

Note:

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

The Act of 29 January 2004 - Public Procurement Law (Journal of Laws of 2017, item 1579) includes the amendments introduced by:

- the Act of 20 May 2016 on energy efficiency (Journal of Laws item 831);
- the Act of 10 June 2016 on bank guarantee fund, the deposit guarantee scheme and a forced restructuring (Journal of Laws item 996);
- the Act of 22 June 2016 amending the Act - Public Procurement Law and some other acts (Journal of Laws item 1020);
- the Act of 7 July 2016. Amending the law on government administration and other acts (Journal of Laws item 1250);
- the Act of 22 July 2016 amending the law on the minimum wage and some other acts (Journal of Laws item 1265);
- the Act of 5 September 2016 on trust services and electronic identification (Journal of Laws item 1579);
- the Act of 21 October 2016 on the contract of concession for works or services (Journal of Laws item 1920);
- the Act of 16 December 2016 provisions introducing the Act on rules of state property management (Journal of Laws item 2260);
- the Act of 7 April 2017 on the amendment of certain acts to facilitate redress (Journal of Laws item 933).

All the above mentioned amendments are marked in bold font.

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

**TITLE I
GENERAL PROVISIONS**

**Chapter 1
Subject of regulation**

Article 1.

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

Article 2.

For the purpose of this Act:

-
- 1) price – shall mean price within the meaning of Article 3 para. 1 point 1 and para. 2 of the Act of 9 May 2014 on information on prices of goods and services (Journal of Laws, item 915);
 - 1a) **life cycle – shall mean all consecutive and interlinked stages of existence of a subject-matter of supply, service or work, in particular research, development, industrial designing, testing, production, transport, use, repair, modernisation, change, maintenance throughout the period of existence, logistics, training, consumption, demolition, withdrawal and disposal;**
 - 2) **supplies – shall mean purchase of products and other goods, in particular on the basis of contracts for sale, supply, hire-purchase, rental or lease with or without option to buy, which may additionally include siting or installation;**
 - 2a) **dynamic purchasing system – shall mean a time-limited electronic process of awarding public contracts for generally available services, supplies, or works;**
 - 3) head of contracting authority – shall mean a person or body, who - in accordance with the provisions, statute or agreement in force – is entitled to manage the contracting authority, with the exclusion of the plenipotentiaries established by the contracting authority;
 - 4) [repealed]
 - 5) **the most advantageous tender – shall mean a tender:**
 - a) **providing the most advantageous balance of price or cost and other criteria relating to the subject-matter of public contract, in particular in the case of contracts for creative or research activities, where the subject-matter of contract cannot be established in advance in an unequivocal and exhaustive manner, or a tender that best meets criteria other than price or cost, where the price or cost is fixed;**
 - b) **offering the lowest price or cost, where price or cost is the only criterion;**
 - 5a) sensitive works – shall mean construction works for security purposes involving, requiring or containing classified information;
 - 5b) sensitive equipment – shall mean equipment used for security purposes involving, requiring or containing classified information;
 - 5c) sensitive service – shall mean services used for security purposes involving, requiring or containing classified information;
 - 5d) a work – shall mean the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfill an economic or technical function.
 - 6) tender for lot – shall mean a tender providing, in accordance with the content of the specification of essential terms of the contract, for the performance of a part of the contract (lot);
 - 7) variant (tender) – shall mean a tender providing, in accordance with the terms of specified in the specification of essential terms of the contract, for a method of the performance of the contract other than that specified by the contracting authority;
 - 7a) contract award procedure – shall mean the procedure commenced by means of public contract notice or by sending an invitation to tender or by sending an invitation to negotiations in order to select the tender of an economic operator
-

with whom public contract will be concluded, or – in the case of a single-source procurement – to negotiate the terms of that contract;

7b) record – shall mean a document drawn up by the contracting authority in a written form, confirming the course of the contract award procedure;

8) works – shall mean execution, or both the design and execution, of works specified in provisions issued under art 2c or the execution, by whatever means, of a work corresponding to the requirements specified by the contracting authority.

8a) military equipment – shall mean equipment specifically designed or adapted for military purposes and intended for use as an arm, munitions or war material;

8b) crisis situation shall be understood as:

a) war,

b) armed conflict,

c) any situation in which a harmful event has occurred or is inevitably likely to occur which clearly exceeds the dimensions of harmful events in everyday life and which endangers the life and health of people, or has a substantial impact on property values, or requires measures in order to supply the population with necessities;

9) public funds – shall mean public funds within the meaning of provisions on public finances;

9a) framework agreement – shall mean an agreement concluded between the contracting authority and one or a bigger number of economic operators for the purpose of establishing the conditions concerning the public contracts to be awarded within a given period, in particular with reference to the prices and, if necessary, envisaged quantities;

9b) subcontract – shall mean a written contract for pecuniary interest having as its subject matter services, supplies or works constituting part of the public contract concluded between economic operator selected by the contracting authority and other entity (subcontractor) and in case of public contracts for works also between the subcontractor and further subcontractor or between further subcontractors;

10) services – shall mean any services other than works or supplies;

11) economic operators – shall mean natural persons, legal persons or organisational units not having legal personality, who compete for the award of a contract, have submitted their tenders or concluded a public procurement contract;

11a) civil purchases – shall mean contracts other than contracts specified in art. 131a para. 1 covering the procurement of non-military products, works or services for logistical purposes.

12) contracting authorities – shall mean natural persons, legal persons or organisational units not having legal personality, obliged to apply this Act;

13) public contracts – shall mean contracts for pecuniary interest concluded between an contracting authority and an economic operator, having as their subject-matter services, supplies or works.

14) utilities contracts – shall mean the contracts referred to in Article 132 para. 1;

-
- 15) **defence and security contracts – shall mean the contracts referred to in Article 131a para. 1;**
 - 16) **label – shall mean a certificate, attestation, or any other document confirming that the works, product, service, process or procedure meet certain requirements;**
 - 17) **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.**

Article 2a.

[repealed]

Article 2b.

[repealed]

Article 2c.

The minister responsible for the economy shall define, by means of a regulation, the list of works taking account of the provisions of 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, 28.03.2014, p. 65, as amended), and 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, 28.03.2014, p. 243, as amended), hereinafter referred to as “Directive 2014/25/EU”.

Article 3.

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

- 1) the public finance sector units within the meaning of provisions on public finances;
- 2) state organisational units not having legal personality, other than those specified in item 1;
- 3) legal persons, other than those specified in item 1, established for the specific purpose of meeting needs in the general interest, not having industrial or commercial character, if the entities referred to in these provisions and in items 1 and 2, separately or jointly, directly or indirectly through another entity:
 - a) finance them in more than 50%, or
 - b) hold more than half of shares or stocks, or
 - c) supervise their managerial board, or

d) have the right to appoint more than half of the members of their supervisory or managerial board

– **unless the legal person operates in ordinary market conditions, its aim is to generate profit, and incurs losses resulting from operations;**

3a) associations of the entities referred to in items 1 and 2, or entities referred to in item 3;

4) entities other than those specified in items 1-3a, if the contract is awarded for the purposes of exercising one of the activities referred to in Article 132, if such an activity is exercised on the basis of special or exclusive rights, or if the entities referred to in items 1-3a, separately or jointly, directly or indirectly through another entity, have a dominant influence over them, in particular:

a) [repealed]

b) **hold more than half of the shares or stocks or**

c) have more than half of the votes resulting from the shares or stocks, or

d) [repealed]

e) **have the right to appoint more than half of the members of their supervisory or managerial board;**

5) **entities other than those specified in items 1-4, if the following circumstances occur:**

a) more than 50% of the value of the contract awarded by them is financed from public funds or by the entities referred to in items 1-3a,

b) the value of a contract is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8,

c) **the subject-matter of contract are: civil engineering works defined in Annex II to Directive 2014/24/EU, construction of hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes – or services connected with such works;**

6) [repealed];

7) [repealed];

2. Special or exclusive rights within the meaning of para. 1 item 4 shall be rights granted by means of an Act or an administrative decision, restricting the performance of a specific activity to one or more entities, exerting a significant influence on the possibility of performing this activity by other entities, except for the rights granted by means of a publicly announced procedure on the basis of objective and non-discriminatory criteria, in particular a procedure:

1) **including a contract notice or commencement of a works or services concession award procedure;**

2) **conducted pursuant to provisions referred to in para. 2a.**

2a. The President of the Public Procurement Office gives notice in Official Journal of the Republic of Poland “Monitor Polski” as well as posts on the website of the Public Procurement Office, hereinafter referred to as “Office”, a list of legal acts implementing the provisions defined in Annex II to Directive 2014/25/EU.

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

Article 4.

This Act shall not apply to:

1) contracts or design contests which the contracting authority is obliged to award or conduct on the basis of a procedure, other than stipulated in the Act:

a) of an international organisation,

b) resulting from an agreement creating an international law commitment, such as an international agreement entered into by the Republic of Poland and one or more countries which are not member states of the European Union, to obtain supplies, services or works for the purpose of implementation or conduct of a joint project;

1a) contracts or design contests entirely funded by an international organisation or an international financing institution, if the contracting authority applies to these contracts or design contests a procedure of the international organisation or the international financing institution, other than defined in the Act;

1b) contracts or design contests funded in more than 50% by an international organisation or an international financing institution, if an application of a procedure of the international organisation or the international financing institution, other than defined in the Act, to these contracts or design contests was agreed with that organisation or institution;

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

a) the exercise of tasks concerning the implementation of the financial policy, in particular contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments,

b) the trading of securities issued by the State Treasury,

c) the management of internal and external debt,

d) the issue of currency and the administering of that currency,

e) accumulation of foreign exchange reserves and management of those reserves,

f) accumulation of gold and precious metals,

g) the operation of bank accounts and conduct of bank financial settlements;

2a) contracts of National Economy Bank related to:

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

- running of bank accounts, conducting cash settlement and conducting activities on the interbank market,

- raising financial resources in order to provide cash flow, financing the activity of handled funds and programmes as well as refinancing of credit action,

-
- b) concerning the transactions on the interbank market referring to management of the state debt;
- c) related to the banking business of the National Economy Bank, which concerns:
- opening and maintaining bank accounts, conduct financial settlements and activities in the interbank market,
 - raising funds to ensure financial liquidity and credit refinancing.
- 3) contracts where the subject-matter of the contract includes:
- a) arbitration or conciliation services,
 - b) services of the National Bank of Poland,
 - c) [repealed],
 - d) [repealed],
 - e) **research and development services, unless covered by the CPV codes from 73000000-2 to 73120000-9, 73300000-5, 73420000-2, and 73430000-5 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. 0001-0562; OJ L, Polish Special Edition, Chapter 6, v. 5, p. 3, as amended), hereinafter referred to as “Common Procurement Vocabulary”, and when the following conditions are jointly met:**
 - **benefits from these services are derived only by the contracting authority for the needs of their own activities,**
 - **the whole remuneration for the service provided is paid out by the contracting authority,**
 - ea) **legal services consisting in:**
 - **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 2014, item 134; of 2015, item 1311; and of 2016, item 65), 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,**
 - **notarisation 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,**

-
- f) [repealed],
 - g) **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,**
 - h) **purchase of broadcasting time or programme from suppliers of audio-visual or radio media services,**
 - i) **purchase of property rights and other rights to buildings or real estates,**
 - j) **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 2014, item 94, as amended¹), and operations conducted with the European Financial Stability Facility and the European Stability Mechanism,**
 - ja) **loans and credits, regardless whether 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 or not, except for credits incurred by local government units under authorisation provided for in the budget act,**
 - jb) **civil defence, civil protection and prevention services provided by non-commercial 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 the Common Procurement Vocabulary, except for patient medical transport services,**
 - k) **supply of rights for emission of greenhouse gases and other substances, units of certified reduction of emissions and reduction emission units, within the meaning of regulations on the trade of rights for emission of greenhouse gases and other substances into the atmosphere,**
 - l) **services of the National Economy Bank with reference to banking services for the entities, referred to In Article 3 para. 1 item 1 and 2, except for self government bodies;**
- 4) employment contracts;
- 4a) [repealed];
- 5) contracts or design contests:**
- a) **classified in accordance with provisions on the protection of classified information, or**
 - b) **when essential security interests of the State so requires, or**
 - c) **when the protection of public safety so requires, or**
 - d) **that must be accompanied, pursuant to separate regulations, by special security measures**

¹ Amendments to the consolidated text of the said Act were announced in the Journal of Laws of 2014, item 586; of 2015, items 73, 978, 1045, 1223, 1260, 1348, 1505, 1513, 1634, 1844, and 1890; and of 2016, items 65, 615, 904, and 996.

– 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 contract without applying the Act;

5a) [repealed]

5b) contracts concerning production or trade of an arm, munitions or war material provided for in art. 346 of the Treaty on the Functioning of the European Union if this is required by primary national security interest, and the award of contract without the application of the Law will not negatively influence competitive conditions on the internal market with reference to products which are not exclusively intended for military purposes;

5c) contracts concerning production and distribution of:

- a) public documents and their personalisation,
- b) forms of strategic importance for national security,
- c) excise stamps;

6) contracts for services awarded to another contracting authority referred to in Article 3 para. 1 point 1-3a, which has been granted with the exclusive right to render those services by means of an Act or other normative act, subject to publication;

7) allocation of subsidies from public funds, if these subsidies are allocated pursuant to acts;

8) contracts and contests where their value does not exceed the equivalent in PLN of EUR 30 000;

8a) [repealed]

8b) [repealed]

8c) [repealed]

8d) [repealed]

9) [repealed]

10) contracts and design contents awarded by contracting authorities referred to in Article 3 para. 1 point 1-3a, where the main purpose is:

- a) permission for the contracting authorities to put the public a telecommunications networks at the disposal, or
- b) exploitation of public telecommunications networks, or
- c) provision of public telecommunications services by means of public telecommunications network;

11) purchase of supplies, services or works from the central purchasing body or from the economic operators selected by the central purchasing body;

12) concession contracts for works and concessions for services within the meaning of the Act of 21 October 2016 on Concession Contract for Works or Services (Journal of Laws item 1920), unless the Act provides otherwise;

12a) contracts awarded and design contests organised by entities carrying out activities referred to in Article 132 para. 1 point 7, to render the following services:

-
- a) **value-added services connected with ICT systems within the meaning of the Act of 18 July 2002 on the provision of services by electronic means (including the secure transmission of coded documents by ICT systems, address management services and transmission of registered electronic mail),**
 - b) **financial services which are covered by CPV codes 66100000-1 to 66720000-3, defined in the Common Procurement Vocabulary, including in particular postal money orders and postal giro transfers,**
 - c) **philatelic or logistics services;**
- 13) contracts awarded to budget economy unit by the public authority performing the functions of a founding body of that unit, if the following conditions are met jointly:
- a) **more than 80% of the activity of a budget economy unit concerns performing of public functions for that public authority,**
 - b) **the public authority exercises control over the budget economy unit, corresponding to control exercised over its own units without legal personality, involving the impact on strategic goals and important decisions concerning the management of affairs of the unit;**
 - c) the subject-matter of the contract falls within the scope of the basic activity of the budget economy unit determined in accordance with Article 26 para. 2 item 2 of the Law of 27 August 2009 on public finances (Journal of Laws No. 157, item 1240 as amended²);
- 14) [repealed]
- 15) [repealed]
- 16) **contracts related to the preparation and conduct of the process of disbursement of guaranteed funds, referred to in Article 2 point 65 of the Act of 10 June 2016 on Bank Guarantee Fund, the deposit guarantee scheme and a forced restructuring (Journal of Laws item 996), in particular services provided by the entity, a contract on the disbursement of guaranteed funds will be concluded with;**
- 17) **contracts related to the preparation and conduct of forced restructuring or remission or conversion of capital instruments, in particular contracts for: a) conduct of an estimation, b) provision of advisory services, including strategic consulting, economic, financial, tax, legal and information technology consulting c) entrusting an entrepreneur or a foreign entrepreneur with the performance of intermediary services with regard to operations listed in Art. 5 and Art. 6 of the Act of 29 August 1997 - Banking Law (Journal of Laws of 2015 item 128 as amended) for and on behalf of the bank in restructuring, and activities related to the activities carried out by the investment firm in restructuring, including providing brokerage services;**
- 18) **contracts awarded by the bridging institution, referred to in Article 2 point 26 of the Act of 10 June 2016 Bank Guarantee Fund, the deposit guarantee scheme and a forced restructuring, or asset managing entity, referred to in Article 2 point 46 of the said Act.**

² The amendments to the mentioned Act were published in the Journal of Laws of 2010 No. 28 item 146, No. 96 item 620, No. 123 item 835 and No. 152 item 1020)

Article 4a.

[repealed]

Article 4aa.

The Council of Ministers shall define, by means of a regulation, the list of documents and forms referred to in Article 4 point 5c letter (a) and (b), with regard to the need of ensuring security of circulation of these documents and forms, as well as the protection of essential national security interests.

Article 4b.

1. The Act shall not apply to contracts provided for in art. 131a para. 1:
 - 1) subject to:
 - a) specific procedure pursuant to an international agreement in which the Republic of Poland is one of the parties and concluded with one or several non-EU states, or an agreement made on ministerial level,
 - b) specific procedure pursuant to an international agreement in which the Republic of Poland is one of the parties, or an agreement made on ministerial level relating to the stationing of troops and concerning undertakings regardless of their seat or place of residence,
 - c) specific procedure of an international organization if procurement must be awarded by the Republic of Poland in accordance with those procedure;
 - 2) in cases where the application of PPL would oblige the contracting authority to supply information the disclosure of which is contradictory to the essential national security interests;
 - 3) contracts for the purpose of intelligence purposes;
 - 4) awarded in the framework of a cooperative programme based on research and development, conducted jointly by the Republic of Poland and at least one other EU member state for the development of a new product and, where applicable, the later phases of the whole or part of the life-cycle of this product;
 - 5) contracts awarded in a non-EU state, including for civil purchases carried out when forces are deployed, and forces mainly tasked with security protection, in cases where operational needs require them to be conducted with economic operators located in the area of operations;
 - 6) awarded by the government of the Republic of Poland to the government of another country and relating to:
 - a) supplies of military equipment or sensitive equipment,
 - b) works and services directly linked to such equipment, or
 - c) works and services for specific military purposes or sensitive works or services;
 - 7) financial services, with the exception of insurance services.

1a. The Act shall not apply to contracts or design contests in the fields of defence and security:

- 1) **entirely funded by an international organisation or an international financing institution, if the contracting authority applies to these contracts or design contests a procedure of the international organisation or the international financing institution, other than defined in the Act;**

-
- 2) **funded in more than 50% by an international organisation or an international financing institution, if an application of a procedure of the international organisation or the international financing institution, other than defined in the Act, to these contracts or design contests was agreed with that organisation or institution.**

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

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

Article 4c.

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

Article 4d.

1. The Act shall not apply to contracts of a value lower than the amounts defined in the provisions issued pursuant to Article 11 para. 8:

- 1) **for supplies or services manufactured solely for the purpose of research, experimentation, study or development which are not conducive to mass production carried out by the contracting authority to establish commercial viability or recover research and development costs;**
- 2) **for supplies or services in the scope of cultural activity connected with the organisation of exhibitions, concerts, competitions, festivals, performances, theatrical performances, undertakings in the scope of cultural education or gathering library materials by libraries or museum collections, as well as in the scope of archival activities connected with gathering of archive materials, if the said contracts are not aimed at furnishing the contracting authority with fixed assets to be used in current operations of the contracting authority;**
- 3) **awarded by other entities than defined in Article 4 point 3 letter (g), whose object of activity is production and co-production of a programme or programme material intended for broadcasting or their development, if the contracts are for the purposes of the provision of audio-visual or radio media services;**
- 4) **for educational supplies or services related to providing textbooks, educational materials and exercise materials referred to in the Act of 7 September 1991 on the education system (Journal of Laws 2015, No. 2156; and of 2016, items 35, 64, 195, 668, and 1010), if the said contracts are not aimed at providing the**

contracting authority with fixed assets to be used in current operations of the contracting authority;

- 5) for services or works implementing revitalisation undertakings specified in a municipal revitalisation programme and carried out in a Special Revitalisation Area, referred to, respectively, in Chapters 4 and 5 of the Act of 9 October 2015 on revitalisation (Journal of Laws item 1777), if the said contracts are awarded:
 - a) by a municipality or a municipal organisational unit to non-governmental organisations or social cooperatives, and the subject-matter of contract belongs to the statutory activity of the economic operator, or
 - b) to activate persons residing in a Special Revitalisation Area;
 - 6) for forestry services covered by CPV codes 77200000-2, 77210000-5, 77211000-2, 77211100-3, 77211200-4, 77211300-5, 77211400-6, 77211500-7, 77211600-8, 77220000-8, 77230000-1, 77231000-8, 77231200-0, 77231600-4 and 77231700-5, defined in the Common Procurement Vocabulary;
 - 7) awarded as part of development cooperation by military units referred to in the Act of 17 December 1998 on the rules of use or stay of Polish armed forces outside the Republic of Poland (Journal of Laws of 2014, item 1510);
 - 8) awarded by the Minister of Justice – General Public Prosecutor or organisational units subordinate to or supervised by them to prison work establishments run by state-owned enterprises or public sector institutions, connected with the employment of persons deprived of liberty, if the main part of activities of a prison work establishment relates to the execution of tasks entrusted to that establishment by the Minister of Justice – General Public Prosecutor or units subordinate to or supervised by them;
 - 9) awarded by the administrator of a Special Economic Zone, referred to in the Act of 20 October 1994 on Special Economic Zones (Journal of Laws of 2015, item 282), being an entity referred to in Article 3 para. 1 point (3).
2. To main activities of a prison work establishment, referred to in para. 1 point (8), the activities connected with the execution of contracts related to social and professional integration of persons referred to in Article 22.2 (3) are included.

Article 5.

[repealed]

Article 5a.

[repealed]

Article 5b.

The contracting authority may not, in order to avoid application of the provisions of the Act:

- 1) combine contracts which, when awarded separately, require the application of different provisions of the Act;
- 2) divide a contract into separate contracts to avoid joint estimation of their value.

Article 5c.

1. If an subject-matter of contract is comprised of contracts governed by the same provisions of the Act as utilities contracts or defence and security contracts, or contracts awarded on general conditions, covering at least two types of contracts from among contracts for works, services, or supplies, it shall be awarded in accordance with the provisions applicable to the type of contract that characterizes the main subject-matter of the contract in question.

2. If a contract, referred to in para. 1, includes services specified in Annex XIV to Directive 2014/24/EU or in Annex XVII to Directive 2014/25/EU and other services or services and supplies, , it shall be awarded in accordance with the provisions applicable to the services or supplies which estimated value is higher.

Article 5d.

1. If the subject-matter of a contract is comprised of contracts governed by different provisions of the Act or contracts governed by the provisions of the Act and contracts not governed by the provisions of the Act, and the contract can be divided, in particular for technical, organisational, economic or purposive reasons, the contracting authority may award:

- 1) separate contracts, under provisions applicable due to their characteristics;
- 2) one contract, in accordance with the rules defined in para.2.

2. In the subject-matter of a contract referred to in para. 1 point (2), includes contracts:

- 1) awarded under general rules, and a contract governed by other provisions of the Act, the award of contracts shall be governed by the general rules of award of contracts, taking account of Articles 5e. para. 2 and 3 and Article 5g;
- 2) governed by the provisions of the Act, and a concession for works and services, the provisions of the Act shall apply to the award of contracts if the value of the contract governed by the Act is equal to or exceeds the amounts defined in the provisions issued pursuant to Article 11 para. 8.

Article 5e.

1. If the subject-matter of a contract is comprised of contracts awarded for the purposes of pursuing at least two different types of activities referred to in Article 132 para. 1, or contracts awarded for the purposes of pursuing at least one of these types of activities and of other contracts, the contracting authority may award:

- 1) separate contracts, under provisions applicable to the type of activity to which each contract is devoted;
- 2) one contract, in accordance with the rules defined in para. 2.

2. If it is possible to define the type of activity covered in main part by a contract referred to in para. 1 (2), the award of the contract shall be governed by the provisions applicable to this type of activity.

3. If it is impossible to determine the activity type covered in main part by a contract, the award of the contract shall be governed by:

-
- 1) **general rules of award of contracts, if the contract includes contracts awarded under general rules;**
 - 2) **provisions of the Act relating to utilities contracts if the contract includes utilities contracts and:**
 - a) **a concession for works or services;**
 - b) **a contract that is not governed by the provisions of the Act, or the provisions of the Act of 21 October 2016 on Concession Contract for Works or Services.**

Article 5f.

If the subject-matter of a contract cannot be divided, in particular due to technical, organisational, economic or purposive reasons, the award of the contract shall be governed by the provisions relating to this type of contract, corresponding to its main subject-matter.

Article 5g.

If the contracting authority, for objective reasons, awards one contract where the subject-matter can be divided, or where the subject-matter of such a contract cannot be divided, and this contract includes a contract governed by:

- 1) **Article 346 of the Treaty on the Functioning of the European Union, the contracting authority may not apply the provisions of the Act to the award of the contract;**
- 2) **provisions of the Act relating to contracts in the fields of defence and security, the contracting authority shall award a contract under the provisions of the Act concerning contracts in the fields of defence and security.**

Article 6.

[repealed]

Art. 6a.

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

Chapter 2

Principles of award of contracts

Article 7.

1. The contracting authority shall prepare and conduct contract award procedures in a manner ensuring fair competition and equal treatment of economic operators as well as in accordance with principles of proportionality and transparency.

1a. The contracting authority, in the scope defined in the Government Procurement Agreement of the World Trade Organisation and other international agreements to which the European Union is a party, shall ensure to economic operators from the States-Parties to this Agreement and to economic operators from the states-parties of these agreements, and to works, supplies and services coming from these states, a treatment no less favourable than treatment accorded to economic operators from the European Union, and works, supplies and services from the European Union.

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

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

Article 8.

1. Contract award procedures shall be public.

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

2a. In the specification of essential terms of a contract, the contracting authority may define requirements for confidentiality of the information provided to the economic operator in the course of the contract award procedure.

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

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

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

2) the amount of remuneration, in case of contract awarded under art. 67 para. 1 point 1a

– in the scope of supplies and services belonging to cultural activities connected with the organisation of exhibitions, concerts, competitions, festivals, performances, theatrical performances, cultural-educational undertakings or gathering library materials by libraries or museums, as well as in the scope of archiving activities connected with gathering of archive materials, if the said contracts are not aimed at furnishing the contracting authority with fixed assets to be used in current operations of the contracting authority, provided that the economic operator, before signing a public contract, reserved that the data may not be disclosed.

Article 9.

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

2. Contract award procedures shall be conducted in Polish.

3. In particularly justified cases the contracting authority may agree on the submission of a request to participate in contract award procedures, statements, tenders and other documents also in a language generally used in international trade or in a language of the country in which the contract is awarded.

4. In duly justified cases, the contracting authority may draw up documents and perform certain activities in a contract award procedure, in particular carry out dialogue, additionally also in one of the languages generally used in international trade or in a language of the country in which the contract is awarded.

Article 9a.

1. Setting the time limits for the submission of requests to participate in a contract award procedure or tenders, the contracting authority shall take into account the complexity of the contract and, in the case of tenders, the time necessary to prepare them, in compliance with the minimum time limits for the submissions of requests to participate in a contract award procedure or tenders provided for in the Act.

2. Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the contract performance by the economic operator, the contracting authority shall set time limits for the submission of tenders with account taken of the time necessary for the economic operators to be aware of the information necessary to produce tender, whereas the time limits must be longer than the minimum time limits for the submission of tenders, defined in the Act.

Article 10.

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

2. The contracting authority may award a contract under negotiated procedure with publication, competitive dialogue, negotiated procedure without publication, single-source procurement, request-for-quotation, innovation partnership, or electronic bidding only in the cases stipulated in the Act.

Chapter 2a

Communication of the contracting authority with economic operators

Article 10a.

1. In contract award procedure, the communication between the contracting authority and the economic operators, in particular the submission of tenders or requests to participate in a contract award procedure, as well as declarations, including declarations submitted on the European Single Procurement Document form drawn up in line with the standard form defined in the Commission Implementing Regulation issued pursuant to Article 59 para. 2 of Directive 2014/24/EU and Article 80 para. 3 of Directive 2014/25/EU, hereinafter referred to as “Single Document” shall be conducted by electronic means of communication.

2. The contracting authority may determine the manner in which the information is presented in the tender in the form of an electronic catalogue or by enclosing an electronic catalogue to the tender, or may allow such a possibility.

3. The contracting authority shall advise of the requirement or possibility referred to in para. 2, in:

- 1) contact notice;**
- 2) invitation to confirm interest;**
- 3) invitation to tender or to negotiate, where the notice on qualification system for economic operators is a call for competition.**

4. In the documents referred to in para. 3, the contracting authority shall specify necessary information on the format, parameters of the electronic equipment used, and technical conditions and specification of the connection, relating to the electronic catalogue.

5. Tenders, requests to participate in a contract award procedure and declarations, including the single document, shall be drawn up, under pain of nullity, in electronic form, and signed with a qualified electronic signature.

Article 10b.

The contracting authority shall ensure that the tools and equipment used to communicate with economic operators with the use of electronic means of communication, and their technical properties, are non-discriminatory, generally available, and interoperable with generally used products for electronic storage, processing, and transmission of data and cannot limit access of the economic operators to the contract award procedure.

Article 10c.

1. The contracting authority may waive the requirement of using electronic means of communication when submitting tenders, if:

- 1) due to specialised nature of the contract, using electronic means of communication would require tools, devices, or file formats which are not generally available or supported with the use of generally available applications;**
- 2) application supporting file formats suitable to draw up tenders use file formats that cannot be handled with the use of any other open-source or generally available communication, or are covered with a licence and may not be rendered available for downloading or remote use by the contracting authority;**
- 3) using electronic means of communication would require specialised equipment not available to the contracting authority;**
- 4) the contracting authority requires that a physical model, scale model, or a sample be presented which cannot be transmitted using electronic means of communication;**
- 5) it is necessary due to a security breach of the electronic means of communication;**

-
- 6) it is necessary due to the need of protection of particularly sensitive information that cannot be ensured in a sufficient manner with the use of electronic means of communication or other tools or devices that could be made available by the contracting authority.

2. In the cases referred to in para. 1, the tender shall be submitted through a postal operator within the meaning of the Act of 23 November 2012 – Postal Law (Journal of Laws item 1529; and of 2015, item 1830), personally or by a courier.

Article 10d.

1. The contracting authority may require that tools, devices, or file formats which are not generally available are used, if:

- 1) it offers unrestricted, full, direct, and free-of-charge access, using electronic means of communication, to the tools, devices, or file formats as of the day on which the contract notice is announced or the invitation to confirm interest is sent, or
- 2) it ensures that economic operators without access to the tools, devices, or file formats, or without a possibility of obtaining it, will be allowed – within a time limit making it possible to enter the contract award procedure – to use temporary tools made available free of charge on the Internet, unless the lack of access results from reasons on the part of an economic operator, or
- 3) it renders available another electronic means of communication to submit the tender.

2. The contract notice or invitation to confirm interest shall specify the address of the website on which the tools, devices or file formats referred to in para. 1 point (1) are available.

Article 10e.

In the case of contracts for works or design contents, the contracting authority may require that electronic construction data modelling tools or similar devices are used. In such a case the contracting authority shall render available means of access to such tools in accordance with Article 10d until they are generally available.

Article 10f.

In cases defined in Article 10c, the contracting authority shall specify in the record the reasons for refraining from using electronic means of communication.

Article 10g.

The Prime Ministers shall define by means of a regulation:

- 1) technical and organisational requirements for the use of electronic means of communication in a contract award procedure,
- 2) manner of drawing up and storing electronic documents and the manner and procedure of submitting them, making them available, and removing them

– having regard to the necessity to ensure competition and the need to ensure efficiency of the contract award procedure, free access of the economic operators to the contract award procedure, and security of the processed data.

Chapter 3 Contract notices

Article 11.

1. Notices referred to in this Act:

1) shall be placed in the Public Procurement Bulletin available on the portal of Public Procurement Office;

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

2. [repealed]

3. [repealed]

4. [repealed]

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

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

7. **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), if the contract value is equal to or higher than the thresholds provided for in provisions issued under para. 8.**

7a. **The notices shall be submitted to the Publications Office of the European Union in accordance with the format and procedures for the electronic transmission of notices indicated on the website referred to in para. 3 of Annex VIII to Directive 2014/24/EU, and para. 3 of Annex IX to Directive 2014/25/EU, hereinafter referred to as “website specified in the Directives”.**

7b. **Notices in the Public Procurement Bulletin shall be placed by electronic means of communication with the use of the standard forms available on the website of the Office.**

7c. **The contracting authority may additionally place a notice in another manner than defined in para. 1, in particular in nationwide press.**

7d. **The placement of notices, in the manner defined in para. 5, subject to the obligatory publication in the Official Journal of the European Union, as well as the notices, referred to in para. 7c, cannot take place prior to their publication in the Official Journal of the European Union or prior to the passage of 48 hours from the confirmation of receipt of a notice by the Publications Office of the European Union.**

7e. The notices referred to in para. 7d cannot contain other information than the information contained in notices submitted to the Publications Office of the European Union. In the former, the date of submission of a notice to the Publications Office of the European Union shall be indicated.

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

Article 11a.

The contracting authority is obliged to document:

- 1) placement of a notice in the Public Procurement Bulletin, and in particular keep a proof of its placement;**
- 2) publication of a notice in the Official Journal of the European Union, and in particular keep a proof of submission of this notice to the Publications Office of the European Union.**

Article 11b.

1. The contracting authority may submit to the Publications Office of the European Union a notice whose publication in the Official Journal of the European Union, due to the amount of the contract or design contest, is not obligatory. The provisions of Articles 11 para. 7 and 11 para. 7a shall be applied accordingly.

2. The contracting authority may, after publishing a contract notice, directly inform economic operators known to them on the commencement of the contract award procedure with the subject-matter of a contract that lies within the scope of their activities for services, supplies, or works.

Article 11c.

The contracting authority may change a notice by placing a correction or a notice for changes. The provisions of Articles 11 para. 7 to 11 para. 7d, and Article 11a shall apply accordingly.

Article 12.

[repealed]

Art. 12a.

1. In case of modification of the contract notice placed in the Public Procurement Bulletin or published in the Official Journal of the European Union, the contracting authority shall extend the time limit for submission of requests to participate in contract award procedure or the time limit for submission of tenders to the additional time indispensable to make changes in requests or tenders, if necessary.

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

submission of requests to participate in contract award procedure or time limit for submission of tenders to additional time indispensable to make changes in requests or tenders, however in contract award procedures where the value is equal to or exceeds the amounts specified in provisions issued under Article 11 para. 8, the time limit:

- 1) **for the submission of tenders, shall not be less than 15 days – from the date of submission of a notice for changes to the Publications Office of the European Union – in the case of an open tender;**
- 2) **for the submission of requests to participate in a contract award procedure, shall not be less than 30 days, and in the event of extreme urgency for the award of a contract, not less than 10 days from the date of submission of a notice for changes to the Publications Office of the European Union – in the case of a restricted tender or negotiated procedure with publication.**

3. Immediately after announcing a notice of change in the Public Procurement Bulletin or submitting it to the Publications Office of the European Union, the contracting authority shall post information about the change on the website.

