

Note: The English translation of the Act of 11 September 2019 – 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 11 September 2019 - Public Procurement Law as amended (2026 consolidated text was prepared by the Public Procurement Office)

**Text of the Act of 11 September 2019 – Public Procurement Law (consolidated text – Journal of Laws of 2026 item 793) contains the amendments introduced by:**

1. Article 18 of the Act of February 13, 2020 on the amendment of the Act – Code of Civil Procedure and certain other acts (Journal of Laws items 288 and 875 and of 2021 item 187);
2. Article 8 of the Act of February 14, 2020 on the amendment of certain acts in connection with a promotion of pro-health consumer choices (Journal of Laws items 1492 and 143);
3. Article 11 of the Act of August 14, 2020 on the amendment of the Act on road traffic and certain other acts (Journal of Laws item 1517);
4. Article 2 of the Act of November 27, 2020 on the amendment of the Act on concession contract for works or services, the Act – Public procurement law and certain other acts (Journal of Laws item 2275);
5. Article 142 of the Act of November 18, 2020 on electronic delivery (Journal of Laws item 2320);
6. Article 73 of the Act of January 21, 2021 on foreign service (Journal of Laws item 464);
7. Article 22 of the Act of July 8, 2021 on the amendment of the Act on Bank Guarantee Fund, the deposit guarantee scheme and a forced restructuring and certain other acts (Journal of Laws item 1598);
8. Article 10 of the Act of October 14, 2021 on the amendment of the Act – Penal Code and certain other acts (Journal of Laws item 2054);
9. Article 11 of the Act of December 2, 2021 on the amendment of the Act on the electromobility and alternative fuels and certain other acts (Journal of Laws item 2269);
10. Article 1 of the Act of December 2, 2021 on the amendment of the Act - Public Procurement Law and the Act on certain agreements concluded in the connection with the contracts of strategic importance for national security (Journal of Laws item 25);
11. Article 20 of the Act of April 7, 2022, amending the Act on covered bonds and mortgage banks and certain other acts (Journal of Laws item 872);
12. Article 128 of the Act of April 28, 2022, on the principles of implementing tasks financed from European funds in the 2021-2027 financial perspective (Journal of Laws item 1079);
13. Article 77 of the Act of August 5, 2022, on the social economy (Journal of Laws item 1812);

14. Article 25 of the Act of July 22, 2022, amending the Act on the Prison Service and certain other acts (Journal of Laws item 1933);
15. Article 44 of the Act of October 7, 2022, amending certain acts to simplify administrative procedures for citizens and businesses (Journal of Laws item 2185);
16. Article 143 of the Act of February 8, 2023, on the Strategic Plan for the Common Agricultural Policy for 2023-2027 (Journal of Laws item 412);
17. Article 17 of the Act of April 14, 2023, amending the Act on Investment Funds and Management of Alternative Investment Funds, the Act on Bonds, the Act on the Bank Guarantee Fund, the Deposit Guarantee Scheme and Compulsory Restructuring, and certain other acts (Journal of Laws item 825);
18. Article 13 of the Act of June 16, 2023, amending the Act on public collective transport and certain other acts (Journal of Laws item 1720);
19. Article 417 of the Act of March 20, 2025, on the labor market and employment services (Journal of Laws item 620);
20. Article 28 of the Act of May 21, 2025, amending certain acts to deregulate economic and administrative law and improve the principles of economic law development (Journal of Laws item 769);
21. Article 4 of the Act of May 9, 2025, amending certain acts to ensure compliance with European Union law aimed at improving the functioning of the internal market (Journal of Laws item 794);
22. Article 1 of the Act of July 9, 2025, amending the Public Procurement Law and the Act on Concession Contracts for Construction Works or Services (Journal of Laws item 1165);
23. Article 1 of the Act of July 25, 2025, amending the Public Procurement Law and certain other acts (Journal of Laws item 1173);
24. Article 38 of the Act of August 5, 2025, on the Certification of Public Procurement Contractors (Journal of Laws item 1235);
25. Article 17 of the Act of January 23., 2026 amending the Act on the national cybersecurity system and certain other acts (Journal of Laws item 252).

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**ACT**  
**of 11 September 2019**  
**Public Procurement Law<sup>1</sup>**

**TITLE I**

**General provisions**

**Chapter 1**

**Subject of regulation**

**Section 1**

**The scope of the Act**

**Article 1.**

The Act regulates public contracts, hereinafter referred to as ‘contracts’, and design contests, including:

- 1) entities obliged to apply the provisions of the Act;
- 2) the scope of exclusions from the application of the provisions of the Act;
- 3) principles of award of contracts;
- 4) stages of the preparation and conduct of contract award procedure;
- 5) types of award of contracts and specific instruments and procedures in the scope of contracts;
- 6) requirements for public contracts and framework agreements
- 7) the authorities competent in matters of contracts;

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<sup>1</sup> This Act implements:

- 1) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94 of 28.03.2014, p.65, as amended);
- 2) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on the procurement of entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94 of 28.03.2014, p.243, as amended);
- 3) Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216 of 20.08.2009, p.76, as amended);
- 4) Council Directive 89/665/EEC of 21 December 1989 on the coordination of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395 of 30.12.1989, p.33, as amended, OJ Polish special edition, chapter 6, vol. 1, p.246);
- 5) Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community provisions to the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76 of 23.03.1992, p.14, as amended; OJ Polish special edition, chapter 6, vol. 1, p.315.

- 8) remedies;
- 9) alternative channels for dispute resolution relating to the contract performance;
- 10) control of the award of contracts and financial penalties.

## **Article 2.**

1. The provisions of the Act shall apply to the award of:

- 1) classical contracts and the organisation of design contests, the value of which is equal to or exceeds the PLN 170 000 by contracting authorities;
  - 2) utilities contracts and the organisation of design contests, the value of which is equal to or exceeds the EU thresholds by contracting entities;
  - 3) contracts in the fields of defence and security, the value of which is equal to or exceeds the EU thresholds, by contracting authorities and contracting entities;
  - 4) classical contracts and the organisation of design contests, the value of which is equal to or exceeds the EU thresholds by subsidised contracting entities in the circumstances, referred to in Article 6.
2. (repealed)

## **Article 3.**

1. The EU thresholds shall mean the amounts of the value of contracts or design contests specified in:

- 1) Article 4 and Article 13 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, repealing Directive 2004/18/EC (OJ L 94 of 28.03.2014, p.65, as amended<sup>2</sup>), hereinafter referred to as 'Directive 2014/24/EU',
- 2) Article 15 of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on the procurement of entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94 of 28.03.2014, p.243, as amended<sup>3</sup>), hereinafter referred to as 'Directive 2014/25/EU',
- 3) Article 8 of Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216 of 20.08.2009, p.76, as amended<sup>4</sup>), hereinafter referred to as 'Directive 2009/81/EC'

— updated in the implementing acts of the European Commission, issued accordingly pursuant to Article 6 para. 5 of Directive 2014/24/EU, Article 17 para. 4 of Directive 2014/25/EU and Article

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<sup>2</sup> Amendments to the Directive were announced in the OJ L 307 of 25.11.2015, p.5, OJ L 24 of 30.01.2016, p. 14 and OJ L 337 of 19.12.2017, p.19.

<sup>3</sup> Amendments to the Directive were announced in the OJ L 307 of 25.11.2015, p. 7 and OJ L 337 of 19.12.2017, p. 17.

<sup>4</sup> Amendments to that Directive were announced in the OJ L 314 of 01.12.2009, p.64, OJ L 319 of 02.12.2011, p.43, OJ L 158 of 10.06.2013, p.184, OJ L 335 of 14.12.2013, p.17, OJ L 330 of 16.12.2015, p.14 and OJ L 337 of 19.12.2017, p.22.

68 of Directive 2009/81/EC.

2. The President of the Public Procurement Office, hereinafter referred to as the “PPO President”, shall inform about:

- 1) the current EU thresholds, their PLN equivalent and the PLN equivalent of amounts expressed in the Act in EUR, established in accordance with a Communication from the European Commission, issued accordingly on the basis of:
  - a) Article 6, para. 3 of Directive 2014/24/EU,
  - b) Article 17, para. 2 of Directive 2014/25/EU,
  - c) Article 68, para. 2 and 3 of Directive 2009/81/EC,
- 2) the average exchange rate of PLN against EUR constituting the basis for converting the value of contracts or design contests, determined on the basis of the amounts specified in the Communication from the European Commission referred to in point 1

— applicable to procurement procedures and design contests launched from the date of entry into force of the executive acts of the European Commission, issued accordingly pursuant to Article 6 para. 5 of Directive 2014/24/EU, Article 17 para 4 of Directive 2014/25/EU and Article 68 of Directive 2009/81/EC.

3. The information referred to in para. 2 shall be published by a notice in the Journal of Laws of the Republic of Poland ‘Monitor Polski’ and shall be published on the website of the Public Procurement Office, hereinafter referred to as ‘the Office’, immediately after the Communication from the European Commission referred to in para. 2 is published in the Official Journal of the European Union.

4. The average exchange rate of PLN against EUR referred to in para. 2 point 2 shall apply for the conversion of the amounts of contracts value expressed in the Act in EUR.

#### **Article 4.**

The provisions of the Act shall apply to contracting authorities, which are:

- 1) the public finance sector units within the meaning of the provision of the Act of 27 August 2009 on public finances (Journal of Laws of 2019 items 869, as amended<sup>5</sup>);
- 2) state organisational units not having legal personality, other than those specified in point 1;
- 3) legal persons, other than those specified in point 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 points 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

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<sup>5</sup> Amendments to the consolidated text of the Act were announced in Journal of Laws of 2019 items 1622, 1649, 2020 and 2473 and of 2020 items 284, 374, 568, 695, 1175 and 2320

- c) supervise their managerial board, or
  - d) have the right to appoint more than half of the members of their supervisory or managerial board;
- 4) associations of the entities referred to in points 1 or 2, or entities referred to in point 3.

#### **Article 5.**

1. The provisions of the Act shall apply to contracting entities, which are:

- 1) contracting authorities to the extent that they exercise one of the utilities sector activities referred to in para. 4.
- 2) entities other than those specified in point 1, which exercise one of the utilities sector activities referred to in para. 4 and over which contracting authorities, individually or jointly, directly or indirectly by another entity have a dominant influence, in particular:
  - a) hold more than half of shares or stocks, or
  - b) have more than half of the votes resulting from the shares or stocks, or
  - c) have the right to appoint more than half of the members of their supervisory or managerial board;
- 3) other than those specified in points 1 and 2, which exercise one of the utilities sector activities referred to in para. 4 if such an activity is exercised on the basis of special or exclusive rights.

2. Special or exclusive rights within the meaning of para. 1 point 3 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 launch of a procedure for works or services concession;
- 2) conducted pursuant to provisions announced by the PPO President referred to in para. 3.

3. The PPO President gives notice in Official Journal of the Republic of Poland "Monitor Polski" as well as posts on the website of the Office a list of legal acts implementing the provisions defined in Annex II to Directive 2014/25/EU.

4. Utilities sector activities in the field of:

- 1) water management shall be:
  - a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water,
  - b) the supply of drinking water to networks referred to in letter a, unless:
    - the production of drinking water by the contracting entity referred to in para. 1 points 2 and 3, is necessary to pursue an activity other than those referred to in points 1 to 4, and

- supply of drinking water to the network depends solely on the own consumption of the contracting entity and during last 3 years, including the year in which contract is awarded, shall not exceed 30 % of its total production volume,
- c) related to the activity referred to in letters a and b, activities relating to:
- 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,
  - the disposal or treatment of sewage;
- 2) the electricity shall be:
- a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity,
  - b) the supply of electricity to networks referred to in letter a, unless:
    - the production of electricity by the contracting entity referred to in para. 1 points 2 and 3 is necessary to pursue an activity other than those referred to in points 1 to 4, and
    - the supply of electricity to the network depends solely on the own consumption of the contracting entity and during the last 3 years, including the year in which the contract is awarded, shall not exceed 30 % of the total electricity production;
- 3) gas and heat shall be:
- a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat,
  - b) the supply of gas or heat to networks referred to in letter a, unless:
    - the production of gas or heat by the contracting entity referred to in para. 1, points 2 and 3, is the unavoidable consequence of carrying out an activity other than those referred to in points 1 to 4, and
    - the supply of gas or heat to networks shall be aimed only at the economic exploitation of production and for the last 3 years, including the year in which the contract is awarded, shall not exceed 20 % of the average turnover of the contracting entity;
- 4) transport services shall be activities relating to the provision or operation of networks intended to provide a service to the public in the field of transport by railway, tramway, trolley bus, bus, cable or with the use of automated systems;
- 5) ports, maritime and airports shall be activities relating to the exploitation of the geographical area for the purpose of the provision of airports and maritime or inland ports or other terminal facilities to accordingly carriers by air, sea or inland waterway;
- 6) postal services shall be activities relating to the provision of:
- a) the clearance, sorting, routing and delivery of postal items,

- b) the management of services referred to in letter a and the provision of services relating to items not included in letter a, such as non-addressed forms, as long as those services are provided by the provider of services referred to in letter a;
  - 7) the extraction of fuels shall be the extraction of oil or gas and their natural derivatives and the exploration for, or extraction of, lignite, hard coal, or other solid fuels.
2. The supply and distribution referred to in para. 4 points 1-3 shall also be understood as production, wholesale and retail.

#### **Article 6.**

The provisions of the Act shall apply to subsidised contracting entities other than contracting authorities or contracting entities, in following circumstances:

- 1) more than 50 % of the value of the contract awarded by this authority is financed from public funds or by the contracting body, referred to in Articles 4 and 5 para. 1 point 1;
- 2) the value of a contract is equal to or exceeds the EU thresholds;
- 3) 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.

#### **Article 7.**

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 of 2019 item 178);. even if it is paid to a non-commercial person;
- 2) 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;
- 3) procurement documents – shall mean documents drawn up by the contracting body or documents to which the contracting body refers, other than a notice, for determining or describing terms of a contract, including a specification of terms of a contract and a description of needs and requirements;
- 4) supplies – shall mean a purchase of products which are movable goods, energy, water and property rights if they may be traded, in particular 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;
- 5) dynamic purchasing system – shall mean a time-limited electronic process of awarding contracts for generally available services, supplies or works;
- 6) innovation – shall mean the implementation of a new or significantly improved product,

service or process, including but not limited to production, building or construction process, a new marketing method or a new organisational method in business practices, workplace organisation or external relations;

- 7) head of contracting body – shall mean a person or body, who in accordance with the provisions, statute or agreement in force, is entitled to manage the contracting body, with the exclusion of the plenipotentiaries established by the contracting body;
- 8) design contest – shall mean a public promise, in which the contracting body, by means of a public notice, promises a prize for the execution and transfer of rights to the design contest project selected by the jury;
- 9) selection criteria – shall mean objective and non-discriminatory criteria used by the contracting body in a procurement procedure or in a design contest, in order to limit the number of economic operators or participants in a design contest, which shall not subject to exclusion and comply with the conditions for participation in the procedure or in a design contest, which the contracting body invites to submit initial tenders or tenders, to negotiate or to the competitive dialogue or to submit a design contest project;
- 10) supply chain – shall mean all the resources and activities necessary for the execution of supplies, services and works, which are the subject of the contract;
- 11) sensitive works – shall mean construction works used for security purposes involving, requiring or containing classified information or information protected for security reasons;
- 12) sensitive equipment – shall mean equipment used for security purposes involving, requiring or containing classified information or information protected for security reasons;
- 13) sensitive services – shall mean services used for security purposes involving, requiring or containing classified information or information protected for security reasons;
- 14) 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;
- 15) tender for lot – shall mean a tender providing, in accordance with the procurement documents, the performance of a part of the contract (lot);
- 16) written (in writing) – shall mean a way to express information consisting of words, digits or other writing marks, which can be read and reproduced, including those submitted by means of electronic communication;
- 17) qualitative means of proof – shall mean means of proof which confirm the absence of grounds for exclusion, fulfilment of the conditions for participation in the procedure or selection criteria, with the exception of the statement referred to in Article 125 para. 1.
- 18) procurement procedure – shall mean the procedure launched by submission or publication of a notice, by submission of an invitation to negotiations or an invitation to tenders, carried out as an orderly sequence of activities based on the terms of the contract determined by the contracting body, leading to the selection of the most advantageous

tender or to the negotiated provisions of a public contract, ending with the conclusion of a public contract or its annulment, except that the conclusion of a public contract does not constitute an activity in this procedure;

- 19) a record – this means a document drawn up by the contracting body, which confirms the course of the procurement procedure;
- 20) means of proof relating to the subject-matter of a contract – shall mean means of proof which confirm compliance of the supplies, services or works offered with the requirements, characteristics or criteria defined in the description of the subject-matter of the contract or in the description of the award criteria or requirements relating to the performance of the contract;
- 21) works – shall mean execution or both design and execution of works specified in Annex II to Directive 2014/24/EU, Annex I to Directive 2014/25/EU and comprised by Chapter 45 of Annex I to Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ L 340 of 16.12.2002, p.1, as amended<sup>6</sup>), hereinafter referred to as the ‘Common Procurement Vocabulary’ or a work, as well as the execution of a work by any means, in accordance with the requirements determined by the contracting body;
- 22) military equipment – shall mean equipment specially designed or adapted for military purposes and intended for use as an arm, munitions or war material;
- 23) 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 2017 item 344)
- 24) public funds – shall mean public funds within the meaning of the Act of 27 August 2009 on public finances;
- 25) award of the contract – shall mean the conclusion of a public contract;
- 26) a framework agreement – shall mean an agreement concluded between the contracting body and one or a bigger number of economic operators for the purpose of establishing the conditions of contracts to be awarded during a given period, in particular with regard to prices and, if necessary, envisaged quantities;
- 27) a subcontract – shall mean a written contract concluded between the economic operator and the subcontractor and, in the case of a contract for works other than from the fields of defence and security, also between the subcontractor and further subcontractor or between further subcontractors, under which the subcontractor or further subcontractor commits to perform part of the contract;
- 28) services – shall mean any services other than works or supplies;
- 29) conditions of the contract – shall mean conditions which refer to the contract or contract award procedure resulting in particular from the description of the subject-matter of the

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<sup>6</sup> Amendments to that Regulation were announced in the OJ L 329 of 17.12.2003, p.1, OJ L 74 of 15.03.2008, p.1 and OJ L 188 of 18.07.2009, p.14.

contract, requirements related to the performance of the contract, award criteria, procedural requirements or designed terms of a public contract;

- 30) an economic operator – shall mean a natural person, a legal person or an organisational entity not having legal personality, who offers on the market the execution of works or work, the supply of products or the provision of services, or competes for the award of a contract, has submitted a tender or concluded a public contract;
- 31) a contracting body – shall mean a natural person, a legal person or an organisational unit not having legal personality, who is obliged under the Act to apply it;
- 32) a public contract – shall mean a contract for pecuniary interest concluded between a contracting body and an economic operator, having as its subject-matter a purchase by the contracting body of works, supplies or services from the selected economic operator;
- 33) a classical contract – shall mean a contract awarded by a contracting authority and subsidised contracting entity other than utilities contract and a contract in the fields of defence and security;
- 34) a contract for social and other specific services – shall mean a classical or utilities contract, for services listed in Annex XIV to Directive 2014/24/EU and Annex XVII to Directive 2014/25/EU accordingly;
- 35) a utilities contract – this shall mean a contract awarded by a contracting entity for the purpose of exercising one of the utilities sector activities referred to in Article 5 para. 4.
- 36) a contract in the fields of defence and security – shall mean a contract awarded by a contracting authority or a contracting entity, having as its subject-matter:
  - a) the supply of military equipment, including any of its parts, components, subassemblies or software,
  - b) the supply of sensitive equipment, including any of its parts, components, subassemblies or software,
  - c) works, supplies and services related to the security of facilities at the disposal of entities performing contracts in the fields of defence and security or related to the equipment referred to in letters a and b and all its parts, components and subassemblies related to the life cycle of this product or service,
  - d) works and services only for military purposes, sensitive works or sensitive services.

#### **Article 8.**

1. Provisions of the Act of 23 April 1964 – the Civil Code (Journal of Laws of 2020 items 1740 and 2320) shall apply to actions undertaken by contracting bodies, economic operators and design contest participants in the procurement procedure and a design contest and to public contracts, unless provisions of this Act provide otherwise.

2. A time limit set in hours shall be launched with the beginning of the first hour and end with the expiry of the last hour.

3. If a certain event is the beginning of the time limit set in hours, the hour when the event occurred

shall not be taken into account when calculating the time limit.

4. A time limit of two or more days shall include at least two working days.

5. A working day is not a public holiday nor a Saturday.

## **Section 2**

### **Exclusions from the application of the provisions of the Act**

#### **Article 9.**

The provisions of the Act shall not apply to classical contracts and utilities contracts, or design contests:

- 1) which the contracting body is obliged to award or conduct on the basis of a procedure, other than defined in the Act:
  - a) of an international organisation,
  - b) resulting from an agreement creating an international legal commitment, such as an international agreement concluded between 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 the joint project;
- 2) entirely financed by an international organisation or an international financing institution, if the contracting body applies to these contracts or design contests a procedure of the international organisation or the international financing institution, other than defined in the Act,
- 3) financed 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.

#### **Article 10.**

1. The provisions of the Act shall not apply to contracts or design contests awarded by:

- 1) 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 management of that currency,
  - e) the accumulation of foreign exchange reserves and management of those reserves,

- f) the accumulation of gold and precious metals,
- g) the operation of bank accounts and conduct of bank financial settlements;

2) National Economy Bank:

- a) related to the exercise of tasks referring to handling of funds established, entrusted or transferred to National Economy Bank and 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,
- d) of a value less than EU thresholds;

3) contracting authorities and subsidised contracting entities, for the purpose of carrying out activities in the scope of:

- a) putting to the public a telecommunications network at the disposal or
- b) the operation of public telecommunications network, or
- c) provision of public telecommunications services by means of public telecommunications network;

4) contracting entities, referred to in Article 5 para. 1, point 1, carrying out utilities sector activities in the scope of postal services referred to in Article 5 para. 4 point 6, to provide 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;

5) [repealed].

2. The provisions of the Act shall not apply to contracts:

- 1) for the services of the National Bank of Poland;
  - 2) for the services of the National Economy Bank, with references to banking services for the entities referred to in Article 4 points 1 and 2, except for self government bodies;
  - 3) awarded to a budget economy unit by a 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 organisational 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 point 2 of the Act of 27 August 2009 on public finances;
  - 4) for services awarded by a contracting authority and a contracting entity to another contracting body which has been granted with the exclusive right to provide those services by means of an Act or other normative act, subject to publication.
3. To calculate the percentage of activity referred to in para. 2 point 3 letter a, the following shall be taken into account:
- 1) the average total turnover generated by the budget economy unit or
  - 2) another alternative measure based on the activity, in particular the costs incurred by the budget economy unit

— for services, supplies or works for 3 years preceding the award of the contract.

4. If due to the day of establishing or launching the activity by the budget economy unit or due to reorganisation of its activity, data relating to the average total turnover for the 3 years preceding the award of the contract or other alternative measure based on activities, in particular the costs incurred by the budget economy unit, is unavailable or inadequate, a reliable measure, in particular projections of turnover, costs or other alternative measures shall be determined by calculating the percentage of activity referred to in para. 2 point 3 letter a.

### **Article 11.**

1. The provisions of the Act shall not apply to contracts or design contests where the subject-matter of the contract includes:

- 1) arbitration or conciliation services;
- 2) legal services related to:
  - a) 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 2020 item 823), 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,
- b) 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 point a, or where it is highly probable that the case covered by the legal advice will become a subject of such proceedings,
  - c) notarisatio and authentication of documents,
  - d) 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,
  - e) the exercise of public authority;
- 3) research or development services, unless they fall within covered by the CPV codes from 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 defined in the Common Procurement Vocabulary, and the following conditions are jointly met:
- a) benefits from these services are derived only by the contracting body for the needs of their own activities,
  - b) the whole remuneration for the service provided is paid out by the contracting body;
- 4) 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;
- 5) purchase of broadcasting time or programme from suppliers of audio-visual or radio media services;
- 6) purchase of property rights and other rights to buildings or real estates;
- 7) 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 2020 items 89, 284, 288, 568 and 2320), and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;
- 8) 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 within the limits on commitments provided in the budget act;
- 9) civil defence, civil protection and prevention services provided by noncommercial organisations or associations and covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9, and 85143000-3, defined in the Common Procurement Vocabulary, except for patient medical transport services;
- 10) [repealed];

11) 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.

2. The provisions of the Act shall not apply to contracts:

- 1) under the labour law;
- 2) on concession for works and concession for services within the meaning of the Act of 21 October 2016 on concession contract for works or services (Journal of Laws of 2019, items 1528, 1655 and 2020 and of 2020, item 2275), unless the Act provides otherwise;
- 3) referred to in Article 149 para. 2 of the Act of 20 July 2018 - Law on Higher Education and Science (Journal of Laws of 2020 items 85, 374, 695, 875 and 1086).

3. [repealed].

4. The provisions of the Act shall not apply to contracts for the production of public document forms referred to in Article 5 para. 2 point 16, 17, 19, and point 32 letter a-e, g, h, and m of the Act of 22 November 2018 on Public Documents (Journal of Laws of 2024, items 1669 and 1863), and their personalization or customization.

5. The provisions of the Act shall not apply to contracts with a value lower than the EU thresholds:

- 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 body 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 body with fixed assets to be used in current operations of the contracting body;
- 3) awarded by other entities than defined in para. 1 point 4, 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 of 2020 item 1327 and of 2021 item 4), if the said contracts are not aimed at providing the contracting body/entity with fixed assets to be used in current operations of the contracting body/entity;
- 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 of 2020 item 802 and 1086 and of 2021 item 11), if these 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 referred to in Chapter 5 of the Act of 9 October 2015 on revitalisation;
- 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 determined on the basis of the Act of 17 December 1998 on the rules of use or residence of Polish armed forces outside the Republic of Poland (Journal of Laws of 2014, item 1510 and of 2019 item 1726);
  - 8) awarded by the Minister of Justice – Prosecutor General or organisational units subordinate to or supervised by him to prison work establishments run by state-owned enterprises or budgetary institutions, related to the employment of persons deprived of liberty, if the main part of activity of a prison work establishment concerns the performance of tasks entrusted to it by the Minister of Justice – Prosecutor General or organizational units subordinate to or supervised by him, carried out independently or with the participation of subcontractors, provided that at least part of the contract is performed by persons deprived of liberty;
  - 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 2020 item 1670), being an entity referred to in Article 4 para 3;
  - 10) related to the process of disbursement of guaranteed funds referred to in Article 2 point 65 of the Act 10 June 2016 on the Bank Guarantee Fund, the deposit guarantee scheme and a forced restructuring, in particular services provided by the entity, a contract on the disbursement of guaranteed funds will be concluded with;
  - 11) related to the compulsory restructuring or cancellation or conversion of capital instruments or eligible liabilities referred to in Article 101 para. 7 of the Act of June 10, 2016 on the Bank Guarantee Fund, the deposit guarantee scheme and compulsory restructuring, or related to the taking of measures and the exercise of powers under Regulation (EU) 2021/23 of the European Parliament and of the Council (EU) 2021/23 of the European Parliament and of the Council of December 16, 2020, on the framework for the recovery and resolution of central counterparties and amending Regulations (EU) No. 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (OJ EU L 22 of 22.01.2021, p. 1), hereinafter referred to as “Regulation No. 2021/23”, the subject of which is:

- a) conduct of an assessment, referred to in Article 137 para. 1 and Article 241 para. 1 of the Act of June 10, 2016, on the Bank Guarantee Fund, the deposit guarantee scheme, and compulsory restructuring,
- aa) carrying out of the valuation, referred to in Article 24 para. 1 of Regulation No. 2021/23,
- b) provision of advisory services, including strategic consulting, economic, financial, tax, legal and information technology consulting,
- c) [repealed].

12) [repealed];

13) related to the use of government financial stabilization instruments referred to in the Act of 12 February 2010 on the recapitalization of certain institutions and on government instruments of financial stabilization, in particular contracts, the subject of which is:

- a) update of an assessment, referred to in Article 19f para. 8 of this Act,
- b) providing advisory services, including strategic consulting, economic and financial, tax, legal and information technology consulting,
- c) entrusting a third party with the management of the rights referred to in Article 19b para. 1 of this Act;

14) for the services of National Economy Bank, in the scope of orders by:

- a) the minister responsible for public finance matters and activities related to the grant the support referred to in Article 3 para. 1 of the Act of 12 February 2009 on granting by the State Treasury support to financial institutions, or granting a guarantee for the repayment of the refinancing loan referred to in Article 4 para. 1 of this Act, including those related to securing or servicing the support provided or the granted guarantee,
- b) National Bank of Poland matters and activities related to the granting of loans, referred to in Article 42 and Article 43 of the Act of 29 August 1997 on the National Bank of Poland, including those related to securing or servicing these loans.

6. The activity connected with the execution of contracts related to social and professional integration of persons referred to in Article 94 para. 1 point 5 are included in the essential part of the activity of a prison work establishment, referred to in para. 5 point 8.

## **Article 12.**

1. The provisions of the Act shall not apply to:

1) contracts or design contests:

- a) classified in accordance with provisions of the Act of 5 August 2010 on the protection of classified information (Journal of Laws of 2019 item 742) or that must be accompanied, pursuant to separate regulations, by special security measures, or
- b) when essential security interests of the State requires so

— in so far as the protection of essential security interests of State cannot be guaranteed in other way, in particular by applying the provisions of Chapter VI;

- 2) contracts concerning production or trade of an arm, munitions or war material provided for in Article 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 in so far as the protection of the essential security interests of State cannot be guaranteed in other way, in particular by applying the provisions of Chapter VI.

2. [repealed]

### **Article 13.**

1. The provisions of the Act shall not apply to contracts in the fields of defence and security:

- 1) in the cases referred to in Article 11 para. 1 points 1, 3 and 6, para. 2 point 1 and Article 12;
- 2) subject to a specific procedure:
  - a) on the basis of an international agreement in which the Republic of Poland is a party, concluded with one or more non-member states of the European Union, or such an agreement concluded at ministerial level,
  - b) on the basis of an international agreement in which the Republic of Poland is a party, or an agreement concluded on ministerial level relating to the stationing of troops and concerning entrepreneurs regardless their seat or place of residence,
  - c) an international organisation purchasing for its purposes or for contracts, which must be awarded by the Republic of Poland in accordance with this procedure;
- 3) in cases where the application of provisions of the Act would oblige the contracting body to submit information, the disclosure of which is contradictory to the essential national security interests;
- 4) provided for intelligence or counter-intelligence purposes;
- 5) 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;
- 6) awarded in a non-member state of the European Union, including contracts for the supply of non-military equipment, works or services for logistic purposes carried out during the deployment of the armed forces, and forces mainly tasked with security protection in cases where operational reasons require them to be conducted with economic operators located in the operating zone;
- 7) awarded by the government, regional or local authorities to the government, regional or local authorities of another country related to:
  - a) supplies of military or sensitive equipment, or

- b) works and services directly linked to such equipment, or
- c) works and services solely for military purposes or sensitive works or services;

8) financial services, with the exception of insurance services.

2. In case of contracts referred to in para. 1 point 5, the contracting body is obliged, after the start of the programme, to inform the European Commission about a part of expenditure for research and development relating to the overall costs of the cooperation programme, the agreement on cost-sharing and the planned procurement for each member state of the European Union, if they are foreseen.

#### **Article 14.**

1. The provisions of the Act shall not apply to contracts or design contests which subject-matter contains defence and security aspects subjected to a specific procedure:

- 1) on the basis of an international agreement in which the Republic of Poland is a party, concluded with one or more non-member states of the European Union, or such an agreement concluded at ministerial level, and relating to works, supplies or services for the joint implementation or operation of the project by the signatories,
- 2) on the basis of an international agreement in which the Republic of Poland is a party, or an agreement concluded on ministerial level relating to the stationing of troops and concerning entrepreneurs regardless their seat or place of residence,
- 3) applied by an international organisation

— if contracts must be awarded by the Republic of Poland in accordance with this procedure.

2. The provisions of the Act shall not apply to contracts or design contests referred to in para. 1:

- 1) financed in total by an international organisation or an international financing institution, if the contracting body 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) financed 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.

#### **Article 15.**

[repealed]

### **Chapter 2**

#### **Principles of award of contracts**

#### **Article 16.**

The contracting body shall prepare and conduct procurement procedure in a following manner:

- 1) ensuring fair competition and equal treatment of economic operators;

- 2) transparent;
- 3) proportional.

#### **Article 16a.**

Within the scope covered by the World Trade Organization Agreement on Government Procurement or other international agreements guaranteeing, on the basis of reciprocity and equality, access to public procurement markets to which the European Union is a party, the contracting body shall ensure that economic operators from third countries that are parties to that Agreement or those international agreements, as well as works, supplies, and services originating from those countries, are treated in the same manner as economic operators from European Union Member States and works, supplies, and services originating from European Union Member States.

#### **Article 16b.**

1. The contracting body may specify in the procurement documents or the contract notice that:

1) economic operators who conduct business and have their registered office or place of residence in countries other than European Union Member States and other than countries that are parties to the World Trade Organization Agreement on Government Procurement or parties to other international agreements guaranteeing, on the basis of reciprocity and equality, access to the public procurement market to which the European Union is a party, hereinafter referred to as “third countries not party to international agreements”;

2) economic operators may compete for a contract jointly with economic operators from third countries not party to international agreements;

3) economic operators may rely on the capacities or situation of entities providing resources referred to in Article 118 para. 1 originating from third countries not parties to international agreements;

4) economic operators may entrust the performance of part of the contract to subcontractors originating from third countries not parties to international agreements;

5) subcontractors may entrust the performance of part of the contract to further subcontractors from third countries not parties to international agreements.

2. The contracting body may, in relation to economic operators from third countries not parties to international agreements or works, supplies and services from those countries, establish less favourable terms of contract than in relation to economic operators from the countries, referred to in Art. 16a, or works, supplies and services originating from those countries.

#### **Article 17.**

1. The contracting body shall award the contract in a manner ensuring:

- 1) the best quality of supplies, services and works, justified by the nature of the contract, within funds which the contracting body may allocate to its performance, and
- 2) the best results of the contract, including social, environmental and economic effects, insofar as any of these effects can be obtained in a given contract in relation to the

expenditure incurred.

2. The contract shall be awarded to the economic operator selected in accordance with the provisions of the Act.

3. Actions related to the preparation and conduct of the procurement procedure shall be carried out by persons ensuring impartiality and objectivity.

### **Article 18.**

1. The procurement procedure shall be open to the public.

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

3. Information, which is regarded as a business secret within the meaning of the provisions of the Act of 16 April 1993 on combating unfair competition shall not be disclosed (Journal of Laws of 2020 item 1913), if the economic operator, together with the submission of such information, stipulated that it shall not be shared and demonstrated that reserved information remains a business secret. The economic operator may not stipulate the information referred to in Article 222 para. 5.

4. The contracting body may determine in procurement documents or in the contract notice the requirement concerning the confidentiality of the information provided to the economic operator during the contract award procedure.

5. Where justified by the protection of privacy or public interest, the contracting body shall not disclose:

1) personal data, in case of contract awarded under Article 214 para. 1 point 1 letter b,

2) the amount of remuneration, in case of a contract awarded under Article 214, para. 1 point 2

— 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 body with fixed assets to be used in current operations of the contracting body, provided that the economic operator, before signing a public contract, reserved that the data may not be disclosed.

6. The contracting body shall make available the personal data referred to in Article 10 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 of 04.05.2016, p.1, as amended<sup>7</sup>), hereinafter referred to as 'Regulation 2016/679', in order to enable legal protection measures referred to in Chapter IX until the expiry of the time limit

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<sup>7</sup> Amendments to that Regulation were announced in the OJ L 127 of 23.05.2018, p.2.

for their lodging.

#### **Article 19.**

1. The contracting body may carry out the information obligations referred to in Article 13 para. 1-3 of Regulation 2016/679, by including the required information in the contract notice or in procurement documents.
2. The exercise by a person to whom the data refers of the right to rectification or supplement referred to in Article 16 of Regulation 2016/679 may not result in a change in the outcome of procurement procedure or an amendment to the terms of a contract in a manner incompatible with the Act.
3. In the procurement procedure, a request for restriction of processing referred to in Article 18 para. 1 of Regulation 2016/679, does not restrict the processing of personal data until this procedure has been completed.
4. The contracting body shall inform about limitations of the application of Regulation 2016/679 referred to in para. 2 and 3, in the contract notice, in the procurement documents or otherwise accessible to the person to whom the personal data refers.
5. The contracting body shall process personal data collected in the procurement procedure in a manner that ensures protection against their unlawful dissemination.

#### **Article 20.**

1. The procurement procedure, subject to the exceptions specified in the Act, shall be conducted in writing.
2. The procurement procedure shall be conducted in Polish.
3. In justified cases, the contracting body may allow in the procurement documents or in the contract notice the possibility to submit a request to participate in the procedure, an initial tender, a tender subjected to negotiations, a tender, a statements or other documents in one of the languages commonly used in international trade or in a language of the country in which the contract is awarded.
4. In justified cases, the contracting body may draw up documents and perform certain activities in a procurement procedure, in particular carry out negotiations in one of the languages commonly used in international trade or in a language of the country in which the contract is awarded.

### **Chapter 3**

#### **The state purchasing policy and the plan of procurement procedures**

#### **Article 21.**

1. The state purchasing policy defines priority actions of the Republic of Poland in the field of public procurement, as well as the desired direction of activities for contracting bodies in the field of award of contracts, which includes, in particular, the purchase of innovative or sustainable

products and services, taking into account:

- 1) standardisation aspects;
- 2) calculation of costs over the life cycle of products;
- 3) corporate social responsibility;
- 4) dissemination of good practices and purchasing tools;
- 5) the use of social and health aspects.

2. In the state purchasing policy, defining planned actions of government administration, the objectives and directions set out in the country's medium-term development strategy are included.

3. The state purchasing policy is developed once every 4 years.

4. The state purchasing policy is adopted by the Council of Ministers, by means of a resolution, on request of the Minister responsible for the economy.

5. The Minister responsible for the economy prepares a draft of the state purchasing policy and coordinates its implementation.

#### **Article 22.**

The contracting body, which is the central body of government administration, draws up a management strategy for a particular purchasing category, compatible with the state purchasing policy. Contracts of a key nature for the implementation of the state purchasing policy are defined in the strategy.

#### **Article 23.**

1. Contracting authorities, referred to in Article 4 points 1 and 2, and their associations, no later than 30 days from the date of adoption of the budget or financial plan by their authorised body, shall draw up a plan of procurement procedures they intend to conduct in a given financial year. The plan shall be provided in the Public Procurement Bulletin, in accordance with the principles set out in Title III Chapter 2, and on the website of contracting body.

2. In the Public Procurement Bulletin and on the website of contracting body, a plan of procurement procedures may also be provided by contracting bodies other than those referred to in para. 1.

3. The plan of procurement procedures shall include, in particular, information on:

- 1) the subject matter of a contract;
- 2) the type of contract broken down by contracts on works, supply or service;
- 3) envisaged type of procedure or procurement procedure;
- 4) estimated contract value;
- 5) expected date for launching the procurement procedure.

4. The contracting body shall ensure that the plan of procurement procedures is up-to-date. The

update of the plan shall be provided in the Public Procurement Bulletin and placed on the website of the contracting body.

5. Information on the plan of procurement procedures shall not be provided if essential interest security of State or the protection of classified information requires so.

6. The Minister responsible for the economy shall define, by means of a regulation, the template of the plan of procurement procedures, based on the need for ensuring the accuracy, transparency and update of the information included in the plan.

## **Chapter 4**

### **Application of the provisions of the Act to mixed contracts**

#### **Article 24.**

1. If the contract is divided into lots and comprises simultaneously:

- 1) lots to which the provisions of the Act on the award of contracts in the fields of defence and security, utilities contracts or classical contracts apply, or
- 2) lots to which the provisions of the Act apply and lots to which these provisions do not apply

— the contracting body may award the contract in lots or in one contract.

2. In case a contract is awarded in lots, the provisions of the Act applicable to the lot concerned shall apply to the award of each contract, taking into account Article 29 para. 2 and Article 30 para. 1, 2 and 4.

3. In case of the award of one contract, the contracting body:

- 1) may not apply the provisions of the Act if the contract comprises a lot for which the circumstances referred to in Article 12 para. 1 occur, and the award of one contract is justified by objective reasons;
- 2) applies the provisions of the Act on the award of contracts in the fields of defence and security if the contract comprises a lot to which these provisions apply, and the award of one contract is justified by objective reasons;
- 3) applies the provisions of the Act on the award of utilities contracts in case:
  - a) the contract comprises a lot to which those provisions apply and its value is equal to or exceeds the EU thresholds,
  - b) the contract includes simultaneously a lot referred to in letter a, and a lot to which the provisions of the Act of 21 October 2016 on the concession contract for works or services apply;

- 4) applies the provisions of the Act on the award of classical contracts, if the contract comprises simultaneously a lot to which these provisions apply and a lot to which the - provisions of the Act of 21 October 2016 on the concession contract for works or services apply;

5) if the contract comprises simultaneously a lot to which the provisions of the Act do not apply, and a lot to which its provisions apply, the provisions of the Act shall apply to a lot to which the provisions of the Act apply, regardless of the value of a lot to which the provisions of the Act do not apply.

4. The contracting body, in cases referred to in para. 3, shall not award one contract in order to avoid application of the provisions of the Act.

#### **Article 25.**

1. If the contract cannot be divided into lots and comprises simultaneously elements to which the provisions of the Act apply, concerning the award of contracts in the fields of defence and security, utilities or classical contracts, or elements to which the provisions of the Act apply and to which these provisions do not apply, to the award of that contract:

- 1) the provisions applicable to the main subject-matter of the contract shall be applied, except that if the contract comprises simultaneously elements of a concession for services and a contract for supplies, the main subject-matter of the contract shall be specified by determining which value of the services or supplies concerned is the higher;
- 2) the provisions of the Act shall not be applied if the contract comprises elements for which the circumstances referred to in Article 12 para.1 occur.
- 3) the provisions of the Act on defence and security contracts shall be applied if the contract comprises elements of defence and security.

2. The contract shall not be divided into lots if it forms, for technical, organisational or economic reasons, an inseparable whole.

#### **Article 26.**

1. If the contract serves simultaneously to carry out several types of activities, one or more of which is a utilities sector activity referred to in Article 5 para. 4, the contracting body may award separate contracts for the purposes of carrying out different types of activities or one contract.

2. The provisions of the Act applicable to the type of activity to which each contract is used shall apply to the award of separate contracts.

3. The provisions of the Act applicable to the type of activity to which the contract principally relates shall apply to the award of a single contract. If the contract relates simultaneously to the utilities sector activity referred to in Article 5 para. 4, and the activity comprising defence and security aspects, the provisions of Article 24 para. 3 points 1 and 2 shall apply.

4. The contracting body, in the cases referred to in para. 3, shall not award one contract in order to avoid the application of the provisions of the Act.

5. If it is impossible to determine which activity type principally relates to the contract, to the award of the contract the following shall be applied:

- 1) the provisions of the Act relating to the award of classical contracts, if these provisions apply to one of the activity type to which the contract relates, and to the other the

provisions relating to the award of utilities contracts;

- 2) the provisions of the Act relating to the award of utilities contracts, if the contract relates simultaneously to utilities sector activities referred to in Article 5 para. 4, and activity for which:
  - a) the provisions of the Act of 21 October 2016 on the concession contract for works or services apply, or
  - b) the provisions of the Act relating to the award of classical contracts and the provisions of the Act of 21 October 2016 on the concession contract for works or services do not apply.

#### **Article 27.**

1. If the contract comprises simultaneously services, supplies or works, the provisions of the Act relating to the main subject-matter of the contract shall apply to the award of the contract.

2. Where the contract comprises simultaneously:

- 1) services and supplies or
- 2) services and social services and other specific services

— the main subject-matter of the contract shall be specified by determining which estimated value of the services or supplies concerned is the higher.

### **Chapter 5**

#### **Estimating the value of the contract and the design contest**

##### **Article 28.**

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 with due diligence.

##### **Article 29.**

1. The contracting body may not underestimate the value of a contract or a design contest, or select the manner of calculating its value with the intention of avoiding the application of the Act.
2. The contracting body may not divide the contract into separate contracts if this leads to non-application of the provisions of the Act, unless it is justified by objective reasons.

##### **Article 30.**

1. If the contracting body plans to award a contract on works or service in lots, each of which is the subject of a separate procedure, or allows submitting tenders for lots, the value of the contract shall be the total value of all those lots.
2. If the contracting body plans to purchase similar supplies, the value of the contract shall be the total value of similar supplies, even if the contracting body awards the contract in lots, each of which is the subject of a separate procedure, or submitting tenders for lots.
3. In calculating the value of a contract for works, the value of the supplies and services, put by

the contracting body at the disposal of the economic operator, shall also be included, in so far as they are necessary to carry out these works.

4. In case of contracts awarded in lots, in order to award of a contract for a given lot, the contracting body may apply the provisions of the Act applicable to the value of this contract lot, if its value is less than the PLN equivalent of EUR 80 000 for supplies or services and of EUR 1 000 000 for works, provided that the total value of these lots is not higher than 20 % of the contract value.

#### **Article 31.**

1. If the contracting body plans to award contracts referred to in Article 214 para. 1 point 7, Article 388, point 2 letter c or Article 415 para. 2 point 6, the value of these contracts shall also be taken into account in determining the value of the contract.

2. In determining the value of a contract, the greatest possible scope of the contract shall be taken into account, including options and recurrences.

3. The value of an innovation partnership shall be the maximum value of all activities in the research and development process which are to be carried out in each of the stages of the planned partnership, and all supplies, services or works to be developed and contracted at the end of the partnership.

4. If the contracting body provides prizes in the competitive dialogue and in the innovation partnership, their value shall be taken into account in the estimated value of the contract.

#### **Article 32.**

1. The value of a dynamic purchasing system shall be the total value of contracts included in this system, which the contracting body/entity envisages to award over the duration of the dynamic purchasing system.

2. The value of a framework agreement shall be the total value of contracts which the contracting body intends to award over the duration of the framework agreement.

3. The value of a design contest shall be the value of prizes and the value of the reimbursement of costs provided for design contest participants .

4. The value of the design contest, in which the prize is an invitation to participate in the procurement procedure, shall be the value of that contract, the value of additional prizes if the contracting body provided for such prizes, and the value of the reimbursement of the costs provided for design contest participants.

#### **Article 33.**

1. In case the contracting body consists of several organisational units, the total value of the contract shall be determined for all the organizational units jointly.

2. If a separate organisational unit, having financial independence, awards a contract related to its own activity, the value of the contract awarded shall be determined separately from the value of contracts awarded by other organisational units of this contracting body which have financial independence.

#### **Article 34.**

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

- 1) Investor's cost estimation drawn up on the basis of the design documentation and technical specifications for the execution and receipt of works, or on the basis of envisaged costs of works specified in the functional-utility programme, if the subject-matter of the contract involves the execution of works within the meaning of the Act of 7 July 1994 – Construction Law (Journal of Laws of 2020 item 1333, 2127 and 2320 and of 2021 item 11);
- 2) envisaged costs of design works and envisaged costs of works specified in the functional-utility programme, if 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. The competent Minister in the field of construction, spatial planning and housing shall specify by a regulation methods and grounds for:

- 1) compiling investor's cost estimation,
- 2) calculation of envisaged costs of design work and envisaged costs of works specified in the functional-utility programme

— taking into account technical, technological and organisational data affecting the contract value.

#### **Article 35.**

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

- 1) the actual total value of successive contracts of the same type awarded over previous 12 months or in the previous budget year or financial year, taking into account changes in the quantity or value of the purchased services or supplies which may have occurred within 12 months following the award of the first contract, or
- 2) the total value of contracts which the contracting body intends to award within 12 months following the first service or supply.

2. If a contracts for supplies on the basis of lease, rental or hire purchases is awarded:

- 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,
  - b) 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.

3. The basis for determination of the value of a contract for services which 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 the contract includes services on:

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

#### **Article 36.**

1. The contract value shall be calculated not earlier than 3 months prior to the date of the start of the procurement procedure where the subject-matter of the contract covers supplies or services and not earlier than 6 months prior to the date of launching the procurement procedure in the case of works, except that in case of contracts awarded in lots, the above time limits relate to the launch of the first from all procedures.

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

### **Chapter 6**

#### **Contracting bodies and economic operators**

##### **Section 1**

##### **Contracting body**

#### **Article 37.**

1. The contracting body shall prepare and conduct a procurement procedure and organise a design contest.

2. The contracting body may entrust the preparation or conduct of the procurement procedure or the organisation of a design contest, within the framework of ancillary purchasing activities, to its own organisational unit or to a third party.

3. Ancillary purchasing activities consist of providing support to the contracting bodies in connection with the award of the contract or the organisation of a design contest, in particular by:

- 1) ensuring technical infrastructure making it possible for the contracting body to award contracts or conclude framework agreements;

- 2) consultancy related to the the planning, preparation or conduct of a contract award procedure or the organisation of a design contest;
  - 3) preparing a procurement procedure;
  - 4) conducting a procurement procedure for and on behalf of the contracting body.
4. Bodies, referred to in para. 2, by carrying out ancillary purchasing activities referred to in para. 3 point 4, shall act as plenipotentiaries of the contracting body.

#### **Article 38.**

1. Contracting bodies may, jointly prepare or conduct a procurement procedure or organise a design contest, award a contract, conclude a framework agreement, establish a dynamic purchasing system or award a contract under a framework agreement or a dynamic purchasing system.
2. In the cases referred to in para. 1, contracting bodies shall conclude an agreement.
3. Contracting bodies jointly preparing or conducting a procurement procedure or organising a design contest shall be jointly responsible for the compliance of that procedure or design contest with the law, including the case when one contracting body prepares or conducts the procedure for or on behalf of all contracting bodies.
4. If a procurement procedure or a design contest is not in whole prepared and conducted or organised for and on behalf of all contracting bodies:
  - 1) each contracting body shall be liable for the fulfilment of its obligations resulting from the Act in the scope of the part of the procedure or a design contest, which it prepares and conducts or organises for itself and on its own behalf;
  - 2) all contracting bodies shall be liable for the fulfilment of the obligations resulting from the Act in the scope of the part of the procedure or a design contest, which is prepared and conducted or organised for and on behalf of all contracting bodies.
5. The provisions relating to the contracting body shall apply accordingly to contracting bodies referred to in para.1.

#### **Article 39.**

The Prime Minister may appoint, by order, from among government administration bodies or organisational units which are subordinate to or supervised by those bodies, the contracting body which will be competent to conduct a procurement procedure or to award a contract for the benefit of those bodies or units, and may specify the manner of cooperation with the appointed contracting body.

#### **Article 40.**

The Minister in charge of the department for government administration may appoint, by order, from organisational units subordinated to or supervised by the Minister, the contracting body, which will be competent to conduct a procurement procedure or to award a contract for the benefit of those units, and may specify the manner of cooperation with the appointed contracting body.

#### **Article 41.**

A unit of territorial self-government executive body may appoint, from among the subordinated local government organisational unit, the contracting body, which will be competent to conduct a procurement procedure or to award a contract for the benefit of those units, and may specify the manner of cooperation with the appointed contracting body.

#### **Article 42.**

1. Contracting body may, jointly with contracting body having their residence or registered office in other Member States of the European Union, prepare or conduct a contract award procedure or organise a design contest, award a contract, conclude a framework agreement, establish a dynamic purchasing system or award a contract under a framework agreement or a dynamic purchasing system.

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

- 1) obligations of the parties, their distribution and the applicable provisions of the countries where the contracting body resides or is registered,
- 2) organisation of a procurement procedure or design contest, the award of a contract, the conclusion of a framework agreement or the establishment of a dynamic purchasing system, including issues related to the preparation and conduct of this procedure or the organisation of a design contest, distribution of contracted works, supplies or services and conclusion of agreements

— unless it is regulated in an international agreement concluded between the Republic of Poland and other Member States of the European Union.

3. The distribution of obligations and applicable regulations shall be detailed in the contract notice or procurement documents concerning jointly awarded contracts or organised design contests.

4. The contracting body 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 43.**

1. Contracting bodies may, by means of an agreement, establish a joint entity with contracting bodies having their residence or registered office in other Member States of the European Union, in particular the 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 the European grouping of territorial cooperation(EGTC) (OJ L 210 of 31.07.2006, p.19, as amended<sup>8</sup>).

2. In the case referred to in para. 1, the contracting body shall, by a decision of the competent authority of the joint entity, indicate the provisions, that will be applicable to preparation and conduct of the procurement procedure or the organisation of a design contest, the conclusion of framework agreements and the establishment of a dynamic purchasing system by a joint entity, applicable in one of the Member States of the European Union, where:

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Amendments to that Regulation were announced in the OJ L 347 of 20.12.2013, p.303 and OJ L 330 of 03.12.2016, p.5.

- 1) the joint entity has registered office or
  - 2) carry out its activities.
3. The agreement, referred to in para. 1, may be concluded for an indefinite or definite period, for the purpose of awarding a particular type of contract, one specific contract or more of them.

#### **Article 44.**

1. The central purchasing body shall be the contracting body, which carries out a permanent activity in the scope of:
  - 1) purchasing products or services intended for their resale to the contracting body or
  - 2) awarding contracts or concluding framework agreements for works, supplies or services for the benefit of contracting bodies.
2. The central purchasing body may carry out activity relating to the performance of ancillary purchasing activities, referred to in Article 37 para. 3.
3. Contracting bodies, without applying the Act, may:
  - 1) purchase products or services from a central purchasing body carrying out the activities referred to in para.1 point 1;
  - 2) in case the central purchasing body carries out the activity referred to in para.1 point 2, purchase works, supplies or services:
    - a) by means of contracts awarded by that central purchasing body,
    - b) by a dynamic purchasing system operated by that central purchasing body,
    - c) under a framework agreement concluded by that central purchasing body;
  - 3) purchase from the central purchasing body the services for pecuniary interest to the extend specified in para. 1 and 2.
4. The provision of para. 3 shall apply in cases of a purchase of:
  - 1) products or services in the scope defined in para. 3 point 1 by the contracting:
    - a) authority, from a central purchasing body, which is a contracting body,
    - b) entity, from the central purchasing body, which is a contracting authority or contracting entity,
    - c) contracting authority or contracting entity awarding contracts in the fields of defence and security, from a central purchasing body, which is a contracting body, a contracting entity or a European public body, as far as it applies the provision of the Act applicable to contracts in the fields of defence and security;
  - 2) works, supplies or services to the extend specified in para. 3 point 2 by:
    - a) contracting authority:
      - by means of contracts awarded by a central purchasing body, which is a contracting authority or

- by a dynamic purchasing system operated by that central purchasing body, or
  - under a framework agreement concluded by that central purchasing body,
- b) contracting entity:
- by means of contracts awarded by a central purchasing body, which is a contracting authority or contracting entity, or
  - by a dynamic purchasing system operated by that central purchasing body, or
  - under a framework agreement concluded by that central purchasing body,
- c) contracting authority or a contracting entity, awarding contracts in the fields of defence and security:
- by means of contracts awarded by a central purchasing body, which is a contracting authority, a contracting entity or a European public body, as far as it applies the provisions of the Act applicable to contracts in the fields of defence and security or
  - by a dynamic purchasing system operated by that central purchasing body, or
  - under a framework agreement concluded by that central purchasing body.

5. The central purchasing body shall be responsible for compliance with the Act of activity referred to in para.1.

6. The provisions referring to the contracting body shall apply accordingly to the central purchasing body.

#### **Article 45.**

In the case of the establishment of a dynamic purchasing system, the central purchasing body shall indicate in the contract notice whether other contracting bodies will be able to use the dynamic purchasing system operated by the central purchasing body.

#### **Article 46.**

Contracting bodies shall be responsible for compliance with the Act:

- 1) of procurement procedures conducted by them falling under a dynamic purchasing system operated by a central purchasing body or under a framework agreement concluded by the central purchasing body;
- 2) of selection of economic operators for contracts falling under a framework agreement concluded by the central purchasing body in the case referred to in Article 314 para. 1 points 1 or 2.

#### **Article 47.**

The Prime Minister may appoint, by order, a central purchasing body from among the organizational units which are subordinated to or supervised by government administration bodies and obligate contracting bodies from government administration to purchase 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 or under a dynamic purchasing system operated by the central purchasing body, and may also specify the manner of cooperation with the central purchasing body.

#### **Article 48.**

1. The Minister in charge of the department of government administration may appoint, by order, a central purchasing body from among organisational units subordinated to or supervised by the Minister and obligate these units to purchase certain types of contracts from a 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 or under a dynamic purchasing system operated by the central purchasing body, and may also specify the manner of cooperation with the central purchasing body.

2. A unit of territorial self-government may purchase certain types of contracts from a central purchasing body, appointed, by order, by the Minister in charge of the department of government administration or from economic operators selected by such central purchasing body, and may award contracts on the basis of a framework agreement concluded by the central purchasing body or contracts under a dynamic purchasing system operated by the central purchasing body.

3. Principles for cooperation in the case referred to in para. 2, between the unit of territorial self-government and the central purchasing body, shall be determined by the agreement concluded between the minister in charge of the department for government administration and a unit of territorial self-government.

#### **Article 49.**

A unit of territorial self-government may designate or appoint a central purchasing body, obligate its subordinate entities to purchase certain types of contracts from the central purchasing body, including from the central purchasing body referred to in Article 48 para. 2, and to award contracts on the basis of a framework agreement concluded by a central purchasing body or under a dynamic purchasing system operated by the central purchasing body, and may specify the manner of cooperation with that central purchasing body.

#### **Article 50.**

1. The contracting body may use the services of a central purchasing body having its registered office in another Member State of the European Union within the scope of a purchase of products or services intended for their resale to the contracting body.

2. Services of the central purchasing body referred to in para. 1 shall be governed by the provisions referred to contracts applicable in the Member State where the central purchasing body has its registered office.

3. For the award of contracts covered by a dynamic purchasing system, for the award of contracts under a framework agreement and to the selection of economic operators under a framework agreement concluded by the central purchasing body referred to in para. 1, the provisions applicable in the Member State of the European Union where the contracting body has its registered office shall apply.

#### **Article 51.**

The contracting body shall not award contracts and organise design contests jointly with a contracting body having its registered office in another Member State of the European Union, nor shall it use the possibility of purchasing services and products from a central purchasing body having its registered office in another Member State of the European Union in order to avoid the application of the provisions of the Act implementing the law of the European Union.

#### **Article 52.**

1. The head of the contracting body shall be responsible for the preparation and conduct of the procurement procedure.
2. Persons other than the head of the contracting body shall be responsible for the preparation and the conduct of the procurement procedure to the extent to which they have been entrusted with activities in the procedure and activities related to the preparation of the procedure. The head of the contracting body may entrust to the employees of the contracting body, in written form, the performance of activities reserved for him, specified in this section.
3. If the preparation and conduct of the procurement procedure is reserved under separate provisions to a body other than the head of the contracting body, the provisions relating to the head of the contracting body shall apply to that body accordingly.

#### **Article 53.**

1. If the contract value is equal to or exceeds the EU thresholds, the contracting body shall appoint a committee to conduct a procurement procedure, hereinafter referred to as the 'tender committee'.
2. If the contract value is lower than the Union thresholds, the head of the contracting body may appoint a tender committee.
3. The tender committee may be of a permanent character or be appointed to prepare and conduct certain procedures.

#### **Article 54.**

1. The tender committee is an ancillary team of the head of the contracting body appointed to evaluate requests to participate or tenders, and to carry out other activities, entrusted by the head of the contracting body, in the procedure or related to the preparation of the procedure.
2. The tender committee shall, in particular, submit to the head of the contracting body results of the evaluation of requests to participate or tenders and a proposal to select the most advantageous tender or to cancel the procurement procedure.

#### **Article 55.**

1. Members of the tender committee shall be appointed and recalled by the head of the contracting body.
2. The tendering committee shall be consisted of at least three members.
3. The head of the contracting body shall specify the organisation, composition, working

procedure and scope of duties of the tender committee members to ensure its efficient operation, individualisation of responsibility of its members for performed activities and transparency of its work.

4. If the performance of specific activities in connection with the preparation and conduct of a procurement procedure requires special knowledge, the head of the contracting body may appoint experts on its own initiative or at the request of the tender committee.

#### **Article 56.**

1. The head of the contracting body, the member of the tender committee and other persons carrying out the procurement procedure on the side of the contracting body or persons which may have influence on the result of that procedure or which award contracts, shall be subject to exclusion from the performance of those activities if there is a conflict of interest on their side.

2. Conflict of interest exists whenever the persons mentioned in the para. 1:

- 1) compete for that 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, or remain in cohabitation with economic operator, his legal deputy or members of managing or supervisory bodies of economic operators competing for a contract;
- 3) during 3 years prior to the launch of the procurement procedure remained in an relationship of employment or service with the economic operator, were remunerated by the economic operator for a different title or were members of the managing or supervisory bodies of economic operators competing for a contract;
- 4) remain in such legal or actual relationship with the economic operator that there is a justified doubt as to their impartiality or independence in connection with the procurement procedure due to having a direct or indirect financial, economic or personal interest in a certain settlement of that procedure.

3. The head of the contracting body, a member of the tender committee and other persons carrying out activities related to the preparation or conduct of the procedure on the side of the contracting body or persons who may have an influence on the result of that procedure or persons awarding a contract shall be subjected to exclusion from performing of those activities if they have been legally sentenced for an offence committed in connection with a procurement procedure referred to in Articles 228 - 230a, Article 270, Article 276, Article 286, Article 287, Article 296, Article 296a, Article 297, Article 303 or Article 305 of the Act of 6 June 1997 – the Criminal Code (Journal of Laws of 2020 item 1444 and 1517), hereinafter referred to as the “Criminal Code”, unless there has been expungement of conviction record.

