



Urząd
Zamówień
Publicznych

Qualitative selection of economic operators in Poland

Warsaw, November 28, 2017

qualitative selection

- eligible to compete for a contract shall be economic operators who
 - are not subject to exclusion
 - fulfil selection criteria, where such criteria have been defined by the contracting authority in the contract notice or in the invitation to confirm interest
- contracting authority shall establish the selection criteria and the appropriate means of proof in a manner which is **proportionate to the subject-matter of contract** and enables evaluation of the economic operator's ability to duly perform the contract, indicating in particular **minimum levels of ability**



exclusion grounds

- excluded from contract award procedures shall be
 - economic operator being a natural person who has been convicted with a final verdict or 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 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 Criminal Code or Article 46 or 48 of the Act on sports
 - constituting an act of terrorism referred to in Article 115 § 20 of the Criminal Code
 - fiscal offence
 - referred to in Article 9 or 10 of the Act on the consequences of entrusting the performance of work to foreigners staying illegally in the Republic of Poland



exclusion grounds

- excluded from contract award procedures shall be
 - 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 thereof
 - 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 selection criteria or the objective objective criteria used to limit the number of otherwise qualified candidates to be invited to participate, or which concealed this information or is unable to present the required documents
 - 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
 - economic operator who wrongfully **influenced or attempted to influence** the activities of the contracting authority **or to obtain confidential information** that could have given him an advantage in a contract award procedure
 - economic operator that **participated in the preparation of 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
 - 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 contracting authority can demonstrate by appropriate means
 - economic operators that, while belonging to the same **capital group** 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



exclusion grounds

- contracting authority **may exclude** from participation in a contract award procedure an economic operator
 - that is **bankrupt** or subject of **insolvency or winding-up** proceedings
 - where a **conflict of interest** cannot be effectively remedied by other less intrusive measures
 - where the contracting authority can demonstrate by appropriate means that the economic operator is **guilty of grave professional misconduct**, which renders its integrity questionable, in particular where the economic operator, as a result of a deliberate action or gross negligence, **failed to perform or performed unduly** a previous contract,
 - 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 imposed in an amount not lower than PLN 3000
 - 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



selection criteria

- selection criteria may relate to:
 - suitability to pursue the professional activity, where required under separate regulations
 - economic or financial standing
 - technical or professional capability
- with regard to criteria relating to economic and financial standing and to criteria relating to technical and professional ability, an economic operator **may**, where appropriate and for a particular contract, **rely on the capacities of other entities**, regardless of the legal nature of the links which it has with them

supporting documents

- in a contract award procedure, the contracting authority may request from economic operators only declarations and documents which are **necessary** for the conduct of the procedure
- declarations and documents proving:
 - the fulfilment of the selection criteria as well as objective criteria used to limit the number of otherwise qualified candidates to be invited to participate
 - the compliance of supplies, services, or works offered with the requirements defined by the contracting authority
 - the absence of grounds for exclusionshall be specified by the contracting authority in the contract notice, procurement specification, or in the invitation to tender



ESPD

- the economic operator shall enclose with the tender or request to participate in a procedure **a statement**, valid as at the day of submission of the tenders or requests to participate, as indicated by the contracting authority in the contract notice or in the tender specification
- information contained therein constitute **preliminary confirmation**, that the economic operator:
 - is not subject to exclusion and fulfils selection criteria
 - fulfils objective criteria used to limit the number of otherwise qualified candidates to be invited to participate
- where the value of the contract is equal to or exceeds the EU thresholds, the statement shall be submitted by the economic operator as a **European Single Procurement Document (ESPD)**



exclusion grounds

- excluded from contract award procedures shall be
 - economic operator being a natural person who has been convicted with a final verdict or 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 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 Criminal Code or Article 46 or 48 of the Act on sports
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exclusion grounds

according to Directive 2014/24/EU

- contracting authorities shall exclude an economic operator from participation in a procurement procedure where
 - economic operator has been the subject of a conviction by final judgment for one of the following:
 - participation in a criminal organisation
 - corruption
 - fraud
 - terrorist offences or offences linked thereto
 - money laundering or terrorist financing
 - child labour and other forms of trafficking in human beings
 - the obligation to exclude an economic operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein



ESPD instructions

INSTRUKCJA WYPEŁNIANIA Jednolity Europejski Dokument Zamówienia JEDZ (*European Single Procurement Document ESPD*)

I. Wejście w życie dyrektyw a podmiotowa kwalifikacja wykonawców

Zgodnie z regulacjami art. 59 dyrektywy 2014/24/UE¹ oraz art. 80 ust. 3 dyrektywy 2014/25/UE², dalej: „dyrektywa” lub „dyrektywy”, jak też ustawą z dnia 22 czerwca 2016 r. o zmianie ustawy – Prawo zamówień publicznych oraz niektórych innych ustaw (Dz. U. poz. 1020), dalej „nowelizacja ustawy Pzp” w odniesieniu do postępowań o udzielenie zamówienia publicznego oraz konkursów, w których wartość zamówienia jest równa lub wyższa od progów unijnych³ podstawowym dokumentem stanowiącym wstępne potwierdzenie:

- 1) spełniania przez wykonawcę warunków udziału w postępowaniu
- 2) braku podstaw wykluczenia,
- 3) jak też spełnianie kryteriów selekcji (obiektywne zasady i kryteria ustalone przez zamawiającego na potrzeby ograniczenia liczby kwalifikujących się kandydatów)

jest **oświadczenie własne wykonawcy** zastępujące, na etapie postępowania o udzielenie zamówienia, dokumenty i zaświadczenia wydawane przez organy publiczne lub osoby trzecie.

II. Formularz Jednolitego Europejskiego Dokumentu Zamówienia

Oświadczenie to zostało ustalone w drodze standardowego formularza jednolitego europejskiego dokumentu zamówienia (**JEDZ**), którego wzór określa rozporządzenie



supporting documents

- before awarding a contract whose value is equal to or exceeds the EU thresholds, 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) supporting declarations or documents, valid as at the submission date
- if the value of a contract is lower than the EU thresholds, 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) supporting declarations or documents, valid as at the submission date



conclusions

- several exclusion grounds which are facultative under Directive 2014/24/EU (Article 57 para 4 items d), f), h) and i)) are **mandatory** under Polish national law
- the main supporting document is **self-declaration** of the economic operator
- above EU thresholds self-declaration on **ESPD standard form**
- ESPD form is based directly on provisions of Directive 2014/24/EU and its terminology
- the main difficulty in filling-in the ESPD form consists in the necessity to „translate” the language of the ESPD standard form and the Directive into the language of national provisions as well as correct understanding of how Directive’s provisions have been transposed into national law
- **instructions** prepared by Public Procurement Office are meant to tackle those issues





Thank you for your attention!