Article 13.

1. The contracting authority, immediately after the approval or adoption of a financial plan according to the provisions, statute or agreement the contracting authority is bound to, and in the case of contracting authorities which do not prepare financial plans – once a year, may submit to the Publications Office of the European Union or post on its website in a separate section for procurement, hereinafter referred to as the “buyer’s profile”, a prior information notice about contracts or framework agreements planned for the following 12 months, whose value is equal or higher than the amounts defined in the provisions issued pursuant to Article 11 para. 8.

2. The notice referred to in para. 1 may be posted by the contracting authority on the buyer’s profile after the passage of 48 hours from submission of the notice to the Publications Office of the European Union.

3. [repealed]

Article 13a.

1. Contracting authorities referred to in Article 3 para. 1 point (1) and (2), and associations of such contracting authorities, no later than 30 days as of the day of adoption of the budget or financial plan by their authorised body, shall draw up plans of contract award procedures they intend to conduct in a given financial year, and shall post these plans on their website.

2. A plan of contract award procedures shall contain in particular information concerning:

- 1) **the subject-matter of contract;**
- 2) **type of contract (work, supplies, or services);**
- 3) **envisaged procedure or other manner of awarding the contract;**
- 4) **estimated contract value;**
- 5) **estimated date of commencement of the procedure, on quarterly or monthly**

basis.

3. Contracting authorities other than listed in para. 1 may post plans of contract award procedures on their websites.

4. Contracting authorities are not required to post information about contract award procedures on their websites, where the protection of classified information so requires.

TITLE II AWARD PROCEDURES

Chapter 1

Contracting authority and economic operators

Article 14.

1. Provisions of the Act of 23 April 1964 – the Civil Code (Journal of Laws of 1964 No 16 item 93 as amended³) shall apply to actions undertaken by the contracting authority and economic operators in the contract award procedure, unless provisions of this Act provide otherwise.
- 2. If the last day of the time limit is Saturday or a public holiday, the time limit shall expire with the next day following the non-working day or days.**

Article 15.

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

2. The contracting authority may entrust ancillary purchasing activities to its own organisational unit or a third party.

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

4. Ancillary purchasing activities consist in supporting of purchasing activities, in particular by:

- 1) ensuring technical infrastructure making it possible for the contracting authority to award contracts or conclude framework agreements;**
- 2) consultancy related to the conduct or planning of contract award**

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

procedures;

3) preparing contract award procedures and conducting them for and on behalf of the contracting authority.

Article 15a.

1. [repealed]

2. [repealed]

3. [repealed]

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

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

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

Article 15b.

1. The central contracting authority shall be the contracting authority referred to in Article 3 para. 1 point (1) to (4), carrying out activities in the scope of:

- 1) purchasing supplies or services intended for the contracting authorities;**
- 2) awarding contracts or entering into framework agreements for works, supplies, or services intended for the contracting authorities;**
- 3) ancillary purchasing activities.**

2. A contract award procedure shall be carried out by the central contracting authority with the use of electronic means of communication only.

3. The contracting authorities referred to in Article 3 para.1 point (1) to (4) may purchase:

- 1) supplies or services from the central contracting authority, or**
- 2) supplies, services, or works with the use of dynamic purchasing systems operated by the central contracting authority or on the basis of a framework agreement entered into by the central contracting authority.**

4. The central contracting authority shall indicate, in the notice on the establishment of a dynamic purchasing system, whether other contracting authority may use the dynamic purchasing system operated by it.

5. The central contracting authority may conclude a framework agreement under which the contracting authorities referred to in para. 1 will be authorised to:

- 1) conduct a competitive procedure among the economic operators covered by the agreement once again and select the best tender;**

-
- 2) indicate which of the economic operators covered with the agreement will carry out the contract awarded by the contracting authorities.

6. The contracting authority shall fulfil the obligations resulting from the Act in the scope of the parts of the procedure it conducts on its own, and in particular:

- 1) for awarding contracts covered by dynamic purchasing system operated by the central contracting authority;
- 2) for awarding contracts on the basis of a framework agreement entered into by the central contracting authority.

Article 15c.

The legislative body of a local government unit may, by means of a resolution:

- 1) designate or appoint an entity to act as a central contracting authority or define the manner in which such entities shall be appointed,
- 2) define the scope of activity of such entities,
- 3) designate contracting authorities obliged to purchase specific types of contracts from the central contracting authority, award contracts on the basis of a framework agreement entered into by the central contracting authority, or covered with a dynamic purchasing system operated by the central contracting authority,
- 4) define the manner of cooperation with the central contracting authority
– having regard the need to ensure higher efficiency and professional basis of contract award procedures, and higher competitiveness.

Article 15d.

1. A contracting authority may use the services of the central contracting authority with the registered office in another Member State of the European Union. Services of the central contracting authority referred to in the first sentence shall be governed by the provisions applicable in this Member State.

2. Contracts covered by a dynamic purchasing system implemented by the central contracting authority referred to in para. 1 or by a framework agreement entered into by such a central contracting authority shall be awarded pursuant to the regulations applicable in the Member State of the European Union where the contracting authority has its registered office.

Article 15e.

1. Contracting authorities may, jointly with contracting authorities having their registered offices in other Member States of the European Union, prepare and conduct a contract award procedure, conclude a framework agreement, or operate a dynamic purchasing system, or award contracts under a framework agreement or a dynamic purchasing system.

2. In the cases referred to in para. 1, the contracting authorities entities shall conclude an agreement defining:

- 1) obligations of the parties, distribution of the obligations between the contracting

authorities, and the applicable provisions of the States referred to in para. 1,

- 2) organisation of a contract award procedure, conclusion of a framework agreement, or establishment of a dynamic purchasing system, including matters connected with the preparation and conducting of such a procedure, distribution of works, supplies, or services, and conclusion of agreements**

– unless it is regulated in an international agreement entered into by and between the Republic of Poland and the Member States of the European Union.

3. The distribution of obligations and applicable regulations shall be detailed in the contract notice or tender specification concerning contracts awarded jointly.

4. The contracting authority shall not apply the provisions of the Act to the activities referred to in para. 1, if the provisions of another Member State of the European Union are applicable.

Article 15f.

1. The contracting authorities may, by means of an agreement, create a joint entity with the contracting authorities having their registered office in other Member State European Union, and in particular a European grouping of territorial cooperation referred to in Regulation (EC) No. 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJ L 210, 31.07.2006, p. 19, as amended).

2. In the case referred to in para. 1, the competent body of the joint entity shall indicate domestic regulations applicable in one of the Member States of the European Union which will be applicable to the preparation and conduct of the contract award procedure, conclusion of framework agreements, and setting a dynamic purchasing system by the joint entity, whereas only the provisions of domestic law of a Member State in which the joint entity has its registered office or conducts its activities may apply.

Article 16.

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

2. [repealed]

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

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

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

6. If a contract award procedure is conducted exclusively for and on behalf of more than one contracting authority, all contracting authorities shall fulfil the obligations resulting from the Act. Liability arises also in the case when one of the contracting authorities conducts the contract award procedure, acting on its own behalf and on behalf of other contracting authorities.

7. If a contract award procedure is not conducted in whole for and on behalf of all the contracting authorities, each contracting authority shall be liable for the fulfilment of its obligations resulting from the Act in the scope of the part of the procedure which it conducts for itself and on its own behalf.

8. All contracting authorities shall fulfil the obligations resulting from the Act in the part of the procedure conducted for and on behalf of all contracting authorities.

Article 17.

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

- 1) they are competing for a contract;
- 2) remain in matrimony, consanguinity or affinity in direct line or consanguinity or affinity in indirect line up to the second degree, or is related due to adoption, legal custody or guardianship with economic operator, his legal deputy or members of managing or supervisory bodies of economic operators competing for a contract;
- 3) during the three years prior to the date of the start of the contract award procedure they remained in a relationship of employment or service with the economic operator or were members of managing or supervisory bodies of economic operators competing for a contract;
- 4) remain in such legal or actual relationship with the economic operator, which may raise justified doubts as to their impartiality;
- 5) have been legally sentenced for an offence committed in connection with contract award procedures, bribery, offence against economic turnover or any other offence committed with the aim of gaining financial profit.

2. Persons carrying out activities in a contract award procedure shall submit, under the pain of criminal liability for misrepresentation, in a written form a statement on the lack or existence of the circumstances referred to in para. 1. Before taking the statement, the head of the contracting authority or a person to whom the managing officer has entrusted activities in the procedure, shall advise the persons making the statement of criminal liability for misrepresentation.

2a. The head of the contracting authority or a person to whom the head of the contracting authority has entrusted activities in the procedure, in case of a justified suspicion that between the employees of the contracting authority or other persons employed by the contracting authority who has direct or indirect influence on the result of the procedure and the economic operators there exists a relationship defined in para. 1 point (2) to (4), shall take from these persons, under penalty of criminal liability for misrepresentation, a written statement regarding the circumstances referred to in para. 1. Before taking the statement, the head of the contracting authority or a person to

whom the head of the contracting authority has entrusted activities in the procedure, shall advise the persons making the statement of criminal liability for misrepresentation.

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

Article 18.

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

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

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

Article 19.

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

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

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

Article 20.

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

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

3. The tender committee shall, in particular, submit to the head of the contracting authority proposals to exclude an economic operator, reject a tender and to select the most advantageous tender, and also, to the extent referred to in para. 1, shall make a request to cancel the contract award procedure.

Article 20a.

1. In the case of a contract for works or services of a value equal to or higher than a PLN equivalent of EUR 1,000,000, a team shall be appointed to supervise the execution of the contract awarded, hereinafter referred to as “team”.

2. The team shall be appointed for one or more interconnected contracts.

3. At least two members of the team is appointed to the tender committee.

4. A team shall not be appointed if the contracting authority ensures in another way the participation of at least two members of the tender committee over the execution of the contract awarded.

Article 21.

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

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

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

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

Article 22.

1. Eligible to compete for a contract shall be economic operators who:

- 1) are not subject to exclusion;**
- 2) meet the conditions for participation in the procedure, if such conditions have been defined by the contracting authority in the contract notice or in the invitation to confirm interest.**

1a. The contracting authority shall define the conditions for participation in the procedure and the means of proof required from the economic operators in proportion to the subject-matter of contract and in a manner enabling evaluation of the economic operator’s ability to duly perform the contract, in particular expressing it as minimum levels of ability.

1b. Conditions for participation in a procedure may concern:

- 1) competences or authorisations to carry out specific professional activity, if required under separate regulations;**
- 2) economic or financial standing;**
- 3) technical or professional capability.**

2. The contracting authority may stipulate in the contract notice that only sheltered workshops and other economic operators may compete for a contract whose activities, or activities of their separated organisational units which will perform the contract, includes social and professional integration of persons belonging to socially marginalised groups, in particular:

-
- 1) disabled persons within the meaning of 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 amended.⁴);
 - 2) unemployed persons within the meaning of the Act of 20 April 2004 on the promotion of employment and labour market institutions (Journal of Laws of 2016, items 645, 691, and 868);
 - 3) persons deprived of liberty or released from prisons, referred to in the Act of 6 June 1997 – Criminal Executive Code (Journal of Laws item 557, as amended⁵), experiencing difficulties with integration into society;
 - 4) persons with mental disorders within the meaning of the Act of 19 August 1994 on protection of mental health (Journal of Laws of 2016, items 546 and 960);
 - 5) homeless persons within the meaning of the Act of 12 March 2004 on social assistance (Journal of Laws of 2016, item 930);
 - 6) persons granted by the Republic of Poland a refugee status or subsidiary protection referred to in the Act of 13 June 2003 on the protection of foreigners in the Republic of Poland (Journal of Laws of 2012, item 680; of 2013, item 1650; of 2014 , item 1004; of 2015, item 1607; and of 2016, item 783);
 - 7) persons up to 30 years of age and persons who have reached 50 years of age, with a job-seeker status and unemployed;
 - 8) persons belonging to disadvantaged minorities, in particular national and ethnic minorities within the meaning of the Act of 6 January 2005 on national and ethnic minorities and regional language (Journal of Laws of 2015, item 573; and of 2016, item 749).

2a. The contracting authority shall define a minimum percentage level of employment of the persons belonging to one or more categories referred to in para. 2 not lower than 30%, of persons employed by sheltered workshops or economic operators or their units referred to in para. 2.

3. [repealed]

4. [repealed]

5. [repealed]

Article 22a.

1. To confirm compliance with the conditions for participation in a procedure, an economic operator may, in relevant situations and in relation to a specific contract or

⁴ 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.

⁵ Amendment to the above mentioned Act have been announced in Journal of Laws of 1997 item 1083; of 1999 item 931; of 2000 items 701 and 1268; of 2001 items 1071 and 1194; of 2002 items 676 and 1679; of 2003 items 1061, 1380, and 1750; of 2004 items 889, 2135, 2405, 2426, and 2703; of 2005 items 1363 and 1479; of 2006 items 708 and 1648; of 2007 item 849; of 2008 items 620 and 1344; of 2009 items 39, 119, 504, 817, 911, 963, 1475, 1540, and 1589; of 2010 items 191, 227, 842, and 1228; of 2011 items 201, 202, 654, 734, 1092, 1280, and 1431; of 2012 item 908; of 2013 items 628 and 1247; of 2014 items 287, 619, and 1707; of 2015 items 21, 396, 431, 541, 1269, and 1573; and of 2016 items 428 and 437.

part thereof, rely on technical or professional abilities or financial or economic standing of other entities, regardless of the legal nature of relationships between the economic operator and these entities.

2. An economic operator that relies on abilities or standing of other entities must demonstrate to the contracting authority that it will have necessary resources of these entities at its disposal when performing a contract, in particular by presenting a written commitment of these entities to share the resources necessary to perform the contract.

3. The contracting authority shall evaluate whether the technical or professional abilities made available to the economic operator, or financial or economic standing of such entities allow the economic operator to demonstrate meeting the conditions for participation in the procedure, and examines whether the grounds for exclusion referred to in Article 24 para. 1 point (13) to (22) and Article 24 para. 5 apply to such an entity.

4. In relation to the conditions relating to education, professional qualifications or experience, economic operators may rely on capabilities of other entities if the latter carry out works or services that require such capabilities.

5. An economic operator that relies on financial or economic standing of other entities shall be jointly and severally liable with the entity that has committed to render resources available, for any loss sustained by the contracting authority as a result of a failure to provide these resources, unless the economic operator is not responsible for the failure.

6. If technical or professional capabilities or economic or financial standing of the entity referred to in para. 1 does not evidence meeting the conditions for participation in the procedure by the economic operator or grounds for exclusion exist with regard to such entities, the contracting authority shall demand that the economic operator, within the time limit set by the contracting authority:

- 1) replace the said entity with another entity or entities, or
- 2) undertake to perform personally the relevant part of the contract, provided that the economic entity demonstrates technical or professional capabilities or financial or economic standing referred to in para. 1.

Article 22b.

1. With regard to conditions for participation in a procedure, relating to competences or authorisations to carry out specific professional activity, the contracting authority may require that the economic operators be entered to one of the professional or business registers kept in a Member State of the European Union where they have their registered office, specified in Annex XI to Directive 2014/24/EU or in Annex VII to Directive of the European Parliament and of the Council 2009/81/CE 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 defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.08.2009, p. 76, as amended), or that they meet other requirements defined in these annexes.

2. In a contract award procedure for services, to the extent in which economic operators must hold relevant authorisation or be members of a specific organisation to provide specific services in their country of origin, the contracting authority may require them to demonstrate that they hold such authorisation or membership in such

an organisation.

Article 22c.

1. In relation to conditions for participation in a procedure relating to economic or financial standing, the contracting authority may require in particular:

- 1) that economic operators have a defined minimum yearly turnover, including a defined minimum yearly turnover in the field of the contract;**
- 2) that economic operators present information about their annual accounts disclosing in particular their asset-liability ratio.**
- 3) that an economic operator has a relevant third party insurance.**

2. The contracting authority may not require that the minimum yearly turnover referred to in para. 1 (1) exceed twice the amount of the contract, except for duly justified cases relating to the subject-matter of the contract or the manner of its performance. The contracting authority shall specify, in the tender specification or in the tender protocol, reasons for applying such a requirement.

3. The contracting authority may require the information referred to in para. 1 (2) if the contracting authority has defined in the tender specification transparent and objective methods and criteria based on which it takes that information into account.

4. If a contract is divided into lots, the provisions of para. 1 to 3 shall apply to each of the lots. The contracting authority may specify the minimum yearly turnover also in relation to more than one lot of a contract to address the situation in which the economic operator whose tender was selected as the best is awarded a number of lots of the contract to be performed simultaneously.

5. If a contract based on a framework agreement is awarded in cases referred to in Article 101a para. 1 (2) (b) or (c), the requirement to have a minimum yearly turnover shall be calculated on the basis of the forecast maximum volume of contracts to be performed simultaneously, or – if such information is not available – on the basis of the framework agreement value. In the case of a dynamic purchasing system, the requirement to have a minimum yearly turnover is calculated on the basis of the forecast maximum volume of contracts to be covered by this system.

Article 22d.

1. When evaluating technical or professional capability of an economic operator, the contracting authority may define minimum conditions relating to education, professional qualifications, experience, technical potential of the economic operator or persons delegated by the economic operator to perform the contract, making it possible to perform the contract at an appropriate level of quality.

2. The contracting authority may, at any stage of the procedure, decide that an economic operator does not have required capabilities if employment of technical or professional resources of the economic operator in other business undertakings may negatively influence the performance of the contract.

3. In a contract award procedure for supplies requiring siting or installation operations, services, or works, the contracting authority may evaluate the ability of an economic operator to duly perform the contract in particular in relation to reliability, qualifications, efficiency, and experience of the economic operator. In such a case, the

contracting authority may require from the economic operators to indicate in the tender or in the request to participate first and last names of the persons carrying out activities connected with the contract performance along with information about professional qualification or experience of these persons.

Article 23.

1. Economic operators may compete for a contract jointly.
2. In the event referred to in para. 1, economic operators shall appoint a plenipotentiary to represent them in the contract award procedure or in the procedure and conclusion of a public procurement contract.
3. The provisions relating to economic operators shall apply respectively to the economic operators referred to in para. 1.
4. If a tender submitted by economic operators, referred to in para. 1, has been selected, the contracting authority may request prior to the conclusion of a public procurement contracts, an agreement resolving cooperation between those economic operators.
5. **The contracting authority may define a specific, objectively justified manner of fulfilment by the economic operators referred to in para. 1 of the conditions for participation in a procedure, referred to in Article 22 para. 1b, if this is justified by the characteristics of the contract and proportionate.**
6. **The contracting authority may define conditions of performance of the contract by the economic operators referred to in para. 1 in another manner than in the case of single economic operators, if this is justified with the characteristics of the contract and proportionate.**

Article 24.

1. Excluded from contract award procedures shall be:
 - 1) [repealed]
 - 1a) [repealed]
 - 2) [repealed]
 - 2a) [repealed]
 - 3) [repealed]
 - 4) [repealed]
 - 5) [repealed]
 - 6) [repealed]
 - 7) [repealed]
 - 8) [repealed]
 - 9) [repealed]
 - 10) [repealed]
 - 11) [repealed]

-
- 12) economic operator which has not demonstrated fulfilment of conditions for participation in a procedure or has not been invited to negotiate or submit initial offers or tenders, or has not demonstrated lack of grounds for exclusion;
 - 13) economic operator being a natural person who has been convicted with a final verdict for a criminal offence:
 - a) referred to in Article 165a, Articles 181 to 188, Article 189a, Articles 218 to 221, Articles 228 to 230a, Articles 250a, 258, or Articles 270 to 309 of the Act of 6 June 1997 – Criminal Code (Journal of Laws item 553, as amended⁶) or Article 46 or 48 of the Act of 25 June 2010 on sports (Journal of Laws 2016, item 176),
 - b) constituting an act of terrorism referred to in Article 115 § 20 of the Act of 6 June 1997 – Criminal Code,
 - c) fiscal offence,
 - d) referred to in Article 9 or 10 of the Act of 15 June 2012 on the consequences of entrusting the performance of work to foreigners staying in the Republic of Poland contrary to regulations (Journal of Laws item 769);
 - 14) economic operator, if a member in office 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 a criminal offence referred to in subpara. (13);
 - 15) 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;
 - 16) economic operator which as a result of wilful misconduct or gross negligence misled the contracting authority when presenting information that it is not subject to exclusion, meets the conditions for participation in the procedure or the objective and non-discriminatory criteria, hereinafter referred to as “selection criteria”, or which concealed this information or is unable to present the required documents;
 - 17) economic operator which as a result of recklessness or negligence presented information misleading the contracting authority, which could have significant influence on the decisions taken by the contracting authority in a contract award procedure;
 - 18) economic operator who wrongfully influenced or attempted to influence

⁶ Amendment to the above mentioned Act have been announced in Journal of Laws of 1997 item 840; of 1999 items 729 and 931; of 2000 items 548, 1027, and 1216; of 2001 item 1071; of 2003 items 1061, 1142, 1750, 1935, and 2255; of 2004 items 219, 626, 889, and 2426; of 2005 items 732, 757, 1109, 1363, 1479, and 1493; of 2006 items 1409, 1592, and 1648; of 2007 items 589, 850, 859, and 1378; of 2008 items 560, 782, 1056, 1080, and 1344; of 2009 items 504, 533, 1317, 1323, 1474, 1540, and 1589; of 2010 items 46, 227, 229, 625, 626, 842, 857, 1018, 1021, 1228, 1474, and 1602; of 2011 items 78, 130, 202, 245, 381, 549, 678, 767, 964, 1135, 1280, 1381, and 1431; of 2012 item 611; of 2013 items 849, 905, 1036, and 1247; of 2014 item 538; of 2015 items 396, 541, 1549, 1707, and 1855; and of 2016 items 189, 428, 437, 862, and 904.

the activities of the contracting authority or to obtain confidential information that could have given him an advantage in a contract award procedure;

- 19) economic operator that participated in the preparation of a contract award procedure or whose employee, as well as a person providing work to the economic operator on the basis of a mandate contract, specific work contract, agency contract, or another service contract, participated in the preparation of such a contract award procedure, unless the resulting distortion of competition can be eliminated in another way than by excluding the economic operator from the procedure;
- 20) economic operator that entered into an agreement with other economic operators, aimed at distortion of competition between economic operators in a contract award procedure, which the contracting authority can demonstrate with the use of appropriate evidence;
- 21) economic operator that is a collective entity prohibited from applying for public contracts by court pursuant to the Act of 28 October 2002 on the liability of collective entities for acts prohibited under penalty (Journal of Laws of 2015, items 1212, 1844, and 1855; and of 2016, items 437 and 544);
- 22) economic operator prohibited from applying for public contracts under a precautionary measure;
- 23) economic operators that, while belonging to the same capital group within the meaning of the Act of 16 February 2007 on competition and consumer protection (Journal of Laws of 2015, items 184, 1618, and 1634), submitted separate tenders, partial offers, or requests to participate in a procedure, unless they demonstrate that the links between them do not result in distortion of competition in the contract award procedure.

2. [repealed]

2a. [repealed]

3. [repealed]

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

5. The contracting authority may exclude, from a contract award procedure, an economic operator:

- 1) that is subject to liquidation proceedings, where in an arrangement approved by court in restructuring proceedings, the satisfaction of creditors' claims are envisaged by means of liquidation of the estate of the economic operator or the court ordered the liquidation of the estate of the economic operator pursuant to Article 332 para. 1 of the Act of 15 May 2015 – Restructuring Law (Journal of Laws, item 978, as amended⁷), or whose bankruptcy has been declared, except for an economic operator that, after its bankruptcy was declared, entered into an arrangement, provided that the arrangement does not provide for the satisfaction of

⁷ Amendments to the said Act were announced in the Journal of Laws of 2015 items 1259, 1513, 1830, and 1844; and of 2016, items 615 and 996.

creditors' claims by means of liquidation of the bankrupt's estate, unless the court ordered liquidation of this estate pursuant to Article 366 para. 1 of the Act of 28 February 2003 – Bankruptcy Law (Journal of Laws of 2015, item 233, as amended⁸);

- 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 with the use of relevant evidence;
- 3) if the economic operator or the persons referred to in para. 1 (14), authorised to represent the economic operator, remain in relationships defined in Article 17 para. 1 (2) to (4) with:
 - a) the contracting authority,
 - b) persons authorised to represent the contracting authority,
 - c) members of the tender committee,
 - d) persons who have submitted the declaration referred to in Article 17.2a
 - 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;
- 4) that, due to reasons attributable to it, failed to perform or performed to a significant extent unduly an earlier public contract or concession contract, entered into with the contracting authority referred to in Article 3.1 (1) to (4), which resulted in terminating the contract or award of damages;
- 5) who 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 in office 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 subpara. (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 (15), 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

⁸ Amendments to the consolidated text of the said Act were announced in the Journal of Laws of 2015 items 978, 1166, 1259, and 1844; and of 2016 items 615 and 996.

liabilities.

6. If the contracting authority intends to exclude an economic operator pursuant to para. 5, it shall demonstrate the grounds for the exclusion in the contract notice, in the tender specification, or in the invitation to negotiations.

7. An economic operator shall be excluded:

- 1) in cases referred to in para. 1 (13) (a) to (c) and 1 (14), where the person referred to in these provisions has been convicted for a criminal offence listed in para. 1 (13) (a) to (c), if 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 (13) (d) and 1 (14), where the person referred to in these provisions, has been convicted for a criminal offence listed in para. 1 (13) (d),**
 - b) in para. 1 (15),**
 - c) in para. 5 (5) to 5 (7),**
 - if less than 3 years have passed since – respectively – the verdict confirming the grounds for the exclusion was issued, 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 (18) and 1 (20), or para. 5 (2) and 5 (4), if less than 3 years have passed as of the occurrence of the event constituting grounds for the exclusion;**
- 4) in the case referred to in para. 1 (21), if the period for which the prohibition from applying for public contracts was imposed in a final decision has not lapsed;**
- 5) in the case referred to in para. 1 (22), if the period for which the prohibition from applying for public contracts has not lapsed.**

8. An economic operator subject to exclusion on the basis of para. 1 (13) and 1 (14) as well as 1 (16) to 1 (20), or para. 5, 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, organisational, 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 with regard to an economic operator that is a collective entity a prohibition from applying for a contract has been imposed by a final verdict, and the period of validity of this prohibition, defined in the verdict, has not lapsed.

9. 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 para. 8 to be sufficient.

10. In cases referred to in para. 1 (19), before excluding an economic operator the contracting authority shall ensure to that operator a possibility of demonstrating that

their participation in the preparation of the contract award procedure will not distort competition. The contracting authority shall specify in the protocol the manner in which competition will be ensured.

11. The economic operator, within 3 days as of providing the information referred to in Article 51 para. 1a, 57 para. 1, or 60d para. 1, or as of posting on the website the information referred to in Article 86.5, shall submit a statement that it belongs or does not belong to the same capital group referred to in para. 1 (23). Along with the statement, the economic operator may present evidence that their links with another economic operator will not distort competition in the contract award procedure.

12. The contracting authority may exclude an economic operator at any stage of the contract award procedure.

Article 24a.

[repealed]

Article 24aa.

1. The contracting authority may, in an open-tender procedure, first evaluate the tenders and then examine whether an economic operator whose offer has been evaluated as the best is subject to exclusion or fulfils the conditions for participation in the procedure, if such a possibility is envisaged in the tender specification or in the contract notice.

2. If the economic operator referred to in para. 1 evades signing the contract or fails to lodge an end-use security, the contracting authority may examine whether the economic operator that has submitted the tender evaluated as the best among other tenders is subject to exclusion or fulfils the conditions for participation in the procedure.

Article 24b.

[repealed]

Article 25.

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

- 1) that the criteria of participation in the procedure or the selection criteria have been met,
- 2) that the supplies, services, or works offered are compliant with the requirements defined by the contracting authority,
- 3) lack of grounds for exclusion

– the contracting authority shall specify in the contract notice, tender specification, or in the invitation to tender.

2. The minister responsible for the economy shall define, by means of a regulation, the types of documents that may be requested by the contracting authority from an economic operator, their period of validity, and the forms in which such

documents may be submitted, having in mind that instead of a document, the fulfilment of criteria of participation in a procedure, the selection criteria, or the lack of grounds for exclusion may be also confirmed by a declaration made before a competent authority, by information from the National Criminal Record, an extract from a relevant register such as court register, or – in the case of lack thereof, an equivalent document confirming the lack of grounds for exclusion, the fulfilment of criteria of participation in a procedure, or the selection criteria, issued by a competent court or administration authority, and the confirmation that supplies, services, or works offered fulfil the criteria defined by the contracting authority may be constituted, in particular, by a certificate of an entity authorised to control quality, and having in mind the validity of the documents and the necessity of ensuring the protection of confidential information in the case of contracts requiring such information or containing it, in the manner defined in the provisions on the protection of confidential information.

Article 25a.

1. To the tender or request to participate in a procedure the economic operator shall enclose a statement in the scope indicated by the contracting authority in the contract notice or in the tender specification, valid as at the day of submission of the tenders or requests to participate in the procedure. Information contained in the statement shall constitute an initial confirmation that the economic operator:

- 1) is not subject to exclusion and complies with the conditions for participation in the procedure;
- 2) complies with the selection criteria referred to in Articles 51.2, 57.3, and 60d.3.

2. If the value of the contract is equal to or exceeds the amounts defined in the provisions issued pursuant to Article 11 para. 8, the statement referred to in para. 1 shall be submitted by the economic operator as a single document.

3. An economic operator which refers to resources of other entities in order to demonstrate the lack of grounds – with regard to such entities – for exclusion and the fulfilment – to the extent in which the economic operator refers to the resources of such entities – the conditions for participations in a procedure:

- 1) shall also submit single documents relating to these entities – if the value of contract is equal to or exceeds the amounts defined in the provisions issued on the basis of Article 11 para. 8;
- 2) shall include information about those entities in the statement referred to in para. 1 – if the value of contract is lower than the amounts defined in the provisions issued on the basis of Article 11 para. 8.

4. In a direct contract procedure, the statement referred to in para. 1 shall be submitted by the economic operator to the contracting authority before signing the contract.

5. Upon request of the contracting authority, an economic operator which intends to entrust part of the contract for execution to subcontractors, in order to demonstrate the lack of grounds for their exclusion in the procedure:

- 1) shall submit single documents relating to the subcontractors – if the value of contract is equal to or exceeds the amounts defined in the provisions issued on the basis of Article 11 para. 8;
- 2) shall include information about those subcontractors in the statement referred

to in para. 1 – if the value of contract is lower than the amounts defined in the provisions issued on the basis of Article 11 para. 8.

6. In a number of economic operators jointly applies for a contract, the single document or the statement shall be submitted by each of the economic operators jointly applying for the contract. The said documents confirm the compliance with the conditions for participation in the procedure or the selection criteria, as well as the lack of grounds for exclusion to the extent in which each of the economic operators demonstrates the fulfilment of conditions for participation in the procedure or the selection criteria, or the lack of grounds for exclusion.

7. An economic operator may use in a single document information which is still valid and contained in another single document submitted in a separate contract award procedure.

Article 26.

1. Before awarding a contract whose value is equal to or exceeds the amounts defined in the provisions issued pursuant to Article 11 para. 8, the contracting authority shall call on the economic operator whose tender has been evaluated as the best to submit within a specified time limit (not shorter than 10 days) declarations or documents, valid as at the submission date, confirming the circumstances referred to in Article 25 para. 1. The provision of the first sentence shall not apply to the award of contracts in cases referred to in Article 101a para. 1 (1) or (2) (a).

2. If the value of a contract is lower than the amounts defined in the provisions issued pursuant to Article 11 para. 8, the contracting authority may call on the economic operator whose tender has been evaluated as the best to submit within a specified time limit (not shorter than 5 days) declarations or documents, valid as at the submission date, confirming the circumstances referred to in Article 25 para. 1.

2a. [repealed]

2b. [repealed]

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

2d. [repealed]

2e. [repealed]

2f. If necessary for ensuring the correct course of a contract award procedure, the contracting authority may, at each stage of the procedure, call on the economic operators to submit all or some of the declarations or documents confirming that they are not subject to exclusion, comply with the conditions for participation in the procedure or with the selection criteria, and if there are justified grounds for regarding the declarations or documents submitted earlier as no longer valid, to submit valid declarations or documents.

3. If an economic operator failed to submit the declaration referred to in Article 25a para. 1, the declarations or documents confirming the circumstances referred to in Article 25 para. 1, or other documents necessary to carry out a procedure, the

declarations or documents are incomplete, contain errors, or raise doubts specified by the contracting authority, the contracting authority shall request that they be submitted, supplemented, or corrected, or to explanations were provided within the time limit specified by the contracting authority, unless despite their submission, supplementation, or correction, or despite provide explanations, the tender of the economic operator would be rejected or if it would be necessary to cancel the procedure.

3a. If an economic operator failed to submit the required powers of attorney or submitted defective powers of attorney, the contracting authority shall call on the economic operator to submit them within the time limit specified by the contracting authority, unless despite their submission, the economic operator's tender would be rejected or if it would be necessary to cancel the procedure.

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

5. [repealed]

6. An economic operator is not obliged to submit declarations or documents confirming the circumstances referred to in Article 25 para. 1 (1) and (3), if the contracting authority holds declarations or documents concerning the economic operator or can obtain them through free-of-charge and generally accessible data bases, and in particular public registers within the meaning of the Act of 17 February 2005 on the computerisation of activities carrying out public tasks (Journal of Laws of 2014, item 1114; and of 2016, item 352).

7. The contracting authority uses an Online repository of certificates (e-Certis) or requires in the first place certificates of such type, or evidence in the form of documents covered with this repository.

Article 27.

[repealed]

Article 28.

[repealed]

Chapter 2 Preparation of a procedure

Article 29.

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

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

3. The subject-matter of contract may not be described by designation of trademarks, patents, or origin, source or specific process characteristic of the goods or

services delivered by a specific economic operator, if this could result in any favourable treatment or an elimination of certain economic operators or goods, unless this is justified by the specificity of the subject-matter of contract and the contracting authority cannot describe the subject-matter of contract with sufficiently exact expressions, and the said designation is accompanied with the wording "or equivalent".

3a. In the description of the subject-matter of contract for services or works, the contracting authority shall define the requirements relating to the employment by an economic operator under an employment contract of persons carrying out activities indicated by the contracting authority in the scope of implementation of the contract, if the said activities are to be carried out in the manner defined in Article 22 § 1 of the Act of 26 June 1974 – Labour Code (Journal of Laws of 2014, item 1502, as amended⁹).

3b. In the description of the subject-matter of contract, the contracting authority may specify the necessity to transfer intellectual property rights or to award of a licence.

4. In the description of the subject-matter of contract, the contracting authority may specify requirements connected with the implementation of the contract which may include economic, environmental, social, innovation- or employment-related aspects, and in particular relating to the employment of:

- 1) unemployed persons within the meaning of the Act of 20 April 2004 on the promotion of employment and labour market institutions;
- 2) adolescents referred to in the provisions of the labour law, for the purposes of professional training;
- 3) disabled persons within the meaning of the Act of 27 August 1997 on the vocational rehabilitation, social resettlement, and employment of disabled persons;
- 4) other persons than listed in subpara. (1), (2), or (3), referred to in the Act of 13 June 2003 on social employment (Journal of Laws of 2011 items 225 and 1211; and of 2015 items 1220 and 1567), or in the relevant regulations of Member States of the European Union or the European Economic Area.

