale, purchase, or transfer of securities or other financial instruments within the meaning of the Act of 29 July 2005 on trading in financial instruments (Journal of Laws of 2016, item 1636), and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;
 - h) loans and credits, regardless whether connected with the issue, sale, purchase, or transfer of securities or other financial instruments or not, except for credits incurred by local government units under authorization provided for in the budget act;
 - i) civil defense, civil protection and prevention services provided by noncommercial organisations or associations and covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9, and 85143000-3, defined in Regulation (CE) No. 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ EU L 340, 16.12.2002, pp. 1; OJ L, Polish Special Edition, Chapter 6, v. 5, p. 3, as amended), hereinafter referred to as “Common Procurement Vocabulary” , except for patient medical transport;
 - j) air transport services based on the grant of an operating license within the meaning of the Regulation (EC) 1008/2008/17 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293 of 31.10.2008, p. 3);
- 4) if the following conditions are met:
 - a) the concession is classified in accordance with provisions on protection of classified information,
 - b) when essential security interests of the State so requires, or
 - c) when the protection of public safety so requires, or

- d) the concession must be accompanied, pursuant to separate regulations, by special security measures
- in so far as the protection of essential security interests of the State defined in points (a) to (d) cannot be guaranteed in other way than awarding a concession contract without applying the Act;
- 5) contracts for services awarded to another contracting authority referred to in the Article 3(1) point 1-3a of the Public Procurement Law, which has been granted with the exclusive right to render those services within the meaning of the Article 3(2) of the Public Procurement Law;
- 6) contracts for services awarded to another entity which has been granted with the exclusive right to render utilities activity within the meaning of the Article 3(2) of the Public Procurement Law'
- 7) contracts awarded by contracting authorities, referred to in Article 3 (1) point 1-3a of the Public Procurement Law, where the main purpose is:
 - a) enabling the contracting authorities to make the telecommunications networks available to public, or
 - b) exploitation of public telecommunications networks, or
 - c) provision of publicly available telecommunications services by means of public telecommunications network;
- 8) for research and development services, unless covered by the CPV codes from 73000000-2 to 73120000-9, 73300000-5, defined in the Common Procurement Vocabulary (CPV) and when the following conditions are jointly met:
 - a) benefits from these services are derived only by the contracting authority for the purpose of its own activity,
 - b) the whole remuneration for the service provided is paid out by the contracting authority,
- 9) for lottery conduction services, covered by the CPV 92351100-7 specified in the Common Procurement Vocabulary, on the basis of an exclusive right other than the one referred to in the Article 3 (2) of the Public Procurement Law, unless the grant of such exclusive rights was subject of a notice in the Official Journal of the European Union;
- 10) contracts awarded by contracting authorities referred to in Article 3 (1) point 1-3a of the Public Procurement Law, for the purpose of performing the activity outside the European Union, provided that no network located within the European Union or European Union area is used for such performance.
- 11) contracts awarded by entities performing utilities activities, if the concession contract awarded to:
 - a) entities with which the contracting authority prepare the annual consolidated financial reports within the meaning of accounting provisions,
 - b) entities in which the contracting authority holds more than half of the shares or stock, hold more than half of the votes resulting from the stock issued by these entities, is entitled to appoint over half of the members of their supervisory or managing body,

- c) entities which hold more than half of the contracting authority's shares or stock, hold more than half of the votes resulting from the stock issued by the contracting authority, entitled to appoint over half of the members of its supervisory or managing body,
 - d) entities that together with the contracting authority are subject of influence of another entity, as specified in item c, by virtue of ownership, financial participation, or the rules which govern it
- if at least 80% of the average income of these entities generated over the preceding 3 years derived from the provision of services in case of concession for services or provision of works in case of concession for works to the contracting authority or entities with which it is affiliated in a manner referred to in items a-d;
- 12) by an entity established by the contracting authorities for the purpose of a joint performance of the utilities activity with:
- a) one of these 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 stipulates that the contracting authorities shall remain its members throughout this period, or
 - b) to an entity affiliated with one of those contracting authorities as defined in point 11, if at least 80% of the average income of this entity generated over the preceding 3 years derived from the provision of services in case of concession for services or provision of works in case of concession for works to the contracting authority or entities with which it is affiliated in a manner referred to in point 11.
- 13) by the contracting authority with an entity, under the terms of the point 12:
2. In case when due to the day of establishing the entity affiliated with the contracting authority in a manner, referred to in para. 1 point 11-13, or commencing the activity, the data relating to the average income generated within 3 years preceding the award of the concessions, referred to in para. 1 point 11-13, is unavailable or inadequate, the data are determined on the basis of credible business projections.
 3. If from among the entities affiliated with the contracting authority in a manner, referred to in para. 1 point 11, more than one entity provides services for the same or similar purpose, or conducts works for the same or similar purpose to the benefit of the contracting authority, the total income of all these entities achieved from the provision of services or execution of works is taken into account.
 4. The contracting authority, at request of the European Commission, provides information on the non-application of the Act 1 on the basis of para. 1 point 11-13, as regards the names and data of contracting authorities, , the nature and value of concession contracts and the proof, deemed necessary by the Commission.
 5. The provisions of the Act shall not apply to award of concession contracts by the contracting authorities in respect to activity to which the European Commission issued a decision referred to under the Article 138f of the Public Procurement Law, or the deadline for such a decision has expired.

Chapter 2

Estimated contract value and mixed contracts

Article 6

1. The estimated value of a concession shall be the total income of the concessionaire generated over the duration of the contract, net of VAT, as estimated with due diligence by the contracting authority, covering the remuneration for performance of works or provision of services and managing thereof being the subject of concession, together with supplies and services incidental to such works and services.
2. The estimated value shall be valid on the day the concession notice is submitted for publication or placed, as defined in the Article 17 point 1 and 2, and in the case where such a notice is not published or placed, on the day an invitation to tender, referred to in Article 17 para. 3, was submitted to economic operator or economic operators.
3. If the value of the concession, net of VAT, on the day of its award is higher by more than 20 % of its value estimated on the day, referred to in para. 2, it is assumed that the estimated value of a concession is the value from the day of its award.
4. The contracting authority shall calculate the estimated value of the concession using an objective method specified in the concession documents, in particular:
 - 1) the value of an option and an extension of the duration of the concession;
 - 2) income from the payment of fees and fines by the users of the works or services other than those collected on behalf of the contracting authority;
 - 3) payments or any financial advantage regardless of their form made by the contracting authority or any other public authority to the concessionaire, including compensation for compliance with a public service obligation and targeted subsidies for financing or subsidizing the investment costs;
 - 4) the value of grants or any other financial advantages, regardless of their form, from third parties for the performance of the concession contract;
 - 5) income from sales of any assets which are part of the concession contract;
 - 6) the value of all the supplies and services that are made available to the concessionaire by the contracting authorities, provided that they are necessary for executing the works or providing the services;
 - 7) prizes or payments to economic operator or concessionaire.

Article 7

The contracting authority is not allowed to choose the method used to estimate the value of a concession contract with the intention of excluding it from the scope of the Act.

Article 8

1. The contracting authority shall not divide the subject matter of concession if such a division results in exclusion from the application of provisions of the Act unless justified by technical, organizational, economic or purposive reasons.
2. Where a proposed execution of a work or provision of services and managing thereof may result in award of separate concession contracts, when awarding each concession

it is assumed that the estimated value of each concession contract is the total value of all the concession contracts.

3. Where the total value of separate parts of subject matter of concession contract is equal to or exceeds the value set in provisions issued under Article 18 para. 2, this Act shall apply to award of a concession contract for each of these parts.

