

Regulation of the Minister of Development¹⁾ of 26 July 2016 on the types of documents which the contracting authority may require from the economic operator in a contract award procedure²⁾

Pursuant to Art. 25 para. 2 of the Public Procurement Law of 29 January 2004 (Journal of Laws of 2015, item 2164; and Journal of Laws of 2016, items 831, 996, and 1020) it is decreed as follows:

§ 1. The Regulation specifies the types of documents which the contracting authority may require from the economic operator, their validity period, and the forms in which they can be submitted.

§ 2.1. In order to confirm that the economic operator complies with the terms and conditions of participation in the procedure or the selection criteria concerning competence or the authority to carry out a specific occupational activity, the contracting authority may request the economic operator to provide documents confirming such competence or authority, as long as such an obligation is provided for under separate provisions, and in particular:

- 1) concessions, permissions, licenses, or a document confirming that the economic operator is entered into one of the professional or commercial registers kept in the Member State of the European Union in which the registered office or place of residence of the economic operator is located;
- 2) in case of contract for services – a document confirming the membership of the economic operator in a given organization which conditions the right to provide the service ordered by the contracting authority in the country in which the registered office or place of residence of the economic operator is located;

2. In order to confirm that the economic operator complies with the terms and conditions of participation in the procedure or the selection criteria concerning economic or financial situation, the contracting authority may request that the following documents be provided:

- 1) financial statement or its part, if the preparation of the financial statement is required under legal provisions of the country in which the registered office or place of residence of the economic operator is located, and, if such statement is examined by an auditor in line with accounting regulations, then the opinion on the financial statement or its part shall also be provided, and as for economic operators which are not obliged to prepare financial statements, they shall provide other documents which state, for instance, revenue, assets and liabilities – for the period of no more than the last 3 financial years or, if the period of activity is shorter – for that period;
- 2) statements of the economic operator on their annual turnover or the turnover regarding the area covered by the contract, for the period of no more than the last 3 financial years or, if the period of activity is shorter – for that period;

²⁾ This Regulation within its scope shall implement:

- 1) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ, EU L 94 of 28/03/2014, p. 65, OJ, EU L 24 of 30/01/2016, p. 14, OJ, EU L 307 of 25/11/2015, p. 5);
- 2) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ, EU L 94 of 28/03/2014, p. 243, OJ, EU L 307 of 25/11/2015, p. 7);
- 3) Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defense and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ, EU L 216 of 20/08/2009, p. 76, OJ, EU L 314 of 01/12/2009, p. 64, OJ, EU L 319 of 02/12/2011, p. 43, OJ, EU L 158 of 10/06/2013, p. 184, OJ, EU L 335 of 14/12/2013, p. 17, OJ, and EU L 330 of 16/12/2015, p. 14).

- 3) information from a bank or savings and credit union stating the amount of available financial assets or credit capacity of the economic operator, no earlier than 1 month before the end of the term for the submission of tenders or requests to participate in the procedure;
- 4) documents confirming that the economic operator has taken out liability insurance within the scope of their activities associated with the subject-matter of contract to the sum guaranteed defined by the contracting authority.

3. If, for justified reasons, the economic operator cannot submit the documents requested by the contracting authority, referred to in para. 2, the contracting authority shall enable the economic operator to provide other documents referred to in Art. 26 para. 2c of the Public Procurement Law of 29 January 2004, hereinafter referred to as the "Act".

4. In order to confirm that the economic operator complies with the terms and conditions of participation in the procedure or the selection criteria concerning technical or occupational capacity, the contracting authority may request that the following documents be provided:

- 1) the list of construction works executed within the last 5 years before the end of the deadline for the submission of tenders or requests to participate in the procedure, or, if the period of activity is shorter – within that period, specifying their type, value, date of execution, and entities for which they were provided, along with proof of due performance of the said construction works, in particular information on whether such works were carried out in line with building law and completed in an appropriate manner, whereas the proofs in question shall comprise credentials or other documents issued by the beneficiary of construction works, or, if the economic operator cannot obtain such documents due to a justified objective reason, other documents can be provided;
- 2) the list of supplies or services, either completed or ongoing (in case of periodical or permanent services), which took place within the last 3 years before the end of the deadline for the submission of tenders or requests to participate in the procedure, or, if the period of activity is shorter – within that period, specifying their value, subject matter, date of execution, and entities for which they were provided, along with proof of due performance of the said supplies or services, in particular credentials or other documents issued by the recipient of such supplies or services, either completed or ongoing (in case of periodical or permanent services), or, if the economic operator cannot obtain such documents due to an important objective reason, then the economic operator shall provide relevant statement; in case of ongoing periodical or permanent services, credentials or other documents which constitute proof of due performance shall be issued no earlier than 3 months before the end of the deadline for the submission of tenders or requests to participate in the procedure;
- 3) the list of tools, plant equipment or technical equipment available to the economic operator in order to perform public contracts, along with information on the basis for disposal of such resources;
- 4) the description of technical equipment as well as organizational and technical means used by the economic operator to ensure the quality and description of the scientific and research facilities held or disposed by the economic operator;
- 5) the list of supply chain management and tracking systems that the economic operator will be able to use in order to perform the public contract;
- 6) the list of environmental management schemes that the economic operator will be able to use to perform the public contract;
- 7) statement on consent for the control of production or technical capacities of the economic operator or, if need be, the scientific and research facilities at their disposal, along with quality control measures to be involved – if the subject-matter of contract comprises complex products or services to be delivered, or in duly justified cases in reference to special purpose products or services;

- 8) statement on the average annual employment rate of the economic operator and the size of managerial staff during the last 3 years before the end of the deadline for submission of tenders or requests to participate in the procedure, or, if the period of activity is shorter – within that period:
- 9) statement on education and professional competence of the economic operator or their management staff;
- 10) the list of persons assigned by the economic operator to perform the public contract, in particular those in charge of services, quality control, or the management of construction works, information on their professional competence, qualifications, experience, and education necessary to perform the public contract, along with the scope of activities carried out by them as well as information on the basis for the use of such persons.

5. In order to ensure an appropriate level of competition in the public contract award procedure, the contracting authority may admit that the list:

- 1) referred to in para. 4 item 1 pertains to construction works executed no longer than 5 years before the end of the deadline for the submission of tenders or requests to participate in the procedure;
- 2) referred to in para. 4 item 2 pertains to supplies or services completed or in progress – in case of periodical or permanent services – in a period of no more than 3 years before the end of the deadline for the submission of tenders or requests to participate in the procedure.

6. If the list, statements, or other documents submitted by the economic operator raise doubts of the contracting authority, it can ask directly the entity, for which the construction works, supplies, or services were performed, and in case of periodical or permanent services are performed, for additional information or documents in this respect.

7. If the content of information provided by the economic operator in the European Single Procurement Document, referred to in Art. 10a para. 1 of the Act, corresponds to the scope of information requested by the contracting authority by way of requests for the documents, in particular those referred to in § 2 para. 2 item 2 and para. 4, the contracting authority may waive the request for these documents from the economic operator. In such a case, the appropriate information submitted by the economic operator or entities, whose capacity or condition the economic operator relies on under the principles defined in Art. 22a of the Act, in the European Single Procurement Document shall serve as a proof that the economic operator complies with the terms and conditions of participation in the procedure or meets the selection criteria and that there is no basis for exclusion.

§ 3. 1. The public contracts referred to in Art. 131a para. 1 of the Act shall be governed by the provisions of § 2 para. 1 to 4 and para. 6, on condition that:

- 1) the list referred to in § 2 para. 4 item 2 covers a period of the last 5 years:
- 2) the contracting authority may also request the following documents:
 - a) a statement on tools, materials, and technical equipment, the size of staff and its specialized knowledge or sources of supply, along with the description of geographic location, if they are located in a country which does not belong to the European Union, available to the economic operator in order to perform the public contract, to meet the possible increased needs of the contracting authority as a result of a crisis situation, and to ensure maintenance, modernization, and adaptation of supplies falling within the subject-matter of the contract,
 - b) statement on legal regulations of the country of the economic operator as well as internal regulations of the economic operator concerning intellectual property,
 - c) certificate, or tests report prepared by a recognized and competent institution that meets the requirements of the relevant European standards, including official quality assurance institutes or agencies, unequivocally confirming the conformity of the offered equivalent military equipment by reference to standards, European Technical Assessments, approvals, technical

specifications, and technical reference systems referred to in Art. 30 para. 1 items 2 to 4 and para. 3 of the Act, or documents on type-examination,

- d) documents or statements confirming the fulfilment of requirements on the performance of a public contract concerning the information security or security of supplies.

2. If, due to justified reasons, the economic operator cannot submit the documents requested by the contracting authority, referred to in § 2 para. 4 items 1 and 2, the contracting authority may request the economic operator to provide other relevant documents to confirm that the economic operator complies with the terms and conditions of participation in the procedure or the selection criteria for technical or occupational capacity.

§ 4. 1. If public contracts involve the processing of classified information or require the access thereto or their application or contain such information, the contracting authority may require the documents which confirm that the economic operator is able to protect such information and process it at a level required under separate provisions, in particular a relevant industrial security certificate, security clearance, and certificate on completed training in the protection of classified information.

2. Documents confirming the economic operator's ability to process classified information must meet the requirements under relevant classified information protection provisions.

3. The contracting authority shall recognize documents authorizing access to classified information issued by other countries on condition that they correspond to a security clearance containing a relevant confidentiality clause issued in line with classified information protection provisions.

4. The contracting authority may request competent authorities to present a confirmation that the security clearance containing a relevant confidentiality clause issued in another country corresponds to the security clearance containing a relevant confidentiality clause issued in line with classified information protection provisions.

§ 5. In order to confirm that there are no grounds for exclusion of the economic operator from participation in a procedure, the contracting authority may request the following documents:

- a) information from the National Criminal Register in the scope provided for in Art. 24 para. 1 items 13, 14, and 21 of the Act and, as regards conviction for the offense to imprisonment, within the scope defined by the contracting authority based on Art. 24 para. 5 items 5 and 6 of the Act, issued no earlier than 6 months before the end of the deadline for submission of tenders or requests to participate in the procedure;
- b) certificate from a competent head of tax office, confirming that the economic operator does not have any tax arrears, issued no earlier than 3 months before the end of the deadline for the submission of tenders or requests to participate in the procedure, or any other document confirming that the economic operator has entered into an arrangement with the competent tax authority as regards the payment of such arrears with possible interest and fines, and in particular that the economic operator was granted an exemption, deferral or spread into instalments of overdue tax payments, or on withdrawal in its entirety of execution of a decision of the competent authority;
- c) certificate from the relevant field organizational unit of the Polish Social Insurance Institution (ZUS) or Agricultural Social Insurance Fund (KRUS) or other document confirming that the economic operator does not have any arrears concerning social or health insurance, issued no earlier than 3 months before the end of the deadline for the submission of tenders or requests to participate in the procedure, or any other document confirming that the economic operator has entered into an arrangement with the competent authority as regards the payment of such arrears with interest and fines, if applicable, and in particular that the economic operator was granted an exemption, deferral or spread into instalments of overdue payments, or on withdrawal in its entirety of execution of a decision of the competent authority;
- d) an excerpt from relevant register or the Central Registration and Information on Business (CEIDG),

if such an entry into the register or Registration is required under relevant provisions, in order to confirm that there is no basis for exclusion under Art. 24 para. 15 item 1 of the Act;