5. In the case of contracts to be used by natural persons, including employees of the contracting authority, the description of the subject-matter of contract shall be drawn up with account taken of the requirements in the scope of accessibility for disabled persons or for-all design.

6. If the requirements referred to in para. 5 result from an act the European Union, the subject-matter of the contract, in the scope of for-all design, shall be described by reference to this act.

Article 30.

1. The contracting authority shall describe the subject-matter of contract in one of the following ways, taking account of separate technical regulations:

- 1) by defining performance or functionality requirements, including environmental requirements, provided that the parameters are specified

⁹ Amendments to the consolidated text of the said Act were announced in the Journal of Laws of 2014 item 1662; of 2015 items 1066, 1220, 1224, 1240, 1268, and 1735; and of 2016 items 868, 910, and 960.

precisely enough to enable the economic operators to determine the subject-matter of contract, and the contracting authority to award of the contract;

- 2) by means of reference, in order or preference, to:
 - a) Polish Standards transposing European standards,
 - b) standards of other Member States of the European Economic Area, transposing European standards,
 - c) European Technical Assessments, understood as documented assessments of operation of a construction product in terms of its basic features, in line with a relevant European Assessment Document within the meaning of Article 2 (12) of Regulation of the European Parliament and of the Council (EU) no. 305/2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 04.04.2011, p. 5, as amended),
 - d) common technical specifications, understood as technical specifications in the field of ICT products, defined pursuant to Article 13 and Article 14 of regulation of the European Parliament and of the Council (EU) no. 1025/2012 of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L, 14.11.2012, p. 12),
 - e) international standards,
 - f) technical specifications which are not mandatory, adopted by a standardisation body specialising in preparation of technical specifications for repeated or continuous application in the field of defence and security,
 - g) other technical reference systems established by the European standardisation bodies;
- 3) by means of reference to standards, European Technical Assessments, technical specifications and technical reference systems referred to in subpara. (2), as well as by means of reference to performance and functionality requirements referred to in subpara. (1) in the scope of selected features;
- 4) by means of reference to categories of performance and functionality requirements referred to in subpara. (1), and by means of reference to standards, European Technical Assessments, technical specifications and technical reference systems referred to in subpara. (2), as a means to presume conformity with such performance and functionality requirements.

2. [repealed]

3. In the absence of Polish Standards transposing European standards, or standards of other Member States of the European Economic Area transposing those standards, as well as standards, European Technical Assessments, technical

specifications, and technical reference systems referred to in para. 1 (2), the following standards shall be taken into consideration in the description of the subject-matter of contract (in order):

- 1) Polish Standards;
- 2) Polish technical approvals;
- 3) Polish technical specifications relating to design, calculation, and implementation of works, and usage of supplies;
- 4) domestic declarations of compliance and domestic declarations of performance for a construction product, or domestic technical assessments issued on the basis of the Act of 16 April 2004 on construction products (Journal of Laws of 2014 item 883; of 2015 item 1165; and of 2016 item 542).

4. When describing the subject-matter of the contract with the use of standards, European Technical Approvals, approvals, technical specifications, and technical reference systems referred to in para. 1 (2) and 3, the contracting authority shall be required to indicate that it admits solutions equivalent to those described and to add an expression “or equivalent” to such an indication.

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

6. [repealed]

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

8. In the case of contracts for works, the contracting authority shall define, in the description of the subject-matter of contract, the required properties of the material, product, or services, corresponding to the use intended by the contracting authority, in particular:

- 1) the contracting authority shall require, accordingly to the subject-matter of contract, adjustment of the design to the needs of all users, including accessibility for disabled persons;
- 2) the contracting authority may require:
 - a) specific levels of influence on the environment and climate,
 - b) a certificate or declaration of compliance,
 - c) specific performance, security, and dimensions, including quality assurance procedures,
 - d) specific terminology, symbols, tests, and test methods,
 - e) specific packaging and marking,
 - f) instructions for use,
 - g) production processes and methods at each stage of the life cycle of works,
 - h) additional studies and tests carried out by authorised bodies within the meaning of the Act of 13 April 2016 on conformity assessment and market supervision systems (Journal of Laws item 542),

-
- i) specific design and costing rules,**
 - j) test, inspection, and acceptance conditions for works,**
 - k) methods or techniques of construction,**
 - l) all other technical conditions.**

9. In the case of contracts for supplies or services, the contracting authority shall define, in the description of the subject-matter of contract, the required properties of the product or service, in particular:

- 1) the contracting authority shall require, accordingly to the subject-matter of contract, adjustment of the design to the needs of all users, including accessibility for disabled persons;**
- 2) the contracting authority may require:**
 - a) that the supply or service have properties referred to in para. 8 (2) (a), (b), (d) to (f), and (i),**
 - b) specific quality levels,**
 - c) specific performance, intend use, security, or dimensions, including requirements relating to the name under which the product is sold,**
 - g) production processes and methods at each stage of the life cycle of the supply or service, and a compliance assessment procedure.**

Article 30a.

1. In the case of contracts with special characteristics, the contracting authority may define, in the description of the subject-matter of contract, in the contract award criteria or in the contract implementation conditions, a specific marking, if the following conditions are jointly met:

- 1) marking requirements concern only the criteria connected with the subject-matter of contract and appropriate to define the characteristics of the works, supplies, or services constituting the subject-matter of the contract;**
- 2) marking requirements are based on objectively verifiable and non-discriminatory criteria;**
- 3) conditions for awarding markings are adopted by means of an open and transparent procedure in which all interested entities may participate, including public administration entities, consumers, social partners, producers, distributors, and non-governmental organisations;**
- 4) marking is available for all interested parties;**
- 5) marking requirements are defined by a third entity on which an economic operator applying for a marking may not exercise a determining influence.**

2. If the contracting authority does not require that the works, supplies, or services comply with all the requirements relating to marking, it shall specify individual marking requirements.

3. If it is required to present a specific marking, the contracting authority shall accept all markings confirming that given works, supplies, or services comply with equivalent requirements.

4. Where an economic operator, for reasons beyond their control, cannot obtain a

marking specified by the contracting authority or a marking confirming that given works, supplies, or services comply with equivalent requirements, the contracting authority – within a time limit set by them – shall accept other appropriate evidence, and in particular technical dossier of the manufacturer, provided that a given economic operator demonstrates that the works, supplies, or services to be carried out by them comply with the requirements of a specific marking or requirements specified by the contracting authority.

5. If a marking that complies with the requirements defined in para. 1 (2) to (5) includes also requirements not connected with the subject-matter of the contract, the contracting authority may not require such a marking. In such a case, the contracting authority may describe the subject-matter of contract by reference to these marking requirements or, if necessary, to those of the requirements which are connected with the subject-matter of contract and appropriate to define the characteristics of the works, supplies, or services under the contract.

Article 30b.

1. The contracting authority may require economic operators to submit a certificate issued by a conformity assessment body, or a report pertaining to a study 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 conditions of the contract performance.

2. A conformity assessment body shall mean a body carrying out activities in the scope of conformity, including calibration, testing, certification, and inspection, accredited pursuant to Regulation of the European Parliament and of the Council (EC) No 765/2008 of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.08.2008, p. 30).

3. If the contracting authority requires the economic operators to submit certificates issued by a specific conformity assessment body, the contracting authority shall also accept certificates issued by other equivalent conformity assessment bodies.

4. The contracting authority shall accept appropriate means of proof other than those referred to in para. 1 and 3, and in particular technical dossier of the manufacturer, where a given economic operator does not have access to certificates or reports pertaining to the studies referred to in para. 1 and 3, or a possibility of obtaining them in the relevant time limit, unless such lack of access can be attributed to a given economic operator, and provided that a given economic operator demonstrates that the works, supplies, or services provided by them comply with the tender assessment requirements or criteria or contract performance conditions.

Article 31.

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

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

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

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

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

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

Article 31a.

1. Before commencing a contract award procedure, the contracting authority may inform the economic operators about plans and expectations relating to the contract, and in particular conduct technical dialogue, by addressing experts, public authorities, or economic operators, seeking for advice or for information necessary for preparation of the description of the subject-matter of contract, tender specification, of conditions of the contract.

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

Article 31b.

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

Article 31c.

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

Article 31d.

Where there is a possibility that an entity participating in the preparation of the award procedure for a contract will apply for the award of that contract, the contracting authority shall ensure that the participation of this entity in the procedure does not distort competition, and in particular shall provide to other economic operators information obtained and conveyed by the contracting authority during the preparation of the procedure, and shall set a relevant time limit for the submission of tenders. In the protocol, the contracting authority shall specify measures to prevent distorting competition.

Article 32.

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

2. The contracting authority may not understate the value of a contract or select

the manner of calculating its value with the intention of avoiding the application of this Act.

3. Where the contracting authority plans to award contracts referred to in Article 67 para. 1 (6) and (7) or Article 134 para. 6 (3), these contracts shall be taken into account in the calculation of the value of the contract.

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

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

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

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

8. The value of an innovation partnership is the maximum value of all activities in the research and development process which are to be conducted as part of each of the stages of the planned partnership, as well as all supplies, services, or works to be developed and contracted with the end of the partnership.

Article 33.

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

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

2. In calculating the value of a contract for works, the contract value must include also the value of supplies and services rendered by the contracting authority at the disposal of the economic operator, if they are necessary to carry out these works.

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

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

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

Article 34.

1. The basis for calculating the value of a contract for services or supplies recurring or intended to be renewed within a specified period of time shall be the total value of contracts of the same type:

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

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

3. Where a contract for supplies is awarded on the basis of lease, rental, or hire purchase:

- 1) **for an indefinite period, or whose validity period cannot be determined, the contract value shall be the monthly value multiplied by 48;**
- 2) **for a definite period:**
 - a) **not longer than 12 months, the contract value shall be the value determined with account taken of the period of contract performance,**
 - a) **longer than 12 months, the contract value shall be the value determined with account taken of the period of contract performance and the residual value of the subject-matter of the public contract.**

3a. The basis for determination of the value of a contract for services whose total price cannot be determined shall be:

- 1) **the total contract value for the whole period of its performance – in the case of contracts awarded for a definite period not longer than 48 months;**
- 2) **the monthly contract value multiplied by 48 – in the case of contracts awarded for an indefinite period or a definite period longer than 48 months.**

4. Where a contract covers:

- 1) **banking services or other financial services, the value of the contract shall be constituted by fees, commissions, interest, and other similar charges;**
- 2) **insurance services, the value of the contract shall be constituted by the premium payable and other forms of remuneration;**
- 3) **design services, the value of the contract shall be constituted by fees, commissions payable, and other forms of remuneration.**

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

Article 35.

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

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

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

Article 36.

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

- 1) name (company name) and address of the contracting authority;
- 2) procedure for awarding the contract;
- 3) description of the subject-matter of contract;
- 4) time limit for contract performance;
- 5) conditions for participation in the procedure;
- 5a) grounds for exclusion referred to in Article 24 para. 5;**
- 6) list of declarations and documents confirming the fulfilment of the conditions for participation in the procedure and the lack of grounds for exclusion;**
- 7) information on the manner of communication between contracting authority and economic operators as well as the manner of submitting declarations and documents, if the contracting authority, in the situations specified in Articles 10c to 10e, envisages another manner of communication than with the use of electronic means of communication, as well as the indication of persons authorised to communicate with the economic operators;**
- 8) deposit requirements;
- 9) time limit during which an economic operator must maintain its tender;
- 10) description of the manner of the tender preparation;
- 11) date and place of the submission and of the opening of tenders;
- 12) description of the method of the price calculation;
- 13) description of the criteria which the contracting authority will apply in selecting a tender, specifying also the weights of particular criteria and the method of assessment of tenders, and if assigning a weight is not possible for objective reasons, the contracting authority shall list the contract award criteria in the order of their priority;**
- 14) information concerning formalities which should be met following the selection of a tender in order to conclude a public procurement contract;

-
- 15) requirements concerning the security on due performance of the contract;
 - 16) provisions of essence to the parties which will be introduced into the concluded public procurement contract, general terms of the contract or model contract, if the contracting authority requires the economic operator to conclude a public procurement contract with it on these terms;
 - 17) information on legal protection measures available to an economic operator during the contract award procedure.

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

- 1) description of the lots if the contracting authority admits the submission of tenders for lots;
- 2) the maximum number of economic operators with whom the contracting authority shall conclude a framework agreement if the contracting authority envisages to conclude a framework agreement;
- 3) information about the contracts as referred to in Article 67 para. 1 (6) and (7) or Article 134.6 (3), if the contracting authority plans to award of such contracts;
- 4) description of the method for submitting variants and the minimum requirements to be met by variants along with selected assessment criteria, if admitted or required by the contracting authority;
- 5) the e-mail or website address of the contracting authority;
- 6) information concerning foreign currencies in which settlements between the contracting authority and the economic operators can be made, if the contracting authority envisages to settle contracts in foreign currencies;
- 7) if the contracting authority envisages an electronic auction:
 - a) information about the envisaged selection of the best tender with the use of electronic auction,
 - b) requirements on the registration and identification of the economic operators, including technical requirements for computer devices,
 - c) information on which contract award criteria shall be used in the electronic auction;
- 8) the amount of reimbursement of the participation costs in the award procedure, if the contracting authority admits it.

8a) where the contracting authority provides for the requirements referred to in Article 29.3a, in particular the specification of:

- a) **the manner of documenting hiring of persons referred to in Article 29.3a,**
- b) **authorisations of the contracting authority to control the economic operator's compliance with the requirements referred to in Article 29.3a, and to impose sanctions for failing to meet these requirements,**
- c) **type of activities necessary to perform the contract, covered by the requirements of hiring, under an employment contract, by the economic operator or its subcontractor, persons carrying out activities in the course of performance of the contract;**

– subpara. (9) shall read as follows:

9) where the contracting authority provides for the requirements referred to in Article 29.4, in particular the specification of:

a) the number and required employment period of the persons to whom the requirements apply,

b) authorisations of the contracting authority to control the economic operator's compliance with the requirements referred to in Article 29.4, and to impose sanctions for failing to meet these requirements;

10) information on obligation to execute the essential parts of a contract by the economic operator itself, if the contracting authority makes such reservation in accordance with Article 36a para. 2;

11) in case of contract for works:

a) requirements concerning subcontract having works as its subject matter, which non-fulfillment causes reservations or objection submitted by the contracting authority, if the contracting authority determines such requirements;

b) information on subcontracts having as its subject-matters supplies and services which, due to the value or subject matter of these supplies or services, do not fall under obligation of submission to the contracting authority, if the contracting authority specifies such information;

12) the percentage value of the last part of remuneration for execution of contract for works, if the contracting authority determines such value, in accordance with Article 143a para. 3.

13) quality standards referred to in Article 91.2a;

14) a requirement or possibility of submitting tenders in the form of electronic catalogues, or enclosing electronic catalogues to a tender in the situation defined in Article 10a.2;

15) the number of lots for which an economic operator may submit a tender or the maximum number of lots for which a contract may be awarded to a single economic operator, as well as criteria and principles to be applied to determine the lots of the contract to be awarded to a single economic operator if their tender is selected for more lots than their maximum number.

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

4. [repealed]

5. [repealed]

Article 36a.

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

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

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

2a. An economic operator that was awarded, pursuant to Article 67 para. 1 (12) to (14), a contract whose subject-matter is the provision of services of general interest, or works, is obliged to perform key lots of these services or works personally.

3. [repealed]

Article 36aa.

1. The contracting authority may divide a contact into lots, defining the scope and subject-matter of these lots.

2. In the case referred to in para. 1, the contracting authority shall define, in the contract notice, in the tender specification, in the invitation to confirm interest, or in the qualification system notice, as well as in the invitation to tender, or in the invitation to negotiations, whether the tender should be submitted with regard to one, some, or all lots of the contract.

3. The contracting authority may define in the contract notice, in the tender specification, in the invitation to confirm interest, or in the qualification system notice, as well as in the invitation to tender, or in the invitation to negotiations, the maximum number of contract lots which may be awarded to a single economic operator.

4. The contracting authority may limit the number of contract lots that may be awarded to a single economic operator, provided that the contracting authority specifies the maximum number of lots to be awarded to an economic operator in accordance with para. 3.

5. In the case referred to in para. 3, the contracting authority shall define, in the tender specification, objective and non-discriminatory criteria or principles they will apply to selected the lots of a contract to be awarded to an economic operator where as a result of a contract award procedure one economic operator would be awarded more contract lots than the maximum number of lots they may be awarded with.

Article 36b.

1. The contracting authority shall require from the economic operator to indicate contract lots that the latter intends to entrust to subcontractors, and to provide company names of the subcontractors.

1a. In the case of contract for works or services to be carried out in a location directly supervised by the contracting authority, the contracting authority shall require that before starting to perform the contract, the economic operator provide (if known already) company names, first and last names, and contact data of the subcontractors and their contact persons, involved in such works or services. The economic operator shall notify the contracting authority of any changes in the data referred to in the first sentence, occurring during the contract performance, and shall provide information about any new subcontractors to whom the economic operator intends to entrust works

or services at a later term.

1b. The contracting authority may request the information referred to in para. 1a in the case of contracts for supplies, services other than relating to services to be provided in a location directly supervised by the contracting authority, or contracts from suppliers involved in the performance of contract for works or services.

2. If a change of or resignation from a subcontractor refers to an entity on whose resources the economic operator relied upon under rules specified in Article 22a para. 1 in order to demonstrate the fulfilment of conditions for participation in the procedure, the economic operator is obliged to demonstrate to the contracting authority that another proposed subcontractor or the economic operator alone fulfils the requirements at least to the extent they were fulfilled by the subcontractor on whose resources the economic operator relied during the contract award procedure.

Article 36ba.

1. If part of a contract for works or services is entrusted to a subcontractor during the performance of the contract, the economic operator, upon request of the contracting authority, shall present the declaration referred to in Article 25a para. 1, or declarations or documents confirming the lack of grounds for exclusion with regard to such a subcontractor.

2. If the contracting authority becomes aware of grounds for exclusion occurring with regard to a given subcontractor, it is obliged to replace this subcontractor or to resign from entrusting the part of the contract to them.

3. The provisions of para. 1 and 2 shall apply with regard to further subcontractors if so provided in the tender specification by the contracting authority.

4. Entrusting part of a contract to subcontractors shall not release the economic operator from liability for due performance of the contract.

Article 36c.

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

Article 37.

1. [repealed]

2. In an open-tender or restricted procedure, the contracting authority shall, and in another procedure, may render available the tender specification on the website as of the day of publishing the contract notice in the Official Journal of the European Union, or as of the day of sending the invitation to confirm interest in the case of contracts or design contests whose value is equal to or exceeds the amounts defined in the provisions issued pursuant to Article 11 para. 8, or as of the day of announcing the contract notice in the Public Procurement Bulletin in the case of contracts or design contests whose value is lower than the amounts defined in the provisions issued pursuant to Article 11 para. 8.

3. In a negotiated procedure with publication, competitive dialogue, or innovation

partnership, to enable the economic operators to determine the nature and scope of the contract and decide whether to submit a request to participate in the procedure, the contracting authority shall render available on a website information and requirements relating to the procedure, including specifications of the subject-matter of the contract, description of the needs and characteristic features of the supplies, services, or works constituting the subject-matter of the contract, or information about the need for an innovative product, service, or work, as of the day of publishing the contract notice in the Official Journal of the European Union, or as of the day of sending the invitation to confirm interest in the case of contracts or whose value is equal to or exceeds the amounts defined in the provisions issued pursuant to Article 11 para. 8, or as of the day of announcing the contract notice in the Public Procurement Bulletin in the case of contracts whose value is lower than the amounts defined in the provisions issued pursuant to Article 11 para. 8.

4. In a competitive dialogue and innovation partnership contract award procedure, the contracting authority shall list the contract award criteria in descending order of importance, if it is impossible to define weights of contract award criteria at the initial stage of the procedure.

5. If a contracting authority cannot render available the tender specification, its part, or the documents referred to in para. 3 on a website due to any of the circumstances referred to in Article 10c para. 1, the contracting authority shall provide it in another manner than indicated in para. 2, defined in the notice or in the invitation to confirm interest.

6. The contracting authority is not obliged to make available part of the tender specification on the website, if it imposed on the economic operators requirements to protect the confidentiality of the information provided in the contract award procedure. In such a case the contracting authority shall define, in the tender specification, measures to protect the confidentiality of the information, and shall specify the manner of obtaining it.

7. If a procedure is started by announcing a qualification system notice, the tender specification shall be made available immediately, however not later than until the day on which the invitation to tender or to provide initial offers is sent.

Article 38.

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

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

— provided that the request for explanation of the contents of specification of essential terms of the contract was received by the contracting authority not

later than by the end of the day, on which passes half of the time limit allowed for submission of tenders.

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

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

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

3. The contracting authority may arrange a meeting of all the economic operators to dispel any doubts concerning the contents of the tender specification. The date of the meeting shall be posted on the website.

3a. The contracting authority shall draw up a memo including requests for clarification of the content of the tender specification, submitted at the meeting, and answers to them, without specifying the requesting parties. The meeting shall be posted on the website.

4. In justified cases, the contracting authority may change the content of the tender specification before the lapse of the time limit for the submission of tenders. Any such change in the content of the tender specification the contracting authority shall post on the website, unless the specification is not made available on the website. The provision of Article 37.5 shall apply accordingly.

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

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

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

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

5. [repealed]

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

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

7. [repealed]

Chapter 3 **Procedures for awarding public contracts**

Section 1 **Open tendering**

Article 39.

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

Article 40.

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

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

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

4. [repealed]

5. [repealed]

5a. [repealed]

6. [repealed]

Article 41.

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

- 1) name (company name) and address of the contracting authority;
- 2) type of the contract award procedure;
- 3) the website address where the specification of essential terms of contract is posted;
- 4) definition of the subject-matter of contract and of the volume or scope of the contract, stating whether it is possible to submit tenders for lots;
- 5) **information concerning the possibility or requirement of submitting variants;**
- 6) contract execution date;
- 7) **conditions for participation in the procedure and grounds for exclusion;**
- 7a) **list of declarations and documents confirming the fulfilment of the**

conditions for participation in the procedure and the lack of grounds for exclusion;

- 8) information concerning the deposit;
- 9) criteria for evaluation of tenders and their significance;
- 10) time limit for the submission of tenders, address to which they have to be sent, and language or languages in which they have to be prepared;**
- 11) time limit during which a economic operator must maintain his tender;
- 12) information on the intention to conclude a framework agreement;
- 13) information on the intention to establish a dynamic purchasing system including the website address where additional information concerning the dynamic purchasing system shall be posted;
- 14) information on the envisaged selection of the best tender with the use of electronic auction including the address of the website where the electronic auction shall be held.
- 15) information about the contracts as referred to in Article 67 para. 1 (6) and (7) or Article 134.6 (3), if the contracting authority plans to award of such contracts.**

Article 42.

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

2. [repealed]

Article 43.

1. Where the value of the contract is less than the amounts specified in a provisions issued under Article 11 para. 8, the contracting authority shall fix the time limit for submission of tenders taking into consideration the time necessary for preparation and submission of tender, however, in case of contracts for supplies or services, the time limit shall not be less than 7 days from the day, on which the contract notice is placed in the Public Procurement Bulletin, and in case of contracts for works- not less than 14 days.

2. If the value of contract is equal to or higher than the amounts defined in the provisions issued on the basis of Article 11 para. 8, the time limit for submitting tenders may not be shorter than 35 days as of submitting the contract notice to the Publications Office of the European Union.

2a. In situations specified in Articles 37.5 and 37.6, the time limit for submitting tenders may not be shorter than 40 days as of submitting the contract notice to the Publications Office of the European Union.

2b. The contracting authority may set a shorter time limit than defined in para. 2 for the submission of tenders, not shorter however than 15 days, in the following cases:

- 1) where a prior information notice is published, provided that the prior information notice contained all information required in the case of a contract**

notice to the extent such information was available at the moment of publication of the prior information notice, and was posted in the buyer profile at least 35 days and at most 12 months before the day on which the contract notice was submitted to the Publications Office of the European Union;

2) where there is an urgent need to award the contract and a shorter term for the submission of tenders is justified.

3. [repealed]

Article 44.

[repealed]

Article 45.

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

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

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

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

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

5a. Where the contracting authority plans to award contracts referred to in Article 67 para. 1 (6) and (7) or Article 134 para. 6 (3), the contracting authority shall specify the amount of the deposit with regard to the value of the main contract. The provision of para. 4 shall apply accordingly.

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

1) cash;

2) bank sureties or guarantees of collective savings-loan fund, however the surety of collective savings-loan fund is always a financial surety;

3) bank guarantees;

4) insurance guarantees;

5) sureties given by entities, referred to in Article 6b para. 5 item 2 of the Act of 9 November 2000 on Establishment of Polish Agency for Enterprise Development (journal of laws of 2007 No. 42 item 275; of 2008 No. 116 item 730 and 732 and No. 227 item 1505 and of 2010 No. 96 item 620).

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

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

Article 46.

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

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

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

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

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

4a. The awarding entity shall retain the deposit together with interest if the economic operator — in response to the call referred to in Articles 26.3 and 26.3a — has failed to submit, due to reasons attributable to the economic operator, any declarations or documents referred to in Article 25 para. 1, the declaration referred to in Article 25a para. 1, or if the economic operator has not granted its consent to correct an error referred to in Article 87.2 (3), which resulted in impossibility of selecting — as the best one — the tender submitted by the economic operator.

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

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

Section 2 Restricted tendering

Article 47.

Restricted tendering means contract award procedures in which, following a public contract notice, economic operators submit requests to participate in a contract award procedure, and tenders may be submitted by economic operators invited to submit their tenders.

Article 48.

1. Article 40 shall apply accordingly to the start of a restricted procedure.

2. The contract notice, referred to in Article 47, shall include at least the following:

- 1) name (company name) and address of the contracting authority;
- 2) type of contract award procedure;
- 3) description of the subject-matter of the contract providing information concerning the possibility of submitting tenders for lots;
- 4) information concerning the possibility of submitting variants;
- 5) contract execution date;
- 6) conditions for participation in the procedure, selection criteria (if defined), and grounds for exclusion;**
- 7) list of declarations and documents confirming the fulfilment of the conditions for participation in the procedure or the selection criteria (if defined), and the lack of grounds for exclusion;**
- 8) number of economic operators to be invited to submit their tenders;
- 8a) [repealed]**
- 9) information on a deposit;
- 10) criteria for evaluation of tenders and their relative weightings;
- 11) time limit for submitting requests to participate in the procedure and the address to which the requests have to be sent,**
- 12) [repealed]**
- 13) information on the intention to conclude a framework agreement;
- 14) information on the envisaged selection of the best tender with the use of electronic auction including the address of the website where the electronic auction shall be held.
- 15) information about the contracts referred to in Article 67 para. 1 (6) and (7) or Article 134.6 (3), if the contracting authority plans to award of such contracts.**
- 16) information about the intention to set up a dynamic purchasing system, with the address of the website on which additional information about the dynamic purchasing system will be posted.**

3. If the prior information notice contains information referred to in para. 2, such information shall be considered a contract notice.

Article 49.

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

2. If the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, the time limit for submitting requests to participate in a restricted procedure may not be shorter than 30 days as of the day on

which the contract notice was submitted to the Publications Office of the European Union.

3. In the event of an urgent need to award a contract, the contracting authority may, in cases referred to in para. 2, set a shorter time limit for the submission of requests to participate in a restricted procedure, however not shorter than 15 days as of submitting the contract notice to the Publications Office of the European Union.

Article 50.

1. [repealed]

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

3. The content of requests to participate in the procedure may not be familiarised with before the lapse of the time limit for their submission.

Article 51.

1. The contracting authority shall invite to tender simultaneously the economic operators who meet the condition of participation in the procedure, in the number defined in the notice, ensuring competition, not lower than 5 and not higher than 20.

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

2. If the number of economic operators who meet the participation conditions is higher than specified in the notice, the contracting authority shall invite to tender the economic operators chosen with the use of the selection criteria. An economic operator not invited to tender shall be considered excluded from the contract award procedure.

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

4. In cases specified in Article 37.5, the contracting authority shall provide to the economic operator, along with the invitation to tender, the tender specification, and shall set the time and place of publication of the contract notice, unless the tender specification has been made available in any other manner.

5. The invitation referred to in para. 1 shall include at least:

- 1) address of the website on which the tender specification is available;**
- 2) information about the time and place of publishing the contract notice;**
- 3) time limit for the submission of tenders, address to which they have to be sent, and language or languages in which they have to be prepared;**
- 4) weights assigned to the contract award criteria or, if applicable, the criteria in descending order of importance, if not specified in such a**

manner in the contract notice, in the qualification system notice, or in the tender specification.

Article 52.

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

2. If the value of contract is equal to or higher than the amounts defined in the provisions issued on the basis of Article 11 para. 8, the time limit for submitting tenders may not be shorter than 30 days as of submitting the invitation to tender.

3. If the contract value is equal to or higher than the amounts specified in the provision issued under Article 11 para. 8, and the information about the contract has been included in the prior information notice, provided that the prior information notice contained all information required in the case of a contract notice to the extent such information was available at the moment of publication of the prior information notice, and was submitted for publication to the Publications Office of the European Union at least 35 days and at most 12 months before the day on which the contract notice was sent, a shorter time limit may be set, however not shorter than 10 days.

4. If the value of a contract is equal to or higher than the amounts defined in the provisions issued on the basis of Article 11 para. 8 and there is an urgent need to award the contract, the contracting authority may set the time frame for submitting tenders not shorter than 10 days as of providing the invitation to tender.

5. In situations specified in Articles 37.5 and 37.6, the time limit for submitting tenders specified in para. 2 and 3 shall be extended by 5 days.

Article 53.

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

Section 3

Negotiated procedure with publication

Article 54.

Negotiated procedure with publication is a contract award procedure type as part of which, after a public contract notice, the contracting authority invites economic operators admitted to participate to submit initial offers, negotiates with them, and then invites them to tender.

Article 55.

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

-
- 1) in a procedure conducted previously as an open-tender procedure or a restricted procedure, all tenders were rejected under Article 89 para. 1 (1), (2), (4), or (5), or the contracting authority cancelled the procedure under Article 93 para. 1 (4), and the original contract conditions are not significantly altered;
 - 2) [repealed]
 - 3) [repealed]
 - 4) [repealed]
 - 5) the contract value is less than the amounts specified in the provisions issued under Article 11 para. 8.
 - 6) solutions available on the market cannot satisfy, without being adapted, the needs of the contracting authority;
 - 7) works, supplies, or services include designs or innovative solutions;
 - 8) the contract cannot be awarded without prior negotiations due to special circumstances relating to its nature, degree of complexity, or specific legal or financial conditions, or due to the risk associated with the works, supplies, or services;
 - 9) if the contracting authority is unable to describe the subject-matter of the contract in a sufficiently precise manner by reference to a specific standard, European Technical Assessment referred to in Article 30 para. 1 (2) (c), common technical specification referred to in Article 30 para. 1 (2) (d), or technical reference.
2. [repealed]

Article 55a.

1. The contracting authority shall specify in the contract notice the subject-matter of contract, minimum requirements to be met by all tenders, and whether the contracting authority intends to award the contract on the basis of initial offers without conducting negotiations, or intends to divide negotiations into stages. Where the contracting authority intends to divide negotiations into stages, the notice shall specify the number of stages.

2. Specification of the subject-matter of contract must be sufficiently precise to enable economic operators to determine the nature and scope of the contract and to decide whether to submit a request to participate in the procedure.

Article 56.

1. To the commencement of a negotiated procedure with publication, the provisions of Articles 40 and 48 para. 2 shall apply accordingly. The contracting authority may waive the provisions of Article 40 if in the procedure conducted under Article 55 para. 1 (1), the contracting authority invites to negotiations only all those economic operators who timely submitted, in a previously conducted open-tender procedure or restricted procedure, tenders corresponding in content to the tender specification, and were not subject to exclusion. If the contracting authority divides negotiations into stages, it shall inform about such a solution in the contract notice.

2. To the submission of request to participate in a negotiated procedure with publication, the provisions of Articles 49 para. 1, 49 para. 2, and 50 shall apply accordingly.

Article 57.

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

2. The contracting authority shall invite to submit initial offers the economic operators who meet the condition of participation in the procedure, in the number defined in the contract notice, ensuring competition, not lower than 3. The provisions of Articles 82 to 84, Article 89 para. 1 (1) to (3), (5), and (8), Article 93 para. 1 (1), (6), and (7) and Articles 93 para. 2 to 93 para. 4 shall apply accordingly.

3. If the number of economic operators who meet the participation conditions is higher than specified in the notice, the contracting authority shall invite to submit initial offers the economic operators chosen with the use of the selection criteria. An economic operator not invited to submit an initial offer shall be considered excluded from the contract award procedure.

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

5. To the submission of initial offers, the provisions of Article 60.2 shall apply accordingly.

6. The contracting authority shall set the time limit for the submission of initial offers, taking into account time necessary to prepare and submit an initial offer, whereas the time limit may not be shorter than 30 days as of the day of submitting the invitation to submit initial offers. To the submission of initial offers, the provisions of Articles 52 para. 3 to 52 para. 5 shall apply accordingly.

Article 58.

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

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

2a. The contracting authority may divide the negotiations into stages to limit the number of tenders, if so provided by the contracting authority in the contract notice.

2b. The contracting authority shall limit the number of tenders at individual stages of the negotiations, applying all or some contract award criteria specified in the notice.

2c. The negotiations may not alter the minimum requirements and contract award criteria specified in the notice.

3. Negotiations shall be confidential. None of the parties is allowed, without

consent of the other party, to disclose technical and commercial information related to the negotiations. A consent which does not specify the type of information shall be ineffective.

4. Information relating to negotiations, and in particular to the requirements and changes in the tender specification made after subsequent stages of the negotiations, as well as the documents and clarifications related to the negotiations, shall be provided to the economic operators on an equal basis.

Article 59.

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

2. [repealed]

Article 60.

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

2. An invitation to tender shall contain at least:

- 1) address of the website on which the tender specification is available;**
- 2) time limit for the submission of tenders, address to which they have to be sent, and language or languages in which they have to be prepared;**
- 3) information about the time and place of publishing the contract notice or the qualification system notice;**
- 4) weights assigned to the contract award criteria or, if applicable, the criteria in descending order of importance, if not specified in such a manner in the contract notice, in the tender specification, in the qualification system notice, or in the description of the subject-matter of contract.**

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

4. In the event of any changes referred to in Article 59 para. 1 made by the contracting authority, along with the invitation to tender the contracting authority shall provide the tender specification or shall post it on the website.

Section 3a

Competitive dialogue

Article 60a.

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

Article 60b.

1. The contracting authority may award a contract in a competitive dialogue, if the circumstances specified in Article 55 para. 1 are the case.

2. [repealed]

Article 60c.