Article 9

1. If the subject-matter of concession contract covers execution of works or provision of services, the provisions concerning this type of concession that characterizes the main subject-matter of the concession in question shall apply to award of concession contract.
2. If the subject-matter of concession contract covers social and other specific services listed in Annex IV to the directive 2014/23/EU, and other services, the provisions concerning this subject-matter of concession which estimated share in the concession is the highest shall apply.
3. If the subject-matter of a contract which cannot be divided, in particular due to technical, organizational, economic or purposive reasons, covers concession contract for services and public procurement contract for supplies, the main subject-matter shall be determined according to which of the estimated values of the respective services or supplies is higher.

Article 10

1. If the subject-matter of a concession is separable, in particular for technical, organizational, economic or purposive reasons, the contracting authorities may choose to award separate contracts for particular separate parts by applying to award of each concession contract the provisions applicable to these parts due to their characteristic features, or to award a single concession contract.
2. When a subject-matter of the concession contract covers:
 - 1) parts to which provisions of this Act apply, and public contracts awarded by the contracting authorities, referred to in Article 3 para. 1 items 1-3a and 5 of the Public Procurement Law, and public contracts, referred to in the Article 132 para. 1 of Public Procurement Law, where the estimated value is equal to or exceeds the amount provided in the provisions issued under Article 18 para. 2 of the Public Procurement Law;
 - 2) parts, where at least one part is covered by the Article 346 of the Treaty on the Functioning of the European Union (TFEU), the provisions of this Act do not apply to the award of a concession contract; provided that the award of a single concession contract is justified for technical, organizational, economic or purposive reasons;
 - 3) part which constitutes a public contract, referred to in Article 131a para. 1 of the Public Procurement Law, to be awarded under Public Procurement Law, a in order to conclude such a contract either the provisions of the Act or provisions of the Public Procurement Law shall apply, according to the choice of the contracting authority provided that the award of a single contract is justified for technical, organizational, economic or purposive reasons;

- 4) parts which include the concession contracts for utilities activity or concession contracts subject to the Article 346 of the Treaty on the Functioning of the European Union, in order to conclude a contract the provisions of the Act do not apply;
 - 5) parts which include the concession contracts for utilities activity and public contracts, as defined in the Article 131a para. 1 of the Public Procurement Law, in order to conclude such a contract either the provisions of the Act or provisions of the Public Procurement Law shall apply, according to the choice of the contracting authority;
 - 6) several activities, in particular utilities activity, the contract is concluded under provisions applicable to the main activity;
 - 7) parts to which provisions of this Act apply, and parts other than those referred to in points 1-6, if the contracting entity chooses to award a single contract, the provisions of this Act shall apply.
3. The contracting authority cannot mix the subject-matter of a concession contract with the subject-matter covered by the Article 346 of the Treaty on the Functioning of the European Union, or with the subject-matter of a public contract, referred to in the Article 131a para. 1 of the Public Procurement Law, in order to avoid the application of the provisions of the Act.
 4. In case of a concession contract where a subject-matter covers various types of activities and it is not possible to determine the main activity, in order to award a contract the following provisions shall apply:
 - 1) Public Procurement Law, if one of the types of activity refers to public contract awarded by contracting authorities, referred to in the Article 3 para. 1 items 1-3a and 5 of the Public Procurement Law, and the other type of activity refers to concession contract which is awarded under provisions of this Act.
 - 2) The Act, if one type of the activity refers to:
 - a) concession contract, and the other one does not refer to public contracts awarded by contracting authorities, referred to in the Article 3 para 1 item 1-3a and 5 of the Public Procurement Law, or public contracts, referred to in the Article 132 para 1 of the Public Procurement Law,
 - b) concession contract, and the other one refers to concession contract to which the provisions of the Act do not apply.
 5. The contracting authority shall not, in order to avoid the application of the provisions of the Act, award one concession contract or several separate concession contracts.

Article 11

If the subject matter of the concession contract, which cannot be divided, in particular due to technical, organizational, economic or teleological, includes parts:

- 1) where some of them are covered by the Article 346 of the Treaty on the Functioning of the European Union, in order to award a contract the provisions of the Act do not apply;
- 2) which constitute a public contract, referred to in the Article 131 para. 1 of the Public Procurement Law, in order to award such a contract either the provisions of the Act or provisions of the Public Procurement Law shall apply, upon the choice of the contracting authority.

Chapter 3

Rules on the award of concession contract

Article 12

1. The contracting authority shall prepare and conduct concession award procedure in a manner ensuring fair competition and equal treatment of economic operators as well as in line with proportionality and transparency rules.
2. The contracting authority shall not prepare and conduct concession award procedure in a manner intended to avoid the application of provisions of the Act.

Article 13

1. The contracting authority shall make available the information concerning the concession award procedure in cases stipulated in the Act. After the conclusion of the concession award procedure or the cancellation thereof, the information concerning the procedure shall be made available based on rules stipulated in provisions on access to public information.
2. The contracting authority shall make available to the economic operators participating in the concession award procedure the procedure documentation other than the concession documents from the day of dispatch of the information on the selection of the most advantageous tender, referred to in the Article 38 para. 1 point 1, or on the cancellation of the concession award procedure.
3. The information regarded as a business secret, within the meaning of provisions on combating unfair competition, shall not be disclosed, if the economic operator stipulated that it shall not be shared and demonstrated that the reserved information remains a business secret, except for the information made public in the concession notice or information delivered to economic operators based on the Act.
4. The contracting authority may impose on economic operators requirements in order to ensure confidentiality of information shared during the concession award procedure.

Article 14

1. The communication in the concession award procedure, including the submission of requests to participate in a procedure, submission of tenders, statements and

notifications, except for cases referred to in the Article 18 and the Article 22, shall be made, upon the choice of contacting authority, in written or electronic form.

2. Upon the consent of contracting authority, the information may be transmitted orally, including communicated by telephone, if the information does not refer to the essential elements of a concession award procedure, and provided that its content is recorded on a durable medium.
3. The means of communication chosen shall be generally available and non-discriminatory, and shall not restrict economic operators' access to the concession award procedure. The electronic means of communication, as well as their technical characteristics shall be interoperable with the information and communication technology equipment in general use.
4. The contracting authority shall ensure that the integrity of data and the confidentiality of requests to participate in a procedure and tenders are preserved. They shall examine the content of requests to participate in a procedure and tenders only after the time limit set for submitting them has expired.

Article 15

Economic operators may compete for a concession contract jointly based on rules provided for in the Public Procurement Law.

Article 16

1. The provisions of the Act of 23 April 1964 - Civil Code (Journal of Laws of 2016, items 380, 585 and 1579) shall apply to actions undertaken by the contracting authority, economic operators and concessionaire in the concession award procedure, unless the provisions of this Act provide otherwise.
2. If the last day of the time limit falls on Saturday, Sunday or a holiday, the nearest working day shall be deemed the last day of the time limit

Chapter 4

Notices and other concession documents

Article 17

The Contracting authority shall invite to participate in a concession award procedure by means of:

- 1) concession notice
- 2) prior information notice – in case of concession award procedure for social and other specific services listed in Annex IV of Directive 2014/23/EU.
- 3) invitation to compete for a concession contract, which is submitted to selected economic operator or economic operators in cases referred to in the Article 20 para. 1.