4. The persons referred to in para. 1 and 3 shall submit, under pain of criminal liability for misrepresentation, a statement, in a written form, on the existence or the lack of existence of the circumstances referred to in para. 2 or 3 accordingly. Before taking the statement, the head of the contracting body or a person to whom activities in the procedure has been entrusted, shall advise

the persons making the statement of criminal liability for misrepresentation.

5. A statement of the existence of the circumstances referred to in para 2 shall be submitted immediately on learning of them and a statement of the lack of existence of those circumstances - not later than before the closing date of the procurement procedure.

6. A statement on the lack or existence of the circumstances referred to in para. 3, shall be submitted before the launch of performing activities related to the conduct of the procurement procedure.

7. The activities in connection with the procurement procedure undertaken by a person subjected to exclusion shall be repeated, except for the opening of tenders and other actual activities having no influence on the result of the procedure.

## **Section 2**

### **Economic operators**

#### **Article 57.**

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

- 1) are not subjected to exclusion;
- 2) meet the conditions for participation in the procedure, if such conditions have been defined by the contracting body.

#### **Article 58.**

1. Economic operators may compete for a contract jointly.
2. In the case referred to in para. 1, economic operators shall appoint a plenipotentiary to represent them in the procurement procedure or to represent in the procedure and to conclude a public contract.
3. The contracting body shall not require from economic operators jointly competing for the award of a contract to have a specific legal form in order to submit a tender or a request to participate.
4. With reference to economic operators jointly competing for a contract, the contracting body may define requirements related to the performance of a contract in a different way than with reference to single economic operators, if this is justified by the nature of the contract and proportional to its subject-matter.
5. The provisions relating to economic operators shall apply accordingly to the economic operators jointly competing for a contract.

#### **Article 59.**

If a tender of economic operators jointly competing for the contract has been selected, the contracting body may request a copy of the an agreement resolving cooperation between those economic operators prior to the conclusion of the public contract.

#### **Article 60.**

The contracting body may reserve an obligation to perform key tasks by individual economic operators jointly competing for the contract, in relation to:

- 1) contracts on works or services;
- 2) siting and installation operations, under the contract for supplies.

## **Chapter 7**

### **Communication of the contracting body with economic operators**

#### **Article 61.**

1. Communication in the procurement procedure and in the design contest, including the submission of tenders, requests to participate in the procedure or in a design contest, exchange of information and the submission of documents or statements between the contracting body and the economic operator, taking into account the exceptions defined in the Act, shall be conducted by means of electronic communication.

2. Oral communication shall be admissible in the course of negotiations or dialogue and with regard to information which is not relevant, in particular they do not concern the contract notice or procurement documents, requests to participate in the procedure or in a design contest, confirmation of interest, tenders or contest projects, provided that its content is documented.

#### **Article 62.**

Whenever this Chapter refers to a tender, it should also be understood as an initial tender, tender subjected to negotiations, final tender, additional tender, variant tender and a tender for lot.

#### **Article 63.**

1. In a procurement procedure or in a design contest with a value equal to or exceeding the EU thresholds, a request to participate in a procurement procedure or in a design contest, the request referred to in Article 371 para. 3, and the statement referred to in Article 125 para. 1, shall be submitted, under pain of nullity, in an electronic form.

2. In a procurement procedure or in a designed contest with a value below the EU thresholds, a tender, the request to participate in the procurement procedure or in a design contest, the statement referred to in Article 125 para. 1 shall be submitted, under pain of nullity, in electronic form or in electronic manner bearing a trusted signature or a personal signature.

#### **Article 64.**

In a procurement procedure or in a design contest the contracting body shall only use tools and equipment of electronic communication which are non-discriminatory, generally available and interoperable within the meaning of the Act of 17 February 2005 on computerisation of entities performing public tasks (Journal of Laws of 2020 items 346, 568, 695, 1517 and 2320), with products commonly used for the electronic storage, processing and transmission of data, and which do not limit access of the economic operators to the procurement procedure or a design contest.

## **Article 65.**

1. The contracting body may waive the requirement to use electronic means of communication, 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) applications supporting file formats suitable to draw up tenders or contest projects use file formats that cannot be handled with the use of any other open-source or generally available communication, or are covered with a license and may not be rendered available for downloading or remote use by the contracting body;
- 3) the use of electronic means of communication would require from the contracting body the acquisition of specialised office equipment;
- 4) the contracting body requires to present a physical model, scale model, or a sample, which cannot be conveyed 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 are generally accessible to economic operators or that could be made available by the contracting body.
- 7) the contract is awarded or a design contest is organised by a foreign institution of the Republic of Poland within the meaning of the Act of 21 January 2021 on foreign service (Journal of Laws item 464) in a third country which is not a member of the European Union with which the European Union has not concluded an agreement on the mutual recognition of trust services referred to in Article 14 para. 1 Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257 of 28.08.2014, p.73), and the value of that contract or design contest is below the EU thresholds.

2. In the case of waiver by the contracting body of the requirement to use electronic means of communication, in view of existence of the circumstances referred to in para. 1, in particular with reference to a request to participate in the procedure or in a design contest, a tender, a contest project or their lots, a qualitative mean of proof or a mean of proof referring to the subject-matter of a contract, they may be conveyed, according to the choice of the contracting body, through a postal operator within the meaning of the Act of 23 November 2012 – Postal Law (Journal of Laws of 2020 items 1041 and 2320), in person or through a messenger.

3. In the case of waiver by the contracting body of the requirement to use electronic means of communication, in view of existence of the circumstances referred to in para. 1, requests to participate in the procedure or in a design contest, requests referred to in Article 371 para. 3, tenders or their lots shall be submitted, according to the choice of the contracting body, under pain of nullity, in written form or in the form or manner referred to in Article 63.

4. The contracting body/entity shall specify in a record the reasons for waiving the requirement to use electronic means of communication.

#### **Article 66.**

1. Contracting body may require the use of tools, devices or file formats which are not generally available if:

- 1) from the date of publication of the contract notice launching the procurement procedure or a design contest or from the date of dispatch of the document launching the procurement procedure, it shall offer to economic operators or design contest participants unrestricted, full, direct and free of charge access, by means of electronic communication, to alternative tools, devices or file formats enabling the submission of tenders or works;
- 2) it ensures that economic operators or design contest participants without access to such tools, devices or file formats, nor having the possibility to obtain it, unless the lack of access results from reasons related to economic operator, will be able to access them – within a time limit enabling participation in the procurement procedure - through the use of temporary authentication tools made available to them free of charge to them at the address of the website indicated by the contracting body;
- 3) it provides economic operators or design contest participants an alternative way for the electronic submission of tenders or contest projects.

2. The contracting body shall provide in the contract notice or in a procurement document commencing the procedure the address of the website where the tools, devices or formats of the files referred to in para. 1 point 1 are available.

#### **Article 67.**

The contracting body shall include in the contract notice commencing the procurement procedure or a design contest or in the procurement document launching the procurement procedure information on the electronic means of communication which will be used to communicate with economic operators or design contest participants and information on technical and organisational requirements for the preparation, sending and receiving of electronic correspondence.

#### **Article 68.**

Submission of tenders, requests to participate in a procurement procedure or in a design contest, the requests referred to in Article 371 para. 3, and contest project shall be carried out by means of electronic communication, ensuring the integrity, authenticity, inviolability of data and its confidentiality as part of the exchange and storage of information, including ensuring that its content can be read only after the time limit for its submission has expired.

### **Article 69.**

1. In the case of contracts for works or design contests, the contracting body may require the preparation and submission of tenders or contest projects using building information electronic modelling tools or other similar tools which are not generally available.
2. The contracting body shall provide economic operators or design contest participants with a possibility to use an alternative mean of access to the tools referred to in para. 1.

### **Article 70.**

The Prime Minister shall define, by means of a regulation:

- 1) the manner of drawing up and submission of requests to participate in the procedure or in a design contest, the requests referred to in Article 371 para. 3, tenders, contest projects, the statements referred to in Article 125 para. 1, qualitative means of proof, means of proof referring to the subject-matter of a contract, and other information, statements or documents submitted in the procedure or design contest.
  - 2) technical requirements for electronic documents containing requests to participate in the procedure or in a design contest, requests referred to in Article 371 para. 3, tenders, contest projects, statements referred to in Article 125 para. 1, qualitative means of proof, means of proof referring to the subject-matter of a contract, and other information, statements or documents submitted in the procedure or design contest,
  - 3) technical and organisational requirements for the use of electronic means of communication for the reception of electronic documents referred to in point 2
- having regard to the value of the contract or a design contest, the necessity to ensure the integrity and authenticity of the data and the necessity to ensure competition and efficiency of the procurement procedure or a design contest, the open access of economic operators to the procurement procedure or a design contest, and the security of the data processed.

## **Chapter 8**

### **Documenting the course of the procurement procedure**

#### **Article 71.**

1. The contracting body shall document the course of the procurement procedure by drawing up a record throughout the procedure.
2. The record shall not be drawn up in case the contract is awarded under the conditions laid down in a framework agreement concluded with one economic operator or with several economic operators, without carrying out the procurement procedure.

#### **Article 72.**

1. The record shall contain at least:
  - 1) the name and address of the contracting body;
  - 2) indication of the subject-matter and the value of the contract;

- 3) information on the procurement procedure and an indication of the circumstances justifying the use of the selected procedure, if the provisions of the Act provide grounds for application of this procedure;
- 4) the value of public contract, framework agreement or dynamic purchasing system;
- 5) reasons for waiving the requirement to use electronic means of communication when submitting requests to participate or tenders, the qualitative means of proof or means of proof referring to the subject-matter of the contract;
- 6) results of examination and evaluation of tenders and requests to participate, together with first and last names or company names of economic operators, tax identification numbers (NIPs) or REGON identification numbers;
- 7) the reasons for cancellation of the procedure;
- 8) information on the existence of the circumstances referred to in Article 56 para.2 and 3;
- 9) information on the submitted statements referred to in Article 56 para. 4.
- 10) the first and last name or a company name of economic operator whose tender has been selected as the most advantageous, and reasons for selecting this tender, as well as, if it is known, an indication of a lot or part of a framework agreement which the economic operator intends to subcontract, and first and last names or company names of potential subcontractors, if already known;
- 11) first and last names of tender committee members and other persons who have carried out activities in the procedure;
- 12) justification for the exceptional circumstances referred to in Article 415 para. 3 or in Article 422 para. 3 in the case of contracts in the fields of defence and security;
- 13) justification for exceeding the limit of 50 % of the contract value referred to in Article 455 para. 1 point 3 letter c, in the case of contracts in the fields of defence and security.

2. The contracting body shall not be obliged to indicate in the record the information specified in the contract notice, provided that this notice is attached to the record.

### **Article 73.**

1. Tenders, opinions of experts, statements, information from meetings with economic operators, notifications, requests, proof of submitting the notice to the Publications Office of the European Union, other documents and information submitted by the contracting body and economic operators and the public contract shall be annexed to the record.

2. If before launching a procurement procedure, a preliminary market consultations were conducted, the information on conducting those consultations, entities which participated in them, shall be indicated by the contracting body in the record.

3. In the case of return to economic operators of plans, designs, drawings, models, samples, patterns, computer applications and other similar materials, information on return shall be annexed to the record.

#### **Article 74.**

1. The record shall be open to the public and made available on request.
  2. Annexes to the record shall be made available after the selection of the most advantageous tender or the cancellation of the procedure, however:
    - 1) tenders with annexes shall be made available immediately after the opening of tenders, but not later than within 3 days from the opening of tenders, with regard to Article 166 para. 3 or Article 291 para. 2 second sentence,
    - 2) requests to participate with annexes shall be made available from the date of notification about results of evaluation of those requests.
- however information of a confidential nature, including this submitted in the course of negotiations or dialogue, shall not be made available.
3. In case a request for the right referred to in Article 18 para. 1 of Regulation 2016/679, will result in limitation of processing of personal data included in the record or in annexes to that record, the contracting body shall not make such data available from the closing date of the procurement procedure, unless the grounds referred to in Article 18 para. 2 of Regulation 2016/679 apply.
  4. Making available referred to in para.1 and 2 shall apply to all personal data, with the exception of the data referred to in Article 9 para. 1 of Regulation 2016/679, collected in the course of the procurement procedure. Limitations to the principle of transparency referred to in para. 3 and Article 18 para. 3-6 shall apply accordingly.

#### **Article 75.**

In case a person whose personal data is processed by the contracting body exercises the right referred to in Article 15 para 1-3 of Regulation 2016/679, the contracting body may require, from the person requesting to indicate additional information, to specifying the name or date of concluded procurement procedure.

#### **Article 76.**

The exercise by the person whose personal data is processed from the right to rectify or supplement the personal data referred to in Article 16 of Regulation 2016/679 shall not affect the integrity of the record and its annexes.

#### **Article 77.**

1. The contracting body shall return to economic operators whose tenders were not selected, upon their request, plans, designs, drawings, models, samples, patterns, computer applications and similar materials submitted by them.
2. The contracting body shall return to the economic operator whose tender has been selected as the most advantageous, upon his request, plans, designs, drawings, models, samples, patterns, computer applications and other similar materials, unless they are annexed to the public contract.
3. The contracting body may return plans, designs, drawings, models, samples, patterns, computer applications and other similar materials submitted by the economic operator if the

request referred to in para. 1 and 2 was not submitted within 30 days from the date of concluding the contract or the cancellation of the procedure.

#### **Article 78.**

1. The contracting body shall keep the record together with its annexes for a period of 4 years from the closing date of the procurement procedure in a manner which shall guarantee its inviolability.

2. In the case a procurement procedure is conducted on the basis of electronic communication tools and devices provided by another entity, the contracting body may entrust it with the storage of the record and the annexes to that record in its ICT system, provided that an electronic copy of all the information and documents related to this procedure is submitted to the contracting body.

3. The manner of storage and submission in the case referred to in para. 2, allows to read stored and submitted documents.

4. If the duration of the public contract exceeds 4 years, the contracting body shall keep the record of the procedure together with the annexes throughout the duration of the public contract.

#### **Article 79.**

1. All documents, including electronic documents submitted or used for carrying out the procurement procedure, as well as for conducted preliminary market consultations, which are annexed to the record, shall be kept in the original form and manner in which they were drawn up or submitted.

2. The contracting body shall document all relevant activities and other relevant events in the procedure in the scope of communication with economic operators and other entities, as well as in connection with providing the record.

#### **Article 80.**

The Minister responsible for the economy shall define, by means of a regulation, the manner:

- 1) of documenting and storage of the procurement documents, record template and the scope of additional information contained in the record, having regard to the value of the contract, the type of a procedure or the procurement procedure;
- 2) and the form of providing the record with annexes to interested parties, having regard to the principle of transparency of the procurement procedure.

#### **Article 81.**

1. The contracting body shall inform the PPO President of submitted requests to participate or tenders, not later than within 7 days from the opening of tenders or additional tenders accordingly, or preliminary tenders or final tenders or cancellation of the procedure.

2. The Minister responsible for the economy shall define, by means of a regulation, the scope of the data contained in the information referred to in para.1, its template, the manner of its drawing up and the manner and procedure of its submission, including the manner of calculating the time limit referred to in para.1, having regard to the obligation of the PPO to conduct an ongoing analysis of the functioning of the procurement system, including in particular as regards information concerning types of contracting bodies, types and value of contracts, the number of

requests to participate or tenders and types of procurement procedure.

#### **Article 82.**

1. The contracting body shall draw up an annual report on awarded public contracts, hereinafter referred to as the “report”, including contracts excluded on the basis of this Title Chapter 1 section 2, classical contracts, the value of which is less than PLN 170 000, as well as on utilities contracts and contracts in the fields of defence and security, the value of which is lower than the EU thresholds.
2. The contracting body shall forward the report to the PPO President by 1 March of each year following the year to which the report refers.
3. The contracting body may correct the report if it finds that the information contained therein is outdated or incorrect.
4. The Minister responsible for the economy will, by means of a regulation, define the scope of the information contained in the report, its template, the manner of its submission and the manner and a procedure of its correction, having regard to the requirements concerning the content of the report to be submitted to the European Commission and the necessity to provide accurate and up-to-date information in order to monitor the public procurement system and the justification for the use of electronic means of communication.

## **TITLE II**

### **Classic procurement procedure of a value equal to or above the EU thresholds**

#### **Chapter 1**

#### **Preparation of the procedure**

#### **Section 1**

#### **Analysis of needs of the contracting body, preliminary market consultation and prior involvement of economic operators**

#### **Article 83.**

1. Prior to the launching of the procurement procedure, the contracting authority shall analyze the needs and requirements, taking into account the type and value of the contract.
2. The analysis, referred to in para. 1, shall include in particular:
  - 1) examining the possibilities of meeting identified needs with the use of own resources;
  - 2) market intelligence:
    - a) in terms of alternative means of meeting identified needs,
    - b) in terms of possible variants of contract performance, or indicates that there is only one possibility of contract performance;

c) to enhance the competitiveness of the procurement procedure.

3. The analysis, referred to in para. 1, indicates:

- 1) indicative contract value for each of the options referred to in para. 2 point 2(b);
- 2) the possibility of dividing the contract into lots;
- 3) the envisaged procurement procedure;
- 4) procurement conditions to enhance the competitiveness of the procurement procedure, which the contracting body intends to apply—where the procurement procedure referred to in Article 129 para.1 point 1-5 is envisaged;
- 5) the possibility of considering social, environmental or innovative aspects of contract;
- 6) the risks related to the procurement procedure and contract performance.

4. The contracting authority may refrain from the analysis of needs and requirements where there is a ground for awarding the contract by negotiated procedure without the publication, referred to in Article 209 para. 1 point 4, or by single-source procurement, as referred to in Article 214 para. 1 point 5.

#### **Article 84.**

1. The contracting body may, before launching a procurement procedure, conduct preliminary market consultations in order to prepare the procedure and inform the economic operators of its plans and procurement requirements.
2. The contracting body shall include information on its intention to conduct preliminary market consultations and their subject matter on the contracting body's website.
3. When conducting market consultations, the contracting body may in particular benefit from the advice of experts, public authorities or economic operators. This advice may be used in the planning, preparation or conduct of a procurement procedure, provided that this does not distort competition or undermine the principles of equal treatment of economic operators and transparency.
4. The contracting body shall include information on preliminary market consultations in the contract notice.

#### **Article 85.**

1. If an economic operator or entity that together with an economic operator belongs to the same group within the meaning of the Act of 16 February 2007 on Competition and Consumer Protection (Journal of Laws of 2019, item 369, 1571 and 1667), has advised or has otherwise been involved in the preparation of the procurement procedure, the contracting body shall take appropriate measures to ensure that by the participation of economic operator in the procedure the competition is not distorted, in particular it shall communicate to the other economic operators the relevant information it has provided or obtained as a result of the involvement of the economic operator or that entity in the preparation of the procurement procedure, and shall set a reasonable time limit for the submission of tenders. The contracting body shall indicate in the minutes of the procedure measures to prevent the distortion of competition.

2. The economic operator involved in the preparation of a procurement procedure shall be excluded only if the distortion of competition resulting from that commitment cannot be eliminated in any other way than by excluding the economic operator from participating in the procedure. Prior to exclusion, the contracting body shall provide the economic operator with the possibility to prove that its involvement in the preparation of the procurement procedure will not distort competition.

## **Section 2**

### **Notices**

#### **Article 86.**

The notices, referred to in this Title, shall be sent by the contracting body to the Publications Office of the European Union and published in the Official Journal of the European Union.

#### **Article 87.**

1. The contracting body shall prepare notices in accordance with the standard forms set out in Commission Implementing Regulation (EU) 2019/1780 of September 23, 2019, establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) 2015/1986 (“e-forms”) (OJ EU L 272 of 25.10.2019, p. 7, as amended<sup>9</sup>).

2. The contracting body shall submit the notices in accordance with the format and procedures for the electronic transmission of notices established by the European Commission, available on the website referred to in para. 3 of Annex VIII to Directive 2014/24/EU.

3. The contracting body is obliged to document the date of submission of the notice, in particular to keep proof of submission of the notice.

4. The minister responsible for the economy may, by means of a regulation, set as mandatory those fields in the standard notice forms not marked as such in the annex to the regulation referred to in para. 1, which must be completed, guided by the need to obtain reliable data for the purpose of fulfilling reporting obligations, in particular with respect to European Union authorities, the need to ensure comparability with data contained in national notice forms published in the Public Procurement Bulletin, as well as the need to automatically generate such data for reuse.

#### **Article 88.**

1. The contracting body shall also make the notice available on the website of the procedure from the date of its publication in the Official Journal of the European Union.

2. In addition, the contracting body may make the notice available in a place other than the one referred to in para. 1.

3. Making a notice available in places referred to in para. 1 and 2 may not take place before its

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<sup>9</sup> The amendments to the aforementioned regulation were published in the Official Journal of the European Union L 305 of November 25, 2022, p. 12, and in the Official Journal of the European Union L 2023/2884 of December 21, 2023

publication in the Official Journal of the European Union, except where the contracting body has not been notified of the publication within 48 hours after confirmation by the Publications Office of the European Union of receipt of that notice.

4. Notice made available in places referred to in para. 1 and 2:

- 1) it may not contain information other than the information contained in the notice submitted for publication to the Publications Office of the European Union;
- 2) it shall include the date of submission of the notice for publication to the Publications Office of the European Union.

#### **Article 89.**

1. The contracting body may submit to the Publications Office of the European Union or publish on the contracting body's website a prior information notice on procurement or framework agreements planned within the next 12 months.

2. Where a prior information notice is published by the contracting body on the contracting body's website, the contracting body shall submit to the Publications Office of the European Union a notice of publication of a prior information notice on the contracting authority's website (a notice on a buyer profile).

3. A prior information notice may not be published on the contracting body's website before the publication of the notice on a buyer profile in the Official Journal of the European Union, except where the contracting body has not been informed of the publication within 48 hours after the confirmation by the Publications Office of the European Union of receipt of that notice.

#### **Article 90.**

1. The contracting body may change the notice by submitting to the Publications Office of the European Union corrigendum (notice for changes or additional information). The provisions of Articles 87 and 88 shall apply.

2. Where changes of the contract notice are significant for drawing up requests to participate or tenders, the contracting body shall extend, as appropriate, the time limit for submission of requests to participate or the time limit for submission of tenders.

3. Where changes of a contract notice significantly change the nature of the procurement compared to the one initially defined, in particular significantly change the scope of the contract, the contracting body shall cancel the procedure pursuant to Article 256.

### **Section 3**

#### **Establishing certain terms of the contract**

#### **Article 91.**

1. The contracting body may award a contract in the form of separate lots, or may allow lots to be submitted in one procurement procedure, specifying the scope and subject-matter of the lots and indicating whether a tender may be submitted for one, for several or for all of the lots of the contract.

2. The contracting body shall indicate in the procurement documents the reasons for not subdividing the contract into lots.
3. The contracting body may limit the number of lots that may be awarded to one economic operator, provided that the maximum number of lots that may be awarded to one economic operator is stated in the contract notice and, in the case of negotiated procedure without notice, in the invitation to negotiate.
4. In the case referred to in para. 3, the contracting body shall indicate in the procurement documents objective and non-discriminatory criteria or rules to be applied in order to select in which lots the economic operator will be awarded the contract, where, as a result of the procurement procedure, one economic operator would be awarded more lots than the maximum number.

#### **Article 92.**

1. The contracting body may allow or require in the contract notice, and if a contract notice was not required, in the procurement documents, the submission of a variants. The variants must be linked to the subject-matter of the contract.
2. Where the contracting body requires or accepts the possibility to submit a variant, it shall specify in the procurement documents:
  - 1) the minimum requirements for a variant and the requirements for their submission, in particular information on the possibility of submitting a variant with a tender or instead of a tender;
  - 2) contract award criteria, in a manner to ensure that they can be applied to tender as well as to variant.

#### **Article 93.**

1. Where communication in the procurement procedure is performed by means of electronic communication, the contracting body may:
  - 1) require the submission of a tender presented in the format of an electronic catalogue, or
  - 2) require to add an electronic catalogue to the tender submitted, or
  - 3) allow the electronic catalogue to be added to the tender, or
  - 4) provide for an obligation to submit an electronic catalogue together with request to participate in a dynamic purchasing system.
2. An electronic catalogue, referred to in para. 1, shall be understood as the list of procured products, works or services established by the economic operator in accordance with the description of the subject-matter of the contract and in a format suitable for automatic data processing. In particular, the electronic catalogue may contain descriptions and photographs of products, works or services and price information.
3. Tenders submitted in the form of an electronic catalogue may be accompanied by documents or statements completing the tender.
4. The economic operator shall establish an electronic catalogue with a view to participating in a

given procurement procedure, in accordance with the requirements established by the contracting body.

5. Information concerning the format, parameters of the electronic equipment used and the technical arrangements and specifications of the connection relating to the transmission of the electronic catalogue to the contracting body shall be given in the procurement documents.

#### **Article 94.**

1. The contracting body may stipulate in the contract notice that only economic operators having the status of a sheltered workshops, social cooperatives and other economic operators whose main purpose or main purpose of the activities of their organisational units that will perform the contract is the social and professional integration of socially marginalised persons, in particular:

- 1) persons with disabilities within the meaning of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities (Journal of Laws of 2019, item 1172, 1495, 1696 and 1818),
- 2) the unemployed persons within the meaning of the Act of 20 March 2025 on the labor market and employment services (Journal of Laws, item 620),
- 3) job seekers who are not in employment or performing other gainful work within the meaning of the Act of 20 March 2025 on the labor market and employment services (Journal of Laws, item 620),
- 4) to-be self-reliant persons referred to in Article 140 para. 1 and 2 of the Act of 9 June 2011 on supporting the family and the foster care system (Journal of Laws of 2019, item 1111, 924 and 1818),
- 5) persons deprived of liberty or released from prisons referred to in the Act of 6 June 1997 – Criminal Code implementing (Journal of Laws of 2019, item 676, 679 and 1694) having difficulties in integration with the environment,
- 6) persons with mental disorders within the meaning of the Act of 19 August 1994 on the protection of mental health (Journal of Laws of 2018, item 1878 and 2019 item 730 and 1690),
- 7) homeless persons within the meaning of the Act of 12 March 2004 on Social Welfare (Journal of Laws of 2019, item 1507, 1622, 1690 and 1818),
- 8) persons who have obtained refugee status or subsidiary protection in the Republic of Poland, referred to in the Act of 13 June 2003 on granting protection to foreigners in the territory of the Republic of Poland (Journal of Laws of 2019, item 1666),
- 9) persons under the age of 30 and after 50 years of age with job-seeker status, without employment,
- 10) persons who are members of disadvantaged minorities, in particular members of national and ethnic minorities within the meaning of the Act of 6 January 2005 on national and ethnic minorities and on regional language (Journal of Laws of 2017, item 823)

— provided that the percentage of employment of persons belonging to one or more of the categories referred to in points 1 to 10 is not less than 30 % of the persons employed by the

economic operator or in its unit that that will perform the contract.

1a. In the case of awarding a contract to a prison workshop, a sheltered workshop, a social cooperative, or another contractor referred to in paragraph 1, the percentage indicator referred to in paragraph 1 shall be determined in relation to the total employment of socially marginalized persons in that entity.

2. In the case referred to in para. 1, the contracting body may request documents or statements confirming:

- 1) the status of an economic operator as a sheltered workshop or a social cooperative or documents confirming the conduct by the economic operator or by its separated organizational units which will carry out the contract, activities whose main purpose is the social and professional integration of social marginalized persons;
- 2) the percentage of employment of persons belonging to one or more of the categories referred to in para. 1, employed by sheltered workshops, social cooperatives or economic operator or separated organisational units thereof, which will carry out the contract.

#### **Article 95.**

1. The contracting body shall specify in the contract notice or procurement documents for service or works the contract performance requirements related to employment by the economic operator or subcontractor under an employment contract of persons performing activities within the contract performance, specified by the contracting body, if the performance of these activities involves the performance of the work in a manner specified in Article 22 § 1 of the Act of 26 June 1974 – the Labour Code (Journal of Laws of 2019, item.1040, 1043 and 1495).

2. Where the contracting body provides for the requirements referred to in para. 1, it shall specify in the procurement documents in particular:

- 1) the type of activities for the performance of a contract which are subject to employment requirements on the basis of the employment contract by the economic operator or subcontractor of persons performing activities during the performance of a contract;
- 2) the method of verifying the employment of those persons;
- 3) contracting body's power to control the fulfillment by the economic operator of the employment requirements of those persons and penalties for non-compliance with those requirements.

#### **Article 96.**

1. The contracting body may specify in the contract notice or procurement documents other than those referred to in Article 95 para. 1 contract performance requirements, which may include economic, environmental, social, innovation, employment or confidentiality aspects of the information provided to the economic operator during the performance of a contract.

2. The requirements referred to in para. 1, may relate in particular to:

- 1) the application of specific environmental management measures;
- 2) employment:

- a) the unemployed persons within the meaning of the Act of 20 March 2025 on the labor market and employment services,
- b) job seekers who are not in employment or performing other gainful work within the meaning of the Act of 20 March 2025 on the labor market and employment services,
- c) to-be self-reliant persons referred to in Article 140 para. 1 and 2 of the Act of 9 June 2011 on family support and foster care,
- d) adolescents, referred to in Labour Law, for apprenticeships,
- e) persons with disabilities within the meaning of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities,
- f) persons other than those referred to in point (a) referred to in the Act of 13 June 2003 on social employment (Journal of laws of 2019, item.217, 730 and 1818) or in the relevant legislation of the Member States of the European Union or of the European Economic Area,
- g) persons under the age of 30 and after 50 years of age with job-seeker status, without employment.

3. In the case referred to in para.2 point 2, the contracting body shall specify in the procurement documents the number and duration of the required employment of the persons concerned.

4. Where the contracting body provides for the requirements referred to in para. 1, the - procurement documents shall specify, in particular, the method for documenting the compliance by the economic operator with those requirements, contracting body's power to control the fulfillment by the economic operator of these requirements and penalties for non-compliance with those requirements.

#### **Article 97.**

1. The contracting body may require economic operators to lodge a tender guarantee.

2. The contracting body shall determine the amount of the tender guarantee of not more than 3 % of the contract value.

3. Where the contracting body allows the submission of lots or awards a contract in the form of separate lots, it shall specify the amount of the tender guarantee for each lot. The provisions of para. 2 shall apply accordingly.

4. Where the contracting body plans to award the contracts referred to in Article 214 para. 1 points 7 and 8 or Article 388 point 2 letter (b) and (c) or Article 415 para. 2 points 5 and 6, it shall specify the amount of the tender guarantee for the value of the main contract.

5. The tender guarantee shall be lodged before the expiry of the time limit for the submission of tenders and shall be maintained without interruption until the day of expiry of tender validity period, except for the cases referred to in Article 98 para. 1 points 2 and 3 and para. 3 point 2.

6. An extension of tender validity period shall be permitted only with the simultaneous extension of the tender guarantee period or, where this is not possible, with the lodging of a new tender guarantee for the extended tender validity period.

7. The tender guarantee may be lodged upon the choice of the economic operator in one or more of the following forms:

- 1) cash;
- 2) bank guarantees;
- 3) insurance guarantees;
- 4) sureties granted by entities referred to in Article 6b para. 5 point 2 of the Act of 9 November 2000 establishing the Polish Agency for Enterprise Development (Journal of Laws of 2019, item 310, 836 and 1572).

8. A tender guarantee lodged in cash shall be paid by bank transfer to the bank account indicated by the contracting body.

9. A tender guarantee lodged in cash shall be kept by the contracting body in a bank account.

10. Where the tender guarantee is lodged in the form of guarantees or sureties referred to in para. 7 points 2 - 4, the economic operator shall submit the original copy of guarantee or surety to the contracting body in electronic manner.

#### **Article 98.**

1. The contracting body shall return the tender guarantee without due delay, however no later than 7 days after the date one of the circumstances occurred:

- 1) the expiry of tender validity period;
- 2) the conclusion of a public contract;
- 3) the annulment of the procurement procedure, except where an appeal for the annulment has not been resolved or the time limit for lodging the appeal has not expired.

2. The contracting body shall, without due delay, however not later than 7 days from the date on which the application was lodged, return the tender guarantee to the economic operator:

- 1) that has withdrawn the tender before the expiry of the time limit for submission of tenders;
- 2) whose tender has been rejected;
- 3) after selecting the most advantageous tender, except for the economic operator whose tender has been selected as the most advantageous;
- 4) after the annulment of the procurement procedure, where an appeal against the - annulment has not been resolved or the time limit for bringing it has not expired.

3. Submission of an application for return of the tender guarantee referred to in para. 2, causes termination of legal relationship with the economic operator along with the loss of his right to use the legal protection measures referred to in section IX.

4. The contracting body shall return the tender guarantee lodged in cash together with interest resulting from the bank account agreement of the bank account where it was held, reduced by the costs of maintaining a bank account and bank commission for the transfer of money to the bank account indicated by the economic operator.

5. The contracting body shall return the tender guarantee lodged in a form other than cash by submitting a declaration to the guarantor on the release of the tender guarantee.
6. The contracting body shall retain the tender guarantee together with interest and, in the case of a tender guarantee lodged in the form of a guarantee or surety referred to in Article 97 para. 7 points 2 – 4, it shall apply to the guarantor requesting payment of the tender guarantee if:
  - 1) economic operator in response to a request, referred to in Article 107 para. 2 or Article 128 para. 1, for reasons attributable to him, did not submit the means of proof referring to the subject-matter of the contract or qualitative means of proof confirming the circumstances, referred to in Article 57 or Article 106 para. 1, the declaration referred to in Article 125 para. 1, other documents or declarations, or did not agree to correct the mistake referred to in Article 223 para. 2 point 3, what made it impossible to select the tender submitted by the economic operator as the most advantageous;
  - 2) economic operator whose tender has been selected:
    - a) refused to sign a public contract under the conditions laid down in the tender,
    - b) has not lodged the required performance security;
  - 3) the conclusion of a public contract has become impossible for reasons attributable to the economic operator whose tender has been selected.

## **Section 4**

### **Description of the subject-matter of a contract**

#### **Article 99.**

1. The subject matter of the contract shall be described in an unequivocal and exhaustive manner, by means of sufficiently precise and comprehensible terms, taking into account the requirements and circumstances which could affect the preparation of a tender.
2. The contracting body shall specify in the description of the subject-matter of the contract the required characteristics of supplies, services or works. These characteristics may refer in particular to a specific process, production method, delivery of the required supplies, services or works, or to a specific process of another stage of their life cycle, even if these factors are not an essential element, provided that they are related to the subject-matter of the contract and proportionate to its value and objectives.
3. The names and codes specified in the Common Procurement Vocabulary shall be used to describe the subject-matter of the contract.
4. The subject-matter of the contract cannot be described in such a manner which could impede fair competition, in particular by referring to trade marks, patents or origin, source or specific process which characterizes the products or services provided by a particular economic operator if this could lead to the favoring or elimination of certain economic operators or products.
5. The subject-matter of the contract may be described by referring to trade marks, patents or

origin, source or specific process which characterizes the products or services provided by a particular economic operator, where the contracting body cannot describe the subject-matter of the contract in a sufficiently precise and intelligible manner, and such a reference is accompanied by the words 'or equivalent'.

6. Where the subject-matter of the contract is described in a manner referred to in para. 5, the contracting body shall indicate in the description of the subject-matter of the contract the criteria applied to assess equivalence.

7. The contracting body may specify in the description of the subject-matter of the contract the need to transfer intellectual property rights or to grant a license.

#### **Article 100.**

1. In the case of procurement intended for use by natural persons, including staff of the contracting body, a description of the subject-matter of the contract shall be drawn up, taking into account accessibility requirements for persons with disabilities and design for all users, unless this is not justified by the nature of the subject-matter of the contract.

2. If the requirements referred to in para. 1, resulting from the European Union law, the subject-matter of the contract with regard to accessibility requirements for persons with disabilities and design for all users, shall be defined by reference to that act.

#### **Article 101.**

1. The subject-matter of the contract shall be described, taking into account separate provisions, in one of the following ways:

- 1) in terms of performance or functional requirements, including environmental requirements, provided that the parameters are sufficiently precise to allow economic operators to determine the subject-matter of the contract and the award of the contract to the contracting body;
- 2) reference to the required characteristics of the material, product or service referred to in Article 102, and, in order of 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 the performance of a construction product in relation to its essential characteristics, in accordance with the relevant European assessment document, within the meaning of Article 2(12) of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonized conditions for the placing on the market of construction products and repealing Council Directive 89/106/EEC (OJ L 88 of 04.04.2011, p.5, as amended<sup>10</sup>)

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<sup>10</sup> Amendments to that Regulation were announced in the OJ L 103 of 12.04.2013, p.10, L 157 of 27.05.2014,

- d) common technical specifications, understood as technical specifications in the field of ICT products, as defined in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardization and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC of the European Parliament and of the Council 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC and 2007/EC of the European Parliament/23 and 2009/EC and 2009/EC of the European Parliament/23 and 2009/EC (OJ L 316 of 14.11.2012, p.12, as amended<sup>11</sup>)
  - e) international standards,
  - f) technical specifications which are not mandatory, adopted by the standardization body, specialized in the development of technical specifications for repetitive and continuous use,
  - g) other technical reference systems established by the European standardization organizations;
- 3) a reference to the standards, European technical assessments, technical specifications and technical reference systems, referred to in point 2, and by reference to the performance or functional requirements referred to in point 1 for the selected characteristics;
  - 4) reference to the categories of performance or functional requirements referred to in point 1 and by reference to the standards, European technical assessments, technical specifications and technical reference systems, referred to in point 2, as a means of presumption of conformity with such performance or functional requirements.

2. The standard shall be understood as a technical specification adopted by a national, European or international standardisation body for the repetitive and continuous application, compliance with which is not obligatory, including the Polish Standard, a European standard or an international standard.

3. In the absence of Polish standards transposing European standards, standards of other Member States of the European Economic Area transposing European standards and standards, European technical assessments, technical specifications and technical reference systems - referred to in para. 1 point 2, when describing the subject-matter of the contract one shall take into account in the following order:

- 1) Polish Standards;
- 2) national technical assessments issued pursuant to the Act of 16 April 2004 on construction products (Journal of Laws of 2019, item 266 and 730);
- 3) Polish technical specifications concerning the design, calculation and execution of construction works and the use of supplies;
- 4) national declarations of compliance and national declarations of performance of the

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p.76 and L 159 of 28.05.2014, p.41.

<sup>11</sup> Amendments to that Regulation were announced in the OJ EU L 241 of 17.09.2015, p.1.

construction product.

4. Describing the subject-matter of the contract by reference to the standards, technical assessments, technical specifications and technical reference systems, referred to in para. 1 point 2 and para. 3, the contracting body shall indicate that equivalent solutions are accepted and such reference is accompanied by the words 'or equivalent'.

5. Where the description of the subject-matter of the contract relates to the standards, technical assessments, technical specifications and technical reference systems, referred to in para. 1 point 2 and para. 3, the contracting body may not reject a tender only because the works, supplies or services tendered for do not comply with the standards, technical assessments, technical specifications and technical reference systems to which the description of the subject-matter of the contract refers to, provided that the economic operator proves in its tender, in particular by means of the qualitative means of proof, referred to in Articles 104 to 107, that the proposed solutions satisfy in an equivalent manner the requirements defined in the description of the subject-matter of the contract.

6. Where the description of the subject-matter of the contract refers to performance or functional requirements, referred to in para. 1 point 1, the contracting body may not reject a tender which comply with the Polish Standard transposing a European standard, standards of other Member States of the European Economic Area transposing European standards, with a European technical assessment, with a common technical specification, with an international standard or with a system of technical references established by the European standardisation body, if those standards, technical assessments, specifications and systems of technical references refer to performance requirements or functional requirements laid down by the contracting body, provided that the economic operator proves in its tender, in particular by means of the qualitative means of proof, referred to in Articles 104 to 107, that works, supplies or services tendered for meet the performance or functionality requirements defined by the contracting body.

#### **Article 102.**

1. In the case, referred to in Article 101 para. 1 point 2, the contracting body shall specify in the description of the subject-matter of the contract for works the required characteristics of the material, product or service corresponding to the intended purpose of the contracting body, which may refer in particular to:

- 1) specific environmental and climate performance levels;
- 2) accessibility requirements for people with disabilities;
- 3) specific performance, safety or dimensions, including quality assurance procedures;
- 4) specific terminology, symbols, tests and methods of testing;
- 5) the specific packaging and marking;
- 6) a specific label;
- 7) users instructions;
- 8) production processes and methods at any stage of the life cycle of the works;
- 9) additional tests and tests carried out by authorised entities within the meaning of the Act

of 13 April 2016 on conformity assessment and market surveillance systems (Journal of Laws of 2019, item 544);

- 10) specific design and costing rules;
- 11) the conditions for the testing, inspection and acceptance of the works;
- 12) construction methods and techniques;
- 13) any other technical conditions.

2. In the case, referred to in Article 101 para. 1 point 2, the contracting body shall specify in the description of the subject-matter of contract for supply or service the characteristics of the product or service which may relate in particular to:

- 1) the supply or service possesses the characteristics, referred to in para. 1 points 1, 4 to 7 and 10;
- 2) specific quality levels;
- 3) specific performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold;
- 4) production processes and methods at any stage of the life cycle of supply or service and conformity assessment procedures.

### **Article 103.**

1. Works contracts shall be described by means of design documentation and technical specifications for the execution and acceptance of works.

2. If the subject of the contract is the design and execution of construction works within the meaning of the Act of 7 July 1994 – Construction Law, the contracting body describes the subject-matter of the contract by means of a functional-use programme.

3. The functional-use programme includes a description of the construction task, which specifies the purpose of the completed works and the technical, economic, architectural, material and functional requirements.

4. The Minister responsible for construction, spacial planning and development as well as housing shall determine, by means of a regulation, the specific scope and form of:

- 1) design documentation,
- 2) technical specifications for the execution and acceptance of the works,
- 3) functional-use programme

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

## **Section 5**

### **The means of proof relating to the subject-matter of a contract**

## **Article 104.**

1. In the case of contracts with specific environmental, social or other characteristics, the contracting body may, in order to confirm the conformity of the works, supplies or services tendered for with the required characteristics, in the description of the subject-matter of the contract, the description of the contract award criteria or in the contract performance requirements, require from the economic operator a specific label provided that all of the following conditions are fulfilled:

- 1) the label requirements relate only to the criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;
- 2) the label requirements are based on objectively verifiable and non-discriminatory criteria;
- 3) label requirements shall be developed and adopted in an open and transparent procedure in which all stakeholders, including public administration bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate;
- 4) labels and label requirements are available to all interested parties;
- 5) label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

2. The label, referred to in the para. 1, is understood as any document, including a certificate or attestation confirming that the works, product, service, process or procedure meets the requirements necessary to obtain the label.

3. Where the contracting body does not require that works, supplies or services meet all the requirements of the label, it shall indicate the applicable label requirements.

4. Where a specific label is required, the contracting body shall accept all labels proving that the works, supplies or services in question meet the equivalent requirements specified by the contracting body.

5. Where an economic operator cannot, for reasons that are not attributable to it, obtain a label or equivalent label indicated by the contracting body, the contracting body shall within the time limit set by it, accept other relevant means of proof relating to subject-matter of a contract, in particular the technical documentation of the manufacturer, provided that the economic operator concerned proves that the works, supplies or services to be performed by it meet the requirements of the specific label or the specific requirements specified by the contracting body.

6. If a label which satisfies the conditions set out in para. 1 points 2 to 5, also sets out requirements not related to the subject-matter of the contract, the contracting body may not require this label. In such a case, the contracting body may define the subject matter of the contract by referring to those requirements the label or, where necessary, the parts thereof which are related to the subject-matter of the contract and are appropriate to define the characteristics of the works, supplies or services tendered for.

#### **Article 105.**

1. In order to confirm the conformity of the works, supplies or services tendered for with the requirements, characteristics or criteria set out in the description of the subject-matter of the contract or the contract award, or the contract performance requirements the contracting body may require economic operators to submit a certificate issued by a conformity assessment body or a test report carried out by that body.

2. A conformity assessment body shall mean a body performing conformity assessment activities, including calibration, testing, certification and inspection, accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council 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 of 13.08.2008, p. 30).

3. Where the submission of certificates issued by a specific conformity assessment body is required, the contracting body shall also accept certificates issued by other equivalent conformity assessment bodies.

4. The contracting body shall accept the appropriate means of proof relating to subject-matter of a contract, other than those referred to in para. 1 and 3, in particular the technical dossier of the manufacturer, where the economic operator concerned has no access to the certificates or test reports referred to in para. 1 and 3, or no possibility of obtaining them in relevant time, provided that this lack of access cannot be attributed to the economic operator concerned, and provided that the economic operator proves that the works, supplies or services provided by it meet the requirements, characteristics or criteria set out in the description of the subject-matter of the contract or the contract award criteria, or contract performance requirements.

#### **Article 106.**

1. The contracting body may require other than those referred to in Articles 104 and 105 means of proof relating to subject-matter of a contract to confirm that the supplies, services or works tendered for meet the requirements, characteristics or criteria specified by the contracting body where they are necessary for the conduct of the procurement procedure. The contracting body shall indicate the required means of proof relating to subject-matter of a contract in the contract notice or procurement documents.

2. The contracting body shall require the qualitative means of proof relating to subject-matter of a contract which are proportionate to the subject-matter of the contract and related to the subject-matter of the contract.

3. The request for the means of proof relating to subject-matter of a contract must not restrict fair competition and equal treatment of economic operators. The contracting body shall accept equivalent means of proof relating to subject-matter of a contract provided that they confirm that the supplies, services or works tendered for meet the requirements, characteristics or criteria specified by the contracting body.

#### **Article 107.**

1. Where the contracting body requests the submission of means of proof relating to subject-matter of a contract, the economic operator shall submit them together with the tender.

2. If the economic operator has not submitted the means of proof relating to subject-matter of a contract or the submitted means of proof relating to subject-matter of a contract are incomplete, the contracting body shall request the economic operators to submit or supplement them within an appropriate time limit, provided that such a requirement are provided for in the contract notice or procurement documents.

3. The provisions of para. 2 shall not apply where the means of proof relating to subject-matter of a contract is intended to confirm compliance with the characteristics or criteria set out in the description of the contract award criteria or, despite the submission of the means of proof relating to subject-matter of a contract, the tender shall be rejected or there are grounds for procedure cancellation.

4. The contracting body may require economic operators to clarify the content of the means of proof relating to subject-matter of a contract.

## **Chapter 2**

### **Qualitative selection of economic operators**

#### **Section 1**

#### **Grounds for exclusion from the procurement procedure**

#### **Article 108.**

1. The economic operator shall be excluded from the participation in the procurement procedure:

- 1) who is a natural person who has been the subject of a conviction by final judgment for a crime:
  - a) participation in an organised criminal group or association with a view to committing a criminal offence or a fiscal offence referred to in Article 258 of the Criminal Code,
  - b) human trafficking referred to in Article 189a of the Criminal Code,
  - c) offences referred to in Articles 228 to 230a, Article 250a of the Criminal Code, Articles 46-48 of the Act of 25 June 2010 on Sport, or Article 54 para. 1-4 of the Act of 12 May 2011 on reimbursement of medicines, foodstuffs intended for particular nutritional uses and medical devices,
  - d) terrorist financing, referred to in Article 165a of the Criminal Code, or the crime of frustrating or obstructing the finding of the criminal origin of money or concealing its origin as referred to in Article 299 of the Criminal Code,
  - e) terrorist crime, as referred to in Article 115(20) of the Criminal Code, or with an intention to commit that crime,
  - f) entrusting the performance of work to a minor foreigner, referred to in Article 9 para. 2 of the Act of 15 June 2012 on the effects of entrusting work to foreigners residing unlawfully in the territory of The Republic of Poland (Journal of Laws item 769),

- g) against economic turnover, referred to in Articles 296 to 307 of the Criminal Code, fraud, referred to in Article 286 of the Criminal Code, an offence against the reliability of the documents, referred to in Articles 270 to 277d of the Criminal Code, or a tax offence,
  - h) crime, referred to in Article 9 para. 1 and 3 or Article 10 of the Act of 15 June 2012 on the effects of entrusting foreigners residing unlawfully in the territory of the Republic of Poland
- or for an appropriate prohibited act as defined in foreign law;
- 2) where the incumbent member of its management or supervisory body, a shareholder in a general partnership or partnership or general partner in a limited partnership or limited joint—stock partnership or a proxy has been the subject of a conviction by final judgment for a crime, referred to in para. 1;
  - 3) subject to a final judgment of a court or a final administrative decision on being in arrears in paying taxes, levies or social or health insurance contributions, unless the economic operator has, as appropriate, before the expiry of the time limit for submitting requests to participate or before the expiry of the time limit for submission of tenders, made payment of due taxes, levies or social or health insurance contributions, including interest or fines, or entered into a binding arrangement with a view to paying the claims;
  - 4) who has been legally prohibited from competing for procurement contracts;
  - 5) where the contracting body can conclude, on the basis of reliable grounds that the economic operator has entered into an agreement with other economic operators aimed at distorting competition, in particular if, by belonging to the same group within the meaning of the Act of 16 February 2007 on the Protection of Competition and Consumers, they have submitted separate tenders, lots or requests to participate in the procedure, unless they demonstrate that they have prepared those tenders or requests independently of each other;
  - 6) where, in the cases referred to in Article 85 para. 1, there has been a distortion of competition resulting from the prior involvement of that economic operator or entity which belongs to the same capital group within the meaning of the Act of 16 February 2007 on the Protection of Competition and Consumers, unless the resulting distortion of competition can be eliminated otherwise than by excluding the economic operator from participation in the procurement procedure.

2. The economic operator that frustrates or obstructs the finding of the criminal origin of money or conceals its origin, due to the inability to determine the beneficial owner within the meaning of Article 2 para..2 point 1 of the Act of 1 March 2018 on anti-money laundering and terrorist financing (Journal of Laws of 2019, item 1115, 1520, 1655 and 1798) is excluded from the procurement procedure, in the case of a contract of a value equal to or exceeding the equivalent in PLN of the amount EUR 20,000,000 for work, and EUR 10,000,000 for supplies or services.

#### **Article 109.**

1. From the procurement procedure, the contracting body may exclude the economic operator:

- 1) which has breached the obligations relating to the payment of taxes, levies or social or health insurance contributions, except in the case referred to in Article 108 para. 1 point (3), unless the economic operator has, made payment of taxes, levies or social or health contributions due, including interest or fines, or entered into a binding arrangement with a view to paying the claims, as appropriate, either before the expiry of the time limit for submission of requests to participate or before the expiry of the time limit for the submission of tenders.
- 2) which has breached environmental, social or labour law obligations:
  - a) a natural person convicted by final judgment for a crime against the environment, referred to in Chapter XXII of the Criminal Code, or for a crime against the rights of persons engaged in gainful employment, referred to in Chapter XXVIII of the Criminal Code, or for a relevant prohibited act as defined in foreign law,
  - b) a natural person convicted by final judgment for an offence against workers' rights or an offence against the environment punishable by detention, restriction liberty or fines,
  - c) being subject of the final administrative decision in which it has been established it has breached the obligations under environmental, labour or social security law and a fine has been imposed by that decision;
- 3) where the incumbent member of its management or supervisory body, a shareholder in a general partnership or partnership or general partner in a limited partnership or limited joint—stock partnership or a proxy has been the subject of a conviction by final judgment for a crime or an offence, referred to in point 2(a) or (b);
- 4) where the economic operator is the subject of winding-up or insolvency proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national provisions;
- 5) where the economic operator is guilty of grave professional misconduct, which renders its integrity questionable; in particular where the economic operator, as a result of intentional action or gross negligence failed to perform or unduly performed the contract, what the contracting body can demonstrate by appropriate means;
- 6) where a conflict of interest within the meaning of Article 56 para. 2 cannot be effectively remedied by other measures than the exclusion of an economic operator;
- 7) where the economic operator, for reasons attributable to it, to a large extent, has failed to perform or has persistently unduly performed substantive requirement under a prior public contract or concession contract, what led to early termination or withdrawal from the prior contract, compensation, substitute performance or exercise of rights under the warranty for defects;
- 8) where the economic operator, as a result of deliberate action or gross negligence, has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the qualitative

selection criteria, selection criteria, what might have a material influence on the decisions made by the contracting body in the procurement procedure, has withheld such information or is not able to submit the required qualitative means of proof;

9) where the economic operator has unlawfully influenced or has attempted to influence the activities of the contracting body, has attempted to obtain or has obtained confidential information that may confer upon it advantages in the procurement procedure;

10) where the economic operator, as a result of recklessness or negligence, has provided misleading information, what might have a material influence on the decisions taken by the contracting body in the procurement procedure.

2. Where the contracting body provides for the exclusion of an economic operator under para. 1, it indicates the exclusion grounds in the contract notice or procurement documents.

3. In the cases, referred to in para. 1 point 1-5 or 7, the contracting body is not required to exclude an economic operator where an exclusion would be clearly disproportionate, in particular where the amounts of overdue taxes or social security contributions are minor or the economic or financial standing of the economic operator, referred to in para. 1 point 4, is sufficient to perform the contract.

#### **Article 110.**

1. The economic operator may be excluded by the contracting body at any stage of the procurement procedure.

2. The economic operator shall not be excluded in the circumstances referred to in Article 108 para. 1 points 1, 2 and 5 or Article 109 para. 1 point 2 to 5 and 7 to 10, if it proves to the contracting body that all the following conditions have been met:

- 1) repaired or committed itself to redress the damage caused by the offence, misdemeanor or misconduct, including compensation;
- 2) clarified in a comprehensive manner the facts and circumstances of the crime, offence or misconduct and the damage caused by it by actively collaborating accordingly with the competent authorities, including the investigating authorities or the contracting body;
- 3) it has taken concrete technical, organisational and personnel measures that are appropriate to prevent further offences, misdemeanors or misconduct, in particular:
  - a) has terminated any links with persons or bodies responsible for misconduct of the economic operator,
  - b) has reorganized the personnel,
  - c) has implemented a reporting and control system,
  - d) set up internal audit structures to monitor compliance with legal provisions, internal regulations or standards,
  - e) has introduced internal rules on liability and compensation for non-compliance with legal provisions, internal regulations or standards.

3. The contracting body shall evaluate whether the activities, referred to in para. 2, taken by the

economic operator, are sufficient to demonstrate its reliability, taking into account the gravity and particular circumstances of the act of the economic operator. Where the measures, referred to in para. 1, have been taken by the economic operator are considered insufficient to demonstrate its reliability, the contracting body shall exclude the economic operator.

### **Article 111.**

Exclusion of the economic operator shall be as follows:

- 1) in the cases, referred to in Article 108 para. 1 point 1(a) – (g) and point 2, for a period of 5 years from the date of the conviction by final judgment confirming the existence of one of the exclusion grounds, unless other period of exclusion is set by that final judgment;
- 2) in the cases referred to in:
  - a) Article 108 para. 1 point 1(h) and point (2) where the person referred to in those provisions has been convicted of the offence, referred to in Article 108 para. 1 point 1(h),
  - b) Article 109 para. 1 points 2 and 3— for a period of 3 years from the date of the conviction by final judgment confirming the existence of one of the exclusion grounds, issuance of the final decision or the occurrence of the event giving rise to exclusion, unless other period of exclusion is set by that final judgment or decision;
- 3) in the case, referred to in Article 108 para. 1 point (4), for the period for which the prohibition to compete for procurement contract has been issued;
- 4) in the cases, referred to in Article 108 para. 1, point 5, Article 109 para.1 points 4, 5, 7 and 9, for a period of 3 years following the occurrence of the event giving rise to the exclusion;
- 5) in the case, referred to in Article 109 para. 1 point 8, for a period of 2 years from the occurrence of the event giving rise to the exclusion;
- 6) in the case, referred to in Article 109 para. 1 point 10, for a period of one year after the occurrence of the event giving rise to the exclusion;
- 7) in the cases, referred to in Article 108 para. 1 point (6) and Article 109 para. 1 point 6, in the procurement procedure, in which the event giving rise to the exclusion occurred.

## **Section 2**

### **Conditions for participation in a procurement procedure**

#### **Article 112.**

1. The contracting body shall indicate the required conditions for participation in a manner proportionate to the subject-matter of the contract and allowing to assess the ability of economic operator to perform the contract, in particular by expressing them as minimum levels of ability.
2. The conditions for participation in a procurement procedure may relate to:

- 1) suitability to pursue the professional activity;
- 2) authorisation to pursue a particular economic or professional activity, in so far as this is the result of separate provisions;
- 3) economic or financial standing;
- 4) technical or professional ability.

3. When specifying the conditions for participation in the procurement procedure within the scope referred to in Article 2 point 4, the contracting body shall apply the capability levels set forth in the provisions issued pursuant to Article 5 para. 4 or 5 of the Act of August 5., 2025 on the Certification of Public Procurement Economic Operators (Journal of Laws, item 1235), unless this is not possible due to the nature of the contract or if no capability levels have been specified for the subject matter of the contract in question, what the contracting body has indicated in the specification of terms of contract or other procurement documents.

#### **Article 113.**

With regard to the condition relating to the suitability to pursue the professional activity, the contracting body may require economic operators engaged in an economic or professional activity to be enrolled in one of the professional or trade registers of kept in the country of their seat or place of residence.

#### **Article 114.**

With regard to the authorisation to pursue a particular economic or professional activity, a contracting body may require proof of the possession of:

- 1) the relevant authorisation, licence, concession or entry in the register of regulated activities, or
- 2) the relevant authorisation, licence, concession or entry in the register of regulated activities, if their possession is necessary for the provision of certain services in the country in which the economic operator has its seat or place of residence, or
- 3) membership in a given organisation if the membership of that organisation is necessary for the provision of specific services in the country in which the economic operator has its seat or place of residence.

#### **Article 115.**

1. With regard to the financial or economic standing, the contracting body may set conditions ensuring that economic operators possess the necessary economic and financial capacity to perform the contract. For this purpose, the contracting body may require in particular:

- 1) that economic operators have certain minimum annual revenues, including certain minimum annual revenues for the activities covered by the contract;
- 2) that economic operators provide information on their annual accounts showing in particular the ratios between assets and liabilities;
- 3) an appropriate level of professional risk indemnity insurance;

- 4) a specific creditworthiness or financial means.
2. The contracting body may not require that the minimum annual revenue, referred to in para. 1 point 1, exceeds two times the contract value, except in duly justified cases relating to the subject-matter of the contract or the manner in which it is executed. The contracting body shall indicate in the procurement documents the reasons for applying such a requirement.
3. The ratio between assets and liabilities, referred to in para. 1 point 2, may be taken into consideration where the contracting body defines transparent and objective methods and criteria in the procurement documents.
4. Where the contract is divided into lots, the provisions of para. 1-3 shall apply to each individual lot. The contracting body may also set a minimum annual revenue for more than one lot of the contract in case the economic operator whose tender has been selected as the most advantageous, is awarded several lots of the contract to be executed at the same time.
5. In the case of a dynamic purchasing system, the condition of having a minimum annual revenue shall be calculated on the basis of the expected maximum size of contracts to be covered by the system.

#### **Article 116.**

1. With regard to technical or professional ability, the contracting body may set the conditions relating to the necessary education, professional qualifications, experience, technical resources of the economic operator or human resources applied by the economic operator to perform the contract, enabling the performance of the contract at the appropriate quality level. In particular, the contracting body may require economic operators to comply with the requirements of certain quality assurance standards, including on accessibility for disabled persons, and environmental management systems or standards indicated by the contracting body in the contract notice or in the procurement documents.
2. When assessing the technical or professional ability, the contracting body may, at any stage of the procedure, consider that the economic operator does not have the required ability if the economic operator has conflicting interests, in particular the involvement of its technical or professional ability in other economic activities may negatively affect the performance of the contract.

#### **Article 117.**

1. The contracting body may define a specific, objectively justified manner of fulfilling the conditions for participation in the procurement procedure by economic operators jointly competing for a contract, where this is justified by the nature of the contract and is proportionate.
2. The Condition relating to the authorisation to pursue a particular economic or professional activity, referred to in Article 112 para. 2 point 2, shall be fulfilled if at least one of the economic operators jointly competing for a contract is authorised to pursue a particular economic or professional activity and performs the works, supplies or services for which such authorisation is required.
3. With regard to the conditions relating to education, professional qualifications or experience, economic operators jointly competing for a contracts may rely on the capacities of those

economic operators who perform the works or services for which these capacities are required.

4. In the case, referred to in para. 2 and 3, economic operators jointly competing for a contract shall attach, as appropriate, to the request for participation or to the tender a statement specifying which of the works, supplies or services will be performed by each of the economic operators.

### **Section 3**

#### **Making resources available**

##### **Article 118.**

1. The economic operator may, in order to confirm the fulfilment of the conditions for participation in the procurement procedure or selection criteria, where appropriate and for a particular contract, or part thereof, rely on the technical or professional ability or the financial or economic standing of the entities that provide capacities regardless of the legal nature of its legal relationship with them.

2. With regard to the conditions of education, professional qualifications or experience, economic operators may rely on the capacities of the entities if they perform the works or services for which such capacities are required.

3. An economic operator which relies on the capacities of other entities shall submit, together with the request to participate or with the tender, as appropriate, a commitment of the entity providing the resources to provide the economic operator with the necessary resources for the performance of a given contract or other qualitative means of proof that it will have the necessary resources at its disposal when performing a contract.

4. A commitment of the entity providing the resources, referred to in para. 3, confirms that the relationship between the economic operator and the entities providing the resources guarantees effective access to those resources and specifies in particular:

- 1) the scope of resources to be made available to the economic operator by the entity providing the resources;
- 2) the manner and duration of the availability to the economic operator and of the use by it of the resources made available by the entity for the performance of the contract;
- 3) whether and to what extent the entity providing the resources, on whose capacities the economic operator relies with regard to the conditions for participation in procurement procedure relating to education, professional qualifications or experience, will perform the works or services for which these capacities are required.

##### **Article 119.**

The contracting body shall assess whether the technical or professional ability or financial or economic standing made available to economic operator by the entity providing the resources allow the economic operator to demonstrate its compliance with the conditions for participation in the procurement procedure, referred to in Article 112 para. 2 points 3 and 4, and, where applicable, the selection criteria, and shall examine whether there are no grounds for exclusion in respect of this entity, which have been provided for in respect of the economic operator.