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

1) a description of needs and requirements of the contracting authority defined in a way that enables the economic operators to prepare for participation in the dialogue, or an information on the manner of obtaining such a description;

2) information on the value of reward for the economic operators who, during the dialogue, presented the solutions which constitute the basis for submission of tenders, if the reward is envisaged by the contracting authority;

3) provisional schedule of the procedure;

4) information about dividing the dialogue into stages, if the contracting authority intends to perform such a division to limit the number of solutions subject to the dialogue at the subsequent stages.

1a. If due to the complexity of contract it is not possible, at this stage of the procedure, to determine the weight of contract award criteria, the contracting authority shall place in the contract notice the contract award criteria in a descending order of importance. Provisions of art. 48 para. 2 point 10 shall not apply.

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

Article 60d.

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

2. The contracting authority shall invite to the competitive dialogue the economic operators who meet the condition of participation in the procedure, in the number defined in the contract notice, ensuring competition, not lower than 3.

3. If the number of economic operators who meet the participation conditions is higher than specified in the notice, the contracting authority shall invite to participate in the dialogue the economic operators chosen with the use of the selection criteria. An economic operator not invited to participate in the dialogue shall be considered excluded from the contract award procedure.

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

to participate in the dialogue all economic operators who have complied with the requirements.

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

- 1) information about the date and place of publication of the contract notice;
- 2) description of the needs and requirements of the contracting authority specified in a manner that allows the economic operators preparation to participate in a dialogue, or information concerning the way of obtaining such description;
- 3) information about the place and date of the start of the dialogue;
- 4) **address of the website on which the tender specification is available;**
- 5) **list of declarations and documents confirming the fulfilment of the conditions for participation in the procedure or the selection criteria, and the lack of grounds for exclusion, or the list of declaration and documents which shall be enclosed to supplement the information;”,**
- 6) **weights assigned to the contract award criteria or, if applicable, the criteria in descending order of importance, if not specified in such a manner in the contract notice, in the tender specification, or in the qualification system notice;**
- 7) **information about language or languages of the dialogue.**

5a. The contracting authority may divide the dialogue into stages to limit the number of solutions.

5b. The contracting authority shall limit the number of solutions at individual stages of the dialogue, applying all or some contract award criteria specified in the notice.

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

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

Article 60e.

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

2. [repealed]

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

3a. The invitation referred to in para. 3 shall include at least:

- 1) **address of the website on which the tender specification is available;**
- 2) **information about the time and place of publishing the notice referred to in Article 60a;**
- 3) **time limit for the submission of tenders, address to which they have to be**

sent, and language or languages in which they have to be prepared;

- 4) **list of declarations and documents confirming the fulfilment of the conditions for participation in the procedure or the selection criteria, and the lack of grounds for exclusion, or the list of declaration and documents which shall be enclosed to supplement the information;**

- 5) **weights assigned to the contract award criteria or, if applicable, the criteria in descending order of importance, if not specified in such a manner in the contract notice, in the tender specification, or in the qualification system notice.**

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

Article 60f.

After selecting the best tender, the contracting authority may, to confirm the financial liabilities or other conditions included in the offer, negotiate, with the economic operator whose tender was selected as the best one, the final terms of the contract, unless this would result in changes in significant elements of the tender or changes in the needs and requirements specified in the contract notice, or in distortion of competition or discrimination of economic operators.

Section 4

Negotiated procedure without publication

Article 61.

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

Article 62.

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

- 1) **in a procedure conducted previously as an open-tender procedure or a restricted procedure, no requests to participate in the procedure or tenders were submitted, or all tenders were rejected under Article 89 para. 1 (2), or all the economic operators were excluded from the procedure, and the original contract conditions are not significantly altered;**
- 2) the design contest referred to in Article 110 has been held, the prize of which consisted in the invitation of at least two authors of the selected contest projects to participate in negotiations without publication;
- 3) **subject-matter of the contract for supplies are products manufactured purely for research, experiment, scientific, or development purposes, and not used by the contracting authority in mass production aimed at**

establishing commercial viability or covering the costs of research or development;

- 4) due to a previously unforeseeable extreme urgency for the award of a contract not resulting from the events brought about by the contracting authority, the time limits provided for open tendering, restricted tendering or negotiations with publication may not be observed.

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

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

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

3. In the case referred to in para. 1 (1), where the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority shall submit the cancellation report to the European Commission, if the latter requested it.

Article 63.

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

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

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

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

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

Article 64.

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

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

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

Article 65.

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

Section 5

Single-source procurement

Article 66.

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

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

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

Article 67.

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

- 1) supplies, services, or works may be provided by only one economic operator:**

-
- a) for objective technical reasons,
 - b) for reasons connected with the protection of exclusive rights, resulting from separate provisions
 - where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the contract;
- 1a) supplies, services, or works may be provided by only one economic operator if the contract is awarded in the field of creative or artistic activity;
 - 1b) subject-matter of the contract for supplies are products manufactured purely for research, experiment, scientific, or development purposes, and not used by the contracting authority in mass production aimed at establishing commercial viability or covering the costs of research or development, and the products can be manufactured by only one economic operator;
 - 2) the design contest referred to in Article 110 has been held, in which the prize consisted in the invitation for the author of the selected contest project to negotiate under the single-source procurement procedure;
 - 3) due to an exceptional situation, not resulting from events brought about by the contracting authority, there is a need for prompt execution of the contract, and the time limits provided for other procedures may not be observed;
 - 4) in a procedure conducted previously as an open-tender procedure or a restricted procedure, no requests to participate in the procedure or tenders were submitted, or all tenders were rejected under Article 89 para. 1 (2) due to their inconsistency with the description of the subject-matter of the contract, or all the economic operators were excluded from the procedure, and the original contract conditions are not significantly altered;
 - 5) [repealed]
 - 6) in the case of awarding to the incumbent economic operator of services or works, within 3 years from the award of the main contract, a contract consisting in the repetition of similar services or works, if such a contract was provided for in the contract notice for the main contract, is compliant with the subject-matter of the main contract, and the total value of this contract has been taken into account when calculating its value;
 - 7) in the case of awarding to the incumbent economic operator of the main contract, a contract for additional supplies aiming at a partial replacement of supplies or installations or an extension of existing supplies or installations, if the change of economic operator would make it necessary to purchase materials of different technical parameters, which would result in technical incompatibility or disproportionate technical difficulties in use and maintenance of these supplies or installations;
 - 8) it is possible to award a supply contract on particularly advantageous terms, in connection with the winding-up procedure of the business activity of another entity, enforcement proceedings or bankruptcy proceedings;

-
- 9) **contract for supplies is made on a commodity exchange within the meaning of the Act of 26 October 2000 on Commodity Exchanges (Journal of Laws of 2016 item 719 and 831), including the commodity exchange of other Member States of the European Economic Area, or when purchasing certificates of origin, certificates of origin for agricultural biogas, certificates of origin from cogeneration and energy efficiency certificates on a commodity exchange, including the commodity exchange of other Member States of the European Economic Area;**
- 10) the contract is awarded by a Polish mission abroad within the meaning of the foreign service regulations, and its value is less than the amounts specified in the provisions issued under Article 11 para. 8;
- 11) the contract is awarded for the own needs of a military unit within the meaning of the regulations on the rules of deployment or stay of Armed Forces of the Republic of Poland abroad, and the value of the contract is less than the amounts specified in the provisions issued under Article 11 para. 8;
- 12) **the contract is awarded by the contracting authority referred to in Article 3 para. 1 (1) to (3a) to a legal person, if the following conditions are jointly met:**
- 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 management decisions relating to the affairs of that legal person; this condition is also fulfilled where such control is exercised by another legal person controlled by the contracting authority in the described 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 controlling it or by another legal person controlled in the manner referred to in point (a) by the contracting authority,**
 - c) **no private capital is directly involved in the controlled legal person;**
- 13) **the contract is awarded by a legal person being a contracting authority referred to in Article 3 para. 1 (1) to (3a) to another contracting authority referred to in Article 3 para. 1 (1) to (4) which controls the legal person, or to another legal person controlled by the same contracting authority, provided that no private capital is directly involved in the legal person to which the contract is awarded;**
- 14) **the contract is awarded by the contracting authority referred to in Article 3 para. 1 (1) to (3a) to a legal person, if the following conditions are jointly met:**
- a) **the contracting authority, along with other contracting authorities referred to in Article 3 para. 1 (1) to (4), exercises control over a given legal person, equivalent to the control exercised by them over their own units, whereas joint control occurs if the following conditions are jointly met:**
 - **the decision-making bodies of the controlled 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 management decisions of the controlled legal person,
 - the controlled legal person does not pursue any interests which contradict the interests of the contracting authorities controlling 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 controlling it or by other legal person controlled by these contracting authorities,
 - c) no private capital is directly involved in the controlled legal person;
- 15) the contract is to be concluded exclusively between at least two contracting authorities referred to in Article 3 para. 1 (1) to (3a), if the following conditions are jointly met:
- a) the contract establishes or implements a co-operation between the participating contracting authorities, aimed at carrying out their public service tasks, with a view to implementing their joint goals,
 - b) implementation of the co-operation is driven by public interest reasons only,
 - c) the co-operating contracting authorities carry out less than 10% of the activity subject to the co-operation on the open market.

1a. In the description of the main contract, referred to in para. 1 (6), the possible scope of these services or works should be specified along with the terms on which they will be awarded.

1b. Duration of a contract awarded as referred to in para. 1 (7) may not exceed 3 years.

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

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

- 1) item 1 Letter a, where the subject-matter of the contract is:
 - a) supply of water via a water network system or disposal of sewage to the sewage network system,
 - b) supply of gas from the gas mains,
 - c) supply of heat from the heat network,
 - d) [repealed],
 - e) electricity, heat and gas fuels transmission and distribution services;
- 2) item 3, in order to reduce the consequences of a random incident caused by unforeseeable external factors, in particular when there is a threat to life or health of people, or a threat of damage of considerable size;

3) items 8 and 9.

4. The contracting authority may waive the application of Articles 19 to 21, Article 24 para. 1 (2) and (3), and Article 68 para. 1 in the case of contracts awarded pursuant to para. 1 (1) (b), 1 (1a), and 1 (2), as well as contracts referred to in para. 3.

5. The contracting authority may waive the application of Articles 68.2 and 139 in the case of contracts awarded pursuant to para. 1 (9).

6. The contracting authority may waive the application of Article 68.2 in the case of contracts awarded pursuant to para. 1 (1a).

7. In the case referred to in para. 1 (4), where the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority shall submit the cancellation report to the European Commission, if the latter requested it.

8. To calculate the percentage of activity referred to in para. 1 (12) (b), 1 (14) (b), and 1 (15) (c), the average revenue generated within the 3 years preceding the award of the contract by the legal person or the contracting authority with regard to the services, supplies, or works is taken into account.

9. If due to the day of establishing or commencing activity by the legal person or the contracting authority or due to reorganisation of their activity, data relating to the average revenue generated within the 3 years preceding the award of the contract is unavailable or inadequate, the percentage of activity referred to in para. 1 (12) (b), 1 (14) (b), and 1 (15) (c) shall be determined on the basis of reliable business projections.

10. The prohibition of private capital involvement referred to in para. 1 (12) (c), 1 (13), and 1 (14) (c) shall not apply to:

- 1) legal persons with the participation of a public partner selected pursuant to the Act of 19 December 2008 on public-private partnership (Journal of Laws of 2015, items 696 and 1777), or**
- 2) participation of the employees representing not more than 15% of the share capital of the company, holding not more than 15% of votes at the general meeting of shareholders.**

11. Before the contract is awarded pursuant to para. 1 (12) to (15), the contracting authority shall announce, on the website of the Public Information Bulletin, and if there is no such a website – on its own website, information about the intention to conclude the contract, including at least:

- 1) name and address of the contracting authority;**
- 2) specification of the subject-matter of contract and the volume or scope of the contract;**
- 3) estimated contract value;**
- 4) name and address of the economic operator to which the contracting authority intends to award the contract;**
- 5) legal grounds for and justification of the selection of a direct contract procedure;**
- 6) planned deadline for the performance of the contract and the contract duration;**
- 7) information about the time limit and, respectively, on announcing or**

publishing the notice of intention to conclude the contract referred to in Article 66.2, if it was announced or published, or information that such a notice was not announced or published.

12. The contracting authority may conclude the contract awarded under para. 1 (12) to (15) no earlier than after the lapse of 14 days as of the day of announcing the information referred to in para. 11.

13. The contracting authority shall announce immediately, but no later than within 14 days as of the conclusion of the contract, on the website of the Public Information Bulletin, and if there is no such a website – on its own website, the information about:

- 1) awarding the contract under para. 1 (12) to (15), including at least:**
 - a) name and address of the contracting authority,**
 - b) specification of the subject-matter, volume or scope of the contract, and the contract value;**
 - c) name and address of the economic operator with which the contract has been concluded,**
 - d) legal grounds for and justification of the selection of a contract award procedure,**
 - e) deadline for the performance of the contract and the contract duration;**
 - f) information about the time and place of publishing the contract notice referred to in Article 66.2, if it was published, or information that such a notice was not published,**
 - g) information about the time and place of announcing or publishing the award notice referred to in Articles 95 para. 1 and 95.2, or**
- 2) not awarding the contract under para. 1 (12) to (15), including at least:**
 - a) name and address of the contracting authority,**
 - b) the information referred to in para. 11. Article 68.**

Article 68.

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

2. At the latest upon the conclusion of the public procurement contract, the economic operator shall submit a declaration that it complies with the participation requirements, and if the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, it shall also provide documents to prove such compliance. The provisions of Article 25 shall apply accordingly.

Section 6

Request-for-quotations

Article 69.

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

Article 70.

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

Article 71.

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

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

Article 72.

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

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

Article 73.

The provisions of Article 64 para. 1 shall apply accordingly to the request for quotation.

Section 6a

Innovation Partnership

Article 73a.

1. Innovation partnership is a contract award procedure type as part of which, in response to a public contract notice, the contracting authority invites economic operators admitted to the procedure to submit initial offers and negotiates with them, and then invites them to tender for the development of an innovative product, services, or works unavailable on the market, and sales of these products, services, or works.

2. The contracting authority shall purchase innovative products, services, or works referred to in para. 1 if they correspond to performance levels and maximum costs agreed upon between the contracting authority and the economic operator or economic operators.

3. An innovative product, service, or work shall mean a new or significantly improved product, service, or process, including manufacturing, construction, or installation process, or a new marketing method or a new organisational method in business activities, work organisation or external relations.

4. All references to a partner in this Subsection shall mean an economic operator which has concluded a public contract the subject-matter of which is establishment of an innovation partnership.

Article 73b.

1. The contracting authority shall specify in the contract notice at least the following:

- 1) specification of demand for an innovative product, service, or works;**
- 2) information about splitting negotiations into stages to limit the number of negotiated tenders with the use of contract award criteria specified in the tender specification, if such splitting is provided for by the contracting authority;**
- 3) list of declarations and documents confirming the fulfilment of the conditions for participation in the procedure and the lack of grounds for exclusion;**
- 4) elements of the description of the subject-matter of contract, defining minimum requirements to be met by all the tenders.**

2. The contracting authority shall specify, in the tender specification, at least the following:

- 1) specification of demand for an innovative product, service, or works;**
- 2) information about the innovation partnership stages, goals to be achieved upon completion of each of them, and milestones;**
- 3) principles of selecting the partner or partners, including contract award criteria;**
- 4) information about establishing innovation partnership with only one economic operator or a possibility of establishing it with many economic operators;**
- 5) information about payment of remuneration in tranches;**
- 6) information about the possibility of ending the innovation partnership or reducing the number of partners after each stage, and terms on which such possibilities may be used, if any;**
- 7) solutions applicable to intellectual property rights;**
- 8) elements of the description of the subject-matter of contract, defining minimum requirements to be met by all the tenders.**

3. The information presented in the contract notice must be sufficiently explicit to enable economic operators to determine the nature and scope of the required solution and to decide whether to submit a request to participate in the procedure.

Article 73c.

1. To the commencement of an innovation partnership procedure, the provisions of Articles 40 and 48 para. 2 shall apply accordingly.

2. To the submission of request to participate in a procedure, the provisions of

Articles 49 para. 1, 49.2, and 50 shall apply accordingly.

Article 73d.

When assessing compliance of the economic operator with the conditions for participation in a procedure, the contracting authority shall take into account, in particular, research and development capabilities of economic operators and their capabilities in the scope of development and implementation of innovative products, services, or works.

Article 73e.

1. To inviting economic operators to submit initial offers, the provisions of Article 57 shall apply accordingly. The time limit for the submission of initial offers may not be shorter than 30 days as of the date of sending the invitation to submit initial offers.

2. To negotiations and tender assessment, the provisions of Articles 58 and 59 shall apply accordingly.

3. To the submission of tenders, the provision of Article 60 shall apply accordingly.

Article 73f.

1. The contracting authority shall select the best offer that provides the best value for money and fulfils other criteria related to the subject-matter of contract.

2. The contracting authority may select a number of tenders submitted by a number of economic operators.

Article 73g.

1. The contracting authority shall conclude a public contract, establishing an innovation partnership, with one partner, and in the case referred to in Article 73f.2, the contracting authority shall conclude contracts with a number of partners.

2. A public contract establishing an innovation partnership shall include at least the provisions pertaining to the matters referred to in Article 73b.1 (1) and (4) and Article 73b.2 (2) and (4) to (8).

Article 73h.

1. An innovation partnership shall consist of stages corresponding to the sequence of activities in the research and development process, and it may include, in particular, development of prototypes and manufacturing of products, provision of services, or completion of works.

2. As part of an innovation partnership, the contracting authority shall set milestones to be achieved by the partners, and shall provide for a remuneration payable in tranches, with account taken of the partnership stages or the milestones.

3. The contracting authority shall ensure that the structure of the innovation partnership, and in particular its duration and the value of its individual stages, reflects the degree of innovativeness of the proposed solution and the order of activities

necessary to develop the innovative product, service, or work. The estimated value of innovative products, services, or works must be proportionate to the value of investment necessary to develop them.

4. After each stage, the contracting authority may terminate the innovation partnership or, in the case of an innovation partnership with a number of partners, reduce the number of partners by terminating individual contracts, provided that the contracting authority has included such an option in the tender specification along with the terms on which it should be used.

5. In the case of an innovation partnership with a number of partners, the contracting authority shall not disclose to other partners the solutions proposed and other confidential information provided as part of the innovation partnership by one of the partners, without consent of the latter.

Section 7

Electronic bidding

Article 74.

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

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

Article 75.

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

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

- 1) name (company name) and address of the contracting authority;
- 2) indication of a contract award procedure;
- 3) description of the subject-matter of the contract;
- 4) requirements concerning registration and identification of economic operators, including technical requirements of IT equipment;
- 5) manner of proceeding during electronic bidding, and in particular the minimum bid increment;
- 6) information about the number of stages of the electronic bidding and their duration;
- 7) time-limit for the submission of requests to participate in the electronic bidding;

-
- 8) the opening date of the electronic bidding and the date and terms of its closing;
 - 9) conditions for participation in the procedure and grounds for exclusion;**
 - 10) list of declarations and documents confirming the fulfilment of the conditions for participation in the procedure and the lack of grounds for exclusion;**
 - 11) time limit during which a economic operator must maintain his tender;
 - 12) contract completion date;
 - 13) requirement concerning security on due performance of the contract;
 - 14) provisions essential to the parties to be incorporated into the contents of the concluded procurement contract or general terms of the procurement contract, or standard contract, if the contracting authority shall require from the economic operators to conclude a procurement contract on such terms;
 - 15) website address where the electronic bidding is to be conducted.

Article 76.

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

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

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

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

Article 77.

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

Article 78.

1. Tenders shall be submitted in electronic form.

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

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

Article 79.

1. The electronic bidding may be a one-stage or multi-stage procedure.
2. The contracting authorities may, if they had made an appropriate reservation in the notice, following the end of each stage of the electronic bidding, not qualify to the next stage those economic operators who have failed to submit new (bid increments), informing them of the fact forthwith.
3. During each stage of the electronic bidding the contracting authority shall dispatch, on a current basis, to all economic operators information about the position of their tenders, the number of economic operators participating in each stage of the bidding, as well as their quotations, however, information allowing identification of economic operators shall not be disclosed until the closing of the electronic bidding.

Article 80.

1. The contracting authority shall close an electronic bidding:
 - 1) within the time limit specified in the notice;
 - 2) if no new bid increments are submitted by the period specified in the notice, or
 - 3) following the end of the last stage specified in the notice.
2. Directly following the closing of the electronic bidding the contracting authority shall provide the name (company name) and address of the economic operator whose tender has been chosen at the website address indicated in the notice.
3. The contracting authority shall award the contract to the economic operator who offered the lowest price.

Article 81.

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

Chapter 4

Selection of the best tender

Article 82.

1. **An economic operator may submit one tender, except for the case referred to in Article 83 para. 1 second sentence.**
2. [repealed]
3. The contents of the tender should correspond to the contents of the specification of essential terms of the contract.

Article 83.

1. **The contracting authority may permit the possibility of or require submitting variants. A variant shall be submitted by the economic operator together with the tender**

referred to in Article 82 para. 1, if the contracting authority requires so.

1a. A variant must comply with minimum requirements specified by the contracting authority.

2. [repealed]

3. [repealed]

Article 84.

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

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

Article 85.

1. An economic operator must maintain his tender until the expiry of the time limit specified in the specification of essential terms of the contract, however not longer than:

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

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

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

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

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

Article 86.

1. The content of requests to participate in the procedure or tenders may not be familiarised with before the lapse of the time limit for their submission or opening, respectively.

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

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

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

5. Immediately after opening of the tenders, the contracting authority shall post on the website the information about:

- 1) the amount which the contracting authority intends to earmark for financing of the contract;**
- 2) company names and addresses of the economic operators who submitted tenders on time;**
- 3) price, contract performance deadline, guarantee period and payment terms contained in the tenders.**

Article 87.

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

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

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

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

Article 88.

[repealed]

Article 89.

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

- 1) it is not in conformity with this Act;
- 2) its content is inconsistent with the specification of essential terms of contract, without prejudice to Article 87 para. 2 item 3;
- 3) its submission is an act of unfair competition within the meaning of the provisions concerning the combating of unfair competition;
- 4) **the price or cost it contains is abnormally low in relation to the subject-matter of the contract;**
- 5) has been submitted by a economic operator excluded from the award procedure or one that was not been invited to tender;
- 6) **contains computational errors in the calculation of price or cost;**
- 7) within 3 days from the submission of notification, the economic operator did not agree to the correction of a error, referred to in Article 87 para. 2 item 3;
- 7a) **the economic operator has not granted the consent referred to in Article 85 para. 2, to extend the tender validity period;**
- 7b) **the deposit has not been lodged or has been lodged in an incorrect manner where the contracting authority required a deposit;**
- 7c) **the variant does not comply with minimum requirements specified by the contracting authority;**
- 7d) **its acceptance would infringe public security or essential security interests of the state, and this security or interests cannot be safeguarded in another manner.**
- 8) is not valid under separate provisions.

2. [repealed]

3. **In contract award procedures for supplies or services the contracting authority may not reject a variant just because the variant, when selected, would result in awarding a contract for services, but not a contract for supplies, or vice versa.**

4. **Where the description of the subject-matter of contract refers to standards, European Technical Assessments, technical specifications, and technical reference systems referred to in Article 30 para. 1 (2) and Article 30 para. 3, the contracting authority may not reject a tender just because of the fact that the works, supplies, or services covered by the tender are not compliant with standards, European Technical Assessments, technical specifications, and technical reference systems referred to in the tender, if the economic operator has proven in the tender, in particular with the use of measures referred to in Article 30b para. 1, that the proposed solutions meet the requirements specified in the description of the subject-matter of contract in an equivalent manner.**

5. Where the description of the subject-matter of contract refers to performance or functionality requirements referred to in Article 30 para. 1 (1), the contracting authority may not reject a tender compliant with a Polish Standard transposing an European standard, standards of other Member States of the European Economic Area transposing European standards, with a European technical approval, with a common technical specification, with an international standard or a technical reference system set up by an European standardisation body, if the said standards, approvals, specifications, and technical reference systems relate to performance and functionality requirements defined by the contracting authority. In such a case, the economic operator must prove in the tender, in particular with the use of measures referred to in Article 30b para. 1 that the work, supply, or service complies with the performance and functionality requirements specified by the contracting authority.

Article 90.

1. If the price or cost or their material parts are abnormally low in relation to the subject-matter of contract and raise doubts of the contracting authority as to the possibility of performing the subject-matter of contract in accordance with the requirements specified by the contracting authority or stemming from separate regulations, the contracting authority shall request explanations, including evidence, relating to the calculation of the price or cost, in particular in the scope of:

1) the economy of the method of contract performance, technical solutions chosen or the exceptionally favorable conditions for performance of contract available to economic operator, originality of the economic operator's design, labour costs where the value used for determining the price shall not be lower than the minimum wage or minimum hourly wage established under art. 2 para. 3-5 of the Act of 10 October 2002 on the minimum wage (Journal of Laws of 2015 item 2008, of 2016 item 1265);

2) public aid granted under separate provisions;

3) resulting from the labour law and social security regulations applicable in the place where the contract is performed;

4) resulting from environment protection regulations;

5) entrusting part of the contract to a subcontractor.

1a. Where the total tender price is lower by at least 30% from:

1) the contract value increased by payable VAT, defined before the commencement of the procedure under Articles 35.1 and 35.2, or the arithmetic mean of the prices of all tenders submitted, the contracting authority shall request explanations referred to in para. 1, unless the discrepancy results from obvious circumstances which do not require explanation.

2) the contract value increased by payable VAT, updated to take account of the circumstances that occurred after the commencement of the procedure, in particular as a result of material change in market prices, the contracting authority shall request explanations referred to in para. 1.

2. The obligation to demonstrate that the price or cost of a tender is not abnormally low rests with the economic operator.

3. The contracting authority shall reject the tender of an economic operator who has failed to provide explanations or if the assessment of the explanations along with the

evidence submitted confirms that the tender contains an abnormally low price or cost in relation to the subject-matter of contract.

4. If the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority shall inform the President of the Office and the European Commission about the rejection of tenders which, in the contracting authority's opinion, contained an abnormally low price or costs because of public aid granted, and with regard to which the economic operator failed to demonstrate, within the time limit set by the contracting authority, that the said aid was lawful within the meaning of the provisions on procedures in state aid matters.

Article 91.

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

2. Tender evaluation criteria shall be price or price and other criteria linked to the subject-matter of the contract, in particular:

- 1) quality, including technical parameters, aesthetic and functional characteristics;
- 2) social aspects, including social and occupational integration of persons referred to in Article 22.2, accessibility to disabled persons, and responding to user needs;
- 3) environmental aspects, including energy efficiency of the subject-matter of contract;
- 4) innovation aspects;
- 5) organisation, professional qualifications and experience of persons appointed to perform the contract, if they can have a significant influence on the contract performance quality;
- 6) after-sales service and technical assistance, delivery conditions such as delivery deadline, manner of delivery, and lead time or period of completion.

2a. The contracting authorities referred to in Article 3 para. 1 (1) and (2) and their associations may apply price criterion as the only contract award criterion or a criterion with a weight exceeding 60% if quality standards pertaining to all important features of the subject-matter of contract are specified in the description of the subject-matter of contract, and if the contracting authorities evidence in an annex to the procedure record how the costs incurred throughout the life cycle of the subject-matter of contract are included in its description, except for Articles 72 para. 2 and 80 para. 3.

2b. The contracting authority may determine a fixed price or cost where generally applicable regulations or a competent authority has determined a fixed price or cost. In such a case, the tender shall be selected on the basis of other contract award criteria than price.

2c. Tender assessment criteria are associated with the subject-matter of a contract if they pertain to works, supplies, or services to be carried out as part of the contract, in all aspects and with regard to individual stages of their life cycle, including the process of production, delivery, or placing on the market, even if they are not an essential feature of the subject-matter of the contract.

2d. The contracting authority shall specify contract award criteria in an explicit and comprehensible manner, making it possible to verify the information provided by economic operators.

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

3a. If a tender has been submitted, the selection of which would result in a tax obligation on the contracting authority under the provisions on tax on goods and services, the contracting authority shall, in order to evaluate such a tender, add the value added tax (VAT) payable under these provisions to the tender price. The economic operator, when submitting a tender, shall inform the contracting authority whether the selection of tender will lead to a tax obligation on the contracting authority, indicating the name (type) of goods or services, delivery of which will lead to a tax obligation, and indicating their value without the tax amount.

3b. The cost criterion may be defined with the use of the life cycle cost approach.

3c. The life cycle cost approach may include, in particular, the following costs:

- 1) costs incurred by the contracting authority or other users, connected with:**
 - a) purchase,**
 - b) use, in particular consumption of energy and other resources,**
 - c) maintenance,**
 - d) end of life, in particular collection and recycling costs;**
- 2) costs attributed to environmental externalities connected with the life cycle of a product, service, or works, concerning emissions of greenhouse gases and other contamination, and other costs connected with mitigating climate change, if they can be monetised and verified.**

3d. Where the contracting authority estimates costs with the use of the life cycle cost approach for the subject-matter of contract, the contracting authority shall provide, in the tender specification, data to be presented by the economic operators and the method to be employed by the contracting authority to determine the life cycle costs on the basis of these data.

4. Where the best tender cannot be selected as two or more tenders represent the same ratio of price and other contract award criteria, the contracting authority shall choose from among those tenders the one with the lowest price or cost, and if tenders of the same price or cost have been submitted, the contracting authority shall call on the economic operators who have submitted the said tenders to submit additional tenders within the time limit specified by the contracting authority.

5. Where price or cost is the only contract award criterion in a contract award procedure and it is impossible to select the best tender as tenders with the same price or cost have been submitted, the contracting authority shall call upon the economic operators who have submitted such tenders to submit additional tenders within the time limit specified by the contracting authority.”;

5a. Where cost defined as the sum of purchase cost and other life cycle costs is the only contract award criterion in a contract award procedure and it is impossible to select the best tender as tenders with the same cost have been submitted, the contracting authority shall select the tender:

- 1) with lower purchase cost, or**

2) with lower life cycle costs

– provided that the contracting authority has provided for such a solution in the tender specification.

6. When submitting additional tenders, economic operators shall not offer higher prices or costs than offered in the tenders submitted previously.

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

7a. The method used to determine the cost attributed to environmental externalities shall jointly fulfil the following conditions:

- 1) it shall be based on objectively verifiable and non-discriminatory criteria;
- 2) it shall be available for all interested parties;
- 3) the provision of data by economic operators acting with due diligence is not unduly burdensome also for economic operators from third countries being parties to the Government Procurement Agreement of the World Trade Organisation or other international agreements to which the Economic operator is a party.

7b. Where under the provisions of European law, specified in Annex XIII to Directive 2014/24/EU or Annex XV to Directive 2014/25/EU, a common method of calculation of life cycle costs is obligatory, such a method shall be used to estimate these costs.

7c. The minister responsible for construction, spatial planning and development, and housing shall specify, by means of a regulation, the method of calculation of the life cycle costs for buildings and the manner of presenting information about these costs, having regard to the need of ensuring uniform and reliable calculations in this scope.

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

Article 91a.

1. In the case of an open-tender procedure, restricted procedure, or negotiated procedure with publication, the contracting authority, having assessed the tenders in order to select the best one, shall conduct an electronic auction if this was provided for by the contracting authority in the contract notice, invitation to confirm interest, or qualification system notice, provided it is possible to accurately define the content of the tender specification and at least 2 tenders not subject to exclusion have been submitted. The provisions of Articles 91.4 to 91.6 shall not apply.

1a. In contracts awarded under framework agreements in cases specified in Article 101a. para. 1 (2) (b) and (c) and as part of a dynamic purchasing system, the contracting authority may conduct an electronic auction in line with the principles defined in para. 1.

2. The provision of para. 1 shall not apply in the case of contracts whose subject-matter is constituted by services of intellectual nature, if they cannot be automatically

assessed.

2a. Where the contracting authority decided to conduct an electronic auction, the contracting authority shall specify in the contract notice or the tender specification at least:

- 1) the elements whose values will be subject to the electronic auction, provided that these elements are measurable and can be expressed in figures or percentages;**
- 2) all limitations pertaining to the values presented, resulting from the description of the subject-matter of contract;**
- 3) information to be made available to the economic operators during the electronic auction, and, if applicable, the period of time during which it will be made available;**
- 4) information about the course of the electronic auction;**
- 5) terms on which the economic operators will bid and, in particular, minimum bidding differences which, where applicable, will be required during the auction;**
- 6) information concerning parameters of the electronic equipment used and the arrangements and technical specifications for connection.”,**

3. The contract award criteria in an electronic auction shall be only those provided for in the tender specification and in the invitation to electronic auction, making possible the automatic assessment of a tender without any interference of the contracting authority, indicated among the criteria based on which the tenders were assessed prior to commencing the electronic auction.

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

Article 91b.

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

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

- 1) ranking places and scores of their tenders;**
- 2) minimal values of the bid increments in the electronic auction;**
- 3) date of the opening of the electronic auction;**
- 4) date and terms of the closing of the electronic auction;**
- 5) the manner for evaluation of tenders in the electronic auction;**
- 6) mathematical formula to be used in the electronic auction to automatically create subsequent transactions on the basis of presented new prices or values;**
- 7) schedule for each stage of the electronic auction, if the contracting authority intends to close the electronic auction under Article 91e (3).**

2a. The mathematical formula referred to in para. 2 (6) shall take into account the weights of all contract award criteria. If variants are allowed, a separate formula for each variant shall be specified.

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

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

Article 91c.

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

2. Bid increments, under the pain of nullity, shall be signed with qualified electronic signature.

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

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

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

Article 91d.

1. If an ICT system failure results in suspension of an electronic auction, the contracting authority shall set the date on which the electronic auction will be resumed for the next working day after the day on which the failure is removed, taking into account the state of tenders after the last approved bidding.

2. After the auction is closed, the contracting authority shall select the best tender on the basis of the contract award criteria specified in the contract notice, taking account of the results of the electronic auction.

Article 91e.

The contracting authority shall close an electronic auction:

- 1) at the time and date specified in the invitation to the electronic auction;**
- 2) if no new biddings are reported within a specified time limit;**
- 3) after the last, specified stage is completed.**

Article 92.

1. The contracting authority shall immediately inform all the economic operators about:

- 1) the selection of the best tender, providing the company name or the first and last name, registered office or place of residence and address, where such an address is the place of business of the economic operator whose tender has been selected, and the company names or first and last names, registered office or place of residence and addresses, where such addresses are places of business of the economic operators who have submitted tenders, as well as scores assigned to the tenders in each contract award criterion, and the total scores,**
- 2) excluded economic operators,**
- 3) economic operators whose tenders have been rejected, reasons for the rejection, and in cases referred to in Articles 89 para. 4 and 89 para. 5, lack of equivalence to or lack of compliance with the performance or functionality requirements,**
- 4) economic operators who have submitted tenders not subject to rejection but have not been invited to the next negotiation or dialogue stage,**
- 5) admitting to a dynamic purchasing system,**
- 6) no dynamic purchasing system set up,**
- 7) cancellation of the procedure**
– **providing factual and legal substantiation.”,**

1a. In cases referred to in Article 24 para. 8, the information referred to in para. 1.2 shall contain explanation of the reasons for which evidence presented by the economic operator was deemed by the contracting authority to be insufficient.