Article 18

1. The notices, referred to in the Act, the contracting authority shall:
 - 1) publish in the Official Journal of the European Union;
 - 2) place in the Public Procurement Bulletin.
2. The Minister responsible for economy shall determine, by means of a regulation, the value of concession contracts which require the submission of the Publications Office of the European Union taking into account the applicable provisions of EU law.
3. The contracting authority shall prepare notices in accordance with standard forms defined in the Commission Implementing Regulation (EU) 2015/1986 of 11 November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011 (OJ L 296, 12.11.2015, p. 1–146).
4. The contracting authority shall submit the notices to the Publications Office of the European Union in accordance with the format and procedures for the electronic submission of notices indicated on the website, referred to in the para. 2 of Annex IX to Directive 2014/23/EU.
5. The contracting authority shall place notices in the Public Procurement Bulletin with the use of standard forms available on the website of the Public Procurement Office.
6. The Minister responsible for economy shall determine, by means of a regulation, the standard forms of notices to be placed in the Public Procurement Bulletin, taking into account the scope of information of the notice as required by the Act, or the concession value.

Article 19

1. The contracting authority may, after the publication of the concession notice in a manner, referred to in the Article 18 para. 1, or after 48 hours for the confirmation of the receipt of such a notice by the Publications Office of the European Union, place additional concession notice in other manner, in particular in a nationwide press.
2. The notice, referred to in para. 1, may not contain any other information than the one contained in the concession notice submitted to the Publications Office of the European Union or placed in the Public Procurement Bulletin. The date of submission of the notice to the Publications Office of the European Union and the date of publication in the Public Procurement Bulletin shall be indicated in this notice.

Article 20

1. The contracting authority shall not be required to publish a concession notice or place a concession notice or prior information notice, if at least one of the following circumstances occurs:
 - 1) the works or services can be performed or provided only by one concessionaire:
 - a) due to the absence of competition for technical reasons,
 - b) due to reasons concerning the protection of exclusive rights,

- c) due to reasons concerning the protection of intellectual property rights and exclusive rights other than those defined in Article 3 para. 2 of the Public Procurement Law,
 - if there is no reasonable alternative or substitute solution and the absence of competition is not the result of an artificial narrowing down of the concession award conditions.
- 2) the aim of the concession is the creation or acquisition of a unique work of art or artistic performance;
- 3) in the concession award procedure, where no request to participate in a procedure, no tender has been submitted in response to a concession notice, or all requests to participate in a procedure were rejected due to the exclusion of economic operators under the Article 32 or failure to meet the requirements determined by the contracting authority on the basis of the Article 33, or no submitted tender may satisfy the needs of contracting authority and fulfill the requirements specified in the concession documents, provided that the initial conditions of the concession contract are not substantially altered;
- 4) the contracting authority, referred to in the Article 3 para. 1 items 1-3a Public Procurement Law, awards a concession contract to a legal person, if the following conditions are met jointly:
 - a) the contracting authority exercises control over that legal person, equivalent to the control exercised over its own units, involving dominant influence on the strategic goals and important decisions relating to management affairs of that legal person; this condition is also fulfilled where such a control is exercised by another legal person controlled by the contracting authority in the same manner,
 - b) more than 90% of the activity of the controlled legal person involves the execution of tasks entrusted to it by the contracting authority exercising control, referred to in letter a, or by other legal person, controlled in a manner, referred to in letter a, by the contracting authority,
 - c) no private capital is directly involved in the controlled legal person; except for the share of the employees of that legal person representing in total up to 15% of the company capital, holding in total up to 15% of the votes at the shareholders meeting or general assembly,
- 5) the contracting authority, referred to in the Article 3 para. 1 items 1-3a Public Procurement Law, awards a concession contract to another contracting authority, if the following conditions are met:
 - a) the contracting authority as a concessionaire exercises control over the contracting authority a contract is awarded to, equivalent to the control exercised over its own units, involving dominant influence on the strategic goals and important decisions relating to management affairs of that contracting entity; this condition is also met where such control is exercised by another legal person controlled in the same manner by the contracting authority being a concessionaire,
 - b) more than 90% of the activity of the controlled contracting authority involves the execution of tasks entrusted to it by the contracting authority exercising control, referred to in letter a, or by other legal person, controlled in a manner, referred to in letter a, by the contracting authority,

- c) no private capital is directly involved in the controlled contracting authority and in the contracting authority exercising control; except for the share of the employees of that legal person representing in total up to 15% of the company capital, holding in total up to 15% of the votes at the shareholders meeting or general assembly,
- 6) the contracting authority, referred to in the Article 3 para. 1 items 1-3a Public Procurement Law, awards a concession contract to a legal person, if the following conditions are met jointly:
- a) the contracting authority together with other contracting authorities, referred to in the Article 3 para. 1 items 1-3a Public Procurement Law, exercise control over the legal person, equivalent to the control exercised over their own units, however the joint control takes place provided that the following conditions are met jointly:
 - the supervisory and managerial bodies of this legal person are composed of representatives of all participating contracting authorities, provided that an individual representative may represent more than one contracting authority,
 - the participating contracting authorities can exercise a joint dominant influence on the strategic goals and important decisions of the controlled legal person,
 - the controlled legal person does not act in the interest that is contradictory to the interests of the contracting authorities exercising the control over it,
 - b) more than 90% of the activity of the controlled legal person involves the execution of tasks entrusted to it by the contracting authorities exercising a control, referred to in a letter a, or by other legal persons controlled in the manner, referred to in a letter a, by these contracting authorities,
 - c) no private capital is directly involved in the controlled legal person;
- 7) the concession contract is awarded between at least two contracting authorities, referred to in the Article 3 para. 1 items 1-3a Public Procurement Law, if the following conditions are met jointly:
- a) the contract establishes or implements a cooperation between these contracting authorities in order to ensure the performance of public services, which they are bound to perform tasks, aiming to achieve common objectives,
 - b) implementation of the cooperation is only driven by public interest reasons,
 - c) the cooperating contracting authorities carry out on the open market less than 20% of the activity subject to the cooperation.
2. In the case, referred to in para. 1 item 3, the contracting authority shall provide the European Commission with the information, if the European Commission requests for it.
3. To calculate the percentage of the activity, referred to in para. 1 item 4 letter b, item 5 letter b, item 6 letter b and item 7 letter c, the average revenue generated by the legal person or the contracting authority with respect to services, supplies, or works within the period of 3 years preceding the award of concession contract shall be taken into account.

4. If due to the day of establishing or commencing the activity by the legal person or the contracting authority or due to reorganization of their activity, the data relating to the average revenue generated within the period of 3 years preceding the award of the concession contract is unavailable or inadequate, the percentage of activity referred to in para. 1 item 4 letter b, item 5 letter b, item 6 letter b and item 7 letter c, shall be determined by means of reliable business projections.
5. The contracting authority, upon the request of the European Commission, shall provide information on the non-application of the Act under para. 1 items 4-7, as regards the names and data of contracting authorities, the nature and value of concession contracts and evidence deemed necessary by the European Commission.

Article 21

1. The contracting authority shall provide in the concession notice:
 - 1) a description of the subject-matter of the concession contract;
 - 2) grounds for exclusion;
 - 3) qualification criteria;
 - 4) description of contract award criteria;
 - 5) minimal requirements, if defined.
2. The invitation to tender or other concession documents shall cover the elements specified in para. 1 items 4 and 5.

Article 22

In cases, referred to in the Article 20 para. 1, the contracting authority may submit for publication in the Official Journal of the European Union or place in the Public Procurement Bulletin, the notice of intention to award a concession contract, containing at least:

- 1) name (business name) and address of the contracting authority;
- 2) description of the subject-matter of concession contract as well as its size or scope;
- 3) justification of intention to award a concession contract without a prior publication of concession notice in the Official Journal of the European Union or without a placement of concession notice in the Public Procurement Bulletin;
- 4) name and surname or name (business name) as well as the address of the economic operator the contracting authority intends to award a concession contract to.