- e) statement of the economic operator for whom no legally binding judgement or final administrative decision was issued on arrears in payment of taxes, fees, or social or health insurance premiums, or – if such a judgement or decision was issued – the documents confirming that such payments with possible interest or fines were made, or that the economic operator entered into a binding agreement on the repayment of these due amounts;
- f) statement of the economic operator confirming that the economic operator was not prohibited from applying for public contracts under a precautionary measure;
- g) statement of the economic operator confirming that the economic operator was not validly sentenced for an offence to restriction of liberty or fine within the scope defined by the contracting authority based on Art. 24 para. 5 items 5 and 6 of the Act;
- h) statement of the economic operator for whom no final administrative decision was issued on the infringement of obligations resulting from the provisions of labour law, environmental protection law, or social security provisions, within the scope specified by the contracting authority based on Art. 24 para. 5 item 7 of the Act;
- i) statement of the economic operator on the lack of tax or local fees arrears referred to in the Act of 12 January 1991 on Local Taxes and Charges (Journal of Laws of 2016, item 716);
- j) statement of the economic operator on affiliation (or lack of affiliation) to the same capital group; if the economic operator is affiliated with the same capital group, it may submit, along with the statement, the documents or information confirming that the connections with another economic operator do not lead to distortion of competition in the procedure.

§ 6. In case of public contracts referred to in Art. 131a para. 1 of the Act, the contracting authority may demand, apart from the documents referred to in § 5 item 1 to 9, also other documents confirming lack of grounds for exclusion, including:

- 1) a valid, relevant security clearance, referred to in the Act of 5 August 2010 on the Protection of Classified Information (Journal of Laws of 2015, item 1228, items 21, 1224, and 2281; and of 2016, item 749);
- 2) a valid industrial security clearance which guarantees the ability to protect classified information referred to in the Act of 5 August 2010 on the Protection of Classified Information.

§ 7. 1. If the registered office or place of residence of the economic operator is located outside the Republic of Poland, instead of the documents referred to in § 5:

- 1) item 1 – information from the relevant register shall be provided or, if there is none, an equivalent document issued by a competent judicial or administrative authority of the country in which the registered office or place of residence of the economic operator is located or where the place of residence of the person concerned is located, or a document within the scope provided for in Art. 24 para. 1 items 13, 14, and 21 as well as para. 5 items 5 and 6 of the Act;
- 2) items 2 to 4 – a document or documents issued in the country where the registered office or place of residence of the economic operator is located shall be provided, which confirm that:
 - a) the economic operator is not in arrears with payment of taxes, fines, social or health insurance premiums or that it entered into an arrangement with relevant authority as regards the payment of such arrears with possible interest and fines, and in particular that the economic operator was granted an exemption, deferral or spread into instalments of overdue payments, or on withdrawal in its entirety of execution of a decision of the competent authority;
 - b) liquidation was not opened nor bankruptcy was declared.

2. The documents referred to in para. 1 item 1 and item 2(b) shall be issued no earlier than 6 months before the end of the deadline for the submission of tenders or requests to participate in the procedure. The documents referred to in para. 1 item 2(a) shall be issued no earlier than 3 months before the end of that deadline.

3. If the country in which the registered office or place of residence of the economic operator is located or the person whom the document concerns has its place of residence does not issue the documents referred to in para. 1, they shall be replaced with a document containing, the statement of the economic operator indicating the person (or persons) authorized to act on its behalf or statement of the person whom this document concerns made before the notary, judicial or administrative authority, professional or economic body appropriate for the place of residence of that person. Paragraph 2 shall be applied accordingly.

4. If there are doubts as to the content of the document submitted by the economic operator, the contracting authority may request competent authorities of the country in which the registered office or place of residence of the economic operator is located or where the place of residence of the person whom the document concerns is located to provide necessary information on such a document.

§ 8. 1. The economic operator with its registered office in the Republic of Poland, in reference to the person having its place of residence outside the Republic of Poland whom the document referred to in § 5 item 1 concerns, shall submit the document referred to in § 7 para. 1 item 1, within the scope provided for in Art. 24 para. 1 items 14 and 21 and para. 5 item 6 of the Act. If the country where the person concerned resides does not issue such documents, it shall be replaced with a statement made by that person before notary, judicial or administrative authority, professional or economic body appropriate for the place of residence of that person. § 7 para. 2, first sentence shall apply.

2. If there are doubts as to the content of the document submitted by the economic operator, the contracting authority may request competent authorities of the country in which the place of residence of the person concerned is located to provide necessary information on such a document.