#### **Article 120.**

The entity which has committed itself to make available the resources shall be jointly liable with the economic operator who relies on its financial or economic standing, for any damage suffered by the contracting body as a result of the failure to make the resources available, unless the entity is not at fault for the failure to make the resources available.

#### **Article 121.**

The contracting body may reserve the obligation for the economic operator to perform itself the critical tasks relating to:

- 1) works or service contracts, or
- 2) siting and installation operations under the supply contract.

#### **Article 122.**

Where the technical or professional ability, the economic or financial standing of the entity making the resources available does not confirm that the economic operator meets the conditions for participation in the procurement procedure or there are exclusion grounds in respect of that entity, the contracting body shall require the economic operator, within a time limit set by the contracting body, replaces that entity with another entity or entities or demonstrate that it fulfils itself the conditions for participation in the procurement procedure.

#### **Article 123.**

An economic operator shall not, after the expiry of the time limit for the submission of requests to participate in a procurement procedure or tenders, rely on the capacities of the entities making the resources available if, at the stage of submitting requests to participate or tenders, it did not rely on the capacities of the entities making the resources available to the extent in question.

### **Section 4**

#### **Qualitative means of proof**

#### **Article 124.**

1. In the procurement procedure, the contracting body:
  - 1) shall request qualitative means of proof as evidence for the absence of grounds for exclusion;
  - 2) it may request qualitative means of proof to confirm fulfilment of the conditions for participation in the procurement procedure or selection criteria.
2. In a procurement procedure, an economic operator may, instead of qualitative means of proof, submit a certificate confirming that it has been certified as a public procurement economic operator within the scope, referred to in Article 3 para. 2 pont 1 and 2 of the Act of August 5., 2025 on the Certification of Public Procurement Economic Operators.
3. The contracting body may not require other qualitative means of proof to the extent that confirmation of the absence of grounds for exclusion or confirmation of compliance with the

conditions for participation in the procedure is provided by the certificate referred to in para. 2, subject to the exception specified in para. 4 and the circumstances referred to in Article 31 para. 6 of the Act of August 5., 2025, on the Certification of Public Procurement Economic Operators.

4. Prior to awarding the contract, the contracting body may require qualitative means of proof from the contractor who submitted the certificate referred to in para. 2 to provide specific evidence confirming that there are no grounds for exclusion from the procedure based on the Article 109 para. 1 point 1.

#### **Article 125.**

1. The request to participate or the tender shall be accompanied by a statement of non-exclusion, compliance with the conditions for participation in the procedure or selection criteria, to the extent set by the contracting body.

2. The statement, referred to in para. 1, shall be submitted in a form of the European Single Procurement Document (ESPD) drawn up on the basis of a standard form established in The Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the Single European Procurement Document (OJ L 3 of 06.01.2016, p. 16) hereinafter referred to as “the single document”.

3. The statement, referred to in para. 1, is an evidence for the absence of grounds for exclusion and for the fulfilment of conditions for participation in the procurement procedure or the selection criteria, as at the date of submission of requests to participate or tenders as appropriate, temporarily replacing the qualitative means of proof required by the contracting body.

4. In the case where economic operators compete for a contract jointly, the statement referred to in para. 1, is submitted by each economic operator. These statements confirm the absence of grounds for exclusion and the fulfilment of the conditions for participation in the procurement procedure or selection criteria to the extent that each economic operator demonstrates compliance with the conditions for participation in the procurement procedure or selection criteria.

5. The economic operator, in the case where it relies on capacities of the entities making the resources available, shall submit, together with the statement, referred to in para. 1, also a statement by the entity making the resources available confirming the absence of grounds for exclusion of that entity and, accordingly, fulfilment of the conditions for participation in the procurement procedure or selection criteria, to the extent it relies on resources of that entity.

6. The economic operator may reuse a single which has already been used in a previous procurement procedure, provided that it confirms that the information contained therein continues to be correct.

#### **Article 126.**

1. Before selecting the most advantageous tender, the contracting body shall invite the economic operator whose tender has been rated the highest, to submit within the time limit set, not less than 10 days, the qualitative means of proof being up-to-date upon the day of their submission.

2. Where this is necessary to ensure the proper conduct of the procurement procedure, the contracting body may, at any stage of the procedure, including at the stage of the submission of

requests to participate or as soon as they have been submitted, call on the economic operators to submit all or certain qualitative means of proof being up-to-date upon the day of their submission.

3. Where there are reasonable grounds to consider that previously submitted qualitative means of proof is no longer valid, the contracting body may at any time call on the economic operator or economic operators to submit all or certain qualitative means of proof being up-to-date upon the day of their submission.

#### **Article 127.**

1. The contracting body shall not call for the submission of qualitative means of proof if:

- 1) may obtain them through free and publicly available databases, in particular public registers within the meaning of the Act of 17 February 2005 on digitalisation of the activities of entities performing public tasks, provided that the economic operator has identified in a single document the data enabling the access to those means;
- 2) the qualitative means of proof is a statement, which content corresponds to the scope of the statement, referred to in Article 125 para. 1.

2. The economic operator shall not be obliged to submit qualitative means of proof which the contracting body possesses if the economic operator indicates these means and confirms they are correct and up-to-date.

#### **Article 128.**

1. Where the economic operator has failed to submit the statement, referred to in Article 125 para. 1, qualitative means of proof, other documents or statements submitted in procurement procedure, or they are incomplete or contain errors, the contracting body shall call on the economic operator to submit, correct or supplement them within a given time limit, unless:

- 1) a request to participate or a tender of an economic operator shall be rejected regardless of their submission, supplementation or correction, or
- 2) there are grounds for cancellation of the procurement procedure.

2. The economic operator shall submit on request the qualitative means of proof, referred to in para. 1, being up-to-date upon the day of their submission.

3. Submission, supplementation or correction of the statement, referred to in Article 125 para. 1, or the qualitative means of proof shall not serve to confirm that the selection criteria are met.

4. The contracting body may demand explanations from economic operators regarding the content of the statement, referred to in Article 125 para. 1, or submitted qualitative means of proof or other documents or statements submitted in the procurement procedure.

5. Where the statement, referred to in Article 125 para. 1, or qualitative means of proof raise doubts of the contracting body, it may directly ask the entity which is in possession of information or documents relevant in that regard for the assessment of the economic operator's compliance with the conditions for participation in the procurement procedure, selection criteria or the absence of grounds for exclusion, to provide such information or documents.

6. The minister responsible for the economy shall, by means of a regulation, determine, the types of qualitative means of proof and other documents or statements which the contracting body may request from the economic operator, their validity period and the form in which they may be submitted, considering the need to confirm the absence of grounds for exclusion, fulfilment of the conditions for participation in the procedure or selection criteria, to ensure the up-to-date status of the qualitative means of proof, other documents and statements, and the means of communication between the contracting body and the economic operator.

#### **Article 128a.**

1. A contracting body that invokes the circumstances, referred to in Article 8 para. 1 of the Act of August 5., 2025 on the Certification of Public Procurement Economic Operators shall request the economic operator to provide explanations within a specified time limit of no less than 5 days from the date of the request.

2. If the contracting authority deems the explanations provided by the contractor to be insufficient, it shall notify the certifying body referred to in Article 14(1) or (2) of the Act of August 5, 2025, on the Certification of Public Procurement Contractors—which issued the certificate referred to in Article 124(2)— regarding the circumstances referred to in Article 8(1) of the Act of August 5, 2025, on the Certification of Public Procurement Contractors, demonstrating that the contractor misled that body, which could have had a material impact on the granting of the public procurement contractor certification, or that the contractor no longer meets the conditions for granting such certification. The contracting authority shall forward the explanations submitted by the contractor to the certifying body.

2. If the contracting body deems the explanations provided by the economic operator to be insufficient, it shall notify the certifying body referred to in Article 14 para. 1 or 2 of the Act of August 5., 2025 on the Certification of Public Procurement Economic Operators—which issued the certificate referred to in Article 124 para. 2— regarding the circumstances referred to in Article 8 para. 1 of the Act of August 5., 2025 on the Certification of Public Procurement Economic Operators, demonstrating that the economic operator misled that body, which could have had a material impact on the granting of the public procurement economic operator certification, or that the economic operator no longer meets the conditions for granting such certification. The contracting body shall forward the explanations submitted by the economic operator to the certifying body.

3. In the event that the validity of public procurement economic operator's certification is suspended pursuant to Article 12( para. 1 of the Act of August 5, 2025 on the Certification of Public Procurement Economic Operators, the contracting body shall request the economic operator to submit, within a specified time limit of no less than 5 days from the date of the request, qualitative means of proof to the extent that the submitted certificate referred to in Article 124 para. 2 was intended to confirm the lack of grounds for exclusion or compliance with the conditions for participation in the procurement procedure for the purposes of the ongoing procurement procedure. The provisions of Article 128 para. 2-5 shall apply accordingly.

**Chapter 3**  
**Procurement procedures**

**Section 1**  
**General provisions**

**Article 129.**

1. The contracting authorities and subsidised contracting entities shall award the contract by one of the following procedures:

- 1) open procedure;
- 2) restricted procedure;
- 3) negotiated procedure with publication;
- 4) a competitive dialogue;
- 5) an innovation partnership;
- 6) negotiated procedure without publication;
- 7) single-source procurement.

2. The contracting body may award the contract by open and restricted procedure, the contracting body may award the contract by other procedures in the specific cases, referred to in the Act.

**Article 130.**

1. The contracting body shall launch a procurement procedure by submitting:

- 1) contract notices to the Publications Office of the European Union, in the case of open procedure, restricted procedure, negotiated procedure with publication, competitive dialogue or innovation partnership;
- 2) invitations to negotiate, in the case of a negotiated procedure without publication or a single-source procurement.

2. The contracting body may launch a procurement procedure by negotiated procedure with publication or competitive dialogue by submitting invitation to negotiations or dialogue, in the circumstances, referred to in Article 153 point 5, where it invites only all economic operators who are not excluded and who fulfil the conditions for participation in the procurement procedure and, during a prior open or restricted procedure, submitted tenders which were not rejected pursuant to Article 226 para. 1 points 1, 2, 6, 7, 9, 12-14 and 18.

3. The contracting body may, after the publication of a contract notice in the Official Journal of the European Union, directly inform about launching a procurement procedure the known economic operators to themselves who, as part of their activities, provide services, supplies or works which are the subject-matter of the contract.

### **Article 131.**

1. The contracting body shall set the time limits for receipt of requests to participate, initial tenders and tenders, taking into account the complexity and specific nature of the subject-matter of the contract and the time needed for their preparation and submission, except that such time limits may not be shorter than the statutory minimum time limits, provided that they are specified.

2. Where the contracting body provides for the possibility or, if necessary due to the specific nature of the subject-matter of the contract, it shall require the submission of a tender after:

- 1) an on-site visit by the economic operator, or
- 2) on-the-spot inspection of the documents necessary for the performance of the contract,

— it set the time limits for the submission of tenders, taking into account the time necessary for economic operators to become aware of the information necessary to produce a tender, except that those time limits must be longer than the statutory minimum time limits, provided that they are specified.

## **Section 2**

### **Open procedure**

#### **Article 132.**

An open procedure is a procurement procedure where all interested economic operators may submit tenders in response to the contract notice.

#### **Article 133.**

1. The contracting body shall provide on the website of the procedure free-of-charge, full, direct and unrestricted access to specifications of terms of the contract, hereinafter referred to as 'STC', from the date of publication of the contract notice in the Official Journal of the European Union not less than the date of award of the contract.

2. Where the contracting body is unable to make a part of the STC available on the website of the procurement procedure due to one of the cases, referred to in Article 65 para. 1, it shall submit it in a different manner specified in the contract notice.

3. If the contracting body is unable to make part of the STC available on the website of the procurement procedure due to the protection of the confidential nature of the information contained in the STC, it shall specify in the contract notice how access to that information can be obtained and the requirements relating to the protection of its confidential nature.

#### **Article 134.**

1. The STC shall contain at least:

- 1) the name and address of the contracting body, telephone number, e-mail address and the website of the procurement procedure;
- 2) the website where the changes and clarifications of the content of the STC and other

procurement documents directly related to the procurement procedure will be made available;

- 3) type of the procurement procedure;
- 4) description of the subject-matter of the contract;
- 5) information on the means of proof relating to the subject-matter;
- 6) the time limit for the performance of the contract;
- 7) the grounds for exclusion, referred to in Article 108;
- 8) information on the conditions for participation in the procurement procedure;
- 9) a list of qualitative means of proof;
- 10) information on the electronic means by which the contracting body will communicate with economic operators and information on technical and organisational requirements for the preparation, sending and receiving of electronic correspondence;
- 11) information on how the contracting body communicates with economic operators other than by electronic means communication, including the cases, referred to in Article 65 para. 1, 66 and 69;
- 12) identification of persons authorized to communicate with economic operators;
- 13) time frame during which the economic operator must maintain its tender;
- 14) a description of the method for the tender preparation;
- 15) the manner and time limit for the submission of tenders;
- 16) time for the opening of tenders,
- 17) the method for the calculation of price;
- 18) a description of the contract award criteria, together with the weightings of those criteria and the tenders evaluation method;
- 19) information on formalities to be completed after the selection of the tender in order to conclude a public contract;
- 20) the proposed provisions of the public procurement contract to be introduced into the public procurement contract;
- 21) instructions on the legal remedies available to the economic operator.

## 2. The STC shall also contain:

- 1) grounds for exclusion, referred to in Article 109 para. 1, where the contracting body provides for them;
- 2) a description of lots if the contracting body permits the submission of lots;
- 3) the number of lots of the contract for which the economic operator may submit a tender or the maximum number of lots for which the contract may be awarded to the same economic operator and the criteria or rules applicable to determine which lots of the contract will be

awarded to the same economic operator in the case of selection of its tender in more than the maximum number of lots;

- 4) tender guarantee where the contracting body provides for an obligation to lodge a tender guarantee;
- 5) information on a contract performance guarantee where the contracting body provides for an obligation to lodge the contract performance guarantee;
- 6) information on variants, including information on the presentation of variants and the minimum conditions to be met by variant tenders where the contracting body requires or accepts their submission;
- 7) the maximum number of economic operators with which the contracting body concludes a framework contract if the contracting body provides for the conclusion of a framework agreement;
- 8) information on the anticipated contracts, referred to in Article 214 para. 1 point 7 and 8, where the contracting body provides for the award of such contracts;
- 9) information concerning an on-site visit by the economic operator or on-the-spot inspection by it of the documents necessary for the performance of the contract, referred to in Article 131 para. 2, if the contracting body provides for the possibility or requires the submission of a tender after an on-site visit or on-the-spot inspection of those documents;
- 10) information on foreign currencies in which settlements between the contracting body and the economic operator may be carried out where the contracting body provides for settlements in foreign currencies;
- 11) information on the prior evaluation of tenders, in accordance with Article 139, where the contracting body provides for a reversed order of evaluation;
- 12) information on the anticipated selection of the most advantageous tender using an electronic auction together with the information, referred to in Article 230, where the contracting body provides for an electronic auction;
- 13) information on the reimbursement of the costs of participation in the procurement procedure where the contracting body provides for their reimbursement;
- 14) employment requirements based on an employment relationship, in the circumstances referred to in Article 95, where the contracting body provides for such requirements;
- 15) employment requirements for persons, referred to in Article 96 para. 2 point (2), where the contracting body provides for such requirements;
- 16) information on the reservation of the possibility for economic operators, referred to in Article 94, to apply for a contract only if the contracting body provides for such requirements;
- 17) information on the obligation of the economic operator to perform critical tasks itself if the contracting body makes such a reservation in accordance with Articles 60 and 121;
- 18) the requirement or possibility to submit tenders in the form of electronic catalogues or to

add electronic catalogues to a tender, in the case referred to in Article 93.

#### **Article 135.**

1. The economic operator may request the contracting body to clarify the content of the STC.
2. The contracting body is required to provide an explanation without delay, but not later than 6 days before the expiry of the time limit for the submission of tenders or no later than 4 days before the expiry of the time limit for submission of tenders in the case, referred to in Article 138 para. 2 point 2, provided that the request for clarification of the content of the STC was received by the contracting body no later than 14 or 7 days accordingly before the expiry of the time limit for submission of tenders.
3. If the contracting body fails to provide an explanation within the time limits, referred to in para. 2, it extends the time limit for the submission of tenders by the time necessary for all the economic operators concerned to become familiar with the explanations necessary for the proper preparation and submission of tenders.
4. The extension of the time limit for the submission of tenders shall not affect the time limit for submission of an request for clarification of the content of the STC, referred to in para..2.
5. Where the request for clarification of the content of the STC has not been received within the time limit, referred to in para. 2, the contracting body shall not be obliged to give clarifications to the STC and to extend the time limit for the submission of tenders.
6. The content of the enquiries, together with explanations, shall be made available by the contracting body on the website of the procedure and in the cases, referred to in Article 133 para. 2 and 3, the contracting body submits it to economic operators to which the STC was submitted, without disclosing the source of the enquiry.

#### **Article 136.**

1. The contracting body may convene a meeting of all economic operators in order to clarify the content of the STC. Information on the date of the meeting shall be made available on the website of the procurement procedure.
2. The contracting body shall draw up information containing enquiries raised at the meeting for clarification of the content of the STC and the answers to them without disclosing the source of the enquiry. Information from the meeting shall be made available on the website of the procurement procedure.

#### **Article 137.**

1. In justified cases, the contracting body may change the content of the STC before the expiry of the time limit for the submission of tenders.
2. The change of the content of the STC shall be made available by the contracting body on the website of the procurement procedure.
3. Where the change concerns parts of the STC which have not been made available on the website of the procurement procedure, in accordance with Article 133 para. 2 and 3, the change

of the content of the STC shall be communicated in a different manner indicated in the contract notice.

4. Where a change in the content of the STC leads to a change in the content of the contract notice, the contracting body shall submit the notice, referred to in Article 90 para. 1, to the Publications Office of the European Union.

5. In the case referred to in para. 4, the change to the content of the STC on the website of the procurement procedure may not be made available before the publication of the notice, referred to in Article 90 para. 1, except where the contracting body has not been notified of the publication within 48 hours after confirmation by the Publications Office of the European Union of receipt of that notice.

6. Where change in the content of the STC is relevant for the preparation of the tender or requires additional time for economic operators to be aware of the change of the STC and to prepare tenders, the contracting body shall extend the time limit for submission of tenders for the time necessary to be aware of the change of the STC and to prepare a tender. The provisions of para.s 4 and 5 shall apply.

7. Where change in the content of the STC would lead to a significant change in the nature of the contract compared to the one initially defined, in particular would lead to a significant change in the scope of the contract, the contracting body shall cancel the procedure pursuant to Article 256.

#### **Article 138.**

1. The time limit for submission of tenders may not be less than 35 days from the date of submission of the contract notice to the Publications Office of the European Union.

2. The contracting body may set a time limit for submission of tenders less than the time limit set out in para. 1 but not less than 15 days from the date of submission of the contract notice to the Publications Office of the European Union, in the following cases:

- 1) the publication of the prior information notice, referred to in Article 89, in so far as it included all the information required for the contract notice, in so far as that information was available at the time of publication of the prior information notice which was submitted for publication to the Publications Office of the European Union or posted on the contracting body website at least 35 days and not more than 12 months before the date of submission of the contract notice to the Publications Office of the European Union;
- 2) where there is an extreme urgency to award a contract and shortening of the time limit for submission of tenders is justified.

3. In the cases, referred to in Article 133 para. 2 and 3, time limits for submission of tenders, referred to in para. 1 and para. 2 point 1, are extended by 5 days.

4. The contracting body may reduce a time limit for submission of tenders by 5 days with reference to the time limit, referred to in para. 1, where tenders are submitted by electronic means of communication in the manner, referred to in Article 63 para. 1.

#### **Article 139.**

1. The contracting body may first carry out the examination and evaluation of tenders and then

qualify the economic operator whose tender has been rated the highest, for the lack of grounds for exclusion and fulfilment of the conditions for participation in the procurement procedure, provided that such a possibility is provided for in the STC or in the contract notice.

2. In the case, referred to in para. 1, the economic operator shall not be obliged to submit, together with the tender, the statement, referred to in Article 125 para. 1, if the contracting body has provided for the possibility of requesting this statement only from the economic operator whose tender has been rated the highest.

3. If the economic operator, referred to in para. 1, is subject of grounds for exclusion, the economic operator does not fulfil the conditions for participation in the procurement procedure, it fails to submit the qualitative means of proof or the statement, referred to in Article 125 para. 1 confirming the absence of grounds for exclusion or fulfilment of the conditions for participation in the procurement procedure, the contracting body shall re-examine and re-evaluate the tenders of other economic operators, and shall then qualify the economic operator whose tender has been rated the highest as to the absence of grounds for exclusion and fulfilment of the conditions for participation in the procurement procedure.

4. The contracting body shall continue the procedure for re-examination and re-evaluation of tenders, referred to in para. 3, in respect of the tenders of economic operators remaining in the procedure, and shall then qualify the economic operator whose tender has been rated the highest as to the absence of grounds for exclusion and fulfilment of the conditions for participation in the procurement procedure, until the most advantageous tender is selected or the procurement procedure is cancelled.

### **Section 3**

#### **Restricted procedure**

##### **Article 140.**

A restricted procedure is a procurement procedure where, in response to a contract notice, requests to participate may be submitted by all economic operators concerned and tenders may be submitted only by economic operators invited to submit tenders.

##### **Article 141.**

The contracting body shall provide on the website of the procurement procedure a free-of-charge, full, direct and unrestricted access to the STC from the date of publication of the contract notice in the Official Journal of the European Union not less than until the date of the award of a contract. The provisions of Article 133 para. 2 and 3 shall apply.

##### **Article 142.**

1. In the case of restricted procedure, the STC shall contain at least the information, referred to in Article 134 para. 1 point 1 to 12 and 17 to 21.

2. The STC shall also contain:

- 1) The information, referred to in Article 134 para. 2 point 1 to 10 and 12 to 18;

- 2) information on the stages of the procurement procedure at which economic operators will be required to submit all or certain qualitative means of proof where the contracting body provides for such a possibility;
- 3) information whether the contracting body provides for the possibility of reducing the number of economic operators invited to submit tenders together with the number of economic operators and the selection criteria, referred to in Article 148, if they are set;
- 4) a description of the manner to prepare requests to participate;
- 5) the manner and the time limit for submission of requests to participate.

#### **Article 143.**

1 The provisions of Article 135 para. 1 and 6, Article 136 and Article 137, taking account of para. 2-5, shall apply accordingly to clarifications and change of the content of STC.

2. If clarifications of the content of the STC are necessary for the proper preparation and submission of a request to participate, the contracting body shall give an explanation in this respect without delay, but not later than 6 days before the expiry of the time limit for submission of requests or no later than 4 days before the expiry of the time limit for submission of requests in the case, referred to in Article 144 para. 2, provided that the request for clarification of the content of the STC has been received by the contracting body no later than 14 days and in the case referred to in Article 144 para. 2, 7 days before the expiry of the time limit for submission of request to participate.

3. If the contracting body fails to provide a clarification within the time limits, referred to in para. 2, it extends the time limit for submission of requests to participate for the time necessary for all the economic operators concerned to be aware of the clarifications necessary for the proper preparation and submission of such requests. The extension of the time limit for submission of requests to participate shall not affect the running of the time limit for submission of requests for clarification of the content of the STC, referred to in para. 2.

4. It is not admissible to change the content of the STC after the expiry of the time limit for submission of requests to participate, which leads to a change in the content of the contract notice.

5. Where clarifications or changes of the content of the STC are relevant for the preparation of requests to participate or require additional time for economic operators to be aware of the change of the STC and to prepare requests, the contracting body shall extend the time limit for their submission.

#### **Article 144.**

1. The time limit for submission of requests to participate in the procedure may not be less than 30 days from the date on which the contract notice is submitted to the Publications Office of the European Union.

2. Where there is an extreme urgency to award a contract duly substantiated by the contracting body, it may set a shorter time limit for submission of requests to participate, but not less than 15 days from the date of submission of the contract notice to the Publications Office of the European

Union.

#### **Article 145.**

The content of requests to participate may not be opened before the expiry of the time limit for their submission.

#### **Article 146.**

1. The contracting body shall reject a request to participate if:

- 1) it has been submitted after the time limit;
- 2) it has been submitted by the economic operator:
  - a) that is excluded from the procurement procedure,
  - b) that does not fulfill the conditions for participation in the procurement procedure,
  - c) that has failed to lodge a statement, referred to in Article 125 para. 1, within the given time limit, or qualitative means of proof confirming the absence of grounds for exclusion or fulfilment of the conditions for participation in procurement procedure, other documents or statements;
- 3) is inconsistent with the provisions of the Public Procurement Law;
- 4) is invalid under separate provisions;
- (4a) was submitted by an economic operator from a third country not party to an international agreement, or jointly with an economic operator from a third country not party to an international agreement, except in the case, referred to in Article 16b para. 1 item 1 or 2;
- 5) has not been drawn up or submitted in accordance with the technical and organisational requirements for the preparation or submission of requests to participate by means of electronic communication specified by the contracting body.

2. A request to participate of an economic operator not invited to submit tender shall be considered as rejected.

#### **Article 147.**

The contracting body shall inform without delay the economic operators who have submitted requests to participate of the results of the evaluation of requests to participate, stating the factual and legal reasons.

#### **Article 148.**

1. The contracting body may limit the number of economic operators invited to submit tenders whose requests to participate have not been rejected, provided that this number is sufficient to ensure competition and is not less than 5.

2. In the case, referred to in para. 1, the contracting body shall indicate in the contract notice and in the STC the selection criteria which it intends to use to limit the number of economic operators invited to submit tenders and shall indicate the minimum number of economic operators invited

to submit tenders. The contracting body may indicate the maximum number of economic operators invited to submit tenders.

#### **Article 149.**

1. The contracting body shall at the same time invite economic operators whose requests to participate were not subject to rejection and, where selection criteria are established, invite economic operators meeting these criteria, in a number determined by the contracting body.

2. Where the number of economic operators who have submitted non-rejectable requests to participate is less than the minimum number determined by the contracting body in accordance with Article 148, the contracting body may continue the procedure by inviting those economic operators to tender or cancel the procedure pursuant to Article 258 para. 1.

#### **Article 150.**

1. The invitation to tender shall contain at least:

- 1) the name and address of the contracting body, telephone number, e-mail address and the website of the procurement procedure;
- 2) the number of the published contract notice;
- 3) the website where the STC is available along its possible changes and clarifications of the content of the STC, as well as other procurement documents directly related to the procurement procedure;
- 4) information on the qualitative means of proof to shall accompany the tender if the contracting body requires to submit selected or all qualitative means of proof during the stage of submission of tenders;
- 5) the manner and time limit for submission of tenders and the language or languages in which tenders must be drawn up and the time for opening of tenders.
- 6) time frame during which the tenderer must maintain its tender.

2. The provisions of Article 135, Article 136, Article 137 para. 1-3 and para. 6 sentence 1 and Article 143 para. 4, shall apply accordingly to clarifications and changes of the content of the STC, to the extent necessary to submit a tender.

#### **Article 151.**

1. The time limit for submission of tenders may not be less than 30 days from the date on which the invitation to tender is submitted.

2. The contracting body may set a time limit for submission of tenders less than the time limit set out in para. 1, but not less than 10 days from the date on which the invitation to tender was submitted, in the following cases:

- 1) the publication of the prior information notice, referred to in Article 89, provided that the prior information notice contains all the information required for the contract notice, in so far as that information was available at the time the prior information notice was published, which was submitted for publication to the Publications Office of the European Union or posted on the contracting body website for at least 35 days and not more than 12 months

before the date on which the contract notice was submitted to the Publications Office of the European Union;

2) where there is an extreme urgency to award a contract and to shorten the time limit for submission of tenders, it is justified.

3. In the cases, referred to in Article 133 para. 2 and 3, the time limits for receipt of tenders, referred to in para. 3 and para. 2 point 1, are extended by 5 days.

4. The contracting body may set a time limit for submission of tenders shorter by 5 days than the one, referred to in para. 1, where tenders are submitted in full by electronic means of communication in the manner, referred to in Article 63 para. 1.

## **Section 4**

### **Negotiated procedure with publication**

#### **Article 152.**

1. A negotiated procedure with publication is a procurement procedure where, in response to a contract notice, requests to participate may be submitted by all interested economic operators, the contracting body shall invite economic operators admitted to participate in the procedure to submit initial tenders, conduct negotiations with them in order to improve the content of the initial tenders, subsequent tenders submitted during the negotiations, after which the contracting body invites economic operators to submit final tenders.

2. The contracting body may award a contract on the basis of initial tenders without negotiation, provided that it indicates in the contract notice that it reserves the possibility of doing so.

#### **Article 153.**

The contracting body may award a contract by negotiated procedure with publication if at least one of the following circumstances occurs:

- 1) the solutions available on the market cannot meet, without their adaptation, the needs of the contracting body;
- 2) works, supplies or services include design or innovative solutions;
- 3) the contract may not be awarded without prior negotiations due to specific circumstances relating to its nature, complexity or legal or financial circumstances, or because of the risks attached to works, supplies or services;
- 4) where the contracting body cannot describe the subject-matter of the contract in a sufficiently precise manner by reference to a specific standard, the European Technical Assessment, referred to in Article 101 para. 1 point 2(c), or the common technical specification, referred to in Article 101 para. 1 point 2(d), or technical reference;
- 5) during the prior open or restricted procedure, all requests to participate were rejected pursuant to Article 146 para. 1 or all tenders were rejected pursuant to Article 226 para. 1, or the contracting body cancelled the procedure pursuant to Article 255 point 3.

#### **Article 154.**

1. In the case, referred to in Article 153 point (5), the contracting body is not required to publish a contract notice if it invites only all economic operators who are not excluded and who fulfil the conditions for participation in the procedure and during the prior open or restricted procedure submitted tenders which were not rejected pursuant to Article 226 para. 1 points 1, 2, 6, 7, 9, 12-14 or 18.
2. Tenders of the economic operators, referred to in para. 1, shall be considered as initial tenders to be subject of negotiations.
3. The contracting body shall simultaneously submit to the economic operators referred to in para. 1, an invitation to negotiate initial tenders, indicating the place, date and manner of negotiations and the website where a description of needs and requirements was made available.

#### **Article 155.**

1. In order to determine by economic operators the nature and scope of the contract and the formal and procedural requirements for the procurement procedure, the contracting body shall draw up a description of needs and requirements.
2. The contracting body shall provide, on the website of the procurement procedure, a free-of-charge, full, direct and unlimited access to the description of needs and requirements from the date of:
  - 1) publication of a contract notice in the Official Journal of the European Union,
  - 2) submission of the invitation to negotiate under the circumstances, referred to in Article 154 para. 1– not less than the date of award of the contract.
3. The provisions of Article 133 para. 2 and 3 shall apply accordingly.

#### **Article 156.**

1. A description of needs and requirements shall include at least:
  - 1) the name and address of the contracting body, telephone number, e-mail address and the website of the procurement procedure;
  - 2) the website where changes and clarifications of content of the description of needs and requirements, as well as other procurement documents directly related to the procurement procedure will be made available;
  - 3) type of the procurement procedure;
  - 4) identification of the subject-matter of the contract;
  - 5) a description of needs of the contracting body and the characteristics of supplies, works or services being subject-matter of the contract;
  - 6) information on the means of proof referring to the subject-matter, where the contracting body requires them to be submitted together with a initial tender;
  - 7) minimum requirements of the description of the subject-matter of the contract or performance of the contract, not subject to negotiations, to be met by all tenders;

- 8) contract award criteria, together with the weightings of those criteria and the manner the tenders are evaluated;
- 9) the grounds for exclusion, referred to in Article 108, and the conditions for participation in the procurement procedure;
- 10) information on the qualitative means of proof, including the stages of the procurement procedure, where economic operators will be required to submit all or certain means of proof;
- 11) information on the electronic by which the contracting body will communicate with economic operators, together with information on technical and organisational requirements for the preparation, sending and receiving of electronic correspondence;
- 12) information on how the contracting body will communicate with economic operators other than by means of electronic communication, including under one of the circumstances, referred to in Article 65 para. 1, Article 66 and Article 69;
- 13) persons authorised to communicate with economic operators;
- 14) a description of the manner in which requests to participate are prepared;
- 15) the manner and time limit for submission of requests to participate;
- 16) the manner in which the results of the evaluation of requests to participate are communicated;
- 17) whether the contracting body reserves the possibility of awarding a contract on the basis of initial tenders without negotiation;
- 18) information on the division of negotiations into stages in order to reduce the number of tenders to be negotiated by applying the contract award criteria, where the contracting body provides for such a division;
- 19) information on the legal remedies available to the economic operator.

2. A description of needs and requirements shall also include the information, referred to in Article 134 para. 2 points 1-10 and 12-18.

3. The information contained in the description of needs and requirements shall be sufficiently precisely to enable economic operators to determine the nature and scope of the contract and to decide whether to submit a request to participate.

4. In the case, referred to in Article 154 para. 1, a description of needs and requirements shall contain at least the information, referred to in para. 1 points 1- 3, 5-13, 18 and 19 and Article 134 para. 2 points 1-10 and 12-18.

#### **Article 157.**

1. The provisions of Article 135 para. 1 and 6, Article 136, Article 137 para. 1-6 and Article 143 para. 2-5 shall apply accordingly to clarifications and changes of the description of needs and requirements in a scope necessary to submit request to participate.

2. Where the contracting body has reserved the possibility of awarding a contract on the basis of initial tenders without negotiation, to clarifications and changes of the content of the description

of needs and requirements necessary to submit those tenders, the provisions of Article 135, Article 136, Article 137 para. 1-6 and Article 143 para. 4 shall apply accordingly.

#### **Article 158.**

1. The time limit for submission of requests to participate may not be less than 30 days from the date on which the contract notice is submitted to the Publications Office of the European Union.
2. The provisions of Article 145, Article 146 para. 1 and Article 147 shall apply to requests to participate.
3. A request to participate of an economic operator who was not invited to submit initial tenders shall be deemed as rejected.

#### **Article 159.**

1. The contracting body may limit the number of economic operators invited to submit initial tenders whose requests have not been rejected, provided that the number is sufficient to ensure competition and is not less than 3.
2. In the case, referred to in para. 1, the contracting body shall indicate in the contract notice and in the description of needs and requirements the selection criteria, which it intends to apply in order to limit the number of economic operators invited to submit initial tenders subject to negotiations, and shall indicate the minimum number of economic operators invited to submit initial tenders. The contracting body may indicate the maximum number of economic operators invited to submit initial tenders.

#### **Article 160.**

1. The contracting body shall simultaneously invite to submit initial tenders the economic operators whose requests to participate have not been subject to rejection and, where selection criteria have been established, it shall invite economic operators who meet those criteria in the number determined by the contracting body in accordance with Article 159.
2. Where the number of economic operators who have submitted non-rejectable requests to participate is less than the minimum number determined by the contracting body in accordance with Article 159, the contracting body may continue the procedure by inviting them to submit initial tenders or cancel the procedure pursuant to Article 258 para. 1.

#### **Article 161.**

1. The invitation to submit initial tenders shall include at least:
  - 1) the name and address of the contracting body, telephone number, e-mail address and the website of the procurement procedure;
  - 2) the number of the published contract notice;
  - 3) the address of the website where a description of needs and requirements is available, as well as changes and clarifications of its content, as well as other procurement documents directly related to the procurement procedure;
  - 4) information on the qualitative means of proof to be attached to the initial tender if the contracting body requires the submission of selected or all qualitative means of proof at

the stage of submission of initial tenders;

- 5) the manner and time limit for the submission of initial tenders and the language or languages in which they must be drawn up and the date of opening of initial tenders.

2. Where part of the description of needs and requirements has not been made available by the contracting body on the website of the procurement procedure for the reasons, referred to in Article 133 para. 2 and 3, the contracting body shall make available, together with the invitation to submit initial tenders, an unavailable part of the description of needs and requirements and its possible changes and clarifications of the content of this part of the description of needs and requirements, as well as other procurement documents directly related to the procurement procedure.

#### **Article 162.**

1. The time limit for submission of initial tenders may not be less than 30 days from the date on which the invitation to submit initial tenders has been submitted.

2. The contracting body may set a time limit for submission of initial tenders less than the time limit set out in para. 1 but not less than 10 days from the date on which the invitation to submit initial tenders was submitted, in the following cases:

- 1) the publication of the prior information notice, referred to in Article 89, in so far as the prior information notice contained all the information required for the contract notice, in so far as it was available at the time of publication of the prior information notice which was submitted for publication to the Publications Office of the European Union or published on the contracting body's website at least 35 days and not more than 12 months before the date of submission of the contract notice to the Publications Office of the European Union;
- 2) where there is an extreme urgency to award a contract and shortening of the time limit for submission of tenders is justified.

3. In the cases, referred to in Article 133 para. 2 and 3, the time limit for submission of preliminary tenders, referred to in para. 1 and para. 2 point 1, is extended by 5 days.

4. The contracting body may set a time limit for submission of initial tenders by 5 days shorter than the one, referred to in para. 1, where tenders are submitted in full by electronic means of communication in the manner, referred to in Article 63 para. 1.

#### **Article 163.**

1. Where the contracting body has provided for the possibility of awarding a contract in a contract notice on the basis of initial tenders without negotiation and based on them selects the most advantageous tenders, the provisions of Articles 218, 219, 221 to 225, Article 226 para. 1 point 1-11 and 15-17 and 19, Article 227-251 and Article 253 shall apply accordingly to the examination and evaluation of initial tenders, however the contracting body rejects an initial tender which does not meet the minimum requirements of the description of the subject-matter of the contract or the performance of the contract laid down by the contracting body.

2. For the examination and evaluation of initial tenders and subsequent tenders subject to negotiation, the provisions of Articles 218, 219, 221, 222 para. 1-3, 5 and 6, Article 223 and Article

226 para. 1 point 1-7, 9 15-17 and 19 shall apply accordingly, but the contracting body rejects the initial tender and subsequent tenders subject to negotiations which do not meet the minimum requirements of the description of the subject-matter of the contract or performance of the contract laid down by the contracting body.

3. The contracting body shall simultaneously invite to negotiate all economic operators who have submitted non-rejectable initial tenders, indicating the date and number of the publication of the contract notice.

4. The contracting body may divide negotiations into stages in order to reduce the number of tenders, using contract award criteria set out in the contract notice and in the description of needs and requirements, provided that the use of this possibility is foreseen in the contract notice or in the description of needs and requirements. The number of tenders obtained at the final stage must ensure competition as long there is a sufficient number of economic operators.

#### **Article 164.**

The negotiation of tenders shall not lead to changes in the minimum requirements and contract award criteria and their weights, as set by the contracting body in the contract notice and in the description of needs and requirements.

#### **Article 165.**

1. When negotiating tenders, the contracting body shall ensure equal treatment of all economic operators.

2. The contracting body shall not provide information in such a manner as to give certain economic operators an advantage over other economic operators.

3. The contracting body shall simultaneously inform all economic operators of the results of the selection of tenders for the next stage, providing the factual and legal justification.

4. The contracting body shall simultaneously inform all economic operators, whose tenders have been selected for the subsequent stages, of any changes affecting the content of the tenders submitted at the negotiation or tender stage, in particular changes related to the description of needs of the contracting body and the characteristics of the supplies, works or services which are the subject-matter of the contract, the terms of the public contract, so that economic operators have equally sufficient time to change and resubmit the revised tenders submitted at the stage of the negotiations or tenders.

#### **Article 166.**

1. The content of the initial tender, tenders submitted during the negotiations and the negotiations themselves shall be confidential.

2. None of the parties may disclose technical and commercial information relating to the negotiations without consent of the other party. Consent shall be granted in respect of specific information and prior to its disclosure.

3. The contracting body shall make available the tenders, referred to in para. 1, together with the annexes, from the day of the opening of the final tenders and where it awards the contract on the basis of initial tenders – from the date of selection of the most advantageous tender.

### **Article 167.**

1. Where the contracting body intends to terminate the negotiations, it shall simultaneously inform all other economic operators and set a time limit for the submission of final tenders.
2. At the end of negotiations, the contracting body shall draw up an STC, which shall clarify and supplement the information contained in the description of the needs and requirements, only to the extent that it has been the subject of negotiations.
3. The STC shall contain the information, referred to in Article 134 para. 1 and para. 2 point 1-10 and 12-18.
4. The provisions of Article 135, Article 136, Article 137 para. 1-3 and para. 6 first sentence and Article 143 para. 4 shall apply accordingly to clarifications and change of the STC content.

### **Article 168.**

1. The contracting body shall invite to submit final tenders all the remaining economic operators.
2. The invitation to submit final tenders shall contain at least:
  - 1) the name and address of the contracting body, telephone number, e-mail address and the website of the procurement procedure;
  - 2) the address of the website at which the STC is available and its possible changes and clarifications of the content of the STC, as well as other procurement documents directly related to the procurement procedure;
  - 3) information on the qualitative means of proof to be attached to the tender if the contracting body requires the submission of selected or all means of proof at the stage of submission of final tenders;
  - 4) the manner and time limit for submission of final tenders and the language or languages in which they must be drawn up and the date for the opening of final tenders.
3. Where a part of the STC has not been made available by the contracting body on the website of the procurement procedure for the reasons, referred to in Article 133 para. 2 and 3, the contracting body shall make available, together with the invitation to submit final tenders, the unavailable part of the STC as well as other procurement documents directly related to the procurement procedure.

## **Section 5**

### **Competitive dialogue**

#### **Article 169.**

A competitive dialogue is a procurement procedure where all interested economic operators may submit requests to participate in response to the contract notice. The contracting body shall conduct a dialogue with economic operators invited to participate in the dialogue on the solutions proposed by them, after which they shall be invited to submit tenders.

#### **Article 170.**

The contracting body may award a contract by competitive dialogue if at least one of the circumstances, referred to in Article 153, arise. Article 154 shall apply accordingly.

#### **Article 171.**

1. The contract shall be awarded on the basis of quality criteria, referred to in Article 242 para. 2, and the price or cost.
2. The contracting body shall fix weighting to the individual criteria for the evaluation of tenders, not later than with the invitation to tender.

#### **Article 172.**

In order for economic operators to determine the needs of the contracting body regarding the nature and scope of the contract as well as the formal and procedural requirements of the procurement procedure, the contracting body shall draw up a description of the needs and requirements.

#### **Article 173.**

The contracting body shall provide on the website of the procurement procedure a free-of-charge, full, direct and unlimited access to a description of needs and requirements from the date of publication of the contract notice in the Official Journal of the European Union no sooner than until the date of award of the contract. The provisions of Article 133 para. 2 and 3 shall apply accordingly.

#### **Article 174.**

1. A description of the needs and requirements shall contain at least the information, referred to in Article 156 para. 1 point 1-4, 9-6 and 19 and may also contain the information, referred to in Article 134 para. 2 point 1-10 and 12-18.
2. A description of the needs and requirements shall also include:
  - 1) a description of needs and requirements of the contracting body for supplies, services or works which are the subject-matter of the contract;
  - 2) information on the value of prizes for economic operators who during the dialogue have presented solutions being the basis for submission of tenders where the contracting body provides for prizes;
  - 3) indicative timeframe for the procurement procedure;
  - 4) a description of the criteria which the contracting body will apply when selecting the tenders, together with the weighting of those criteria and the method of evaluation of tenders, and if the weighting cannot be fixed for objective reasons at the stage of launching the procedure, the contracting body shall indicate the contract award criteria in a descending order of importance;
  - 5) the number of economic operators to be invited to participate in the dialogue if the contracting body provides for a reduction of number of economic operators;

6) information on the division of the dialogue into stages if the contracting body provides for such a division in order to reduce the number of solutions to be discussed in subsequent stages.

3. The information contained in the description of needs and requirements shall be formulated 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.

#### **Article 175.**

The provisions of Article 135 para. 1 and 6, Article 136, Article 137 para. 1-6 and Article 143 para. 2-5 shall apply accordingly to clarifications and changes of the content of the description of needs and requirements to the extent necessary for the submission of a request to participate.

#### **Article 176.**

1. The time limit for submission of requests to participate may not be less than 30 days from the date on which the contract notice is submitted to the Publications Office of the European Union.

2. The provisions of Article 145, Article 146 para. 1 and Article 147 shall apply to requests to participate.

3. A request to participate of an economic operator not invited to the dialogue shall be considered as rejected.

#### **Article 177.**

1. The contracting body may reduce the number of economic operators invited to dialogue, whose requests were not rejected, provided that the number is sufficient to ensure competition and is not less than 3.

2. In the case, referred to in para. 1, the contracting body shall indicate in the contract notice and in the description of needs and requirements the selection criteria which it intends to use to reduce the number of economic operators invited to the dialogue and shall indicate the minimum number of economic operators to be invited to this dialogue. The contracting body may indicate the maximum number of economic operators invited to the dialogue.

#### **Article 178.**

1. The contracting body shall invite simultaneously economic operators whose requests to participate were not rejected and, where selection criteria are established, it shall invite economic operators who meet those criteria in the number specified by the contracting body in accordance with Article 177.

2. (repealed)

3. Where the number of economic operators who have submitted non-rejectable request to participate is less than the minimum number determined by the contracting body in accordance with Article 177, the contracting body may continue the procedure by inviting the economic operators concerned to participate in the dialogue or cancel the procedure pursuant to Article 258 para. 1.

### **Article 179.**

1. An invitation to dialogue shall include at least:

- 1) the name and address of the contracting body, telephone number, e-mail address and the website of the procurement procedure;
- 2) the number of the published contract notice;
- 3) the website where the description of needs and requirements is available, as well as any changes and clarifications thereof, as well as other procurement documents directly related to the procurement procedure necessary for the preparation of economic operators for participation in the dialogue;
- 4) information on the qualitative means of proof, where the contracting body requires all or selected qualitative means of proof to be submitted at the dialogue stage;
- 5) the weighting fixed to the contract award criteria or, where appropriate, the descending order of importance if this is has not been indicated in the contract notice or in the description of needs and requirements;
- 6) information on the place and date of the dialogue;
- 7) information on the language or languages in which the dialogue will be conducted.

2. Where part of the description of needs and requirements has not been made available by the contracting body on the website of the procurement procedure for the reasons, referred to in Article 133 para. 2 and 3, the contracting body shall make available, together with the invitation to the dialogue, the unavailable part of the description of needs and requirements and its possible changes and clarifications of the content of this part of the description of needs and requirements, as well as other procurement documents directly related to the procurement procedure.

### **Article 180.**

During the dialogue, the contracting body may discuss with the invited economic operators all the terms of the contract.

### **Article 181.**

1. During the dialogue, the contracting body shall ensure equal treatment of all economic operators.
2. The contracting body shall not provide information in a manner which may give certain economic operators an advantage over other economic operators.
3. The contracting body shall simultaneously inform all economic operators of the results of selection of the proposals for the next stage, providing the factual and legal justification.
4. The contracting body shall simultaneously inform all economic operators whose proposals have been qualified for subsequent stages of the dialogue, pursuant to Article 183, of any changes affecting the content of subsequent proposals, in particular changes related to the description of needs of the contracting body and the characteristics of the supplies, works or services being the subject-matter of the contract, the terms of the public contract, so that individual economic operators have equally sufficient time to change and resubmit subsequent amended proposals.

#### **Article 182.**

1. The content of proposals of economic operators and the conducted dialogue itself shall be confidential.
2. None of the parties may disclose technical and commercial information relating to the dialogue without consent of the other party. Consent shall be granted in respect of specific information and prior to its disclosure.

#### **Article 183.**

The contracting body may divide the dialogue into stages in order to reduce the number of solutions, using the contract award criteria set out in the contract notice and in the description of needs and requirements, provided that the use of this option is foreseen in the contract notice or in the description of needs and requirements. The number of solutions obtained at the final stage must ensure competition if there is a sufficient number of economic operators.

#### **Article 184.**

1. The contracting body shall maintain a dialogue until it is able to determine the solution or solutions that best meet its needs.
2. The contracting body shall simultaneously inform all other economic operators participating in the dialogue of the conclusion of the dialogue.

#### **Article 185.**

1. After concluding the dialogue, the contracting body shall draw up an STC, which shall clarify and supplement the information contained in the description of needs and requirements, on the basis of the solutions presented during the dialogue.
2. The STC shall contain the information, referred to in Article 134 para. 1 and para. 2 point 1-10 and 12-18.
3. For clarifications and changes to the content of the STC, the provisions of Articles 135, 136, Article 137 para. 1-3 and para. 6 first sentence as well as Article 143 para. 4 shall apply accordingly.

#### **Article 186.**

1. The contracting body shall invite to tender the economic operators with whom they have discussed and who have not been eliminated from the procedure at subsequent stages.
2. The invitation to tender shall contain at least:
  - 1) the name and address of the contracting body, telephone number, e-mail address and the website of the procurement procedure;
  - 2) the website where the STC is available and its potential changes and clarifications thereof, as well as other procurement documents directly related to the procurement procedure;
  - 3) information on the qualitative means of proof to be attached to the tender if the contracting body requires to submit selected or all qualitative means of proof at the tendering stage;
  - 4) the weighting of the individual contract award criteria if it has not been fixed at an earlier

stage of the procurement procedure;

- 5) the manner and time limit for the submission of tenders and the language or languages in which they must be drawn up and the date of the opening of tenders.

3. Where a part of the STC has not been made available by the contracting body on the website of the procurement procedure for the reasons, referred to in Article 133 para. 2 and 3, the contracting body shall make available, together with the invitation to tender, the unavailable part of the STC, as well as other procurement documents directly related to the procurement procedure.

#### **Article 187.**

In the course of the examination and evaluation of tenders, the contracting body may require economic operators to specify, clarify and improve the content of tenders and to provide additional information, except that it shall not be acceptable to make significant changes to the content of tenders and changes to the requirements contained in the description of needs and requirements or the STC.

#### **Article 188.**

Before selecting the most advantageous tender, the contracting body may, in order to confirm the financial commitments or other terms contained in the tender, negotiate with the economic operator whose tender has been rated the highest, the final terms of the contract, provided that this does not result in changes in essential elements of the tender or changes in the needs and requirements specified in the contract notice or in the description of needs and requirements, nor does it result in distortions of competition or unequal treatment of economic operators.

### **Section 6**

#### **Innovation partnership**

#### **Article 189.**

1. The contracting body may award an innovation partnership contract in the event of a demand for an innovative product, service or works, if they are not available on the market.

2. Innovation partnership is a procurement procedure whereby all interested economic operators may submit requests to participate in response to the contract notice. The contracting body shall invite economic operators admitted to participate in the procedure to submit initial tenders, conduct negotiations with them in order to improve the content of the initial tenders, tenders submitted at the negotiation stage, and then invites to submit tenders covering research and development aimed at developing of innovative product, service or works, and, after their development, it purchases supplies, services or works, provided that they correspond to the levels of efficiency and maximum costs agreed between the contracting body and the economic operator or economic operators.

#### **Article 190.**

1. The contracting body may decide to establish an innovation partnership with one or more partners conducting separate research and development activities, in particular in order to prevent the restriction or distortion of competition.

2. Whenever a partner is referred to in this section, it shall be understood as the economic operator who has concluded a public procurement contract, the subject of which is the establishment of an innovation partnership.

#### **Article 191.**

1. The contracting body shall draw up a description of the needs and requirements in order to determine the nature and scope of the required solution for the development of an innovative product, service or works by economic operators, as well as formal and procedural requirements for the procurement procedure.

2. The contracting body shall provide free of charge, full, direct and unlimited access to a description of the needs and requirements on the website of the procedure from the date of publication of the contract notice in the Official Journal of the European Union at least until the date of award of the contract. The provisions of Article 133 para. 2 and 3 shall apply.

#### **Article 192.**

1. A description of the needs and requirements shall contain at least the information referred to in Article 156 para. 1 points 1- 6, 9 - 16 and 19 and may contain the information referred to in Article 134, para. 2 points 1 - 9 and 11 - 17.

2. A description of the needs and requirements shall also include:

- 1) the identification of the need for an innovative product, service or work which cannot be met by the purchase of products, services or works already available on the market;
- 2) information which elements of the description of needs and requirements define the minimum requirements not subject to negotiations and to be met by all tenders;
- 3) the minimum requirements to be met by variants if the contracting body provides for the possibility to submit variants;
- 4) information on the establishment of an innovation partnership with only one partner or the possibility of establishing it with several partners;
- 5) the rules on which the partner or partners will be selected;
- 6) the criteria to be used by the contracting body when selecting the tender, together with the weighting, and if it is not possible to assign weights for objective reasons at the stage of launching the procedure, the contracting body shall indicate the criteria for the evaluation of tenders in order from the most important to the least important;
- 7) information on the amount of prizes for economic operators who, during the negotiations, have proposed innovative solutions for the subject matter of the contract, if provided for;
- 8) information on payment of remuneration in parts.

3. The information contained in the description of needs and requirements shall be sufficiently precise to enable economic operators to determine the nature and scope of the required solution and to decide whether to submit a request to participate.

4. Article 135 para. 1 and 6, article 136, article 137 para. 1-6 and 143 para. 2, 3 and 5 shall apply

accordingly to the explanation of the content of the description of needs and requirements to the extent necessary for the submission of a request to participate.

5. In justified cases, the contracting body may, before the expiry of the time limit for submitting requests to participate, change the content of the description of needs and requirements. The provisions of Article 143 para. 4 and 5 shall apply accordingly.

#### **Article 193.**

1. The contracting body, when determining the fulfilment of the selection criteria by the economic operator, shall take into account, in particular, the capacity of economic operators for research and development and the development and implementation of innovative products, services or works.

2. The contracting body may limit the number of economic operators invited to submit initial tenders whose requests to participate were not rejected. The provisions of Articles 159 and 160 shall apply.

#### **Article 194.**

1. The time limit for receipt of requests to participate may not be less than 30 days from the date of dispatch of contract notice to the Publications Office of the European Union.

2. The provisions of Article 145, Article 146 para 1, article 147 and article 158 para. 3 shall apply to requests to participate.

#### **Article 195.**

1. The contracting body at the same time invites economic operators whose requests to participate were not subject to rejection to submit initial tenders and in case of establishing selection criteria, it invites economic operators who meet those criteria in the number determined by the contracting body in accordance with Article 159. The provisions of Article 258 shall apply.

2. The invitation to submit initial tenders shall contain at least the information referred to in Article 161 para. 1.

3. In the invitation to submit initial tenders, the contracting body shall also indicate the contract award criteria with their weights, and if it is not possible to assign weights for objective reasons at this stage of the procedure, indicate the contract award criteria in order from the most important to the least important.

4. Where part of the description of needs and requirements has not been made available by the contracting body on the website of the procedure for the reasons referred to in Article 133 para. 2 and 3, the contracting body shall make available an unavailable part of the description of needs and requirements and its possible changes and explanations of the content of this part of the description of needs and requirements together with the invitation to submit initial tenders, as well as other procurement documents directly related to the procurement procedure.

#### **Article 196.**

The time limit for submission of initial tenders may not be less than 30 days from the date on which the invitation to submit initial tender has been sent to economic operators.

#### **Article 197.**

1. For the examination and evaluation of initial tenders and subsequent tenders submitted at the negotiation stage, the provisions of Articles 218, 219, 221 and 222 para. 1-3, 5 and 6, Article 223 and 226 para. 1 points 1-7, 9, 15-17 and 19 shall apply accordingly, however the contracting body rejects the initial tender and subsequent tenders submitted at the negotiation stage which do not meet the minimum requirements specified by the contracting body.

2. The contracting body shall at the same time invite to negotiate all economic operators who have submitted initial tenders not subject to rejection, indicating the number of the contract notice and the place, time and manner of conducting the negotiations.

#### **Article 198.**

The contracting body may divide negotiations into stages in order to reduce the number of tenders. Article 163 para. 4 shall apply.

#### **Article 199.**

The negotiation of tenders shall not lead to changes in the minimum requirements and contract award criteria laid down by the contracting body in the contract notice and in the description of needs and requirements.

#### **Article 200.**

The provisions of Articles 165 and 166 shall apply to the negotiation of initial tenders and tenders submitted during the negotiations.

#### **Article 201.**

If the contracting body intends to complete the negotiation phase, it shall simultaneously inform about it all other economic operators.

#### **Article 202.**

1. After the completion of the negotiations, the contracting body shall draw up a description of the needs and requirements, which shall specify and supplement the information contained in the description of the needs and requirements made available from the date of publication of the contract notice in the Official Journal of the European Union only to the extent to which it has been the subject of negotiations.

2. The description of the needs and requirements referred to in para. 1 shall contain at least the information referred to in Article 156 para. 1 points 1-6, 11-13 and 19 and shall contain the information referred to in Article 134 para. 2 points 2-10 and 12-18.

3. The description of the needs and requirements referred to in para. 1, also contains:

- 1) a description of the award criteria used by the contracting body to select the tender, together with their weights;
- 2) information on the qualitative means of proof to be attached to the tender if the contracting body requires the submission of selected or all qualitative means of proof at the stage of submission of tenders;
- 3) information on the stages of the innovation partnership, the objectives to be achieved after

each of them and the intermediate objectives to be achieved by the partners;

- 4) information on the possibility of terminating the innovation partnership or reducing the number of partners after each stage, and the conditions under which the contracting body provides for this possibility;
- 5) objective criteria for the selection of the most advantageous development of an innovative product, service or works resulting from research and development created under the innovation partnership, if the contracting body provides for the establishment of an innovation partnership with several partners;
- 6) the rules applicable to the purchase of supplies, services or works resulting from research and development created under the innovation partnership, where the contracting body provides for the purchase of supplies, services or works from several partners;
- 7) solutions applicable to intellectual property rights.

#### **Article 203.**

1. The contracting body shall invite economic operators with whom it has negotiated and who have not been eliminated from the procedure at different stages to submit tenders.
2. The invitation to submit tenders shall contain at least:
  - 1) the name and address of the contracting body, telephone number, e-mail address and the website of the proceeding;
  - 2) the address of the website on which a description of the needs and requirements referred to in Article 202 is available, and any changes and explanations thereof, as well as other procurement documents directly related to the procurement procedure;
  - 3) the manner and time limit for the submission of tenders and the language or languages in which they must be drawn up and the date for opening the tenders.
3. If part of the description of needs and requirements referred to in Article 202 has not been made available by the contracting body on the website of the procedure for the reasons referred to in Article 133 para. 2 and 3, the contracting body shall make available, together with the invitation to tender, an unavailable part of the description of needs and requirements, as well as other procurement documents directly related to the procurement procedure.
4. For explanations and changes to the content of the description of needs and requirements referred to in Article 202, the provisions of Articles 135, 136 and 137 para. 1-3 and para. 6 first sentence and Article 143 para. 4 shall apply accordingly.

#### **Article 204.**

1. The contracting body shall select the most advantageous tender, which shall present the best ratio of price or cost and quality criteria relating to the subject-matter of the contract.
2. The contracting body may select several tenders submitted by several economic operators.

#### **Article 205.**

1. The contracting body shall conclude a public procurement contract the subject of which is the establishment of an innovation partnership, with single partner and, in the case referred to in

Article 190 para. 1, it concludes contracts with several partners.

2. A public contract the subject of which is the establishment of an innovation partnership shall contain at least provisions on the matters referred to in Article 192 para. 2 points 1, 2, 4 and 8 and Article 202 para. 3 points 3 to 6.

#### **Article 206.**

1. The innovation partnership shall consist of stages corresponding to the order of activities in the research and development process, in particular the development of prototypes and the manufacturing of products, the provision of services or the completion of works.

2. The contracting body shall ensure that the structure of the innovation partnership, in particular its duration and value of the various stages, reflects the degree of innovation of the proposed solution and the sequence of steps necessary for the development of an innovative product, service or works. The estimated value of innovative products, services or works must be proportionate to the value of the investments necessary for their development.

3. In the innovation partnership, the contracting body shall set targets to be achieved after each stage or intermediate targets and shall provide for remuneration in parts taking into account the stages of the partnership or the intermediate targets.

4. Based on the targets referred to in para. 3, the contracting body may, after each stage, terminate the innovation partnership or, in the case of an innovation partnership with several partners, reduce the number of partners by terminating individual contracts, provided that the contracting body has indicated this possibility in the description of the needs and requirements referred to in Article 202, and has specified the conditions for its use.

5. In the case of an innovation partnership with several partners, the contracting body shall not reveal to the other partners the proposed solutions or other confidential information provided in the innovation partnership by one of the partners, without its agreement. The provisions of Article 165 para. 2 and Article 166 para. 2 shall apply accordingly.

#### **Article 207.**

In the case of the establishment of an innovation partnership with several partners, the contracting body shall select the most advantageous solution or solutions using the objective criteria referred to in Article 202 para. 3 point 5 and purchase supplies, services or works from one or more partners, applying the purchasing rules referred to in Article 202 para. 3 point 6.

### **Section 7**

#### **Negotiated procedure without publication**

#### **Article 208.**

1. Negotiated procedure without publication is a procurement procedure where the contracting body negotiates the terms of a public contract with the economic operators of its choice and invites them to submit tenders.

2. The contracting body may, after the launch of the procedure, submit a notice of the intention to

conclude a contract (voluntary ex ante notice) for publication to the Publications Office of the European Union.

#### **Article 209.**

1. The contracting body may award a contract by negotiated procedure without publication, if one or more of the following circumstances has occurred:

- 1) in previously conducted open or restricted procedure no request for participation has been received or all requests for participation have been rejected pursuant to Article 146 para. 1 point 2, either no tenders have been submitted or all tenders have been rejected pursuant to Article 226 para. 1 point 2, due to their inconsistency with the description of the subject-matter of the contract, pursuant to Article 226 para. 1 point 5 and the initial terms of the contract have not been substantially changed;
- 2) a design contest referred to in Article 326 point 2 has been held, in which the prize was the invitation to negotiate without the publication for at least two authors of the selected design projects;
- 3) the subject-matter of the contract for supply shall be goods manufactured purely for research, experimental, scientific or development purposes, which are not used by the contracting body to carry out mass production aimed at achieving commercial viability or covering the costs of research or development;
- 4) due to the urgent need to award a contract not resulting from reasons attributable to the contracting body, which could not be foreseen in advance, the time limits specified for open or restricted procedure or negotiations with publication cannot be complied with.