Article 23

1. Not later than 48 days after the award of a concession, the concession award notice shall be submitted for publication in the Official Journal of the European Union or placed in the Public Procurement Bulletin by the contracting authority.
2. In the case, referred to in the Article 5 para. 1 item 6, the contracting authority submits the concession award notice for publication in the Official Journal of the European Union, if the provisions from the list, referred to in the Article 3 para. 2a of the Public

Procurement Law, provide for no transparency obligations to be applied to a given utilities activity.

Article 24

1. The contracting authority shall make concession documents available at the website from the day the concession notice is published in the Official Journal of the European Union or placed in the Public Procurement Bulletin or from the day on which the contract notice is announced in the or published or day of submitting the invitation to invitation to compete for a concession contract is sent.
2. The contracting authority shall include in the concession notice or the invitation to submit tender the address of the website on which the concession documents are available.
3. If due to exceptional technical or security reasons, the contracting authority cannot make certain concession documents available on the website, it shall indicate in the concession notice or invitation to submit tender that the concession documents concerned will be transmitted by other means than electronic means. In such cases the contracting authority shall prolong the time limit for submission of tenders.

Article 25

1. The economic operator may ask the contracting authority for additional information concerning the concession documents.
2. If the request for additional information was received by the contracting authority not later than by the end of the day on which half of the time limit for submission of tenders passes, the contracting authority shall, not later than 6 days before the expiry of the time limit for submission of tenders and without disclosing the source of the request:
 - 1) provide the information to all the economic operators participating in the concession award procedure;
 - 2) post such information on its website if the request refers to concession document made available prior to the entry of economic operators to concession award procedure.

Article 26

1. The contracting authority shall specify in concession documents the technical and functional requirements for works or services which constitute the subject-matter of a concession contract.
2. The requirements concerning the subject-matter of concession contract may also refer to specific process of production, performance of contracted works or provision of services, provided that they are linked to the subject-matter of the concession and proportionate to its value and objectives, and may include in particular: quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, applied terminology, labelling and user instructions, as well as testing and test methods.

3. The subject-matter of concession contract shall not be described by making reference to trademarks, patents, origin, source or specific process which characterize the products or services provided by a specific economic operator, with the effect of favoring or eliminating certain economic operators or certain products.
4. The reference, referred to in para. 3, is permitted in exceptional cases, where a precise and intelligible description of the subject- matter of the contract is not possible. if the description of the subject-matter of concession contract in a precise and intelligible manner is impossible, and such a reference is accompanied by the words ‘or equivalent’.
5. The subject-matter of concession contract shall be described with names and codes specified in the Common Procurement Vocabulary.
6. In the description of the subject-matter of contract for services or works, the contracting authority shall indicate the requirements relating to the employment by a concessionaire or subcontractor under an employment contract of persons carrying out activities indicated by the contracting authority within the concession contract performance, provided that the said activities are to be carried out in the manner defined in 22 § 1 of the Act of 26 June 1974 – Labour Code (Journal of Laws of 2016, item 1666).
7. In cases where the contracting authority provides for the requirements, referred to in para. 6, it specifies in the description of the subject-matter of concession contract in particular:
 - 1) documentation manner of the employment, referred to in para. 6;
 - 2) authorizations of the contracting authority as regards the control of the concessionaire’s compliance with the requirements, referred to in para. 6, and sanctions for failure to meet these requirements,
 - 3) type of activities necessary for performance of the concession contract, which requirements concerning the employment by the concessionaire or subcontractor under an employment contract of persons carrying out indicated within the concession contract performance relate to.

Article 27

In the description of the subject-matter of concession contract, the contracting authority may indicate the concession performance requirements which may include economic, environmental, social, innovation- or employment-related aspects.

Chapter 5

Concession award procedure

Article 28

The contracting authority may organize a concession award procedure in a manner meeting its needs.

Article 29

1. The contracting authority may conduct a concession award procedure where:
 - 1) in response to concession notice, all interested economic operators submit tenders together with information for the purpose of evaluation of fulfillment of qualification criteria, or
 - 2) in response to concession notice, all interested economic operators submit requests to participate in a concession award procedure together with information for the purpose of evaluation of fulfillment of qualification criteria, and subsequently invites to submit tenders or to negotiations and submission of tenders those economic operators that fulfill qualification criteria, the provisions of para. 5 shall apply, or
 - 3) conducts negotiations with economic operators admitted to participate in a concession award procedure, and subsequently invites them to submit tenders.
2. The contracting authority shall not change the contract award criteria nor the minimum requirements during the negotiations.
3. The contracting authority shall present to economic operators a description of the concession award procedure, which contains in particular:
 - 1) qualification criteria;
 - 2) means of communication with economic operators;
 - 3) the conditions, a request to participate in a concession award procedure and the tender must comply with, under the pain of their rejection;
 - 4) the planned deadline of the concession award procedure.
4. The contracting authority informs the economic operators participating in the concession award procedure of modifications concerning the information contained in the description of the concession award procedure, and when the modifications concern the information contained in the concession notice, the contracting authority modifies in this respect the content of the concession notice.
5. The contracting authority may limit the number of economic operators to be invited to participate in the concession award procedure, provided that it is based on objective and non-discriminatory criteria and the number of economic operators to be invited ensures a competition.
6. The contracting authority documents each stage of the concession award procedure by any means of its choice.

Article 30

1. Persons performing activities in the concession award procedure on the part of contracting authority are subject to exclusion, if their impartiality and independence in the context of the concession award procedure is or might be compromised due to their direct or indirect financial, economic or personal interest in a specific result of the concession award procedure, especially when they:
 - 1) participate in the concession award procedure;

- 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 representative or members of managing or supervisory bodies of economic operators competing for a contract;
 - 3) during the three years prior to the day of commencement of a concession 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) have been legally sentenced for an offence committed in connection with contract award procedure, bribery, offence against economic turnover or any other offence committed with the aim of gaining financial profit.
2. Persons performing activities in a concession award procedure shall submit, **under the pain of criminal liability for giving false testimony**, in a written form a statement on the lack or existence of the circumstances referred to in para. 1. Prior to receipt of a statement, the head of the contracting authority or a person who was entrusted to carry out activities in a concession award procedure, shall inform the persons making the statement of criminal liability **for giving false testimony**.
 3. A statement of circumstances, referred to in para. 1, shall be lodged immediately after becoming aware of these circumstances; however, a statement on the lack of circumstances shall be lodged not later than prior to the conclusion of a concession contract.
 4. Persons, referred to in para. 1, are subject to exclusion upon their request, at request of contracting authority or ex officio. Such a request shall be lodged immediately after becoming aware of these circumstances.
 5. Actions in the course of concession award procedure undertaken by a person subject to exclusion shall be repeated, except for the opening of tenders and other factual actions having no influence on the outcome of the procedure.

Article 31

1. The contracting authority shall set the time limit for submission of tenders or requests to participate in a concession award procedure, taking account of the complexity of the subject-matter of contract and the time necessary to prepare requests to participate in a procedure or tenders.
2. In cases where tenders or requests to participate in a procedure can be submitted only after the visit to the site or after on-the-spot inspection of documents supporting the concession documents, the contracting authority shall set the time limit for submission of tenders or requests to participate in a concession award procedure taking into account the time necessary for the economic operators to become familiar with the information necessary to prepare a tender or a request to participate in a concession award procedure, in consideration of para. 3 and 4.
3. The time limit for submission of the tenders, specified in the Article 29 para. 1 item 1, or the requests to participate in a concession award procedure, referred to in the Article 29 para. 1 item 2, shall not be less than 30 days of the date of submission of

concession notice to the Publications Office of the European Union or the date of placement of concession notice in the Public Procurement Bulletin.