§ 9. 1. In order to determine whether the economic operator relying on the capacities or condition of other entities under the principles defined in Art. 22a of the Act has necessary resources which allow for due performance of the public contract as well as evaluation whether the relationship between the economic operator and those entities guarantees an actual access to their resources, the contracting authority may request documents that specify in particular:

- 1) the scope of resources of that other entity available to the economic operator;
- 2) the manner of use of the other entity's resources by the economic operator in the performance of a public contract;
- 3) the scope and period of participation of that other entity in the performance of a public contract;
- 4) whether the entity whose capacities regarding education, professional qualifications or experience the economic operator relies on in relation to the terms and conditions of participation in the procedure will carry out construction works or services that require such capacities.

2. The contracting authority may request the economic operator which relies on the capacities or condition of other entities under the principles defined in Art. 22a of the Act to present the documents specified in § 5 items 1 to 9 as regards such entities.

3. The contracting authority may request the economic operator to present the documents specified in § 5 items 1 to 9 in relation to subcontractor, whom it intends to entrust the performance of part of the contract and who was not the subject on whose capacities or condition the economic operator relies under the principles defined in Art. 22a of the Act.

§ 10. 1. If the economic operator indicates the availability of the statements or documents referred to in § 2, § 5, and § 7 in electronic form at specific internet addresses of public and free-of-charge

databases, the contracting authority shall download the statements or documents from the databases specified by the economic operator on its own.

2. If the economic operator specifies that the statements or documents referred to in § 2, § 5, and § 7 are available to the contracting authority, in particular statements or documents stored by the contracting authority in line with Art. 97 para. 1 of the Act, the contracting authority, in order to confirm the circumstances referred to in Art. 25 para. 1 items 1 and 3 of the Act, shall use such statements and documents, on condition that they are valid.

§ 11. In the case referred to in Art. 22 para. 2 of the Act, the contracting authority may request:

- 1) a decision on granting the status of sheltered workshop or occupational activation facility referred to in the Act of 27 August 1997 on the Vocational Rehabilitation, Social Resettlement, and Employment of Disabled Persons (Journal of Laws of 2011, item 721, as amended³⁾), or other documents confirming that the economic operator has been granted a status of sheltered workshop or confirming that the economic operator – or their organizational unit that will carry out the public contract – conducts the activity including social and occupational integration of socially marginalized groups;
- 2) documents confirming a minimum percentage level of employment of the persons belonging to one or more categories referred to in Art. 22 para. 2 of the Act, persons employed by sheltered workshops or economic operators or their organizational units performing the contract.

§ 12. An economic operator entered into the official list of certified economic operators or an economic operator certified by relevant certification authorities fulfilling the requirements for European certification standards may provide a certificate on entry into an official list issued by a relevant body or certificate issued by a relevant certification authority in the country in which the registered office or place of residence of the economic operator is located, being considered as the documents that serve as a basis for entry or obtaining certification in place of relevant documents referred to in § 2 and § 5.

§ 13. 1. In order to confirm that the offered construction works, supplies, or services meet the requirements defined by the contracting authority, the contracting authority may request in particular:

- 1) samples, descriptions, photographs, plans, designs, drawings, models, patterns, computer programmes, and other similar materials which authenticity must be confirmed by the economic operator at request of the contracting authority;
- 2) a certificate issued by a conformity assessment body, or a test report carried out by such a body as means of proof of conformity with the requirements or characteristics defined in the description of the subject-matter of contract, contract award criteria, or the conditions of performance of contract;
- 3) a certificate of an independent body authorized to carry out quality control, confirming that the supplied products correspond to specific standards or technical specifications;
- 4) a certificate of an independent body dealing with attestation of fulfillment by the economic operator of quality assurance standards by the economic operator, if the contracting authority refers to quality assurance systems based on the relevant European standards series;
- 5) a certificate of an independent body dealing with attestation of fulfillment by the economic operator of specific environmental management schemes or standards, if the contracting authority specifies environmental management measures to be applied by the economic operator when performing a public contract by reference to the EU Eco-Management and Audit Scheme (EMAS) or other environmental management standards based on the relevant European or international standards