2. In the case referred to in para. 1 point 1, the contracting body shall submit the record of the procedure to the European Commission, if the European Commission requested its submission.

#### **Article 210.**

1. The contracting body shall launch a negotiated procedure without publication dispatching the invitation to negotiate to economic operators of its choice.

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

- 1) the name and address of the contracting body, telephone number, e-mail address and the website of the procedure;
- 2) specification of the procurement procedure and the legal basis for its application;
- 3) description of the subject-matter of the contract, specifying the possibility of submitting tenders for lots;
- 4) information on the possibility of submitting variant tenders;
- 5) the time limit for performance of the contract;
- 6) the qualitative selection criteria in the procedure;
- 7) the contract award criteria and their weights;
- 8) place and time and manner of conducting negotiations with the contracting body.

3. The contracting body shall invite economic operators to negotiate in a number providing competition, not less than 3, unless, unless due to the specific nature of the contract, the number of economic operators able to perform it is less, however not less than 2.

4. In the case referred to in Article 209 para. 1 point 1, the contracting body shall invite to negotiate at least those economic operators who have submitted tenders in an open or restricted procedure. The provision of paragraph 3 shall apply.

#### **Article 211.**

1. The conducted negotiations are confidential. The provision of Article 166 para. 2 shall apply.

2. For negotiations, the provisions of Article 165 para. 1 and 2 shall apply accordingly.

#### **Article 212.**

1. The contracting body shall simultaneously inform all other economic operators about the conclusion of the negotiations and then invite the economic operators with whom it has negotiated and who remained in the procedure to submit their tenders.

2. The invitation to submit tenders shall contain at least the information referred to in Article 168 para. 2.

3. Along with the invitation to tender, the contracting body shall provide STC containing at least the information referred to in Article 134 para. 1.

4. In the case referred to in Article 209 para. 1 point 4, the contracting body may refrain from requesting the economic operator to submit the statement referred to in Article 125 para. 1.

5. For clarifications and changes in the content of STC, the provisions of Article 135 para. 1, Article 136, Article 137 para. 1 and para. 6 first sentence shall apply accordingly.

### **Section 8**

#### **Single-source procurement**

#### **Article 213.**

1. A single-source procurement is a procurement procedure whereby the contracting body awards the contract after negotiations with only one economic operator.

2. After the launch of the procedure, the contracting body may dispatch a notice of intention to conclude a contract (voluntary ex ante notice) to the Publications Office of the European Union, taking into account Article 216 para 1.

#### **Article 214.**

1. The contracting body may award a single-source contract, if at least one of the following circumstance occurs:

- 1) supplies, services or works may be provided by only one economic operator for the following reasons:

- a) technical of objective nature,
  - b) relating to the protection of exclusive rights deriving from separate provisions
- where there is no reasonable alternative or substitute solution and the absence of competition is not the result of an artificial narrowing down of the contract parameters;
- 2) supplies, services or works may be provided by only one economic operator in the case of the award of a contract for creative or artistic activities;
  - 3) the subject-matter of the contract for supply shall be goods manufactured purely for research, experimental, scientific or development purposes which are not used by the contracting body to carry out mass production, aimed at achieving commercial viability or covering the costs of research or development, and which can only be produced by one economic operator;
  - 4) a design contest referred to in Article 326 point 2 has been held, in which the prize is the invitation for the author of the selected design project to negotiate under the single-source procurement;
  - 5) due to an exceptional situation not resulting from reasons attributable to the contracting body, which it could not have foreseen, urgent execution of the contract is required and the time limits specified for the other procurement procedures cannot be complied with;
  - 6) in previously conducted open or restricted procedure no requests for participation has been received or all requests for participation have been rejected pursuant to Article 146 para. 1 point 2, either no tenders have been submitted or all tenders have been rejected pursuant to Article 226 para. 1 point 2, due to their inconsistency with the description of the subject-matter of the contract, pursuant to Article 226 para. 1 point 5, and the initial terms of the contract have not been substantially changed;
  - 7) in the case of awarding to the economic operator to which the original contract was awarded, within 3 years from the date of award of the original contract, a contract consisting in the repetition of similar service or works, if such a contract was provided for in the contract notice for the original contract and it is consistent with the subject-matter of the original contract and the total value of that contract has been taken into account in calculating its value;
  - 8) in the case of awarding to the economic operator to which the original contract was awarded, a contract for additional supplies which are intended as a partial replacement of supplies or installations or as the extension of existing supplies or installations, if a change of economic operator would oblige the contracting body to purchase materials of other technical characteristics, which would result in technical incompatibility or disproportionate technical difficulties in the operation and maintenance of those supplies or installations;
  - 9) a contract for supplies may be awarded on particularly advantageous terms in connection with the winding-up of another entity's business activities or the liquidation or insolvency procedure;
  - 10) a contract for supplies is made on a commodity market where the regulated and

supervised multilateral trade structure naturally guarantees market prices, including the commodity exchange within the meaning of the Act of 26 October 2000 on commodity exchanges (Journal of Laws of 2019, item 312), 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 the commodity exchange within the meaning of the Act of 26 October 2000 on commodity exchanges, or on the commodity exchange of other Member States of the European Economic Area;

11) the contract shall be awarded by the contracting body referred to in Articles 4 and Article 5 para. 1 point 1 to a legal person, if the following conditions are jointly met:

- a) the contracting body exercises control over that legal person equivalent to the control exercised over its own units, consisting of a dominant influence on the strategic objectives and relevant decisions concerning the management of the matters of that legal person; this condition is also fulfilled where such control is carried out by another legal person controlled by the contracting body in the described manner,
- b) more than 90 % of the activities of the controlled legal person relate to the execution of tasks entrusted to it by the controlling contracting body or by another legal person over which the contracting body exercises the control referred to in point (a),
- c) there is no direct participation of private capital in the controlled legal person;

12) the contract shall be awarded by the contracting body referred to in Articles 4 and 5 para. 1 point 1, to another contracting body referred to in Articles 4 and 5 para. 1 point 1, which exercises control over the contracting body awarding the contract, or to another legal person controlled by the same contracting body, if the following conditions are met:

- a) the contracting body to which the contract is awarded shall exercise over the contracting body awarding a contract, a control equivalent to the control exercised over its own units, consisting of a dominant influence on the strategic objectives and relevant decisions concerning the management of the matters of the controlled contracting body; this condition is also fulfilled where such control is carried out by another legal person controlled by the contracting body to which the contract is awarded,
- b) more than 90% of the activities of the controlled contracting body relate to the execution of the tasks entrusted to it by the contracting body exercising the control referred to in point (a), or by another legal person over which the contracting body exercises the control referred to in point (a),
- c) there is no direct participation of private capital in the controlled contracting body and in the controlling contracting body;

13) the contract shall be awarded by the contracting body referred to in Articles 4 and 5 para. 1 point 1 to a legal person, if the following conditions are jointly met:

- a) a contracting body jointly with other contracting bodies referred to in Article 4 and 5

para. 1, point 1, exercises control over the legal person, which is equivalent to the control exercised by them over their own units, where joint control takes place if the following conditions are jointly met:

- the decision-making bodies of the controlled legal person shall be composed of representatives of all participating contracting bodies, provided that an individual representative may represent more than one contracting body,

- participating contracting bodies may jointly exercise a dominant influence on the strategic objectives and the relevant decisions of the controlled legal person,

- the controlled legal person does not pursue any interests which are contrary to the interests of the controlling contracting bodies,

- a) more than 90% of the activities of the controlled legal person relate to the execution of tasks entrusted to it by the controlling contracting bodies or by other legal persons controlled by those contracting bodies,

- b) there is no direct participation of private capital in the controlled legal person;

14) the contract is to be concluded exclusively between two or more contracting bodies referred to in Articles 4 and 5 para.1 point 1, if the following conditions are jointly met:

- a) the contract establishes or implements cooperation between participating contracting bodies with the aim of ensuring that public services they have to perform are provided with a view to achieving their common objectives,

- b) the implementation of this cooperation is governed solely by public interest considerations,

- c) contracting bodies performing cooperation shall perform on the open market less than 10% of the activities concerned by the cooperation.

2. In the description of the original contract referred to in para. 1 point 7, the possible scope of these services or works should be specified along with the terms on which they will be awarded.

3. The duration of the contract awarded as referred to in para. 1 point 8, may not exceed 3 years after the award of the original contract.

4. The existence of the circumstances referred to in para. 1 points 11 to 14 is required throughout the period for which the contract is concluded. The contracting body shall publish a notice in the Public Procurement Bulletin on the fulfilment of the conditions referred to in para. 1 points 11 to 14, within 30 days after the expiry of each 12 months from the date of conclusion of the contract, in accordance with terms set out in Title III Chapter 2.

5. For the determination of the percentage of activities referred to in para. 1 point 11 (b), 12 (b), 13 (b) and 14 (c) the average revenue achieved by the legal person or the contracting body with respect to services, supplies or works for the 3 years preceding the award of the contract, is taken into account.

6. Where, because of the date on which the relevant legal person or contracting body was created or commenced activities, or because of reorganisation of their activities, the average revenue for the 3 years preceding the award of the contract is not available or irrelevant, the percentage of the

activities referred to in para. 1 point 11 (b), 12 (b), 13 (b) and 14 (c) shall be determined by reliable business projections.

7. Requirement of a percentage of the activity referred to in para. 1 point 11 (b), 12 (b), 13 (b) and 14 (c) is not fulfilled, if the reorganisation of the activities referred to in para. 6, was carried out for the seemingly.

8. Prohibition of private capital participation referred to in para. 1 point 11 (c), 12 (c) and 13 (c) shall not apply to:

- 1) legal persons with the participation of a private partner selected in accordance with the Act of 19 December 2008 on public-private partnership (Journal of Laws of 2020, item 711 and 2275) or
- 2) participation of employees representing in total up to 15 % of the share capital of the company, in the case of a simple joint-stock company - up to 15 % of the shares of that company, holding up to 15 % of the votes in total at the shareholders' meeting or at the general meeting.

9. Economic operator to whom a contract has been awarded pursuant to para. 1, points 11 to 13, may not entrust to the subcontractor the performance of the part of the contract which relates to the main subject-matter of the contract.

#### **Article 215.**

1. The contracting body may waive the application of the provisions of Articles 53 to 55, Article 108 para.1 points 1 and 2 and Article 217 para. 1 in the case of contracts awarded pursuant to Article 214 para. 1:

- 1) point 1 (b), points 2, 4, 9 and 10;
- 2) point 5, in order to limit the effects of a random event caused by external factors, which could not have been foreseen, in particular threatening the life or health of people or which can cause a damage of considerable size;
- 3) point 1 (a), the subject-matter of which are:
  - a) the supply of water via water network system or disposal of sewage to the sewage network system,
  - b) gas supply from the gas network,
  - c) heat supply from the heating network,
  - d) transmission or distribution services of electricity, heat or gaseous fuels.

2. In the case referred to in Article 214 para. 1 point 6, the contracting body shall submit the record of the procedure to the European Commission, if the European Commission requested its submission.

#### **Article 216.**

1. The contracting body shall publish in the Public Procurement Bulletin a notice of intention to conclude a contract (voluntary ex ante notice), before awarding a contract pursuant to Article 214 para.1 points 11 to 14, in accordance with terms set out in Title III Chapter 2.

2. The contracting body may conclude a contract awarded pursuant to Article 214 para. 1 points 11 to 14 not earlier than 14 days after the date of publication of the notice referred to in para. 1.
3. The contracting body shall publish in the Public Procurement Bulletin a notice on the result of procurement procedure, immediately, but not later than 14 days from the date of closing the procurement procedure pursuant to Article 214 para. 1 points 11 to 14, in accordance with terms set out in Title III Chapter II.

#### **Article 217.**

1. The contracting body, together with the invitation to negotiation, shall provide the economic operator with the information necessary for the conduct of the procedure, including draft provisions to be introduced into the content of the public contract.
2. The economic operator shall provide a statement referred to in Article 125 para. 1, and qualitative means of proof not later than upon the conclusion of a public contract.
3. The contracting body may refrain from requesting the economic operator to submit the statement referred to in Article 125 para. 1.

### **Chapter 4**

#### **Submission and opening of tenders**

##### **Section 1**

##### **Submission of tenders**

#### **Article 218.**

1. The economic operator may submit only one tender, except in the cases specified in the Act.
2. The content of the tender must comply with the requirements of the contracting body as set out in the procurement documents.

#### **Article 219.**

1. The tender may be submitted only until the time limit for the submission of tenders.
2. Until the time limit for submission of tenders, the economic operator may withdraw the tender.

#### **Article 220.**

1. The economic operator shall be bound by a tender no longer than:
  - 1) 90 days,
  - 2) 120 days – if the value of the contract for works is equal to or exceeds the equivalent in PLN of EUR 20 000 000 and for supplies or services EUR 10 000 000— from the expiry of the time limit for the submission of tenders, with the first day of the tender validity period is the day on which the time limit for the submission of tenders expires.

2. The contracting body shall specify the tender validity period by indicating the date in the procurement documents.
3. If the most advantageous tender is not selected before the expiry of tender validity period referred to in para. 2, the contracting body, before the expiry of tender validity period, shall ask economic operators once to agree to extend that period by a period specified by the contracting body, not longer than 60 days.
4. The extension of the tender validity period referred to in para. 2, requires the economic operator to submit a written declaration of consent to extend the tender validity period.
5. If the contracting body requests the tender guarantee, the extension of the tender validity period referred to in para. 2 shall be accompanied by the extension of the period of validity of the tender guarantee or, if this is not possible, with the lodging of a new tender guarantee for the extended tender validity period.

## **Section 2**

### **Opening of tenders**

#### **Article 221.**

The contracting body shall ensure that the content of tenders cannot be read before the time limit of their opening.

#### **Article 222.**

1. Tenders shall be opened immediately after the expiry of the time limit for the submission of tenders, not later than the day on which the time limit for the submission of tenders expired.
2. If tenders are opened using an ITC system, in the event of a failure of that system, which makes it impossible to open tenders within the time limit specified by the contracting body, tenders shall be opened immediately after the failure has been removed.
3. The contracting body shall inform about the change of the date of opening tenders on the website of the conducted procedure.
4. The contracting body shall provide on the website of conducted procedure, information on the amount it intends to allocate to finance the contract, at the latest before the opening of tenders.
5. The contracting body shall, immediately after the opening of tenders, provide on the website of the procedure:
  - 1) the names or first and last names and registered seats or places of business activity or places of residence of economic operators whose tenders have been opened;
  - 2) prices or costs included in the tenders.
6. In the case of tenders that are subject to negotiations, the contracting body shall provide the information referred to in para. 5 point 2, immediately after the opening of the final tenders or the cancellation of the procedure.

## **Chapter 5**

### **Evaluation of tenders**

#### **Article 223.**

1. In the course of the examination and evaluation of tenders, the contracting body may require economic operators to clarify the content of the tenders submitted and the means of proof relating to the subject-matter of a contract or other documents or statements submitted. It shall not be admissible to conduct negotiations between the contracting body and the economic operator concerning the tender submitted and, taking into account Article 187 para. 2, any change in its content.

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

- 1) obvious typographical errors,
- 2) obvious accounting errors, taking into account the accounting implications of the corrections made,
- 3) other errors which result in non-compliance of the tender with the procurement documents, without causing significant changes to the content of the tender

— without delay notifying the economic operator whose tender has been corrected.

3. In the case referred to in para. 2 point 3, the contracting body shall set appropriate period for the economic operator for expressing consent to correct the mistake in the tender or to challenge the correction. Failure to reply within the specified time limit shall be considered as consent to correct the error.

#### **Article 224.**

1. If the offered price or cost, or their essential components, appear to be abnormally low in relation to the subject-matter of the contract or raise doubts of the contracting body as to performance of the subject-matter of the contract in accordance with the requirements set out in the procurement documents or resulting from separate provisions, the contracting body shall require the economic operator to provide explanations including the submission of evidence as to the calculation of the price or cost, or their essential components.

2. If the total price of the tender submitted within the deadline is at least 30% lower than:

- 1) the value of the contract increased by the tax due on goods and services, determined before the launch of the procedure or the arithmetic average of the prices of all tenders submitted which are not subject to rejection pursuant to Article 226 para. 1 points 1, 5a and 10, the contracting body shall request the explanations referred to in para. 1, unless the discrepancy arises from obvious circumstances which do not require clarification;
- 2) the value of the contract increased by the tax due on goods and services, updated taking into account the circumstances which occurred after the launch of the procedure, and in particular a significant change in market prices, may request the clarifications referred to in para.1.

3. The explanations referred to in para. 1, may relate in particular to:

- 1) management of the production process, the services provided or the construction method;
- 2) selected technical solutions, exceptionally favourable conditions of supply, services or - related to the execution of works;
- 3) originality of supplies, services or works offered by the economic operator;
- 4) compliance with the provisions on labour costs, where the value used for determining the price shall not be lower than the minimum wage for work or the minimum hourly rate, established on the basis of the provisions of the Act of 10 October 2002 on Minimum Wage (Journal of Laws of 2020, item 2207) or separate provisions relevant to the matters related to the contract;
- 5) compliance with the provisions on proceedings in matters related to state aid;
- 6) compliance with labour law and social security provisions applicable in the place where the contract is performed;
- 7) compliance with environment protection provisions;
- 8) fulfillment of the obligations relating to the entrustment of a part of the contract to subcontractor.

4. In the case of contracts for works or service, the contracting body shall require the explanations referred to in para. 1, at least to the extent referred to in para. 3 points 4 and 6.

5. The obligation to demonstrate that the tender does not contain an abnormally low price or cost rests with the economic operator.

6. The tender of the economic operator who did not provide the explanations within the specified period, or if the explanations submitted along with the evidence do not justify the price or cost quoted in the tender, shall be rejected as a tender with the abnormally low price or cost.

7. If the value of the contract is equal to or exceeds the EU thresholds, the contracting body shall notify the President of the Office and the European Commission of the rejection of tenders which, according to the contracting body, contained an abnormally low price or cost due to the granting of state aid, and the economic operator, within the time limit set by the contracting body, has not proven that the aid is lawful within the meaning of provisions on proceeding in matters relating to state aid.

#### **Article 225.**

1. If a tender has been submitted, the selection of which would lead to a tax obligation for the contracting body in accordance with the Act of 11 March 2004 on tax on goods and services (Journal of Laws of 2018, item 2174, as amended), for the purposes of applying the price or cost criterion, the contracting body shall add to the price presented in the tender the amount of tax on goods and services, which it would be obliged to settle.

2. In the tender referred to in para. 1, the economic operator shall have the following obligations:

- 1) inform the contracting body that the selection of the tender will result in a tax obligation for the contracting body;
- 2) indication of the name (type) of the goods or services the supply or provision of which will

result in a tax obligation;

- 3) indication of the value of the goods or services subject to the contracting body's tax obligation, without the amount of tax;
- 4) indication of the tax rate on goods and services, which, according to the economic operator, will be applicable.

#### **Article 226.**

1. The contracting body shall reject the tender if:

- 1) it was submitted after the time limit for the submission of tenders;
- 2) it was submitted by the economic operator:
  - a) to be excluded from the procurement procedure, or
  - b) who does not fulfil the qualitative selection criteria in the procurement procedure, or
  - c) who has not submitted the statement referred to in Article 125 para. 1 within the specified period, or qualitative mean of proof confirming the lack of grounds for exclusion or fulfilment of the qualitative selection criteria in the procurement procedure, the mean of proof relating to the subject-matter of a contract or other documents or statements;
- 3) it is incompatible with the provisions of the Act;
- 4) it is invalid under separate provisions;
- 5) its content is incompatible with the terms of the contract;
- 5a) was submitted by an economic operator from a third country not party to an international agreement, or jointly with an economic operator from a third country not party to an international agreement, except in the case referred to in Article 16b para. 1 item 1 or 2;
- 6) it has not been drawn up or transmitted in accordance with the technical and organisational requirements of the preparation or transmission of tenders using electronic means of communication specified by the contracting body;
- 7) it was submitted under the conditions of an act of unfair competition within the meaning of the Act of 16 April 1993 on combating unfair competition;
- 8) it contains an abnormally low price or cost in relation to the subject-matter of the contract;
- 9) it has been submitted by an economic operator not invited to submit tenders;
- 10) it contains errors in the calculation of the price or cost;
- 11) the economic operator within the specified period has challenged the correction of the error referred to in Article 223 para. 2 point 3;
- 12) the economic operator has not expressed written consent to extend the tender validity period;
- 13) the economic operator has not expressed written consent to the selection of his tender

after the expiry of the tender validity period;

- 14) the economic operator has not lodged a tender guarantee, or lodged it incorrectly or it has not maintained the tender guarantee continuously until the tender validity period has expired, or it has applied for tender guarantee in the case referred to in Article 98 para. 2 point 3;
- 15) a variant tender has not been submitted or it does not fulfil the minimum requirements specified by the contracting body, if the contracting body required its submission;
- 16) its adoption would violate public security or essential interest of state security, and that security or interest cannot be guaranteed in another manner;
- 17) it covers an ICT product, ICT service, or ICT process identified in the recommendation referred to in Article 33 para. 4 of the Act of July 5., 2018 on the National Cybersecurity System (Journal of Laws of 2026, items 20 and 252), which states that they have a negative impact on a fundamental national security interest;
- 18) it was submitted without a local inspection or without checking the documents necessary for the performance of the contract available on the contracting body's site, if it was required by the contracting body in the procurement documents;
- 19) it covers an ICT product of a type specified in the decision designating a supplier as a high-risk supplier, as referred to in Article 67b para. 15 of the Act of July 5., 2018 on the National Cybersecurity System, or an ICT service or ICT process specified in that decision.

2. The provision of para. 1 shall apply to the variant offer, except that, in a procurement procedure for supplies or services, a variant offer is not to be rejected only because its selection would lead to the award of a service contract in place of a supply contract or to the award of a supply contract in place of a service contract.

## **Chapter 6**

### **Electronic auction**

#### **Article 227.**

1. In the case of open or restricted procedures, or negotiations with publication, the contracting body may provide in the contract notice that the selection of the most advantageous tender will be preceded by an electronic auction, if the terms of the contract, in particular a description of the subject-matter of the contract, are specified in the procurement documents in a precise manner and can be classified by automatic evaluation methods and at least 2 tenders not subject to rejection have been submitted.

2. The contracting body may conduct an electronic auction in order to obtain new, reduced prices or new values for certain elements of tenders which are assessed under the contract award criteria.

#### **Article 228.**

1. The electronic auction shall be carried out using an ITC system in the form of a repetitive

electronic process enabling tenders to be classified by automatic evaluation methods, after preliminary examination and evaluation of tenders in accordance with the contract award criteria and weight assigned to them.

2. An electronic auction shall not apply to service or works contracts the object of which is intellectual performance which cannot be classified by automatic assessment methods.

#### **Article 229.**

An electronic auction may be based on the following elements of tenders:

- 1) prices, if the only contract award criterion in the procedure is a price;
- 2) the prices or new values of the elements of the tenders indicated in the procurement documents, if the contract award criteria in the procedure are qualitative criteria or the lowest cost.

#### **Article 230.**

Where an electronic auction is carried out, the contract notice or the procurement documents shall specify at least:

- 1) elements, the values of which will be the subject of an electronic auction, provided that these elements are measurable and can be expressed in figures or percentages;
- 2) any limitation as to the values presented, resulting from the description of the subject-matter of the contract;
- 3) the information to be made available to the economic operators during the electronic auction and, where appropriate, the date of making it available;
- 4) information on the conduct of the electronic auction;
- 5) the conditions under which the economic operators will be able to bid, in particular the minimum values of the bid increments that will be required during the auction;
- 6) information on the parameters of the electronic equipment used, technical solutions and specifications for connections.

#### **Article 231.**

The electronic auction shall be one-stage or multi-stage procedure.

#### **Article 232.**

1. The contracting body shall simultaneously invite to participate in the electronic auction all the economic operators which have submitted non-rejectable tenders using electronic connections indicated in the invitation.

2. In the invitation, the contracting body shall inform the economic operator of:

- 1) the result of the examination and evaluation of the tender of that economic operator;
- 2) minimum values of the bid increments submitted in the course of an electronic auction;
- 3) the opening date of the electronic auction;
- 4) the date and conditions for closing the electronic auction;

- 5) the manner of evaluation of tenders in the course of the electronic auction;
- 6) a mathematical formula to be used in an electronic auction to automatically create subsequent classifications on the basis of new prices or values presented;
- 7) a timetable for each stage of the electronic auction, if the contracting body intends to close an electronic auction pursuant to point 3 of Article 237.

3. Except where the most advantageous offer is selected on the basis of the price, the mathematical formula referred to in paragraph 2 point 6 shall take into account the weightings assigned to each contract award criteria in order to select the most advantageous tender, indicated in the contract notice or procurement documents and, in the case of acceptance of variants, a specific formula for each variant shall be specified.

4. The opening date of the electronic auction shall not be less than 2 working days after the date on which the invitations were sent out.

#### **Article 233.**

1. In the course of the electronic auction, the contracting body shall provide each economic operator on ongoing basis with information enabling him to determine the position of his tender in the classification of tenders, in particular information on the score obtained and the score of the tender which received the highest number of points.

2. The contracting body may, if provided for in the procurement documents, publish within set time limit, the number of participants in a given stage of electronic auction.

3. Until the electronic auction is closed, no information shall be disclosed enabling the identification of economic operators participating in a given stage of the electronic auction.

#### **Article 234.**

1. In the course of the electronic auction, the economic operator using a form available on the website for entering the necessary data through a direct connection to the site, shall submit successive, more advantageous bid increments, subject to automatic evaluation and classification.

2. The bid increments, subject to nullity, shall be submitted in electronic form.

#### **Article 235.**

1. The tender of the economic operator ceases to be binding insofar as it submits a more advantageous tender during the electronic auction.

2. In the situation referred to in para. 1, the validity period of the tender shall not be interrupted.

#### **Article 236.**

If the failure of the ICT system results in the interruption of the electronic auction, the contracting body shall set a date for the continuation of the electronic auction for the following working day after the removal of the failure, taking into account the status of tenders after the last approved bidding.

#### **Article 237.**

The contracting body shall close an electronic auction:

- 1) within the time limit specified in the invitation to participate in the electronic auction;
- 2) if no new actions are notified within the time limit set;
- 3) after the last, set stage.

#### **Article 238.**

After closing the electronic auction, the contracting body shall evaluate tenders on the basis of contract award criteria specified in the contract notice and in the procurement documents, taking into account the results of the electronic auction.

### **Chapter 7**

#### **Selection of the most advantageous tender**

#### **Article 239.**

1. The contracting body shall select the most advantageous tender on the basis of the contract award criteria set out in the procurement documents.
2. The most advantageous offer is the offer presenting the best value for money or cost or offer at the lowest price or cost.

#### **Article 240.**

1. The contracting body shall describe the contract award criteria in a clear and unequivocal manner.
2. The contract award criteria and their description may not leave the contracting body unlimited freedom to choose the most advantageous tender and they allow verification and comparison of the level of performance offered for the subject-matter of the contract on the basis of the information presented in the tenders.

#### **Article 241.**

1. The contract award criteria must be linked to the subject-matter of the contract.
2. There is a link between the contract award criteria and the subject-matter of the contract, if they pertain to works, supplies or services which are the subject of the contract in any aspect and with regard to any 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.
3. The contract award criteria shall not pertain to the characteristics of the economic operator, and in particular to its economic, technical or financial credibility.

#### **Article 242.**

1. The most advantageous tender may be selected on the basis of:
  - 1) quality criteria and price or cost;
  - 2) price or cost.

2. Quality criteria may be, in particular, criteria relating to:

- 1) quality, including technical parameters, aesthetic and functional characteristics such as accessibility for persons with disabilities or responding to user needs;
- 2) the social aspects, including the social and occupational integration of persons referred to in Article 94 para 1.
- 3) environmental aspects, including energy efficiency of the subject-matter of the contract;
- 4) innovative aspects;
- 5) the organization, professional qualifications and experience of persons appointed to perform the contract, if they can have a significant impact on the contract performance quality;
- 6) after-sales service, technical assistance, delivery conditions such as delivery deadline, delivery manner or delivery time, and period of completion.

2. The most advantageous tender shall be selected only on the basis of qualitative criteria if, on the basis of generally applicable rules or decisions of the competent authorities, the price or cost is fixed.

#### **Article 243.**

In procedures where the subject-matter of the contract involves creative or scientific activities, and the result of which cannot be clearly or exhaustively described in advance, the most advantageous tender shall be selected solely on the basis of price or cost and quality criteria.

#### **Article 244.**

[repealed]

#### **Article 245.**

1. The cost criterion can be based on the cost-efficiency method, which is the life cycle cost approach.

2. The life cycle cost approach may, to the appropriate extent, include some or all of the costs incurred during the life cycle of a product, service or works.

3. The costs, referred to in para. 1, include in particular the costs:

- 1) incurred by the contracting body or other users related to:
  - a) purchase,
  - b) use, in particular consumption of energy and other resources,
  - c) maintenance,
  - d) decommissioning, in particular the costs of demolition and recycling;
- 2) attributed to environmental externalities connected with the life cycle of a product, service or work, in particular concerning emissions of greenhouse gases and other contamination, and other costs connected with mitigating climate change, provided that they value can be monetized and verified.

4. Where the contracting body estimates costs with the use of the life cycle cost approach, the contracting body shall provide, in the procurement documents, data to be presented by the economic operators and the method to be employed by the contracting body to determine the life cycle costs on the basis of these data.

5. The method for estimating the costs 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 accessible to all interested parties;
- 3) it shall ensure that 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 Organization or other international agreements to which the European Union is a party.

6. Where, on the basis of the provisions of European Union law set out in Annex XIII to Directive 2014/24/EU, a common method for calculating life cycle costs becomes mandatory, life cycle costs shall be estimated using that method.

7. The Minister responsible for construction, spatial planning and development and housing shall determine, by means of a regulation, the method for calculating the life cycle costs of buildings, taking into account the costs referred to in para. 3 point 1 (a) to (c) and the manner of presenting information these costs, based on the need to ensure the uniformity and reliability of those calculations.

#### **Article 246.**

1. The contracting authorities referred to in points 1 and 2 of Article 4 and their associations do not use the price criterion as the sole contract award criterion or as a criterion exceeding 60 % weight.

2. The contracting authorities referred to in points 1 and 2 of Article 4 and their associations may use the price criterion as the sole contract award criterion or as a criterion exceeding 60% weight, if they specify in the description of the subject-matter of the contract, qualitative standards relating to at least the main elements of the subject-matter of the contract.

#### **Article 247.**

1. The contracting body shall specify in the contract notice or procurement documents, the weight to be assigned to each criterion selected for determining the most advantageous tender, except where the most advantageous tender is determined solely on the basis of the price.

2. The weights assigned to each criterion may be expressed by providing a range with an appropriate maximum spread.

#### **Article 248.**

1. If the most advantageous tender cannot be selected because two or more tenders present the same balance of price or cost and other contract award criteria, the contracting body shall select from among those tenders the one with highest score in the criterion with the highest weight.

2. Where tenders have received the same assessment in the criterion of the highest weight, the contracting body shall select the tender at the lowest price or at the lowest cost.

3. If the tender cannot be selected in the manner referred to in para. 2, the contracting body shall call on the economic operators who have submitted these tenders to submit, within a time limit specified by the contracting body, additional tenders containing a new price or cost.

#### **Article 249.**

Where price or cost is the only contract award criterion in a procurement procedure and the most advantageous tender cannot be selected because tenders at the same price or cost have been submitted, the contracting body shall call on the economic operators who have submitted those tenders to submit, within a time limit specified by the contracting body, additional tenders containing a new price or cost.

#### **Article 250.**

1. Where cost defined as the sum up of purchase cost and other life cycle costs is the only contract award criterion in a procurement procedure and the most advantageous tender cannot be selected because tenders with the same cost have been submitted, the contracting body shall select the tender:

- 1) with lower purchase cost, or
- 2) with lower other life cycle costs

— provided that such a solution is envisaged in the procurement documents.

2. If the tender cannot be selected in the manner referred to in para. 1, the contracting body shall call on the economic operators who have submitted these tenders to submit additional tenders containing a new purchase cost, within a time limit specified by the contracting body.

#### **Article 251.**

When submitting additional tenders, economic operators shall not offer prices or costs higher than those offered in their previous tenders.

#### **Article 252.**

1. The contracting body shall select the most advantageous tender within the tender validity period, specified in the procurement documents.

2. If the tender validity period has expired before the selection of the most advantageous tender, the contracting body shall call on the economic operator whose tender has received the highest assessment, to express, within the time limit specified by the contracting body, a written consent to the selection of its tender.

3. In case of absence of the consent referred to in para. 2, the contracting body shall request such consent from another economic operator whose tender has received the highest rate, unless there are grounds for cancellation of the procedure.

#### **Article 253.**

1. Immediately after the selection of the most advantageous tender, the contracting body shall simultaneously inform the economic operators who have submitted tenders of:

- 1) the selection of the most advantageous tender, providing the company name or first name and last name, registered seat or place of residence, if it is the place of business of the economic operator whose tender has been selected, and the company names or first and last names, registered seats or places of residence, if they are the places of business of economic operators who have submitted tenders, as well as the scores awarded to tenders in each award criterion and the total scores,
  - 2) economic operators whose tenders have been rejected
- providing factual and legal justification.
2. The contracting body shall immediately make the information referred to in para. 1 point 1 available on the website of the conducted procedure.
  3. The contracting body may not disclose the information referred to in para. 1, if its disclosure would be contrary to an important public interest.

## **Chapter 8**

### **End of the procedure**

#### **Article 254.**

The procurement procedure shall end with:

- 1) conclusion of a public contract or
- 2) cancellation of the procedure.

#### **Article 255.**

The contracting body shall cancel the procurement procedure if:

- 1) no request to participate or no tender has been submitted;
- 2) all requests to participate or tenders submitted are subject to rejection;
- 3) the price or cost of the most advantageous tender or tender with the lowest price exceeds the amount the contracting body intends to allocate to finance the contract, unless the contracting body is able to increase that amount up to the price or cost of the most advantageous tender;
- 4) in cases referred to in Article 248 para. 3, Article 249 and Article 250 para. 2, additional offers with the same price or cost have been submitted;
- 5) a significant change in 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;
- 6) the procedure is encumbered with irreparable defect which prevents the conclusion of a valid public procurement contract;
- 7) the economic operator has not provided the required security on due performance of the contract or refuses to conclude the contract, taking into account Article 263;

- 8) under single-source procurement, the negotiations did not lead to the conclusion of the contract.

**Article 256.**

The contracting body may cancel the contract award procedure respectively before the expiry of the time limit for the submission of requests to participate in the procedure, or before the expiry of the time limit for the receipt of tenders, if there are circumstances causing the continuation of the procedure to be unfounded.

**Article 257.**

The contracting body may cancel the procurement procedure if the public funds which the contracting body intended to allocate to finance all or part of the contract have not been granted to the contracting body and the possibility of the cancellation of the contract award procedure 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
- 2) invitation to negotiations – in the procedure conducted under negotiated procedure without publication or single-source procurement.

**Article 258.**

1. The contracting body may cancel the procurement procedure if the number of economic operators which have submitted non-rejectable requests to participate is less than the minimum number of economic operators specified in the contract notice or procurement documents, - which the contracting body intended to invite to submit tenders, initial offers or to competitive dialogue.

2. The contracting body may cancel the procurement procedure if the number of non-rejectable initial offers or tenders that are subject to negotiation or the number of solutions submitted by economic operators during the competitive dialogue is less than the minimum number specified in the contract notice or procurement documents.

3. The contracting body may cancel the procurement procedure if the number of non-rejectable tenders that are subject to negotiations at the final stage is less than 2.

4. The contracting body may cancel the procedure for the conclusion of a framework agreement which was to be concluded with more than one economic operator, if less than 2 non-rejectable tenders or less than 2 non-rejectable requests to participate have been submitted.

**Article 259.**

If the contracting body has allowed the possibility of submitting tenders for lots, the Articles 255 – 258 shall apply accordingly to the cancellation of the procedure for the award of lot.

**Article 260.**

1. The contracting body shall simultaneously notify economic operators who have submitted tenders or requests to participate or who have been invited to negotiate about the cancellation of

the procedure, providing legal and factual grounds.

2. The contracting body shall immediately make the information referred to in para. 1 available on the website of the conducted procedure.

#### **Article 261.**

In the event of cancellation of the procurement procedure for reasons attributable to the contracting body, economic operators which have submitted non-rejectable tenders shall be entitled to a claim for reimbursement of the justified costs of participation in the procedure, in particular the costs incurred for the preparation of their tenders.

#### **Article 262.**

In the event of cancellation of the procurement procedure, the contracting body shall immediately notify the economic operators who have applied for the award of the contract in that procedure of launching another procedure which relates to the same subject-matter or covers the same - subject-matter of the contract.

#### **Article 263.**

If the economic operator whose tender has been selected as the most advantageous, refuses to conclude the contract or does not provide the required contract performance guarantee, the contracting body may re-examine and evaluate the tenders from among the tenders of the economic operators remaining in the procedure and select the most advantageous tender or cancel the procedure.

#### **Article 264.**

1. The contracting body shall conclude a public contract, taking into account Article 577, within a period of not less than 10 days from the date on which the notification of the most advantageous tender was sent, if the notice was sent by electronic means or 15 days, if it was sent by other means of communication.

2. The contracting body may conclude a public contract before the expiry of the period referred to in para. 1, if:

- 1) in the procurement procedure conducted by:
  - a) open procedure only one tender has been submitted,
  - b) restricted procedure, negotiations with publication, competitive dialogue and innovation partnership either only one request or only one tender was submitted and the time limit for lodging an appeal for rejection of the request has expired or, following an appeal, the National Appeal Chamber has delivered a judgment or decision which ends an appeal procedure;
- 2) a public contract concerns a contract awarded under negotiated procedure without publication, under a dynamic purchasing system or under a framework agreement.

#### **Article 265.**

1. The contracting body shall submit a contract award notice on the results of the contract award procedure for publication to the Publications Office of the European Union no later than 30 days

from the date of end of the procurement procedure.

2. The contracting body may in the notice referred to in para. 1, designate certain information as not intended for publication, if its disclosure in a published notice would impede law enforcement or otherwise be contrary to the public interest, could harm the legitimate economic interests of a particular economic operator or could adversely affect fair competition between economic operators.

## **TITLE III**

### **Classical procurement procedure of a value below the EU thresholds**

#### **Chapter 1**

##### **Scope of application**

###### **Article 266.**

The provisions of Title II shall apply to preparation and conduct by contracting authorities of classical procurement procedures of a value below the EU thresholds, with the exception of Article 83, Article 86, Article 87 para. 3, Articles 88 - 90, Article 97 para. 2, Article 124 para. 1, Article 125 para. 2 and 6, Article 126, Article 127 para. 1, Article 129, Article 130, Articles 132-188, Article 220, Article 227 para. 1, Article 257, Article 264 and Article 265, unless provisions of this Title provide otherwise.

#### **Chapter 2**

##### **Notices**

###### **Article 267.**

1. The notices, referred to in this Title, shall be placed in the Public Procurement Bulletin, made available on the website of the Public Procurement Office.

2. In the Public Procurement Bulletin, the contracting body shall place the following types of notices:

- 1) contract notice;
- 2) a notice on the intention to conclude a contract;
- 3) a notice on the outcome of the procedure;
- 4) a design contest notice;
- 5) a notice on the results of the design contest;
- 6) a notice for changes;

- 7) a modification notice;
- 8) a notice on execution of the contract;
- 9) a notice of compliance with the circumstances, referred to in Article 214 para. 1 point 11-14.

3. The contracting body is obliged to document the placement of the notice in the Public Procurement Bulletin and keep proof of its placement.

**Article 268.**

(repealed)

**Article 269.**

1. The contracting body shall place a notice in the Public Procurement Bulletin by electronic means of communication using the standard forms placed on the portal of the Public Procurement Office.

2. In the case of personal data placed by the contracting body in the Public Procurement Bulletin, the rights referred to in Articles 15 and 16 of Regulation 2016/679 shall be exercised by a request addressed to the contracting body.

3. The President of the Public Procurement Office ensures the technical maintenance of the ICT system, with the use of which the Public Procurement Bulletin is made available, and specifies the period of storage of personal data placed in the Public Procurement Bulletin.

**Article 270.**

1. The contracting body may additionally make the notice available in a manner other than that the one, referred to in Article 269 para. 1, in particular on its website.

2. The contracting body may additionally submit a notice for publication in the Official Journal of the European Union. The provisions of Article 87 para. 1 and 2 shall apply accordingly.

3. Making a notice available or submitting it in a manner, referred to in para. 1 or 2, may not occur prior to its placement in the Public Procurement Bulletin.

4. A notice made available or submitted in a manner, referred to in para. 1 or 2:

- 1) may not contain information other than the information contained in the notice placed in the Public Procurement Bulletin;
- 2) indicates the date of the placement of the notice in the Public Procurement Bulletin.

**Article 271.**

1. The contracting body may change the notice by placing in the Public Procurement Bulletin a notice for changes.

2. Where a change is made to the content of the contract notice, the contracting body shall extend the time limit for receipt of requests to participate or the time limit for the submission of tenders by the time necessary to introduce changes to requests or tenders.

3. If the change, referred to in para. 2, is significant, in particular it concerns the determination of

the subject-matter, size or scope of the contract, contract award criteria, conditions for participation in the procurement procedure or the manner of assessing their fulfilment, the contracting body shall extend the time limit for submitting requests to participate or the time limit for submission of tenders by the time necessary for their preparation or introduction of changes to the requests or tenders.

4. The contracting body shall, immediately after the placement of change of the content of the contract notice in the Public Procurement Bulletin, make available or submit a notice for changes in a manner, referred to in Article 270 para. 1 or 2, provided that it has published a contract notice in such a manner.

#### **Article 272.**

1. The notice placed in the Public Procurement Bulletin shall include in particular the name and address of the contracting body and the subject-matter of the contract or the design contest.

2. The Minister responsible for the economy shall, by means of a regulation, determine the scope of the information included in the notices placed in the Public Procurement Bulletin, including the notices, referred to in Article 216 para. 1 and 3 and Article 448, as well as the procedure for submission of notices, taking into account the types of notices, the types of procurement procedures and specific instruments and procedures.

### **Chapter 3**

#### **Qualitative selection of economic operators**

#### **Article 273.**

1. In the procurement procedure, the contracting body may request qualitative means of proof to confirm:

- 1) the absence of grounds for exclusion;
- 2) compliance with the conditions for participation in the procedure or selection criteria.

2. In the basic procedure, the statement referred to in Article 125 para. 1, shall be attached by the economic operator to a tender submitted in response to a contract notice. In the statement, the economic operator shall indicate whether it will use the certificate referred to in Article 124 para.

2. If the economic operator intends to use this certificate, the statement must include the number and designation of the certificate, the name of the certifying body that issued it, the validity period of the certification for public procurement economic operators, and an indication of the grounds for exclusion or conditions for participation in the procurement procedure for which the economic operator will rely on this certificate.

#### **Article 274.**

1. The contracting body shall call on the economic operator whose tender has been rated the highest to submit, within the time limit set, not less than 5 days from the date of the call, the qualitative means of proof being up-to-date upon the day of their submission if the contracting body required their submission in the contract notice or procurement documents.

2. Where this is necessary to ensure the proper conduct of the procurement procedure, the contracting body may, at any stage of the procedure, including at the stage of the submission of tenders being subject to negotiations or as soon as they have been submitted, call on the economic operators to submit all or certain qualitative means of proof being up-to-date upon the day of their submission if the contracting body required their submission in the contract notice or procurement documents.

3. Where there are reasonable grounds to consider that previously submitted qualitative means of proof are no longer valid, the contracting body may at any time call on the economic operator or economic operators to submit all or some of the qualitative means of proof being up-to-date upon the day of their submission.

4. The contracting body does not call for the submission of qualitative means of proof if it can obtain them by accessing free-of-charge and publicly available databases, in particular public registers within the meaning of the Act of 17 February 2005 on digitalization of activities of entities performing public tasks, provided that the economic operator has indicated in the statement, referred to in Article 125 para. 1, the data enabling the access to these means.

## **Chapter 4**

### **Procurement procedures**

#### **Section 1**

#### **Basic procedure**

#### **Article 275.**

The contracting body shall award a contract by basic procedure where, in response to a contract notice, all interested economic operators may submit tenders and subsequently the contracting body:

- 1) shall select the most advantageous tender without negotiations, or
- 2) may conduct negotiations in order to improve the content of tenders to be assessed under the contract award criteria, provided that the contracting body has provided for this possibility and, after the conclusion of the negotiations, the contracting body shall invite economic operators to submit additional tenders, or
- 3) it conducts negotiations to improve the content of tenders, and after the conclusion of negotiations, the contracting body shall invite economic operators to submit final tenders.

#### **Article 276.**

1. The contracting body shall launch a procurement procedure under basic procedure by placing a contract notice in the Public Procurement Bulletin.

2. The contracting body may, after placing a contract notice in the Public Procurement Bulletin, directly inform on the launch of procurement procedure its known economic operators who, within their activities, provide services, supplies or works being the subject-matter of the contract.

#### **Article 277.**

1. In the cases, referred to in Article 275 points (1) and (2), the contracting body shall draw up an STC.

2. In the case referred to in Article 275 point (3), the contracting body shall draw up a description of needs and requirements and, after the negotiations, shall draw up an STC.

#### **Article 278.**

In the case, referred to in Article 275 point (2), the negotiations on the content of tenders:

- 1) shall not lead to a change in the content of the STC;
- 2) they concern only those elements of the content of tenders which are evaluated under the contract award criteria.

#### **Article 279.**

In the case, referred to in Article 275 point (3), negotiations on the content of tenders:

- 1) shall not lead to changes of the minimum requirements relating to the subject-matter of the contract or the performance of the contract set out in the description of needs and requirements;
- 2) may relate to the terms of the contract, in order to improve its efficiency.

#### **Article 280.**

1. From the date of the publication of the contract notice in the Public Procurement Bulletin, the contracting body shall provide, on the website of the procurement procedure, a free-of-charge, full, direct and unrestricted access to:

- 1) STC – in the cases, referred to in Article 275 points 1 and 2,
- 2) a description of needs and requirements, in the case referred to in Article 275 point (3),
  - not less than until the date of award of the contract.

2. Where the contracting body is unable to make available part of the STC or part of a description of needs and requirements on the website of the procurement procedure, due to one of cases, referred to in Article 65 para. 1, it shall make them available in a different manner specified in the contract notice.

3. If the contracting body is unable to make available part of the STC or part of a description of needs and requirements on the website of the procurement procedure, due to the protection of confidential nature of information contained therein, it shall specify in the contract notice how access to that information can be obtained and the requirements relating to the protection of its confidential nature.

#### **Article 281.**

1. In the cases, referred to in Article 275 point (1) and (2), the STC shall contain at least:

- 1) the name and address of the contracting body, telephone number, e-mail address and the

website of the procurement procedure;

- 2) the address of the website where changes and clarifications of the content of the STC and other procurement documents directly related to the procurement procedure will be made available;
  - 3) the type of procurement procedure;
  - 4) information whether the contracting body provides for the selection of the most advantageous tender with the possibility of conducting negotiations;
  - 5) description of the subject-matter of the contract;
  - 6) the time limit for the performance of the contract;
  - 7) the proposed provisions of the public procurement contract to be introduced to the content of this contract;
  - 8) information on the electronic means by which the contracting body will communicate with economic operators and information on technical and organisational requirements for the preparation, sending and receiving of electronic correspondence;
  - 9) information on how the contracting body communicates with economic operators other than by means of electronic communication in the event of one of the situations referred to in Article 65 para. 1, 66 and 69;
  - 10) identification of persons authorised to communicate with economic operators;
  - 11) time frame during which the tenderer must maintain its tender;
  - 12) a description of the method for tender preparation;
  - 13) the manner and time limit for the submission of tenders;
  - 14) the date for the opening of tenders;
  - 15) grounds for exclusion, referred to in Article 108 para. 1.
  - 16) the method for the calculation of price;
  - 17) a description of the contract award criteria, together with the weightings of those criteria and the tender evaluation method;
  - 18) information on formalities to be completed after the selection of the tender in order to conclude a public contract;
  - 19) instructions on the legal remedies available to the economic operator.
2. In the cases, referred to in Article 275 point (1) and (2), the STC shall also include:
- 1) grounds for exclusion, referred to in Article 109 para. 1, where the contracting body provides for them;
  - 2) information on the conditions for participation in the procurement procedure, where the contracting body provides for them;
  - 3) information on qualitative means of proof, if the contracting body requires them to be submitted;

- 4) a description of lots if the contracting body permits the submission of lots;
- 5) the number of lots of the contract for which the economic operator may submit a tender or the maximum number of lots for which the contract may be awarded to the same economic operator and the criteria or rules applicable to determine which lots of the contract will be awarded to the same economic operator in the case of selection of its tender in more than the maximum number of lots;
- 6) information on variants, including information on the presentation of variants and the minimum conditions to be met by variant tenders where the contracting body requires or accepts their submission;
- 7) employment requirements based on an employment relationship, in the circumstances referred to in Article 95;
- 8) employment requirements for persons, referred to in Article 96 para. 2 point (2), where the contracting body provides for such requirements;
- 9) information on the reservation of a possibility for economic operators, referred to in Article 94, to apply for a contract only if the contracting body provides for such requirements;
- 10) tender guarantee requirements, including its amount, where the contracting body provides for an obligation to lodge a tender guarantee;
- 11) information on the anticipated contracts, referred to in Article 214 para. 1 points 7 and 8, where the contracting body provides for the award of such contracts;
- 12) information concerning an on-site visit by the economic operator or on-the-spot inspection by it of the documents necessary for the performance of the contract, referred to in Article 131 para. 2, if the contracting body provides for the possibility or requires the submission of a tender after an on-site visit or on-the-spot inspection of those documents;
- 13) information on foreign currencies in which settlements between the contracting body and the economic operator may be carried out where the contracting body provides for settlements in foreign currencies;
- 14) information on the reimbursement of the costs of participation in the procurement procedure where the contracting body provides for their reimbursement;
- 15) information on the obligation of the economic operator to perform critical tasks itself if the contracting body makes such a reservation in accordance with Articles 60 and 121;
- 16) the maximum number of economic operators, which the contracting body will conclude a framework agreement with, if the contracting body provides for the conclusion of a framework agreement;
- 17) information on the anticipated selection of the most advantageous tender using an electronic auction together with the information, referred to in Article 230, where the contracting body provides for an electronic auction;
- 18) the requirement or possibility to submit tenders in the form of electronic catalogues or to add electronic catalogues to a tender, in the case referred to in Article 93.

19) information on a contract performance guarantee where the contracting body provides for it.

3. In the case, referred to in Article 275 point (2), the STC shall also indicate whether the contracting body provides for the possibility of reducing the number of economic operators it will invite to negotiate by applying the contract award criteria.

4. Amount of the tender guarantee, referred to in para. 2 point 10, may not exceed 1,5 % of the contract value.

#### **Article 282.**

1. In the case, referred to in Article 275 point (3), a description of needs and requirements shall contain accordingly the information, referred to in Article 281 para. 1 point 1-3, 8-10, 12-15 and 19.

2. A description of needs and requirements shall also include:

- 1) the information, referred to in Article 281 para. 2 point 1 - 9 and 11-19 and para. 3.
- 2) identification of the subject-matter of the contract;
- 3) a description of needs of the contracting body and the characteristics of supplies, works or services covered by the contract;
- 4) minimum requirements for the subject-matter of the contract or performance of the contract, non-negotiable, which must be met by all tenders;
- 5) a description of contract award criteria which the contracting body will use when selecting a tender, together with the weighting of those criteria and the method of evaluation of tenders, and if the weighting cannot be fixed for objective reasons at the stage of launching the procedure, the contracting body shall indicate the contract award criteria in a descending order of importance;

3. The information contained in the description of needs and requirements shall be formulated sufficiently precise to enable economic operators to determine the nature and scope of the contract and to decide whether to submit a negotiable tender.

#### **Article 283.**

The contracting body shall set a time limit for submission of tenders taking into account the complexity of the contract and the time needed for their preparation, except that such time limit in the case of supplies and services may not be less than 7 days from the date of the placement of a notice in the Public Procurement Bulletin, and in the case of works shall not be less than 14 days from the date of the placement of a notice in the Public Procurement Bulletin.

#### **Article 284.**

1. The economic operator may request the contracting body to clarify the content of the STC or of a description of needs and requirements, as appropriate.

2. The contracting body shall provide clarifications without due delay, but not later than 2 days before the expiry of the time limit for submission of tenders or tenders subject to negotiations, as

appropriate, provided that the request for clarification of the content of the STC or of a description of needs and requirements, as appropriate, has been received by the contracting body no later than 4 days before the expiry of the time limit for submission of tenders or tenders subject to negotiation, as appropriate.

3. If the contracting body fails to provide a clarification within the time limit, referred to in para. 2, it shall extend the time limit for submission of tenders or tenders subject to negotiation, as appropriate, by the time necessary for all the economic operators concerned to become familiar with the clarifications necessary for the proper preparation and submission of tenders or tenders subject to negotiation, as appropriate.

4. Where the request for clarification of the content of the STC or of a description of needs and requirements has not been received within the time limit, referred to in para. 2, the contracting body shall not be obliged to provide clarifications of the STC or of a description of needs and requirements, as appropriate, and to extend the time limit for the submission of tenders or tenders subject to negotiation, as appropriate.

5. The extension of the time limit for submission of tenders, referred to in para. 4, shall not affect the time limit for submission of request for clarification of the content of the STC or of the description of needs and requirements, as appropriate.

6. The content of the enquiries, together with clarifications, shall be made available by the contracting body, without disclosing the source of the enquiry, on the website of the procurement procedure and in the cases, referred to in Article 280 para. 2 and 3, the contracting body shall submit it to economic operators to which the STC or the description of the needs and requirements, as appropriate, was made available.

#### **Article 285.**

1. The contracting body may convene a meeting of all economic operators in order to clarify the content of the STC or the description of needs and requirements, as appropriate. The information on the date of the meeting shall be made available on the website of the procurement procedure.

2. The contracting body shall draw up information containing enquiries, raised at the meeting, concerning the clarification of the content of the STC or of the description of needs and requirements, as appropriate, and answers to them, without disclosing the source of the enquiries. The information from the meeting shall be made available on the website of the procurement procedure.

#### **Article 286.**

1. In justified cases, the contracting body may change the content of the STC before the expiry of the time limit for the submission of tenders.

2. In justified cases, the contracting body may, before the expiry of the time limit for the submission of tenders subject to negotiation, change the content of the description of needs and requirements.

3. Where a change in the content of the STC is relevant for the preparation of tenders or it requires additional time for economic operators to become familiar with the change in the content of the STC and to prepare the tenders, the contracting body shall extend the time limit for submission of

tenders by the time necessary for their preparation.

4. Where a change in the content of the description of needs and requirements is relevant for the preparation of tenders subject to negotiation or it requires additional time for economic operators to become familiar with the change in the content of the description of the needs and requirements and to prepare the tenders, the contracting body shall extend the time limit for the submission of tenders by the time necessary for their preparation.

5. The contracting body shall inform economic operators of the extended time limit for submitting tenders or tenders subject to negotiation as appropriate, by placing information on the website of the procedure where the STC or a description of the needs and requirements was made available.

6. The contracting body shall indicate the extended time limit for the submission of tenders or tenders subject to negotiation as appropriate, in the notice referred to in Article 267 para. 2 point 6.

7. The change of the content of the STC or the description of needs and requirements as appropriate, shall be made available by the contracting body on the website of the conducted procedure.

8. Where the change concerns a part of the STC or a description of the needs and requirements as appropriate, which have not been made available on the website of the procedure, in accordance with Article 280 para. 2 and 3, the change of the content of the STC or the description of needs and requirements as appropriate, shall be communicated in different way indicated in the contract notice.

9. If a change of the content of the STC or a description of needs and requirements as appropriate, leads to a change in the content of the contract notice, the contracting body shall publish in the Public Procurement Bulletin a notice referred to in Article 267 para. 2 point 6.

#### **Article 287.**

1. In the case referred to in Article 275 point 2, where the contracting body does not conduct negotiations, it shall select the most advantageous tender from among the non-rejectable tenders submitted in response to the contract notice.

2. In the case referred to in Article 275 point 3, the provisions of Article 222 para. 4, Article 224, Article 225 and Article 226 para. 1 points 8-14, 17 and 18 shall not apply to tenders submitted in response to a contract notice. The contracting body shall reject tenders which do not meet the minimum requirements for the description of the subject-matter of the contract or the performance of the contract, specified by the contracting body.

3. In the case referred to in Article 275 point 2, the contracting body shall simultaneously inform all economic operators who have submitted tenders in response to the contract notice of economic operators:

- 1) whose tenders have not been rejected, and the score awarded to tenders in each contract award criterion and the total score,
- 2) whose tenders have been rejected,
- 3) who have not been qualified for negotiations, and the scoring given to their tenders in each

contract award criterion and the total score, in the case referred to in Article 288 para. 1

- providing factual and legal justification.

4. In the case referred to in Article 275 point 3, the contracting body shall simultaneously inform each of the economic operators individually of:

1) the rejection of his offer or

2) in the case referred to in Article 288 para. 1, on the non-qualification of his tender for negotiations and on the score awarded in each contract award criterion and the total score

- providing factual and legal justification.

#### **Article 288.**

1. In the cases referred to in Article 275 points 2 and 3, the contracting body may limit the number of economic operators invited to negotiate, provided that this number is sufficient to ensure - competition and is not less than 3.

2. In the case referred to in para. 1, the contracting body shall indicate, in the contract notice and in the STC or in the description of needs and requirements as appropriate, the contract award criteria which it intends to use to limit the number of economic operators invited to negotiate and shall indicate the maximum number of economic operators invited to negotiate tenders.

#### **Article 289.**

1. In the case referred to Article 275 point 2, the contracting body may invite, and in the case - referred to in Article 275 point 3, simultaneously invites economic operators to negotiate tenders submitted in response to a contract notice, if they were not subject to rejection, and if the contracting body has established the criteria referred to in Article 288 para. 2, the invitation is addressed to those economic operators whose tenders satisfy to the highest extent those criteria, in a number to be determined by the contracting body.

2. The tender of the economic operator not invited to the negotiations shall be deemed to be rejected.

3. If the number of economic operators who have submitted non-rejectable tenders in response to a contract notice is less than 3, the contracting body shall continue the procedure in the case referred to in Article 275 point 2.

4. If the number of economic operators who have submitted non-rejectable tenders in response to a contract notice is less than 3, the contracting body may, in the case referred to in Article 275 point 3, continue the procedure by inviting those economic operators to negotiate tenders or cancel the procedure.

5. The contracting body shall indicate in the invitation to negotiate the place, time limit and manner of negotiations and, in the case referred to in Article 275 point 2, also contract award criteria under which negotiations will be conducted to improve the content of tenders.

#### **Article 290.**

1. During the negotiation of tenders, the contracting body shall ensure equal treatment of all economic operators.

2. The contracting body shall not provide information in a way that could give certain economic operators an advantage over other economic operators.

#### **Article 291.**

1. In the case referred to in Article 275 point 2, the conducted negotiations shall be confidential. The contracting body shall make tenders and annexes submitted in response to the contract notice available immediately after the opening of those tenders, but not later than 3 days from the date of their opening.

2. In the case referred to in Article 275 point 3, the content of the tenders to be negotiated and the conducted negotiations shall be confidential. The contracting body shall make those tenders and annexes available from the date of opening of the final tenders.

3. Neither party may, without the consent of the other party, disclose technical and commercial information relating to negotiations. The consent shall be granted in respect of specific information and before its disclosure.

4. In the case referred to in Article 275 point 3, the contracting body shall negotiate the content of the tenders submitted in response to the contract notice until all the terms of the contract subject to negotiation are clarified or supplemented.

#### **Article 292.**

1. In the case referred to in Article 275 point 3, after the conclusion of the negotiations, the contracting body shall draw up STC, which shall specify and supplement the information contained in the description of needs and requirements, to the extent that it was the subject of negotiations.

2. The STC may not contain provisions which lead to a change of the minimum requirements concerning the subject-matter of the contract or the performance of the contract specified in the description of needs and requirements and to change of essential elements of the content of the contract notice.

#### **Article 293.**

1. In the case referred to in Article 275 point 2, the contracting body shall simultaneously inform all economic operators whose tenders submitted in response to the contract notice were not rejected about the completion of the negotiations and invite them to submit additional tenders.

2. In the case referred to in Article 275 point 3, the contracting body shall simultaneously inform all economic operators whose tenders submitted in response to the contract notice were not rejected and who participated in the negotiations about the conclusion of the negotiations and invite them to submit final tenders.

#### **Article 294.**

In the case referred to in Article 275 point 2, the invitation to submit additional tenders shall include at least:

- 1) the name and address of the contracting body, telephone number, e-mail address and the website of the proceeding;

- 2) the manner and time limit for the submission of additional tenders and the language or languages in which they must be drawn up and the date for the opening of those tenders.

#### **Article 295.**

1. In the case referred to in Article 275 point 3, the invitation to submit final tenders shall include at least:

- 1) the name and address of the contracting body, telephone number, e-mail address and the website of the proceeding;
- 2) the address of the website at which the STC is available, any changes and explanations thereof, as well as other procurement documents directly related to the procurement procedure;
- 3) information on the qualitative means of proof to be attached to the final tender, if the contracting body requires the submission of selected or all means of proof at the stage of submission of final tenders;
- 4) the weighting of the individual contract award criteria, if they are not specified in a description of the needs and requirements at an earlier stage of the procurement procedure;
- 5) the manner and time limit for the submission of final tenders and the language or languages in which they must be drawn up and the date for the opening of final tenders.