4. If the concession award procedure is divided into stages, the contracting authority shall set time limits for the submission of initial tenders and it shall not be less than 22 days from the date on which the invitation to tender is sent.
5. If the contracting authority accepts that tenders may be submitted by electronic means, the time limit for submission of tenders, referred to in para. 3 and 4, may be reduced by 5 days.

Chapter 6

Qualification of economic operators and selection of the most advantageous tender

Article 32

1. The contracting authorities, referred to in the Article 3 para. 1 items 1-3a of the Public Procurement Law, shall exclude, and the other contracting authorities may exclude, the following economic operators:
 - 1) an economic operator being a natural person who has been the subject of a conviction by final judgment for one of the following reasons:
 - a) referred to in the Article 165a, Articles 181 to 188, Article 189a, Articles 228 to 230a, Article 258, or Articles 270 to 309 of the Act of 6 June 1997 – Criminal Code (Journal of Laws of 2016 item 1137) or the Article 46 or 48 of the Act of 25 June 2010 on sports (Journal of Laws of 2016, items 176 1170 and 1171),
 - b) constituting an act of terrorism, referred to in the Article 115 § 20 of the Act of 6 June 1997 – Criminal Code,
 - c) fraud,
 - d) referred to in the Article 9 or 10 of the Act of 15 June 2012 on the consequences of entrusting the performance of work to foreigners staying against the regulation in the Republic of Poland (Journal of Laws item 769);
 - 2) economic operator, if a member of its managing or supervisory body, partner in a general partnership or limited liability partnership, or general partner in a limited partnership or a limited joint-stock partnership, or a proxy has been convicted with a final verdict for an offence, referred to in item 1;
 - 3) an economic operator for whom a final verdict or final administrative decisions has been issued on arrears in payment of taxes, levies, or social or health insurance premiums, unless the economic operator has paid due taxes, levies, and social or health insurance premiums with due interest or penalties, or entered into a binding agreement on the repayment of these liabilities;
 - 4) if the economic operator or the persons, referred to in the Article 30 para. 1, authorized to represent that economic operator, remain in relationships, referred to in the Article 30 para. 1 items 2 or 3 with:
 - a) the contracting authority,

- b) persons authorized to represent the contracting authority,
 - unless it is possible to secure impartiality on behalf of the contracting authority in another manner than by excluding the economic operator from the procedure;
 - 5) economic operator which as a result of intended action or gross negligence misled the contracting authority when presenting information which were required to verify absence of exclusion grounds or to assess the fulfillment of qualification criteria, withheld such information or is unable to submit the required documents supporting such information, or due to recklessness or negligence presented misleading information that may have a material influence on decisions taken by the contracting authority in the concession award procedure;
 - 6) an economic operator who unduly influenced or attempted to influence the activities of the contracting authority or to obtain confidential information that may confer upon it advantage in a concession award procedure;
 - 7) an economic operator that participated in the preparation of a concession award procedure or whose employee, as well as a person providing work under civil contract, contract of commission, agency contract, or other contract for provision of services, participated in the preparation of such a procedure, unless the resulting distortion of competition can be eliminated in other way than by excluding the economic operator from the concession award procedure;
 - 8) an economic operator that entered into agreement with other economic operators, aimed at distortion of competition between the economic operators in a concession award procedure, if the contracting authority has justified grounds to state the conclusion of such an agreement;
 - 9) an economic operator being a collective entity against which the court ruled ban on participation in the concession award procedure pursuant to the Act of 28 October 2002 on the liability of collective entities for acts prohibited under penalty (Journal of Laws of 2016, item 1541);
 - 10) an economic operator against which the court ruled ban on participation in the concession award procedure as a precautionary measure.
2. A contracting authority may exclude, from participation in a concession award procedure, an economic operator:
- 1) that is subject of winding-up proceedings, where in an arrangement approved by court in restructuring proceeding, the satisfaction of creditors is secured by liquidation assets or the court ordered the liquidation of assets of economic operator pursuant to the Article 332 para. 1 of the Act of 15 May 2015 – Restructuring Law (Journal of Laws of 2016, items 1574 and 1579), or whose bankruptcy has been declared, except for an economic operator that, after its bankruptcy was declared, entered into an arrangement approved by the court, provided that the arrangement does not provide for the satisfaction of creditors, unless the court ordered the liquidation of its assets under the Article 366(1) of the Act of 28 February 2003 – Bankruptcy Law (Journal of Laws of 2015, item 233, as amended);
 - 2) that culpably infringed its professional obligations, which puts its integrity into question, and in particular where the economic operator, as a result of a deliberate action or gross negligence, failed to perform or performed unduly a contract, which the contracting authority can demonstrate by means of appropriate evidence;

- 3) that failed to perform or unduly performed to a significant degree an earlier concession contract or public contract concluded with contracting authority, what resulted in termination of a contract or compensation;
 - 4) that, in case of concession contract in the fields of defense and security, was found based on appropriate evidence, not to possess the reliability necessary to exclude risks to the security of the Member State.
 - 5) that is a natural person convicted with a final verdict for an offence against employee rights or against the environment, if they were subjected to custodial sanctions, imprisonment, or fine of at least PLN 3000 for that offence;
 - 6) if a member of its management or supervisory body, partner in a general partnership or limited liability partnership, or general partner in a limited partnership or a limited joint-stock partnership, or a proxy has been convicted with a final verdict for a offence referred to in the item 5;
 - 7) with regard to which a final administrative decision was issued on the infringement of obligations resulting from the provisions of labour law, environment protection law, or social security provisions, if by this administrative decision a fine was assessed in an amount not lower than PLN 3000;
 - 8) that infringed the obligations relating to the payment of taxes, levies, or social or health insurance premiums, which the contracting authority is able to demonstrate with the use of relevant evidence, except for the case referred to in para. 1 item 3, unless the economic operator has paid due taxes, levies, and social or health insurance premiums with due interest or penalties, or entered into a binding agreement on the repayment of these liabilities.
3. If the contracting authority provides for a possibility of exclusion of economic operator based on para. 2, at least one of the grounds for the exclusion shall be demonstrated in the concession notice or in the prior information notice, or in the invitation to compete for a concession contract.
4. An economic operator shall be excluded:
- 1) in cases referred to in para. 1 item 1 a-c and item 2, where the person referred to in these provisions has been convicted for a criminal offence referred to in para. 1 item 1 a-c, provided that less than 5 years have passed since the verdict confirming the grounds for exclusion was issued, unless another period of exclusion was set in this verdict;
 - 2) in cases referred to:
 - a) in para. 1 item 1d and item 2, where the person referred to in these provisions, has been convicted for a criminal offence referred to in in para. 1 item 1d,
 - b) in para. 1 item 3,
 - c) in para. 2 items 5-7,
 - if less than 3 years have passed since – respectively – the verdict confirming the grounds for the exclusion became final and binding, unless another period of exclusion was set in this verdict, or from the date on which a decision confirming the existence of one of the grounds for exclusion became final.

- 3) in cases referred to in para. 1 items 6 and 8, or para. 2 items 2 and 4, provided that less than 3 years have passed from the day on which the event constituting grounds for the exclusion occurred;
 - 4) in the case referred to in para. 1 item 9, provided that the period imposing on legally valid prohibition from applying for public contracts has not expired;
 - 5) in the case referred to in para. 1 item 10, provided that the period imposed on prohibition from applying for public contracts has not expired.
5. An economic operator subject to exclusion on the basis of para. 1 items 1 and 2 as well as items 4-8, or para. 2, may present evidence that measures undertaken by them are sufficient to demonstrate their reliability, and in particular to evidence that the damage inflicted by a criminal offence or fiscal offence has been redressed, or that a compensation for non-material damage has been paid or the damage was redressed, with exhaustive description of the factual state and cooperation with the law enforcement authorities, as well as undertaking specific technical, organizational, and staff measures to prevent further criminal offences, fiscal offences, or irregular activities of the economic operator. The provision of the first sentence shall not apply if a prohibition from applying for a contract has been imposed on an economic operator by a final verdict, and the period of validity of this prohibition has not expired
 6. An economic operator shall not be subject to exclusion, if the contracting authority, taking account of the significance and specific circumstances of economic operator's act, deems the evidence presented pursuant to the para. 5 to be sufficient.
 7. The contracting authority may exclude an economic operator at any stage of the concession award procedure if a ground for exclusion exists.
 8. In exceptional cases, for overriding reasons of public interest, defense and security, the contracting authority referred to in art. 3 para. 1 items 1-3a of the Public Procurement Law may refrain from the exclusion of economic operators to whom the exclusion specified in para. 1 item 3 applies.