³⁾ Amendments to the consolidated text of the said Act were announced in the Journal of Laws of 2011, items 1016, 1243, 1244, and 1707; of 2012, items 986 and 1456; of 2013, items 73, 675, 791, 1446, and 1645; of 2014, items 598, 877, 1198, 1457, and 1873; of 2015, items 218, 493, 1240, 1273, 1359, 1649, and 1886; and of 2016, item 195.

by accredited bodies.

2. In case of public contracts, referred to in Art. 131a para. 1 of the Act, in order to confirm that the offered supplies, services, or works correspond to the requirements defined by the contracting authority, the contracting authority may request – in addition to the documents referred to in para. 1 – the description of technical equipment, manuals, and means applied by the economic operator of supplies or services, along with the description of their scientific and research facilities in order to ensure:

- 1) that the public contract being performed is of proper quality;
- 2) the security of supplies and the protection of classified information;
- 3) that the public contract is performed if case of increase in demand of contracting authority;
- 4) the maintenance, modernization, or adaptation of supplies which constitute the subject-matter of contract.

3. Instead of the documents referred to in para. 1 items 2 to 5, the economic operator may submit equivalent documents issued by entities seated in another Member State of the European Economic Area.

4. If the economic operator cannot obtain the documents referred to in para. 1 items 2 to 5 due to reasons beyond its control, then other documents concerning quality assurance or environmental management schemes can be submitted in order to confirm that the quality assurance measures by the economic operator conform to the required quality assurance standards or environmental management measures equivalent to the measures required under applicable environmental management schemes or standards.

5. Proofs which ensure the protection of classified information must meet the requirements under relevant classified information protection regulations. The contracting authority shall recognize documents authorizing the access to classified information issued by other countries on condition that they are equivalent to a security certificate containing a relevant confidentiality clause issued in line with classified information protection provisions. The contracting authority may request relevant authorities to present a confirmation that the security clearance containing a relevant confidentiality clause issued in another country corresponds to the security clearance containing a relevant confidentiality clause issued in line with classified information protection provisions.

§ 14. 1. The statements referred to in the Regulation concerning the economic operator and other entities whose capacity or condition the economic operator relies on pursuant to principles defined in Art. 22a of the Act as well as those concerning subcontractors shall be submitted in their original copies.

2. The documents referred to in the Regulation other than the statements referred to in para. 1 shall be provided in their original or certified copies.

3. Certified copies shall be made respectively by the economic operator, the entity whose capacity or condition the economic operator relies on, economic operators that jointly apply for a public contract, or a subcontractor, within the scope of the documents concerned.

4. A certified copy shall be made in writing or electronic form.

§ 15. The contracting authority may request the submission of the original copy or the copy certified by a notary of the documents referred to in the Regulation other than statements only where the submitted copy of the document is illegible or there are doubts as to its authenticity.

§ 16. 1. Documents prepared in a foreign language shall be translated into Polish. Translation is not required where the contracting authority granted its consent referred to in Art. 9 para. 3 of the Act.

2. In case referred to in § 10 para. 1, the contracting authority may request the economic operator to provide the Polish translation of the documents specified by the economic operator and downloaded by the contracting authority on their own.

§ 17. Public contract award procedures commenced before the entry into force of the present Regulation shall be governed by the hitherto provisions.

§ 18. The Regulation shall enter into force on 28 July 2016 ⁴⁾

on behalf of Minister of Development: *J. Kwieciński*

⁴⁾ This Regulation was preceded by the Regulation of the Prime Minister of 19 February 2013 on types of documents which the contracting authority may require from the economic operator, and forms in which the documents may be submitted (*Journal of Laws*, item 231), which shall cease to apply as of the entry into force of this Regulation pursuant to Art. 20 of the Act of 22 June 2016 on Amending the Public Procurement Law and Some Other Acts (*Journal of Laws*, item 1020).