2. The contracting authority shall make the information referred to in para. 1 (1) and (5) to (7) available on the website.

3. The contracting authority does not have to disclose the information referred to in para. 1 if its disclosure would be contrary to important public interest.

Article 93.

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

- 1) no non-rejectable tender has been submitted or no request to participate in the procedure from a non-excludable economic operator has been received, subject to items 2 and 3;**
- 2) less than two non-rejectable tenders have been submitted in the request-for-quotations procedure;**
- 3) in a procedure under electronic bidding, less than two requests to participate in electronic bidding have been made, or no tender has been submitted;**
- 4) the price of the best tender or a tender with the lowest price exceeds the amount which the contracting authority can allocate to finance the contract,**

unless the contracting authority is able to increase that amount up to the price of the best tender;

- 5) in the cases referred to in Article 91 para. 5 additional tenders with the same price have been submitted;
- 6) a material change in the circumstances has occurred which causes the conduct of the procedure or the execution of the contract to be no longer in the public interest and which could not have been foreseen earlier;
- 7) the award procedure is encumbered with irreparable defect which prevents the conclusion of a valid public procurement contract.

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

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

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

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

1c. In case, referred to in para. 1 point 4, if a tender has been submitted, the selection of which would result in a tax obligation on the contracting authority under the provisions on tax on goods and services, then a tax on goods and services which the contracting authority would have to settle under these provisions, shall be added to the most advantageous tender or the tender with the lowest price.

1d. The contracting authority may cancel a contract award procedure if the number of economic operators who meet the participation conditions is lower than the number of economic operators specified in the contract notice, which the contracting authority intended to invite to submit tenders, initial offers, to competitive dialogue, or negotiations.

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

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

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

- providing factual and legal grounds.

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

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

Article 94.

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

- 1) of not less than 10 days from the day on which the notice on the selection of the best tender was sent, if the notice was sent with the use of electronic means of communication, or 15 days – if it was sent in any other manner, if the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8;**
- 2) of not less than 5 days from the day on which the notice on the selection of the best tender was sent, if the notice was sent with the use of electronic means of communication, or 10 days – if it was sent in any other manner, if the contract value is lower than the amounts specified in the provisions issued under Article 11 para. 8.**

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

1) in case of contract award procedure:

A) under open tendering only one tender was submitted,

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

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

3) in a contract award procedure of a value lower than the amounts specified in the provisions issued under Article 11 para. 8, the time limit to lodge an appeal against the activities of the contracting authority listed in Article 180.2 has expired or as a result of lodging such an appeal, the Chamber announced a verdict or decision ending the appellate procedure.

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

Article 95.

1. If the value of a contract or a framework agreement is lower than the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority shall announce, not later than within 30 days as of the conclusion of the public contract or the framework agreement, a contract award notice in the Public Procurement Bulletin.

2. If the value of a contract or a framework agreement is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, the contracting authority shall submit, not later than within 30 days as of the conclusion of the agreement on the public contract or the framework agreement, a contract award notice in the Public Procurement Bulletin.

3. [repealed]

4. [repealed]

5. The contracting authority shall submit a contract award notice for publication within 30 days as of awarding any contract covered by a dynamic purchasing system. Contract award notices may be grouped on a quarterly basis and submitted for publication within 30 days as of the last day of the each quarter. In a contract award notice, the contracting authority shall include information about ending a dynamic purchasing system, if the system validity period has elapsed or was shortened.

6. In the case of a framework agreement the contracting authority may not publish a contract award notice for each contract under the framework agreement.

7. In a contract award notice the contracting authority may not disclose certain information if its disclosure would impede law enforcement or would be contrary to the public interest, or could infringe legitimate commercial interests of economic operators, or distort competition between them.

Chapter 5

Record of contract award procedure

Article 96.

1. In the course of a contract award procedure the contracting authority shall prepare a written record containing at least:

- 1) description of the subject-matter of the contract;
- 2) information on the contract award procedure;
- 3) [repealed]
- 4) [repealed]
- 5) first and last name or company name of the economic operator whose

tender has been selected as the best one, as well as reasons for selecting this tender, indication of the contract lot or part of a framework agreement which the economic operator intends to sub-contract to third persons, and – if known at that time – first and last names or company names of possible subcontractors;

- 6) name and address of the contracting authority, the subject-matter and value of the public contract, framework agreement, or the dynamic purchasing system;
- 7) where applicable, results of the examination of grounds for exclusion, the assessment of compliance with the contract participation conditions or the selection criteria, including:
 - a) first and last names or company names of the economic operators not subject to exclusion, economic operators that demonstrated the compliance with the contract participation criteria or the selection criteria, and reasons for selecting these economic operators,
 - b) first and last names or company names of the economic operators who are subject to exclusion, failed to demonstrate the compliance with the contract participation criteria or the selection criteria, and reasons for not inviting them to participate in the procedure,
- 8) reasons for rejecting tenders;
- 9) in the case of a negotiated procedure with publication, competitive dialogue, negotiated procedure without publication, or a direct contract procedure, indication of the circumstances substantiating the selection of a given procedure type;
- 10) reasons based on which the contracting authority has decided not to award a contract, not to conclude a framework agreement, or not to set up a dynamic purchasing system;
- 11) reasons for not splitting a contract into lots;
- 12) reasons for waiving the requirement of using electronic means of communication to submit tenders;
- 13) if an economic operator or persons authorised to represent the economic operator remain with the contracting authority or persons authorised to represent the contracting authority in relations defined in Article 17 para. 1 (1) to (4), information about the relations and measures undertaken with regard to them;
- 14) information about persons carrying out activities connected with the preparation of the contract award procedure and persons carrying out activities in the contract award procedure, remaining in relations defined in Article 14 para. 1 (1) to (4), and about submitting the declaration referred to in Article 17.2 by them

1a. The record shall not be drawn up in the case of contracts awarded under framework agreements concluded with one economic operator or with a number of economic operators pursuant to agreement terms without subjecting the contract to competitive tendering again.

1b. Where the contracting authority has published a contract award notice containing all the information referred to in para. 1, the contracting authority may

invoke the notice in the record.

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

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

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

4. [repealed]

5. The **Minister responsible for economy** shall specify by a regulation:

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

Article 97.

1. The contracting authority shall keep the record together with its annexes for a period of 4 years from the closing date of the contract award procedure in a manner which shall guarantee its inviolability. **If the agreement duration exceeds 4 years, the contracting authority shall store the agreement for the whole its duration period.**

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

Article 98.

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

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

3. [repealed]

4. The minister responsible for the economy shall define, by means of a regulation, the scope of information contained in the record, its template and manner of submission, having regard to the requirements pertaining to the content of a record submitted to the European Commission and the need for ensuring up-to-date information for the purposes of monitoring public contracts, and the justification for the use of electronic means of communication.

**TITLE III
SPECIFIC PROVISIONS**

**Chapter 1
Framework agreements**

Article 99.

The contracting authority may conclude a framework agreement after conducting a procedure, applying accordingly the provisions on the award of contracts as part of an open-tender procedure, restricted procedure, negotiated procedure with publication, competitive dialogue, negotiated procedure without publication, direct contract procedure, or innovation partnership.

Article 100.

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

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

3. [repealed]

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

Article 101.

[repealed]

Article 101a.

1. The contracting authority shall award contracts whose subject-matter is covered by a framework agreement:

- 1) to the economic operator with whom the contracting authority has concluded the framework agreement, on terms specified in the framework agreement;**
- 2) to the economic operators with whom the contracting authority has concluded the framework agreement:**
 - a) on terms of the framework agreement, without requesting the economic operators to submit tenders again, where in the agreement all the conditions relating to the performance of works, services, or supplies, and**

the conditions of selection of economic operators to be parties to the framework agreement and perform the works, services, or supplies, are specified,

- a) requesting tenders in the event when not all conditions of performance of works, services, or supplies, or not all conditions of selection of economic operators to be parties to the framework agreement are specified in the framework agreement,
- c) for certain contracts in accordance with point (a), and for other contracts in accordance with point (b), if such a possibility has been provided for by the contracting authority in the contract notice, where the framework agreement defines all the conditions governing the performance of works, services, or supplies.

2. Contracts may be awarded in the manner referred to in para. 1 only by the contracting authorities designated in the contract notice, invitation to confirm interest, and if a contract notice was not required – in the tender specification.

3. When awarding a contract under a framework agreement, the contracting authority may not introduce material changes in the conditions of contract specified in the framework agreement, in particular where the contract is awarded in line with the principles specified in para. 1 (1).

4. When awarding a contract in line principles specified in para. 1 (1), the contracting authority, if the framework agreement has been amended, may call on the economic operator being a party to the framework agreement to supplement the tender within the time limit set by the contracting authority.

5. In a procedure aimed at concluding a framework agreement, the contracting authority shall define in the tender specification or in the invitation to negotiations the terms on which contracts will be awarded to the economic operators that will perform works, services, or supplies in the case referred to in para. 1 (2) (a).

6. The contracting authority shall define, in the tender specification or in the contract notice relating to the framework agreement, the criteria of selection of the works, supplies, or services to be purchased after the contract is subjected to competitive tendering again or directly, pursuant to the terms of the framework agreement, where the contract is awarded in line with the principles specified in para. 1 (2) (c). These documents shall also specify the conditions that shall constitute the subject of the repeated competitive tendering.

7. The provisions of para. 1 (2) (c) shall be applied also to these parts of the framework agreement for which all the conditions relating to the performance of works, services, or supplies have been specified, whether all conditions relating to the performance of works, services, or supplies for the remaining parts of the agreement have been specified or not.

8. In cases referred to in para. 1 (2) (b) or (c), the best tender may be selected in an electronic auction.

9. If economic operators being parties to a framework agreement are invited to tender as referred to in para. 1 (2) (b) or (c), the contracting authority:

- 1) shall apply the same conditions for participation in the procedure and the same conditions of contract performance as those applied when concluding the framework agreement, and, if needed, more detailed conditions, as well as, if

applicable, other conditions defined in the tender specification or in the contract notice relating to the framework agreement, and

- 2) shall invite to tender economic operators capable of performing the contract, and
- 3) shall set a time limit for submitting tenders, taking account of the complexity of the subject-matter of contract and the time necessary to draw up and submit tenders in relation to each contract.

Article 101b.

1. The contracting authority may allow or require the submission of tenders for the purposes of a framework agreement in the form of electronic catalogues or the enclosing of electronic catalogues to the tender.

2. If a framework agreement has been concluded with more than one economic operator and all tenders have been submitted in the form of electronic catalogues, or electronic catalogues have been enclosed to all tenders, the contracting authority may decide that the contract will be awarded on the basis of updated electronic catalogues.

3. In the case referred to in para. 2, the contracting authority:

- 1) shall invite economic operators to submit electronic catalogues again, adjusted to the requirements of a given contract, or
- 2) shall inform economic operators that from the already submitted electronic catalogues the contracting authority shall derive information needed to draw up tenders compliant with the requirements of a given contract, provided that the contracting authority has informed of such a solution in the contract notice or in the tender specification relating to the framework agreement.

4. In the case referred to in para. 3 (2), the contracting authority shall inform – with due advance – the economic operators about the date and time of deriving information needed to draw up tenders compliant with the requirements of a given contract. If an economic operator does not consent to deriving the information, it shall be considered that such an economic operator has not submitted a tender.

5. Before awarding a contract, the contracting authority shall present to a given economic operator the information derived, in order to verify whether the tender contains any material errors.

Chapter 2

Dynamic purchasing system

Article 102.

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

1a. A dynamic purchasing system may be divided into categories of supplies, services, or works, defined on the basis of characteristics of the contracts to be awarded under a given category. These characteristics may relate, in particular, to admissible

volumes of later contracts or to the geographic area in which later contracts will be performed.

2. [repealed]

3. [repealed]

3a. If the duration of the dynamic purchasing system is changed, the contracting authority shall change the contract notice

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

Article 103.

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

2. [repealed]

3. [repealed]

Article 104.

1. From the day on which the contract notice is announced in the Public Procurement Bulletin or published in the Official Journal of the European Union, the contracting authority shall make available on the website the information about the application of a dynamic purchasing system, along with information relating to the dynamic purchasing system, in particular:

- 1) **specification of the subject-matter of contracts covered by the dynamic purchasing system, along with their estimated quantity;**
- 2) duration of the dynamic purchasing system;
- 3) envisaged dates for awarding contracts;
- 4) technical requirements for telecommunications and computer devices necessary to ensure communication between the contracting authority and the economic operators, including the submission of tenders;
- 5) **the manner in which the dynamic purchasing system is operated;**
- 6) **division of supplies, services, or works into categories, along with the characteristics defining these categories, if the dynamic purchasing system is to be divided into categories;**
- 7) **whether it is required to submit tenders in the form of an electronic catalogue or to enclose an electronic catalogue to the tender.**

2. The information referred to in 1 shall be available on the website throughout the duration of the dynamic purchasing system.

Article 104a.

1. The contracting authority shall set a time limit for the submission of requests to participate in a dynamic purchasing system, not shorter than 30 days as of the day of

announcing the contract notice in the Public Procurement Bulletin or as of submitting the contract notice to the Publications Office of the European Union or, where the prior information notice includes information required for a contract notice, as of the day of submitting the invitation to confirm interest.

2. Throughout the duration of the dynamic purchasing system, the contracting authority shall ensure to economic operators not participating in it a possibility of submitting requests to participate in the dynamic purchasing system. After sending the invitation to tender with regard to the first contract covered by a dynamic purchasing system, further time limits for the submission of request to participate in the dynamic purchasing system shall not be set.

Article 104b.

1. The contracting authority shall assess whether an economic operator meets the conditions for participation in a procedure within 10 days as of receiving the request to participate in the dynamic purchasing system.

2. The time limit referred to in para. 1 may be extended, in justified cases, to 15 days, in particular where there is a need to examine additional documentation or to verify whether the conditions for participation in the procedure have been met.

3. If the invitation to tender for the first contract covered by a dynamic purchasing system has not been sent, the time limit referred to in para. 1 may be extended, provided that in the extended time limit no invitation to tender shall be sent. The contracting authority shall inform the economic operator whose request is subject to examination about the extension of the time limit.

Article 104c.

1. The contracting authority shall invite to participate in a dynamic purchasing system economic operators that are not subject to exclusion. The provisions of Article 51 do not apply.

2. If a dynamic purchasing system has been divided into categories of supplies, services, or works, the contracting authority shall invite to participate in the dynamic purchasing system economic operators that are not subject to exclusion and that meet the conditions for participation in a procedure corresponding to one of the categories.

Article 104d.

The contracting authority may, at any time within the duration of the dynamic purchasing system, call on the admitted economic operators to submit, within 5 working days as of sending the call, new declarations pursuant to Articles 26 para. 1 and 26.2

Article 104e.

1. The contracting authority shall invite simultaneously all participants of the system to tender with regard to each of the contracts awarded as part of the dynamic purchasing system within a time limit not shorter than 10 days as of sending an invitation to tender. The provisions of Articles 52.3 to 52.5 shall not apply.

2. If a dynamic purchasing system has been divided into categories of supplies,

services, or works, the contracting authority shall invite to tender simultaneously all economic operators admitted to tender with regard to a given category.

3. In situations specified in Article 10c, the contracting authority shall provide to the economic operator, along with the invitation to tender, the tender specification, and shall set the time and place of publication of the contract notice.

4. The invitation referred to in para. 1 shall include at least:

- 1) address of the website on which the tender specification is available;
- 2) information about the time and place of publishing the contract notice referred to in Article 104 para. 1;
- “3) time limit for the submission of tenders, address to which they have to be sent, and language or languages in which they have to be prepared;
- 4) list of declarations and documents confirming the lack of grounds for exclusion;
- 5) weights assigned to the contract award criteria, if not specified in the contract notice or in the qualification system notice.

5. The contracting authority shall select the best tender based on the contract award criteria specified in the contract notice.

6. In the invitation to tender, the contracting authority may specify in more detail the contract award criteria defined in the contract notice, the invitation to confirm interest, or in the qualification system notice.

Article 104f.

Access to the dynamic purchasing system is free of charge.

Article 104g.

1. The contracting authority may require that tenders as part of a dynamic purchasing system are submitted in the form of electronic catalogues or that electronic catalogues are enclosed to the request to participate in a dynamic purchasing system.

2. If more than one economic operator has been admitted to a dynamic purchasing system and electronic catalogues have been submitted with all requests to participate in the dynamic purchasing system, the contracting authority may, before awarding a contract, invite the economic operators to submit electronic catalogues once again or update them.

3. In the case referred to in para. 2, the contracting authority shall inform economic operators that from the already submitted electronic catalogues the contracting authority shall derive information needed to draw up tenders, provided that the contracting authority has informed of such a solution in the contract notice or in the tender specification relating to the framework agreement.

4. The contracting authority shall inform the economic operators about the date and time of deriving the information referred to in para. 3, giving sufficient time for an economic operator to refuse to grant the consent for deriving the information.

5. Before awarding a contract, the contracting authority shall present to the economic operator whose tender has been selected the information derived, in order to verify whether the tender contains any material errors.

Article 105.

[repealed]

Article 106.

[repealed]

Article 107.

[repealed]

Article 108.

[repealed]

Article 109.

[repealed]

**Chapter 3
Design contest**

Article 110.

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

Article 111.

1. The prize of a design contest may be:

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

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

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

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

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

Article 112.

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

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

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

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

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

Article 113.

1. The jury is an auxiliary team of the head of the contracting authority appointed to evaluate compliance of participants in the design contest with the requirements laid down in the Rules of Procedures for the design contest, to evaluate the designs and to choose the best design.

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

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

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

Article 114.

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

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

Article 115.

1. The contracting authority shall announce the design contest notice in the manner defined in Articles 11 to 11c.

2. A design contest notice shall contain at least:

- 1) name (official address) and address of the contracting authority;
- 2) definition of the subject-matter of design contest;

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

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

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

5. [repealed]

Article 116.

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

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

- 1) name and surname or name (company name) and address and place of residence (seat) of the contracting authority;
- 2) form of the design contest;
- 3) detailed description of the design contest subject-matter;
- 4) maximum envisaged total cost of performing the work based on the contest project;
- 5) In the cases referred to in Article 111 para. 1 items 2 and 3, the scope of the detailed preparation of the contest project which is the subject-matter of a contract awarded by a negotiated procedure without publication or by single-source procurement procedure;
- 6) information about the declarations and documents to be provided by the participants in the design contest to prove their compliance with the relevant requirements, the provisions of Article 25 shall apply accordingly;
- 7) means of communication between the contracting authority and the participants in the contest, and means of dispatch declarations and documents;
- 8) place and time limit for the submission of the requests to participate in the design contest;
- 9) scope of content, form and method of presentation of the contest project;

-
- 10) place and time limit for submitting contest projects by the admitted participants;
 - 11) criteria for evaluation contest projects, together with their weightings;
 - 12) composition of the jury;
 - 13) type and value of prizes;
 - 14) time limit for the awarding (payment) of the prize and, in the cases referred to in Article 111 para. 1 items 2 and 3, for the invitation to participate in a negotiated procedure without publication or in a single-source procurement procedure;
 - 15) amounts reimbursed for the preparation of the contest projects if the contracting authority plans to reimburse such costs;
 - 16) provisions concerning the transfer of financial copyright to the selected contest project including a detailed specification of the areas of use of the contest projects, and in the cases referred to in Article 111 para. 1 items 2 and 3 also the essential provisions to be included in the contract;
 - 17) manner of public announcement of the result of the design contest;
 - 18) manner of providing explanations concerning the Rules of Procedure for the design contest;
 - 19) information on legal protection measures available to design contest participants.

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

4. [repealed]

Article 117.

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

Article 118.

- 1.** Participants in the design contest may be natural persons, legal persons and organisational units not having legal personality.
- 2.** Where specific provisions require that the participants in the design contest should have professional authorisations to execute a contest project, the participants may only be natural persons having the required authorisations or entities using natural persons having the required authorisations.
- 3.** Participants may take part in the design contest jointly. The provisions relating to a participant in a design contest shall apply respectively to participants taking part jointly.

Article 119.

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

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

Article 120.

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

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

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

Article 121.

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

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

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

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

Article 122.

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

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

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

Article 123.

1. Immediately after the results of a design contents are known, the contracting authority shall inform the participants of the contest about the results and scores obtained by them, providing the first and last name, or the company name, registered office, place of residence and address, if the latter is the place of business of the author(s) of the selected contest work.

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

3. The record shall contain a ranked list of contest works and remarks of the contest jury along with conclusions and recommendations, and it shall specify in particular aspects of a contest work that require clarification.

4. If needed, the contracting authority may request clarifications referred to in para. 3 from the economic operators. The clarifications shall constitute an appendix to the record.

Article 124.

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

Article 125.

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

Article 126.

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

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

Article 127.

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

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

Chapter 4

Award of contracts by the concessionaire of works

Art. 128. [repealed]

Art. 129. [repealed]

Art. 130. [repealed]

Art. 131. [repealed]

Chapter 4a

Contracts in the field of defence and security

Article 131a.

1. The provisions of this Chapter shall apply to contracts awarded by the contracting authorities referred to in Article 3 para. 1 (1) to (4), if the subject-matter of contract comprises:

- 1) deliveries of military equipment, including all the parts, components and subassemblies;
- 2) deliveries of sensitive equipment, including all parts, components and subassemblies;
- 3) works, supplies and services directly connected with the equipment mentioned in point 1 and 2, and all its components and subassemblies connected with life-cycle of this product;
- 4) works and services for special military purposes or sensitive works and services.

1a. The provisions of this Chapter shall apply to contracts related to critical infrastructure referred to in the Act of 26 April 2007 on crisis management (Journal of Laws of 2013, item 1166; of 2015, item 1485; and of 2016, items 266 and 904).

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

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

3a. If a defence and security contract includes services specified in the provisions issued pursuant to Article 131bb.2 and other services or services and supplies, the award of the contract shall be governed by the provisions relating to services or supplies whose estimated value is higher.

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

5. Whenever in the provisions of this Chapter a reference is made to a subcontract, it shall mean an agreement drawn up in writing for pecuniary interest, concluded to perform a defence and security contract between the economic operator selected by the contracting authority and at least one other entity.

Article 131b.

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

Article 131ba.

The contracting authority may waive taking into account a contract award procedure in the procedure plan referred to in Article 13a if this is justified by reasons of state defence or security.

Article 131bb.

1. The provisions of the Act governing the time limits for submitting request to participate in a procedure or time limits for submitting tenders, the obligation to demand a deposit, the obligation to demand documents confirming that the conditions for participation in a procedure are met, the prohibition of setting contract award criteria on the basis of the characteristics of an economic operator, and the premises for the selection of negotiated procedure with publication, competitive dialogue, or electronic auction shall not apply to contract award procedures whose subject-matter are non-priority services specified in the provisions issued pursuant to para. 2.

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

Article 131bc.

1. In contract award procedures relating to defence and security contracts, communication between the contracting authority and the economic operators shall take place, at the contracting authority's discretion, by the postal operator within the meaning of the Act of 23 November 2012 – Postal Law, in person, or with the use of electronic means of communication.

2. The means of communication selected must be generally available and may not limit access of the economic operators to a defence and security contract award procedure.

3. In the contract notice, the contracting authority may demand that requests to participate in the procedure are submitted with the use of electronic means of communication.

4. The information about submitting a request to participate in a procedure may be provided by phone before the lapse of the time limit for submitting requests to participate in the procedure. Such a request shall be considered timely submitted if it was sent before the lapse of the time limit for the submission of requests to participate in the procedure and the contracting authority received it no later than 7 days as of the day on which the time limit for the submission of the requests elapsed.

5. Tenders shall be submitted, under pain of nullity, in written form or, upon the consent of the contracting authority – in electronic form, signed respectively with a handwritten signature or qualified electronic signature.

Article 131c.

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

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

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

Article 131d.

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

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

Article 131da.

Notices in a defence and security contract award procedure shall be submitted to the Publications Office of the European Union in accordance with the format and procedures for the electronic transmission of notices specified on the website referred to in para. 3 of Annex VI to Directive of the European Parliament and of the Council 2009/81/EC of 13 July 2009 on the coordination of procedures for the award of certain construction works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.

Article 131e.

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

1) economic operators referred to in Article 24 para. 1 (12) and (13), except for economic operators convicted for a criminal offence referred to in Articles 181 to 188 and Article 189a of the Act of 6 June 1997 – Criminal Code, and (14) where a person referred to in this provision has been convicted for a criminal offence listed in Article 24 para. 1 (13), except for criminal offences referred to in Articles 181 to 188 and Article 189a of the Act of 6 June 1997 – Criminal Code, if an appropriate proviso has been included in the contract notice;

2) [repealed]

3) [repealed]

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

5) economic operators that infringed upon their obligations concerning security of information or security of supply, or that have been found not to possessing the credibility necessary to exclude the threat to national security, also in a manner other than by means of a issuing a decision on withdrawal of industrial security clearance referred to in art. 66 of the Act of 5 August 2010 on protection of classified information;

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

1a. [repealed]

1b. In defence and security contract award procedures, the contracting authority may exclude an economic operator:

1) referred to in Article 24:

a) para. 1 (13) (a), if the economic operator has been convicted for a criminal offence referred to in Articles 181 to 188 or Article 189a of the Act of 6 June 1997 – Criminal Code,

b) para. 1 (14), if the person referred to in this provision has been convicted for a criminal offence referred to in Articles 181 to 188 or Article 189a of the Act of 6 June 1997 – Criminal Code,

c) para. 5;

2) that is a natural person who has infringed information security or supply security obligations in relation to performance, non-performance or improper performance of a contract;

3) if a member in office 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 infringed information or supply security obligations in relation to performance, non-performance or improper performance of a contract.

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

2a. In defence and security contract award procedures:

- 1) **the provisions of the Act relating to the single document shall not apply;**
- 2) **the contracting authority shall demand from the economic operator declarations or documents confirming the fulfilment of the conditions for participation in the procedure.**

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

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

5. The contracting authority may waive the obligation to exclude economic operators from a contract award procedure, if appropriate reservation has been provided for in the contract notice.

Article 131f.

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

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

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

Article 131g.

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

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

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

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

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

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

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

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

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

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

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

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

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

5. In duly justified cases the provision of Article 30.4 shall not apply to defence and security contracts.

6. In a defence and security contract award procedure, the contracting authority, in order to confirm the conformity referred to in Article 30b para. 1 shall accept also research certificates and reports issued by conformity assessment bodies accredited in another manner than in the regulation referred to in Article 30b.2., provided that this shall not distort competition.

Article 131h.

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

2. In cases referred to in para. 1, first sentence, the contracting authority may select the most advantageous tender by means of electronic auction. **The provisions of Articles 91a to 91e shall apply accordingly.**

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

1) **it is not possible to award a contract under restricted procedure or negotiated procedure with publication because due to the complexity of the contract, it is not possible to describe the subject-matter of the contract under Articles 30 to 31 or to define objectively the legal or financial conditions of contract performance;**

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

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

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

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

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

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

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

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

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

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

authority include in present procedure all the economic operators that submitted tenders in the previous procedure conducted under restricted tendering, negotiated procedure with publication or competitive dialogue.

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

- 1) circumstances referred to in art. 67 para. 1 letter 1 and b, point 5, 8 and 9;
- 2) due to crisis, the immediate execution of contract is required and the time-limit, including the shortened time-limits for restricted tendering or the negotiated procedure with publication cannot be complied with; or
- 3) due to exceptional circumstances not attributable to the contracting authority, which could not have been foreseen, the immediate execution of contract is required and the time-limit, including the shortened time-limits for restricted tendering or the negotiated procedure with publication cannot be complied with;
- 4) for additional supplies by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance, the length of such contracts shall not exceed 5 years; 5) within 5 years from the award of main contract, the current provider of services or works is awarded a complementary contract of the same type as the main contract on condition that the main contract was awarded under restricted tendering negotiated procedure with publication or competitive dialogue and the complementary contract was provided for in the contract notice for the main contract and is conforms as to subject-matter of contract with the basic procurement.

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

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

Article 131i.

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

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

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

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

5. [repealed]

Article 131da.

In defence and security contract award procedures:

- 1) along with the invitation to tender in a restricted procedure, invitation to submit initial offers in a negotiated procedure with publication, or invitation to participate in a competitive dialogue, the contracting authority shall submit the tender specification, unless the tender specification has been made available on a website, and the contracting authority provides its address in the invitation to tender, invitation to submit initial offers, or invitation to participate in dialogue, respectively;
- 2) where the contracting authority has published a prior information notice that contained all information required in the case of a contract notice to the extent such information was available at the moment of publication of the prior information notice, and the prior information notice was submitted to the Publications Office of the European Union or posted on the website at least 52 days and at most 12 months before the day of submitting the contract notice to the Publications Office of the European Union, the contracting authority may set a time limit for submitting tenders not shorter than 22 days as of sending the invitation to tender;
- 3) in the case referred to in subpara. (2), the contracting authority may set a time limit for the submission of tenders shorter by 5 days, provided that the contracting authority makes available the tender specification on the website no later than as of the day of publication of the contract notice in the Official Journal of the European Union and up to the lapse of the time limit for the submission of tenders;
- 4) an economic operator may place in the Public Procurement Bulletin or submit to the Publications Office of the European Union a notice of intention to conclude a sub-contract with regard to a part of a defence and security contract awarded to the economic operator, provided that the value of this part is lower than the amounts specified in the provisions issued under Article 11 para. 8;
- 5) conducted as part of a restricted procedure, negotiated procedure with publication, and competitive dialogue, the time limit for submitting requests to participate in the procedure may not be shorter than:
 - a) 30 days – as of the day of submitting the contract notice to the Publications Office of the European Union by electronic means, in line with the form and procedures specified on the website referred to in Article 131da,
 - b) 37 days – as of the day of submitting the contract notice to the Publications Office of the European Union in another manner than specified in point (a);
- 6) conducted as part of a restricted procedure, the time limit for the submission of tenders may not be shorter than 40 days – as of the day on which the invitation

to tender is submitted, with account taken of Article 52.4;

- 7) **in the event of an urgent need to award a contract, the contracting authority may set a shorter time limit for the submission of requests to participate in a restricted procedure or negotiated procedure with publication, however not shorter than:**
- a) **10 days – as of the day of submitting the contract notice to the Publications Office of the European Union by electronic means, in line with the form and procedures specified on the website referred to in Article 131da,**
 - b) **15 days – as of the day of submitting the contract notice to the Publications Office of the European Union by fax.**

Article 131j.

1. When awarding a contract in the field of defence and security under restricted tendering, negotiated procedure with publication or competitive dialogue, the contracting authority shall invite to submit tenders, initial tenders or to participate in dialogue the economic operators meeting the conditions for participation in procurement procedure in a number indicated in the contract notice guaranteeing competition, however not less than 3.

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

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

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

Article 131k.

1. **In case of contracts in the field of defence and security, the contract award criteria include price or price and other criteria relating to the subject-matter of the contract, in particular the criteria referred to in Article 91.2 or such criteria as profitability, supply security, interoperability, and operational features specified in the tender specification. The provisions issued under Article 91.8 shall not apply to contracts in the field of defence and security.**

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

Article 131l.

1. The contracting authority may:

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

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

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

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

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

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

Article 131m.

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

2. [repealed]

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

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

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

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

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

Article 131n.

1. The economic operator obliged to conclude a subcontract, referred to in art. 131m para. 1, shall commence a procedure for selection of subcontractor by publishing a

subcontract notice. The economic operator shall apply provisions on contract notices respectively.

2. In a sub-contract notice, the economic operator shall specify the conditions for participation in the procedure.

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

4. [repealed]

Article 131o.

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

Article 131p.

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

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

Article 131r.

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

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

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

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

Article 131s.

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

2. Provisions of art. 131n para. 1-3 and art. 131o do not apply to entrusting the execution of part of the contract in the field of defence and security awarded to economic

operator if the value of subcontract is less than the amounts specified in provisions issued under art. 11 item 8.

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

Article 131t.

The economic operator shall not award a subcontract, if:

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

Article 131u.

1. The following subjects shall not be considered subcontractors:

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

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

Article 131v.

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

- 1) as to provision of an information, the provisions of art. 8 para. 3, art. 51 para. 1a, art. 57 para.1, art 60d para. 1, art. 92 and art. 93 para. 3 and 5 apply respectively, however, the contracting authority may refuse to provide information if its disclosure could impede law enforcement or would be contrary to public interest, in particular

to interest related to defence and security or if it might harm the lawful commercial interests of economic operators or might prejudice fair competition between them;

2) the economic operator may present a different document certifying in sufficient manner the fulfilment of condition specified by the contracting authority, if for justified reason, the economic operator cannot present documents concerning their knowledge, experience and technical potential or personnel capable of performing a contract;

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

Article 131w.

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

1) such a possibility was envisaged in the contract notice or in the specification of essential terms of contract, or

2) economic operator was selected under negotiated procedure without publication or single-source procurement.

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

1) the amount of single advance payment does not exceed 25% of the remuneration of economic operator;

2) the rules for providing advance payments were specified in the invitation to negotiations and remain unaltered in the course of execution of a contract.

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

Chapter 5

Utilities contracts

Article 132.

1. The provisions of this Chapter shall apply to contracts awarded by the contracting authorities referred to in Article 3 para. 1 (1) to (4), if the contract is awarded to carry out one of the following activity types:

1) extracting oil, gas and their natural derivatives, and exploring for or extracting lignite, hard coal, or other solid fuels;

2) the management of airports, maritime or inland ports and their provision to air, sea and inland carriers;

3) the creation of networks intended to provide public services connected with the production, transmission or distribution of electricity, gas or heat or supply of electricity, gas or heat to such networks or management of such networks;

4) the creation of networks intended to provide public services connected with the production or distribution of drinking water or supply of drinking water to such

networks or management of such networks;

5) the operation of networks providing public services in the field of transport by railway, tramway, trolley bus, cable or with the use of automatic systems;

6) the operation of networks providing public services in the field of bus transport;

7) **services consisting in clearance, sorting, transport, and delivery of postal consignments**

1a. The distribution referred to in para. 1 (3) and (4) shall also include wholesale and retail sale.

2. Contracting authorities awarding contracts referred to in para. 1 (4) shall apply the provisions of this Chapter also to the award of contracts related to:

1) **sewage systems and waste water treatment;**

2) **hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations.**

3. Contracting authorities awarding contracts referred to in para. 1 (7) shall apply the provisions of this Chapter also to contracts related to the provision of the management services with regard to the services referred to in para.1 (7), as well as services related to non-addressed forms, unless the European Commission has issued a decision referred to in Article 138f.1 with regard to the provision of such services, or the time limit for issuing such a decision has elapsed ineffectively.

Article 133.

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

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

3. The provisions of Article 67 para. 1b and Article 100 para. 2 shall not apply to utilities contracts.

4. In a utilities contract award procedure, the economic operator shall not be subject to exclusion in the case referred to in Article 24 para. 1 (13) (d) and in the case referred to in Article 24 para. 1 (14) if the person referred to in this provisions has been convicted for a criminal offence listed in Article 24 para. 1 (13) (d).

Article 134.

1. The contracting authority may award a utilities contract as part of an open-tender procedure, restricted procedure, negotiated procedure with publication, competitive dialogue, negotiated procedure without publication, direct contract procedure, or innovation partnership. The provisions of Articles 55 and 60b shall not apply.