2. If a part of the STC has not been made available by the contracting body on the website of the proceedings, for the reasons referred to in Article 280 para. 2 and 3, the contracting body shall provide the unavailable part of the STC, together with the invitation to submit final tenders, as well as other procurement documents directly related to the procurement procedure.

3. The STC shall contain the information referred to in Article 281 para. 1 points 1-3 and 5-19 and para 2.

4. The provisions of Articles 284, 285 and 286 para. 1, 3, 5, 7 and 8 shall apply accordingly to the explanations and changes to the content of the STC.

#### **Article 296.**

1. In the case, referred to in Article 275 point 2, the contracting body shall set a time limit for the submission of additional tenders, taking into account the time needed for the preparation of those tenders, however this time limit shall not be less than 5 days from the date of dispatch of the invitation to submit additional tenders.

2. The economic operator may submit an additional tender which includes new proposals for the content of the tenders to be assessed within the contract award criteria indicated by the contracting body in the invitation to negotiate. An additional tender may not be less favourable in any of the contract award criteria indicated in the invitation to negotiate than the tender submitted in response to the contract notice. The tender shall cease to bind the economic operator to the extent that it submits an additional tender containing more favourable proposals within each of the contract award criteria indicated in the invitation to negotiate. An additional tender which is less favourable in any of the contract award criteria indicated in the invitation to negotiate than

the tender submitted in response to the contract notice shall be rejected.

3. In the case referred to in Article 275 point 3, the contracting body shall set a time limit for the submission of final tenders taking into account the complexity of the contract and the time required for the preparation of those tenders, except that this period in the case of supplies and services may not be less than 5 days from the date of dispatch of the invitation to submit final tenders and, in the case of works, shall not be less than 10 days from the date of dispatch of invitation to submit final tenders.

## **Section 2**

### **Innovation partnership**

#### **Article 297.**

The provisions of Title II, Chapter 3, Section 6, as amended by this section, shall apply to the award of an innovation partnership.

#### **Article 298.**

1. The contracting body launches the procurement procedure under the innovative partnership procedure by publishing a contract notice in the Public Procurement Bulletin.
2. The contracting body shall provide, on the website of the procedure, free of charge, full, direct and unlimited access to the description of needs and requirements, from the date of the publication of the contract notice in the Public Procurement Bulletin.
3. After completion of the negotiations, the contracting body shall draw up a description of the needs and requirements, which shall specify and supplement the information contained in the description of needs and requirements available from the date of the publication of the contract notice in the Public Procurement Bulletin, only to the extent that it was the subject of negotiations.

#### **Article 299.**

1. The time limit for receipt of requests to participate may not be less than 7 days from the date on which the contract notice was published in the Public Procurement Bulletin.
2. The contracting body shall set a time limit for submitting the initial tender or tender as appropriate, taking into account the complexity of the contract and the time required for its preparation. The time limit for submitting the initial tender or tender as appropriate, in the case of supplies or services, may not be less than 7 days from the date on which the invitation to submit initial tenders or tenders as appropriate, has been submitted and, in the case of works, shall not be less than 14 days from the date on which the invitation to submit initial tenders or tenders as appropriate, been submitted.
3. Where the contracting body requests economic operators to provide a tender guarantee, it shall determine the amount thereof not exceeding 1,5 % of the value of the contract.

## **Section 3**

### **Negotiated procedure without publication**

#### **Article 300.**

The provisions of Title II, Chapter 3, Section 7, as amended by this section, shall apply to the award of the contract by negotiated procedure without publication.

#### **Article 301.**

1. The contracting body may award a contract under negotiated procedure without publication if:

- 1) one of the circumstances referred to in Article 209 para. 1 points 2 and 3 has occurred;
- 2) in the procedure previously conducted under the basic procedure no tenders were submitted or all tenders were rejected pursuant to Article 226 para. 1 points 2 or 5, and the initial terms of the contract have not been substantially altered;
- 3) due to the urgent need to award a contract not resulting from reasons attributable to the contracting body, which could not be foreseen in advance, the time limits specified for basic procedure cannot be complied with;
- 4) within 3 years from the award of the contract for works, the contracting body has withdrawn from the public contract for reasons attributable to the economic operator and the award of the contract is necessary for the completion of the works which are the subject of the previous contract.

2. In the case referred to in para. 1 point 4, the contracting body shall invite to negotiate, within 3 months from the date of withdrawal from the public contract, at least those economic operators who have submitted tenders in the earlier procedure, except the economic operator with whom the contract has been concluded, from which the contracting body has withdrawn.

#### **Article 302.**

The contracting body may, after the commencement of the procedure, publish a notice of intention to conclude a contract (voluntary ex ante contract) in the Public Procurement Bulletin.

#### **Article 303.**

1. The contracting body, together with the invitation to submit tender, shall forward the procurement documents containing at least the information referred to in Article 281 para. 1.

2. For clarification and modification of procurement documents, the provisions of Articles 284, 285 and 286 para. 1, 3, 5, 7 and 8 shall apply accordingly.

3. Article 299 para. 3 shall apply.

### **Section 4**

#### **Single-source procurement**

#### **Article 304.**

The provisions of Title II of Chapter 3, Section 8, as amended by this section, shall apply to the award of a single-source procurement.

### **Article 305.**

The contracting body may award a single-source procurement if:

- 1) one of the circumstances referred to in Article 214 para. 1 points 1-5 and 7-14 has occurred;
- 2) in the procedure previously conducted under the basic procedure no tenders were submitted or all tenders were rejected pursuant to Article 226 para. 1 point 5 or 2 and the initial terms of the contract have not been substantially altered;
- 3) the contract is awarded by a foreign office within the meaning of the Act of 27 July 2001 on Foreign Service (Journal of Laws, item 464);
- 4) the contract is awarded for the purposes of a military unit within the meaning of the Act of 17 December 1998 on the rules of use or residence of the Armed Forces of the Republic of Poland abroad;
- 5) the contract is awarded by contracting authorities established outside the national borders and is performed outside the national borders.

### **Article 306.**

1. The contracting body may, after the launch of the procedure, publish a notice of intention to conclude a contract (voluntary ex ante notice) in the Public Procurement Bulletin.
2. The contracting body may, before awarding the contract, require the economic operator to submit the statement referred to in Article 125 para. 1, or qualitative means of proof.

## **Chapter 5**

### **Selection of the most advantageous tender**

#### **Article 307.**

1. The economic operator shall be bound by the tender until the expiry of the period specified in the procurement documents, but not longer than 30 days from the expiry of the time limit for the submission of tenders, where the first day of the tender validity period is the day on which the time limit for the submission of tenders expires.
2. If the selection of the most advantageous tender does not take place before the expiry of the tender validity period specified in the procurement documents, the contracting body shall, before the expiry of the tender validity period, ask the economic operators once for their consent to extend that period for a period indicated by the contracting body, no longer than 30 days.
3. The extension of the tender validity period referred to in para. 2, requires the economic operator to submit a written statement of consent to extend the tender validity period.
4. If the contracting body requests the payment of tender guarantee, an extension of the tender validity period referred to in para. 2, shall be accompanied by an extension of the period of validity of tender guarantee or, if this is not possible, with the lodging of a new tender guarantee for an extended tender validity period.

### **Article 308.**

1. In the case of a basic procurement procedure, the contracting body may provide in the contract notice and in the procurement documents, that the selection of the most advantageous tender will be preceded by an electronic auction, if the terms of the contract, in particular the description of the subject-matter of the contract, are specified in the procurement documents in a precise manner and the benefits can be classified by automatic assessment methods, and at least 2 tenders not subject to rejection have been submitted.

2. The contracting body shall conclude a public contract, taking into account Article 577, within a period of not less than 5 days from the date of sending the notification about the selection of the most advantageous tender, if the notification was sent by electronic means, or 10 days if it was sent in different way.

3. The contracting body may conclude a public contract before the expiry of the period referred to in para. 2, if:

- 1) in the procurement procedure conducted:
  - a. under basic procedure only one tender was submitted,
  - b. under innovation partnership only one request or only one tender has been submitted and the time limit for lodging an appeal against the dismissal of the request has expired, or, following an appeal, the National Appeal Chamber has delivered a judgment or ruling ending the appeal procedure;
- 2) public contract shall relate to a contract awarded by negotiated procedure without publication or under a framework agreement.

### **Article 309.**

1. No later than 30 days from the date of end of the procurement procedure, the contracting body shall publish in the Public Procurement Bulletin a contract award notice containing information on the award of the contract or the cancellation of the procedure.

2. The contracting body may not contain certain information in the notice referred to in para. 1, if their disclosure in the content of the published notice would impede law enforcement or otherwise be contrary to the public interest, could harm the legitimate economic interests of a particular economic operator or could adversely affect fair competition between economic operators.

### **Article 310.**

The contracting body may cancel the procurement procedure if the public funds which the contracting body intended to allocate to finance all or part of the contract have not been granted to it and the possibility of cancelling the procedure on that basis is provided for in:

- 1) a contract notice – in the basic procedure or innovation partnership, or
- 2) an invitation to negotiate – in the negotiated procedure without publication or single-source procurement.

## **TITLE IV**

### **Specific instruments and procedures for classical procurement**

#### **Chapter 1**

#### **Framework agreement**

##### **Article 311.**

1. The contracting body may conclude a framework agreement after the procedure has been carried out by applying, as appropriate, the provisions relating to the following procedures:

- 1) open-tender procedure, restricted procedure, negotiated procedure with publication, competitive dialogue or innovation partnership where the value of the classical contract is equal to or exceeds the EU thresholds;
- 2) basic procedure or innovation partnership referred to in Title III, Chapter 4, of Section 2, where the value of the classical contract is below the EU thresholds.

2. The provisions of Title VII shall apply to framework agreements.

3. A framework agreement shall be concluded for a period not longer than 4 years, except that, in view of the subject-matter of the contract and the specific interest of the contracting body, such a contract may be concluded for a longer period.

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

##### **Article 312.**

1. The award of a contract covered by a framework agreement may only take place between the contracting authorities indicated in the contract notice and the economic operators who are parties to the framework agreement.

2. When awarding a contract, the contracting body shall not make substantial changes to the conditions of the contract set out in the framework agreement.

##### **Article 313.**

1. Where a framework agreement has been concluded with only one economic operator, the contracting body shall award the contract under the terms of the contract specified in the framework agreement, without conducting a procurement procedure.

2. If not all the conditions for the performance of works, services or supplies are specified in the framework agreement, the contracting body may request the economic operator in writing to complete the tender.

##### **Article 314.**

1. Where a framework agreement has been concluded with more economic operators, the contracting body shall award:

- 1) contracts in accordance with the terms of the contract specified in the framework agreement, without conducting a procurement procedure, if the framework agreement

specifies all the conditions for the performance of works, services or supplies, and the conditions for the selection of economic operators to perform the contract;

2) part of contracts without conducting a procurement procedure in accordance with point 1 and part after conducting the procurement procedure in accordance with point 3, if the framework agreement specifies all the conditions for the performance of works, services or supplies, and the contracting body has provided for this possibility in the procurement documents relating to the framework agreement and jointly defined:

a) criteria for deciding which works, supplies or services will be awarded after or without conducting a procurement procedure,

b) which contract terms may be the subject of a new procurement procedure;

3) contracts following a procurement procedure where not all the conditions for the performance of works, services or supplies are specified in the framework agreement.

2. The provision of para. 1 point 2 shall also apply to those parts of the framework agreement for which all the conditions for the performance of works, services or supplies are specified, whether or not the framework agreement specifies all the conditions for the performance of works, services or supplies for the remaining parts of this agreement.

3. In the case of a procurement procedure, referred to in para. 1 point 2 or 3, the contracting body shall award a contract under the same and, if necessary, more specific terms of the contract which were applied to conclude the framework agreement, and, where appropriate, under other contract terms indicated in the procurement documents relating to the framework agreement. In the case referred to in Article 115 para. 1 point 1, the condition of having a minimum annual - income shall be calculated on the basis of the expected maximum size of specific contracts to be performed at the same time, or, in the absence of such information, on the basis of the value of the framework agreement.

4. In the case, referred to in para. 3, the contracting body shall award a contract after conducting an electronic auction, in accordance with the conditions set out in Title II, Chapter 6, or the following procedure:

1) before awarding each contract, the contracting body shall in writing invite economic operators capable of performing a specific contract to submit tenders;

2) sets a time limit for submission of tenders taking into account the complexity of the subject-matter of the contract and the time necessary for the preparation and submission of tenders for each contract;

3) tenders shall be submitted in writing, using electronic means of communication, and their content shall not be known before the time limit for submission;

4) the contracting body shall award the contract to the economic operator who has submitted the most advantageous tender on the basis of the tender evaluation criteria specified in the contract notice or contract documents relating to the framework agreement; Article 253, para. 1 shall apply.

5. To cancel the contract award procedure referred to in para. 1 point 2 or 3, the provisions of

Articles 255 to 261 shall apply.

6. The contracting body may not dispatch a contract award notice to the Publications Office of the European Union or not to publish a notice on the results of the procedure in the Public Procurement Bulletin containing information on the award of a contract covered by a framework agreement or on the cancellation of the contract award procedure referred to in para. 1 point 2 or 3.

7. Where the contracting body dispatches to the Publications Office of the European Union or publishes in the Public Procurement Bulletin the notices referred to in para. 6, the provisions of Article 265 para. 2 or Article 309 para. 2 shall apply accordingly.

#### **Article 315.**

1. Where a framework agreement has been concluded with more economic operators after all tenders have been submitted in the form of electronic catalogues, the contracting body may decide that the contract award procedure will be based on updated electronic catalogues.

2. In the case referred to in para. 1, the contracting body:

- 1) invites economic operators to resubmit electronic catalogues, adapted to the requirements of a given contract, or
- 2) informs economic operators that from electronic catalogues which have already been submitted it will download the data needed to draw up tenders tailored to the requirements of a given contract, provided that it has been announced in the contract notice or procurement documents relating to the framework agreement.

3. In the case referred to in para. 2 point 2, the contracting body shall:

- 1) inform, in due advance, economic operators about the date and time of downloading the data needed to draw up tenders adapted to the requirements of a given contract and provide economic operators with the possibility to update the electronic catalogues or refuse consent to such downloading;
- 2) before awarding the contract, submit to the economic operator to whom it intends to award the contract, downloaded data and shall set an appropriate time limit for the economic operator to contest or confirm that the tender drawn up in this manner does not contain substantial errors, however if the economic operator does not contest the tender drawn up in this manner within the prescribed time limit, it shall be deemed to have submitted a tender.

## **Chapter 2**

### **Dynamic purchasing system**

#### **Article 316.**

1. Where the value of a classical contract is equal to or exceeds the EU thresholds, the contracting body may establish a dynamic purchasing system and award contracts covered by this system by applying the provisions on the award of contracts by a restricted procedure, unless the provisions

of this Chapter provide otherwise.

2. A dynamic purchasing system may be divided into categories of supplies, services or works, defined on the basis of the characteristics of the contracts to be awarded under the category concerned. These characteristics may, in particular, relate to the allowable size of subsequent contracts or the geographical area in which subsequent contracts will be carried out.
3. In the event of a change in the period of validity of the dynamic purchasing system, the contracting body shall inform about this change by dispatching to the Publications Office of the European Union the notice referred to in Article 90 para. 1.
4. Where the change in the period of validity of the dynamic purchasing system leads to its termination, the contracting body shall inform about this change by dispatching to the Publications Office of the European Union the notice containing information on the award of the contract.
5. Access to the dynamic purchasing system is free of charge.
6. The contracting body may not use a dynamic purchasing system to restrict competition.

#### **Article 317.**

In the procedure conducted to establish a dynamic purchasing system and in the contract award procedure covered by a dynamic purchasing system, contracting authorities and economic operators shall provide statements, documents, requests, notifications, invitations and other information, using electronic means of communication.

#### **Article 318.**

1. From the date of publication of the contract notice in the Official Journal of the European Union, the contracting body shall make available on the website of the dynamic purchasing system information on the use of the dynamic purchasing system together with information on the dynamic purchasing system, in particular:

- 1) identification of the subject-matter of the contracts covered by the dynamic purchasing system together with the estimated quantity;
- 2) the period of validity of the dynamic purchasing system;
- 3) expected dates of procurements;
- 4) technical requirements for ICT devices necessary for communication between the contracting body and economic operators, including the transmission of tenders;
- 5) the functioning of the dynamic purchasing system;
- 6) division into categories of supplies, services or works together with the characteristics defining these categories, provided that the dynamic purchasing system is divided into categories;
- 7) whether it is required to submit offers in the form of an electronic catalogue or to add an electronic catalogue to the offer.

2. The information referred to in para. 1, are available on the website of the dynamic purchasing system throughout the duration of the dynamic purchasing system.

#### **Article 319.**

1. The contracting body shall set a time limit for submitting requests to participate in a dynamic purchasing system, not less than 30 days from the date of dispatch of the contract notice for publication to the Publications Office of the European Union or, where the prior information notice contains the information required for the contract notice, from the date of forwarding the invitation to confirm interest. After the submission of the invitation to tender for the first contract covered by a dynamic purchasing system, no further time limits for the submission of requests to participate in the dynamic purchasing system shall be set.
2. During the period of validity of the dynamic purchasing system, the contracting body shall ensure that economic operators not covered by the system may submit requests to participate in the dynamic purchasing system.

#### **Article 320.**

1. The contracting body shall qualify the economic operator within 10 days from the date of receipt of the request to participate in the dynamic purchasing system.
2. The time limit referred to in para. 1, in justified cases, may be extended to 15 days.
3. If the invitation to tender for the first contract covered by the dynamic purchasing system has not been sent, the time limit referred to in para. 1, may be extended provided that no invitation to tender is sent within the extended period. The contracting body shall notify the economic operator whose application is subject to the examination of the length of the extended period.

#### **Article 321.**

1. The contracting body shall invite economic operators, whose applications are not subject to rejection pursuant to Article 146 para. 1 points 2-5, to participate in a dynamic purchasing system. Article 148 shall not apply.
2. Where the dynamic purchasing system is divided into the categories of supplies, services or works, the contracting body shall invite economic operators, who are not subject to exclusion and meet the conditions for participation in the procedure corresponding to one of the categories, to participate in a dynamic purchasing system.

#### **Article 322.**

The contracting body may, at any time during the validity of the dynamic purchasing system, request admitted economic operators to submit a new and updated single document within 5 working days from the date of submission of the request. The provisions of Articles 126 and 127 shall apply.

#### **Article 323.**

1. The contracting body shall, at the same time, invite all participants of the dynamic purchasing system to submit tenders for each contract awarded under this system within a period not shorter than 10 days from the date of sending the invitation to tender. Article 151 shall not apply.
2. Where the dynamic purchasing system is divided into categories of supplies, services or works,

the contracting body shall, at the same time, invite all economic operators who have been admitted to tender for a given category to submit tenders.

3. The invitation referred to in para. 1, contains at least:

- 1) the address of the website where the specification of terms of a contract is available;
- 2) information on the date and place of publication of the contract notice referred to in Article 318 para. 1;
- 3) the time limit for the submission of tenders, the address to which tenders must be sent and the language or languages in which they must be drawn up;
- 4) a list of statements or documents proving the lack of grounds for exclusion;
- 5) the weight assigned to the tender evaluation criteria if it is not indicated in the contract notice or in the notice on economic operators qualification system.

4. The contracting body shall select the most advantageous tender on the basis of the award criteria set out in the contract notice.

5. In the invitation to tender, the contracting body may detail the tender evaluation criteria set out in the contract notice.

6. An electronic auction may be carried out when a contract is awarded under a dynamic purchasing system, in accordance with the conditions set out in Chapter 6 of Title II.

7. No later than 30 days from the date of completion of the procurement procedure covered by the dynamic purchasing system, the contracting body shall dispatch to the Publications Office of the European Union a contract award notice containing information on the results of this procedure. Contract award notices may be grouped quarterly and submitted for publication within 30 days of the last day of each quarter.

#### **Article 324.**

1. The contracting body may require that tenders under a dynamic purchasing system are submitted in the form of electronic catalogues or attaching electronic catalogues to the request for participation in the dynamic purchasing system.

2. Where more than one economic operator has been admitted to the dynamic purchasing system and with all requests for participation in the dynamic purchasing system electronic catalogues have been submitted, the contracting body may, before awarding the contract, invite economic operators to resubmit or update the electronic catalogues.

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

- 1) inform economic operators that it will download from the already submitted electronic catalogues the data needed to draw up tenders adapted to the requirements of a given contract, provided that it has informed them thereof in the contract notice or in the specification of terms of a contract regarding the establishment of a dynamic purchasing system;
- 2) inform, in due advance, economic operators about the date and time of downloading the data, referred to in point 1, and shall provide economic operators with the possibility to

respectively supplement or update the electronic catalogues or refuse consent to such downloading;

- 3) before awarding the contract, the contracting body shall submit to the economic operator to whom it intends to award the contract downloaded data and shall set an appropriate time limit for the economic operator to contest or confirm that the tender drawn up in this manner does not contain substantial errors, however if the economic operator does not contest the tender drawn up in this manner within the prescribed time limit, it shall be deemed to have submitted a tender.

### **Chapter 3**

#### **Design contest**

##### **Section 1**

#### **General provisions**

##### **Article 325.**

1. The contracting body may organise a design contest to select a creative work in the field of, in particular, spatial planning, urban design, architectural design, architectural and construction design, data processing, IT design and innovative purposes.
2. If the contracting body intends to award a contract for architectural design services or architectural and construction design services, such contract shall be preceded by a design contest.
3. The provision of para. 2 shall not apply to contracts:
  - 1) awarded under negotiated procedure with publication, competitive dialogue, negotiated procedure without publication or single-source procurement;
  - 2) with values below the EU thresholds;
  - 3) the subject-matter of which is a line object within the meaning of the Act of 7 July 1994 – Construction Law.
4. Chapter 2 of Title I shall apply to the design contest accordingly, except that Article 17 shall not apply.

##### **Article 326.**

The prize in the design contest is:

- 1) in money or in-kind prize awarded to the author or authors of selected contest projects; or
- 2) inviting the author or authors of selected contest projects to negotiate, respectively, under a single-source procurement or negotiated procedure without publication, in order to perform the service on the basis of selected contest project, or such an invitation with a in money or in-kind prize.

#### **Article 327.**

The design contest shall be conducted in an unlimited or restricted contest procedure.

#### **Article 328.**

1. The provisions of Articles 23, 53 to 55 and 57 to 60 shall not apply to the preparation and conduct of the design contest.
2. The contracting body shall ensure the anonymity of the contest projects.
3. The contracting body shall make available only the award-winning contest projects and the studies on the basis of which the projects were performed, from the time of submitting the notification referred to in Article 354. The contracting body shall determine how the award-winning contest projects and studies are made available to the public, taking into account the provisions on the protection of copyrights.

#### **Article 329.**

1. The design contest may be one-stage or two-stage.
2. In a two-stage design contest, studies meeting the requirements set out in the Rules of Procedure are selected in the first stage. In the second stage, the jury, on the basis of the criteria set out in the Rules of Procedure, evaluates the contest projects performed on the basis of studies selected in the first stage.
3. In a two-stage design contest, the contracting body may limit the number of participants to be invited to the second stage of the contest, applying to studies, all or some of the evaluation criteria for the contest projects set out in the Rules of Procedure.
4. In a two-stage design contest, the contracting body shall invite participants to submit contest projects in the number ensuring competition.
5. The contracting body shall immediately inform the participants of the design contest who submitted the studies about the results of the evaluation of the studies, providing factual and legal justification.
6. In a two-stage design contest, the provisions on contest projects apply accordingly to studies.

#### **Article 330.**

1. The participants of the design contest may be natural persons, legal persons or organizational entities without legal personality.
2. Where specific provisions require authorization to develop a contest project or to perform a service on the basis of a contest project, participants may only be natural persons with the required authorizations or entities using natural persons having the required authorizations.
3. In the case of a restricted design contest, the contracting body shall also determine other than those specified in para. 2, objective requirements, the non-fulfilment of which prevents participation in the contest.
4. Objective requirements may include grounds for exclusion, conditions for participation in the procedure or selection criteria. Articles 108 to 123 shall apply accordingly.

5. In the circumstances referred to in para. 2-4, the contracting body may request the qualitative means of proof referred to in Article 124. The provisions of Articles 127 and 128 shall apply.

6. The contracting body may stipulate in the contest notice and in the Rules of Procedure that the design contest is reserved to participants employing persons belonging to the categories of socially marginalised persons in accordance with Article 94.

7. Participants may jointly participate in the design contest. The rules governing the participant of the design contest shall apply accordingly to participants participating jointly in the contest.

#### **Article 331.**

The subject-matter of the design contest shall be described in an unambiguous and understandable manner, taking into account the requirements and circumstances which may affect the preparation of the contest project.

#### **Article 332.**

Article 56 shall apply accordingly to persons performing activities on the part of the contracting body.

### **Section 2**

#### **Rules of Procedure for a design contest**

#### **Article 333.**

1. The contracting body shall organise a design contest on the basis of the Rules of Procedure established by itself.

2. The Rules of Procedure for a design contest shall in particular specify:

- 1) name and address of the contracting body;
- 2) type of contest project and the procedure for conducting the design contest;
- 3) description of the subject-matter of the design contest;
- 4) the maximum planned total cost of works carried out on the basis of the contest project;
- 5) requirements to be met by the participants in the design contest;
- 6) information on the qualitative means of proof confirming compliance with the requirements;
- 7) means of communication between the contracting body and the participants in the design contest, and the manner of providing qualitative means of proof, explanations or information;
- 8) manner and time limit for submission of studies or contest projects in the case of an unlimited design contest or requests to participate in a restricted design contest;
- 9) material scope and form of the elaboration and presentation of the contest project;
- 10) criteria for the evaluation of contest projects, together with an indication of the importance of these criteria;
- 11) criteria for the evaluation of studies, together with an indication of the importance of these criteria, in the case referred to in Article 329 para. 3;

- 12) composition of the jury;
- 13) type and amount of prizes;
- 14) date of payment of a cash prize or issuance of a prize in kind;
- 15) the amount of reimbursement of the costs of preparing the contest projects, where the contracting body provides for their reimbursement;
- 16) provisions of the future agreement on the transfer of copyrights to the selected project, together with a detailed identification of the fields of exploitation of the contest projects;
- 17) maximum amount of reimbursement for the preparation and submission of the contest project, if the contest is cancelled, in the circumstances referred to in Article 355 para. 4.
- 18) manner in which the results of the design contest are made publicly available;
- 19) instruction on legal protection measures available to participants in the design contest.

3. In the case of the design contest referred to in Article 326 point 2, the Rules of Procedure:

- 1) may not contain the information referred to in para. 2 point 13;
- 2) shall also contain information on:
  - a) the planned date of the invitation to negotiate under the negotiated procedure without publication or single-source procurement, in order to perform a service on the basis of the selected contest project,
  - b) the subject-matter of the service to be carried out in the procedure conducted under a single-source procurement or negotiated procedure without publication, on the basis of selected contest project,
  - c) essential provisions to be introduced into the public procurement contract,
  - d) the grounds for exclusion from the procedure and the conditions for participation in the procedure which will be determined in the procedure conducted under a single-source procurement or negotiated procedure without publication,
  - e) the indicative date of service provision.

4. The contracting body shall make the Rules of Procedure available on the website of the design contest.

#### **Article 334.**

The contracting body may convene a meeting of entities interested in submitting contest projects in order to clarify doubts concerning the content of the Rules of Procedure. Information on the date of the meeting shall be made available by the contracting body on the website of the design contest.

### **Section 3**

#### **Design contest jury**

#### **Article 335.**

1. The head of the contracting body shall appoint a design contest jury and determine the organisation, composition and working procedure of the jury.
2. The jury shall consist of at least 3 persons appointed and dismissed by the head of the - contracting body.

3. Members of the jury shall be impartial. Article 56 shall apply accordingly to members of the jury.
4. Members of the jury shall be persons with knowledge and experience enabling them to evaluate submitted contest projects, but where specific provisions require the authorisation to develop a contest project, at least a third of the of the jury members, including its chairperson, shall have the required authorisations.

#### **Article 336.**

1. The jury is appointed to evaluate the contest projects and to select the best contest projects.
2. The jury shall, in particular, draw up information about contest projects, prepare a justification of the outcome of the design contest and lodge a request to cancel the design contest.
3. The jury to the extent referred to in para. 1 and 2 is independent.
4. The head of the contracting body may entrust the jury with other than those referred to in para. 1 activities related to the preparation and conduct of the design contest.

#### **Article 337.**

The head of the contracting body or the person authorised by him shall supervise the jury as regards the compliance of the contest with the provisions of the law and the Rules of Procedure, in particular:

- 1) cancels the design contest;
- 2) approves the outcome of the design contest.

### **Section 4**

#### **Unlimited and restricted design contest**

#### **Article 338.**

An unlimited design contest is a procedure for conducting a design contest, in which all interested participants may submit contest projects in response to a public contest notice.

#### **Article 339.**

A restricted design contest is a procedure for conducting a design contest, in which, in response to a contest notice, the participants submit requests to participate in the design contest, and contest projects may only submit the participants invited to submit their works.

#### **Article 340.**

1. The contracting body shall initiate a design contest by:
  - 1) dispatching a contest notice to the Publications Office of the European Union where the value of the contest is equal to or exceeds the EU thresholds;
  - 2) publication of a contest notice in the Public Procurement Bulletin, where the value of the contest is below the EU thresholds.
2. The provisions of Articles 86 to 88 and 90 shall apply accordingly to contest notices and, if the

value of a design contest is below the EU thresholds – Articles 267 and 269 to 272.

3. The contracting body shall ensure, on the website of the design contest, free of charge, full, direct and unlimited access to the Rules of Procedure, as from the date of publication of the contest notice in the Official Journal of the European Union or in the Public Procurement Bulletin, not less than the expiry of the time limit for submitting the contest projects.

#### **Article 341.**

1. A design contest participant may request the contracting body to clarify the content of the Rules of Procedure.

2. Article 284 shall apply accordingly to clarification of the content of the Rules of Procedure.

#### **Article 342.**

1. In justified cases, the contracting body may change the content of the Rules of Procedure:

- 1) in an unlimited design contest before the time limit for submitting the contest projects;
- 2) in a restricted design contest, before the time limit for submission of requests to participate in the contest.

2. Changing the content of the Rules of Procedure after expiry of the time limits referred to in para. 1, is inadmissible unless it concerns a change in the composition of the jury.

3. The contracting body shall make the change of the Rules of Procedure available on the website of the design contest.

4. The provisions of Article 137 para. 4-7 shall apply accordingly to changes in the content of the Rules of Procedure and, if the value of the design contest is below the EU thresholds – the provisions of Article 286 para. 3, 5, 6 and 9.

#### **Article 343.**

1. In a restricted design contest, the contracting body shall set a time limit for the submission of requests to participate in a design contest, taking into account the time for the submission of the required qualitative means of proof, however this period may not be less than 21 days from the date on which the contest notice is dispatched to the Publications Office of the European Union. The provisions of Article 145, Article 146 para. 2 and Article 148 shall apply accordingly.

2. If the value of the design contest is below the EU thresholds, the contracting body in a restricted design contest shall set a time limit for the submission of requests to participate in the design contest, taking into account the time for the submission of the required qualitative means of proof, however this period may not be less than 14 days from the date of the publication of the contest notice in the Public Procurement Bulletin. The provisions of Article 145, Article 146 para. 2 and Article 148 shall apply accordingly.

3. The contracting body shall reject a request to participate in a design contest if:

- 1) it is submitted after the time limit for submission of requests;
- 2) has been submitted by a contest participant who failed to demonstrate compliance with the contracting body's requirements specified in the contest notice and the Rules of

Procedure;

- 3) is inconsistent with the provisions of the Act;
- 4) is invalid under separate provisions;

4a) was submitted by a contestant from a third country not party to an international agreement, or jointly with a contestant from a third country not party to an international agreement, unless the contracting body specified in the contest notice or Rules of Procedure that contestants, including participants jointly participating in the design contest, may originate from third countries not parties to international agreements;

- 5) it has not been drawn up or submitted in accordance with the technical and organisational requirements for the preparation or submission of requests using electronic means of communication specified by the contracting body.

4. The contracting body shall inform all participants of the design contest about the results of the evaluation of requests to participate in the design contest.

5. At the same time, the contracting body shall invite the participants of the design contest, whose requests to participate in the procedure shall not be rejected, to submit their contest projects.

#### **Article 344.**

The contracting body shall set a time limit for the submission of the contest project, taking into account the time necessary for the preparation and submission of the project.

#### **Article 345.**

1. A participant of the design contest may submit one contest project.
2. The contest project not complying with the provisions of the Act, the contest notice or the Rules of Procedure, submitted after the time limit and submitted by the participant whose request to participate has been rejected, shall not be evaluated.

#### **Article 346.**

The content of the contest projects may not be reviewed by the jury before the time limit for their submission.

#### **Article 347.**

1. The jury shall evaluate the contest projects in accordance with the criteria laid down in the contest notice and the Rules of Procedure.
2. The contracting body shall define the criteria for the evaluation of the contest projects in an unambiguous and understandable manner, ensuring the possibility of selecting the best contest project, taking into account the maximum planned total cost of the works carried out on the basis of the contest project.
3. The criteria for the evaluation of the contest projects shall not concern the characteristics of the contest participant.

#### **Article 348.**

1. Where the explanations of a contest participant may be helpful in the evaluation of the contest project, the jury through the contracting body may ask the participant to provide explanations.

Article 223 para. 1 shall apply accordingly.

2. The contracting body shall organise the explanation of the contest project in such a way as to prevent the identification of the participant.

#### **Article 349.**

1. A record on the work of the jury shall be drawn up based on the course of the work of the jury.

2. The record shall include, in particular, a list of the contest projects, their ranking and comments from the members of the jury, together with conclusions and recommendations, including an indication of aspects of the contest project that need explanations. Explanations of contest participants are attached to this report.

3. The record is part of the design contest documentation.

#### **Article 350.**

1. The jury shall resolve the design contest by selecting the best contest project or the best contest projects from among all projects.

2. The jury shall identify all the contest projects after resolving the contest.

#### **Article 351.**

The participants shall submit their contest projects together with information on the planned total costs of works carried out on the basis of the contest project, unless it is not possible to determine the costs due to the specific nature of the subject-matter of the design contest.

#### **Article 352.**

1. The participants in an unlimited design contest submit their design projects and a written application for participation in the design contest.

2. The application for participation shall contain the name and surname or the name and address of the participant.

#### **Article 353.**

1. The contracting body shall immediately after the conclusion of the unlimited design contest call upon the author of the selected contest project or the authors of selected projects to submit the means of proof related to the subject-matter of the contest confirming the possession of the authorisations referred to in Article 330 para. 2, setting a time limit for their submission.

2. The participant in the design contest, in the circumstances referred to in para. 1 which does not demonstrate the authorisations referred to in Article 330 para. 2, does not receive a prize.

### **Section 5**

#### **Conclusion of the design contest**

#### **Article 354.**

Immediately after approval of the contest resolution or its cancelation, the contracting body shall at the same time notify the participants about the results and received grades, providing the

name, surname and place of residence or company name, seat or place of business activity of the author of the selected project or the authors of selected projects.

#### **Article 355.**

1. The contracting body shall cancel the design contest if:

- 1) no request to participate in the design contest or no contest project has been submitted;
- 2) all requests to participate in the design contest were rejected, or all contest projects were not subject to evaluation;
- 3) there has been a change in circumstances causing that the conduct of the design contest is not in the public interest, which could not have been anticipated in advance;
- 4) the contest is burdened with a defect that affects or may affect its outcome.

2. The contracting body may cancel the design contest if only one contest project or only one request to participate in the contest has been submitted.

3. The contracting body may cancel the design contest referred to in Article 326 point 2, if the public funds which the contracting body intended to allocate to finance a contract awarded under a single-source procurement or negotiated procedure without publication have not been granted to it.

4. The contracting body shall provide for the reimbursement of the costs of preparing the contest project to the participants who have submitted the contest projects subject to evaluation, if the cancellation of the contest took place for reasons attributable to the contracting body.

#### **Article 356.**

1. Within the time limit laid down in the Rules of Procedure, not less than 15 days from the date of approval of the contest resolution, the contracting body shall, in the case referred to Article 326 point 1, pay a cash prize or issue a prize in kind and, in the case referred to in Article 326 point 2, shall invite to negotiate under negotiated procedure without publication or single-source procurement, respectively, the authors of the selected projects or the author of the selected project and, if has provided for a prize, shall issue or pay a prize.

2. If the negotiations conducted under a single-source procurement procedure with the author of the selected contest project have not led to the conclusion of a public procurement contract, the contracting body may invite to negotiate under this procedure the participant whose contest project received the second highest grade, and the contracting body has provided for this possibility in the Rules of Procedure.

#### **Article 357.**

Immediately after approval of the contest resolution or its cancelation, the contracting body shall dispatch a notice on its result to the Publications Office of the European Union and, if the value of the contest is below the EU thresholds, it shall publish it in the Public Procurement Bulletin.

#### **Article 358.**

1. The contracting body shall keep the documentation of the design contest for a period of 4 years from the date on which the results of the contest were determined, in the form in which it was drawn up or forwarded, in a manner that ensures its integrity and readability.

2. The contracting body shall, at the request of the participants whose contest projects have not been awarded, return the contest projects submitted by them.
3. The contracting body shall, at the request of the participants, return the studies submitted by them, with the exception of the study, on the basis of which the selection of the contest project was made.
4. Contest projects which have not been awarded and studies shall not be made public.
5. The provisions of Article 74 para. 3 and 4, Article 75, Article 76, Article 78 para. 2 and Article 79 para. 2 shall apply accordingly.

## **Chapter 4**

### **Contracts for social and other specific services**

#### **Article 359.**

When awarding contracts for social and other specific services, the provisions of the Act applicable to:

- 1) classical contracts, with a value equal to or exceeding the EU thresholds shall apply – if the value of the contract expressed in PLN is equal or exceeds the equivalent of EUR 750,000, taking into account the changes resulting from this Chapter;
- 2) classical contracts with a value below the EU thresholds shall apply – if the value of the contract expressed in PLN is less than the equivalent of EUR 750,000, however not less than PLN 170,000.

#### **Article 360.**

When awarding contracts referred to in Article 359 point 1, the contracting body may not apply the provisions of the Act concerning:

- 1) the obligation to appoint a tender committee;
- 2) the obligation to submit the statement referred to in Article 125 para. 1, on the form of the single document;
- 3) the minimum time limits for submitting requests to participate in the procedure or for submitting tenders;
- 4) the obligation to request documents as a qualitative means of proof;
- 5) the conditions for choosing the award procedure, in the case of negotiated procedure with publication or competitive dialogue.

#### **Article 361.**

1. In the case of contracts referred to in Article 359 points 1 and 2, the contracting body may stipulate in the contract notice or in the prior information notice that for the award of a contract for health, social and cultural services falling within CPV codes 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, from 85000000-9 to 85323000-9, 92500000-

6, 92600000-7, 98133000-4, 98133110-8, specified in the Common Procurement Vocabulary, only economic operators who meet all of the following conditions may apply:

- 1) the purpose of their activity is to carry out the general interest tasks related to the provision of these services as well as social and professional integration of the persons referred to in Article 94;
- 2) their activity is not intended to generate profit, they allocate all income for the implementation of statutory objectives and do not allocate the profit for distribution to their shareholders and employees;
- 3) their management structure or ownership structure is based on co-management in the case of cooperatives, employee shareholding or employee participation principles, which the economic operator defines in its statute;
- 4) within the last 3 years preceding the date of launch of a procurement procedure for social and other specific services, they have not been awarded a contract under this provision by the same contracting body.

2. In the cases, referred to in para. 1, a public procurement contract may not be concluded for a period of more than 3 years.

3. The contracting body may request documents or declarations to confirm compliance with the conditions referred to in paragraph 1 points 1-3, in particular the certificate referred to in Art. 27 of the Act of 5 August 2022 on social economy (Journal of Laws, item 1812).

## **TITLE V**

### **Public contracts in utilities sectors**

#### **Chapter 1**

#### **Scope of application**

#### **Article 362.**

The following shall apply to the award of public contracts in utilities sectors:

- 1) Title II, with the exception of Article 83, Article 89, Article 91 para. 2, Article 115 paragraph 2 and with the exception of Chapter 3, unless otherwise specified in this title;
- 2) Title IV, except for the provisions of Chapter 1, Article 319 para. 1 and Article 325 para. 2.

#### **Article 363.**

1. The provisions of the Act shall not apply to public contracts in utilities sectors awarded for the purpose of resale, rental or lease of the subject-matter of the public contract to third parties, provided that the contracting body does not have a special or exclusive right to sell, rent or lease the subject of the public contract and other entities may sell, rent or lease it without restriction under the same conditions as the contracting body.

2. The provisions of the Act shall not apply to public contracts in utilities sectors and design

contests awarded for the purpose of carrying out activity in utilities sectors referred to in Article 5 para. 4, outside the territory of the European Union, where a network located within the European Union or the territory of the European Union is not used for its operation.

3. The contracting body shall, at the request of the European Commission, provide information to the extent referred to in para. 1 and 2.

#### **Article 364.**

1. Contracting bodies carrying out activities in utilities sectors referred to in Article 5 para. 4 points 2, 3 and 7, do not apply the provisions of the Act to the award of public contracts in utilities sectors for:

- 1) the the supply of energy and fuels for energy generation, as well as the purchase of the certificates of origin or the agricultural biogas certificates of origin, in order to fulfil the obligation referred to in Article 52 para. 1 point 1 of the Act of 20 February 2015 on renewable energy sources, the purchase of the energy efficiency certificates, in order to fulfil the obligation referred to in Article 10 para. 1 point 2 of the Act of 20 May 2016 on energy efficiency, and the purchase of the guarantees of origin referred to in Article 120 para. 1 of the Act of 20 February 2015 on renewable energy sources;
- 2) transmission, storage, distribution of gaseous fuels, liquefied natural gas and re-gasification of liquefied natural gas.

2. Contracting bodies carrying out activities in utilities sectors referred to in Article 5 para. 4 point 1, do not apply the provisions of the Act to the award of water supply contracts.

#### **Article 365.**

1. The provisions of the Act shall not apply to public supply contracts in utilities sectors awarded to entities:

- 1) whose data, together with the contracting body's data, are covered by the annual consolidated financial statements within the meaning of the Accounting Act of 29 September 1994 (Journal of Laws of 2019, item 351, 1495, 1571, 1655 and 1680),
- 2) in which contracting bodies hold more than half of the shares or stakes, hold more than half of the votes resulting from shares or stakes, supervise the management body or have the right to appoint more than half of the composition of the supervisory or management body,
- 3) which hold more than half of the shares or stakes of the contracting body, hold more than half of the votes resulting from the shares or stakes of the contracting body, supervise its management body or have the right to appoint more than half of the composition of its supervisory or management body,
- 4) which, together with the contracting body, are subject to the influence of another undertaking as defined in point 3

- where, in the preceding 3 years, at least 80 % of the average revenues of those entities generated from the provision of supplies have derived from the provision of supplies to the contracting body or to the entities referred to in points 1 to 4.

2. The provisions of the Act shall not apply to utilities procurement for services awarded to entities:

- 1) whose data, together with the data of the contracting body, are covered by the annual consolidated financial statements within the meaning of the Accounting Act of 29 September 1994,
- 2) in which contracting bodies hold more than half of the shares or stakes, hold more than half of the votes resulting from shares or stakes, supervise the management body or have the right to appoint more than half of the composition of the supervisory or management body,
- 3) which hold more than half of the shares or stakes of the contracting body, hold more than half of the votes resulting from the shares or stakes of the contracting body, supervise its management body or have the right to appoint more than half of the composition of its supervisory or management body,
- 4) which, together with the contracting body, are subject to the influence of another undertaking as defined in point 3

- where, in the preceding 3 years, at least 80 % of the average revenues of those entities generated from the provision of services have derived from the provision of services to the contracting body or to the entities referred to in points 1 to 4.

3. The provisions of the Act shall not apply to public works contracts in utilities sectors awarded to entities:

- 1) whose data, together with the data of the contracting body, are covered by the annual consolidated financial statements within the meaning of the Accounting Act of 29 September 1994,
- 2) in which Contracting bodies hold more than half of the shares or stakes, hold more than half of the votes resulting from shares or stakes, supervise the management body or have the right to appoint more than half of the composition of the supervisory or management body,
- 3) which hold more than half of the shares or stakes of the contracting body, hold more than half of the votes resulting from the shares or stakes of the contracting authority, supervise its management body or have the right to appoint more than half of the composition of its supervisory or management body,
- 4) which, together with the contracting body, are subject to the influence of another undertaking as defined in point 3

— where, in the preceding 3 years, at least 80 % of the average revenues of those entities generated from the provision of works have derived from the performance of works to the contracting body or entities, referred to in points 1 to 4.

4. Where the duration of the activity referred to in paragraph 1-3 is less than 3 years, the revenues generated during that period and the revenues expected to be achieved in the remaining period until the end of 3 years shall be taken into account.

### **Article 366.**

1. The provisions of the Act shall not apply to public contracts in utilities sectors awarded by an entity created by Contracting bodies for the purpose of joint pursuit of activities in utilities sectors referred to in Article 5 para. 4:

- 1) to one of those Contracting bodies, provided that the entity has been set up for a period of at least 3 years and from the document on which it was created, it appears that the Contracting bodies will remain its members during that period, or
- 2) an entity affiliated to one of those Contracting bodies as defined in Article 365 where, in the previous 3 years, at least 80 % of the average revenue of that entity generated from the provision of supply, provision of services or the performance of works have derived respectively from the provision of supply, provision of services or the performance of works to the entities with which it is affiliated.

2. The provisions of the Act shall not apply to public contracts in utilities sectors awarded to an entity set up by Contracting bodies for the purpose of joint pursuit of activities in utilities sectors referred to in Article 5 para. 4, by one of those Contracting bodies, provided that the entity was created for a period of at least 3 years and from the document on which it was created, it appears that the Contracting bodies will remain its members during that period.

3. In the case referred to in para. 1, point 2, Article 365 para. 4 shall apply.

### **Article 367.**

Where, among the entities ,referred to in Article 365, more than one entity provides the same or similar services to the contracting body or provides the same or similar supplies or performs the same or similar works, the total revenue of all those entities resulting respectively from the provision of services or from the provision of supplies or from the performance of works shall be taken into account.

### **Article 368.**

The contracting body shall, at the request of the European Commission, provide information to the extent referred to in Articles 365 and 366.

## **Chapter 2**

### **Periodic indicative notice**

### **Article 369.**

1. The contracting body may submit for publication to the Publications Office of the European Union or publish on the contracting body's website a periodic indicative notice on the public contracts in utilities sectors or framework agreements planned for a period which is not longer than 12 months.

2. Where a periodic indicative notice is published by the contracting body on the contracting body's website, the contracting body shall submit for publication to the Publications Office of the European Union a notice of the publication of the periodic indicative notice on the contracting

body's website.

### **Article 370.**

1. A periodic indicative notice on planned public contracts in utilities sectors may be a call for competition for public contracts in utilities sectors. In such a case, the contracting body shall not publish a contract notice when awarding a public contract under restricted tender procedure and sectoral negotiations with publication.

2. A periodic indicative notice may be posted by the contracting body on the contracting body's website, after publication of that notice in the Official Journal of the European Union or 48 hours after confirmation of receipt of the notice by the Publications Office of the European Union.

3. In the case referred to in para. 1, the contracting body shall invite economic operators who, after publication of the periodic indicative notice, have informed the contracting body that they are interested in participating in the procedure, to confirm that interest, while informing the time limit for receipt of requests to participate in the procedure.

4. The periodic indicative notice shall include:

- 1) an explicit reference to the supplies, works or services constituting the subject-matter of public contract in utilities sectors to be awarded;
- 2) an indication that the public contract in utilities sectors will be awarded under restricted tender procedure or sectoral negotiations with publication, without further publication of a contract notice, on the basis of invitation to confirm interest;
- 3) an invitation addressed to economic operators to express their interest;
- 4) additional information set out in Annex VI, Part A, Sections I and II to Directive 2014/25/EU.

5. The periodic indicative notice shall be submitted to the Publications Office of the European Union at least 35 days and not more than 12 months before the date of sending the invitation to confirm interest.

6. The invitation to confirm interest shall include at least:

- 1) the name and address of the contracting body;
- 2) the type and size or scope of the public contract, including options and renewals and, where possible, the expected time limit for the execution of these options and renewals;
- 3) the type and size or scope of recurring public contracts and, where possible, the anticipated publication date for future notices relating to those public contracts;
- 4) information on the procedure for awarding a public contract in utilities sectors;
- 5) where appropriate, the date of commencement or termination of supplies, works or services;
- 6) economic and technical conditions, financial guarantees and information required from economic operators;
- 7) the contract award criteria and their weight or, where applicable, the order of those criteria according to their validity from the most important to the least valid if this is not specified

in the periodic indicative notice, in the description of the subject matter of the public contract or in the invitation to submit tenders or to negotiate;

- 8) the address of the website at which the specification of terms of a contract (STC) is available;
- 9) in the cases referred to in Article 65 paragraph 1, the place and the date of making available the STC and the language or languages in which it is drawn up.

### **Chapter 3**

#### **Qualification system of economic operators**

##### **Article 371.**

1. The contracting body may establish and operate a system of qualification of economic operators, to participate in which contracting body shall allow economic operators which are not excluded and fulfil the conditions for participation in the qualification system of economic operators for a particular category of public contracts in utilities sectors, and shall enter them in the list of qualified economic operators.

2. The contracting body shall specify in the notice on a qualification system of economic operators the grounds for exclusion and the conditions for participation in the qualification system of economic operators and objective criteria and rules for the functioning of that system, in particular covering the inscription in the list of qualified economic operators, periodic update of the conditions for participation and the grounds for exclusion, if any, and the duration of the system. Where the conditions for participation in the qualification system of economic operators relate to the required characteristics of supplies, services or works, Articles 99 to 106 shall apply accordingly.

2a. The contracting body may specify in the notice on a qualification system of economic operators that economic operators from third countries not parties to international agreements, or economic operators together with economic operators from third countries not parties to international agreements, may also apply for admission to qualification system of economic operators.

3. A qualification system of economic operators shall be set up for a limited period in such a way as to enable economic operators to submit requests to participate in the system and update them throughout the duration of the system.

4. The contracting body may specify in the procurement documents or in the contract notice - requirements for keeping the confidential nature of the information provided to the economic operator in connection with the qualification system of economic operators.

5. To specify:

- 1) grounds for exclusion in the qualification system of economic operators the provisions of Title II, Chapter 2, Section 1 and Article 393 para. 1, point 2 shall apply;

- 2) conditions for participation in the qualifying system of economic operators, the provisions of Title II, Chapter 2 Section 2 and 3 and Article 393 para. 1 point 2 shall apply accordingly.

#### **Article 372.**

1. The contracting body shall establish a qualification system of economic operators by submitting a notice on a qualification system of economic operators for publication in the Official Journal of the European Union.
2. In the case of a qualification system of economic operators established for a period longer than 3 years, the notice on the qualification system of economic operators shall be published annually in the Official Journal of the European Union.
3. The contracting body shall make available on the website a notice on the qualification system of economic operators throughout the duration of the system.
4. The contracting body may change the duration of the qualification system of economic operators:
  - 1) without terminating the system, by submitting for publication in the Official Journal of the European Union the notice referred to in para. 1.
  - 2) in the event of termination of the system, by submitting for publication in the Official Journal of the European Union the notice referred to in Article 265 para. 1.

#### **Article 373.**

1. The economic operator requesting to participate in the qualification system of economic operators shall submit a request together with a declaration of non-exclusion and fulfilment of the conditions for participation in the qualification system of economic operators laid down by the contracting body in the notice on a qualification system of economic operators and, if the contracting body requests qualitative means of proof or the means of proof relating to subject matter of a public contract, also those means of proof. If the contracting body requires qualitative means of proof, the economic operator may instead of the qualitative means of proof submit the certificate referred to in Article 124 para. 2. The provisions of Article 125 paragraph 2 to 6, Articles 127, 128 and 393 para. 1 points 1 and 3 shall apply accordingly.
2. The contracting body shall inform the economic operator of the decision to qualify for the qualification system of economic operators immediately, no later than 4 months from the date of submission of the request.
3. If, in the contracting body's assessment, the decision referred to in para. 2 has been taken later than 4 months from the date on which the request is lodged, the contracting body shall inform the economic operator within 2 months of the date on which the request was submitted of the reasons for the extension of that period and of the date by which his request will be examined. The decision to qualify the economic operator cannot be notified later than 6 months from the date of submission of the request by the economic operator.
4. The contracting body shall immediately notify the economic operator of its refusal to participate in the qualifying system of economic operators, but not later than 15 days from the date of the refusal decision, stating the reasons in fact and in law, taking into account the time limit referred

to in paragraph 3 second sentence.

#### **Article 374.**

1. The economic operators admitted to the qualification system of economic operators shall be included in the list of qualified economic operators, in the relevant category of public contracts in utilities sectors, maintained by the contracting body and updated throughout the duration of the system.
2. The economic operators included in the list of qualified economic operators in the relevant category of public contracts in utilities sectors shall not be obliged to confirm the absence of grounds for exclusion and fulfil the conditions for participation indicated in the notice on qualification system of economic operators for subsequent public contracts covered by this category of public contracts in utilities sectors.
3. The contracting body shall inform of its intention to delete from the list referred to in para. 1, an economic operator who no longer fulfils the criteria for the selection of economic operators no later than 15 days before the planned deletion.

#### **Article 375.**

1. The contracting body may launch a procurement procedure for public contracts in utilities sectors by means of restricted tender procedure, sectoral negotiations with publication, competitive dialogue or innovation partnership, by submitting for publication in the Official Journal of the European Union a notice on a qualification system of economic operators which constitutes a call for competition.
2. In the circumstances referred to in para. 1:
  - 1) the contracting body shall not publish a contract notice;
  - 2) economic operators authorised to participate in the procedure shall be considered eligible for participation in the qualification system of economic operators in a specific category of public contracts in utilities sectors;
  - 3) the contracting body shall at the same time submit to economic operators admitted to the system, respectively, an invitation to tenders, preliminary tenders, to participate in a dialogue or negotiations in the case of restricted tender procedure, innovation partnerships, competitive dialogue or sectoral negotiations with publication;
  - 4) the contracting body shall ensure, on the website on which the procurement procedure is held, free of charge, full, direct and unlimited access to procurement documents, immediately, but not later than from the date of dispatch of the invitation to tender, preliminary tenders, to participate in a dialogue or negotiations in the case of restricted tenders, innovation partnerships, competitive dialogue or sectoral negotiations with publication.

## **Procedures for awarding public contracts in utilities sectors**

### **Article 376.**

1. Contracting entities shall award public contracts under one of the following procedures:
  - 1) an open procedure;
  - 2) a restricted procedure;
  - 3) sectoral negotiations with publication;
  - 4) a competitive dialogue;
  - 5) an innovation partnership.
2. Contracting entities may award public contracts under negotiated procedure without publication or single-source procurement in the cases referred to in this Chapter.

### **Article 377.**

1. Contracting entities shall initiate a procurement procedure by transmission of a call for competition by means of:
  - 1) contract notices in the case of open tender procedure, restricted tender procedure, sectoral negotiations with publication, competitive dialogue or innovation partnership;
  - 2) notice on a qualification system of economic operators constituting a call for competition in the case of restricted tender procedure, sectoral negotiations with publication, competitive dialogue or innovation partnership;
  - 3) a periodic indicative notice constituting a call for competition in the case of restricted tender procedure or sectoral negotiations with publication;
  - 4) invitation to negotiate in the case of negotiated procedure without publication or single-source procurement.
2. The contracting body shall submit the notices in accordance with the format and procedures for the electronic transmission of notices established by the European Commission, available on the website referred to in paragraph 3 of Annex IX to Directive 2014/25/EU.

### **Article 378.**

1. Articles 132 to 139 shall apply to open tender procedure.
2. In an open tender procedure, the contracting body may set a time limit for the receipt of tenders not less than 15 days from the date of transmission of the contract notice to the Publications Office of the European Union, if the public contract information was included in the periodic indicative notice concerning public contracts planned within 12 months, submitted or posted on the contracting body's website at least 35 days before the date of the transmission of the contract notice to the Publications Office of the European Union.

### **Article 379.**

1. Articles 140 and 142 to 151 shall apply to restricted tender procedure.
2. The contracting body shall provide, on the website of the procedure conducted, free of charge,

full, direct and unrestricted access to the tender specification from the date of publication of the contract notice in the Official Journal of the European Union or from the date of dispatch of the invitation to confirm interest, not less than the date of award of the public contract. The provisions of Article 133 para. 2 and 3 shall apply.

3. In a restricted tender procedure, the contracting body may set:

- 1) a time limit for receipt of requests to participate in procedure not less than 30 days from the date on which the contract notice is submitted to the Publications Office of the European Union or of the invitation to confirm interest and, in exceptional cases, 15 days from the date of transmission of the contract notice to the Publications Office of the European Union or the transmission of an invitation to confirm interest;
- 2) a time limit for the submission of tenders not less than 10 days, taking into account the time needed to prepare and submit a tender;
- 3) any time limit for the submission of tenders, if all economic operators who are invited to tender have given their consent.

#### **Article 380.**

Sectoral negotiations with publication are a contract award procedure in which, in response to a notice published in the Official Journal of the European Union, which constitutes a call for competition, economic operators submit requests to participate in the procedure, the contracting body shall invite the economic operators admitted to participate in the procedure, negotiate with them and then invite them to submit tenders.

#### **Article 381.**

1. For sectoral negotiations with the publication Article 155 para. 1, Article 156 para. 1 points 1 to 5 and 7 to 16, 18 and 19 and paragraphs 2 and 3, Article 157 para. 1, Article 158 para. 2, Article 167 and Article 168 shall apply accordingly.

2. The contracting body shall provide, on the website of the procedure conducted, free of charge, full, direct and unrestricted access to a description of the needs and requirements from the date of publication of the contract notice in the Official Journal of the European Union or from the date of dispatch of the invitation to confirm interest, not less than the date of award of the public contract. The provisions of Article 133 para. 2 and 3 shall apply accordingly.

3. In a procedure conducted under sectoral negotiations with publication, the contracting body may set:

- 1) a time limit for receipt of requests to participate in procedure not less than 30 days from the date on which the contract notice is submitted to the Publications Office of the European Union or of the invitation to confirm interest and, in exceptional cases, 15 days from the date of transmission of the contract notice to the Publications Office of the European Union or the transmission of an invitation to confirm interest;
- 2) a time limit for the submission of tenders not less than 10 days from the date of transmission of the invitation to tender, taking into account the time needed to prepare and submit a tender;

3) any time limit for the submission of tenders, if all economic operators who are invited to tender have given their consent.

4. At the same time, the contracting body shall invite economic operators whose requests to participate in the procedure were not subject to rejection.

5. The contracting body may limit the number of economic operators invited to negotiate whose requests were not rejected, provided that the number is sufficient to ensure competition and is not less than 3.

6. In the case referred to in para. 5, the contracting body shall indicate in the contract notice and in the description of the needs and requirements the selection criteria which it intends to use in order to reduce the number of economic operators invited to negotiate, and shall indicate the minimum number of economic operators to be invited to negotiate. The contracting body may indicate the maximum number of economic operators to be invited to negotiate.

7. A request to participate in the procedure of an economic operator not invited to negotiate shall be deemed to be rejected.

8. The negotiations shall not lead to changes to the minimum requirements and the contract award criteria and their weights set out by the contracting body in the notice initiating the procedure and in the description of needs and requirements.

9. During the negotiations, the contracting body shall ensure equal treatment of all economic operators. The negotiations under way are confidential.

#### **Article 382.**

The provisions of Articles 169, 171 to 175 and Article 176 para. 2 and 3 and Articles 177 to 188 shall apply to the competitive dialogue.

#### **Article 383.**

The provisions of Articles 189 to 193, Article 194 para. 2, Article 195 and Articles 197 to 207 shall apply to innovation partnership.

#### **Article 384.**

In a competitive dialogue or innovation partnership procedure, the contracting body may set a time limit for the submission of:

- 1) requests to participate in procedure not less than 30 days from the date of transmission of the contract notice to the Publications Office of the European Union or of the invitation to confirm interest and, in exceptional cases, 15 days from the date of transmission of the contract notice to the Publications Office of the European Union or the transmission of an invitation to confirm interest;
- 2) tenders taking into account the time needed to prepare and submit a tender.

#### **Article 385.**

1. In the case of a procedure for awarding public contract in utilities sectors conducted under restricted tender procedure, sectoral negotiations with publication, competitive dialogue or innovation partnership, the contracting body may limit the number of economic operators invited

to submit tenders, to negotiate, to participate in a dialogue or to submit preliminary tenders.

2. The contracting body shall indicate in the contract notice, the notice on qualification system of economic operators or in the invitation to confirm interest the selection criteria it intends to apply and the number of economic operators it intends to invite to ensure competition.

#### **Article 386.**

1. The provisions of Articles 208 and 210 to 212 shall apply to negotiations without publication.

2. Public contract in utilities sectors may be awarded by negotiated procedure without publication:

- 1) in the cases referred to in Article 209 para. 1 points 2 to 4;
- 2) where no request to participate has been received in an open tender procedure, restricted tender procedure, sectoral negotiations with publication, competitive dialogue or innovation partnership, or all requests to participate in the procedure have been rejected pursuant to Article 146 para. 1 point 2, either no tenders have been submitted or all tenders have been rejected pursuant to Article 226 para. 1 point 2 or, because of their non-compliance with the description of the subject matter of the public contract, pursuant to Article 226 para. 1 point 5 and the initial conditions of the public contract have not been substantially altered.

#### **Article 387.**

The provisions of Articles 213 and Articles 215 to 217 shall apply to single-source procurement.