Article 33

1. The contracting authority shall specify the qualification criteria concerning:
 - 1) economic or financial standing;
 - 2) technical or professional capability.
2. The qualification criteria defined by the contracting authority shall be related to the subject-matter of concession contract, proportionate to the subject-matter of concession contract, ensure real competition, and shall enable the evaluation of the economic operator's economic or financial standing as well as technical or professional capability necessary to perform the concession contract.
3. The contracting authority may require from the economic operators to indicate in the tender or in the request to participate in the concession award procedure the first and last names as well as relevant professional qualifications of persons responsible for performance of concession contract.

Article 34

1. The contracting authority may stipulate in the concession notice or in the prior information notice that for the concession contract only sheltered workshops and other economic operators whose main goal is social and professional integration of disabled people within the meaning of the provisions on the vocational rehabilitation, social resettlement and employment of disabled people; or under the relevant provisions of the Member States of the European Economic Area, or disadvantaged persons.
2. In the case, referred to in para. 1, the contracting authority shall define a minimum percentage level of employment of the persons referred to in para. 1 not lower than 30%, of persons employed by sheltered workshops or economic operators referred to in para. 1.

Article 35

1. The economic operator based on the rules set in the concession notice, shall submit a statement on the fulfillment of qualification criteria and on the lack of grounds for exclusion.
2. The contracting authority according to rules set in the concession notice may as well request from economic operator to submit documents confirming the fulfillment of qualification criteria and lack of grounds for exclusion.
3. The manner for submission of documents and their scope shall be non-discriminatory and proportionate to the subject-matter of the concession contract and shall be used exclusively to demonstrate the fulfillment by the economic operator of qualification criteria and lack of grounds for exclusion.

Article 36

1. In order to confirm compliance with the qualification criteria, the economic operator may, where appropriate and in relation to a specific concession contract, rely on capacities of other entities, regardless of the legal nature of relationships between the economic operator and these entities.
2. In case when the economic operator wishes to rely on capacities of other entities, it shall demonstrate to the contracting authority that it will have necessary resources of these entities at its disposal throughout the whole period of concession contract performance, in particular by presenting a written commitment of these entities.
3. An economic operator that relies on capacities of other entities in terms of financial or economic standing shall be jointly and severally liable with the entity that committed itself to make the resources available, for any damage suffered by the contracting authority as a result of a failure to provide these resources, unless the economic operator is not responsible for the failure.

Article 37

1. Contracting authority indicates the award criteria connected with the subject-matter of a concession contract in descending order of importance.

2. Contract award criteria may include, inter alia, environmental, social or innovation-related aspects of the subject-matter of a concession contract.
3. In exceptional cases when a tender offers an innovative solution, constituting the implementation of a new or significantly improved product, service or process, including a production or construction process, a new marketing method or a new organizational method in business activity, work organization or external relations, in particular with a purpose of solving social problems or supporting social strategies that the contracting authority could not foresee despite due diligence, the contracting authority may change the order of importance of contract award criteria in order to consider this solution.
4. The contracting authority informs all economic operators of the change in the order of contract award criteria and submits a new invitation to tender, maintaining the time limits, referred to in art. 31 para. 3 and 4. If the contract award criteria were published in concession notice, the change in the order of importance of contract award criteria requires a publication of new concession notice.
5. The contracting authority shall not reject a tender on the grounds that the offered works or services do not comply with the technical and functional requirements set in the description of the subject-matter of a contract, once the economic operator proves in its tender that the proposed solution equally satisfies these requirements.

Article 38

1. The contracting authority shall forthwith inform all the economic operators of:
 - 1) the selection of the most advantageous tender by providing the first and the last name or the company name as well as the address of the successful economic operator;
 - 2) the grounds for rejection of tender or request to participate in the concession award procedure and the legal protection measures;
 - 3) cancellation of concession award procedure;
 - 4) recommencement of concession award procedure
- providing factual and legal justification.
2. The contracting authority, immediately after the selection of the most advantageous tender, shall provide the information to the economic operator whose tender was rejected containing:
 - 1) justification for selection of the most advantageous tender;
 - 2) the score of the economic operator whose tender was considered the most advantageous;
 - 3) the score of the economic operator to whom the information is addressed.
3. The contracting authority waive the obligation to provide the information on the grounds for rejection of a tender or request to participate in the concession award procedure if there are reasons connected with classified information on state security and the entity that provided the information reserved that the information shall not be revealed.

Article 39

1. The contracting authority shall cancel a concession award procedure, if:
 - 1) no tender or request to participate in the concession award procedure was submitted;
 - 2) all tenders or requests to participate in the concession award procedure were rejected.
2. The contracting authority may cancel a concession award procedure, if:
 - 1) there are objectively justified reasons, in particular, there has been a significant change in circumstances, leading to the fact that conducting a concession award procedure or performing a subject matter of concession contract is not in the public interest;
 - 2) the funds that the contracting authority intended to finance all or part of the concession contract were not granted to it, and the possibility of cancelation of concession award procedure on this ground was provided for in the concession notice or prior information notice or invitation to compete for a concession contract.
 - 3) the concession award procedure is encumbered with irreparable defect which prevents the conclusion of a valid concession contract.

Article 40

The contracting authority shall conclude a concession contract with selected economic operator based on the contract award criteria, if the following circumstances are met jointly:

- 1) The tender must comply with minimal requirements set by the contracting authority (if applicable);
- 2) the economic operator is not subject to exclusion;
- 3) the economic operator meets the qualification criteria.

Article 41

1. The contracting authority shall conclude a concession contract at least 10 days after the day on which the information on the selection of the most advantageous tender was submitted, if the information was submitted by electronic means of communication; or 15 days - if it was submitted in any other manner.
2. The contracting authority may conclude a concession contract prior to the expiry of the time limits, referred to in para. 1, if:
 - 1) in concession award procedure only one tender or one request to participate in the procedure was submitted;
 - 2) only one economic operator was invited to participate in a concession award procedure, and the request to participate in a procedure of other economic operators were rejected and the time limit for appeal against this action expired, or, as a result of the appeal, the Chamber issued a judgment or a decision that ended the appeal procedure;

- 3) the contract is a concession contract, which under provisions of the Act, does not require prior publication of a concession notice.

Chapter 7

Concession contracts

Article 42

The scope of services of the economic operator which derives from the concession contract shall be identical with its commitment contained in the tender.

Article 43

1. A concession contract requires, under the pain of nullity, a written form, unless separate provisions require a particular form.
2. The parties of concession contract shall perform the concession contract with respect for the principle of transparency.

Article 44

1. The concession contracts shall be open and shall be made accessible pursuant to rules laid down in provisions on the access to public information.
2. The contracting authority may refuse to make the contract accessible due to reasons of state defense or security.