2. The contracting authority may conclude a framework agreement after conducting a procedure, applying accordingly the provisions on the award of contracts as part of an open-tender procedure, restricted procedure, negotiated procedure with publication, competitive dialogue, or innovation partnership. The provisions of Article 55 and Articles 100 para. 1 and 100 para. 2 shall not apply.

2a. The contracting authority shall specify the principles and manner of awarding contracts as part of a framework agreement in the tender specification.

2b. The contracting authority may conclude a framework agreement for a period not longer than 8 years, unless there are exceptional circumstances justified by the subject-matter of the contract.

2c. The contracting authority may set up a dynamic purchasing system.

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

- 1) a time limit for the submission of requests to participate in a procedure, which is not shorter than:
 - a) **30 days as of the day of submitting the contract notice to the Publications Office of the European Union or submitting the invitation to confirm interest, and in exceptional circumstances, 15 days as of submitting the contract notice to the Publications Office of the European Union or as of submitting the invitation to confirm interest,**
 - b) [repealed]
 - c) [repealed]
- 2) a time limit for the submission of tenders that is not shorter than 10 days, taking into account the time required to prepare and submit a tender;
- 3) any time limit for the submission of tenders, provided that all the economic operators who will be invited to submit tenders, agreed on this.

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

3b. In a procedure conducted as a competitive dialogue or innovation partnership, the contracting authority may set the time limit for submitting:

- 1) **request to participate in a procedure of at least 30 days as of the day of submitting the contract notice to the Publications Office of the European Union or submitting the invitation to confirm interest, and in exceptional circumstances, 15 days as of submitting the contract notice to the Publications Office of the European Union or as of submitting the invitation to confirm interest;**
- 2) **tenders, taking account of the time necessary to draw up and submit a tender.**

3c. In the case of a utilities contract award procedure conducted as a restricted

procedure, negotiated procedure with publication, competitive dialogue, or innovation partnership, the contracting authority may limit the number of economic operators to be invited by the contracting authority to tender, to negotiations, or to participate in a dialogue, respectively.

3d. The contracting authority shall specify in the contract notice, qualification system notice, or in the invitation to confirm interest the selection criteria the contracting authority intends to apply, and the number of economic operators, ensuring competition, the contracting authority intends to invite.

3e. In a procedure conducted as a negotiated procedure with publication, negotiated procedure without publication, competitive dialogue, or innovation partnership, after the negotiations are completed, the contracting authority shall invite to tender the economic operators with whom it negotiated.

4. [repealed]

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

1) where any one of the circumstances referred to in Article 62 para. 1 applies;

2) [repealed]

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

1) **where one of the circumstances referred to in Article 67 para. 1 items 1 – 4 and 7-9 occur;**

2) where it is possible to award a contract for a price that is much lower than the market price owing to particularly advantageous circumstances existing for a very limited period of time only;

3) **where the contract is awarded to the incumbent economic operator of services or works and consists in the repetition of similar services or works, if such a contract was provided for in the contract notice for the main contract, is compliant with the subject-matter of the main contract, and the total value of this contract has been taken into account when calculating its value, and where in the description of the main contract, the scope of these services or works and the terms on which they are awarded has been specified.**

4) [repealed]

Article 134a.

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

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

Article 134b.

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

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

3. The qualification system notice shall be made available on the website of contracting authority throughout the duration of the system. The contracting authority shall made available the tender specification on the website as of the day of sending the invitation to tender or the invitation to negotiations at the latest.

Article 134c.

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

2. No later than within 6 months from submitting a request, the contracting authority shall select economic operators admitted to the qualification system. **Within 2 months as of submitting a request to participate in a qualification system, the contracting authority shall inform the economic operators that the admission or refusal to admit to participate in the qualification system shall take place after the lapse of 4 months as of the day of submitting the request. Such information shall include justification.**

Article 134d.

1. The contracting authority shall immediately inform an economic operator on admitting or refusal to admit it to the qualification system, however within a period not longer than 15 days as of the decision, stating the factual and legal justification.

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

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

4. The contracting authority shall inform an economic operator about the end of the qualification process with regard to that economic operator no later than 15 days before the intended end of the qualification process.

Article 134e.

1. The contracting authority may commence a utilities contract award procedure as part of a restricted procedure or negotiated procedure with publication by announcing a notice on setting up a qualification system.

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

Article 135.

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

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

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

3. [repealed]

4. If information about a contract was contained in a periodic indicative notice relating to contracts planned within 12 months, submitted or posted on the buyer's profile at least 52 days prior to submitting the contract notice to the Publications Office of the European Union, the contracting authority may, within an open-tender procedure, set a time limit for the submission of tenders not shorter than 15 days – as of the day of submitting the contract notice to the Publications Office of the European Union, by electronic means in line with the form and procedures defined on the website specified in the Directives.

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

5a. The notice referred to in para. 5:

- 1) **shall contain an explicit reference to supplies, works, or services constituting the subject-matter of the utilities contract to be awarded;**
- 2) **shall contain an advise that the utilities contract shall be awarded as part of a restricted procedure or negotiated procedure with publication, without publishing the contract notice, on the basis of an invitation to confirm interest;**
- 3) **shall contain invitation to confirm interest, addressed to economic operators;**
- 4) **shall contain additional information specified in Annex VI, Part A, section**

I and II of Directive 2014/25/EU;

- 5) has been submitted to the Publications Office of the European Union at least 35 days and at most 12 months before the day of sending the invitation to confirm interest.**

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

6a. An invitation to confirm interest shall include in particular:

- 1) address of the contracting authority;**
- 2) in the case of contracts referred to in Article 34 para. 1 – the characteristics and quantity of products or services constituting the subject-matter of a contract, including all options concerning contracts, referred to in Article 34.5, and, if possible, the estimated time available for exercising these options;**
- 3) estimated timing for further notices relating to contracts referred to in subpara. (2) and contracts for works;**
- 4) information about the procedure type used to award a utilities contract;**
- 5) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;**
- 6) economic and technical conditions, and financial and technical guarantees required of economic operators;**
- 7) weights assigned to the contract award criteria or, if applicable, the criteria in descending order of importance, if not specified in such a manner in the periodic indicative notice, in the description of the subject-matter of contract, or in the invitation to tender or to negotiations;**
- 8) address of the website on which the tender specification is available;**
- 9) in circumstances specified in Article 10c and 10d, the place and date of making available the tender specification, and language or languages in which it is drawn up.**

7. [repealed]

Article 136.

1. The Act shall not apply to utilities contracts, if awarded to:

- 1) entities with which the contracting entities prepare the annual consolidated financial reports within the meaning of accounting regulations,**
- 2) entities in which the contracting entities hold over half of the shares or interests, hold more than half of the votes resulting from the shares or stocks, control the managing body or are entitled to appoint over half of the members of their supervisory or management body,**
- 3) entities which hold over half of the contracting entities shares or interests, hold more than half of the votes resulting from the awarding entities shares or**

stocks, control its managing body or are entitled to appoint over half of the members of their supervisory or management body,

- 4) entities who together with the contracting entity are subjected to the influence of another entity as specified in item 3

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

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

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

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

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

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

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

Article 137.

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

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

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

- 1) the production of electricity is necessary to conduct an activity other than that defined in Article 132 and

-
- 2) the provision of electricity is dependent solely on own consumption, and it does not exceed 30% of the total production over the period of the previous three years, including the year in which the contract is awarded.

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

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

Article 138.

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

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

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

4. **Upon request of the European Commission, the contracting authority is obliged to provide information in the scope referred to in para. 1 to 3.**

Article 138a.

1. **The contracting authority performing activity referred to in Art. 132 para. 1 point 1 and 3 do not apply the Act to the award of contracts for supplies of electricity, gas fuels or heat, and fuels for energy generation, as well as the purchase of certificates of origin, certificates of origin for agricultural biogas, certificates of origin from cogeneration and energy efficiency certificates in order to comply the obligation referred to in Article 9a para. 1 point 1 of the Act of 10 April 1997 - Energy Law (Journal of Laws of 2012 item. 1059 as amended) or to comply the obligation referred to in Article 52 para. 1, item 1 of the Law of 20 February 2015 on renewable energy sources (Journal of Laws item 478 and 2365), or to comply the obligation referred to in Article 10 para. 1 point 2 of the Act of 20 May 2016 on energy efficiency (Journal of Laws item 831).**

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

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

Article 138b.

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

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

Article 138c.

1. The contracting authority may:

- 1) request the economic operators to keep any information provided under the contract award procedure confidential;
- 2) demand that the economic operators should provide documents other than those listed in the provisions issued under Article 25 para. 2 to prove their compliance with the participation requirements if necessary to evaluate such compliance;
- 3) choose not to request a deposit or a security on due contract performance;
- 4) **in the case of a supply contract, reject a tender in which the proportion of commodities or software used in telecommunications network equipment originating from the Member States of the European Union, states with which the European Union has entered into agreement on equal treatment of entrepreneurs, or states with regard to which, under a decision of the Council, the provisions of Directive 2014/25/EU are applied, does not exceed 50%, if this requirement has been provided for by the contracting authority in the contract notice, and if the procedure is not commenced with a contract notice – in the tender specification;**
- 5) **refrain from the obligation to exclude from the procedure the economic operators subject to exclusion under Article 24 para. 1 (15) if such a stipulation was included in the contract notice, and if the procedure is not commenced with a contract notice – in the tender specification;**
- 6) **require to submit tenders in the form of an electronic catalogues or to enclose an electronic catalogue to the tender in order to enable such a possibility.**

1a. The contracting authority may not demand from the economic operators tests or other evidence of particular circumstances, if the economic operator presented evidence confirming them earlier.

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

3. The provision of para. 2 shall not apply if its application would result in the purchase of equipment incompatible with the equipment at the disposal of the

contracting authority, in other technical difficulties in operation and maintenance of the equipment, or would require disproportionate costs.

4. If the contracting authority is a transmission system operator or a combined system operator within the meaning of the Act of 10 April 1997 – Energy Law (Journal of Laws of 2012, item 1059, as amended¹⁰), and the subject-matter of contract is constituted by services necessary for that operator to ensure correct and secure operation of an electricity system, its operational reliability, and the maintenance of the quality parameters of electricity whose supply conditions are specified in the instruction referred to in Article 9g para. 1 of the Act of 10 April 1997 – Energy Law, the contracting authority may select a number of tenders submitted by a number of economic operators, if such a possibility has been provided for in the contract notice, and if the procedure is not commenced with a contract notice – in the tender specification.

Article 138d.

[repealed]

Article 138e.

[repealed]

Article 138f.

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

2. The competent authority, at its own initiative or upon request of the contracting authority, or the contracting authority may, having analysed the relevant market, submit a request to the European Commission to declare that contracting authorities pursuing activities referred to in Article 132 act on a competitive market to which access is not limited. The contracting authority shall immediately provide a copy of the request to the competent authority.

3. The competent authority or the contracting authority shall carry out a market analysis in the scope of a given activity and shall draw up a request in line with the requirements specified in the decision European Commission of 7 January 2004 on the detailed rules for the application of the procedure provided for in Article 30 of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ EU L 7, 11.01.2005, p. 7).

4. The Council of Ministers shall indicate, by a regulation, the competent authorities to make the applications referred to in para. 2, taking into account the type of activity and the

¹⁰ Amendments to the consolidated text of the said Act were announced in the Journal of Laws of 2013 items 984 and 1238; of 2014 items 457, 490, 900, 942, 1101, and 1662; of 2015 items 151, 478, 942, 1618, 1893, 1960, and 2365; and of 2016 items 266, 831, and 925.

scope of operation of the relevant authorities and the competent authority's knowledge of the functioning of the relevant market in terms of a given activity.

Chapter 6

Contracts for social and other specific services

Article 138g.

1. The provisions of this Chapter shall apply only to contracts for social and other specific services, hereinafter referred to as “contracts for social services”, if the contract value is equal to or exceeds a PLN equivalent of the following amounts:

- 1) EUR 750,000 – in the case of contracts other than utilities contracts or defence and security contracts;**
- 2) EUR 1,000,000 – in the case of utilities contracts.**

2. The provisions of this Chapter shall not apply to contracts in the fields of defence and security.

Article 138h.

The subject-matter of a contract for social services are services listed in Annex XIV to Directive 2014/24/EU and Annex XVII to Directive 2014/25/EU.

Article 138i.

1. The contracting authority shall commence an award procedure for a contract for social services with the use of a contract notice or prior information notice. The provisions of Articles 11 to 11c shall apply accordingly.

2. A prior information notice may cover a period longer than 12 months.

3. The provision of para. 1 shall not be applied to the award of contracts for social services if the circumstances specified in Article 62 para. 1 and Article 67 para. 1 occur.

Article 138j.

In the case of utilities contracts for social services, the procedure referred to in Article 138i para. 1 shall be commenced with the use of:

- 1) contact notice;**
- 2) periodic indicative notice or qualification system notice;**

Article 138k.

The contracting authority shall specify the manner of conducting the award procedure for a contract for social services, taking account of the obligatory elements of the procedure defined in this Chapter and following the principles of equal treatment and competition, transparency, proportionality, as well as the provisions of Articles 17 and 18. The provision of Article 93 shall apply accordingly.

Article 138l.

The award procedure for a contract for social services is conducted applying the provisions of Section I Chapter 2a, Section II Chapter 5, Section V Chapter 3, and Section VI.

Article 138m.

The provisions of Articles 22 to 22d, Article 24, Articles 29 to 30b, and Articles 32 to 35 shall apply accordingly to contracts for social services.

Article 138n.

The contracting authority may conduct an award procedure for a contract for social services, as part of which:

- 1) in response to the notice, all interested economic operators shall submit tenders along with information confirming that they are not subject to exclusion and that they meet the conditions for participation in the procedure, or
- 2) in response to the notice, all interested economic operators shall submit requests to participate in the procedure along with information confirming that they are not subject to exclusion and that they meet the conditions for participation in the procedure, or
- 3) the contracting authority conducts negotiations with economic operators admitted to participate in the procedure.

Article 138o.

1. If the value of a contract for social services is lower than the amounts specified in Article 138g para. 1, the contracting authority may award the contract applying the provisions of para. 2 to 4.

2. The awarding entity shall award the contract in a transparent, objective, and non-discriminative manner.

3. The awarding entity shall publish on the website of Public Information Bulletin or — if there is no such website of the Public Information Bulletin — on another website, a contract notice containing information necessary considering the circumstances in which the contract is awarded, and in particular:

- 1) the time limit for submission of tenders, including the time necessary for preparation and submission of a tender;
- 2) description of the subject-matter of contract and definition of the volume or scope of the contract;
- 3) contract award criteria.

4. Immediately after awarding the contract, the awarding entity shall publish on the website of the Public Information Bulletin or — if there is no such website of the Public Information Bulletin — on another website, information about the contract awarded, with the company name or the name and surname of the entity that concluded the public procurement contract. Should the contract not be awarded, the awarding entity shall publish on the website of the Public Information Bulletin or — if there is no such website of the Public Information Bulletin — on another website, information that

the contract was not awarded.

Article 138p.

1. The contracting authority may make a proviso in the contract notice that for the award of a contract for health, social, and cultural services covered by CPV reference numbers 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8, defined in the Common Procurement Vocabulary, only such economic operators may apply that jointly fulfil the following conditions:

- 1) the aim of their activity is the execution of general interest tasks connected with the provision of these services, and the social and vocational integration of the persons referred to in Article 22.2;
- 2) their activity is not intended to generate profit and they devote the whole of their income to the achievement of statutory objectives, and do not distribute profit between their shareholders or employees;
- 3) their management or ownership structure is based on co-managing in the case of co-operatives, employee stock ownership or employee participation principles, which shall be specified by the economic operator in its articles of association;
- 4) within the last 3 years preceding the day of commencement of the award procedure for the contract for social services, they were not awarded any contract on the basis of this provision by the same contracting authority.

2. In cases referred to in para. 1, the public procurement contract may not be concluded for a period longer than 3 years.

Article 138q.

The contracting authority shall set time limits for the submission of tenders or requests to participate in a procedure, taking account of the complexity of the subject-matter of contract and the time necessary to prepare tenders or requests.

Article 138r.

1. The contracting authority shall reject a tender in cases specified in Article 89.
2. The contracting authority shall also reject a tender in other cases than specified in Article 89, if the contracting authority has provided for additional premises of rejection of a tender in the contract notice or in the tender specification.
3. The contracting authority shall select the best tender that provides the best value for money and fulfils other criteria, in particular related to the quality and sustainability of social services, continuity or availability of a given service, or the criterion of the extent to which special needs of the service user are taken into account.

Article 138s.

1. After the award of a contract for social services, the contracting authority shall submit an award notice for publication. The provisions of Article 95.2 shall be applied.

2. The contracting authority may group award notices and submit them for publication within 30 days as of the last day of the each quarter.

**TITLE IV
PUBLIC PROCUREMENT CONTRACTS**

Article 139.

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

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

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

Article 140.

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

2. [repealed]

3. The contract shall be made void in the part which exceeds the subject-matter of contract defined in the tender specification, subject to Article 144.

Article 141.

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

Article 142.

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

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

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

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

- 1) credit and loan;
- 2) bank account, if the contract period does not exceed 5 years;

-
- 3) insurance, if the contract period does not exceed 5 years;
 - 4) [repealed];
 - 5) provision of public transport services;
 - 6) public-private partnership.**

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

- 1) the rate of tax on goods and services,
- 2) the amount of minimum wage or minimum hourly wage determined based on provisions of the Act of 10 October 2002 on the minimum wage,**
- 3) the rules on social insurance or health insurance or the rate of social security or health insurance contributions

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

Article 143.

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

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

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

- 1) electrical energy from the power network;

2. Article 142 para. 3 shall not apply

Article 143a.

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

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

2) The total remuneration payable to economic operator after execution of whole works - the contracting authority is obliged to provide for advance payments, however granting of subsequent advance payments by the contracting authority requires presentation by the economic operator of proof of payment of due remuneration to subcontractor and further subcontractor, referred to in art. 143c para. 1, involved in execution of part of a contract, for which the advance payment was granted.

2. In case of failure of economic operator to provide all the proofs of payment, referred to in para. 1, suspended shall be accordingly:

1) payment of due remuneration for accepted works,

2) subsequent advance payments

- in part equal to the sum of amounts resulting from non-provided proofs of payment.

3. In case referred to in para. 1, point 1, the contracting authority may specify in specification of essential terms of contract the percentage value of the last part of remuneration, which may not be more than 10% of the remuneration payable to economic operator.

Article 143b.

1. The economic operator, subcontractor or further subcontractor of contract for works contract intending to conclude a subcontract, having works as its subject matter, is obliged during the execution of contract for works, to submit to contracting authority a draft of subcontract, whereas subcontractor or further subcontractor is required to enclose consent of the economic operator for conclusion of a subcontract, which consent is in accordance with the draft subcontract.

2. The time limit for payment of remuneration to subcontractor or further subcontractor provided for in the subcontract may not be more than 30 days from the date of delivery of the economic operator, subcontractor or further subcontractors of the invoice or receipt confirming the execution of supply, service or work assigned to subcontractor or further subcontractor.

3. the contracting authority, within the time limit specified in accordance with art. 143d para. 1 point 2 shall submit **in written form** reservations to the draft of subcontract, having works as its subject matter:

1) if it does not fulfill the requirements set out in specification of essential terms of contract;

2) if it provides for time limit for payment of remuneration longer than specified in the para. 2.

4. Failure to submit **in written form** reservations to submitted draft of subcontract, having works as its subject matter, within the time limit specified in accordance with art. 143d para. 1 point 2 shall be deemed acceptance of the draft subcontract by the contracting authority.

5. The economic operator, subcontractor or further subcontractor of contract for works shall submit to the contracting authority a certified true copy of the subcontract, where works are its subject matter, within 7 days from the date of its conclusion.

6. The contracting authority, within the time limit specified in accordance with art. 143d para. 1 point 2, shall submit **in written form** objection to subcontract, where works are its subject matter, in cases referred to in para. 3

7. Failure to submit **in written form** objection to submitted subcontract, where works are its subject matter, within the time limit specified in accordance with Art. 143d para. 1 point 2 shall be deemed acceptance of the subcontract by the contracting authority.

8. The economic operator, subcontractor or further subcontractor of contract for works shall submit to the contracting authority a certified true copy of the subcontract, where supplies or services are its subject matter, within 7 days from the date of its conclusion, except for subcontracts of the value less than 0,5% of the contract value in public

procurement and subcontracts, where its subject matter has been indicated by the contracting authority in the specification of essential terms of contract, as not falling under this obligation. The exemption referred to in the first sentence does not apply to subcontracts of a value of more than 50 000 PLN. The contracting authority may specify a lower value, of which the obligation to submit a subcontract shall apply.

9. In case, referred to in para. 8, if the date of payment of wages is longer than specified in the para. 2, the contracting authority shall inform the economic operator thereof and summons it to make changes in the contract under the pain of payment of contractual penalty.

10. The provisions of para. 1-9 shall apply accordingly to changes in the subcontract.

Article 143c.

1. The contracting authority shall directly pay due remuneration to a subcontractor or further subcontractor that entered into subcontract for works accepted by the contracting authority, or that entered into subcontract submitted to contracting authority, having supplies or services as its subject matter, in case of evasion of payment respectively by the economic operator, subcontractor or further subcontractor of contract for works.

2. The remuneration, referred to in para. 1, applies only to claims arising after acceptance by the contracting authority of the subcontract, having works as its subject matter, or after the submission of a certified true copy of the subcontract, having supplies and services as its subject matter.

3. Direct payment covers only due remuneration without interests, payable to subcontractor or further subcontractor.

4. Before making direct payment, the contracting authority is obliged to allow the submission by the economic operator of comments **in written form** on the legitimacy of direct payments of wages to subcontractor or further subcontractor, referred to in para. 1. The contracting authority shall inform on the time limit for submission of comments, not less than seven days from delivery of this information.

5. In case of submission of comments, referred to in para. 4, within the time limit specified by the contracting authority, the contracting authority may:

- 1) not make direct payment of wages to subcontractor or further subcontractor if the economic operator demonstrates lack of justification for such payment or
- 2) deposit to court the amount needed to cover the remuneration of subcontractor or further subcontractor if there is substantial doubt of the contracting authority as to the amount of the due payment or to the entity to whom payment is due, or
- 3) make the direct payment of remuneration to subcontractor or further subcontractor if the subcontractor or further subcontractor demonstrates the legitimacy of such payment.

6. In case of direct payment to subcontractor or further subcontractor, referred to in para. 1, the contracting authority shall deduct the amount of paid remuneration from remuneration payable to the economic operator.

7. The need for multiple direct payments to subcontractor or further subcontractor, referred to in para. 1, or the need for direct payment in the amount of more than 5% of the contract value may constitute grounds for withdrawal from the contract by the contracting authority.

8. The provisions of the Act of 23 April 1964 - Civil Code shall apply to joint liability of the contracting authority, economic operator, subcontractor or further subcontractor for the performance of works, unless provided otherwise in the Act.

Article 143d.

1. The contract for works includes, in particular, provisions relating to:

1) the obligation of economic operator to submit to the contracting authority of the draft of subcontract, having works as its subject matter, as well as draft of its modification, and a certified true copy of the subcontract, having works as its subject matter;

2) an indication of the time limit for submission by the contracting authority of reservations to the draft of subcontract, having works as its subject matter, and to draft of its modification or of objections to the subcontract, having works as its subject matter, and to its modifications;

3) obligation of economic operator to submit a certified true copy of concluded subcontracts, having supplies or services as their subject matter, and their modification;

4) rules for payment of remuneration to economic operator, conditional upon presentation of proof of payment of due remuneration to subcontractors or further subcontractors;

5) time limit for payment of remuneration to subcontractor or further subcontractor;

6) rules of subcontracting with further subcontractors;

7) the amount of contractual penalties due to:

a) non-payment or untimely payment of remuneration to subcontractors or further subcontractors,

b) failure to submit for acceptance to contracting authority of a draft of subcontract, having works as its subject matter, or the draft of its modification,

c) failure to submit a certified true copy of a subcontract or its modification,

d) lack of modification of the subcontract as regards the time limit for payment.

2. In cases referred to in para. 1 points 1 and 3 and art. 143b. 5 and 8, the submitter may certify a true copy of the subcontract.

Article 144.

1. Any amendments to the provisions of a concluded contract or framework agreement, when compared to the content of the tender based on which the economic operator has been selected, shall be prohibited, unless at least one of the following circumstances occur:

1) the amendments have been provided for in the contract notice or in the tender specification in the form of explicit contractual provisions which specify the scope of the amendments, and in particular any possible changes in the amount of remuneration of the economic operator, and the nature and conditions for the introduction of the amendments;

-
- 2) the amendments relate to the provision of additional supplies, services, or works by the incumbent economic operator, not covered by the main contract, provided that they became necessary and the following conditions are jointly met:
 - a) the economic operator may not be changed for economic or technical reasons, in particular relating to interchangeability or interoperability of equipment, services, or installations contracted under the main contract,
 - b) changing the economic operator would result in significant inconvenience or considerable increase of costs for the contracting authority,
 - c) value of each subsequent change does not exceed 50% of the contract value defined originally in the contract or in the framework agreement;
 - 3) the following conditions are jointly met:
 - a) necessity to amend the contract or the framework agreement results from the circumstances which could not be predicted by the contracting authority despite acting with due diligence.
 - b) value of the amendment does not exceed 50% of the contract value defined originally in the contract or in the framework agreement;
 - 4) the economic operator awarded with the contract by the contracting authority is to be replaced by a new economic operator:
 - a) on the basis of contractual provisions referred to in subpara. (1),
 - b) following a merger, division, transformation, bankruptcy, restructuring operations, or acquisition of the incumbent economic operator or its enterprise, provided that the new economic operator meets the conditions for participation in the procedure, no grounds for exclusion occur with regard to it, and such a situation does not result in other significant amendments to the contract,
 - c) as a result of transfer of liabilities of the economic operator towards subcontractors onto the contracting authority;
 - 5) amendments, whatever their value, are not significant within the meaning of para. 1e;
 - 6) the total value of amendments is lower than the amounts specified in the provisions issued under Article 11 para. 8 and lower than 10% of the contract value specified in the original contract in the case of contracts for services or supplies, or – in the case of contracts for works – lower than 15% of the contract value specified in the original contract.”,

1a. In cases referred to in para. 1 (2), 1 (3), and 1 (4) (b), the contracting authority may not introduce subsequent amendments to the framework agreement to evade application of the provisions of the Act.

1b. In cases referred to in para. 1 (1), 1 (3), and 1 (6), amendments to contractual obligations may not result in a change in the nature of the contract or the framework agreement.

1c. In cases referred to in para. 1 (2) and 1 (3), the contracting authority, having

amended the contract, shall announce in the Public Procurement Bulletin or submit to the Publications Office of the European Union a notice of the amendment.

1d. If a contract contains provisions allowing for a change in the remuneration payable to the economic operator due to changes in circumstances other than a change of the scope of benefits of the economic operator, the admissible value of contract referred to in para. 1 (2) (c), 3 (b), and (6) shall be determined on the basis of the contract value defined originally, taking account of the changes resulting from these provisions.

1e. An amendment to the provisions included in a contract or a framework agreement shall be considered significant, if:

- 1) it changes the general nature of the contract or the framework agreement in relation to the nature of the contract or the framework agreement in its original wording;
- 2) it does not change the general nature of the contract or the framework agreement and at least one of the following circumstances occur:
 - a) the amendment introduces conditions which, had they been made in the contract award procedure, other economic operators could have participated in the procedure or tenders of other content would have been accepted,
 - b) the amendment disturbs the economic equilibrium of the contract or the framework agreement in favour of the economic operator, in the manner not provided for originally in the contract or the framework agreement,
 - c) the amendment significantly extends or reduces the scope of benefits and liabilities resulting from the contract or the framework agreement,
 - d) the amendment consists in replacing the economic operator to whom the contracting authority has awarded the contract, in other cases than listed in para. 1 (4).”

2. A contractual provision amended in breach of para. 1 to 1b, 1d, and 1e shall be null and void. Void provisions of the contract or the framework agreement shall be replaced by contractual provisions in the original wording.

3. If the contracting authority intends to change the conditions of performance of a contract which exceed the amendments to the contract or the framework agreement allowed under para. 1 to 1b, 1d, and 1e, the contracting authority is obliged to conduct a new contract award procedure

Article 144a.

1. The PPO President may apply to the court for invalidation of:

- 1) the part of the contract, referred to in Article 140 para. 3;
- 2) amendments of the contract made in breach of Articles 144 para. 1 to 144 para. 1b, 144 para. 1d, and 144 para. 1e;
- 3) contracts, referred to in Article 146 para. 1.

2. The authorisation, referred to in Article 144a para. 1, shall expire after 4 years from the day, on which the contract was concluded or modified.

Article 144b.

1. If the supervisor of the contracting authority has reasonable doubts as regards the correctness of application of Article 67 para. 1 (12) to (15), it shall prohibit entering into a contract until the matter is clarified, for a period not longer, however, than 21 days.

2. Where the supervisor is of the opinion that there are no grounds for the award of a contract pursuant to Article 67 para. 1 (12) to (15), it shall prohibit entering into the contract, and if the contract has been concluded, it shall request the contracting authority to terminate or withdraw from the contract within the time limit indicated by the supervisor.

3. In the case of ineffective expiry of the time limit referred to in para. 2, the supervisor shall request a court to cancel the contract, in whole or in part.

4. The provisions of para. 1 to 4 do not affect the entitlements and obligations of supervisors of the contracting authority, resulting from separate regulations.

Article 145.

1. In the event of a material change of circumstances which causes that the performance of the contract is no longer in the public interest, and which could not have been foreseen at the time of concluding the contract, or where further performance of the contract can pose a threat to a material security interest of the state or public security, the contracting authority may withdraw from the contract within a period of 30 days from the date on which it became aware of these circumstances.

2. In the case referred to in para. 1, the economic operator may demand remuneration due for the performed part of the procurement contract.

Article 145a.

The contracting authority may terminate a contract if at least one of the following circumstances occur:

- 1) an amendment to the contract has been made in breach of Articles 144 para. 1 to 144 para. 1b, 144 para. 1d, and 144 para. 1e;
- 2) when concluding the contract, the economic operator was subject to exclusion under Article 24 para. 1;
- 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, Directive 2014/24/EU and Directive 2014/25/EU, due to the fact that the contracting authority has awarded the contract in breach of the European Union law.

Article 145b.

In the case referred to in Article 145a, the economic operator may demand only

remuneration due for the portion of contact performed.

Article 146.

1. A procurement contract shall be null and void if the contracting authority:
 - 1) used the negotiated procedure without publication or single-source procurement in breach of provisions of the Act;
 - 2) failed to place the contract notice in the Public Procurement Bulletin or submit it to the Publications Office of the European Union;
 - 3) conclude the contract in breach of provisions of Article 94 para. 1 or Article 183 para. 1, if this prevented the National Appeals Chamber from examining the appeal before the conclusion of a contract;
 - 4) **prevented the economic operators who were not admitted to participate in a dynamic purchasing system so far from submitting requests to participate in the dynamic purchasing system or prevented the economic operators who were admitted to participate in a dynamic purchasing system from submitting tenders in a contract award procedure conducted as part of that system;**
 - 5) **prevented the economic operators with whom a framework agreement has been concluded from submitting tenders in a competitive procedure for the award of a contract under the framework agreement, provided that not all terms of the contract have been specified in the framework agreement.**
 - 6) used the request-for-quotation in the breach of provisions of this Act;
 - 7) has entered into the contract before the expiry of the time limit referred to in Article 67 para. 12.
2. A procurement contract shall not be subject of annulment, if:
 - 1) in case, referred to in para. 1 item 1, the contracting authority had reasonable grounds to believe that it acts in compliance with the Act and the contract was concluded respectively 5 days after the notice of intention to conclude a contract was placed in Public Procurement Bulletin or 10 days after such notice was published in Official Journal of the EU; or
 - 2) in cases, referred to in para. 1 item 4 and 5, the contracting authority had reasonable grounds to believe that it acts in compliance with the Act, and the contract was concluded after the expiry of the time limit fixed in Article 94 para. 1.
3. The annulment of the contract shall be in effect from the moment of its conclusion, subject to Article 192 para. 3 item 2 letter b.
4. Due to reasons, referred to in para. 1 and 6, the annulment of a contract may not be requested under Article 189 of the Code of Civil Procedure of 17 November 1964 (Journal of Laws No. 43, item 296 as amended¹¹).

¹¹ The amendments to this Act were published in Journal of Laws of 1965 No. 15 item 113; of 1974 No. 27, item 157; and No. 39, item 231; of 1975: No. 45, item 234; of 1982: No. 11, item 82; and No. 30, item 210; of 1983: No. 5, item 33; of 1984: No. 45, item 241 and 242; of 1985: No. 20, item 86; of 1987: No. 21, item 123; of 1988: No. 41, item 324; of 1989: No. 4, item 21; and No. 33, item 175; of 1990: No. 14, item 88; No. 34, item 198; No. 53, item 306; No. 55, item 318; and No. 79, item 464; Dz. U. of 1991: No. 7, item 24; No. 22, item 92;

5. The provision of para.1 shall not exclude the contracting authority's option to request the annulment of contract under Article 70⁵ of the Act of 23 April 1964 - Civil Code.

6. The PPO President may apply to the court for annulment of contract if the contracting authority acted or failed to act in breach of provision of the Act, what had or might have influenced the outcome of the procedure.

Article 146a.

A contract concluded under Article 67 para. 1 (12) to (14) shall expire with the lapse of 3 months as of the day on which in the controlled legal person referred to in Article 67 para. 1 (12) (c), (13), or (14) (c), private capital became involved, except for the cases referred to in Article 67 para. 10.

Article 147.

1. The contracting authority may request the economic operator to provide security on due performance of the contract, hereinafter referred to as „security”.

2. The security shall serve to cover the claims in respect of non-performance or improper performance of the contract.

3. [repealed]

4. [repealed]

Article 148.