#### **Article 388.**

Public contract in utilities sectors may be awarded by single-source procurement:

- 1) in the cases referred to in Article 214 paragraph 1, points 1 to 5 and 9 to 14;
- 2) if:
  - a) given the particularly favourable circumstances of a very short period of time, it is possible to award the public contract at a price significantly lower than the market price,
  - b) in the case of awarding a basic public contract to an existing economic operator, public contracts for additional supplies intended to partially replace the delivered products or installations, or increase current supplies or extension of existing installations, if a change of economic operator would oblige the contracting body to purchase materials of other technical characteristics, which would result in technical incompatibility or disproportionate technical difficulties in the operation and maintenance of those products or installations,
  - c) the public contract shall be awarded to the existing economic operator of services or works and consists of a repetition of similar services or works where such a public contract was provided for in the contract notice for a basic public contract and is consistent with its subject matter and the total value of that public contract has been taken into account in the estimation of its value, and the description of the

basic public contract indicates the extend of those services or works and the - conditions under which they will be awarded;

- d) in an open tender procedure, restricted tender procedure, sectoral negotiations with publication, competitive dialogue or innovation partnership, no request to participate or all requests to participate have been rejected pursuant to Article 146 para. 1 point 2, either no tenders have been submitted or all tenders have been rejected pursuant to Article 226 para. 1 point 2 or, because of their non-compliance with the description of the subject matter of the public contract, pursuant to Article 226 para. 1 point 5 and the initial conditions of the public contract have not been substantially altered.

## **Chapter 5**

### **Specific instruments and procedures in the field of public contracts in utilities sectors**

#### **Article 389.**

1. The contracting body may conclude a framework agreement after conducting the procedure under one of the procedure for awarding public contracts in utilities sectors provided for in the Act.
2. Public contracts under a framework agreement shall be awarded on the basis of objective rules and criteria which may include reopening the competition among those economic operators party to the framework agreement as concluded.
3. The contracting body shall specify the rules and mean of awarding public contracts under a framework agreement in the procurement documents relating to the framework agreement.
4. The contracting body may conclude a framework agreement for a period of not more than 8 years, unless there are exceptional situations justified by the subject of the agreement. The provisions of Title VII shall apply to the framework agreement.
5. The award of a public contract covered by a framework agreement may only take place between the Contracting bodies indicated in the contract notice and the economic operators party to the framework agreement.
6. The provision of Article 253 para. 1 shall apply to public contracts covered by a framework agreement awarded after reopening the public contract to competition between economic operators that are party to the framework agreement.
7. Where a framework agreement has been concluded with more economic operators after all tenders have been submitted in the form of electronic catalogues, the contracting body may decide that the reopening of the public contract to competition will take place on the basis of updated electronic catalogues.
8. In the case referred to in para. 7, the contracting body shall:
  - 1) invite economic operators to resubmit electronic catalogues, adapted to the requirements of a public contract in question, or
  - 2) inform economic operators that it will collect from electronic catalogues which have already been submitted the data needed to draw up tenders adapted to the requirements

of the public contract in question, provided that it has informed about it in the contract notice or procurement documents relating to the framework agreement.

9. In the case referred to in para. 8 point 2, the contracting body shall:

- 1) inform economic operators with due advance of the date and time of collection of the data needed to draw up tenders adapted to the requirements of the public contract in question and provide economic operators with the opportunity to update the electronic catalogues or refuse such data collection;
- 2) before awarding the public contract, it shall present to the economic operator to whom it intends to award the public contract the data collected and shall set a reasonable period for the economic operator to contest or confirm that the tender so drawn up does not contain material errors, where the economic operator fails to contest the tender so drawn up within the prescribed period, it shall be deemed to have submitted a tender.

#### **Article 390.**

1. The contracting body may not submit to the Publications Office of the European Union a notice containing information on the award of a public contract covered by a framework agreement or the cancellation of the procedure for the award of such a public contract.

2. Where the contracting body submits to the Publications Office of the European Union a notice containing information on the award of a public contract covered by a framework agreement or the cancellation of a public contract award procedure, Article 265 para. 2 shall apply.

#### **Article 391.**

1. The contracting body may establish a dynamic purchasing system.

2. From the date of publication of a contract notice in the Official Journal of the European Union or, where a periodic indicative notice is used as a call for competition, from the date of transmission of the invitation to confirm interest, the contracting body shall make available on the website of the dynamic purchasing system information on the use of the dynamic purchasing system together with information on the dynamic purchasing system and in particular:

- 1) identification of the subject matter of the public contracts covered by the dynamic purchasing system together with the estimated quantity;
- 2) the duration of the dynamic purchasing system;
- 3) the foreseen time limits for the awarding public contracts;
- 4) technical requirements for ICT equipment necessary for communication between contracting body and economic operators, including the transmission of tenders;
- 5) the way of functioning of the dynamic purchasing system;
- 6) the breakdown by categories of supplies, services or works together with the characteristics defining those categories, provided that the dynamic purchasing system is subdivided into categories;
- 7) whether it is required to submit tenders in the form of an electronic catalogue or to add an electronic catalogue to the tender.

3. The information referred to in para. 2, are available on the website of the dynamic purchasing system throughout the duration of the dynamic purchasing system.

4. In a dynamic purchasing system, the minimum time limit for receipt of requests to participate in a dynamic purchasing system shall, as a general rule, be at least 30 days from the date of transmission of the contract notice or, where a periodic indicative notice is used as a call for competition, from the date of transmission of the invitation to confirm interest and shall in no case be less than 15 days.

5. In a dynamic purchasing system, the time limit for the receipt of tenders may be fixed by mutual agreement between the contracting body and the economic operators admitted to participate in the procedure, provided that all economic operators have the same time to prepare and submit tenders. Where no agreement on the time limit for the submission of tenders is reached, that time limit shall be at least 10 days from the date on which the invitation to tender is notified.

6. The provisions of Article 316, Article 317, Article 319 para. 2, Articles 320 to 322, Article 323 paragraphs 2 to 7 and Article 324 shall apply to the dynamic purchasing system..

#### **Article 392.**

1. The provisions of the Act applicable to public contracts in utilities sectors shall apply to the award of public contracts in utilities sectors for social services and other specific services, if the value of the public contract is equal to or exceeds the equivalent of EUR 1 000 000, expressed in PLN.

2. Contracting body when awarding public contracts referred to in para. 1, may not apply the provisions of the Act concerning:

- 1) obligation to make a statement referred to in Article 125 para. 1, on the form of European Single Procurement Document;
- 2) the minimum time limits for the receipt of requests to participate or the time limits for the receipt of tenders;
- 3) the obligation to request documents as a means of proof.

3. The contracting body may reserve in a contract notice, a periodic indicative notice or a notice on a qualification system of economic operators that for the award of public contracts for health, social and cultural services falling within CPV codes 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, from 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 conditions referred to in Article 361 para. 1.

4. In the cases referred to in para.3, a contract shall not be longer than 3 years.

## **Chapter 6**

### **Certain powers of contracting entity**

### **Article 393.**

1. In the procurement procedure for public contract in utilities sectors:

- 1) Contracting bodies referred to in Article 5 para. 1, points 2 and 3, may not apply the grounds for exclusion of the economic operator referred to in Article 108;
- 2) the contracting body may apply grounds for exclusion and conditions for participation in the procedure, other than those referred to in Articles 108, 109 and 112, in so far as they are objective in nature and are specified in the procurement documents;
- 3) the contracting body may also require the submission of means of proof other than those laid down in the provisions adopted pursuant to Article 128 para. 6, where necessary to assess whether economic operators fulfil the conditions and the absence of grounds for exclusion;
- 4) the contracting authority, taking into account Art. 16b, may, in the case of a supply contract, reject a tender in which the share of products, including software used in telecommunications network equipment, originating from Member States of the European Union, countries with which the European Union has concluded agreements on the equal treatment of undertakings, or countries to which, pursuant to a Council decision, the provisions of Directive 2014/25/EU apply, does not exceed 50% of the total value of the products covered by the tender, provided that this was specified in the contract notice, and if the procurement procedure is not initiated by means of a contract notice— in STC.

2. Where the most advantageous tender cannot be selected on the grounds that two or more tenders at the same price or showing the same price balance and other contract award criteria have been submitted and the STC does not provide for rejection of tender pursuant to paragraph 1 point 4, the contracting body shall select a tender which could not be rejected pursuant to para. 1 point 4. The prices presented in tenders shall be the same if the difference between the price of the most advantageous tender and the prices of other tenders which could not be rejected pursuant to para. 1 point 4, does not exceed 3 %.

3. The provision of para. 2 shall not apply if its use would result in the acquisition of equipment incompatible with the equipment at the disposal of the contracting body, other technical difficulties in the operation and maintenance of the equipment, or would require disproportionately high costs.

4. In the procurement procedure for public contract in utilities sectors, the economic operator shall not be excluded in the case referred to in Article 108 para. 1 point 1 item h), and in the case referred to in Article 108 para. 1 point 2, if the person referred to in that provision has been convicted of the offence referred to in Article 108 para. 1 point 1 item h).

5. When awarding a public contract in utilities sectors, the head of the contracting body may refrain from setting up a tender committee. By departing from the appointment of a tender committee, the contracting body shall determine how the procedure is conducted to ensure the efficiency of the award of public contracts, the individualisation of responsibility for the activities carried out and the transparency of the work.

## **Article 394.**

1. The contracting body or the competent authority on its own initiative or at the request of the contracting body may, after carrying out an analysis of the relevant market, request the European Commission to declare that a contracting entities engaged in a activity in utilities sectors referred to in Article 5 paragraph 4, operate in a competitive market to which access is not limited. The contracting body shall forward a copy of the request without delay to the competent authority.

2. The contracting body or the competent authority shall carry out an analysis of the market in respect of the activity concerned and shall draw up the request referred to in para. 1, in accordance with the requirements set out in Commission Implementing Decision (EU) 2016/1804 of 10 October 2016 concerning detailed rules for the application of Articles 34 and 35 of Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 275 of 12.10.2016, p.39).

3. Contracting bodies which, in accordance with the published decision of the European Commission, operate in a competitive market to which access is not limited, do not apply the provisions of the Act. This provision shall apply accordingly if the European Commission fails to issue a decision within 7 months of receipt of the request referred to in para. 1.

4. The Council of Ministers shall, by means of a regulation, determine the competent authorities to make the request referred to in para. 1, having regard to the type of activity and the scope of activities of the authorities, and their knowledge of the functioning of the market in respect of the activities concerned.

## **TITLE VI**

### **Procurement in the fields of defence and security**

#### **Chapter 1**

#### **Scope of application**

#### **Article 395.**

1. For defence and security procurement:

1) the following provisions shall apply:

a. of Title II:

- with the exception of Article 83, Article 87 para. 2, Article 89 para. 1 and 3, Article 91 para. 2, Article 92, Article 94, Article 100 to Article 102, Article 110 para. 2 and 3, Article 115 para. 2, Article 125 para. 2, 3 and 6, Article 126 para. 1 and 2, Article 127, Article 222 para. 2 to 5, Article 245 para. 6 and Article 262,

- of Chapter 3, with the exception of Article 129 and Article 130 para. 2, unless the provisions of this Title provide otherwise,

b. of Title IV, Chapter 1, with the exception of Article 311 para. 1 and 3;

2) The provisions of Article 16a, Article 16b, Article 21 to Article 23, Article 72 para. 1 point 5, Article 78 para. 4, Article 442 para. 1 and 2, Article 443, Article 446 and Article 448 shall not apply.

2. The provisions of Chapter 7 of Title I shall not apply to procurement in the fields of defence and security insofar as they provide for an obligation to communicate with the economic operator only by electronic means of communication, and Article 97 para. 10 insofar as it provides for an obligation to provide the original guarantee or surety in electronic manner.

3. Procurement in the fields of defence and security are not subject to the provisions of the Act applicable to open procedure, innovation partnership, dynamic purchasing system and design contest.

#### **Article 396.**

1. The provisions of this Chapter shall also apply to procurement covering simultaneously contracts in the fields of defence and security and other contracts to which the provisions of the Act apply if the award of a single contract is justified for objective reasons.

2. Contracting body may not, in order to avoid the procedures set out in the Act, combine other contracts with contracts in the fields of defence and security.

#### **Article 397.**

If a contract in the fields of defence and security covers priority services and non-priority services, as defined in Annexes I and II to Directive 2009/81/EC, the award shall be governed by the provisions applicable to those services, the estimated value of which is greater.

#### **Article 398.**

The procurement procedure where the subject-matter are non-prioritized services specified in Annex II to Directive 2009/81/EC shall not be governed by the provisions of the Act concerning:

- 1) the grounds for choosing the competitive dialogue procedure;
- 2) examination of the grounds for exclusion of the economic operator referred to in Article 108;
- 3) the minimum time limits for the receipt of requests to participate or the time limits for the receipt of tenders;
- 4) the obligation to request documents as a qualitative mean of proof.

## **Chapter 2**

### **Contract award procedure in the fields of defence and security**

#### **Article 399.**

Notices of contract award procedures in the fields of defence and security shall be provided to the Publications Office of the European Union for publication pursuant to the format and procedures for electronic sending of notices established by the European Commission and available on the website referred to in paragraph 3 of Annex VI to Directive 2009/81/EC.

## **Article 400.**

1. In contract award procedures in the fields of defence and security, the subject of the contract shall be described taking into account separate provisions, including those relating to product safety, and international standardisation agreements in one of the following manners:

- 1) by reference to the required characteristics of the material, product or service as referred to in Article 102, and, in order of preference, to:
  - a) Polish Standards transposing European standards,
  - b) civil standards of other Member States of the European Economic Area transposing European standards,
  - c) European Technical Assessments, understood as the documented assessments of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document, within the meaning of Article 2 para. 12 of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC,
  - d) common civil technical specifications, understood as technical specifications in the field of ICT products, as defined in accordance with Article 13 and Article 14 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation and amending Council Directives 89/686/EEC and 93/15/EEC and Directives of the European Parliament and of the Council 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 and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council,
  - e) Polish standards transposing international standards,
  - f) civil standards of other Member States of the European Economic Area transposing international standards,
  - g) civil international standards,
  - h) technical reference systems established by the European standardisation bodies,
  - i) civil technical specifications,
  - j) national defence standards and specifications in the field of defence equipment similar to those standards;
- 2) by specifying performance or functional requirements, including environmental requirements, provided that the parameters specified are sufficiently precise to enable economic operators to determine the subject of the contract and the award of the contract to contracting body;
- 3) by reference to the categories of performance or functional requirements referred to in point 2 and by reference to the standards, European technical assessments, technical

specifications and technical reference systems referred to in point 1 as a means of presumption of conformity with such performance or functional requirements;

- 4) by reference to the standards, European technical assessments, technical specifications and technical reference systems referred to in point 1 and by reference to the performance or functional requirements referred to in point 2, within the scope of selected characteristics.

2. In the absence of technical reference systems referred to in para. 1 point 1 letter h, when describing the subject matter of the contract shall be taken into account in the order of:

- 1) Polish Standards;
- 2) civil standards of the Member States of the European Economic Area;
- 3) national technical assessments issued on the basis of the Law of 16 April 2004 on construction products;
- 4) Polish technical specifications concerning the design, calculation and execution of works and the use of supplies;
- 5) national declarations of conformity and national declarations of performance of a construction product.

3. Describing the subject matter of the contract by reference to the standards, technical assessments, technical specifications and technical reference systems referred to in para. 1 point 1 and para. 2, contracting body shall indicate that it accepts solutions equivalent to those described and is accompanied by the words 'or equivalent'.

4. Where contracting body makes use of the possibility of reference to the standards, technical assessments, technical specifications and technical reference systems referred to in para. 1 point 1 and para. 2, contracting body may not reject a tender on the basis that the products and services which are the subject of the tender do not comply with those standards, technical assessments, technical specifications and technical reference systems, if the economic operator proves in his tender that the proposed solutions meet the requirements set out by contracting body to an equivalent degree.

5. Where contracting body makes use of the possibility to describe the subject matter of the contract by specifying performance or functional requirements referred to in para. 1 point 2, contracting body may not reject a tender for works, products or services conforming to a national standard transposing a European standard, with a European technical assessment, a common technical specification, an international standard or a system of technical references developed by the European standardisation body, if the economic operator proves in his tender that they meet the characteristics and performance or functional requirements specified by contracting body.

6. A conformity assessment body referred to in Article 105 para. 2 shall also mean a body performing actions in the field of conformity assessment under the provisions on the conformity evaluation system of the products intended for the purposes of defence and security of the state.

7. In the case referred to in para. 1 point 1, contracting body shall specify in the description of the

subject-matter of the works contract the required characteristics of the material, product or service corresponding to the intended purpose of contracting body, which may relate in particular to:

- 1) specific environmental and climate impact levels;
- 2) accessibility requirements for people with disabilities;
- 3) specific performance, safety or dimensions, including quality assurance procedures;
- 4) specific terminology, symbols, tests and methods of testing;
- 5) the specific packaging and marking;
- 6) a specific label;
- 7) instructions for use;
- 8) production processes and methods at each stage of the life cycle of building objects;
- 9) additional tests and tests carried out by authorised bodies within the meaning of the Act of 13 April 2016 on conformity assessment and market surveillance systems;
- 10) specific design and costing rules;
- 11) the conditions for testing, inspection and acceptance of building objects;
- 12) construction methods and techniques;
- 13) any other technical conditions.

8. In the case referred to in para. 1 point 1, contracting body shall specify in the description of the subject-matter of the supply or service contract the characteristics of the product or service which may relate in particular to:

- 1) having by a supply or service the characteristics referred to in para. 7 point 1, point 4 to point 7 and point 10;
- 2) specific quality levels;
- 3) specified performance, use of the product, safety or dimensions, including product-related requirements in terms of the name under which the product is sold;
- 4) production processes and methods at any stage of the life cycle of the supply or service as well as the conformity assessment procedure.

#### **Article 401.**

1. In procurement procedures in the fields of defence and security, communication between contracting body and economic operators shall be conducted, at the choice of contracting body, through a postal operator, within the meaning of the Act of 23 November 2012 – Postal law, personally, by messenger, by fax or by means of electronic communication.

2. Communication, exchange and storage of information shall be conducted in such a way as to ensure the integrity, authenticity, inviolability and confidentiality of such information, including ensuring that requests to participate or tenders can be opened only after the time limit set for submitting them has expired.

3. A request to participate may be submitted by telephone before the time limit set for submission has expired. The request shall be deemed to have been submitted within a time limit if, before the expiry of the period for the submission of requests to participate, it has been sent and received by contracting body no later than 14 days after the expiry of the time limit for the submission of requests.

4. Contracting body may require that requests to participate, submitted by fax, be confirmed within the time limit specified by contracting body through the postal operator within the meaning of the Act of 23 November 2012 – Postal Law or by means of electronic communication. Such a requirement, including the expiry of the period for sending confirmations via a postal operator within the meaning of the Act of 23 November 2012 – Postal Law or by means of electronic communication, shall be indicated by contracting body in the contract notice.

5. A tender, a request to participate and a statement referred to in Article 125 para. 1, shall be submitted, under pain of nullity, in writing or, with the consent of contracting body, in electronic form.

#### **Article 402.**

1. Contracting body, after approval or adoption of a financial plan in accordance with the provisions, statute or agreement binding thereon, and in the case of contracting authorities who do prepare a financial plan – once a year, may send to the Publications Office of the European Union, or submit on contracting body's website a prior information notice on contracts or framework contracts planned for awarding by restricted procedure, negotiated procedure with publication or competitive dialogue.

2. The notice referred to in para. 1 shall provide:

- 1) works – the basic features of contracts or framework agreements for works which contracting body intends to award;
- 2) supplies – the total value of contracts or framework agreements for supplies, broken down by product group, within the given group specified in the Common Procurement Vocabulary, which contracting body intends to award within the following 12 months;
- 3) services – the total value of contracts or framework agreements for services, in each of the categories of services specified in the Common Procurement Vocabulary, which contracting body intends to award within the following 12 months.

3. Where a prior information notice is placed by contracting body on its website, contracting body shall dispatch to the Publications Office of the European Union for publication the notice on the buyer's profile.

4. Contracting body may not publish a prior information notice on its website before sending to the Publications Office of the European Union for publication the notice on the buyer's profile.

#### **Article 403.**

1. Contracting body may allow the submission of a variant in the contract notice. The variant must be related to the subject-matter of the contract.

2. Where contracting body allows the possibility to submit a variant, it shall specify in the

procurement documents:

- 1) the minimum requirements to be met by variants and any specific requirements for their submission, in particular information on the possibility of submitting a variant with a basic tender or instead of a basic tender;
- 2) criteria for the evaluation of tenders in such a way as to ensure that they can be used in relation to both the basic tender and the variant.

**Article 404.**

1. Economic operators having their seat or place of residence in one of the European Union Member States or Member States of the European Economic Area or a state with which the European Union or the Republic of Poland concluded an international agreement concerning contracts in the fields of defence and security may compete for the award of such contract.
2. Contracting body may specify in the contract notice that also economic operators from countries other than those specified in para. 1 may compete for a contract in the fields of defence and security.
3. With respect to economic operators from countries other than those listed in para. 1, or works, supplies, and services originating from such countries, the contracting body may establish terms of contract that are less favorable than those applicable to economic operators from the countries listed in para. 1 or to works, supplies, and services originating from such countries.

**Article 405.**

1. Economic operators referred to in Article 108 shall be excluded from the contract award procedure in the fields of defence and security.
2. In contract award procedures in the fields of defence and security, contracting body may exclude the economic operator:
  - 1) being a natural person, a general partnership, a professional partnership, a limited partnership, a limited joint-stock partnership or a legal person, if, respectively, in relation to such a person, a partner in a general partnership, a partner or a member of the governing body, a general partner, an active managing body's member, or in relation to any action undertaken or omission committed by them, a decision was taken to withdraw security clearance referred to in Article 33 para. 11 point 1 of the Act of 5 August 2010 on the protection of classified information;
  - 2) which has breached the obligations relating to security of information or security of supply;
  - 3) which has been found to be unreliable to exclude a threat to defence or state security, also in other ways than by means of a decision to withdraw the industrial security certificate referred to in Article 66 of the Act of 5 August 2010 on the protection of classified information;
  - 4) who has their registered office or a place of resident in any other state than those referred to in Article 404 para. 1, subject to Article 404 para. 2;
  - 5) as referred to in Article 109;

- 6) who is a natural person and has breached obligations relating to the security of information or security of supply, in connection with the performance, non-performance or improper performance of the contract;
- 7) where the current member of its management or supervisory body, a partner in a general partnership or professional partnership or a general partner in a limited partnership or a limited joint-stock partnership, or a proxy has breached the obligations relating to security of information or security of supply in connection with the performance, non-performance or improper performance of the contract.

3. In the cases referred to in para. 2 point 2, point 6 and point 7, exclusion of the economic operator shall take place if 5 years have not elapsed since the finding of the infringement referred to in those provisions.

4. The request to participate and, in the case of negotiated procedure without prior publication, shall be accompanied by the statement referred to in Article 125 para. 1, and qualitative means of proof.

5. The statement referred to in Article 125 para. 1, as well as qualitative means of proof, confirm the absence of grounds for exclusion, fulfilment of the conditions for participation or of the selection criteria not later than as at the day of submission of requests for participation, and in the case of negotiated procedure without prior publication - not later than as at the day of submitting the tenders.

6. Exclusion, on the basis of the para. 2 point 3 may also occur if contracting body receives, directly or indirectly, a written notification from the institutions competent in matters of internal or external security of the State, which have information in this respect, of a threat to defence and security, in particular the transmission of information on the decision to withdraw the industrial security certificate referred to in Article 66 of the Act of 5 August 2010 on the protection of classified information.

7. Contracting body shall waive the reasons for rejecting the request to participate or tender pursuant to para. 2 point 3, where the justification for the grounds for exclusion is classified or it is stipulated that the information on the content of the notice referred to in para. 6 is not to be given to the economic operator, or the transferor has not indicated detailed information on the occurrence of a threat to defence and security to contracting body.

8. Contracting body may refuse to reject a request to participate or tender of the economic operator, in respect of which the grounds for exclusion referred to in para. 1 and para. 2 occur, if a relevant reservation has been provided for in the contract notice and if this is justified by the general interest.

#### **Article 406.**

Contracting body may obligate the economic operator to inform subcontractors of their obligation to protect classified information which they have obtained during the procurement procedure in the fields of defence and security.

#### **Article 407.**

In the case of contracts involving classified information, contracting body shall specify in the

contract notice or procurement documents the requirements relating to the performance of the contract, which are necessary to ensure the security of that information. For this purpose contracting body may, in particular:

- 1) require the submission of the following together with a tender:
  - a) the obligations of the economic operator and already known subcontractors to protect classified information held by them or which they become acquainted with during and after the performance of the contract,
  - b) the economic operator's obligations to obtain from other subcontractors to which it entrusts subcontracting during the performance of the contract, the obligations referred to in letter a and to submit them to contracting body before concluding the subcontract,
  - c) information relating to subcontractors already known, including the indication of their names and surnames, as well as their place of resident or their name and registered office, and data which enable contracting body to establish that each of them possesses the qualifications required to protect classified information to which they have access or which will be generated in connection with the performance of the subcontract,
  - d) the economic operator's obligations to provide the information referred to in letter c, concerning new subcontractors, before concluding the subcontract;
- 2) determine the right to verify or dismiss the economic operator's employees who are to participate in the performance of the contract, both at the stage of the procurement procedure and at the stage of the performance of a public contract in the fields of defence and security, if the protection of the essential interests of State security so requires, or is necessary in order to improve the security of the performed contracts.

#### **Article 408.**

1. Contracting body shall specify in the contract notice or procurement documents the requirements related to the performance of the contract in the field of security of supply. For this purpose contracting body may request the submission of a tender together with the tender, in particular:

- 1) documentation ensuring fulfilment of the requirements for the export, transfer or transit of products related to a contract in the fields of defence and security, including any accompanying documents obtained from the Member State of the European Union concerned;
- 2) information on restrictions imposed on contracting body with respect to disclosure, transfer or use of products and services or results related to those products and services resulting from export or security controls;
- 3) documentation ensuring that the organisation and location of the economic operator's supply chain enables the economic operator to comply with the security of supply

requirements set out in the contract notice or procurement documents, as well as the obligation to ensure that any changes in the supply chain during the performance of the contract do not adversely affect compliance with these requirements;

- 4) the economic operator's obligations to ensure, under agreed conditions, the possibility of performing the contract in the case of an increase in contracting body's needs as a result of a crisis situation, including by establishing or maintaining capacity at the required level;
- 5) documentation received from the State authorities of the economic operator concerning the possibility of performance of the contract in the case of an increase in the needs of contracting body resulting from a crisis situation;
- 6) the economic operator's obligations to ensure the maintenance, modernisation or adaptation of the supplies covered by the contract;
- 7) the economic operator's obligations to inform contracting body without delay of any change in its organisation, supply chain or industrial strategy likely to affect its obligations towards contracting body;
- 8) the economic operator's obligations to provide, under agreed conditions, where it is no longer able to provide supplies to contracting body, any specific means of production of spare parts, components and special test equipment, including technical drawings, - licences and instructions for use.

2. Specifying the requirements referred to in para. 1, shall not result in an obligation for the economic operator to obtain from the authorities of a Member State of the European Union an obligation restricting its freedom to apply, in accordance with the relevant provisions of international or Union law, its national criteria for export, transfer or transit licensing criteria.

3. By the crisis situation referred to in para. 1 point 4 and point 5, shall be understood as follows:

- 1) a war;
- 2) armed conflict;
- 3) another situation in which damage has occurred or inevitably will occur, clearly exceeding the amount of damage occurring in everyday life and endangering the lives and health of many people or having serious consequences for material goods, or requiring action to provide the population with the means necessary to survive.

#### **Article 409.**

1. Contracting body/entity may specify in the contract notice or in another document launching the procedure the requirements relating to the performance of the contract in the field of subcontracting concerning:

- 1) an indication in the tender a part, the performance of which will be entrusted to subcontractors and the name of the subcontractors together with the subject-matter of the subcontracts for which they are proposed, where the economic operator is not obliged by contracting body to select subcontractors in accordance with the procedure laid down in Article 423 to Article 430;
- 2) inform immediately of any changes affecting subcontractors that occur during the

performance of the contract;

- 3) applying the procedure laid down in Article 423 to Article 430 for the selection of subcontractors of all or some parts of the contract, which the economic operator intends to entrust to subcontractors;
- 4) imposing an obligation on the economic operator to conclude subcontracts, indicating the range of values covering the minimum and maximum percentage of the value of the public contract in the fields of defence and security to be the subject of those contracts.

2. In the case referred to in para. 1 point 4:

- 1) contracting body shall determine the range referred to in para. 1 point 4, in a manner proportionate to the subject-matter and value of the contract and the nature of the industrial sector involved, including the level of competition on the market concerned and the appropriate technical qualifications of the industrial base;
- 2) the total value of the subcontracts which the economic operator will be obliged to conclude may not exceed 30 % of the value of the contract awarded to the economic operator;
- 3) each percentage of the value of the subcontract falling within the range referred to in para. 1 point 4 shall be considered to comply with the subcontracting requirements;
- 4) Article 423 to Article 430 shall apply to the conclusion of subcontract;
- 5) the economic operator shall indicate in the tender the part of the contract which it will entrust to subcontractors in order to fulfil the obligation to conclude subcontracts.

3. The entrustment of performance of a part of the contract to subcontractors shall not relieve the economic operator from responsibility for the performance of the contract in the fields of defence and security.

### **Chapter 3**

#### **Procurement procedures in the fields of defence and security**

##### **Article 410.**

1. Contracting body may award contracts in the fields of defence and security through restricted procedure or negotiated procedure with publication.

2. Contracting body may award contracts in the fields of defence and security by competitive dialogue, negotiated procedure without prior publication or direct-award contracts in the cases referred to in this Chapter.

3. In the cases referred to in paragraph 1, contracting body may choose the most advantageous tender using electronic auction. The provisions of Article 227 to Article 238 shall apply accordingly.

4. Contracting body may convene a meeting of all economic operators in order to clarify the content of STC or a description of needs and requirements, respectively. Contracting body shall communicate the date of the meeting to the economic operators or make available on the website

of the proceeding conducted in the cases referred to in Article 411 para. 3, Article 412 para. 3 and Article 413 para. 4.

5. Contracting body shall draw up information containing questions submitted at the meeting concerning the explanation of the content of STC or a description of needs and requirements, respectively, and replies to them, without indicating the sources of inquiries. The information from the meeting shall be communicated to the economic operators or made available on the website of the proceeding carried out in the cases referred to in Article 411 para. 3, Article 412 para. 3 and Article 413 para. 4.

#### **Article 411.**

1. The restricted procedure shall not be governed by the provisions of Article 141, Article 142, Article 143 para. 1 to para. 3, 144 para. 2, Article 148 to Article 151.

2. Where STC is forwarded to economic operators together with an invitation to submit a tender, STC shall include at least:

- 1) the name and address of contracting body;
- 2) the information referred to in Article 134 para. 1 point 3 to point 6 and point 13 to point 21 and para. 2 point 2 to point 5, point 7, point 9, point 10, point 12 to point 15, point 17 and point 18;
- 3) information on how contracting body communicates with economic operators and the persons authorised to communicate with economic operators;
- 4) information on variants, including information on the presentation of variants and the minimum conditions to be met by variants if contracting body allows them to be submitted;
- 5) information on the anticipated contracts referred to in Article 415 para. 2 point 5 and point 6, where contracting body provides for the award of such contracts.

3. Where contracting body provides on the website of the conducted proceeding free of charge, full, direct and unrestricted access to STC from the date of publication of the contract notice in the Official Journal of the European Union not shorter than the date of award of the contract, STC shall contain at least:

- 1) the information referred to in Article 134 para. 1 point 2 to point 9 and point 17 to point 21 and para. 2 point 2 to point 5, point 7, point 9, point 10, point 12 to point 15, point 17 and point 18;
- 2) the information referred to in para. 2 point 1 and point 3 to point 5;
- 3) grounds for exclusion referred to in Article 405 para. 2 where contracting body provides for them;
- 4) information whether contracting body envisages a possibility of reduction of number of the economic operators which it will invite to submit tenders along with specifying the number of the economic operators and the selection criteria, if they are determined;
- 5) a description of the way in which requests to participate are prepared;
- 6) the method and the time-limit for submitting requests to participate.

4. If explanations of the content of STC are necessary for the proper preparation and submission of a request to participate, contracting body shall give an explanation in this respect without delay, but not later than 6 days expiration of the time-limit for requesting participation or no later than 4 days before the expiration of the time-limit for requesting participation in the case referred to in para. 7, provided that the request for clarification of the content of STC was received by contracting body no later than 14 days or 7 days, respectively, before the expiration of the time-limit for requesting participation.

5. The extension of the time-limit for the submission of requests to participate shall not affect the running of the time-limit for submitting a request for clarification of the content of STC referred to in para. 4.

6. The provisions of Article 135 and Article 137 shall accordingly apply to clarifications of and changes to the content of STC.

7. If there is an urgent need to award a contract, contracting body may set a shorter time-limit for the submission of requests to participate, but not less than 10 days from the date on which the contract notice is dispatch to the Publications Office of the European Union for publication.

8. Contracting body may limit the number of economic operators invited to submit tenders whose requests to participate have not been rejected, provided that this number is sufficient to ensure competition and is not less than 3.

9. In the case referred to in para. 8, contracting body shall indicate in the contract notice and, in the case referred to in para. 3, in STC, the selection criteria it intends to apply to reduce the number of economic operators invited to submit tenders and shall indicate the minimum number of economic operators it intends to invite to submit tenders. Contracting body may indicate the maximum number of economic operators which it will invite to submit tenders.

10. The contracting body/entity shall at the same time invite economic operators whose requests to participate were not subject to rejection and, where selection criteria are established, invite economic operators who meet these criteria in a number to be determined by contracting body.

11. Where the number of economic operators who have submitted requests to participate not subject to rejection is less than the minimum number to be determined by contracting body in accordance with para. 8 and para. 9, contracting body may:

- 1) continue the procedure by inviting these economic operators to submit tenders, or
- 2) suspend the procedure and publish the contract notice again, specifying, by applying the rules on the time-limits for the submission of requests to participate, a new time-limit for the submission of the requests and informing economic operators who fulfil the conditions for participation, or
- 3) cancel the procedure pursuant to Article 258 para. 1.

12. The invitation to submit a tender shall contain at least the name and address of contracting body, the information on the means of proof relating to subject-matter of a contract to be attached to the tender and the information referred to in Article 150 para. 1 point 2 and point 5. Contracting body shall attach to the invitation to submit tenders the STC and its possible modifications and clarifications of the content of STC, as well as other procurement documents directly related to

the procurement procedure, unless they have been made available on the website in accordance with para. 3.

13. Contracting body shall set a time-limit for submission of tenders, taking into account the time necessary for the preparation and submission of a tender, except that the time-limit may not be less than 40 days from the date of the dispatch of the invitation to submit tenders.

14. In the case referred to in para. 3, the minimum time-limit referred to in para. 13, may be reduced to 35 days from the date of the dispatch of the invitation to submit tenders.

15. Where contract information is included in a prior information notice, provided that the prior information notice contains all the information required for the contract notice, to the extent that this information is available at the time of publication of the prior information notice which has been submitted for publication to the Publications Office of the European Union for at least 52 days and not more than 12 months before the date of dispatch of the contract notice, contracting body may set a shorter time-limit for the submission of tenders, but not less than 22 days from the date of the dispatch of the invitation to submit tenders.

16. Where there is an urgent need to award a contract, contracting body may set a shorter time-limit for the submission of tenders, but not less than 10 days from the date of the dispatch of the invitation to submit tenders.

#### **Article 412.**

1. The provisions of Article 152 para. 2, Article 153, Article 154, Article 155 para. 2 and para. 3, Article 156 para. 1, para. 2 and para. 4, Article 157 para. 2, Article 160 to Article 162, Article 163 para. 1, Article 167 para. 3 and Article 168 para. 2 point 1 to point 3 and para. 3 shall not apply to negotiated procedure with publication.

2. Where a description of needs and requirements is provided to the economic operators together with an invitation to submit initial tenders, the description of needs and requirements shall include at least:

- 1) the information referred to in Article 134 para. 2 point 2 to point 5, point 7, point 9, point 10, point 12 to point 15, point 17 and point 18, Article 156 para. 1 point 3 to point 8, point 18 and point 19;
- 2) the information referred to in Article 411 para. 2 point 1 and point 3 to point 5.

3. Where contracting body provides free, full, direct and unrestricted access on its website to a description of the needs and requirements and other procurement documents, from the date of publication of the contract notice in the Official Journal of the European Union, not shorter than until the date of award of the contract, a description of the needs and requirements shall contain at least:

- 1) the information referred to in Article 134 para. 2 point 2 to point 5, point 7, point 9, point 10, point 12 to point 15, point 17 and point 18 and Article 156 para. 1 point 2 to point 10, point 14 to point 16, point 18 and point 19;
- 2) the information referred to in Article 411 para. 2 point 1 and point 3 to point 5;
- 3) the grounds for exclusion referred to in Article 405 para. 2 where contracting body provides

for them;

- 4) the information whether contracting body provides for the possibility of reducing the number of economic operators which it will invite to submit initial tenders together with specifying the number of the economic operators and the selection criteria, if they are determined.

4. If there is an urgent need to award a contract, contracting body may set a shorter time-limit for submission of requests to participate, but not less than 10 days from the date on which the contract notice is sent to the Publications Office of the European Union for publication.

5. Contracting body shall at the same time invite to submit initial tenders the economic operators whose requests to participate were not subject to rejection and, where selection criteria are established, it shall invite economic operators who meet these criteria in the number determined by the contracting body/entity in accordance with Article 159.

6. Where the number of economic operators which have submitted requests for participation not subject to rejection is less than the minimum number determined by contracting body in accordance with Article 159, contracting body may:

- 1) continue the procedure by inviting these economic operators to submit initial tenders, or
- 2) suspend the procedure and publish the contract notice again specifying, with the application of the provisions concerning the time-limits for the submission of requests to participate, a new time-limit for the submission of requests and informing economic operators who fulfil the conditions for participation, or
- 3) cancel the procedure pursuant to Article 258 para. 1.

7. The invitation to submit initial tenders shall contain at least the name and address of contracting body and the information referred to in Article 161 para. 1 point 2 and point 5. Contracting body shall attach to the invitation to submit initial tenders the description of needs and requirements and its possible changes and clarifications of the content of the description of needs and requirements, as well as other procurement documents directly related to the - procurement procedure, unless the description of needs and requirements has been made available on the website in accordance with para. 3. By the time-limits for the submission of initial tenders, the provisions of Article 411 para. 13 to para. 16 applies.

8. After completion of the negotiations, contracting body shall provide the remaining economic operators with the invitation to submit final tenders which shall include at least the name and address of contracting body and the information referred to in Article 168 para. 2 point 4. Contracting body shall attach to the invitation to submit final tenders STC, which shall contain at least the information referred to in Article 411 para. 2.

### **Article 413.**

1. The provisions of Article 170, Article 173, Article 174 para. 1, Article 178 para. 1 and para. 3, Article 179, Article 185 para. 2 and Article 186 para. 2 shall not apply to competitive dialogue.

2. Contracts in the fields of defence and security may be awarded by competitive dialogue if, due to the particular complexity of the contract, it is not possible to award a contract by restricted

procedure or by negotiated procedure with the publication of a contract. In this case, the price is not the only criterion for selecting the best tender.

3. Where a description of needs and requirements is provided to economic operators together with an invitation to take part in a dialogue, the description of needs and requirements shall include at least:

- 1) the information referred to in Article 134 para. 2 point 2 to point 5, point 7, point 9, point 10, point 13 to point 15, point 17 and point 18 and Article 156 para. 1 point 3, point 4 and point 19;
- 2) the information referred to in Article 174 para. 2.
- 3) the information referred to in Article 411 para. 2 point 1 and point 3 to point 5.

4. Where contracting body provides on the website of the procedure conducted free of charge, full, direct and unlimited access to a description of needs and requirements and other - procurement documents, from the date of publication of the contract notice in the Official Journal of the European Union, at least until the date of award of the contract, the description of needs and requirements shall contain at least:

- 1) the information referred to in Article 134 para. 2 point 2 to point 5, point 7, point 9, point 10, point 13 to point 15, point 17 and point 18 and Article 156 para. 1 point 2 to point 4, point 9, point 10, point 14 to point 16 and point 19;
- 2) the information referred to in Article 174 para. 2;
- 3) the information referred to in Article 411 para. 2 point 1 and point 3 to point 5;
- 4) grounds for exclusion referred to in Article 405 para. 2 where contracting body provides for them;
- 5) whether contracting body provides for the possibility of reducing the number of economic operators to be invited to the dialogue, together with the number of economic operators and the selection criteria, if they are established.

5. At the same time, contracting body shall invite economic operators whose requests to participate were not rejected and, where selection criteria are established, they shall invite - economic operators who meet these criteria in the number specified by contracting body in accordance with Article 177.

6. Where the number of economic operators which have submitted requests to participate not subject to rejection is less than the minimum number determined by contracting body in accordance with Article 177, the contracting body/entity may:

- 1) continue the procedure by inviting these economic operators to dialogue, or
- 2) suspend the procedure and publish the contract notice again specifying, by applying the rules on the time-limits for the submission of requests to participate, a new time-limit for the submission of requests and informing economic operators who fulfil the conditions for participation, or
- 3) cancel the procedure pursuant to Article 258 para. 1.

7. The invitation to take part in the dialogue shall include at least the name and address of contracting body and the information referred to in Article 179 para. 1 point 2 and point 5 to point 7. Contracting body shall attach to the invitation to take part in the dialogue a description of needs and requirements and its possible changes and clarifications of the content of the description of needs and requirements, as well as other procurement documents directly related to the procurement procedure, unless a description of needs and requirements has been made available on the website in accordance with para. 4.

8. At the end of the dialogue, contracting body shall communicate to economic operators with which he has conducted a dialogue and who have not been eliminated from the procedure at different stages an invitation to tender which shall include at least the name and address of contracting body and the information referred to in Article 186 para. 2 point 4 and point 5. Contracting body shall attach to the invitation to tender the STC which shall contain at least the information referred to in Article 134 para. 1 point 3 to point 6 and point 13 to point 21, para. 2 point 2 to point 5, point 7, point 9, point 10, point 13 to point 15, point 17 and point 18 and Article 411 para. 2 point 1 and point 3 to point 5.

#### **Article 414.**

1. The provisions of Article 209 and Article 210 para. 3 and para. 4 shall not apply to negotiated procedure without prior publication.

2. Contracts in the fields of defence and security may be awarded by negotiated procedure without prior publication if at least one of the following circumstances occurs:

- 1) the subject of the contract shall be products manufactured only for research and development purposes, with the exception of series production intended to achieve profit or to cover the costs incurred for research or development;
- 2) in a procedure previously conducted by restricted procedure, negotiated procedure with prior publication or competitive dialogue, no request for participation was received or all requests to participate were rejected pursuant to Article 146 para. 1 point 2, no tenders were submitted or all tenders were rejected pursuant to Article 226 para. 1 point 2 or, because of their non-compliance with the description of the subject matter of the contract pursuant to Article 226 para. 1 point 5 and the original terms of the contract have not been substantially altered;
- 3) in view of the urgent need to award the contract arising from the emergency situation referred to in Article 408 para. 3, the time-limits, including shortened time-limits, specified for restricted procedure or negotiated procedure with prior publication may not be respected;
- 4) in view of the urgent need to award a contract which does not exist for reasons attributable to contracting body, which could not have been anticipated before, the time-limits, including the shortened time-limits set for restricted procedure or for negotiated procedure with prior publication, cannot be respected;
- 5) the subject matter of the service or supply contract shall be intended for research or development purposes other than those referred to in Article 11 para. 1 point 3;

- 6) in the case of contracts related to the provision of air and sea transport services for the Armed Forces of the Republic of Poland, as well as the forces whose tasks include security protection related to participation in a foreign mission, if contracting body has to request such services from economic operators who guarantee the validity of their tenders only for such a short period of time that the time-limits for restricted procedure or negotiated procedure with prior publication, including shorter time-limits, cannot be complied with;
- 7) in a procedure previously conducted under restricted procedure, negotiated procedure with prior publication or competitive dialogue, all requests to participate were rejected pursuant to Article 146 para. 1 or all tenders were rejected pursuant to Article 226 para. 1, or contracting body has cancelled the procedure pursuant to Article 255 point 3, provided that the original terms of the contract have not been substantially altered and contracting body invites only all economic operators who are not excluded and who fulfil the conditions for participation and the proceedings conducted previously under the restricted procedure, negotiated procedure with prior publication or competitive dialogue, submitted tenders which have not been rejected pursuant to Article 226 para. 1 point 1, point 2, point 6, point 7, point 9, point 12 to point 14 or point 18).

3. The invitation to negotiate without prior publication shall include at least the name and address of contracting body and the information referred to in Article 210 para. 2 point 2 to point 8.

#### **Article 415.**

1. The provisions of Article 214 para. 1 point 2 to point 8 and para. 2 and para. 3 shall not apply to direct-award contracts.
2. Contracts in the fields of defence and security may be awarded by direct-award contracts if one or more of the following circumstances arise:
  - 1) referred to in Article 214 para. 1 point 1 and point 9 to point 14;
  - 2) referred to in Article 414 para. 2 point 1 and point 3 to point 7, where it is either inexpedient or impossible to address other economic operators or where urgent operational needs so require;
  - 3) in view of the crisis situation referred to in Article 408 para. 3, immediate execution of the contract is required and the time-limits, including shortened time-limits, specified for restricted procedure or negotiated procedure with prior publication cannot be respected;
  - 4) whereas, in view of an exceptional situation which does not exist for reasons attributable to contracting body which it could not have foreseen, immediate performance of the contract is required and the time-limits, including the time-limits set for restricted procedure or negotiated procedure with publication, cannot be respected;
  - 5) the contract relates to additional supplies carried out by an existing economic operator for the purpose of partial repetition of supplies or renewal of installations, or to increase supplies, or to extend existing installations if a change of economic operator would oblige contracting body to purchase materials of other technical characteristics, which would result in non-compatibility or disproportionate technical difficulties in the use and

maintenance, with the duration of such contracts not exceeding 5 years after the award of the basic contract;

- 6) within 5 years of the award of the basic contract to the existing economic operator of services or works, a supplementary contract of the same type as the basic contract shall be awarded, provided that the basic contract has been awarded by restricted procedure, negotiated procedure with prior publication or competitive dialogue, and that the supplementary contract was provided for in the contract notice for the basic contract and is in conformity with the subject of the basic contract;
- 7) in a procedure previously conducted by restricted procedure, negotiated procedure with prior publication or competitive dialogue, no request for participation was received or all requests to participate were rejected pursuant to Article 146 para. 1 point 2, no tenders were submitted or all tenders were rejected pursuant to Article 226 para. 1 point 2 or, because of their non-compliance with the description of the subject matter of the contract pursuant to Article 226 para. 1 point 5 and the original terms of the contract have not been substantially altered.

3. In exceptional circumstances related to the expected period of operation of the equipment, installations or systems supplied, as well as the technical difficulties that a change of economic operator may cause, to contracts in the fields of defence and security awarded by direct-award contracts on the basis of:

- 1) para. 2 point 5 – the requirement that the duration of such contracts does not exceed 5 years from awarding the basic contract shall not apply;
- 2) para. 2 point 6 – the requirement for award within 5 years of the award of the basic contract shall not apply.

#### **Article 416.**

Where STC or a description of needs and requirements is held by an entity other than contracting body, the invitation to tender, to negotiate or to participate in a dialogue shall include the address of the institution to which such documentation may be requested and the date by which such documentation may be requested, as well as the amount due for their availability, together with the method of payment. The competent entity shall forward the requested documentation to the economic operators as soon as they have received their requests, together with proof of payment of the amount due for making it available.

#### **Article 417.**

1. In the case of contracts in the fields of defence and security, the criteria for the evaluation of tenders shall be the price or price or cost and other criteria relating to the subject matter of the contract referred to in Article 242 para. 2, or other criteria, in particular profitability, security of supply, interoperability and operational characteristics, as defined in STC.

2. Contracting body, while awarding contracts in the fields of defence and security by restricted procedure, negotiated procedure with prior publication, competitive dialogue or negotiated procedure without prior publication, shall specify in the procurement documents the criteria for the evaluation of tenders together with their description, the weighting of those criteria and the

way tenders are evaluated.

#### **Article 418.**

1. Contracting body may:

- 1) reject the tender on the reasons for the rejection of the tender other than the reasons referred to in Article 226 para. 1,
- 2) cancel the procedure on grounds for cancellation of procedure other than those referred to in Article 255 to Article 258

- provided that they are identified in the contract notice, in STC or a description of needs and requirements, in a clear and exhaustive manner, and ensuring fair competition and equal treatment of economic operators.

2. Contracting body shall notify about the cancellation of the procedure for reasons referred to in paragraph 1, point 2, the economic operators who:

- 1) have applied for the award of the contract - in the event of cancellation of the procedure before the expiry of the time-limit for submission of tenders,
- 2) submitted tenders – in the event of cancellation of the procedure after expiry of the time-limit for submission of tenders

- providing factual and legal grounds.

3. In the event of cancellation of the procurement procedure, contracting body shall immediately notify the economic operators who have applied for the award of the contract in that procedure, at their request, of the launching of a further procedure which relates to the same subject-matter of the contract or covers the same subject-matter of the contract.

#### **Article 419.**

In the procurement procedure in the fields of defence and security:

- 1) as regards the provision of information, the provisions of Article 18 para. 1, Article 147, Article 253 and Article 260 shall apply, except that contracting body may refuse to provide information if its disclosure would impede the application of legal provisions or would be contrary to the public interest, in particular defence or security interests, or could harm legitimate commercial interests of economic operators, or could harm fair competition between them;
- 2) entities participating in it may consult classified documents.

#### **Article 420.**

1. Contracting body may grant advances for performance of a contract in the fields of defence and security if:

- 1) this possibility is provided for in the contract notice or in the procurement documents, or
- 2) the economic operator was selected in a negotiated procedure without publication or a direct-award contract.

2. Contracting body may grant advances in the case of the award of a contract in the fields of defence and security by negotiated procedure without prior publication or direct-award contract if:

- 1) the amount of the one-off advance shall not exceed 33 % of the value of the economic operator's remuneration;
- 2) the rules for the granting of advances are laid down in the invitation to negotiate and will remain unchanged during the performance of the public contract.

3. Contracting body may grant further advances, provided that the economic operator, in the context of the performance of the contract:

- 1) settles the funds to the extent of the value of advances previously granted, or
- 2) demonstrates that he allocated the entire funds to the extent of the value of advances previously granted.

#### **Article 421.**

1. Contracting body shall conclude a contract, taking account of Article 577, within a period of not less than 10 days from the date of sending the notification of the best tender, if this notification was sent by electronic means or by fax or 15 days - if it was otherwise sent.

2. Contracting body may conclude a contract before the expiry of the time-limit referred to in para. 1, if:

- 1) only one request has been submitted in a restricted procedure, negotiated procedure with prior publication or competitive dialogue, or if a single tender has been submitted and the time-limit for submitting appeals against the act of rejection of the request has expired or, following an appeal, the National Appeals Chamber has issued a judgment or a ruling ending the appeal proceedings;
- 2) a public contract shall relate to a contract awarded by negotiated procedure without prior publication or under a framework agreement.

3. Contracting body may conclude a contract for a period of more than 4 years if it is justified by the public interest if the performance of the contract in the longer term results in savings in the costs of the performance of the contract in relation to the four-year period or results from the programme of development of the Armed Forces referred to in the Act of 25 May 2001 on the reconstruction and modernisation of the technical service and financing of the Armed Forces of the Republic of Poland (Journal of Laws 2019, item 1453 and 2020).

4. If the duration of the public contract exceeds 4 years, contracting body shall after the expiry of that period, keep the record and the annexes until the end of the contract, with the exception of requests to participate, tenders and other documents relating to economic operators with whom the contract has not been concluded.

5. Contracting body shall, within 30 days of the performance of a public contract, provide the President of the Office with information on the performance of this contract containing at least:

- 1) the name and address of contracting body, telephone number, e-mail address and the address of the website of contracting body/entity;

- 2) the number of the contract award notice;
- 3) determination of the subject-matter of the contract;
- 4) an indication of the amount of remuneration of the economic operator specified in the contract and the final amount of the remuneration that has been spent on the performance of the contract;
- 5) whether the contract has been properly executed, including the information on whether the contract has been performed within the time-limit;
- 6) information on subcontractors;
- 7) information on modifications to the public contract.

## **Chapter 4**

### **Framework agreement**

#### **Article 422.**

1. Contracting body, when awarding a contract in the fields of defence and security, may conclude a framework contract after the procedure has been conducted, applying, as appropriate, the rules on the award of a contract by restricted procedure, negotiated procedure with publication, competitive dialogue, negotiated procedure without prior publication or direct-award contract.
2. A framework agreement shall be concluded for a period of not more than 7 years.
3. A framework agreement may be concluded for a period of more than 7 years, if necessary due to exceptional circumstances, taking into account the expected life-cycle of the equipment, installations or systems supplied, as well as the technical difficulties that a change of economic operator may cause.
4. Where a framework agreement is concluded for a period of more than 7 years, contracting body shall provide in the contract award notice the reasons for the exceptional circumstances referred to in para. 3.
5. Where a framework agreement is concluded with several economic operators, their number may not be less than 3 if there is a sufficient number of economic operators.

## **Chapter 5**

### **Subcontracting requirements**

#### **Article 423.**

- 1 The economic operator obliged to conclude a subcontract in accordance with Article 409 para. 1 point 4, launches a procedure for the selection of subcontractors by publishing a subcontract notice. The economic operator shall apply the provisions on the contract notice accordingly.
2. In the subcontract notice, the economic operator shall indicate the grounds for exclusion and

the conditions for participation or the selection criteria provided by contracting body in the procurement procedure, as well as any other criteria which the economic operator intends to apply to the selection of subcontractors. All the criteria which the economic operator intends to apply to the selection of subcontractors must be objective, non-discriminatory and consistent with the grounds for exclusion and the conditions for participation. The required conditions for participation or selection criteria must be directly linked to the subject-matter of the subcontract and must be commensurate with the subject-matter of the subcontract.

3. The provision of para. 1 shall not apply in the case where at least one prerequisite for awarding a contract under negotiated procedure without publication or direct-award contract referred to in Article 414 and Article 415 has been met.

#### **Article 424.**

Where the economic operator is obliged to conclude a subcontract in accordance with Article 409 para. 1 point 4 shall be the contracting authority or the contracting entity shall apply the provisions of the law applicable to the award of contracts to the selection of subcontractors.

#### **Article 425.**

The economic operator may meet the requirements of contracting body for the selection of a subcontractor also by concluding a framework agreement on subcontracting. The provisions of Article 423 and Article 424 shall apply.

#### **Article 426.**

1. The economic operator may, in his tender, propose to perform, under subcontract, a part of the value of the contract in the fields of defence and security which exceeds the range referred to in Article 409 para. 1 point 4.

2. In the case referred to in para. 1, the economic operator shall indicate in the tender, at the request of contracting body, the parts of the public contract which he intends to entrust to the subcontractors, and shall indicate the names of the subcontractors if they are selected.

**Article 427.** 1. Contracting body, during the procurement procedure in the fields of defence and security or during the performance of a public contract in the fields of defence and security, may refuse to consent to the conclusion of a contract with a subcontractor proposed by the economic operator in the event of grounds for exclusion or non-compliance by the subcontractor with the conditions for participation provided for the economic operator.

3. Contracting body shall notify the economic operator of the reasons for refusing to consent to the conclusion of a contract with a subcontractor, specifying the conditions for participation which the proposed subcontractor does not comply with, or the grounds for exclusion which apply to the subcontractor.

4. Contracting body shall, during the performance of a public contract in the fields of defence and security, where the subcontractor loses the credibility necessary to exclude a threat to the security of the State, obliges the economic operator, within the set time-limit, to change the subcontractor or to perform that part of the contract itself.

5. Where exclusion or change of a subcontractor concerns an entity whose resources were invoked by the economic operator, contracting body shall require the economic operator to demonstrate, within a time-limit set by contracting body, that the proposed other subcontractor or economic operator itself fulfils them to an extent no less than a subcontractor whose resources the economic operator has invoked during the procurement procedure.

#### **Article 428.**

1. In determining the value of the subcontract, Article 28 to Article 36 shall apply accordingly.
2. The provisions of Article 423 and Article 424 shall not apply to entrustment of the performance of part of the contract in the fields of defence and security awarded to the economic operator where the value of the subcontract is less than the EU thresholds.
3. In the case referred to in para. 2, the economic operator shall, when concluding a subcontract, apply the rules laid down in the Treaty on the Functioning of the European Union, in particular as regards equal treatment, fair competition and transparency.

#### **Article 429.**

The economic operator shall not award a subcontract if:

- 1) none of the subcontractors taking part in the procedure for the selection of subcontractors fulfils the conditions for participation, or
- 2) none of the tenders submitted by subcontractors participating in the procedure for the selection of subcontractors meets the requirements set out in the subcontract notice

— and this may result in the economic operator not complying with the requirements of a public contract in the fields of defence and security.

#### **Article 430.**

1. Where contracting body has specified subcontracting requirements for the use of the procedure referred to in Article 409 para. 1 point 3, or imposed on economic operators the obligation referred to in Article 409 para. 1 point 4 shall not be considered as a subcontractor:

- 1) an entity over which an economic operator may have a dominant influence, directly or indirectly, an entity which may have a dominant influence over the economic operator, an entity which, as an economic operator, is subject to a dominant influence of another entity as a result of a relationship of ownership, financial share or rules governing its conduct, in relation to:
  - a) holding more than half of the shares or stocks of an entity under dominant influence, or
  - b) holding more than half of the votes resulting from the shares or stocks of that entity, or
  - c) the right to appoint more than half of the members of the managing or supervisory body of this entity;
- 2) groups of entities established for the purpose of being awarded a contract;
- 3) an entity related to the group referred to in point 2 as defined in point 1.

2. The economic operator shall provide in the tender a list of entities which cannot be considered as subcontractors and shall update it after any changes in relations between these entities occur.

## **Title VII**

### **Public procurement contract and its performance**

#### **Chapter 1**

#### **General provisions**

##### **Article 431.**

The contracting body and the economic operator selected in the procurement procedure shall be obliged to cooperate in the performance of a public contract, hereinafter referred to as ‘the contract’, in order to properly perform the contract.

##### **Article 432.**

The contract requires a written form, under pain of nullity, unless separate provisions require a special form.

##### **Article 433.**

The proposed provisions of the contract shall not provide for:

- 1) the liability of the economic operator for delay, unless it is justified by the circumstances or scope of the contract;
- 2) charging contractual penalties for the behavior of the economic operator not related, directly or indirectly, to the subject-matter of the contract or its proper performance;
- 3) the liability of the economic operator for circumstances for which the contracting body is solely responsible;
- 4) the possibility of limiting the scope of the contract by the contracting body without indicating the minimum value or amount of the performance of the parties.

##### **Article 434.**

1. The contract shall be concluded for a definite period of time, no longer than 4 years.
2. The contract shall be concluded for a definite period of time.
3. The contracting body may conclude a contract, having as its subject-matter periodical or continuous services, for a period longer than 4 years, if the performance of the contract over a longer period results in savings in contract performance costs compared to the four-year period, or it is justified by the contracting body’s payment capacity or the scope of envisaged outlays and the period necessary for their repayment.

### **Article 435.**

1. A contract may be concluded for an indefinite period of time if its subject-matter is the supply of:

- 1) water via a water and sewerage network or the disposal of sewage into such a network;
- 2) gas from the gas network;
- 3) heat from the heating network;
- 4) computer software licenses.

2. A contract may also be concluded for an indefinite period of time if its subject-matter are services of transmission or distribution of electricity or natural gas.

### **Article 436.**

The contract shall contain provisions specifying in particular:

- 1) the planned termination date of the service, supply or works and, if necessary, the planned time limits for the performance of individual parts of the service, supply or work, specified in days, weeks, months or years, unless an indication of the date of performance of the contract is justified by an objective reason;
- 2) the conditions for payment of remuneration;
- 3) the total maximum amount of contractual penalties which may be claimed by the parties;
- 4) in the case of contracts concluded for a period longer than 12 months:
  - a) the amount of contractual penalties charged to the economic operator for non-payment or untimely payment of the remuneration due to subcontractors for the change in the amount of remuneration referred to in Article 439 para. 5,
  - b) rules for introducing changes in the amount of remuneration in the case of a change of:
    - rates of tax on goods and services and excise duty,
    - the amount of the minimum wage or minimum hourly rate determined pursuant to the Act of 10 October 2002 on the minimum wage for work,
    - the rules of being subject to social or health insurance or the amount of social or health insurance contribution rate,
    - the rules for the collecting and amount of contributions to employee capital plans referred to in the Act of 4 October 2018 on employee capital plans (Journal of Laws, item 2215 and 2019 item 1074 and 1572),
    - if these changes affect the costs of performance of the contract by the economic operator.

### **Article 437.**

1. The contract for works shall also contain provisions concerning:

- 1) the obligation for the economic operator to submit to the contracting body a draft

subcontract for works and a draft modification thereof, as well as a certified true copy of the concluded subcontract for works and its modifications;

- 2) an indication of a time limit for the contracting body to raise objections to the draft subcontract for works and to the draft of its modification or objection to the subcontract for works and to its modification;
- 3) the obligation for the economic operator to submit to the contracting body certified true copies of the concluded subcontracts for supplies or services and their modifications;
- 4) the rules for the payment of the economic operator's remuneration, conditional on the presentation by him of evidence confirming the payment of the due remuneration to subcontractors or further subcontractors;
- 5) the time limit for payment of remuneration to subcontractors or further subcontractors;
- 6) rules for concluding subcontracts with further subcontractors;
- 7) the amount of contractual penalties, in respect of:
  - a) non-payment or untimely payment of the remuneration due to subcontractors or further subcontractors,
  - b) failure to submit for approval of a draft subcontract for works or a draft modification thereof,
  - c) failure to submit a certified true copy of the subcontract or its modification,
  - d) non-modification of the subcontract with regard to the time limit for payment, in accordance with Article 464 para. 10.