Article 45

1. A concession contract shall be concluded for a defined period.
2. In case of concession contract concluded for a period longer than 5 years, the duration of the concession contract may not exceed the period during which the concessionaire may reasonably expect to recover capital expenditures for the execution of works or services together with return on invested capital, including initial investment and investments made during the concession period.

Article 46

1. It is prohibited to modify the provisions of the concession contract unless at least one of the following occurs:
 - 1) The modifications have been provided for in the concession notice or other concession document in a form of unequivocal contractual clauses that define their scope, in particular the possibility of modification of the amount of concessionaire's remuneration, and the nature and conditions of such changes;

- 2) The modifications concern the contracting of additional services or works not covered by the concession contract from the existing concessionaire, if they have become necessary, provided that the change of the concessionaire:
 - a) cannot be made for economic or technical reasons, in particular concerning interchangeability or interoperability of equipment, services or installations procured under the concession contract; and
 - b) would cause significant inconvenience or substantial increase of costs for the contracting authority.
 - 3) the need for modification is caused by circumstances, which the contracting authority acting with due diligence could not foresee;
 - 4) the existing concessionaire is replaced by the new concessionaire:
 - a) based on contractual clauses, referred to in point 1;
 - b) As a result of the merger, division, transformation, bankruptcy, restructuring or acquisition of the existing concessionaire or its company as long as the new concessionaire meets the qualification criteria provided that it does not entail other substantial modification to the concession contract and is not intended to avoid the application of the provisions of the Act,
 - c) as a result of the contracting authority's assumption of the concessionaire's obligations towards its subcontractors;
 - 5) where modifications, irrespective of their value, are not substantial within the meaning of para. 6;
 - 6) where the value of the modification is lower than the amount specified in the provisions issued under Article 18 para. 2 and at the same time lower than 10% of the concession contract value specified originally, and in the case where several successive modifications are made, the value shall be assessed on the basis of the total value of the successive modifications.
2. In cases referred to in the para. 1 items 1, 3 and 6, modifications of the concession contract clauses may not lead to a change in the nature of a contract.
 3. In case of a concession contract concluded by the contracting authority for the purpose of performing the activity other than utilities activity, each subsequent increase in concession contract valued, under circumstances referred to in para. 1 item 2 and 3, shall not exceed 50% of the concession contract value defined originally. The modifications may not be aimed to avoid the application of the provisions of the Act.
 4. If the contract provides for possibility of modification of remuneration of the concessionaire for other reasons than the modification of the scope of concessionaire's benefits, an acceptable value of the contract modification, referred to in para. 1 point 6 and para. 3, shall be assessed based on the value of the original concession contract in consideration of modifications resulting from these provisions.
 5. If the concession contract does not include provisions referred to in para. 4, the updated value of the contract shall be assessed in consideration of the price index of investment announced by the President of the Central Statistical Office based on the Article 15 para. 5b of the Act of 15 February 1992 the act on corporate income tax (Journal of Laws of 2016 item 1888).

6. The modification of a concession contract is considered substantial where due to this modification, the nature of a concession contract differs substantially from its original nature, in particular where at least one of the following conditions is met:
 - 1) the modification introduces conditions which, if they had been defined in the concession award procedure, they would have allowed for the admission of other economic operators than those that were admitted or for the acceptance of other tenders other than those accepted, or could have resulted in participation in concession award procedure of other economic operators than those that participated;
 - 2) the modification influences the economic balance of the concession contract in favor of the concessionaire in a manner which was not originally provided for in the concession contract;
 - 3) the modification significantly extends the scope of benefits and obligations resulting from the concession contract;
 - 4) a new concessionaire replaces the existing concessionaire, in cases other than those provided for in para. 1 point 4.
7. In case of modification of concession contract under para. 1 items 2 or 3, the contracting authority, submits for publication in the Official Journal of the European Union or places in the Public Procurement Bulletin a modification notice.
8. The contractual clauses amended in breach of para. 1 shall be void. The void provisions of the concession contract shall be replaced by contractual provisions in the original wording.
9. If the contracting authority intends to change the terms of concession contract which exceed the contract modifications acceptable under para. 1, the contracting authority is obliged to conduct a new concession award procedure or contract award procedure.

Article 47

1. The contracting authority may terminate a concession contract if at least one of the following circumstances occur:
 - 1) The modification of a concession contract was made in breach of Article 46 para. 9;
 - 2) The concessionaire when concluding a concession contract was subject to exclusion under Article 32 para. 1 items 1 or 2;
 - 3) the Court of Justice of the European Union found, as part of the procedure provided for in Article 258 of the Treaty on the Functioning of the European Union, that Poland has failed to fulfil its obligations under the Treaties and the Directive 2014/23/EU due to the fact that the contracting authority concluded a concession contract in breach of the European Union law.

Article 48

1. In the concession documents, the contracting authority may require from economic operators to indicate in their tenders the part of a subject-matter of a concession contract that they intend to subcontract, and the proposed subcontractors.

2. Entrusting the performance of part of a concession contract to subcontractors does not release the concessionaire from liability for due performance of this contract.
3. The concessionaire that was awarded a contract, pursuant to Article 20 para. 1 items 4-7, where the subject-matter is the provision of services of general interest, or works, is obliged to perform key parts of these services or works personally.
4. In case of concession contracts to be provided at the facility under the direct oversight of the contracting authority, the contracting authority shall require, after the award of the concession and at the latest when the performance of the concession commences, the concessionaire to indicate to the contracting authority the name or name and surname, contact details and legal representatives of its subcontractors, involved in such works or services, insofar as known at that point in time. The concessionaire shall notify the contracting authority of any changes to that information as well as deliver information on new subcontractors which it intends to entrust with performance of works or services.
5. The contracting authority may request the information, referred to in para. 4, in particular:
 - 1) in case of concession contracts for supplies, which are not to be provided at the facility under the direct oversight of the contracting authority;
 - 2) from suppliers involved in the performance of concession contract;
 - 3) concerning further subcontractors.
6. The provisions of the Article 32 apply accordingly to direct subcontractors of the concessionaire. If the contracting authority states, that there are grounds for exclusion with regard to a given subcontractor, the economic operator is obliged to replace this subcontractor or to resign from entrusting to subcontractor the performance of part of the concession contract.
7. The contracting authority may apply the provisions of para. 6 with regard to further subcontractors if provided in the concession notice, prior information notice or invitation to compete for a concession contract.

Article 49

1. A concession contract shall be subject of annulment if:
 - 1) a contract was concluded without prior publication of a concession notice in the Official Journal of the European Union or its placement in the Public Procurement Bulletin unless the Act allows for that possibility,
 - 2) a contract was concluded in breach of the time limit defined in the Article 41 para. 1, or the prohibition to conclude a contract referred to in the Article 183(1) of the Public Procurement Law, if that prevented the National Appeal Chamber from consideration of appeal before the contract was concluded;
 - 3) if the subject-matter of a contract exceeds the scope of subject-matter of a contract indicated in the concession documents,
 - 4) in part exceeding the definition of subject-matter of concession contract in the description of subject-matter of concession in consideration of Article 46.

2. In the case referred to in par. 1 point 1, the concession contract is not subject to annulment if the contracting authority has had reasonable grounds to believe that it acts in accordance with the law and the contract was concluded after 10 days from the date of placement of the notice on the intention to conclude a contract in the Public Procurement Bulletin or from the publication of such a notice in Official Journal of the European Union.
3. In justified cases, the procurement contract shall be subject of annulment with regard to unfulfilled obligations, particularly where reimbursement of benefits is not possible.
4. Due to reasons, referred to in para. 1, the annulment of concession contract may not be claimed under the Article 189 of the Code of Civil Procedure of 17 November 1964 - (Journal of Laws of 2016 items 1822, 1823 and 1860).
5. The provision of para. 1 does not exclude the right of contracting authority to claim the annulment of concession contract under the Article 70⁵ of the Act of 23 April 1964 - Civil Code.