1. The security may be provided at the economic operator's choice in one or several of the following forms:

1) cash;

and No. 115, item 496; of 1993: No. 12, item 53; of 1994: No. 105, item 509;] of 1995: No. 83, item 417; of 1996: No. 24, item 110; No. 43, item 189; No. 73, item 350; and No. 149, item 703; of 1997: No. 43, item 270; No. 54, item 348; No. 75, item 471; No. 102, item 643; No. 117, item 752; No. 121, item 769 and 770; No. 133, item 882; No. 139, item 934; No. 140, item 940; and No. 141, item 944; of 1998: No. 106, item 668; and No. 117, item 757; of 1999: No. 52, item 532; of 2000: No. 22, item 269 and 271; No. 48, item 552 and 554; No. 55, item 665; No. 73, item 852; No. 94, item 1037; No. 114, item 1191 and 1193; No. 122, item 1314, 1319 and 1322; of 2001: No. 4, item 27; No. 49, item 508; No. 63, item 635; No. 98, item 1069, 1070 and 1071; No. 123, item 1353; No. 125, item 1368; and No. 138, item 1546; of 2002: No. 25, item 253; No. 26, item 265; No. 74, item 676; No. 84, item 764; No. 126, item 1069 and 1070; No. 129, item 1102; No. 153, item 1271; No. 219, item 1849; and No. 240, item 2058; of 2003: No. 41, item 360; No. 42, item 363; No. 60, item 535; No. 109, item 1035; No. 119, item 1121; No. 130, item 1188; No. 139, item 1323; No. 199, item 1939; and No. 228, item 2255; of 2004: No. 9, item 75; No. 11, item 101; No. 68, item 623; No. 91, item 871; No. 93, item 891; No. 121, item 1264; No. 162, item 1691; No. 169, item 1783; No. 172, item 1804; No. 204, item 2091; No. 210, item 2135; No. 236, item 2356; and No. 237, item 2384; of 2005: No. 13, item 98; No. 22, item 185; No. 86, item 732; No. 122, item 1024; No. 143, item 1199; No. 150, item 1239; No. 167, item 1398; No. 169, item 1413 and 1417; No. 172, item 1438; No. 178, item 1478; No. 183, item 1538; No. 264, item 2205; and No. 267, item 2258; of 2006: No. 12, item 66; No. 66, item 466; No. 104, item 708 and 711; No. 186, item 1379; No. 208, item 1537 and 1540; No. 226, item 1656; and No. 235, item 1699; of 2007: No. 7, item 58; No. 47, item 319; No. 50, item 331; No. 99, item 662; No. 106, item 731; No. 112, item 766 and 769; No. 115, item 794; No. 121, item 831; No. 123, item 849; No. 176, item 1243; No. 181, item 1287; No. 192, item 1378; and No. 247, item 1845; of 2008: No. 59, item 367; No. 96, item 609 and 619; No. 110, item 706; No. 116, item 731; No. 119, item 772; No. 120, item 779; No. 122, item 796; No. 171, item 1056; No. 220, item 1431; No. 231, item 1547; No. 234, item 1571; and of 2009: No. 26, item 156; No. 67, item 571; No. 69, item 592 and 593; No. 131, item 1075; and No. 179, item 1395 and No. 216 item 1676 and of 2010 No. 3 item 13, No. 7 item 45, No. 40 item 229, iNo. 108 item 684 and No. 109 item 724.

-
- 2) bank sureties or guarantees of collective savings-loan fund, however the surety of collective savings - loan fund is always a financial surety;
 - 3) bank guarantees;
 - 4) insurance guarantees;
 - 5) sureties granted by entities, referred to in Article 6b para. 5 item 2 of the Act of 9 November 2000 on the establishment of the Polish Agency for Enterprise Development.

2. With the approval of the contracting authority a security may be provided also:

- 1) bills of exchange with the surety of bank or collective savings-loan fund;
- 2) by establishing a pledge on securities issued by the State Treasury or unit of territorial self-government;
- 3) by establishing a registered pledge, in accordance with the principles laid down in the provisions concerning registered pledges and the pledge register.

3. An economic operator shall remit security to be provided in cash by bank transfer to a bank account indicated by the contracting authority.

4. In the event of a deposit made in cash an economic operator may agree to count the amount of the deposit towards the security.

5. In the event of a cash security the contracting authority shall keep it on a bank account bearing interest. The contracting authority shall return security provided in cash together with interest resulting from the bank account agreement on which it has been kept less the cost of its operation and bank commission for transfer of funds to the economic operator's bank account.

Article 149.

1. In the course of the execution of procurement contract the economic operator may change the form of security to one or several of those referred to in Article 148 para. 1.

2. With the approval of the contracting authority the economic operator may change the form of the security to one or several of those referred to in Article 148 para. 2.

3. The change of the form of security shall be made preserving its continuity and without decreasing its amount.

Article 150.

1. The amount of the security shall be determined on a percentage-wise basis in relation to the aggregate price quoted in the tender or the maximum nominal value of the contracting authority's commitment under the contract, if unit price or unit prices have been quoted in the tender.

2. The security shall amount up to 10% of the total price specified in the tender or to the maximum nominal value of the contracting authority's liability resulting from the contract.

3. If the time for the completion of the contract exceeds one year, the security, with the consent of the contracting authority, may be established by deductions from dues for the already performed part of supplies, services or works.

4. In the case, referred to in para. 3, an economic operator shall be required to contribute at least 30% of the security amount on the date of the contract.

5. The contracting authority shall pay the amounts deducted to the bank account on the same day on which it pays invoices.

6. In the case, referred to in para. 3, payment of the full amount of the security shall be done not later than by the end of the first half of the period for which the contract was concluded.

7. If the period for which the security is to be lodged exceeds 5 years, a security paid in cash shall be lodged for the whole this period, and other forms of security shall be lodged for a period not shorter than 5 years, while the economic operator shall at the same time undertake to extend the security or lodge a new security for further periods.

8. If the security is not extended or a new security is not lodged at least 30 days before the expiry of the validity period of the existing security lodged in another form than cash, the contracting authority shall change the form of security into cash by withdrawing a relevant amount from the existing security.

9. The withdrawal referred to in para. 8 shall take place no later than on the last day of validity of the existing security.

10. The provision of Article 149 shall apply.

Article 151.

1. The contracting authority shall return the security within 30 days of the completion of the contract and acknowledgement by the contracting authority as duly performed.

2. The amount retained to secure claims for warranty for defect shall not exceed 30% of the amount of the security.

3. The amount referred to in para. 2 shall be returned not later than on the 15th day following the expiry of the period of warranty for defect.

Article 151a.

1. The contracting authority may make advance payments on performance of a contract, if such a possibility is provided for in the contract notice or in the tender specification.

2. [repealed]

3. The awarding party may not make an advance payment if the economic operator was selected in a negotiated procedure without publication or in a direct contract procedure, unless the contract is awarded under Article 67 para. 1 (10).

4. The contracting authority can give subsequent advance payments provided that the economic operator evidences that it has performed the contract within the value of the advance payments received earlier.

5. The contracting authority can request from the economic operator to provide a security on the advance payment in one or more forms as listed in Articles 148 para.1 and 2.

6. The contracting authority shall request security on the advance payment if the anticipated value of advances exceeds 20% of the value of economic operator's remuneration.

7. If there is a request to provide security on the advance payment, the contract shall

specify also the form or forms of the security on the advance payment, the value of the security as well as the manner how it should be provided and returned. The contract may provide possibility to change the form of the security on the advance payment in the course of performance of that contract.

8. The provisions of para. 2–4 and 6 shall not apply to the awarding entities referred to in Article 3 para. 1 point 2–7.

TITLE V PRESIDENT OF THE PUBLIC PROCUREMENT OFFICE (PPO PRESIDENT)

Chapter 1 Scope of activities

Article 152.

1. The PPO President is a central government body competent for matters concerning public contracts.

2. The PPO President shall be subordinate to **the minister responsible for the economy**.

3. The PPO President shall be assisted in his work by the PPO.

4. The organisation of the PPO shall be defined by a statute issued by the **minister responsible for the economy** by means of an order.

Article 153.

1. The PPO President shall be appointed by the **minister responsible for the economy** from among persons selected in open and competitive recruitment. The **minister responsible for the economy** shall recall the PPO President.

2. The PPO President may be a person who:

- 1) has higher education (title of Master or equivalent);
- 2) is Polish citizen;
- 3) enjoys all public rights;
- 4) has not been validly convicted of an offence committed intentionally or intentional treasury offence;
- 5) has managerial competences;
- 6) has at least 6 year work experience, including at least 3 year work experience on managerial position;
- 7) has education and knowledge in matters which fall within the competences of PPO President.

3. The information on recruitment for the post of PPO President shall be announced by placing the information in a place accessible to the public in the seat of PPO and in Public Information Bulletin of the PPO and Public Information Bulletin of the Chancellery of Prime Minister. The information shall include:

- 1) name and address of the Office;

-
- 2) name of the post;
 - 3) requirements for the post resulting from the legal provisions;
 - 4) range of tasks performed at the post;
 - 5) indication of the required documents;
 - 6) time limit and place for the submission of documents;
 - 7) information on the method and recruitment techniques.

4. The time limit, referred to in para. 3 item 6, shall not be less than 10 days from the day on which the information was published in Public Information Bulletin of the Chancellery of the Prime Minister.

5. Recruitment for the position of the President of the Office shall be carried out by a team appointed by the minister responsible for the economy, comprised of at least 3 people whose expertise and experience ensure selection of the best candidates. In course of recruitment procedure, the work experience, knowledge necessary to perform the tasks at the recruited post and managerial competences of the candidate shall be assessed.

6. The assessment of the knowledge and managerial competences, referred to in para. 5, shall be conducted on request of the unit by the independent person not being the unit member, who possess the appropriate qualifications to conduct such assessment.

7. The member of the unit or the person, referred to in para. 6, are obliged to keep the information concerning persons, which was obtained in course of recruitment secret.

8. In the course of the recruitment, the team selects no more than 3 candidates and presents them to the minister responsible for the economy.

9. The report from the recruitment shall be prepared, which contains:

- 1) name and address of the Office;
- 2) name of the recruited post and the number of candidates;
- 3) names, surnames and addresses of not more than top 3 candidates ordered based on the level of fulfillment of requirements specified in the recruitment notice;
- 4) information on the applied recruitment methods and techniques;
- 5) justification of the selection or the reasons for non-selection of candidates;
- 6) composition of the unit.

10. The result of the recruitment shall be announced forthwith by placing the information in the Public Information Bulletin of the Office and Public Information Bulletin of the Chancellery of Prime Minister. The information on results of recruitment shall contain:

- 1) name and address of the Office;
- 2) name of the recruited post;
- 3) names and surnames of the selected candidates along with their place of residence under provisions of the Civil Code or the information on non-selection of candidate.

11. Placement in the Public Information Bulletin of the Chancellery of Prime Minister of the recruitment notice and the notice on results of the recruitment shall be free of charge.

Article 154.

The PPO President:

- 1) prepares drafts of normative acts on public contracts;
- 2) takes decisions on individual issues stipulated in this Act;
- 3) issues by electronic means the Public Procurement Bulletin, where all the notices provided for in this Act are placed;
- 4) [repealed];
- 5) keeps and publishes on the PPO website a list of organisations authorised to submit legal protection measures;
- 5a) [repealed];
- 6) ensures the functioning of the system of legal protection measures;
- 7) prepares training programmes, organises and encourages training in the field of public procurement;
- 8) prepares and disseminates standard criteria for assessment of the substance of the training;
- 9) [repealed]
- 10) prepares and disseminates exemplary standard forms of public procurement contracts, rules of procedures and other documents used when awarding public contracts;
- 11) watches over observance of the public procurement system rules and in particular carries out controls of the contract award process within the scope stipulated in this Act;
- 12) disseminates the principles of professional ethics of persons performing tasks within the public procurement system;
- 13) aspires to provide uniform application of the procurement provisions, considering the judicature of courts and the Constitutional Court, in particular dissemination of decisions of the National Appeal Chamber, courts and Constitutional Court which refer to public procurement;
- 14) maintains international co-operation on issues relating to public contracts;
- 15) analyses the functioning of the system of public contracts;
- 16) prepares and presents to the (Polish) Council of Ministers and to the European Commission annual reports on the functioning of public procurement system, including information on performance of task, referred to in point 10;
- 16a) submits to the European Commission, once every three years, a procurement system monitoring report and a statistical report on contracts whose value is lower than the amounts specified in the provisions issued under Article 11 para. 8;**
- 17) presents to the **minister responsible for economy** an annual information on the functioning of the National Appeal Chamber, which considers the problems resulting from the adjudication;
- 17a) presents to the **minister responsible for economy** not less than once every three years a plan on the manner of performing the tasks, referred to in point 10, for the next years;

-
- 18) proposes candidates for the post of President and Vice-President of the National Appeal Chamber;
 - 19) puts forward a motion to appoint the disciplinary agent of the National Appeal Chamber;
 - 20) carries out activities which refer to e-Procurement;
 - 21) delivers to the European Commission, every year by the 31st March, the decisions passed by the National Appeal Chamber in the previous year with regard to appeals concerning contract award procedures, where the contract was not annulled due to important public interest, referred to in Article 192, together with the justification.

Article 154a.

1. The entry on the list, referred to in Article 154 para. 5, can be applied for by the entities which operate under the regulations on:

- 1) chambers of commerce;
- 2) crafts;
- 3) professional self-government for certain entrepreneurs;
- 4) employers' organisations;
- 5) **professional self-governments for architects and construction engineers.**

2. The PPO President conducts the entry on the list, refusal of entry or the deletion from the list by means of administrative decision.

Article 154b.

[repealed]

Article 154c.

1. **The President of the Office undertakes activities with a view to ensuring uniform application of the provisions of the Act by the contracting authorities, in particular by issuing – *ex officio* or upon request – opinions presenting interpretation of the provisions of the Act which raise serious doubts or result in discrepancies in jurisprudence, taking into account case-law of courts, Constitutional Tribunal, or Court of Justice of the European Union.**

2. **An opinion referred to in para. 1 shall contain in particular:**

- 1) **description of the legal issue that requires interpretation of the provisions of the Act;**
- 2) **clarification of the scope and manner of application of the provisions of the Act, along with legal justification.**

3. **A request for an opinion referred to in para. 1 shall contain substantiation, which shall, in particular:**

- 1) **present the essence of the legal issue and designate provisions of the Act**

requiring an opinion;

2) justify the need for issuing an opinion.

4. The President of the Office shall leave a request for an opinion referred to in para. 1 unexamined, if the conditions referred to in para. 1 and 3 are not met or the request has been submitted by an entity providing professional legal services.

5. The President of the Office shall post the opinions referred to in para. 1, issued *ex officio*, on the website of the Office.

Article 155.

1. The PPO President shall perform the tasks provided for in this Act with the assistance of no more than two Vice-Presidents.

2. The Vice-Presidents of the PPO shall be appointed by **the minister responsible for economy** from among persons selected in open and competitive recruitment at the request of the PPO President. The **minister responsible for economy** shall recall the Vice-Presidents of the PPO at the request of the PPO President.

3. The unit which conducts the recruitment for the posts, referred to in para. 2, shall be appointed by the PPO President.

4. To the manner of conducting recruitment for the posts, referred to in para. 2, the provisions of Article 153 para. 2-11 shall apply accordingly.

Article 156.

[repealed]

Chapter 2

Public Procurement Council

Article 157.

1. The Public Procurement Council shall hereby be established, hereinafter referred to as the "Council", which is an advisory and consultative body of the PPO President.

2. The Council shall in particular:

- 1) express its opinions on particularly important matters of the public contracts system presented to it by the PPO President;
- 2) give its opinion on normative acts concerning public contracts;
- 3) give its opinion on the annual reports of the PPO President concerning the functioning of the public contracts system;
- 4) establish the principles of professional ethics of persons performing tasks specified in this Act within the public contracts system;
- 5) [repealed]

Article 158.

1. The Council shall be composed of 10 to 15 members appointed by the **minister responsible for economy**.
2. **The candidates may be proposed by parliamentary clubs, national local government organisations, national entrepreneurs' organisations, and the Council for Social Dialogue.**
3. The **minister responsible for economy** shall appoint members of the Council from among persons who:
 - 1) are Polish citizens;
 - 2) enjoy all public rights;
 - 3) have not been convicted of an offence committed in connection with a contract award procedure, bribery or any other offence committed in order to gain a financial benefit;
 - 4) have the knowledge and authority guaranteeing proper performance of the Council's tasks.
4. The **minister responsible for economy** shall appoint from among the persons, referred to in para. 1, the President of the Council. The Council shall appoint the Vice-President of the Council from among its members.
5. Members of the Council are entitled to remuneration for participation in the Council's works.
6. The proceedings of the Council shall be regulated by the Rules of Procedure adopted by the Council.

Article 159.

1. The term of office of the Council shall expire together with the term of office of the PPO President.
2. Membership in the Council shall expire in the event of expiry of the term of office of the Council, death of its member, his dismissal or resignation.
3. The **minister responsible for economy** shall recall a member of the Council if he ceased to satisfy one of the conditions referred to in Article 158 para. 3, and at the request of the PPO President in the event of:
 - 1) failure to fulfil the obligations of a Council's member;
 - 2) loss of authority guaranteeing proper performance of the Council's tasks;
 - 3) illness preventing him from carrying out the functions of a member of the Council.

Article 160.

1. The PPO provides assistance to the proceedings of the Council.
2. The **minister responsible for economy** shall specify, by a regulation, the amount of remuneration of the President, Vice-President and other members of the Council, taking into

consideration performed functions and the scope of duties of the President, Vice-President and other members of the Council.

Chapter 3

Control of the award of contracts

Section 1

General provisions

Article 161.

1. The PPO President shall control the award of contracts.
2. The objective of controls is to prove the conformity of contract award procedures with the Act.
3. The control shall be conducted in the seat of the PPO, however control of contract award procedures concerning documents that include classified information with a “confidential” or “strictly confidential” clause, might be conducted at the seat of contracting authority.
4. The commencement of the control may be preceded by the explanatory proceeding in order to establish whether there is a justified presumption that the provisions of the Act were violated in course of the contract award procedure what might have influenced results of the award procedure.

Article 162.

1. The PPO employees shall be excluded from participation in control procedure, if they:
 - 1) participated in the procedure being the subject of control or actions directly connected with their preparation on the part of contracting authority or economic operator;
 - 2) remain in matrimony, actual relationship, consanguinity or affinity in direct line or consanguinity or affinity in indirect line up to the second degree, or is related due to adoption, legal custody or guardianship with the person acting on the part of contracting authority or economic operator in the procedure being controlled, his legal deputy or members of managing or supervisory bodies of legal persons competing for the contract, which is the subject of control;
 - 3) during three years prior to the date of the start of the award procedure being the subject of control remained in a relationship of employment or freelance agreement with the contracting authority or economic operator or was a member of managing or supervisory bodies of legal persons competing for the controlled contract;
 - 4) remain in such legal or actual relationship with the person acting on the part of the contracting authority or economic operator in the procedure being the subject of control, which may raise justified doubts as to their impartiality.

2. The employee of the PPO shall inform the PPO President about reasons of his exclusion from the participation in a control.

3. The PPO President shall decide on the exclusion of the employee by means of a decision.

Article 163.

1. In course of the explanatory proceeding or control, the PPO President may:

1) request from the head of the contracting authority to submit the contract award procedure documentation which is certified by the head of the contracting authority to be in conformity with the original;

2) request from the head of the contracting authority or from its employees and other subjects written explanations in cases concerning the subject of control;

3) ask for the expert's opinion, if the establishment or the assessment of the actual state of the case or conduct of other control activities requires specific knowledge.

2. The expert shall be entitled to remuneration covered by the PPO President, in the amount determined in accordance with provisions of the Chapter 2 title III of the Act of 28 July 2005 on the court costs in civil cases (Journal of Laws of 2010, No. 90 item 594 as amended¹²).

3. The factual state of the case shall be based on the whole evidence gathered in the course of the explanatory proceeding and control, in particular based on the award procedure documentation, explanation of the head and employees of the contracting authority, expert's opinions and explanations of other subjects.

Article 164.

1. Following the control a control report shall be prepared.

2. The control report shall include in particular:

1) name (company name) and address of the contracting authority;

2) date of commencement and end of a control;

3) names of persons performing the control;

4) indication of the contract award procedure, which was the subject-matter of the control;

5) information on findings of breaches.

Section 2

Ad hoc control

Article 165.

¹² The amendments to consolidated version of this Act were published in Journal of Laws of 2010 No. 152 item 1016 and No. 197 item 1307 and of 2011 No. 92 item 531, No. 106 item 622, No. 149 item 887, No. 163 item 981 and No. 240 item 1431

1. The PPO President may commence an ad hoc control ex officio or on request in case of justified presumption, that in course of the contract award procedure a breach of the provisions of the Act appeared, which might have influenced the result.

2. The ad hoc control may be commenced not later than within 4 years from the day of the end of the contract award procedure. If the control is commenced before the conclusion of public contract, the provisions of Article 169 para. 3, Article 170 para. 2 and 4, and Article 171 para. 1, 3 and 5 shall apply.

3. The PPO President shall inform the applicant on the commencement of the ad hoc control or on the refusal of commencement of ad hoc control, indicating the justification of the lack of circumstances, as referred to in para. 1.

4. The PPO President shall commence an ad hoc control on request of the managing authority, referred to in provisions on the National Development Programme, in provisions on rules of development policy, in provisions on implementation of cohesion policy programmes in the 2014-2020 financial perspective, in provisions on support for rural development by the European Agricultural Fund for Rural Development within Rural Development Programme for 2007-2013, in provisions on support for rural development by the European Agricultural Fund for Rural Development within Rural Development Programme for 2014-2020, or in provisions on social assistance, hereinafter referred to as “the managing authority”, or on request of the paying agency, referred to in provisions on support for rural development by the European Agricultural Fund for Rural Development within Rural Development Programme for 2014-2020, if based on the justification of request of managing authority or paying agency, there is a justified presumption that in course of contract award procedure the breach of provisions of the Act appeared, which might have influenced its outcome.

Article 166.

1. The end of the ad hoc control shall be the submission of information on the result of ad hoc control, which contains in particular:

- 1) description of the contract award procedure, which was the subject-matter of the control;
- 2) information on confirmation of breach or lack of breach.

2. In case of reservations, as referred to in Article 167 para. 1, the end of the ad hoc control shall be the submission to the contracting authority of information on the final resolution of reservations.

Article 167.

1. The contracting authority shall have the right to make justified reservations to the PPO President within 7 days from the submission of information on the result of ad hoc control.

2. The PPO President shall examine the reservations within 15 days from the date of their receipt. In case of not admitting reservations, the PPO President shall dispatch those reservations for an opinion to the National Appeal Chamber.

3. The National Appeal Chamber composed of 3 members shall prepare an opinion on the reservations in form of resolution, within 15 days from the date of their receipt.

4. The opinion of the National Appeal Chamber is binding for the PPO President.

5. The PPO President shall forthwith inform the head of the contracting authority about the final examination of the reservations.

6. Article 188 shall apply accordingly to the members of the National Appeal Chamber who examine the reservations.

Article 168.

In case of disclosed breach of the provisions of this Act, the PPO President may:

- 1) [repealed];
- 2) impose a financial penalty referred to in Title VII;
- 3) apply to the court for the annulment of procurement contract in its entirety or in part.

Article 168a.

In case of disclosure of breach of the Act constituting a violation of public finance discipline, the President of PPO notifies the competent agent for public finance discipline of the breach of public finance discipline.

Section 3

Ex-ante control of contracts co-financed from the EU funds

Article 169.

1. The provisions of this Section shall apply to contracts or framework agreements co-financed by the EU funds.

2. The PPO President shall conduct control of the awarded contracts prior to the conclusion of contract (ex-ante control), if the value of contract or framework agreement for:

- 1) works - is equal to or exceeds the PLN equivalent of EUR 20 000 000;
- 2) supplies or services - is equal to or exceeds the PLN equivalent of EUR 10 000 000.

3. The submission of the copy of the contract award procedure documentation to the PPO President shall commence the ex-ante control.

4. On request of the management authority, the PPO President may refrain from conducting ex-ante control, if based on the assessment of the management authority, the contract award procedure was conducted in accordance with provisions of the Act. The PPO President shall forthwith dispatch such an information to contracting authority and to applicant.

Article 170.

1. The contracting authority shall forthwith, after the National Appeal Chamber passes its judgement or decision which ends the appeal procedure, with regard to the selection of the best tender, or after the expiry of the time limit for lodging the appeal, but prior the conclusion of contract, submit to the PPO President the copies of the documentation of contract award procedure, confirmed by the contracting authority's manager to be in conformity with the original, for the purposes of conducting a ad-hoc control.

2. The contracting authority shall forthwith inform the PPO President about appeal or complaint being lodged after dispatch of the documentation for ex- ante control. The PPO President shall refrain from conducting the ex- ante control until the National Appeal Chamber passes the judgement or decision which ends the appeal procedure, without prejudice to Article 183 para. 2.

3. In case of tender for lots where the value of separate lots is less than the amounts, as referred to in Article 169 para. 2, The PPO President may refrain from conducting control, and shall notify it to the contracting authority immediately after the receipt of the copy of documentation, as referred to in para. 1.

4. The start of ex-ante control shall suspend the time limit during which an economic operator must maintain his tender, until the end of control.

Article 171.

1. The end of an ex-ante control shall be the submission to the contracting authority of the information on the result of the control, which contains in particular:

- 1) description of the contract award procedure, which was the subject-matter of the control;
- 2) information on confirmation of breach or lack of breach.
- 3) post control recommendations – if in course of the control the cancellation of the procedure or removal of the confirmed breaches was found legitimate.

2. In case of making reservations, as referred to in Article 171 a, the submission to the contracting authority of the information on the final resolution of reservations shall end the control procedure.

3. The submission of information on control results shall occur not later than within 14 days from the day of submission of the documentation, as referred to in Article 163 para. 1, and in case of the highly complicated control- not later than within 30 days from the day of submission of the documentation, as referred to in Article 163 para. 1.

4. Until the submission of the information, as referred to in para. 1, the contract shall not be concluded.

5. The head of the contracting authority, shall inform in writing the PPO President on the manner of performing post control recommendations.

Art. 171a.

The contracting authority shall have the right to make justified reservations to the PPO President within 7 days from the submission of the information on the control results. The provisions of Article 167 para. 2-6 shall apply accordingly.

Chapter 4 National Appeal Chamber

Article 172.

1. The National Appeal Chamber hereinafter referred to as the “Chamber” shall be established shall be competent for the examination of the appeals lodged in contract award procedures.

2. The bodies of the Chamber are:

- 1) President;
- 2) Vice-President;
- 3) General Assembly composed of the members of the Chamber.

3. The President of the Chamber conducts the works of the Chamber, in particular:

- 1) represents the Chamber outside;
- 2) presides over the General Assembly;
- 3) fixes the dates of sessions of adjudication panels and orders the joint examination of the appeals;
- 4) appoints the adjudication panel of the Chamber for examination of the appeal, including its President;
- 5) supervises the efficiency of the Chamber’s work;
- 6) submits to the PPO President, the annual information on the functioning of the Chamber considering the problems resulting from the adjudication, after it is passed by the General Assembly.

3a. The President of the Chamber shall define, by means of a regulation, the internal operational code of conduct of the Chamber.

4. The General Assembly of the Chamber:

- 1) prepares and passes the annual information on functioning of the Chamber considering the problems resulting from the adjudication;
- 2) appoints the composition of the disciplinary court;
- 3) examines the appeal against the decision of the disciplinary court;
- 4) examines and gives opinion other subject matters submitted by the PPO President or raised by members of General Assembly.

5. The NAC President calls the General Assembly of the Chamber at least two times a year, and at written request of at least half of its members or the President of the disciplinary court within 14 days of the date it was put forward. The resolutions of the General Assembly are passed by a majority vote in the presence of at least half of the Chamber’s composition; in case of equal number of votes, the President of the Chamber has a casting vote.

Article 173.

1. The composition of the Chamber consists of no more than 100 members appointed and dismissed by the **minister responsible for economy** from among persons satisfying the requirements, referred to in para. 2, who obtained the best results in qualifying procedure.

2. A person eligible to become member of the Chamber::

- 1) is a Polish citizen;
- 2) has higher law education;

-
- 3) has full legal capacity to enter into legal transactions;
 - 4) enjoys all public rights;
 - 5) has an unblemished reputation;
 - 6) has not been validly convicted of offences committed intentionally;
 - 7) has minimum 5 year work experience in public administration or at the positions connected with giving legal advice, preparing legal opinions, preparing drafts of legal acts as well as acting before courts and offices.
 - 8) is at least at the age of 29.

3. President and Vice-President of the Chamber shall be appointed for a three-year term of office by the **minister responsible for economy** upon request of PPO President from among Chamber members having security clearance for access to classified information with a “strictly confidential” clause or who submitted a statement of consent for verification procedure referred to in art. 22 para.1 point 2 of the Act of 5 August 2010 on protection on classified information, which aims at establishing whether the person, subject to verification, provides a guarantee of confidentiality. Art. 174 para. 5 shall apply respectively to dismissal of President and Vice-President of the Chamber before the expiry of their term of office.

3a. The **minister responsible for economy** dismisses the President and Vice-President of the Chamber in case of a refusal to issue of withdrawal of security clearance referred to in the Act of 5 August 2010 on protection of classified information.

4. The employment relationship is established based on the appointment and date fixed in the appointment act. The PPO President shall perform actions within the labour law concerning the members of the Chamber. In matters concerning the employment relationship of the members not regulated by this Act, the provisions of the Act of 26 June 1974 - Labour Code (Journal of Laws of 1998 No. 21 item 94 as amended¹³) shall apply accordingly.

5. Prior to undertaking their responsibilities, the members of Chamber are obliged to take an oath before the **minister responsible for economy** by repeating the following words: „I hereby solemnly swear to diligently fulfil the duties of the member of Chamber, to act being guided by the principles of dignity and honesty”; the oath can be ended with “so help me God”. The members of the Chamber confirm the taking of the oath by subscribing their signatures thereto.

6. The basis for determining the base remuneration for the President and the Vice-President, as well as the other members the Chamber is the multiple base amount determined in the budget act for the given year, pursuant to Article 9 para. 1 item 2 of the Act of 23 December 1999 on the remuneration in the state-budget sector and on amending certain acts (Journal of Laws No. 110 item 1255, as amended¹⁴) for the employees of the state-budget sector referred to in Article 5 item 1 letter a) of that Act;

¹³ The amendments to the consolidated text of this Act were published in the Journal of Laws of 1998 No. 106 item 668 and No. 113 item 717, of 1999 No. 99 item 1152, of 2000 No. 19 item 239, No. 43 item 489, No. 107 item 1127 and No. 120 item 1268, of 2001 No. 11 item 84, No. 28 item 301, No. 52 item 538, No. 99 item 1075, No. 111 item 1194, No. 123 item 1354, No. 128 item 1405 and 154 item 1805, of 2002 No. 74 item 676, No. 135 item 1146, No. 196 item 1660, No. 199 item 1673 and No. 200 item 1679, of 2003 No. 166 item 1608 and No. 213 item 2081, of 2004 No. 96 item 959, No. 99 item 1001, No. 120 item 1252 and No. 240 item 2407, of 2005 No. 10 item 71, No. 68 item 610, No. 86 item 732 and No. 167 item 1398 and of 2006 No. 104 item 708 and No. 133 item 935, No. 217 item 1587 and No. 221 item 1615; of 2007 No. 64 item 426, No. 89 item 589, No. 176 item 1239, No. 181 item 1288 and No. 225 item 1672; of 2008 No. 93 item 586, No. 116 item 740, No. 223 item 1460 and No. 237 item 1654; of 2009 No. 6 item 33, No. 56 item 458, No. 58 item 485, No. 98 item 817, no. 99 item 825, No. 115 item 958, No. 157 item 1241 and No. 219 item 1704 and of 2010 No. 105 item 655.

¹⁴

7. The members of the Chamber are entitled for seniority anniversary reward, starting from the 6th year of work, which amounts to 5% of the monthly base remuneration and increases 1% after each year of work, until it reaches 20% of the monthly base remuneration.

8. The members of the Chamber are entitled for anniversary reward, which amounts to:

- 1) 75% of the monthly remuneration- after 20 years of work;
- 2) 100% of the monthly remuneration- after 25 years of work;
- 3) 150% of the monthly remuneration- after 30 years of work;
- 4) 200% of the monthly remuneration- after 35 years of work;
- 5) 300% of the monthly remuneration- after 40 years of work;
- 6) 350% of the monthly remuneration- after 45 years of work.

9. The work period, which entitles for anniversary reward, includes all the previous employment periods and other periods, if they, in view of separate provisions, are to be included in the work period, which determines the employee rights. The provisions on anniversary reward, referred to in provisions on the public office employees, shall apply accordingly to evaluation and payout of anniversary reward.

10. The Prime Minister shall determine by means of a regulation, the multiple base amount, referred to in para. 6, considering the function performed by a member of the Chamber and the fact, that the multiplicity of the base amount cannot be less than 4,5.

11. The organizational- technical support and accountant service for the Chamber are provided by the Office.

Article 174.

1. The membership in the Chamber cannot be joined with:

- 1) mandate of the Member of Parliament or Senator,
- 2) a mandate of the councillor, borough leader (mayor, president of the city) or the membership in board of poviat or voivodship;
- 3) a membership in regional clearing chamber or self governmental appeal bodies;
- 4) membership of a political party or performance of political function.

2. The Chamber members may not:

- 1) take up additional employment and other paid work, except for the work as teaching staff, academic teacher or a research worker if it is less than the full time work at this position, if this employment does not interfere with the duties as a member of the Chamber;
- 2) perform business activity individually or together with other persons, as well as manage such activity or be a representative or plenipotentiary in conducting such activity;
- 3) be a member of board, a supervisory board or an audit committee or plenipotentiary of commercial companies;
- 4) be a member of foundation board, which performs business activity;

5) own more than 10% of stocks or shares which accounts for more than 10% of the seed capital of such commercial companies..

3. A member of the Chamber shall submit to the PPO President by 31 March of each year a statement on:

- 1) currently pending penal procedures against him together with information about the subject-matter of these procedures;
- 2) his financial standing as for 31 December of the previous year by using accordingly the form, specified in provisions on restriction of performing economic activities by persons performing public functions.

4. Membership in the Chamber shall expire in the event of the death of its member or his dismissal.

5. The **minister responsible for economy** shall recall the member of the Chamber in case of:

- 1) loss of Polish citizenship;
- 2) loss or restriction of capacity to enter into legal transactions;
- 3) loss of the public rights;
- 4) loss of authority which gave a guarantee of the correct fulfilment of responsibilities of a member of the Chamber;
- 5) valid conviction for an offence committed intentionally or intentional tax fraud;
- 6) expiry of the 6 month period of suspension, referred to in Article 176 para. 1;
- 7) the disciplinary sanction resulting in exclusion from the composition of the Chamber;
- 8) failure to submit one the statements, referred to in para. 3;
- 9) refusal to take an oath;
- 10) failure to take the post within the time limit specified in the act of appointment
- 11) motion of dismissal put forward by the member of Chamber.

6. The members of the Chamber, within the scope of the responsibilities provided for in the Act, exercise the right to the legal protection for the public functionaries.

7. The members of the adjudication panels of the Chamber are independent and bound solely by the provisions of the binding law.

Article 175.

1. The members of Chamber are liable for the disciplinary responsibility for breach of the duties and professional dignity.

2. The disciplinary penalties are:

- 1) admonition;
- 2) dismissal from the performed function;
- 3) exclusion from the composition of the Chamber.

3. The penalty, referred to in para. 2 item 2, means the inability to perform the function of President, Vice-President, Disciplinary agent or a member of disciplinary court for 3 years.

4. In disciplinary matters concerning the members of the Chambers, the following bodies are authorized to give a ruling:

1) in the first instance- disciplinary court in composition of 5 members of the Chamber, appointed by the General Assembly from among the members of the Chamber;

2) in the second instance- General Assembly of the Chamber.

5. The disciplinary agent acts as the prosecutor before the disciplinary court. The **minister responsible for economy** at the request of the PPO President shall appoint a disciplinary agent from among the members of the Chamber for the 3-year term of office. The disciplinary agent may be dismissed at any time and performs its duties until the new disciplinary agent is appointed.