2. In the cases referred to in para. 1 points 1 and 3, the submitting economic operator may certify a copy of the subcontract as a true copy of the original.

#### **Article 438.**

1. In the case of a contract for works or services, providing for the requirements referred to in Article 95 para. 1, its content shall include provisions on how to document employment and the control of compliance by the economic operator or subcontractor with employment requirements under an employment contract and provisions on sanctions for failure to meet the requirements laid down in Article 95 para. 1.

2. In order to verify the employment by the economic operator or subcontractor, on the basis of an employment contract, of persons performing the activities in the scope of contract performance and indicated by the contracting body, the contract shall provide for the possibility for the contracting body to require in particular:

- 1) a statement of the employee employed,
- 2) a statement of the economic operator or subcontractor on the employment of an employee under an employment contract,
- 3) a certified true copy of the employment contract of the employed employee,
- 4) other documents

— containing information, including personal data, necessary for the verification of employment under an employment contract, in particular the name and surname of the employee employed, the date of conclusion of the employment contract, the type of employment contract and the scope of the employee's duties.

#### **Article 439.**

1. A contract for works, supplies, or services concluded for a period longer than 6 months, shall contain provisions concerning the rules for introducing changes in the amount of remuneration due to the economic operator in the event of a change in the price of materials or costs related to the performance of the contract.

2. The contract shall specify:

- 1) the level of change in the price of the materials or costs referred to in para. 1, entitling the parties to the contract to demand a change of remuneration and the initial date of determining the change of remuneration;
- 2) the method of determining the change of remuneration:
  - a) by reference to the index of changes in the price of materials or costs, in particular the index published in the statement of the President of the Statistics Poland, or
  - b) by indicating another basis, in particular a list of types of materials or costs for which a change in price entitles the parties to the contract to demand a change in remuneration;
- 3) the method of determining the impact of the change in the price of materials or costs on the cost of performance of the contract and determining the periods during which a change in the remuneration of the economic operator may occur;
- 4) the maximum value of a change in remuneration permitted by the contracting body as a result of the application of the provisions on the rules for changing the amount of remuneration.

3. If the contract has been concluded after 180 days from the expiry of the time limit for the submission of tenders, the initial date for determining the change in remuneration shall be the day of the opening of tenders, unless the contracting body sets an earlier date.

4. A change in the price of materials or costs shall be understood as an increase in prices or costs respectively as well as a reduction thereof in relation to the price or cost adopted to determine the remuneration of the economic operator included in the tender.

5. The economic operator whose remuneration has been changed in accordance with para. 1 to 3 shall be obliged to change the remuneration of the subcontractor with whom he has concluded the contract, to the extent corresponding to changes in the prices of materials or costs related to the subcontractor's commitment, if all of the following conditions are met:

- 1) the subject of the contract is works, supplies, or services;
- 2) the duration of the contract exceeds 6 months.

#### **Article 440.**

Where the contracting body provides for the inclusion of provisions concerning rules for changing the amount of remuneration in a contract other than those referred to in Article 439 para. 1, the provisions of Article 439 para. 2-4 shall apply to the definition of those rules.

#### **Article 441.**

1. The contracting body may use the option if it has provided for the option in the contract notice or in the procurement documents in the form of clear, precise and unambiguous contractual provisions which meet all of the following conditions:

- 1) specify the type and maximum value of the option;
- 2) specify the circumstances of using the option;
- 3) they shall not modify the general nature of the contract.

2. Actions carried out on the basis of contractual provisions providing for options in breach of para. 1 shall be invalidated.

#### **Article 442.**

1. The contracting body may grant advance payments for the performance of the contract if this possibility has been provided for in the contract notice or in the procurement documents.

2. The contracting body may grant further advance payments provided that the economic operator proves that he has performed the contract in terms of the value of advance payments previously granted.

3. The contracting body may require the economic operator to lodge a security on the advance payment in one or more of the following forms:

- 1) the bank sureties or sureties of a cooperative savings-loan fund, however the surety of the fund is always a financial surety;
- 2) bank guarantees;
- 3) insurance guarantees;
- 4) sureties granted by entities referred to in Article 6b para. 5 point 2 of the Act of 9 November 2000 on the establishment of the Polish Agency for Enterprise Development;
- 5) bills of exchange with the surety of bank or cooperative savings-loan fund;
- 6) by establishing a pledge on securities issued by the State Treasury or by a local government unit;
- 7) by establishing a registered pledge on the terms specified in the Act of 6 December 1996 on the Registered Pledge and the Pledge Register (Journal of Laws of 2018, item 2017).

4. The contracting body shall require the lodging of a security on the advance payment if the expected value of advance payments exceeds 20% of the economic operator's remuneration.

5. Where a security on the advance payment is required, the contract shall specify the form or forms of the security, the amount of the security and the manner in which it is lodged and returned.

The contract may provide for the possibility of changing the form of security during the performance of the contract.

6. The contracting bodies referred to in Article 4 points 2 and 3 shall not be covered with the provisions of para. 2 and 4.

#### **Article 443.**

1. The contracting body shall pay the remuneration in parts, after the completion of a part of the contract, or grant an advance payment for the performance of the contract, in the case of contracts concluded for a period of more than 12 months.

2. The contracting body shall specify in the contract the percentage of remuneration paid for individual parts. The percentage of the last part of the remuneration may not be more than 50% of the remuneration due to the economic operator.

3. The advance payment may not be less than 5% of the economic operator's remuneration.

#### **Article 444.**

1. The body exercising financial supervision over the contracting authority, in the case of doubts as to the correctness of the application of the single-source procurement pursuant to Article 214 para. 1, points 11 to 14, shall prohibit the conclusion of the contract for the period of clarification of the case, however, no longer than 21 days.

2. Where the supervisor finds that there are no grounds for awarding the contract pursuant to Article 214 para. 1, points 11 to 14, it prohibits the conclusion of the contract and, if the contract has been concluded, requests the contracting body to terminate the contract or withdraw from the contract within a time limit specified by the supervisor.

3. In the case of ineffective expiry of the time limit referred to in para. 2, the supervisor shall request the court to cancel the contract in whole or in part.

4. The provisions of the para. 1 to 3 shall not exclude the rights and obligations of the bodies exercising financial supervision over the contracting authority under separate provisions.

#### **Article 445.**

1. The economic operators referred to in Article 58 para. 1 shall be jointly and severally liable for the performance of the contract and lodging of a contract performance guarantee.

2. The provision of para. 1 shall not apply to the contract awarded under the innovation partnership procedure to economic operators jointly applying for the contract. In such a case, the economic operators referred to in Article 58 para. 1, shall be responsible for the performance of the contract and lodging of a contract performance guarantee in part which they perform in accordance with the contract concluded between these economic operators.

#### **Article 446.**

1. The contracting body shall draw up a report on the performance of the contract in which it evaluates this performance if:

- 1) an amount of at least 10% higher than the value of the tender price has been spent for the performance of the contract;

- 2) contractual penalties have been imposed on the economic operator of at least 10% of the value of the tender price;
  - 3) there have been delays in the performance of the contract exceeding at least:
    - a) 90 days, in the case of works contracts with a value equal to or exceeding the PLN equivalent of the amount for works – EUR 20,000,000 and for supplies or services – EUR 10,000,000,
    - b) 30 days, in the case of contracts with a value below the PLN equivalent of the - amount for works – EUR 20,000,000 and for supplies or services – EUR 10,000,000;
  - 4) the contracting body or the economic operator has withdrawn from the contract in whole or in part or has terminated it in whole or in part.
2. The contracting body may draw up a report in cases other than those referred to in para. 1.
3. The report shall contain:
- 1) an indication of the amount that has been spent on the performance of the contract and its comparison with the amount resulting from the estimation of the contract value and the total price specified in the tender or the maximum nominal value of the contracting body's commitment resulting from the contract, if the tender includes a unit price or unit prices;
  - 2) an indication of the circumstances referred to in para. 1, and the reasons for their occurrence;
  - 3) evaluation of the method of contract performance, including the quality of its performance;
  - 4) conclusions on a possible change in the manner of performing future contracts or determining the subject-matter of the contract, taking into account the expediency, effectiveness and efficiency of public spending.
4. The contracting body shall draw up a report within one month of:
- 1) drawing up a record of acceptance or recognising the contract as performed, or
  - 2) termination of the contract as a result of submitting a declaration of termination or withdrawal from it.

#### **Article 447.**

1. In the case of works contracts with performance period of more than 12 months, where the contract provides for payment of:
- 1) the remuneration payable to the economic operator in parts – the condition for the payment by the contracting body of the second and subsequent parts of the due remuneration for received works, shall be submission of proofs of payment of the due remuneration to subcontractors and further subcontractors referred to in Article 464 para 1, involved in the performance of the received works;
  - 2) the total remuneration due to the economic operator after the completion of all works – the contracting body is obliged to provide for granting of advance payments, while granting further advance payments by the contracting body requires proof of payment of the due

remuneration to subcontractors and further subcontractors referred to in Article 464 para. 1, involved in the performance of part of the contract, for which the advance payment was paid.

2. Where the economic operator fails to provide all the proofs of payment referred to in para. 1, suspended respectively is:

- 1) payment of the remuneration due for the received works,
- 2) granting another advance payment

— in part equal to the sum of amounts resulting from unsubmitted proofs of payment.

3. In the case referred to in para. 1 point 1, the contracting body may indicate in the STC the percentage value of the last part of the remuneration, which may not exceed 50% of the remuneration due to the economic operator.

#### **Article 448.**

Article 448. The contracting body shall, within 30 days of the performance of the contract, publish in the Public Procurement Bulletin a notice on the performance of the contract, in accordance with the conditions set out in Title III, Chapter 2.

### **Chapter 2**

#### **Contract performance guarantee**

#### **Article 449.**

1. Whenever this Chapter refers to guarantee, it shall be understood as a guarantee of the proper performance of the contract.

2. The guarantee shall serve to cover claims for non-performance or improper performance of the contract.

3. The guarantee shall be lodged before the conclusion of the contract, unless the law provides otherwise, or the contracting body specifies a different time limit in the contract documents.

#### **Article 450.**

1. The guarantee may be lodged, at the choice of the economic operator, in one or more of the following forms:

- 1) cash;
- 2) the bank sureties or sureties of a cooperative savings-loan fund, however the surety of the fund is always a financial surety;
- 3) bank guarantees;
- 4) insurance guarantees;
- 5) sureties granted by entities referred to in Article 6b para. 5 point 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 body, the guarantee may also be lodged:

- 1) bills of exchange with the surety of bank or cooperative savings-loan fund;
  - 2) by establishing a pledge on securities issued by the State Treasury or by a local government unit;
  - 3) by establishing a registered pledge on the terms specified in the Act of 6 December 1996 on the Registered Pledge and the Pledge Register.
3. The guarantee lodged in cash shall be paid by the economic operator by bank transfer to the bank account indicated by the contracting body.
4. Where a tender guarantee is lodged in cash, the economic operator may agree to include the amount of the tender guarantee towards the contract performance guarantee.
5. If the guarantee is lodged in cash, the contracting body shall keep it in an interest-bearing bank account. The contracting body shall return the guarantee lodged in cash together with interest arising from the agreement of the bank account in which it was held, less the cost of maintaining that account and the bank commission for the transfer of funds to the economic operator's bank account.

#### **Article 451.**

1. During the performance of the contract, the economic operator may change the form of the guarantee into one or more forms referred to in Article 450 para. 1.
2. With the consent of the contracting body, the economic operator may change the form of the guarantee into one or more forms referred to in Article 450 para. 2.
3. The change in the form of guarantee shall be made with the continuity of guarantee and without reducing its amount.

#### **Article 452.**

1. The amount of the guarantee shall be determined as a percentage of the total price indicated in the tender or the maximum nominal value of the contracting body's commitment resulting from the contract, if the tender includes a unit price or unit prices.
2. The guarantee shall be fixed at not more than 5% of the total price indicated in the tender or the maximum nominal value of the contracting body's commitment under the contract.
3. The guarantee may be fixed in an amount higher than that referred to in para. 2, however, not more than 10% of the total price indicated in the tender or the maximum nominal value of the contracting body's commitment under the contract, if it is justified by the subject-matter of the contract or the risk related to the performance of the contract, as described by the contracting body in the STC or other procurement documents.
4. If the period of contract performance is longer than one year, the guarantee, with the consent of the contracting body, may be created by deductions from amounts due for partially performed supplies, services or works.
5. In the case referred to in para. 4, on the date of conclusion of the contract, the economic operator is obliged to lodge at least 30% of the amount of the guarantee.
6. The contracting body shall pay the amounts deducted into the bank account on the same day

as the payment of the invoice.

7. In the case referred to in para. 4, the full amount of the guarantee may not be lodged later than half of the period for which the contract was concluded.

8. If the period for which the guarantee is to be lodged exceeds 5 years, the guarantee in cash shall be lodged for the entire period and the guarantee in another form shall be lodged for a period of not less than 5 years, at the same time the economic operator commits itself to extend the guarantee or to lodge a new guarantee for subsequent periods.

9. In the case of non-renewal or non-lodging of a new guarantee not later than 30 days before the expiry date of the existing guarantee lodged in a form other than in cash, the contracting body shall change the form into guarantee in cash by paying the amount from the existing guarantee.

10. The payment referred to in para. 9, shall take place not later than on the last day of validity of the existing guarantee.

#### **Article 453.**

1. The contracting body shall return the guarantee within 30 days from the date of performance of the contract and its recognition by the contracting body as duly performed.

2. The contracting body may leave an amount not exceeding 30% of the guarantee to secure claims under the warranty or warranty for defects.

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 or warranty for defects.

4. The contracting body may partially return the guarantee after the performance of part of the contract, if it has provided for this possibility in the procurement documents.

### **Chapter 3**

#### **Modification of the contract**

#### **Article 454.**

1. A significant modification of the contract concluded requires a new procurement procedure.

2. The modification of the contract is significant if it causes the nature of the contract to change significantly in relation to the original contract, in particular if the modification:

- 1) introduces conditions which, if they had been applied in a procurement procedure, other economic operators would have participated or could have participated in the procurement procedure or offers of a different content would be accepted;
- 2) violates the economic balance of the parties to the contract in favor of the economic operator in a manner not provided for in the original contract;
- 3) significantly extends or reduces the scope of the services and obligations arising from the contract;
- 4) it consists of replacing the economic operator to whom the contracting body has awarded the contract with a new economic operator in cases other than those referred to in Article

**Article 455.**

1. It is permissible to modify the contract without conducting a new procurement procedure:
  - 1) irrespective of the value of the modification, provided that it is provided for in the contract notice or contract documents, in the form of clear, precise and unambiguous contractual provisions, which may include provisions relating to the rules for changing the price if they meet all of the following conditions:
    - a) specify the type and scope of modifications,
    - b) lay down the conditions for introducing modifications,
    - c) they do not provide for modifications that would change the general nature of the contract;
  - 2) when the new economic operator is to replace the current economic operator:
    - a) where this possibility is provided for in the contractual provisions referred to in point 1, or
    - b) as a result of the succession, by entering into the rights and obligations of the economic operator, following a takeover, merger, division, transformation, bankruptcy, restructuring, inheritance or acquisition of the current economic operator or its enterprise, provided that the new economic operator fulfils the conditions for participation in the procedure, there are no grounds for his exclusion, it does not entail any other significant modifications of the contract, and it is not intended to avoid the application of the provisions of the Act, or
    - c) as a result of the contracting body taking over the economic operator's commitments towards its subcontractors, in the case referred to in Article 465 para. 1.
  - 3) where it concerns the performance, by the current economic operator, of additional supplies, services or works and, in the case of contracts in the fields of defense and security – of services or works which were not included in the basic contract, provided that they have become necessary and all following conditions are met:
    - a) the change of the economic operator shall not be made for economic or technical reasons, in particular as regards the interchangeability or interoperability of equipment, services or installations ordered under a basic contract,
    - b) the change of the economic operator would result in a significant inconvenience or significant increase in costs for the contracting body,
    - c) the price increase due to each subsequent modification shall not exceed 50% of the value of the original contract and, in the case of contracts in the fields of defense and security, the total value of modifications shall not exceed 50% of the value of the original contract, except in duly justified cases;
  - 4) if the need to modify the contract, including in particular a change in price, is caused by

circumstances which the contracting body, acting with due diligence, could not have foreseen, provided that the modification does not change the overall nature of the contract and the price increase caused by each subsequent modification does not exceed 50% of the original contract value.

2. It is also permissible to modify the contract without conducting a new procurement procedure, the total value of which is below the EU thresholds and is less than 10% of the value of the original contract, in the case of services or supplies contracts, or 15% in the case of works contracts, and these modifications do not alter the general nature of the contract.

3. In the cases referred to in para. 1 points 3 and 4, the contracting body:

- 1) shall not introduce further modifications to the contract in order to avoid the application of the provisions of the Act;
- 2) after the modification of the contract, it shall publish a notice on modification of the contract in the Public Procurement Bulletin or forward it to the Publications Office of the European Union.

4. Where the contract contains provisions on rules for changes in the amount of prices, the limit value of the price change referred to in para. 1 point 3(c) and 4, or the limit value of the modification of the contract referred to in para. 2, is determined on the basis of a changed price.

## **Chapter 4**

### **Withdrawal from the contract and its cancellation**

#### **Article 456.**

1. The contracting body may withdraw from the contract:

- 1) within 30 days of the day of becoming aware of a significant change in circumstances causing that the performance of the contract is not in the public interest, which could not have been foreseen at the time of the conclusion of the contract, or the continuation of the contract may pose a threat to the essential interests of State security or public security;
- 2) where at least one of the following circumstances occurs:
  - a) the contract has been modified in breach of Articles 454 and 455;
  - b) the economic operator at the time of concluding the contract was subject to exclusion under Article 108,
  - c) The Court of Justice of the European Union found, in the framework of the procedure provided for in Article 258 of the Treaty on the Functioning of the European Union, that the Republic of Poland has failed to fulfil its obligations under the Treaties, Directive 2014/24/EU, Directive 2014/25/EU and Directive 2009/81/EC, due to the fact that the contracting body has awarded the contract in breach of the European Union law.

2. In the case referred to in para. 1 point 2(a), the contracting body shall withdraw from the contract in the part to which the modification relates.

3. In the cases referred to in para. 1, the economic operator may only claim the remuneration due for the performance of part of the contract.

#### **Article 457.**

1. The contract shall be cancelled if the contracting body:

- 1) in breach of the law, awarded a contract, concluded a framework agreement or established a dynamic purchasing system without prior publication in the Public Procurement Bulletin or forwarding to the Publications Office of the European Union a notice initiating the procedure or without the required notice amending the notice initiating the procedure, if the changes were significant for the preparation of requests to participate in procedure or tenders;
- 2) concluded the contract in breach of Article 264 or Article 308 para. 2 or 3 or Article 421 para. 1 or 2 or Article 577, if this prevents the National Appeal Chamber from examining the appeal before the conclusion of the contract;
- 3) concluded the contract before the expiry of the period referred to in Article 216 para. 2.
- 4) in breach of Article 314 para. 1 point 3, para. 3 and 4, Article 315 or Article 422 para. 2 or 3 awarded the contract covered by the framework agreement;
- 5) in breach of Articles 323, 324 or 391 para. 4 or 5 awarded a contract covered by a dynamic purchasing system.

2. The contract shall not be cancelled if:

- 1) in the case referred to in para. 1 point 1, the contracting body had reasonable grounds to believe that it was acting in accordance with the Act, and the contract was concluded respectively 5 days after the date of publication of the notice of intention to conclude the contract in the Public Procurement Bulletin or 10 days after the date of publication of such a notice in the Official Journal of the European Union;
- 2) in the cases referred to in para. 1 points 4 and 5 the contracting body had reasonable grounds to believe that it was acting in accordance with the Act, and the contract was concluded after the expiry of the time limit specified in Article 264 para. 1 or Article 308 para. 2 or Article 421 para. 1.

3. The cancellation of the contract shall take effect from the moment of its conclusion, subject to Article 554 para.3 point 2(b).

4. For the reasons referred to in para. 1 and Article 458, cannot be demanded declaration of invalidity of the contract pursuant to Article 189 of the Act of 17 November 1964 – Code of Civil Procedure (Journal of Laws of 2019, item.1460, as amended<sup>12</sup>).

5. The provision of para. 1 does not exclude the possibility of requesting the cancellation of the contract pursuant to Article 705 of the Act of 23 April 1964 – Civil Code.

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<sup>12</sup> Amendments to the consolidated text of the aforementioned Act were announced in the Journal of Laws of 2019, item 1469, 1495, 1649, 1655, 1798, 1802 and 1818.

#### **Article 458.**

The modification of the contract shall be invalidated if it has been made in breach of Articles 454 and 455. In that case, the contractual provision in the wording in force before that modification shall apply.

#### **Article 459.**

1. The President of the Office may apply to the court for the invalidation of:
  - 1) the modification of the contract made in breach of Articles 454 and 455;
  - 2) the contract referred to in Article 457 para. 1.
2. The right referred to in para. 1, shall expire after 4 years from the date of conclusion of the contract or its modification.

#### **Article 460.**

Cancellation of the contract may be requested by an economic operator who has or had an interest in obtaining a given contract, in the case referred to in Article 457 para. 1 point 1. This right shall expire within 4 years from the date of conclusion of the contract.

#### **Article 461.**

Contract concluded pursuant to Article 214 para. 1 points 11 to 13 shall expire after 3 months from the date on which in the controlled legal person referred to in Article 214 para. 1 point 11(c), point 12(c) or 13(c), the share has acquired private capital, with the exception of the cases referred to in Article 214 para. 8.

### **Chapter 5**

#### **Subcontracting**

#### **Article 462.**

1. The economic operator may entrust the performance of part of the contract to a subcontractor.
2. The contracting body may require the economic operator to indicate, in the tender, parts of the contract which it intends to entrust to subcontractors and to indicate the names of possible subcontractors if they are already known.
3. In the case of contracts for works and services to be performed at a place subject to direct supervision of the contracting body, the contracting body shall require the economic operator to provide, before proceeding with the performance of the contract, the names, contact details and representatives of subcontractors involved in such works or services, if already known. The economic operator shall notify the contracting body of any changes to the information referred to in the first sentence during the performance of the contract and shall provide the required information on new subcontractors to whom it intends to entrust performance of works or - services at a later stage.
4. The contracting body may request the information referred to in para. 3:
  - 1) in the case of supply contracts and contracts for service other than those relating to

services to be performed at a place subject to direct supervision of the contracting body,  
or

2) concerning further subcontractors, or

3) concerning suppliers participating in the performance of a works or services contract.

5. In the cases referred to in para. 2 and 3 and para. 4 point 1, the contracting body may examine whether there are grounds for exclusion, referred to in Articles 108 and 109, of a subcontractor that is not an entity providing resources, provided that the contracting body has provided for this in the procurement documents. The economic operator shall, at the request of the contracting body, provide the statement referred to in Article 125 para. 1, or qualitative means of proof concerning that subcontractor.

6. In the case referred to in para. 5 if there are grounds for exclusion against a subcontractor, the contracting body shall require the economic operator to replace the subcontractor within the time limit specified by the contracting body under the pain of not allowing the subcontractor to perform part of the contract.

7. Where a change or resignation from a subcontractor concerns the entity whose resources the economic operator referred to, in accordance with the conditions laid down in Article 118 para. 1, in order to demonstrate compliance with the conditions for participation in the procedure, the economic operator shall demonstrate to the contracting body that the proposed other subcontractor or economic operator itself fulfils them to an extent no less than the subcontractor whose resources the economic operator referred to during the procurement procedure. Article 122 shall apply accordingly.

8. The entrustment of performance of a part of the contract to subcontractors shall not release the economic operator from liability for the proper performance of that contract.

#### **Article 463.**

The subcontract shall not contain provisions shaping the rights and obligations of the - subcontractor, as regards contractual penalties and provisions concerning the conditions for payment of remuneration, in a manner which is less favourable to him than the economic operator's rights and obligations, as shaped by the provisions of the contract concluded between the contracting body and the economic operator.

#### **Article 464.**

1. An economic operator, a subcontractor or a further subcontractor of a works contract intending to conclude a subcontract for works shall be required, during the performance of the contract, to submit a draft of this contract to the contracting body, while the subcontractor or further subcontractor is obliged to attach the economic operator's consent to conclude a subcontract with the content consistent with the draft contract.

2. The time limit for payment of the subcontractor's or further subcontractor's remuneration provided for in the subcontract shall not exceed 30 days from the date of delivery of the invoice or bill to the economic operator, subcontractor or further subcontractor.

3. The contracting body, within the time limit to be determined in accordance with Article 437 para.

1 point 2 shall submit in writing, subject to nullity, objections to the draft subcontract for works where:

- 1) it does not meet the requirements set out in the procurement documents;
- 2) it provides for a period for payment of remuneration longer than that laid down in para. 2.
- 3) it contains provisions inconsistent with Article 463.

4. Failure to submit the objections, referred to in para. 3, to the submitted draft subcontract for works, within the time limit laid down in accordance with Article 437 para. 1 point 2 shall be considered as acceptance by the contracting body of the draft contract.

5. The economic operator, subcontractor or further subcontractor of a works contract shall submit to the contracting body a certified true copy of the concluded subcontract for works within 7 days of its conclusion.

6. The contracting body, within the time limit to be determined in accordance with Article 437 para. 1 point 2, shall submit in writing, subject to nullity, the objection to the subcontract for works in the cases referred to in para. 3.

7. Failure to submit the objection referred to in para. 6, to the submitted subcontract for works, within the time limit laid down in accordance with Article 437 para. 1 point 2 shall be considered as acceptance of the contract by the contracting body.

8. In the case of contracts for works, the economic operator, subcontractor or further subcontractor shall submit to the contracting body a certified true copy of the concluded subcontract for supplies or services within 7 days of its conclusion, with the exception of subcontracts with a value of less than 0,5% of the value of the contract and the subcontracts the subject-matter of which has been indicated by the contracting body in the contract documents. The exemption referred to in the first sentence does not apply to subcontracts with a value higher than PLN 50,000. The contracting body may determine a lower value from which it will be required to submit a subcontract.

9. In the case referred to in para. 8, the subcontractor or further subcontractor shall also submit a certified true copy of the contract to the economic operator.

10. In the case referred to in para. 8, if the time limit for payment of the remuneration is longer than that set out in para. 2, the contracting body shall inform the economic operator thereof and calls on him to modify that contract, subject to a request for payment of a contractual penalty.

11. The provisions of para. 1-10 shall apply accordingly to modifications of the subcontract.

#### **Article 465.**

1. In the case of contracts for works, the contracting body shall directly pay payable remuneration due to a subcontractor or a further subcontractor who has concluded a subcontract for works approved by the contracting body or who has concluded a subcontract for supplies or services submitted to the contracting body, in the case of failure to pay by the economic operator, subcontractor or further subcontractor respectively.

2. The remuneration referred to in para. 1, shall relate only to claims arising after the contracting body has accepted the subcontract for works or, after submission to the contracting body

certified true copy of the subcontract for the supplies or services.

3. The direct payment shall cover only the remuneration due, without interest, to the subcontractor or further subcontractor.

4. The contracting body, before making direct payment, is obliged to enable the economic operator to notify, in writing, comments on the justification of the direct payment of remuneration to the subcontractor or further subcontractor. The contracting body shall inform about the time limit for submitting comments, not less than 7 days from the date of delivery of this information. The comments shall not refer to the deduction of the economic operator's claims against the subcontractor not related to the performance of the subcontract.

5. In the case of submitting the comments referred to in para. 4, within the time limit specified by the contracting body, the contracting body may:

- 1) not to pay the remuneration directly to the subcontractor or further subcontractor if the economic operator proves that such payment is unjustified; or
- 2) submit to the court deposit the amount necessary to cover the remuneration of the subcontractor or further subcontractor if there is a fundamental doubt of the contracting body as to the amount of the payment due or the entity to which the payment is due, or
- 3) make a direct payment of the remuneration to the subcontractor or further subcontractor if the subcontractor or further subcontractor demonstrates the justification of such payment.

6. In the case of direct payment to the subcontractor or further subcontractor, the contracting body shall deduct the amount of remuneration paid from the remuneration due to the economic operator.

7. The necessity to make multiple direct payments to the subcontractor or further subcontractor or the necessity to make direct payments of more than 5% of the contract value may constitute grounds for withdrawal from the contract.

8. The provisions of the Act of 23 April 1964 – Civil Code shall apply to the rules of liability of the contracting body, economic operator, subcontractor or further subcontractor for the performance of works, unless the provisions of the Act stipulate otherwise.

## **TITLE VIII**

### **Authorities competent in matters of public contracts**

#### **Chapter 1**

#### **President of the Office**

#### **Article 466.**

1. The central body of government administration competent in matters of public contracts is the

President of the Office.

2. The President of the Office shall be supervised by the Minister responsible for the economy.
3. As part of the supervision of the President of the Office, the Minister responsible for the economy:
  - 1) exercises control over the President of the Office in accordance with the rules and procedures laid down in the Act of 15 July 2011 on Control in Government Administration (Journal of Laws 2020, item 224);
  - 2) approves the plan referred to in Article 469 point 18;
  - 3) assesses the activities of the President of the Office on the basis of the report referred to in Article 469 point 20 by 30 September of each year;
  - 4) may require the President of the Office to provide information or documents related to the performance of his tasks.

#### **Article 467.**

1. Functioning of the President of the Office shall be provided by the Public Procurement Office.
2. The Minister responsible for the economy, by means of an order, shall give the statute of the Office, in which he determines its organisation, with a view to ensuring proper service of the President of the Office and the National Appeal Chamber.

#### **Article 468.**

1. The President of the Office shall be appointed by the Minister responsible for the economy from among persons selected by means of open and competitive recruitment.
2. The position of the President of the Office may be held by a person who:
  - 1) holds at least a master's degree or equivalent;
  - 2) is a Polish citizen;
  - 3) enjoys all public rights;
  - 4) has not been convicted by a final judgment for intentional offences or intentional treasury offences;
  - 5) has managerial competences;
  - 6) have at least 6 years of work experience, including at least 3 year work experience on managerial position;
  - 7) he has knowledge and experience in the field of public procurement.
3. Information on the recruitment for the position of the President of the Office shall be published by placing the advertisement in a place accessible to the public in the seat of the Office and in the Public Information Bulletin, on the personal website of the Office, the personal website of the office serving the Minister responsible for the economy and the personal website of the Chancellery of the Prime Minister.
4. The notice referred to in para. 3, contains:

- 1) name and address of the Office;
- 2) identification of the position for which the recruitment is carried out;
- 3) position-related requirements arising from legal provisions;
- 4) scope of tasks performed on the position for which recruitment is carried out;
- 5) indication of the documents required;
- 6) date, form and place of submission of the documents;
- 7) information on recruitment methods and techniques.

5. The time limit referred to in para. 4 point 6, cannot be less than 10 days from the date of the publication of the notice in the Public Information Bulletin, on the personal website of the office serving the Minister responsible for economy.

6. Recruitment for the position of the President of the Office shall be carried out by a qualification commission appointed by the Minister responsible for the economy, comprised of at least 3 people whose knowledge and experience warrants the selection of the best candidates. In the course of the recruitment procedure, the commission shall examine the fulfilment of the requirements referred to in para. 4 point 3, including evaluation of the experience and knowledge necessary to carry out the tasks for which the recruitment is carried out and the managerial competences.

7. The assessment of the candidate's knowledge, experience and managerial competence may be carried out at the request of the qualification commission by a non-member who has the knowledge, experience and qualifications to ensure that the best candidates are selected.

8. Member of the qualification commission and the person referred to in para. 7, shall be obliged to keep confidential information concerning applicants for whom recruitment is being conducted, obtained in the course of recruitment.

9. In the course of the recruitment, the qualification commission shall appoint no more than 3 candidates who it shall submit to the Minister responsible for the economy.

10. The qualification commission shall draw up a record of the recruitment carried out containing:

- 1) name and address of the Office;
- 2) specify the position for which the recruitment was made and the number of candidates;
- 3) names and addresses of no more than 3 best candidates ranked according to their level of compliance with the requirements set out in the notice;
- 4) information on the recruitment methods and techniques used;
- 5) reasons for the choice made or reasons for the non-selection of candidate;
- 6) composition of the qualification commission.

11. The result of the recruitment shall be announced without delay by placing the information in the Office's seat and in the Public Information Bulletin, on the website of the Office, the personal website of the office serving the minister responsible for the economy and the personal website of the Chancellery of the Prime Minister.

12. The notice referred to in para.11 contains:

- 1) name and address of the Office;
- 2) identification of the position for which the recruitment was made;
- 3) name of the selected candidate and his place of residence or information about not-selection of the candidate.

13. The placing of the notice referred to in para.4, and the notices referred to in para.12, in the Public Information Bulletin, on the personal website of the Office, on the personal website of the office serving the minister responsible for the economy and the personal website of the Chancellery of the Prime Minister is free of charge.

14. The President of the Office shall be dismissed by the Minister responsible for the economy.

### **Article 469.**

The President of the Office:

- 1) ensures the procurement system, in particular ensures compliance with the procurement rules and controls the procurement process within the scope of the law, and promotes the principles of professional ethics of persons performing tasks in the procurement system;
- 2) decides on individual matters provided for by the Act;
- 3) conducts international cooperation on procurement-related matters;
- 4) analyses the functioning of the procurement system;
- 5) draws up and gives an opinion on draft regulatory acts on procurement;
- 6) seeks to ensure uniform application of the procurement rules, taking into account the case law of the courts and tribunals, in particular the dissemination of decisions of the National Appeal Chamber, common courts, the Supreme Court, the Court of Justice of the European Union and the Constitutional Tribunal concerning procurement;
- 7) prepares and disseminates examples of public contracts, rules of procedure and other documents used in the award of public contracts;
- 8) prepares, on the basis of the case-law of the National Appeal Chamber and the public procurement court, and make publicly available examples of contractual provisions which may not comply with Article 433;
- 9) conducts educational and information activities in the field of public procurement;
- 10) provides information on public procurement, by means of a telephone centre and by electronic means of communication;
- 11) disseminates knowledge of public procurement, including analytical information;
- 12) conducts activities related to the computerisation of the public procurement system;
- 13) issues in electronic form the Public Procurement Bulletin, in which the notices provided for by the Act are published;
- 14) ensures the functioning of the system of legal remedies in the area of appeal proceedings;

- 15) maintains and publishes on the Office's website a list of organisations entitled to bring legal remedies;
- 16) submit candidates for President and Vice-Presidents of the National Appeal Chamber;
- 17) submits a request for the appointment of a disciplinary spokesman of the National Appeal Chamber;
- 18) submits to the Minister responsible for economy, for approval, by 31 October each year, a plan of how the tasks set out in points 7 and 9 shall be carried out in the following calendar year;
- 19) submits to the Minister responsible for the economy a report on the activities of the National Appeal Chamber for the previous calendar year, taking into account the problems arising from its case-law;
- 20) draws up and submits to the Council of Ministers, by 31 July each year, and the relevant parliamentary committee, a report on the functioning of the procurement system, including the performance of the tasks referred to in points 6 and 7, during the preceding calendar year, taking into account an analysis of his activities;
- 21) transmits to the European Commission, every three years, a report on the monitoring of the functioning of the procurement system and a statistical report on public contracts whose value is less than the European Union thresholds;
- 22) transmits to the European Commission, by 31 March each year, the judgments of the National Appeal Chamber of the previous calendar year concerning appeals in respect of procurement procedures in which the annulment of the contract has not been decided on the grounds of an important public interest referred to in Article 554 para. 3 point 2 item c, together with their justification;
- 23) presents the position in relation to the interpretation doubts between the control authorities referred to in Article 596 para.2, at the request of the control authority;
- 24) gives an opinion on the control questionnaire referred to in Article 599 para.1 if the control authority requests an opinion;
- 25) performs the tasks of a Member State referred to in Article 13 para. 5, Article 14 para. 5-7, Article 36 para. 1 and Article 38 para. 3 of Regulation (EU) 2022/2560 of the European Parliament and of the Council of December 14, 2022, on foreign subsidies distorting the internal market (OJ EU L 330 of December 23, 2022, p. 1), hereinafter referred to as "Regulation 2022/2560," regarding foreign subsidies distorting the internal market in the context of procurement procedures.

#### **Article 469a.**

The President of the Office shall cooperate with the President of the Office of Competition and Consumer Protection to the extent necessary for the performance of his statutory duties, in particular with regard to the performance of the Member State's tasks specified in the Regulation 2022/2560.

#### **Article 470.**

1. The entry on the list referred to in Article 469 point 15 can be applied for by the entities which operate under the provisions on:

- 1) chambers of commerce;
- 2) crafts;
- 3) professional self-government of certain entrepreneurs;
- 4) employers' organisations;
- 5) professional self-governments of architects and construction engineers;
- 6) trade unions.

2. Entry on the list, refusal of entry or deletion from the list shall be made by the President of the Office by an administrative decision.

#### **Article 471.**

1. In order to ensure uniform application of the provisions of the Act by contracting bodies, the President of the Office shall, in particular, issue opinions on its own motion or on request, in which it presents an interpretation of the provisions of the Act which raise serious doubts or cause discrepancies in case law, taking into account the case-law of the Supreme Court, the Constitutional Tribunal, the Court of Justice of the European Union, the common courts and the National Appeal Chamber.

2. Request for the opinion referred to in para.1, state the reasons in which, in particular:

- 1) essence of the legal issue shall be presented and shall indicate the provisions of the Act requiring an opinion;
- 2) need for an opinion shall be justified.

3. The President of the Office shall leave the request for the opinion referred to in para.1, without consideration if the conditions referred to in para. 1 are not met, or the request for an opinion shall not contain a statement of reasons.

4. The opinion referred to in para.1, contains in particular:

- 1) description of the legal issue in connection with which the interpretation of the provisions of the Act is carried out;
- 2) interpretation of the provisions of the Act together with legal justification.

5. The President of the Office shall publish the opinion referred to in para. 1, issued ex officio, on the Office's website.

#### **Article 472.**

1. The President of the Office shall perform the tasks arising from the Act with the assistance of no more than two Vice-Presidents of the Office.

2. The Vice-President of the Office shall be appointed by the Minister responsible for the economy, from among the persons selected by means of open and competitive recruitment, at the request

of the President of the Office. The Minister responsible for the economy shall dismiss the Vice-President of the Office at the request of the President of the Office.

3. The post of Vice-President of the Office may be held by a person who fulfils the requirements laid down in Article 468 para. 2.

4. The qualification commission conducting the recruitment for the post of Vice-President of the Office shall be appointed by the President.

5. To recruitment for the post of Vice-President of the Office the Article 468 para. 4, 5, 7, 8, 10 – 12 shall apply. The provisions of Article 468 para. 3, 6, 9 and 13 shall apply mutatis mutandis.

## **Chapter 2**

### **National Appeal Chamber**

#### **Section 1**

#### **Tasks and regime of the National Appeal Chamber**

##### **Article 473.**

1. The National Appeal Chamber, hereinafter referred to as ‘the Chamber’, shall be the authority competent to:

- 1) examination of appeals in the cases referred to in Article 513;
- 2) examination of requests to repeal the prohibition of the conclusion of the contract referred to in Article 578 para. 1.
- 3) adopting resolutions containing an opinion on the contracting body’s reservations to the result of ex-ante control and ad-hoc control carried out by the President of the Office.

2. Organizational, technical and accounting service of the Chamber are provided by the Office.

##### **Article 474.**

1. The Chamber shall be composed of no more than 100 members, appointed by the Minister responsible for the economy from among those fulfilling the requirements referred to in para. 2, and which achieved the best results in the qualifying procedure.

2. A member of the Chamber may be a person who:

- 1) is a Polish citizen;
- 2) has a higher education in law;
- 3) has passed a judge, prosecutor’s, notarial, lawyer’s or counsel’s examination or has been a judge or prosecutor, has exercised the profession of notary or has the professional title of lawyer;
- 4) is distinguished by knowledge in the field of procurement and civil law and has a minimum of five years’ professional experience in this field;

- 5) has full legal capacity;
- 6) exercises full public rights;
- 7) has a good repute;
- 8) has not been convicted by a final judgment for intentional offences or intentional treasury offences;
- 9) has reached the age of 29;
- 10) has a security clearance authorising access to classified information of a 'confidential' or higher clause, or has made a statement of consent to conduct the examination procedure referred to in Article 22 para.1 point 1 or 2 of the Act of 5 August 2010 on the protection of classified information, depending on the clause given to information, for which access is sought by a member of the Chamber, or of the function to perform.

3. Before taking up his duties, a member of the Chamber shall take an oath before the Minister responsible for the economy by repeating the following words : "I solemnly fulfil my duties of a member of the Chamber, judge impartially, in accordance with the law, and follow the principles of dignity and honesty in proceedings." Taking the oath may at the end add: "So help me God". A member of the Chamber confirms the oath by signing it.

#### **Article 475.**

1. A member of the Chamber shall enjoy the legal protection afforded to a public officer in the performance of the activities specified in the Act.
2. A member of the Chamber shall be independent and bound only by the provisions of applicable law.

#### **Article 476.**

1. Membership in the Chamber cannot be combined with:
  - 1) mandate of a Member of Parliament or a senator;
  - 2) mandate of a councillor, a mayor (mayor, city president) or a member of the county or voivodeship board;
  - 3) membership of a regional audit chamber or self-governmental appeal bodies;
  - 4) membership of a political party or political activity.
2. A Member of the Chamber cannot:
  - 1) undertake additional occupations, with the exception of teaching, research or research and teaching posts, with a cumulative amount not exceeding the full working time of the staff employed in those posts;
  - 2) carry out a self-employed or jointly business activity and manage such activities or be a representative or representative in the pursuit of such activity;
  - 3) be a member of the Management Board, the Supervisory Board or the Audit Committee or the Agent of Commercial Companies;
  - 4) be a member of the board of foundations or associations engaged in an economic activity;
  - 5) hold in commercial companies more than 10 % of the stakes or shares representing more than 10 % of the share capital in each of these companies.
3. Additional activities taken by a member of the Chamber shall not be contrary to the

performance of the duties of a member of the Chamber and shall not undermine confidence in his impartiality or compromise the seriousness of his duties.

4. A Member of the Chamber shall submit to the President of the Office every year, by 31 March, a declaration:

- 1) whether criminal proceedings are pending against him, together with information concerning the subject matter of the proceedings;
- 2) on the property status as at 31 December of the previous year, using a form, the model of which is specified in the provisions issued under the Act of 21 August 1997 on limiting the conduct of business by persons performing public functions (Journal of Laws 2019 item 2399).

#### **Article 477.**

1. Members of the Chamber shall be selected by means of a qualification procedure:

- 1) which consists of:
  - a) written examination of theoretical and practical knowledge of public procurement and civil law; and
  - b) interviews;
- 2) results of which the candidate for a Member of the Chamber has the right to appeal to the Minister responsible for the economy within 7 days of the date of receipt by the candidate of the result at a given stage of the procedure; the right to appeal shall also be granted to the candidate in the event of refusal to participate in the qualification procedure.

2. The qualification procedure shall be announced by the Minister responsible for the economy at the request of the President of the Office.

3. The announcement is published in the Public Information Bulletin, on the website of the Office, the personal website of the office serving the minister responsible for the economy and the personal website of the Chancellery of the Prime Minister, as well as in the press with a nationwide coverage.

4. The announcement shall include:

- 1) information on the number of persons who may be appointed to the Chamber in a given qualification procedure;
- 2) specify the date, form and place of acceptance of applications for members of the Chamber;
- 3) list of documents to be attached to the application of a candidate for a member of the Chamber, confirming that the conditions referred to in Article 474 para. 2 points 1 to 6 and 8 to 10 are fulfilled, and an indication of the data to be included in the application;
- 4) determination of the date for carrying out the qualification procedure;
- 5) information on the minimum number of points necessary to obtain.

5. The time limit referred to in para.4 point 2, may not be less than 30 days from the date of the publication of the announcement in the Public Information Bulletin, on the personal website of

the Office.

6. The Minister responsible for the economy shall appoint a qualification commission to conduct the qualification procedure, including the preparation of tasks for the written examination referred to in para.1 point 1, from among the persons designated by the President of the Office.

7. The qualification commission shall be composed of seven members. A member of the commission may only be a person whose knowledge and experience in the field of public procurement or civil law rules, and his authority, guarantee the proper and impartial conduct of the qualification procedure.

8. If, in the qualification procedure, a minimum number of points is obtained by fewer persons than the limit established under para. 4 point 1, the Minister responsible for the economy may announce a supplementary qualification procedure for a member of the Chamber no later than 30 days from the date of completion of the qualification procedure. For the supplementary qualification procedure, the provisions of para.1-7 applies.

9. In the composition of the Chamber, in place of a candidate selected by means of a qualification procedure or a supplementary qualification procedure, who has resigned from appointment after the announcement of the result of the procedure, another person who has obtained a minimum number of points may be appointed and not appointed as a member of the Chamber as a result of a qualification procedure or a supplementary qualification procedure, provided that such appointment occurs within one year from the date of completion of the qualification procedure or the supplementary qualification procedure respectively.

10. The Prime Minister will determine, by means of a regulation:

- 1) procedure for conducting the qualification procedure and the supplementary qualification procedure, as well as the method of determining its outcome, as well as the way in which an appeal against the outcome of the qualification procedure is lodged, and the procedure for examining the appeal,
- 2) documents to be attached to the application of a candidate for a member of the Chamber confirming that the conditions referred to in Article 474 para. 2 points 1 to 6 and 8 to 10 are met, and the scope of the data to be included in the application,
- 3) detailed range of issues on the basis of which the qualification procedure is carried out and the supplementary qualification procedure,
- 4) manner of appointment of the qualification commission, detailed requirements for the members of the qualification commission and the organisation of its work

— based on the need to ensure the proper and efficient conduct of the qualification procedure and supplementary qualification procedures, the need for objective verification of the theoretical and practical preparation of candidates for a member of the Chamber, and the fact that the data provided in the application must clearly confirm the identity of the candidate for a member of the Chamber, indicate the previous course of his professional career, his experience and education, and the attached documents or declarations are able to verify, to the extent necessary, that the applicant fulfils the required conditions, whereby the information is to be verified on the basis of documents or statements containing

information subject to the protection of personal data, and bearing in mind that the time limit for appeal is to be counted from the date of receipt by the candidate of information about the result at a given stage of the qualification procedure, and bearing in mind the need to ensure the effective and impartial work of the qualification commission.

11. The controller of the personal data of the candidate submitted in the application of the candidate for a member of the Chamber and accompanying documents, processed in the qualification procedure and in connection with the appeal against the outcome of this procedure, as well as personal data of members of the qualification commission shall be the President of the Office.

12. The Minister responsible for the economy is the controller of the candidate's personal data in connection with his appeal against the outcome of the qualification procedure, as well as personal data of members of the qualification commission, in order to fulfil his tasks, duties and powers under the Act.

13. The retention period of personal data shall be 10 years from the end of the year in which the qualification procedure was completed, in which the personal data were collected.

14. In connection with the processing of personal data in the qualification procedure, the fulfilment of the obligations referred to in Article 13 para. 1 and 2 of Regulation 2016/679 shall be effected by the inclusion of the information referred to in Article 13 para. 1 and 2 of this Regulation in the Public Information Bulletin on the personal website of the Public Procurement Office and the personal website of the office serving the minister responsible for the economy. In this case, when obtaining personal data, the authority shall provide the data subject with information on the manner in which that obligation has been performed.

#### **Article 478.**

1. Membership in the Chamber expires due to death or dismissal.

2. A member of the Chamber shall be dismissed by the Minister responsible for the economy in the case of:

- 1) loss of Polish citizenship;
- 2) loss or limitation of legal capacity;
- 3) loss of public rights;
- 4) loss of good repute;
- 5) final conviction for a deliberate offence or a deliberate treasury offence;
- 6) expiry of 6 months of the suspension period referred to in Article 486;
- 7) judgments of disciplinary exclusion from the Chamber;
- 8) not to make within the time limit one of the declarations referred to in Article 476 para.4;
- 9) refusing to issue or withdraw the security clearance referred to in the Act of 5 August 2010 on the protection of classified information;
- 10) refusing to take the oath;
- 11) failure to take up a post within the time limit laid down in the act of appointment;
- 12) application for dismissal by a member of the Chamber;
- 13) permanent incapacity to perform the duties of a member of the Chamber established by

the judge of the Social Insurance Institution or refusal without a reasonable reason to submit to an assessment of the ability to perform these duties, despite the recommendation of the President of the Chamber.

3. In the Chamber, in place of a member of the Chamber dismissed pursuant to para.2 point 10 or 11, another person who has obtained a minimum number of points may be appointed and was not appointed to the Chamber as a result of a qualification procedure or a supplementary qualification procedure, provided that the procedure was terminated not earlier than one year before the date of dismissal.

#### **Article 479.**

1. The organs of the Chamber are:

- 1) the President of the Chamber;
- 2) the General Assembly of the Chamber.

2. The President of the Chamber shall direct the work of the Chamber, in particular:

- 1) represent the Chamber outside;
- 2) chair the General Assembly of the Chamber;
- 3) set the dates of the meetings of the formations of the adjudicating panels and manage the cumulative examination of the appeals;
- 4) designate the composition of adjudicating panels to examine the appeal, including its chairperson, and the composition of adjudicating panels to adopt the resolution referred to in Article 473 para. 1 point 3, including its chairperson;
- 5) ensure the efficiency of the Chamber's work;
- 6) examine the case law of the Chamber, the common courts, the Supreme Court, the Court of Justice of the European Union and the Constitutional Tribunal, on procurement and prepare the conclusions of these analyses;
- 7) submit to the President of the Office, after adoption by the General Assembly of the Chamber, annual information on the operation of the Chamber, taking into account the problems arising from the case law.

3. The President of the Chamber performs the tasks with the assistance of the Vice-President of the Chamber, who shall replace the President of the Chamber in his absence.

4. The General Assembly of the Chamber shall be composed of members of the Chamber.

5. The General Assembly of the Chamber shall be responsible for:

- 1) preparing and receiving annual information on the activities of the Chamber, taking into account the problems arising from the case law;
- 2) designation of the composition of the disciplinary court;
- 3) examination of appeals against decisions of a disciplinary court;
- 4) consideration or opinion of other matters submitted by the President of the Chamber or submitted by the members of the General Assembly of the Chamber.

#### **Article 480.**

1. The President of the Chamber and the Vice-President of the Chamber shall appoint, at the

request of the President of the Office, the Minister responsible for the economy for a term of three years.

2. The President of the Chamber and the Vice-President of the Chamber shall be appointed from among the members of the Chamber who hold a security clearance authorising access to classified information about the 'secret' clause or have made a statement of consent to conduct the examination procedure referred to in Article 22 para. 1 point 2 of the Act of 5 August 2010 on the protection of classified information.

3. The President of the Chamber and the Vice-President of the Chamber may also be appointed from among candidates fulfilling the conditions referred to in Article 474 para. 2, selected by the competition. Before appointment, the candidate shall provide the security clearance referred to in para.2. The candidate appointed as President of the Chamber or Vice-President of the Chamber on the day of appointment shall become a member of the Chamber.

4. A competition for the President of the Chamber or the Vice-President of the Chamber referred to in para. 3, announces the Minister responsible for the economy, at the request of the President of the Office. The provisions of Article 477 para. 1 and 3, para. 4 points 2 to 5 and para. 5 to 7 shall apply to the conduct of a competition and the provisions adopted pursuant to Article 477 para. 10 shall apply mutatis mutandis.

5. The Minister responsible for the economy shall revoke the President of the Chamber or the Vice-President of the Chamber if he has been refused or withdrawn the security clearance referred to in para .2.

6. Article 478 para. 2 shall apply to the dismissal of the President of the Chamber and the Vice-President of the Chamber.

#### **Article 481.**

1. The General Assembly of the Chamber shall be convened by the President of the Chamber at least twice a year, as well as at the written request of at least half of the composition of the Chamber or the chairperson of the disciplinary court, within 14 days of its submission.

2. Resolutions of the General Assembly of the Chamber shall be adopted by a majority of votes in the presence of at least half of the composition of the Chamber. In the event of an equal number of votes, the vote of the President of the Chamber shall be decided.

#### **Article 482.**

The President of the Chamber shall determine, by order, the internal rules governing the organisation of the work of the Chamber and the tasks of the Vice-President of the Chamber, bearing in mind the need to ensure the smooth and fair performance of the Chamber's tasks.

#### **Article 483.**

1. The employment relationship with the Member of the Chamber shall be established on the basis of appointment, within the time limit specified in the act of appointment. Activities in matters relating to labour law concerning a member of the Chamber shall be carried out by the President of the Office.

2. In matters not regulated by the Act, concerning the employment relationship of a member of

the Chamber, the provisions of the Act of 26 June 1974 – the Labour Code shall apply accordingly.

#### **Article 484.**

1. The basis for determining the basic remuneration of the President of the Chamber, the Vice-President of the Chamber and the other members of the Chamber shall constitute a multiple of the base amount established in the Budget Act for a given year, pursuant to Article 9 para.1 point 2 of the Act of 23 December 1999 on shaping wages in the state budgetary sphere and amending certain acts (Journal of Laws 2018, item. 2288), for the employees of the state budgetary sphere referred to in Article 5 point 1 item a) of this Act.

2. A member of the Chamber is entitled to an allowance for long-term work, starting from the sixth year of work, 5 % of the monthly basic salary and increasing after each year of work by 1 %, up to 20 % of the monthly basic salary.

3. A member of the Chamber shall be entitled to the Jubilee Prize in the amount of:

- 1) 75% of the monthly salary – after 20 years of work;
- 2) 100% of the monthly salary – after 25 years of work;
- 3) 150% of the monthly salary – after 30 years of work;
- 4) 200% of the monthly salary – after 35 years of work;
- 5) 300% of the monthly salary – after 40 years of work;
- 6) 350% of the monthly salary – after 45 years of work.

4. The period of the Jubilee Prize shall include all previous completed periods of employment and other periods where, by virtue of separate provisions, they are included in the employment period on which employee rights depend. For the calculation and payment of the Jubilee Prize, the rules on jubilee prizes referred to in the provisions on public servants shall apply mutatis mutandis.

5. The Prime Minister shall, by means of a regulation, determine the multiple of the base amount referred to in para. 1, bearing in mind the function of a member of the Chamber, and the fact that multiples may not be less than 4.5.

#### **Article 485.**

1. A member of the Chamber shall be liable to disciplinary responsibility for violation of his duties and failure of professional dignity.

2. Disciplinary penalties shall be:

- 1) reminder;
- 2) removal from the function occupied;
- 3) exclusion from the Chamber.

3. Judgment of the penalty referred to in para. 2 point 2, means the inability for 5 years to hold the office of President of the Chamber, Vice-President of the Chamber, disciplinary spokesperson and member of the disciplinary court.

4. In disciplinary matters against the Members of the Chamber shall rule:

- 1) at first instance, a disciplinary court consisting of five members of the Chamber, appointed by the General Assembly of the Chamber from among the members of the Chamber;

2) in the second instance, the General Assembly of the Chamber.

5. The prosecutor before the disciplinary court is a disciplinary spokesman.

6. The disciplinary spokesman shall be appointed from among the members of the Chamber for a three-year term of office by the Minister responsible for economy at the request of the President of the Chamber. The disciplinary spokesman may be dismissed at any time and shall perform his duties until a new disciplinary spokesman is appointed.

7. A disciplinary decision issued at second instance may appeal to the appeal court - labour and social security court, competent for the seat of the Office, within 14 days from the date of service of the decision together with the reasons. The decision of the appeal court is not entitled to a cassation complaint.

8. The procedure for disciplinary proceedings and the procedure for selecting the composition of the disciplinary court shall be determined by the Rules of Procedure adopted by the General Assembly of the Chamber.

#### **Article 486.**

1. The Minister responsible for the economy shall suspend a member of the Chamber in his rights and obligations if he is accused of committing a deliberate offence or deliberate treasury offence.

2. The period of suspension referred to in para. 1, lasts until the end of criminal proceedings, but no longer than 6 months.

3. During the period of suspension, a member of the Chamber shall retain the right to half the salary.

### **Section 2**

#### **Rules of operation of the Chamber**

#### **Article 487.**

1. The Chamber shall examine the appeal consisting of:

- 1) three members in the case of public contracts with a value equal to or above the European Union thresholds,
- 2) single member in the case of public contracts with a value less than the European Union thresholds

– hereinafter referred to as ‘the adjudicating panel’, unless otherwise specified by the Act.

2. The President of the Chamber may order the review of an appeal in a single member panel, in the case of public contracts with a value equal to or exceeding the European Union thresholds, or in the case of public contracts with a value less than the European Union thresholds, if he deems it appropriate due to the degree of complexity of the case.

3. Resolutions containing an opinion on the contracting body’s reservations to the result of ad-hoc or ex-ante control shall be adopted by the Chamber in a three member panel.

#### **Article 488.**

1. The President of the Chamber shall assign cases and designate the adjudicating panel and the panel to take part in the adoption of the resolution referred to in Article 487 para. 3.
2. The cases shall be assigned from the alphabetical list of Members of the Chamber:
  - 1) according to the order of receipt of appeals, open to the parties to the appeal proceedings;
  - 2) according to the order of receipt of reservations to the result of ad-hoc or ex-ante control, which is public to the contracting body submitting reservations.
3. Derogation from the assignation of cases in accordance with para. 2 is admissible due to illness of a member of the Chamber or for any other valid reason, which should be indicated in the order for the appointment respectively of adjudicating panel or panel to take part in the adoption of the resolution referred to in Article 487 para.3.
4. Amendment of the designated adjudicating panel and panel to take part in the adoption of the resolution referred to in Article 487 para. 3, may occur for the reasons referred to in para. 3.
5. The circumstances referred to in para. 3, a member of the adjudicating panel and a member of the panel to take part in the adoption of the resolution referred to in Article 487 para. 3, shall notify the President of the Chamber in writing.

#### **Article 489.**

The President of the Chamber shall indicate, from among the appointed members of the panel, the chairperson of:

- 1) adjudicating panel;
- 2) panel taking part in the adoption of the resolution referred to in Article 487 para. 3.

#### **Article 490.**

1. A member of adjudicating panel and a member of panel to take part in the adoption of the resolution referred to in Article 487 para. 3, on the basis on the Act is excluded on the matters:

- 1) in which he is a party to or with one of the parties in such a legal relationship that the outcome of the case affects his rights or obligations;
- 2) his spouse, relatives or relatives in a straight line, side relatives to the fourth degree and lateral affinities to the second degree;
- 3) persons associated with he for adoption, care or guardianship;
- 4) in which he has been or is a representative of one of the parties;
- 5) in which he provided legal assistance to one of the parties or any other service related to the case.

2. The reasons for exclusion also continue after the cessation of marriage, adoption, care or guardianship.

#### **Article 491.**

1. The President of the Chamber shall exclude a member of the panel, at his request or the party's request, if there are circumstances justifying the exclusion of a member, in particular where there are facts or legal circumstances which may raise reasonable doubts as to his impartiality.

2. A member of the adjudicating panel shall notify the President of the Chamber in writing of the

basis of his exclusion.

3. A party shall apply for the exclusion of a member of adjudicating panel, in writing, substantiating the circumstances justifying the exclusion. A reappraisal based on the same circumstances is left unexamined. The President of the Chamber shall decide whether to leave the application without consideration.

4. The provisions of the para. 1 to 3 shall apply mutatis mutandis to the member of the panel taking part in the adoption of the resolution referred to in Article 487 para. 3.

#### **Article 492.**

1. The President of the Chamber shall decide on the exclusion of a member of adjudicating panel or refusal of his exclusion by means of a decision against which a complaint is not entitled to the court.

2. If the circumstances referred to in Article 490 para. 1 and Article 491 para. 1, concerns the President of the Chamber, his exclusion or refusal of exemption shall be decided by the Minister responsible for economy.

3. In the cases referred to in Article 490 para. 1 and Article 491 para. 1, the President of the Chamber shall appoint another member of the Chamber in alphabetical order of the list of members of the Chamber.

4. The provisions of the para.1 to 3 shall apply mutatis mutandis to the member of the panel taking part in the adoption of the resolution referred to in Article 487 para. 3.

### **Chapter 3**

#### **Committee for the Control of Public Contracts**

#### **Article 493.**

The Committee for the Control of Public Contracts, hereinafter referred to as 'the Committee', is the advisory body of the Minister responsible for the economy.

#### **Article 494.**

The tasks of the Committee shall be:

- 1) monitoring and analysis of the activities of the control authorities referred to in Article 596 para.2, as regards the verification of the legality of the award of public contracts, including the examination of cases where the activities of those authorities have revealed irregularities in compliance with the procurement rules, and the discrepancy in the application or understanding of those provisions, and the preparation of the conclusions of that analysis;
- 2) proposing actions, including preventive actions, corresponding to the conclusions of the analysis referred to in point 1;
- 3) ensuring the possibility of cooperation between the control authorities referred to in Article 596 para.2, for the checks referred to in point 1;
- 4) requesting the President of the Office to conduct training for control institutions, issue an

opinion or take other measures aimed at ensuring a correct and uniform understanding of procurement rules;

- 5) proposing solutions for changing the procurement control system, including the purchasing policy of the State;
- 6) proposing, at the request of the authority referred to in Article 495 para.1 point 2 and para.2, the content of the position on the objections raised by the European Commission with regard to the application of the procurement rules;
- 7) promoting good practices in procurement control standards;
- 8) cooperation in matters related to the development of a procurement control system with other countries, organisations and international and foreign institutions.

#### **Article 495.**

1. The Committee shall be composed of:

- 1) Chairperson of the Committee, appointed by the Minister responsible for the economy from among the staff of the office serving that Minister;
- 2) one representative appointed by:
  - a) the President of the Council of Ministers,
  - b) the President of the Office,
  - c) the President of the Office for Competition and Consumer Protection,
  - d) the Minister responsible for regional development, responsible for coordinating operational programmes, within the meaning of the rules governing the implementation of cohesion policy programmes,
  - e) [repealed];
- 3) The President of the Chamber.