Article 50

1. The supervisory body of the contracting authority, in case of doubts as regards the correctness of application of Article 20 para. 1 items 4-7, shall prohibit the conclusion of a contract until the matter is clarified, however for a period not longer than 21 days.
2. If the supervisory body states that there are no grounds for the award of a contract pursuant to Article 20 para. 1 items 4-7, it shall prohibit entering into the contract, and if the contract was concluded, it shall request the contracting authority to terminate or withdraw from the contract within the indicated time limit.
3. In the case of ineffective expiry of the time limit, referred to in para. 2, the supervisory body shall apply to court for the annulment of contract, in whole or in part.
4. The provisions of para. 1-3 do not affect the rights and obligations of supervisory bodies of the contracting authority, resulting from separate provisions.

Chapter 8

Concession contract for social services or other specific services

Article 51

1. The contracting authority may conclude a concession contract for social services or other specific services, referred to in the annex IV to the Directive 2014/23/EU, without applying the provisions of the Act, except for provisions defined in para. 2-4.
2. If the concession contract value is equal to or higher than the amount specified in the provisions issued under the Article 18 para. 2, the contracting authority shall:
 - 1) apply the rules on concluding concession contracts, referred to in the Article 12 and 13;

- 2) invite to participate in the concession award procedure by means of prior information notice, referred to in the Article 17 item 2, unless the circumstances, specified in the Act, occur that exempt from this obligation;
- 3) publish in the Official Journal of the European Union the concession award notice, referred to in the Article 23 para. 1.
3. The notices in the concession award procedure for social services and other specific services may be grouped and submitted to the Publications Office of the European Union within 48 days of the end of each quarter.
4. The provisions of the Chapter 10 shall apply to concession contract for social services and other specific services.

Chapter 9

Competent authorities

Article 52

1. The competent authority in matters of the concession contracts is the President of the Public Procurement Office.
2. The President of the Public Procurement Office shall:
 - 1) develop, after consultation with the minister responsible for regional development, and provide opinions on drafts of normative acts concerning concession contract;
 - 2) monitor the application of rules on the award of concession contracts and shall disseminate the monitoring results;
 - 3) submit, at the request of the European Commission, not less than every 3 years, monitoring reports.

Article 53

The National Appeal Chamber, referred to in the Public Procurement Law, is the competent authority responsible for examining the appeals lodged in the course of concession award procedure.

Chapter 10

Legal protection measures

Article 54

1. The economic operator as well as to other subject, if it has or had an interest in being awarded a concession contract and suffered or may suffer a damage as a result of the violation of provisions of this Act by the contracting authority, has the right to lodge an appeal against an unlawful action taken by the contracting authority in the concession award procedure or failure to act, to which the contracting authority is bound to under the Act.

2. The provisions of Title VI Chapter 2 of Public Procurement Law, except for the Article 180 para. 2 of this Act, shall apply as regards the lodging and examining the appeals, unless the provisions of this chapter provide otherwise.
3. The registration fee shall be paid in the amount of the registration fee for an appeal concerning public procurement, where the value is:
 - 1) is less than the amounts specified in provisions issued based on the Article 11 para. 8 of the Public Procurement Law, if the concession value is less than the amount specified in provisions issued based on the Article 18 para. 2;
 - 2) equal to or higher than the amounts specified in provisions issued based on the Article 11 para. 8 of the Public Procurement Law, if the concession value is equal to or higher than the amount specified in provisions issued based on the Article 18 para. 2.

Article 55

The appeal shall be lodged within:

- 1) 10 days from the date of submission of information on the action of contracting authority against which the appeal is lodged, if the information was submitted by means of electronic communication, or within 15 days – if it was submitted in any other manner;
- 2) 10 days from the date of publication of concession notice in the Official Journal of the European Union or its placement in the Public Procurement Bulletin or publication of the concession documents on the website – in case of appeals against the content of concession notice or concession documents;
- 3) 10 days from the date of publication of the notice on intention to conclude a concession contract in the Official Journal of the European Union or its placement in the Public Procurement Bulletin – in case of appeals against the conclusion of concession contract without prior publication of concession notice in the Official Journal of the European Union or its placement in the Public Procurement Bulletin;
- 4) 30 days from the date when the contracting authority published the concession award notice, provided that the notice entails the justification of a decision on the award of a concession contract without prior publication of concession notice in the Official Journal of the European Union or its placement in the Public Procurement Bulletin;
- 5) 30 days from the date when the modification notice was published in the Official Journal of the European Union or placed in the Public Procurement Bulletin;
- 6) 6 months from the date of conclusion of concession contract, in case of lack of publication of concession award notice in the Official Journal of the European Union or lack of justification in the published concession award notice;
- 7) 3 months from the date of conclusion of concession contract, in case of lack of placement of concession award notice in the Public Procurement Bulletin or lack of justification in the placed concession award notice.

Article 56

1. The judgment or decision which ends the appeal proceedings of the National Appeal Chamber may be challenged by the parties and participants of the appeal proceeding before the court.
2. The provisions of Title VI Chapter 3 of the Public Procurement Law shall apply to pending proceedings as a result of lodging a complaint.

Chapter 11

Changes in Applicable Law

Article 57 - 67

Ref. to modification of provisions of other Acts.

Chapter 12

Final and transitional provisions

Article 68

1. The hitherto provisions shall apply to complaints lodged before the Administrative Court and to concession award procedures, referred to in the Act on Concession for Works or Services of 9 January 2009 (Journal of Laws of 2015 item 113), commenced and not completed before the day of entry into force of this Act.
2. The hitherto provisions shall apply to concession contracts concluded as a result of concession award procedures conducted before the day of entry into force of this Act.

Article 69

1. Within 2016-2025, the maximum limit of state budget expenditures being a financial result of the Act amounts to 2 013 000 PLN, including in:
 - 1) 2016 – 213 000 PLN;
 - 2) 2017 – 200 000 PLN;
 - 3) 2018 – 200 000 PLN;
 - 4) 2019 – 200 000 PLN;
 - 5) 2020 – 200 000 PLN;
 - 6) 2021 – 200 000 PLN;
 - 7) 2022 – 200 000 PLN;
 - 8) 2023 – 200 000 PLN;
 - 9) 2024 – 200 000 PLN;
 - 10) 2025 – 200 000 PLN,
2. In case of overrun or risk of overrun of maximum limit of state budget expenditures adopted for a given financial year, a correction mechanism shall be applied, consisting

of reduction of costs on public tasks performed for the benefit of citizens, and particularly of:

- 1) publications issued by the President of the Public Procurement Office;
- 2) elaboration of training programs and organisation of trainings.
3. The authority responsible for monitoring the use of state budget expenditures limit and implementation of correction mechanism is the President of the Public Procurement Office.

Article 70

1. The hitherto executive provisions issued under the Article 10 para. 5 of the Act, referred to in the Article 71, remain in force until the day of entry into force of the executive provisions issued under the Article 18 para. 6 of the present Act, however not longer than 12 months from the day of entry into force of the present Act.
2. The concession for works notice shall be published in the Official Journal of the European Union, regardless of the estimated value of concession contract, until the date of entry into force of provisions issued under the Article 18 para. 6 of the Act.

Article 71

The Act on Concession for Works or Services of 9 January 2009 (Journal of Laws of 2015 item 113) shall be repealed.

Article 72

The Act shall enter into force after 14 days from date of its publication, except for the Article 10 para. 1 items 4-7 and para. 3-5, Article 48 para. 3 and Article 50 which shall enter into force on January 1., 2017.

President of the Republic of Poland: *A. Duda*