6. The disciplinary ruling issued in the second instance may be appealed before the appeal court- industrial and national insurance tribunal, competent for the seat of the Office, within 14 days from the date of submission of the ruling together with the justification. There is no complaint for annulment against the decision of the appeal court.

7. The detailed course of the disciplinary proceeding and selection of adjudication panel of the disciplinary court are specified in the rules of procedure passed by the General Assembly of the Chamber.

Article 176.

1. The **minister responsible for economy** shall suspend the member of the Chamber in his rights and obligations in case of accusation of committing the offence intentionally or intentional tax fraud.

2. The suspension period, referred to in para. 1, shall last until the end of the criminal proceedings, however not more than 6 months.

3. During the suspension period, the member of the Chamber has the right to receive half of the remuneration.

Article 176a.

1. The members of the Chamber are selected by qualifying procedure, which consists of:

1) a written exam in theoretical and practical knowledge of the contract award procedure rules

2) an interview.

2. The notice on qualifying procedure for the members of the Chamber is issued by the **minister responsible for economy** at the request of the PPO President, if the increase in composition of the Chamber is needed.

3. The notice referred to in para. 2 shall be announced in the **Public Information Bulletin of the Office and the Chancellery of the Prime Minister, as well as in nationwide press.**

4. The notice shall include:

- 1) information on the number of persons to be appointed in the given qualifying procedure;
- 2) time limit and place for collecting the applications; however the time limit shall not be less than 30 days of the date of the notice;
- 3) list of the documents to be enclosed to the application for the member of the Chamber;
- 4) The date of the qualifying procedure, referred to in para. 1;
- 5) minimum number of points to be obtained.

5. In order to conduct the qualifying procedure for the members of the Chamber, the **minister responsible for economy** appoints the qualifying committee, which consists only of persons whose knowledge and experience in the field of rules for conducting contract award procedures as well as authority guarantee the correct and impartial conduct of the contract award procedure.

6. If in qualifying procedure the minimum number of points is received by a smaller number of persons than the limit specified in the notice, referred to in para. 4 item 1, the **minister responsible for economy** shall call the supplementary qualifying procedure for the members of the Chamber within 30 day of the end of the previous qualifying procedure. The provisions of para. 1-5 shall apply.

7. The Prime Minister specifies by means of a regulation of the manner of conducting the qualifying procedure, referred to in para. 1-6, the manner of appointing the qualifying committee, as well as the scope of the qualifying procedure, taking into consideration the need to ensure objective verification of candidate's theoretical and practical preparation, the efficient conduct of the appeal procedure and the fact that documents containing information subject to personal data protection and in particular the information from the National Register of Criminal Records may be required to confirm a candidate's compliance with the conditions referred to in Article 173 para. 2.

Chapter 5

[repealed]

TITLE VI

LEGAL PROTECTION MEASURES

Chapter 1

Common provisions

Article 179.

1. Legal protection measures specified in this Title are granted to economic operators and participants of the design contest, as well as to other persons if they have or had interest in being awarded the contract and suffered or may suffer a damage as a result of the violation of the provisions of this Act by the contracting authority.

2. Legal protection measures against the contract notice and specification of essential terms of contracts shall be also available to organisations entered in the list, referred to Article 154 item 5.

Chapter 2

Appeal

Article 180.

1. An appeal shall only be admissible against actions incompliant with the Act, performed by the contracting authority in the course of contract award procedure or against failure to act which the contracting authority is bound to perform under this Act.

2. If the value of contract award procedure is less than the amounts specified in provisions issued on the basis of the Article 11 para. 8, the appeal shall solely be admissible against actions:

- 1) choice of the negotiated procedure without publication, single-source procurement and request for quotation;
- 2) **definition of conditions for participation in the procedure;**
- 3) exclusion of the appellant from the contract award procedure;
- 4) rejection of tender of appellant;
- 5) **description of the subject-matter of contract;**
- 6) **selection of the best tender.**

3. The appeal should indicate the contracting authority's action or failure to act which is challenged as incompliant with the Act, contain a brief summary of the charges, define the demand and indicate the factual and legal circumstances which justify the lodging of the appeal.

4. **An appeal shall be lodged to the President of the Chamber in a written form or electronic form, signed respectively with a handwritten signature or qualified electronic signature.**

5. The appellant should dispatch a copy of the appeal to the contracting authority before the expiry of the time limit for lodging the appeal, so that the contracting authority is able to become familiar with the appeal before the end of that time limit. **It shall be presumed that the contracting authority might become familiar with the appeal before the expiry of the time limit for lodging the same, if a copy thereof was sent before the expiry of the time limit for lodging with the use of electronic means of communication.**

Article 181.

1. The economic operator or the participant of design contest may, within the time limit for lodging an appeal, inform the contracting authority of the action taken by the contracting authority incompliant with the Act or against failure to act which the contracting authority is bound to perform under this Act against the provisions of the Act or failure to act which the contracting authority was obligated to take under the Act, both subject of appeal under Article 180 para. 2.

2. If the provided information is found admissible, the contracting authority shall repeat the action or take the omitted action, notifying this to the economic operators in the manner provided for that action in the Act.

3. Against the actions, referred to in para. 2, the appeal shall not be lodged, subject to Article 180 para. 2.

Article 182.

1. The appeal should be lodged:

1) **within 10 days from the date of sending the information on the contracting authority's action constituting the basis for lodging the appeal, if the information was sent in the manner specified in Article 180.5, second sentence, or within 15 days – if it was sent in any other manner, in case of contracts with the value equal to or exceeding the amounts specified in provisions issued under Article 11 para. 8;**

2) **within 5 days from the date of sending the information on the contracting authority's action constituting the basis for lodging the appeal, if the information was sent in the manner specified in Article 180.5, second sentence, or within 10 days – if it was sent in any other manner, in case of contracts whose value is lower than the amounts specified in the provisions issued under Article 11 para. 8.**

2. The appeal against the contract notice, and if the procedure is conducted under open tendering procedure, also against the specification of essential terms of contract shall be lodged within:

1) 10 days from the date of publication of contract notice in the EU Official Journal of the EU or publication of the specification of essential terms of contract on the website – if the value of the contract is equal to or exceeding the amounts specified in the provisions issued under Article 11 para. 8;

2) 5 days from the day on which the contract notice was placed in the Public Procurement Bulletin or publication of the specification of essential terms of contract on the website – if the value of the contract is less than the amounts specified in the provisions issued under Article 11 para. 8.

3. Appeal against actions other than those specified in para. 1 and 2 shall be lodged:

1) in the case of contracts with value equal to or exceeding the amounts specified in provisions issued under Article 11 para. 8 – within 10 days from the date on which one have become or with due diligence may have become aware of the circumstances constituting the basis thereof,

2) in the case of contracts with value less than the amounts specified in provisions issued under Article 11 para. 8 – within 5 days from the date on which one have become or with due diligence may have become aware of the circumstances constituting the basis thereof.

4. If the contracting authority failed to publish the notice of intention to conclude the contract or, in spite of such obligation, failed to dispatch to the economic operator a notice of selection of the best tender, or failed to invite the economic operator to submit a tender within a dynamic purchasing system or a framework agreement, the appeal shall be lodged not later than within:

1) 15 days from the date on which the contract award notice was placed in the Public Procurement Bulletin and published in the EU Official Journal, and in the case of a contract awarded under negotiated procedure without publication, single-source procurement or request-for-quotations – publication of the contract award notice together with justification;

2) 6 months from the conclusion of contract, if the contracting authority:

a) failed to publish the contract award notice in the EU Official Journal; or

b) published in the EU Official Journal the contract award notice which does not contain justification for awarding the contract under negotiated procedure without publication or single-source procurement;

3) 1 month from the conclusion of contract, if the contracting authority:

a) failed to place contract award notice in the Public Procurement Bulletin; or

b) placed in the Public Procurement Bulletin contract award notice which does not contain the justification for awarding the contract under negotiated procedure without publication or single-source procurement or request-for-quotations.

5. In case of appeals lodged against the contract notice or the specification of essential terms of contract, the contracting authority may extend the time limit for submission of tenders or time limit for submission of requests.

6. In case of appeals lodged after the expiry of the time limit for submission of tenders, the period during which the economic operator must maintain his tender shall be suspended until the judgment is passed by the National Appeal Chamber.

Article 183.

1. In case of appeal being lodged, the contracting authority may not conclude a contract until the Chamber passes its judgment or decision which ends the appeal procedure, hereinafter referred to as “ruling”.

2. The contracting authority may put forward a motion to the Chamber in order to revoke the ban on conclusion of contract, referred to in para. 1. The Chamber may revoke the ban on conclusion of a contract, if non conclusion of a contract might cause a negative effects for public interest, in particular in the field of defense and security, exceeding the benefits related to the necessity of protecting of all interests, with reference to which a possibility of sustaining a loss due to actions conducted by the contracting authority in contract award procedure occurs.

3. The motion referred to in para. 2 shall be examined by the adjudication panel of the Chamber, appointed to examine the appeal. The provisions of Article 188 para.3 –7 shall apply.

4. The Chamber examines the motion, referred to in para. 2, at closed session by means of a resolution, not later than within 5 days from the date when the motion is put forward. The decision of the Chamber shall not be subject of complaint.

5. The Chamber shall discontinue, by means of a decision, the procedure launched as a result of the filing of the motion, referred to in para. 2, if examining the appeal became groundless, in particular due to:

- 1) the Chamber passing its ruling before the motion is examined;
- 2) withdrawal of the motion.

6. The motion referred to in para. 2 may be submitted by the contracting authority by post operator within the meaning of the Act of 23 November 2012 – Postal Law, personally, by courier, or by means of electronic communication.

Article 184.

The contracting authority calls upon the economic operators, under the pain of exclusion from the procedure, not later than 7 days prior to the expiry of the deposit, to prolong the validity of the deposit or to pay a new deposit for a period necessary for the security of the procedure until the conclusion of the contract. after the final examination of the protest. If the appeal was lodged after the selection of the best (most advantageous) tender, the call is addressed only to that economic operator whose tender was selected as best (most advantageous).

Article 185.

1. The contracting authority shall forthwith dispatch, not later than within 2 days from the date of receipt, a copy of appeal to all other economic operators who participate in the contract award procedure, and if the appeal refers to the content of contract notice or provisions of specification of essential terms of contract, shall also place it also on the website, where the contract notice is placed or specification is made available, calling upon the economic operators to access the appeal procedure.

2. The economic operator expresses the accession to the appeal procedure within 3 days of the date of receipt of the copy of appeal, indicating the party, on whose side it accesses, and the interest in obtaining the adjudication in favour of the accessed party. The notification of accession shall be submitted to the President of the Chamber in written or electronic form signed with qualified electronic signature, and a copy thereof shall be dispatched to the contracting authority and to the economic operator who lodged the appeal.

3. The economic operators who accessed the appeal procedure become the participants of the appeal procedure if they have interest in the appeal being adjudicated in favour of one of the parties.

4. The contracting authority or the appellant may file an objection against the accession of another economic operator not later than by the time when the hearing is opened. The Chamber sustains the objection if the objecting party lends credence that the economic operator has no interest in obtaining the adjudication in favour of the party it accessed; otherwise, the Chamber shall dismiss the objection. The decision on sustaining or

dismissing the objection may be issued by the Chamber at closed hearing. The decision on sustaining or dismissing the objection shall not be subject of complaint..

5. The actions of a participant of the appeal procedure shall not stand in contradiction to actions and declarations of the party, he chooses to support, with the proviso for the submission of an objection, referred to in Article 186 para. 3, filed by a participant who joined the procedure at the contracting authority's side.

6. The appellant and the economic operator summoned in accordance with para. 1 shall not subsequently use legal remedies with regard to the actions of the contracting authority performed in accordance with the judgement passed by the Chamber or the court or under Articles 186 para. 2 and 3.

7. Appeal procedures shall be regulated by appropriate provisions of the [Polish] Code of Civil Procedure of 17 November 1964 on the court of arbitration, unless this Act provides otherwise.

8. If the last day of the time limit is Saturday or a public holiday, the time limit shall expire with the next day following the non-working day or days.

Article 186.

1. The contracting authority may file a reply to the appeal. The reply to the appeal should be filed either **in written form** or expressed orally in the minutes.

2. If the contracting authority recognises in its entirety the charges presented in the appeal, the Chamber may decide to discontinue the procedure in a closed hearing without the presence of the parties and the participants in the appeal procedure, who have joined the proceedings at the side of economic operator, provided that no economic operator joined the appeal procedure on the contracting authority's side within the provided time limit. In such a case, the contracting authority shall perform, repeat or revoke the actions in the contract award procedure as demanded in the appeal.

3. If a participant of the appeal procedure who joined the procedure on the contracting authority's side does not file an objection as to the full recognition of the charges presented in the appeal by the contracting authority, the Chamber discontinues the procedure and the contracting authority shall perform, repeat or revoke the in the contract award procedure as demanded in the appeal.

3a. If the contracting authority grants part of the pleas included in the appeal and the remaining part of the pleas is withdrawn by the appellant, the Chamber may discontinue the proceedings *in camera* without the parties and appellate proceedings participants who have supported the economic operator in the proceedings being present, provided that no economic operator has opposed against the appeal on the part of the contracting authority in the appellate proceedings or the economic operator who opposed against the appeal has not objected against granting part of the pleas. In such a case, the contracting authority shall carry out, repeat, or cancel actions in the contract award procedure pursuant to the appeal in the scope of the pleas granted.”;

4. If a participant in the appellate proceedings who joined the proceedings on the contracting authority's side files an objection as to granting the pleas presented in the appeal in part or in whole, where the appellant does not withdraw the other pleas, the Chamber shall examine the appeal.”,

4a. If part of the pleas is granted by the contracting authority, where no economic operator has joined the appellate proceedings on the side of the contracting authority and the appellant has not withdrawn the other pleas, the Chamber shall examine the appeal in the scope of the other pleas.

5. The objection should be filed either in writing or expressed orally in the minutes.

6. Costs of appeal procedure:

1) in the circumstances, referred to in para. 2 and 3a, are cancelled mutually;

2) in the circumstances, referred to in para. 3:

a) are incurred by the contracting authority if the contracting authority recognised in full the charges presented in the appeal after the hearing was opened,

b) are cancelled mutually if the contracting authority recognised in whole or in part the charges presented in the appeal before the hearing was opened;

3) in the circumstances referred to in para. 4, shall be incurred by:

a) the appellant, if the appeal was dismissed by the Chamber,

b) the objecting party, if the appeal was recognised by the Chamber.

4) in the circumstances referred to in para. and 4a, shall be incurred by:

a) the appellant, if the appeal, in the part of the charges not recognised by the contracting authority, was dismissed by the Chamber,

b) the contracting authority, if the appeal, in the part of the charges not recognised by the contracting authority, was recognised by the Chamber.

Article 187.

1. The appeal shall be examined if:

1) there are no formal shortcomings;

2) the registration fee was paid.

2. The registration fee shall be paid by the end of the time limit for appeal at the latest, and the proof of payment shall be enclosed with the appeal.

3. If the appeal cannot take a formal course due to failure to meet the formal requirements, in particular those referred to in Article 180 para. 3, failure to submit the plenipotentiaries or failure to pay the registration fee, the President of the Chamber shall summon the appellant, under the pain of return of the appeal, to correct or complete the appeal or to submit the proof of payment of the registration fee within 3 days of the date of receipt of the call. A wrong indication of the appeal or any obvious inaccuracy shall not be an impediment for the appeal to take its course and be examined by the Chamber.

4. In the summons, referred to in para. 3, the President of the Chamber advises that in the event of the failure to correct or complete the appeal or to enclose the proof of the payment of the registration fee within 3 days, the appeal shall be returned.

5. If a summons, referred to in the first sentence of para. 3, is served on the appellant earlier than 3 days prior to the end of the time limit for lodging of the appeal, the appellant

may supplement the proof of payment of registration fee by the end of the time limit for the lodging the appeal at the latest.

6. If the registration fee is not paid within the time limit, referred to in para. 2, and after the ineffective expiry time limit, referred to in para. 3 and 5, the President of the Chamber shall return the appeal by means of decision. A returned appeal shall not exert any effect, provided for by the Act with reference to lodging the appeal with the President of the Chamber. The return of the appeal shall be notified to the contracting authority by the President of the Chamber by means of a copy of the decision.

7. If the failure to meet the formal requirements or failure to submit plenipotentiaries is stated by the adjudication panel of the Chamber, the provisions of para. 1–6 shall apply with the proviso that the competences of the President of the Chamber are vested in the adjudication panel of the Chamber.

8. The appellant can withdraw the appeal until the hearing is closed; in this case, the Chamber shall discontinue the appeal procedure. If the appeal is withdrawn before the opening of the hearing, the appellant shall be refunded 90% of the registration fee.

Article 188.

1. The appeal shall be examined by the Chamber, in a panel composed of a single member. The President of the Chamber may order the case to be examined by a panel of three members, if it is found advisable due to the particular complexity or a precedential nature of the case. In such a case, the President of the Chamber shall appoint the presiding member of the adjudication panel from among the appointed members.

2. The Chamber's adjudication panel, hereinafter referred to as the "adjudication panel", shall be appointed by the President of the Chamber in an order considering date of receipt of the appeals, from the list of the Chamber members arranged alphabetically – the list is open to the parties to the appeal procedures. Exception from this order is admissible only due to illness of a Chamber member or for another important reason, which shall be stated in an order on appointment of composition the adjudication panel.

3. The change of appointed adjudication panel may occur only for reasons, referred to in para. 2 sentence 2.

4. The member of the adjudication panel shall notify in writing to the President of the Chamber the circumstances, referred to in para. 2 sentence 2.

5. The member of the adjudication panel or the party of the appeal procedure shall notify to the President of the Chamber the circumstances justifying the exclusion of the appointed member, in particular when there are factual or legal circumstances which may raise justified doubts as to that member's impartiality. The exclusion of a member of the Chamber or the refusal of exclusion is resolved by the President of the Chamber by means of a decision which shall not be a subject of complaint.

6. If the circumstances, referred to in para. 5, pertain to the President of the Chamber, his exclusion or refusal of the same shall be resolved by the Prime Minister.

7. In case of circumstances, referred to in para. 5 and 6, the President shall appoint other member of the adjudication panel from the alphabetical list of the members of the Chamber.

Article 189.

1. The Chamber examines the appeal within 15 days from the date of its submission to the President of the Chamber. The President of the Chamber may order a joint examination of the appeals, which were lodged in the course of the same contract award procedure or refer to the same actions of the contracting authority.

2. The Chamber shall reject the appeal if it states that:

- 1) the provisions of the Act do not apply in the case in question;
- 2) the appeal was lodged by an unauthorised entity;
- 3) the appeal was lodged after the expiry of the time limit set in the Act;
- 4) the appellant invokes only those circumstances which were the subject of resolution by the Chamber in case of another appeal pertaining to the same procedure, lodged by the same appellant;
- 5) the appeal pertains to action, which was performed by the contracting authority in accordance with the judgement passed by the Chamber or court or – if the charges contained in the appeal were recognised – performed in accordance with the demand contained in the appeal;
- 6) in the procedure where the value of the contract is less than the amounts specified in provisions issued under Article 11 para. 8, the appeal pertains to actions other than defined in Article 180 para. 2;
- 7) the appellant failed to dispatch to the contracting authority a copy of the appeal in accordance with Article 180 para. 5.

3. The Chamber may reject the appeal in a closed session. Should the Chamber consider this necessary, it may permit the parties, witnesses or experts to participation in the session.

4. If no grounds for rejection are found, the Chamber sets the case for a hearing.

5. The Chamber shall examine the appeal in an open hearing.

6. At request of the party or ex-officio, the Chamber closes the hearing for the public in full or in part, if a secret information protected by separate legal provisions, other than the classified information within the meaning of provisions on the protection of classified information, might be disclosed while examining the appeal. In such a case, the hearing is open only for the parties concerned and their plenipotentiaries.

7. The Chamber shall examine the appeal in a closed hearing, if when examining the appeal a classified information within the meaning of provisions on protection of classified information might be revealed.

8. In the case referred to in para. 7, the Chamber may decide on examination of an appeal in a closed hearing due to essential interest of one of the parties.

9. In case of lodging the appeal concerning the award procedure in the field of defence and security that includes classified information in its documentation, the PPO President, upon request of the President of the National Appeal Chamber, in order to ensure the protection of classified information, shall indicate a place for appeal examination by the National Appeal Chamber.

Article 190.

1. The parties and participants in the appeal proceedings are under obligation to adduce evidence in support of facts they derive legal consequences from. Evidence in support of their statements or against the statements of opposite party can be presented by the parties and the participants in appeal procedure until the hearing is closed.

1a. The burden of proof that the tender does not comprise an abnormally low price lies with:

- 1) the economic operator that submitted it, being a party or participant in the appeal procedure;
- 2) the contracting authority, if the economic operator that submitted the tender is not the participant of the appeal procedure.

2. The Chamber may admit a proof not indicated by a party.

3. Documents, statements of witnesses, expert opinions and depositions of the parties shall in particular be regarded as evidence.

4. The Chamber may appoint an expert from among persons entered in the list of court experts, maintained by the president of the competent district court, if the determination of the factual state of the case requires special knowledge. The expert shall be entitled to remuneration in the amount determined in accordance with provisions of the Chapter 2 title III of the Act of July 28 2005 on the court costs in civil cases.

5. Generally known facts and facts known ex officio shall not require the support of evidence. Evidence shall not be required in the case of facts admitted in the course of the procedure by the opposing party, if the Chamber considers that this admission raises no doubts as to its conformity with the actual state of affairs.

6. The Chamber shall refuse to examine the evidence if facts on which they are based have already been confirmed by other evidence or if they have been adduced only for the purpose of causing delay.

7. The Chamber shall assess the credibility and power of evidence at its own discretion, on the basis of a comprehensive examination of the collected material.

8. If the contract was concluded, the Chamber can conduct explanatory proceedings in order to establish the grounds for invalidation of the contract, imposing a financial penalty or shortening the term of contract.

9. The members of the Chamber shall keep confidentiality of classified information and other information included in the documents presented by parties and participants of the appeal procedure and subjects accessing the appeal procedure and shall act in the appeal procedure in line with defence and security interests.

Article 191.

1. The president of the adjudication panel shall close the hearing after having heard the evidence and having given the floor to the parties, or if in the opinion of the Chamber the case has been clarified enough.

2. When passing the judgement, the Chamber shall take as the basis the state of affairs determined in the course of the procedure.

3. The Chamber shall re-open a closed hearing if new circumstances material to the resolution of the appeal have been disclosed thereafter.

4. A judgment may only be issued by the adjudication panel before which the appeal proceedings took course.

Article 192.

1. The Chamber issues a judgement on the dismissal or admission of an appeal. In all other cases the Chamber issues decisions.

2. The Chamber shall admit the appeal, if it states the breach of the provisions of the Act which had or may have an essential influence on the result of the contract award procedure.

3. When recognising the appeal, the Chamber may:

1) if the public contract has not been concluded – demand performance or repetition or demand cancellation of action performed by the contracting authority; or

2) if the public contract has been concluded and one of the prerequisites, referred to in Article 146 para. 1, occurs:

a) invalidate the contract; or

b) invalidate the contract with regard to the unfulfilled obligations and impose a financial penalty in justified cases, in particular when return of benefits provided, under the contract being subject to invalidation, is impossible; or

c) impose a financial penalty or rule the shortening of the duration of contract if important public interest, in particular in the field of defense and security, requires that the contract is maintained; or

3) if the contract was concluded in circumstances permitted by the Act – state the violation of the provisions of the Act.

4. When adjudicating under para. 3 item 2, the Chamber shall consider all important circumstances, including the significance of violation, the contracting authority's conduct and the consequences of invalidation of contract.

5. The important public interest, within the meaning of para. 2 item 3 letter c, does not refer to economic interest directly linked to the contract concerned, encompassing in particular consequences of the costs incurred due to a delay in performance of a contract, costs resulting from the launching of a new procurement procedure, costs resulting from the change of the economic operator performing the contract and costs of legal obligations resulting from invalidation of contract. Economic interest in maintaining the contract's validity may be considered as an important public interest only where the invalidation of the contract would cause disproportionate consequences.

6. The Chamber shall not order the conclusion of a contract.

6a. The Chamber cannot invalidate a contract if this could constitute a significant threat to a broader defence and security programme necessary from the viewpoint of security interests of the Republic of Poland.

7. The Chamber may not adjudicate on any charges which were not included in the appeal.

8. In case, referred to in second sentence of Article 189 para. 1, the Chamber may pass a joint ruling in cases regarding the lodged appeals.

9. In the judgment and in the decision ending the appeal procedure the Chamber settles the issue of the costs of the appeal procedure.

10. The parties shall bear the costs of the procedure appropriately to the results thereof, subject to Article 186 para. 6.

Article 193.

The financial penalties, referred to in Article 192 para. 3 item 2 letter b and c, are imposed on the contracting authority of up to 10% of the amount of economic operator's remuneration provided for in the concluded contract, taking into account the type and scope of violation as well as the amount of economic operator's remuneration provided for in the concluded contract, for which the penalty is being adjudicated.

Article 194.

When stating a violation of Article 94 para. 1 or 94 para. 2 or Article 183 para. 1, which was not connected with violation of any other provision of the Act, the Chamber imposes on the contracting authority a financial penalty in the amount of up to 5% of the economic operator's remuneration provided for in the concluded contract, taking into account all important circumstances related to the award of the contract.

Article 195.

1. The financial penalty shall be paid to the bank account of the Public Procurement Office within 30 days of the day, on which the ruling of the Chamber or the court imposing financial penalty becomes binding.

2. The President of the Chamber or respectively the president of the court, which examined the complaint against the Chamber's ruling, shall forthwith dispatch to the PPO President a copy of the effective ruling on the imposition of financial penalty, in case of court ruling – together with a copy of the Chamber's ruling being the subject of complaint. The PPO President is the creditor within the meaning of the provisions of the Act on execution proceedings in administration.

3. The Chamber's ruling issued on grounds of Article 192 para. 3 item 2 letter b or c shall become effective respectively on the day of expiry of the time limit for lodging the complaint, or on the day the court passes a judgement dismissing the complaint – as a result of examination of the complaint against the Chamber's ruling.

4. The ruling of the court, which examines the complaint against the Chamber's ruling on the imposition of financial penalty, becomes effective on the day it is passed.

5. In case of expiry of the time limit, referred to in para. 1, the financial penalty is subject to exaction under provisions on the enforcement proceedings in administration.

6. In case of untimely payment of the financial penalty, no interest is collected.

7. The incomes from financial penalties constitute the State budget revenues.

Article 196.

1. The Chamber shall announce its ruling after closing the hearing in an open session and expresses orally the motives for its ruling. Absence of the parties shall not prevent the announcement of the ruling.

2. In a complex case, the Chamber can adjourn the announcement of the ruling for not more than 5 days. In the decision on the adjournment of the announcement of the ruling, the Chamber shall set the date of the announcement of the same. If the announcement was adjourned, it can be delivered either by the president of the adjudication panel or by a member of the adjudication panel, designated by the President of the Chamber.

3. The Chamber shall prepare a justification for the ruling *ex officio*.

4. The justification of the judgement shall contain the identification of factual grounds for the resolution, including the state of facts which the Chamber recognized, evidence on which the Chamber relied and the reasons why it found other evidence not credible and deprived it of probative force, as well as the indication of legal grounds for the judgement, including reference to the law provisions.

5. The copies of the ruling together with justification shall be dispatched to the parties and participants in the appeal procedure or to their plenipotentiaries, within 3 days of the announcement of the ruling or – if there was no announcement – within 3 days of the day, on which the decision was passed.

6. The Chamber may correct, by means of a decision, misprints or computational errors or other obvious errors committed in the ruling. In such a case, the president of the adjudication panel shall place on the original of the ruling a note of its correction. The President of the Chamber shall deliver forthwith to the parties and participants in the appeal procedure, or their plenipotentiaries, copies of the corrected ruling together with a copy of the decision on correction.

Article 197.

1. The ruling of the Chamber, after its enforceability is stated by the court, is equally binding as the court's decision. The provisions of Article 781 para. 2 of the Act of 17 November 1964- Civil Procedure Code shall apply accordingly.

2. The enforceability of the Chamber's ruling is stated by the court at the request of the party. The party is obliged to enclose to its request the original or a copy of the Chamber's ruling certified by the President of the Chamber.

3. The court states the enforceability of the Chamber's ruling by a warrant of execution.

Article 198.

The Prime Minister shall define by means of a regulation:

- 1) the rules of procedure concerning the examination of appeals specifying in particular the formal requirements concerning the appeal, manner for lodging the appeal by electronic means, actions with the appeal being lodged, preparation of hearing taking into consideration the need to ensure efficient organisation of the hearing, fast course of appeal procedures and the open nature of hearings;
- 2) the amount and manner for collecting appeal registration fees as well as type of costs in appeal procedure and rules for allocation of costs, considering the diversified amount of the registration fee which depends on the value and type of contract, as well as legitimacy of the reimbursement of the costs to the party, necessary for the appropriate pursuit of rights and appropriate legal protection.

Chapter 3
Complaint to the court

Article 198a.

1. The parties and participants of the appeal procedure may complain to the court against the Chamber's ruling.

2. Unless the provisions of this Chapter provide otherwise, in the proceedings pending as a result of a lodged complaint, the provisions of the Code on Civil Procedure of 17 November 1964 on the appeal shall apply accordingly.

Article 198b.

1. The complaint should be lodged with the district court court competent for the seat or place of residence of the contracting authority.

2. The complaint should be lodged through the President of the Chamber within 7 days of the day, on which the Chamber's ruling was submitted, dispatching simultaneously its copy to the complaint's opponent. Submitting the complaint in a postal facility of an operator appointed within the meaning of the Act of 23 November 2012 – Postal Law (Journal of Laws item 1529) shall be considered as lodging thereof.

3. The President of the Chamber shall transfer the complaint together with the files of the appeal procedure to the competent court within not more than 7 days from the date of its receipt.

4. Within 21 days of the day, on which the ruling was passed, a complaint may also be lodged by the PPO President. The PPO President may also join the pending procedure. The provisions of the Code on Civil Procedure of 17 November 1964 on public prosecutor shall apply accordingly to the actions taken by the PPO President.

Article 198c.

The complaint should meet the requirements provided for submissions and contain the indication of the ruling complained against, a quotation of charges, a brief summary of their justification, identification of evidence, as well as a motion for repealing the ruling or for changing the ruling in full or in part.

Article 198d.

In the procedure pending due to the lodged complaint, the demand stated in the appeal shall not be extended nor new demands shall be brought.

Article 198e.

1. The court, at a closed session, shall reject a complaint lodged after the expiry of the time limit or a complaint inadmissible for any other reasons as well as a complaint, where the shortcomings were not supplemented by the party on time.

2. If the party has not completed an action in proceedings for reasons not attributable to that party, the court – at the request of that party – shall restore the time limit. The decision in this matter may be passed at closed session.

3. The submission with the request for restoration of the time limit should be filed with the court within 7 days of the day, on which the reason for not having met the time limit ceased.

Article 198ea.

The burden of proof that the tender does not comprise an abnormally low price lies with:

- 1) the economic operator that submitted it, being a party of the procedure or intervener;
- 2) the contracting authority, if the economic operator that submitted the tender is neither the party of the procedure nor intervener.

Article 198f.

1. The court shall forthwith examine the complaint, however not later than within 1 month of the day, on which the complaint was received by the court.

2. The court shall dismiss the complaint by means of a judgement, if the complaint is unjustified. If the complaint is recognised, the court shall change the challenged ruling and rule, by means of a judgement, on the merits of the case, whereas passing a decision in all other matters. The provisions of Articles 192–195 shall apply accordingly. The provision of Article 386.4 of the Code of Civil Procedure of 17 November 1964 shall not apply.

3. If the appeal is rejected or grounds for discontinuation of the procedure occur, the court repeals the judgement or changes the decision and rejects the appeal or discontinues the procedure.

4. The court cannot adjudicate on any charges which were not the subject matter of the appeal.

5. The parties shall bear the costs of procedure in accordance with the outcome of the procedure; when determining the amount of costs in the ruling, the court shall also take into account the costs incurred by the parties in connection with the examination of the appeal.

Article 198g.

1. The court's judgement or decision that ends the procedure in the case shall not be a subject of revocation complaint. This provision shall not apply to the PPO President.

2. The provisions on the Prosecutor General, specified in Part I, Book I, Title VI, Section V a of the Code of Civil Procedure of 17 November 1964, shall apply accordingly to actions taken by the PPO President.

TITLE VII

LIABILITY FOR BREACH OF PROVISIONS OF THIS ACT

Article 199.

The provisions of this Title are not applicable to the awarding entities, referred to in in Article 3 para. 1 items 1, 2 and 5.

Article 200.

1. The contracting authority who:

- 1) awards a contract:
 - a) infringing the provisions of this Act which refer to prerequisites for the application of types of contract award procedures: negotiated procedure without publication, single-source procurement or request-for-quotations,
 - b) without the required notice;
 - c) without applying this Act;
- 2) [repealed]
- 3) [repealed]
- 4) modifies the concluded contract infringing upon the provisions of this Act

- shall be subject to a financial penalty.

2. Awarding entities shall also be subject to a penalty in the following cases:

- 1) where the requirements to participate in a contract award procedure as defined by the contracting authority distort fair competition,
- 2) where the contracting authority describes the subject-matter of contract in a way that restricts fair competition,
- 3) where the contracting authority conducts a contract award procedure in breach of the rule of openness,
- 4) where the contracting authority fails to comply with the respective time limits fixed for in this Act,
- 5) where the contracting authority excludes an economic operator from the contract award procedure in breach of the provisions of the Act governing the preconditions for such exclusion,
- 6) where the contracting authority rejects a tender in breach of the provisions of the Act governing the preconditions for such rejection,
- 7) where the contracting authority selects the best tender in breach of the provisions of this Act

- if such a breach has an impact on the outcome of the contract award procedure.

Article 201.

1. The amount of the financial penalty, referred to in Article 200, shall be determined depending on the contract value.

2. Where the contract value:

- 1) is less than the amounts specified in the provisions issued under Article 11 para. 8 - the financial penalty shall be PLN 3 000;

-
- 2) is equal to or exceeds the amounts specified in the provisions issued under Article 11 para. 8, but is less than EUR 10 000 000 for services and supplies and EUR 20 000 000 for works - the financial penalty shall be PLN 30 000;
 - 3) is equal to or exceeds the expressed in PLN equivalent of EUR 10 000 000 for services and supplies and EUR 20 000 000 for works - the financial penalty shall be PLN 150 000.

Article 202.

1. The financial penalty shall be imposed by the PPO President by an administrative decision.

1a. The PPO President shall not impose the financial penalty, if due to infringement of provisions of the Act, the financial penalty was imposed by the Chamber or a court.

2. The decision to impose a financial penalty shall not be issued with the clause of immediate enforceability.

Article 203.

1. The financial penalty constitutes the revenue of the state budget.

2. Financial penalties shall be subject to collection under the provisions concerning execution proceedings in administration with regard to the execution of duties of pecuniary nature.

TITLE VIII

AMENDMENTS TO THE EXISTING PROVISIONS

Articles 204 to 219 – omitted.

TITLE IX

INTERIM AND FINAL PROVISIONS

Articles 220 to 227 – omitted.