2. A representative of the Supreme Audit Chamber, appointed by the President of the Supreme Audit Chamber, and a representative of the Regional Audit Chamber, appointed by the National Council of Regional Audit Chambers, shall be invited to participate in the Committee's work, in accordance with the rights of a member.

3. Representatives of government administration bodies invited by the chairperson of the Committee on his own initiative or at the request of a member of the Committee may participate in the Committee's work.

4. The Committee may also be consulted by persons with appropriate knowledge or experience in matters covered by the Committee's tasks, invited by the Chairperson of the Committee either on his own initiative or at the request of a member of the Committee.

#### **Article 496.**

1. The Chairperson of the Committee shall direct the work of the Committee.

2. The Chairperson of the Committee may, on his own initiative or at the request of a member of the Committee, set up working groups, specifying their composition, the terms of reference and the working arrangements and schedule.

#### **Article 497.**

1. The Committee shall decide by means of resolutions, at meetings.

2. The Committee's resolutions shall be adopted by a public vote, with a majority of 2/3 votes in the presence of at least half of the Committee's composition. In the event of an equal number of votes, the vote shall be decided by the Chairperson of the Committee.
3. The resolutions shall be signed by the Chairperson of the Committee on behalf of the Committee.
4. Draft resolutions of the Committee may be put to a circular vote.
5. Persons invited to attend the meeting of the Committee referred to in Article 495 para. 3 and 4, are not entitled to vote on resolutions.
6. The Minister responsible for the economy shall determine, by means of an order, the Committee's rules of procedure.

#### **Article 498.**

1. The Committee shall be assisted by an office serving the Minister responsible for the economy.
2. The costs of the Committee's service shall be borne by the State budget from the part which is administered by the Minister responsible for the economy.

#### **Article 499.**

The Chairperson of the Committee shall submit to the Minister responsible for the economy by 30 June each year information on the activities of the Committee for the preceding calendar year.

### **Chapter 4**

#### **Public Procurement Council**

#### **Article 500.**

1. At the President of the Office there is a Public Procurement Council, hereinafter referred to as the "Council", which is its consultative and advisory body.
2. The tasks of the Council shall be:
  - 1) expressing opinions on particularly important matters of the public procurement system presented to it by the President of the Office;
  - 2) giving opinions on draft normative acts concerning public contracts presented to it by the President of the Office;
  - 3) giving opinion on the report on the functioning of the public procurement system referred to in Article 469 point 20;
  - 4) establishing the principles of professional ethics of persons performing tasks specified in the Act in the public procurement system;
  - 5) performing other tasks commissioned by the President of the Office.
3. The Office shall provide service to the Council's work.

#### **Article 501.**

1. The Council is composed of 10 to 15 members, appointed by the Minister responsible for the economy.

2. Candidates for members of the Council may be proposed, within 60 days from the date of the publication of the information on the appointment of the Council in the Public Information Bulletin on the personal website of the office serving the Minister responsible for the economy by:

- 1) the President of the Office;
- 2) other government administration bodies;
- 3) Joint Committee of Government and Territorial Government;
- 4) Social Dialogue Council.

3. The Minister responsible for the economy shall appoint members of the Council from among persons who:

- 1) are Polish citizens;
- 2) enjoy full public rights;
- 3) have not been convicted by a final judgment for intentional offences or intentional treasury offences;
- 4) have the knowledge and authority to guarantee the proper implementation of the Council's tasks.

4. The Minister responsible for the economy shall appoint from among the persons referred to in para.1, Chairperson of the Council. The Council shall elect a Vice-Chairperson of the Council.

5. The President of the Office shall determine, by means of an order, the rules of procedure of the Council.

#### **Article 502.**

1. The Council shall be dissolved together with the dismissal of the President of the Office.

2. Membership of the Council shall expire in the case referred to in para.1, as well as in the event of the death of a member of the Council, his dismissal or resignation.

3. The Minister responsible for economy shall dismiss a member of the Council if he no longer fulfils one of the conditions laid down in Article 501 para. 3 points 1-3, and at the request of the President of the Office, in case of:

- 1) failure to perform the duties of a member of the Council;
- 2) loss of authority guaranteeing the proper performance of the Council's tasks;
- 3) loss of ability to perform duties as a result of a long-term disease of at least 6 months.

#### **Article 503.**

1. During the performance of his duties by the President of the Office, the composition of the Council:

- 1) shall be completed if, as a result of the expiry of membership of the Council, due to the death of a member of the Council, his dismissal or resignation, the number of members would be less than 10;
- 2) may be completed in accordance with Article 501 para. 1 if the number of members of the Council is not less than 10.

2. Candidates for members of the Council may be proposed by the entities referred to in Article 501 para. 2, within 60 days from the date of the publication in the Public Information Bulletin on

the personal website of the office serving the Minister responsible for the economy, information on the completion of the Council's composition.

#### **Article 504.**

1. Members of the Council shall be remunerated for their participation in the work of the Council. The amount of remuneration depends on the responsibilities of the Council and the number of meetings attended by a member of the Council.
2. The Minister responsible for the economy will determine, by means of a regulation, the remuneration of the Chairperson, Vice-Chairperson and other members of the Council for a single meeting, taking into account the extent of their duties and the fact that the remuneration may not be less than 5 % of the average remuneration in the national economy in the calendar year preceding the year of establishment of the Council, announced by the President of the Central Statistical Office on the basis of Article 20 point 1 item a) of the Act of 17 December 1998 on Pensions and Pensions from the Social Security Fund (Journal of Law 2020, items. 53, 252, 568, 1222 and 1578) and may not exceed 25 % of this remuneration.
3. Members of the Council residing in a locality other than the seat of the Office shall be entitled to subsistence allowances and reimbursement of travel and accommodation expenses under the conditions laid down in the provisions issued pursuant to Article 77<sup>5</sup> § 2 of the Act of 26 June 1974 – the Labour Code.

### **TITLE IX**

#### **Remedies**

##### **Chapter 1**

#### **General provision**

#### **Article 505.**

1. Remedies set out in this title shall be open to the economic operator, the participant of the contest and to another entity if he or she has or had an interest in obtaining a contract or prize in a contest and has suffered or may suffer damage as a result of a breach of the provisions of the Act by contracting body.
  - 1a. The remedies specified in this chapter shall not be available to economic operator, to a design contest participant, or any other entity referred to in para. 1 originating from a third country not party to international agreements.
2. Organizations entered in the list referred to in Article 469 point 15 and the Spokesperson for Small and Medium-Sized Enterprises shall be entitled to remedies with respect to the notice launching a contract award proceedings or a notice of the contest as well as the contract documents.

**Chapter 2**  
**Appeal proceedings**

**Section 1**  
**General provisions**

**Article 506.**

1. The appeal procedure is conducted in Polish.
2. All documents shall be presented in the Polish language and, if drawn up in a foreign language, the party and the participant in the appeal proceedings which invoke them shall present their translation into Polish. In justified cases, the Chamber may request the presentation of a translation into Polish of the document certified by a sworn translator.

**Article 507.**

When submitting a letter to the Chamber, the parties and participants in the appeal proceedings shall forward the letter or a copy thereof, if it has been submitted in writing, to the parties and participants in the appeal proceedings. A letter submitted to the Chamber shall be accompanied by proof of delivery of the letter or a copy thereof to the parties and participants in the appeal proceedings, or a statement confirming that the letter or a copy thereof has been delivered to them.

**Article 508.**

1. Letters of appeal shall be submitted in writing or in electronic form or in electronic manner, with the proviso that an appeal and joining the appeal proceedings submitted in electronic manner require to bear a trusted signature.
2. Written letters shall be submitted through a postal operator within the meaning of the Act of 23 November 2012 – Postal Law, in person, through a messenger, and letters in electronic manner are submitted by means of electronic communication, including the electronic delivery address, referred to in Article 2 point 1 of the Act of 18 November 2020 on Electronic Delivery.
3. Documents submitted during a hearing that is not a remote hearing or a session that is not a remote session shall be submitted together with copies for the parties and participants in the appeal proceedings, if such documents are submitted in writing.
4. Documents submitted during a remote hearing or remote meeting shall be submitted in electronic form. If, during a remote hearing or remote meeting, it is not possible to submit a document in electronic form due to at least one of the situations specified in Article 65 para. 1, the presiding judge shall decide on the manner of submitting that document.

**Article 508a.**

1. Open hearings or open sessions may be conducted using technical devices enabling them to

be conducted remotely (remote hearing or remote session), provided that this is not precluded by the nature of the activities to be performed at these hearings or sessions, there are no other circumstances hindering the conduct of a remote hearing or remote session, and the full protection of the procedural rights of the parties and participants in the appeal proceedings and the proper course of these proceedings are guaranteed.

2. In the case of a remote hearing or remote session, the adjudicating panel and the court clerk shall be present in the courtroom, and other persons participating in the remote hearing or remote session, in particular the parties and participants in the appeal proceedings, need not be present in the courtroom. The video and audio recording of the proceedings taking place in the courtroom shall be transmitted from the courtroom to the location of the persons participating in the remote hearing or remote session and from the location of those persons to the courtroom.

3. The President of the Office shall publish, by means of an announcement in the Public Information Bulletin on the Office's website, information on the technical standards of the software and hardware requirements necessary to participate in a remote hearing or remote meeting.

#### **Article 509.**

1. Time-limits shall be calculated in accordance to the provisions of civil law.

2. If the end of a time-limit for the performance of an act falls on a Saturday or a public holiday, the time limit shall expire on the day following the public holiday or public holidays.

#### **Article 510.**

1. An attorney may be an advocate or a legal counsellor as well as a person administering the property or interests of a party or the participant of the proceeding, and a person remaining in a relationship of mandate with a party or the participant of the proceeding, provided that the subject matter of the case is covered by this mandate.

2. An attorney of a legal person or an entrepreneur, including the one having no legal personality or an entity without legal personality, may also be an employee of this entity.

#### **Article 511.**

1. An attorney is obliged, while performing his/her first act before the President of the Chamber or before the Chamber, attach to the case files the power of attorney together with the signature of the principal or a certified copy of the power of attorney. Where the power of attorney is submitted in writing, the attorney shall submit it together with a copy to the parties and participants in the appeal proceeding, unless the copy of the power of attorney has been delivered directly by the attorney to the party and to the participant. An advocate and a lawyer may authenticate themselves a copy of the power of attorney granted to them and copies of other documents demonstrating their legitimacy.

1a. During appeal proceedings, power of attorney may be granted orally at a hearing or session by means of a statement made by a party or participant in the appeal proceedings and recorded in the minutes.

2. If lacks regarding power of attorney or composition of the competent authorities are possible

to be supplemented, the Chamber shall set the appropriate time-limit for this purpose.

3. The Chamber may temporarily admit to activities a person who is not able to present his/her power of attorney, provided that before the expiry of the set time-limit those deficiencies will be supplemented and activities approved by the person appointed to do so.

#### **Article 512.**

Members of the Chamber shall maintain the confidentiality of the information contained in documents provided by the parties and participants in the appeal proceeding and act in appeal proceeding in accordance with the public interest, in particular in the fields of defence and security.

### **Section 2**

#### **Appeal**

#### **Article 513.**

An appeal can be filed against:

- 1) an act of contracting body which is incompatible with the provisions of the Act, undertaken in contract award proceeding, conclusion of a framework agreement, dynamic purchasing system, system of qualification of economic operators or a contest, including a draft provision of the contract;
- 2) failure to act in the contract award proceeding, conclusion of a framework agreement, dynamic purchasing system, system for qualifying economic operators or a contest to which contracting body was obliged under the Act;
- 3) failure to conduct the contract award proceeding or to organise a contest on the basis of the Act, although contracting body was obliged to do so.

#### **Article 514.**

1. An appeal shall be lodged with the President of the Chamber.
2. The appellant shall forward to contracting body an appeal lodged in electronic form or electronic manner or a copy of that appeal, if it has been lodged in writing, before the expiry of the time-limit for lodging the appeal in such a way that the appeal can be consulted before the expiry of this time-limit.
3. It is presumed that contracting body may have been able to read the content of the appeal before the expiry of the time-limit for submitting the appeal if, accordingly, the appeal or a copy of the appeal, took place before the expiry of the time-limit for submission by means of electronic communication.

#### **Article 515.**

1. An appeal shall be lodged:
  - 1) in the case of contracts the value of which is equal to or above the EU thresholds, within:
    - a) 10 days from the date of transmission of information on the activity of contracting body providing the grounds for its lodging, if the information was transmitted by

means of electronic communication,

b) 15 days from the date of transmission of information on the activity of contracting body providing the grounds for its lodging, if the information was transmitted by in a manner other than that referred to in letter a;

2) in the case of contracts with a value less than the EU thresholds, within:

a) 5 days from the date of transmission of information on the activity of contracting body providing the grounds for its lodging, if the information was transmitted by means of electronic communication,

b) 10 days from the date of transmission of information on the activity of contracting body providing the grounds for its lodging, if the information has been communicated in a manner other than that referred to in letter a.

2. An appeal against the content of the notice launching a procurement procedure or the contest or to the content of the procurement documents shall be filed within:

1) 10 days from the date of publication of the notice in the Official Journal of the European Union or the publication of the procurement documents on the website in the case of contracts the value of which is equal to or above the EU thresholds;

2) 5 days from the date of the publication of the notice in the Public Procurement Bulletin or the procurement documents on the website, in the case of contracts the value of which is less than the EU thresholds.

3. Appeal in cases other than those referred to in para. 1 and para. 2 shall be submitted within:

1) 10 days from the day of becoming aware, or, acting with due diligence, one could have become aware of the circumstances providing grounds for its lodging in the case of the contracts whose value is equal to or exceeds the EU thresholds;

2) 5 days from the date of becoming aware, or, acting with due diligence, one could have become aware of the circumstances providing grounds for its lodging in the case of the contracts whose value is less than the EU thresholds.

4. If contracting body has not published a notice of intention to conclude a contract, or despite such obligation has not sent the economic operator a notification of the choice of the best tender or has not invited the economic operator to tender under a dynamic purchasing system or framework agreement, an appeal shall be lodged no later than:

1) 15 days from the date of the publication in the Public Procurement Bulletin of a notice of the result of the proceeding or 30 days from the date of publication in the Official Journal of the European Union of a contract award notice, or in the case of award of the contract by negotiated procedure without prior publication a direct-award contract - a notice of the result of the proceeding or a contract award notice, including a justification for awarding the contract by negotiated procedure without prior notice or a direct-award contract;

2) 6 months from the date of conclusion of the contract, if contracting body:

a) failed to publish a contract award notice in the Official Journal of the European Union –or

b) published in the Official Journal of the European Union a contract award notice which does not contain a justification for the award of the contract by negotiated

- procedure without prior publication or a direct-award contract;
- 3) one month from the date of conclusion of the contract, if contracting body:
    - a) failed to publish the notice of the result of the proceeding in the Public Procurement Bulletin or
    - b) published in the Public Procurement Bulletin a notice of the result of the proceeding, which does not contain a justification for awarding the contract in negotiated procedure without prior publication or direct-award contract.

#### **Article 516.**

##### 1. The appeal shall contain:

- 1) the forename and surname or name, place of residence or seat, the phone number and electronic mail address of the appellant as well as the forename and surname of the appellant's representative (representatives);
- 2) the name and the seat of contracting body, telephone number and e-mail address of contracting body;
- 3) the Universal Electronic Population Register System number (PESEL) or Tax Identification Number (NIP) of the appellant who is a natural person, provided that he/she is obliged to hold such a number or holds the same without being obliged to do so;
- 4) the number in the National Court Register or, in the absence thereof, the number in another relevant register, records or NIP of the appealing non-natural person who is not obliged to enter in the relevant register or records, if it is obliged to hold it;
- 5) identification of the subject-matter of the contract;
- 6) indication of the number of notice in the case of publication in the Public Procurement Bulletin or publication in the Official Journal of the European Union;
- 7) indication of the act or failure to act of contracting body charged as being non-compliance with the provisions of the Act, or an indication of the failure to conduct a contract award procedure or to organise a contest on the basis of the Act;
- 8) brief presentation of the pleas;
- 9) a request as to how the appeal will be settled;
- 10) indication of the factual and legal circumstances justifying the appeal and the evidence in support of the circumstances cited;
- 11) the appellant's signature or his representative or representatives;
- 12) list of annexes.

##### 2. The appeal shall be accompanied by:

- 1) a proof of payment of the appeal fee in the required amount;
- 2) a proof of transmission of the appeal or a copy thereof to contracting body, as appropriate;
- 3) a document confirming the authority to represent the appellant;
- 4) the evidence, referred to in para 1 point 10.

#### **Article 517.**

##### 1. The appeal shall be examined if:

- 1) does not contain formal deficiencies;

- 2) an entry fee has been paid in the required amount.
2. The entry fee shall be paid at the latest by the date of expiry of the time-limit for lodging an appeal.

#### **Article 518.**

1. Where the appeal is unable to proceed properly as a result of failure to comply with the formal conditions, the absence of a power of attorney or the absence of proof of payment of the appeal fee within the time-limit referred to in Article 517 para. 2, the President of the Chamber shall require the appellant, under the pain of returning the appeal, to correct or supplement the appeal or to submit a proof of payment of the entry fee or document confirming the right to represent the appellant, within 3 days from the date of delivery of the request.
2. Incorrect indication of the appeal or other obvious inaccuracies shall not be an obstacle to commencing the running of the appeal period and to examine it by the Chamber.
3. The President of the Chamber shall instruct in the request referred to in para. 1 that in the event of a failure to correct, complete or attach of proof of payment of the entry fee or document confirming the right to represent the appellant within 3 days, the appeal will be returned.
4. In the event the request referred to in para. 1 is served on the appellant earlier than 3 days prior to the expiration of the time-limit for lodging the appeal, the appellant may submit the lacking proof of payment of the entry fee by the expiration date of the time-limit for submitting the appeal, at the latest.

#### **Article 519.**

1. In the case of non-payment of an entry fee within the time-limit referred to in Article 517 para. 2, and after unsuccessful expiry of the time-limit referred to in Article 518 para. 1, the President of the Chamber shall return the appeal in the form of a ruling.
2. The returned appeal shall not bring about the effects which under the Act are binding upon lodging the appeal to the President of the Chamber.
3. The President of the Chamber shall inform contracting body about the return of the appeal, by sending a copy of the ruling together with the justification. Article 559 para. 2 shall apply accordingly.
4. The provisions of para. 1 to para. 3 shall apply in the case of failure to comply with the formal conditions for the appeal or lack of a power of attorney ascertained by the adjudicating bench. The adjudicating bench shall enjoy the competences of the President of the Chamber.

#### **Article 520.**

1. The appellant may withdraw an appeal until closing a hearing.
2. The withdrawn appeal shall not bring about the legal effects which under the Act are binding upon lodging the appeal to the President of the Chamber.

#### **Article 521.**

1. The contracting body is obliged to respond to the appeal within the time limit set by the President of the Chamber. The time limit for responding to the appeal may not be shorter than 5

days from the date of delivery of the appeal or a copy thereof to the contracting authority.

2. In its response to the appeal, the contracting body shall address the content of the appeal, in particular the allegations raised in the appeal, indicate its claims and attach evidence in support of its claims or in order to refute the claims made in the appeal.

#### **Article 521a.**

1. The contracting body shall send to the certification body referred to in Article 14 para. 1 or 2 of the Act of August 5., 2025 on the Certification of Public Procurement Economic Operators, a copy of the appeal without delay, no later than within 2 days from the date of its receipt, if the appeal contains allegations concerning the presumption arising from the certification of public procurement economic operators.

2. The certification body referred to in Article 14 para. 1 or 2 of the Act of August 5., 2025 on the Certification of Public Procurement Economic Operators shall, without delay and no later than within 5 days from the date of receipt of the appeal, shall deliver to the President of the Chamber and send to the contracting body and the economic operator filing the appeal its position, together with a statement of reasons, addressing the claims referred to in para. 1 contained in the appeal.

### **Section 3**

#### **Granting appeal by the contracting body**

#### **Article 522.**

1. In the event that contracting body grants all allegations presented in the appeal, the Chamber may discontinue appeal proceeding at a closed session without the appearance of the parties to and the participants of the appeal proceeding who joined the proceeding on the economic operator's side, provided that no economic operator joined the appeal proceeding on the contracting body's side within the set time-limit. In such a case contracting body shall perform, repeat or cancel acts in contract award proceeding as demanded in the appeal.

2. If a participant in an appeal procedure which has entered into proceeding on the part of contracting body does not object to the full consideration of the objections raised in the appeal by contracting body, the Chamber shall discontinue the procedure and contracting body shall perform, repeat or invalidate the actions in the procurement procedure, in accordance with the request contained in the appeal.

3. In the event that contracting body grants part of the allegations presented in the appeal and the appellant withdraws the other allegations, the Chamber may discontinue appeal proceeding at a closed session without the appearance of the parties and the participants in the appeal proceeding that joined the proceeding on the economic operator's side, provided that no economic operator joined the appeal proceeding on contracting body's side within the set time-limit or the economic operator which joined the appeal proceeding on contracting body's side did not lodge any objection against granting part of the allegations. In such a case contracting body shall perform, repeat or cancel acts in contract award proceeding as demanded in the appeal to the extent of the allegations granted.

4. In the event that the contracting body grants part of the allegations presented in the appeal, the Chamber may discontinue appeal proceeding in the part concerning those allegations, provided

that no economic operator joined the appeal proceedings on contracting body's side within the set time-limit or the economic operator which joined the appeal proceeding on contracting body's side did not lodge any objection against granting those allegations. In such a case the Chamber shall examine the other allegations of the appeal. Contracting body shall perform, repeat or cancel acts in contract award proceeding as demanded in the appeal to the extent of the allegations granted.

#### **Article 523.**

1. A participant in an appeal procedure which has entered into proceeding on the part of contracting body may object to contracting body's taking into account the objections raised in the appeal in whole or in part.
2. An objection shall be lodged in accordance with Article 508 para. 1 or oral to the minutes.
3. If a participant in an appeal procedure which has entered into proceeding on the part of contracting body raises an objection to the objections raised in the appeal in whole or in part if the appellant fails to withdraw the other pleas of appeal, the Chamber shall examine the appeal.

### **Section 4**

#### **Joining appeal proceeding**

#### **Article 524.**

Contracting body shall send without delay, no later than 2 days from the date of receipt, a copy of the appeal or a copy thereof to other economic operators participating in the procurement procedure, and if the appeal concerns the content of the contract notice or procurement documents, it shall also publish it on the website where the contract notice is published or the procurement documents are made available, inviting economic operators to join the appeal proceedings.

#### **Article 525.**

1. The economic operator may join the appeal proceedings within 3 days of receiving the appeal or a copy thereof, indicating the party to which it is joining, its interest in obtaining a decision in favor of the party it is joining, and its claims, as well as attaching evidence to support its claims or to refute the claims made in the appeal or response to the appeal.
2. The notification of joining the appeal proceedings shall be delivered to the President of the Chamber, and the notification of joining or a copy thereof, if submitted in writing, shall be sent to the contracting authority and the contractor lodging the appeal. The application to join the proceedings shall be accompanied by a document confirming the authority to represent the contractor who has joined the appeal proceedings.
3. Economic operators who have entered the appeal procedure shall become participants in the appeal procedure if they have an interest in the appeal being decided in favour of one of the

parties.

4. The activities of a participant in the appeal procedure shall not conflict with the acts and statements of the party to whom it proceeds, except in the case of an objection referred to in Article 523 para. 1, by the participant who proceeded to the proceeding on the part of contracting body.

#### **Article 526.**

1. Contracting body or the appellant may object to the accession of another economic operator, not later than the time of the opening of the hearing.

2. The Chamber shall take into account the opposition if it is probable that the economic operator has no interest in obtaining a settlement in favour of the party to which it proceeds. Otherwise, the Chamber dismisses the opposition.

3. A ruling on granting or dismissing the opposition may be issued by the Chamber at a closed session.

4. The ruling on granting or dismissing the opposition shall not be complained against to a court.

#### **Article 527.**

An act of contracting body carried out in accordance with the judgment of the Chamber or the court, or, in the event of taking into account the pleas set out in the appeal which he exercised in accordance with the request contained in the appeal, the appellant and the economic operator requested in accordance with Article 524, shall not be entitled to remedies.

### **Section 5**

#### **Rejection of the appeal**

#### **Article 528.**

The Chamber shall reject the appeal if it finds that:

- 1) the provisions of the Act do not apply to a case;
- 2) the appeal has been lodged by an unauthorised entity;
- 3) the appeal was filed after the expiry of the time-limit specified in the law;
- 4) the appellant refers only to the same circumstances as those which were the subject of a decision by the Chamber in the case of another appeal concerning the same procedure brought by the same appellant;
- 5) the appeal relates to an act which contracting body has performed in accordance with the judgment of the Chamber or the court or, in the event of taking into account the objections set out in the appeal, which he has performed in accordance with the request made in the appeal;
- 6) the appellant has not forwarded the appeal or a copy thereof to contracting body accordingly, in accordance with Article 514 para. 2.

#### **Article 529.**

1. The Chamber may reject the appeal at a classified meeting.

2. If it deems it necessary, the Chamber may allow the parties, the participants in the appeal proceeding, witnesses or experts to attend a meeting.

#### **Article 530.**

If it is found that there are no grounds for rejection of the appeal, the Chamber shall refer the case to the hearing.

### **Section 6**

#### **Evidence**

#### **Article 531.**

The subject of the evidence shall be facts which are essential to the settlement of the case.

#### **Article 532.**

1. Facts commonly known do not require proof.
2. The same applies to the facts known to the Chamber on its own initiative, but the Chamber at the hearing draws the attention of the parties and the participants in the appeal proceeding at the hearing.

#### **Article 533.**

1. They do not require proof of the facts granted in the course of the appeal proceeding by the other party, if the Chamber will consider that the granting does not raise doubts as to the compatibility with the actual situation.
2. If the party fails to comment on the opposite party's arguments on the facts, the Chamber, having regard to the outcome of the whole hearing, may consider these facts to be granted.

#### **Article 534.**

1. The parties and the participants to the appeal proceeding shall be required to indicate evidence for the determination of the facts from which they derive legal effects.
  - 1a. In a motion to introduce evidence, the party and participant in the appeal proceedings are required to identify the evidence in a manner that allows it to be introduced and to specify the facts to be proven by that evidence.
2. The Chamber may ex officio allow evidence not adduced by a party.

#### **Article 535.**

1. The evidence in support of their claims or in refutation of the claims of the opposing party shall be presented by the parties and participants in the appeal proceedings together with the appeal, the response to the appeal, the joinder in the appeal proceedings, or together with another document submitted no later than on the day preceding the date on which the date of the hearing or session referred to in Art. 545 para. 1 was set, under pain of losing the right to invoke evidence in the course of the appeal proceedings. The provision of Art. 509 para. 2 shall apply, except that the deadline shall expire before the opening of the hearing.
2. Where it was not possible to obtain evidence in advance to support their claims or refute the claims of the opposing party, or where the need to invoke such evidence arose in the course of the

appeal proceedings, the parties and participants in the appeal proceedings may present such evidence until the hearing is closed. The second sentence of Article 508(4) shall apply accordingly to the presentation of evidence during a remote hearing or remote session.

3. The parties and participants in the appeal proceedings are not required to attach documentary evidence to the documents referred to in paragraph 1 if such documents are included in the appeal case file, in particular if they constitute documentation of the procurement procedure.

#### **Article 536.**

The adjudicating bench may oblige the parties to or participants in appeal proceeding to present documents or other evidence relevant for resolution of the appeal.

#### **Article 537.**

The burden of proof that the offer does not contain an abnormally low price lies with:

- 1) economic operator who submitted it, if it is a party or a participant in the appeal procedure;
- 2) contracting body, if the economic operator that submitted the tender is not a participant in the appeal procedure.

#### **Article 538.**

1. The evidence is, in particular, documents, witnesses' testimonies, expert opinions and hearing of the parties.

2. In a ruling on admission of evidence, the adjudicating bench shall indicate the mean of proof and the facts to be shown.

3. The adjudicating bench accepts the evidence at the trial. Aa ruling on admission of evidence may also be issued at a closed session.

4. The adjudicating bench composition shall not be bound by its provision of evidence and may, as appropriate, repeal or amend them.

#### **Article 539.**

1. When allowing evidence from the expert's opinion, the adjudicating bench shall specify in the ruling the subject matter of the opinion and the field in which the expert is appointed and shall indicate the documentation necessary for drawing up the opinion.

2. The Chamber may appoint an expert from among persons entered on the list of judicial experts or from outside that list, where the determination of the facts of the case requires special knowledge. The expert shall be entitled to remuneration and reimbursement of expenses, in accordance with the provisions of Title III of Chapter 2 of the Act of 28 July 2005 on judicial costs in civil matters (Journal of Laws 2020, item 755, 807, 956 and 2186). The provisions on experts considering remuneration and reimbursement of expenses shall apply accordingly to interpreters.

3. In the case of appeal proceeding whose documentation contains classified information, the adjudicating bench shall appoint an expert who has access to classified information.

3. The President of the Chamber shall, by order, determine the time-limit for drawing up an opinion and shall carry out the organisational activities resulting from the acceptance of proof of the expert's opinion, in particular, in particular, it shall provide the expert with a certified true copy of

the order on admitting expert evidence and the documentation of the procurement procedure in electronic manner, or a copy of this documentation certified as a true copy of the original, in the case where contracting body waived the requirement of using electronic means of communication, necessary to prepare the opinion, along with a certified true copy of the the letter lodged in the appeal proceeding requesting the request for the admission of that evidence or a copy of the minutes of the hearing prepared in writing, if the request for the admission of expert evidence was submitted or admitted at the hearing.

4. Where a request for admission of evidence from an expert's opinion or admission to the hearing is submitted, if the hearing has been postponed in order to carry out this evidence, the adjudicating bench shall, in agreement with the President of the Chamber, set the date for the postponed hearing after drawing up the expert's opinion and inform the parties and the participants in the appeal proceeding. The adjudicating bench may request the expert to submit a supplementary opinion in writing or orally to the minutes. Where a supplementary opinion is submitted in writing, the first sentence shall apply accordingly.

5. The President of the Chamber shall send the parties and the participants in the appeal procedure a a certified true copy of the expert's opinion or a copy of the supplementary opinion prior to setting a date of the postponed hearing. If the evidence from the expert's opinion was accepted at a classified meeting before the date of the hearing in accordance with Article 544 para. 3, the President of the Chamber shall send to the parties and to the participants in the appeal procedin, before the time-limit is fixed, a certified true copy of the decision to accept this proof and a copy of the expert's opinion, if it was possible to draw up an opinion within that time-limit.

6. A party or a participant in the appeal proceeding may, until the completion of the expert's activities, request his exclusion for reasons for which the exclusion of a member of the adjudicating bench may be requested. In the case of a request to exclude an expert after the commencement of the activities, the party or the participant shall be required to prove that the reason for the exemption was later or was not known before. The exclusion of an expert shall be decided by the adjudicating bench after hearing the party or the participant of the proceeding and the expert, respectively, unless this would lead to excessive delay in the proceeding.

7. The Chamber may request the opinion of the entity referred to in Article 7 of the Act of 20 July 2018 – Law on Higher Education and Science. The opinion should indicate the persons who carried out the study and gave the opinion. The provisions of the para. 1, para. 2 second sentence, and para. 3 to para. 7 shall apply accordingly.

#### **Article 540.**

1. Where evidence is taken from the testimony of a witness,, the chairman of the adjudicating bench shall instruct the witness about the right to refuse to testify and criminal liability for giving false testimony. From the witness, who is to give testimony, an oath shall be taken, after having instructed him on the meaning of this act.

2. Witnesses shall not be:

- 1) persons incapable of perceiving or communicating their observations;
- 2) military and officials not exempted from the secrecy of classified information with "restricted" or "confidential" clause and persons obliged to keep the secret of the General

Prosecutor's Office of the Republic of Poland, if their testimony were to be connected with a violation of the clause;

- 3) legal representatives of parties or participants in a proceeding and persons who may be heard as a party or a participant in a proceeding, as bodies of a legal person or other organisation with a right to appeal.

3. No one shall have the right to refuse testimony as a witness, except the spouses of the parties or participants in the proceeding, their ascendants, descendants and siblings and relatives in the same line or degree, as well as persons being with parties or participants in the proceeding in relation of adoption. The right to refuse to testify shall continue after the termination of the marriage or the dissolution of the adoption relationship.

4. A witness may refuse to answer the question referred to him, if the testimony would jeopardise him or the persons referred to in para. 3 for criminal liability, severe and direct damage to property or if the testimony were to be combined with a violation of essential professional secrecy. The priest may refuse to testify as to the facts entrusted to him in confession.

5. The witness has the right to demand reimbursement of expenses necessary to appear for a hearing or a classified meeting, as well as remuneration for loss of earnings, in accordance with the provisions of Title III of Chapter 2 of the Act of 28 July 2005 on judicial costs in civil matters.

#### **Article 541.**

The Chamber shall refuse to carry out the evidence requested, if the facts at issue have already been established by other evidence or where it has been invoked only for delay and also if a party or participant in the appeal proceedings has lost the right to adduce evidence in the course of the proceedings.

#### **Article 542.**

1. The Chamber assesses the credibility and power of evidence according to its belief, on the basis of a comprehensive consideration of the collected material.

2. On the same basis, the Chamber shall assess the importance of refusing to provide by a party or a participant in the appeal proceeding with evidence or obstacles which they place in carrying out it contrary to the obligation of the Chamber.

#### **Article 543.**

In the event of conclusion of the contract, the Chamber may conduct investigation in order to determine the conditions for cancellation of the contract, impose a financial penalty or shorten the duration of the contract.

### **Section 7**

#### **Considering an appeal**

#### **Article 544.**

1. The Chamber shall examine the appeal within 15 days of serving thereof upon the President of

the Chamber. In the case of a summons referred to in Article 518 para. 1, the time limit for considering the appeal shall be counted from the date of correction or supplementation of the appeal or submission of proof of payment of the fee or a document confirming the authority to represent the appellant.

2. The President of the Chamber may order a joint examination of appeals by the Chamber, if they have been submitted in the same procurement procedure or concern the same activities or reluctance of contracting body activities.

3. The date of a hearing and session referred to in Article 545 para. 1, shall be set by the President of the Chamber.

3a. When setting the date for hearing the appeal, the President of the Chamber may order a remote hearing or remote meeting, as referred to in Article 545 para. 1.

4. The Prime Minister shall determine, by means of a regulation, the detailed procedure for the examination of appeals, a detailed manner of filing an appeal and other letters in appeal proceeding, the procedure to be followed in respect of an appeal lodged, and the manner regarding the preparation of a hearing, taking into consideration the need to ensure efficient organization of the hearing, fast progress of the appeal proceeding and the open character of the hearing.

#### **Article 545.**

1. The Chamber shall examine the appeal at a public hearing, unless the Act provides otherwise. This hearing may be preceded by a public session.

2. The Chamber shall, at the request or ex officio, exclude the openness of the hearing in whole or in part, if information constituting a secret which is protected under separate provisions other than classified information may be disclosed in the examination of the appeal. Then the hearing shall be held only with the parties and participants in the appeal proceeding or their representatives.

3. The Chamber, upon request or ex officio, may, within the necessary scope, restrict the parties and the parties in the appeal proceeding to access the evidence annexed to the file of the case where the disclosure of such material would threaten to disclose information which constitutes a protected secret under separate provisions other than classified information.

#### **Article 546.**

1. The Chamber shall examine the appeal at a classified meeting, if classified information may be disclosed in the examination of the appeal.

2. In the case referred to in para. 1 the Chamber may decide to consider an appeal at a hearing, the open character of which was excluded in whole, if justified by an important interest of a party.

#### **Article 547.**

In the event of an appeal concerning the procurement procedure in the fields of defence and security, whose documentation contains classified information, the President of the Office, at the request of the President of the Chamber, with a view to ensuring the protection of classified information, shall indicate the place of examination of the appeal by the Chamber.

## **Section 8**

### **Hearing and session**

#### **Article 548.**

In the hearing and the session referred to in Article 545 para. 1, a party and a participant in the appeal proceedings who do not speak Polish shall participate with the assistance of an interpreter.

#### **Article 549.**

1. A hearing and session, referred to in Article 545 para. 1, shall be chaired by the chairman of the adjudicating bench, who shall in particular open the hearing, order breaks during the hearing, give the floor to the parties and participants in the appeal proceeding, ask questions, enable members of the adjudicating bench to ask questions, states the wording of the entries in the minutes as well as close the hearing and announce the decision.

2. Following the opening of the hearing, the chairman of the adjudicating bench shall verify that the parties and the parties to the appeal proceeding have been duly informed of the date of the hearing and whether the persons representing the parties and participants are entitled to speak on their behalf.

3. In the event of non-presentation of a party or a participant in appeal proceeding at the hearing and lack of proof of effective service of notice of the date of the hearing, the chairman of the adjudicating bench shall adjourn the hearing and shall, in agreement with the President of the Chamber, set a new date for the hearing.

4. The failure of a party or a participant in an appeal procedure duly notified of the date of the hearing shall not suspend the examination of the appeal.

5. If the conditions at the location of a person participating in a remote hearing or remote meeting are not in keeping with the dignity of the Chamber or constitute an obstacle to the conduct of proceedings, or if the behavior of that person raises reasonable doubts as to the proper conduct of proceedings conducted remotely with their participation, the Chamber may refuse, by way of a decision, to allow that person to participate in the remote hearing or remote meeting. In such a case, that person shall be deemed not to have appeared at the remote hearing or remote session.

6. No appeal may be lodged with the court against the decision referred to in paragraph 5.

#### **Article 550.**

1. The adjudicating bench may postpone the hearing in order to carry out evidence which could not be carried out within the prescribed period or for other valid reasons, and shall, in agreement with the President of the Chamber, set a new date for the hearing, taking into account Article 539 para. 5.

2. In the case referred to in para. 1, the chairman of the adjudicating bench shall instruct the parties and the participants in the appeal procedure of the obligation to appear within a new period without separate notification. The parties absent at the hearing and the absent participants in the appeal procedure shall be notified of the new date.

### **Article 551.**

1. The Chairman of the adjudicating bench shall close the hearing after taking evidence and giving the floor to the parties, and if the Chamber considers that the matter has been sufficiently clarified.
2. The Chamber shall reopen a closed hearing if, after its closure, circumstances relevant to the decision of the appeal have been disclosed.

## **Section 9**

### **Decisions of the Chamber**

#### **Article 552.**

1. In its judgment, the Chamber takes as a basis the state of affairs established during the appeal proceeding.
2. The judgment may be delivered only by the adjudicating bench before which the appeal proceeding have taken place.

#### **Article 553.**

The Chamber shall rule on the dismissal of an appeal or its consideration in its judgment. In other cases, the Chamber shall issue a ruling.

#### **Article 554.**

1. The Chamber shall take account of the appeal in whole or in part if it finds:
  - 1) violation of the provisions of the Act which has had or may have a significant impact on the outcome of the contract award procedure, the contest or the system for the qualification of economic operators;
  - 2) non-conformity of the proposed provisions of the contract with the requirements arising from the provisions of the Act.
2. If the appeal is granted in part, the Chamber shall indicate, in the operative part of the judgment, which allegations it has found legitimate and which it has found illegitimate.
3. When granting the appeal, the Chamber may:
  - 1) if no contract has been concluded:
    - a) order the performance or repetition of contracting body's activities, or
    - b) order the cancellation of contracting body's activities, or
    - c) order the proposed contract provision to be modified or deleted, if it is inconsistent with the provisions of the Act, or
  - 2) where the contract has been concluded and one of the conditions referred to in Article 457 para. 1:
    - a) invalidate a contract or
    - b) invalidate a contract for outstanding obligations and impose a financial penalty in justified cases, in particular where it is not possible to reimburse benefits fulfilled under an invalidated contract, or

- c) impose a financial penalty or decide to shorten the duration of the contract where it is found that the maintenance of the contract is in an important public interest, in particular in the fields of defence and security, or
- 3) if the contract is concluded in the circumstances permitted by the law, declare the infringement of the provisions of the Act.

4. The Chamber, adjudicating on the basis of para. 3 point 2 shall take into account all relevant circumstances, including the seriousness of the infringement, the conduct of contracting body and the consequences of the termination of the contract or its provision.

5. An important public interest within the meaning of para. 3 point 2 letter c does not constitute an economic interest directly linked to the contract, including in particular the consequences of incurring costs resulting from delays in performance of the contract, launching of a new procurement procedure, the award of the contract to another economic operator and the legal obligations relating to the termination of the contract. The economic interest in maintaining the validity of the contract may be regarded as an important public interest only where the cancellation of the contract has disproportionate consequences.

6. The Chamber may not order the conclusion of the contract or the introduction into the contract of a specific content.

7. The Chamber may not invalidate the contract, if this could constitute a significant threat to the wider defence and security programme necessary for the sake of the security interests of the Republic of Poland.

#### **Article 555.**

The Chamber may not rule on charges which were not included in the appeal.

#### **Article 556.**

In the case referred to in Article 544 para. 2, the Chamber may issue a joint ruling on cases of appeals submitted.

#### **Article 557.**

In the judgment and in the ruling terminating the appeal proceeding, the Chamber shall decide on the costs of the appeal proceeding.

#### **Article 558.**

1. The Chamber shall announce the decision after the hearing has been closed, in public sitting and giving the reasons for the decision orally. The absence of the parties shall not withhold the judgment.

2. In the case of an intricate case, the Chamber may postpone the announcement of the judgment for a period of not more than 5 days. In the ruling to defer delivery of the decision, the Chamber shall set a time-limit for its announcement. If the announcement has been deferred, it may be made by the chairman of the adjudicating bench or a member appointed by the President of the Chamber.

#### **Article 559.**

1. The Chamber shall prepare, ex officio, a statement of reasons of the decision within 7 days from announcement thereof.
2. The reasons for the decision shall include an indication of the basis for the factual settlement, including the determination of the facts which the Chamber considered to be proven, the evidence on which it based it, and the reasons why it refused to give the other evidence the credibility and the force of evidence, and an indication of the legal basis of the decision quoting the provisions of the law.

#### **Article 560.**

The decision or a copy of the decision, together with the statement of reasons, shall be delivered to the parties and participants in the appeal proceedings or their representatives without due delay after the statement of reasons has been drawn up.

#### **Article 561.**

1. The Chamber may rectify, at the request or ex officio, by ruling, clerical errors or accounting errors or other obvious errors made in the decision. In such a case, the chairman of the adjudicating bench shall make a reference to its rectification on the original of the decision. The President of the Chamber shall, without delay, serve the parties and the participants in the appeal proceeding or their representatives with copies of the corrected decision, together with a copy of the rectification ruling.
2. A request for rectification may be made by a party or a participant in an appeal procedure .

#### **Article 562.**

1. The decision of the Chamber, once the court has declared its enforceability, shall have legal effect as well as the judgment of the court. Article 781 para. 2 of the Act of 17 November 1964 – Code of Civil Procedure shall apply accordingly.
2. The court shall rule on the declaration of enforceability of the judgment of the Chamber at the request of the party. The party must attach to the request the original or certified copy of the Chamber's decision.
3. The court shall declare the enforceability of the Chamber decision enforceable by execution, assigning the clause of enforceability to the decision.

#### **Article 563.**

Financial penalties referred to in Article 554 para. 3 point 2 letter b and letter c shall be imposed on contracting body up to 10 % of the value of the economic operator's remuneration provided for in the contract, taking into account the nature and extent of the infringement for which the penalty is adjudicated and the value of the economic operator's remuneration provided for in the contract concluded.

#### **Article 564.**

The Chamber, finding that the provision of Article 264 para. 1, Article 308 para. 2 or Article 577 is

infringed, which was not combined in breach of another provision of the Act, imposes a financial penalty on contracting body up to 5 % of the value of the economic operator's remuneration provided for in the contract, taking into account all relevant circumstances relating to the award of the contract.

#### **Article 565.**

1. Chamber decision issued pursuant to Article 554 para. 3 point 2 letter b or letter c shall become valid respectively on the date of the expiration of the time-limit for lodging a complaint or the date of issue by a court of a judgment dismissing the complaint, as a result of considering a complaint against a Chamber decision.

2. The decision of the court examining the complaint against the decision of the Chamber to impose a financial penalty shall be final on the date of its issue.

#### **Article 566.**

1. The President of the Chamber or the President of the court examining the complaint against the decision of the Chamber shall immediately send to the President of the Office a copy of the final decision imposing a financial penalty, in the case of a court decision – together with a copy of the Chamber decision complained against.

2. The President of the Office is a creditor within the meaning of the Act of 17 June 1966 on enforcement proceeding in administration (Journal od Laws 2020, item 1427, 1492 and 2320 and 2021, item 11 and 41).

#### **Article 567.**

1. Financial penalty shall be paid to the bank account of the Office within 30 days from the date when the decision of the Chamber or the court on imposing a financial penalty becomes valid.

2. In the event of expiry of the period referred to in para. 1, the financial penalty shall be levied in accordance with the rules on enforcement proceeding in the administration.

3. In the event of late payment of a financial penalty, interests shall not be collected.

4. The proceeds from financial penalties are the income of the state budget.

#### **Article 568.**

The Chamber shall discontinue appeal proceeding, in the form of a ruling, in the case of:

- 1) the withdrawal of the appeal;
- 2) finding that the proceeding has otherwise become redundant or inadmissible;
- 3) as referred to in Article 522.

#### **Article 568a.**

If it is found in a final and binding appeal proceeding that the presumption of non-exclusion or ability to properly perform the contract, resulting from the certificate referred to in art. 124 sec. 2, has been rebutted in whole or in part covering the specific scope of certification of public procurement economic operators, the President of the Chamber shall immediately, within no more than 3 working days from the date of issuance of the final ruling in this proceeding, send information in this respect to the certifying body referred to in Article 14 para. 1 or 2 of the Act of August 5., 2025 on the Certification of Public Procurement Economic Operators.

## **Section 10**

### **Minutes**

#### **Article 569.**

1. Minutes from the course of an open session shall be drawn up.
2. The minutes shall also be prepared from announcement of a judgment or a ruling issued after closing a closed session with participation of the parties, participants in appeal proceeding, witnesses or experts.

#### **Article 570.**

1. Minutes shall be drawn up in which the course of a session shall be recorded by means of a sound or picture and sound recording device, as well as in writing, under the direction of the chairperson of the adjudicating bench.
2. If recording of the course of the session by means of a sound or picture and sound recording device is impossible for technical reasons, the minutes shall be drawn up exclusively in writing, under the direction of the chairman of the adjudicating bench.
3. Recording of the course of the session by means of a sound or picture and sound recording device shall apply accordingly the provisions issued on the basis of Article 158 para. 5 of the Act of 17 November 1964 – Code of Civil Procedure.

#### **Article 571.**

1. The minutes drawn up in writing shall contain:
  - 1) an indication of the place and date of the session, forenames and surnames of the members of the adjudicating bench, the recording clerk, the parties and the participants in appeal proceeding, as well as the legal representatives and proxies present at the session, and the designation of the case and a mention of whether the session is public or closed;
  - 2) the course of the session, in particular the conclusions and statements of the parties and the participants to the appeal proceeding, the listing of the orders and decisions given at the session and whether they have been announced;
  - 3) the activities of the parties and the participants in appeal procedure relevant to the settlement of the case.
2. If the conduct of a public session is not recorded by a sound or picture and sound recording device, the minutes drawn up in writing shall include, in addition to the data and circumstances indicated in para. 1, the results of the inquiry and other circumstances relevant to the conduct of the session.
3. The minutes drawn up by means of a sound or picture and sound recording device shall be signed by the recording clerk by means of an electronic signature guaranteeing identification of the person who is the recording clerk and recognizability of any later amendment to the minutes.
4. The minutes drawn up in writing shall be signed by the chairman of the adjudicating bench and the recording clerk.

### **Article 572.**

1. The minutes may be rectified at the request or ex officio.
2. The chairman of the adjudicating bench shall decide on the rectification of the minutes.
3. When rectifying the minutes, a note to that effect shall be made in the minutes.
4. Refusal to rectify the minutes shall be decided by a ruling which is not subject to an action before the court.
5. The recording of a sound or picture and sound shall not be rectified.

## **Section 11**

### **Costs of the appeal procedure**

#### **Article 573.**

Until closing the hearing, the party, the participant in the appeal proceeding lodging an objection or their representatives may submit a request concerning the costs of the appeal proceeding.

#### **Article 574.**

The costs of the appeal shall include the entry fee and reasonable costs of the parties and the participants in the appeal proceeding raising objection.

#### **Article 575.**

The parties and the participant in the appeal proceeding raising objection shall bear the costs of the appeal procedure according to its outcome.

#### **Article 576.**

The Prime Minister will determine, by means of a regulation:

- 1) the amount and method of collecting an entry fee on the appeal, taking into account the differentiated amount of the entry depending on the value and type of the contract, and the fact that the entry may not be higher than PLN 20.000 and taking into account the available forms of payment of the entry;
- 2) the detailed types of costs of the appeal proceeding and the limit of costs incurred for remuneration and the expenses of the representative, as well as the detailed conditions for incurring the costs and the manner in which they are to be settled by the Chamber, taking into account the reasonableness of the reimbursement of the party and the participant in the appeal proceeding lodging objection the costs necessary for the deliberate exercise of rights or for deliberate defence, as well as the fact that the limit of costs incurred for remuneration and expenses may be issued only by one representative and shall not be higher than the minimum rates of fees laid down for the value of the case up to PLN 50.000, pursuant to provisions on advocate's or legal counsel's fee, and having regard to the content of decision issued by the Chamber.

## **Section 12**

### **Prohibition of conclusion of the contract**

#### **Article 577.**

Where an appeal is lodged, contracting body may not conclude the contract until the Chamber has announced the judgment or ruling terminating the appeal procedure.

#### **Article 578.**

1. Contracting body may submit a request to the Chamber to repeal the prohibition of the conclusion of the contract referred to in Article 577.
2. The Chamber may repeal the prohibition on the conclusion of the contract if:
  - 1) failure to conclude a contract could have adverse effects on the public interest, which exceed the advantages of the need to protect all interests in respect of which there is a likelihood of injury as a result of the actions taken by contracting body in the procurement procedure;
  - 2) contracting body proved with a reasonable degree of likelihood that the appeal is lodged exclusively in order to prohibit from conclusion of the contract.
3. The request referred to in para. 1 is examined by the adjudicating bench designated for the review of the appeal. The provisions of Article 488 para. 4 and para. 5 and Article 490 to Article 492 shall apply.
4. On the request referred to in para. 1, the Chamber shall decide at a closed session, in the form of a ruling, no later than 5 days from the date of its submission. There is no complaint against the Chamber's ruling.
5. The Chamber shall discontinue, in the form of a ruling, the proceeding launched as a result of the submission of the request referred to in para. 1, in the case of:
  - 1) the announcement by the Chamber of a decision prior to the examination of the request;
  - 2) withdrawal of the request;
  - 3) it is found that further proceeding have become unnecessary or inadmissible for other reasons.

## **Chapter 3**

### **Complaints procedure**

#### **Article 579.**

1. On the decision of the Chamber and the ruling of the President of the Chamber referred to in Article 519 para. 1, the parties and the participants in the appeal proceeding shall be entitled to lodge a complaint to a court.
2. In proceeding pending as a result of a complaint, the provisions of the Act of 17 November 1964 – Code of Civil Procedure on appeal shall apply accordingly, unless the provisions of this Chapter provide otherwise.

#### **Article 580.**

1. The complaint is brought before the District Court in Warsaw - a public procurement court, hereinafter referred to as the 'Public Procurement Court'.
2. The complaint shall be lodged via the President of the Chamber, within 14 days from the date of service of the decision of the Chamber or the ruling of the President of the Chamber referred to in Article 519 para. 1, at the same time sending a copy of the complaint to the opponent. Submitting a complaint at a post office of an operator designated within the meaning of the Act of 23 November 2012 – Postal Law or by sending to the electronic delivery address, referred to in Article 2 point 1 of the Act of 18 November 2020 on electronic delivery is equivalent to its submitting.
3. The President of the Chamber shall forward the complaint together with the files of the appeal proceeding to the Public Procurement Court within 7 days from the date of receipt of the complaint.
4. A complaint may also be lodged by the President of the Office within 30 days from the date of issue of the decision of the Chamber or the ruling of the President of the Chamber referred to in Article 519 para. 1. The President of the Office may also proceed to the pending proceeding. The provisions of the Act of 17 November 1964 – Code of Civil Procedure on prosecutor shall apply accordingly to the actions taken by the President of the Office.

#### **Article 581.**

The complaint must comply with the requirements laid down for the pleadings and must include the designation of the contested decision, stating whether it is contested in full or in part, the citing of the pleas in law, the concise reasoning thereof, the indication of the evidence and the request for the cancellation of the decision or to amend the decision in whole or in part, specifying the extent of the amendment requested.

#### **Article 582.**

In the proceeding pending as a result of a lodged complaint, neither the demand for the appeal may be expanded nor new demands may be made.

#### **Article 583.**

The court cannot rule on charges which have not been the subject of an appeal.

#### **Article 584.**

The court shall reject the complaint lodged after the expiry of the period or inadmissible for other reasons, as well as a complaint whose deficiencies have not been completed by the party within the time-limit.

#### **Article 585.**

1. If the party or intervener has not performed the procedural action within the time-limit, the court shall, at its request, restore the time-limit. A ruling on this matter may be given at a closed session.
2. A letter requesting the restoration of the period shall be submitted to the court within 7 days of the date on which the reason for the failure to comply with the deadline ceased. The reasons for

the request should be substantiated in the letter. Simultaneously with the request a party shall perform a procedural action.

#### **Article 586.**

The burden of proof that the offer does not contain an abnormally low price lies with:

- 1) economic operator who has lodged, if it is either party to the proceeding or intervener;
- 2) contracting body, if the economic operator that has submitted the tender is not a party to the procedure or intervener.

#### **Article 587.**

1. The court shall examine the case without delay, but not later than one month from the date of receipt of the complaint.
2. The provisions of Article 545 para. 2 and para. 3 shall accordingly apply to examining the complaint.

#### **Article 588.**

1. The court dismisses the complaint by judgment, if it is unfounded.
2. If the complaint is taken into account, the court amends the contested decision and decides on the substance of the case and, in other cases, gives a ruling. The provisions of Article 553 to Article 557 and Article 563 to Article 567 shall apply accordingly. The provision of Article 386 para. 4 of the Act of 17 November 1964 - the Code of Civil Procedure shall not apply.
3. If the appeal is rejected or there are grounds for dismissal, the court abrogates the judgment or amends the ruling and rejects the appeal or dismisses the proceeding.

#### **Article 588a.**

If it is found, in a final and binding complaint proceeding that the presumption of the absence of grounds for exclusion or of the ability to properly perform the contract—as evidenced by the certificate referred to in Article 124 para. 2—has been rebutted in whole or in part with respect to a specific scope of certification for public procurement economic operators, the court considering the complaint against the Chamber's ruling shall immediately, within no more than 3 working days from the date of issuance of the final decision in such proceedings, forward relevant information to the certifying body, referred to in Article 14 para. 1 or 2 of the Act of August 5., 2025 on the Certification of Public Procurement Economic Operators.

#### **Article 589.**

1. The parties shall bear the costs of the proceeding according to its outcome.
2. When determining the amount of the costs in the content of the decision, the court shall also take into account the costs incurred by the parties in connection with the review of the appeal.

#### **Article 590.**

1. The judgement of the court or the ruling terminating the case shall be subject to a cassation appeal before the Supreme Court.
2. A cassation complaint may be lodged by the party and the President of the Office. The

provisions of Part One of Book One of Title VI of Chapter Va of the Act of 17 November 1964 - Code of Civil Procedure shall apply

3. The actions taken by the President of the Office shall apply accordingly the provisions on the Public Prosecutor set out in Part One of Book One of Title VI of Chapter Va of the Act of 17 November 1964 – Code of Civil Procedure.

## **TITLE X**

### **Out-of-court settlement of disputes**

#### **Article 591.**

1. In a case of property in which the settlement is admissible, each party to the contract may, in the event of a dispute arising from the contract, submit a request for mediation or other amicable settlement of the dispute with a Court of Arbitration acting at the General Prosecutor's Office of the Republic of Poland, the chosen mediator or a person handling other amicable dispute settlement.

2. A contract or a framework agreement may contain provisions on mediation or other amicable resolution of the dispute. A mediation agreement or other amicable resolution of the dispute may also be concluded by the party's consent to mediation or other amicable resolution of the dispute where the other party has lodged the request referred to in para. 1.

#### **Article 592.**

The conclusion of the settlement shall not lead to an infringement of Chapter 3 of Title VII.

#### **Article 593.**

1. A lawsuit or a response to a lawsuit of contracting body shall contain the information on whether the parties have made an attempt at mediation or other amicable settlement of a dispute, and where no such attempts have been made, such information shall contain clarification of the reasons for not making them.

2. If the lawsuit or the response to the lawsuit of contracting body does not contain the information referred to in para. 1 in the event that the estimated value of a contract has been determined as equal to or exceeding the equivalent in zloties of the amount of EUR 10,000,000 for supplies or services and EUR 20,000,000 for construction works, and the value of the object of the dispute exceeds PLN 100,000, the court shall refer the parties to mediation or other amicable settlement of the dispute to the Arbitration Court acting at the General Prosecutor's Office of the Republic of Poland, unless the parties have designated a mediator or a person handling other amicable settlement of the dispute.

3. In the event of refusal of mediation or other amicable resolution of the dispute by the Arbitration Court of the General Prosecutor's Office of the Republic of Poland, the court shall refer the parties to mediation or other amicable resolution of the dispute:

- 1) to the mediator or to the person leading another amicable resolution of the dispute, as chosen the parties or

- 2) if the parties have not chosen a mediator or other amicable resolution of the dispute, the court shall, as appropriate, designate:
- a) a mediator pursuant to Article 183<sup>9</sup> of the Act of 17 November 1964 – Code of Civil Procedure or
  - b) by ruling, a person with the appropriate knowledge and skills to pursue another - amicable resolution of the dispute in civil matters and procurement.

#### **Article 594.**

1. The Arbitration Court of the General Prosecutor's Office of the Republic of Poland conducts mediation or other amicable resolution of the dispute pursuant to provisions of the Act of 15 December 2016 on the General Prosecutor's Office of the Republic of Poland (Journal of Laws of 2020, item 762 and 2320).
2. In cases not covered by this title, the provisions of Part One of Book One of Title VI of Chapter II of Section 1 of Subsection 1 of the Act of 17 November 1964 – Code of Civil Procedure shall apply to mediation or other amicable resolution of the dispute.
3. Article 54a of the Act of 27 August 2009 on public finances applies.

#### **Article 595.**

A mediator and a person pursuing other amicable resolution of the dispute may not be a proxy before the court in proceeding relating to a mediated dispute or other amicable settlement of the dispute, as well as in any other way participate in such proceeding.

### **TITLE XI**

#### **Control of the award of contracts**

##### **Chapter 1**

##### **General provisions**

#### **Article 596.**

1. The provisions of the Act and separate provisions applicable to the body entitled to conduct control shall apply to control the award of contracts, in terms of compliance with the provisions of the Act, hereinafter referred to as 'control' conducted by the control bodies.
2. Whenever the law refers to control bodies, they shall be understood as:
  - 1) The PPO President,
  - 2) the bodies referred to in Article 6 of the Act of 15 July 2011 on control in government administration, with the exception of the Prime Minister,
  - 3) regional chambers of audit,

- 4) managing authority within the meaning of the provisions on the implementation of cohesion policy programmes rural development programs, the strategic plan for the common agricultural policy, and funds supporting the maritime or fisheries sectors  
— carrying out controls on the award of public contracts.
3. In the case of conflicts between the provisions of this Chapter and the separate provisions referred to in para. 1, the provisions of this Chapter shall apply.

#### **Article 597.**

1. The control bodies shall, in connection with the conducted control, cooperate with each other by exchanging information on the conducted controls and their results.
2. In the case a control body becomes informed of a previous control of the contract, conducted by another control body, the body shall:
  - 1) request for access to the information on the result of control, including the document ending the control from the body which conducted the control, unless the body obtained the information otherwise;
  - 2) take into account the results of a previous control conducted by another control body.
3. The control body shall make the information referred to in para. 2 available immediately, no later than 30 days from the date of receipt of the request for access.
4. The contracting body shall, as soon as the control has been launched, inform the control body about a previous control of the contract conducted by another control body and provide it with its results.

#### **Article 598.**

1. Control bodies shall plan and conduct controls after prior review of the probability of a breach of law in the award of the contract.
2. The review shall include identification of the objective and subjective areas in which the risk of a breach is the highest.
3. The manner of conducting the review shall be determined by the control body or its superior authority.
4. No review shall be carried out in the case of control launched upon request.
5. A control body shall conduct a review before drawing up the control programme referred to in Article 14 para. 1 of the Act of 15 July 2011 on control in government administration, in so far as it is obliged to draw up such a programme under this Act.

#### **Article 599.**

1. A control body shall specify a template of control questionnaire containing a detailed description of issues to be checked during the control, the scope of the documents which a control body may request from the contracting body during the control, and the place to provide information by the contracting body on the control of the award of the contract conducted by the PPO President or by another control body.

2. The standard form of a control questionnaire shall be made available on the website of the control body in the Public Procurement Bulletin.

#### **Article 600.**

1. A control body shall submit to the contracting body to be controlled, a control questionnaire or information on the place where the control questionnaire was made available together with the notice of the launch of a control, provided that such notice is submitted.

2. In the course of the control, the control body shall not go beyond the description of the issues contained in the control questionnaire.

#### **Article 601.**

1. The basis for finding that the procurement procedure was conducted incompliant with the Act shall be the breach of the provision of the Act, which had an influence on the result of the procedure.

2. The provision referred to in para. 1, shall not apply in case of the control of the procurement procedure co-financed from the European Union funds.

#### **Article 602.**

The control bodies shall publish the information on the conducted controls and their results, including the document completing the control, in the Public Information Bulletin on their website within 30 days of the completion of the control.

## **Chapter 2**

### **Control of the PPO President**

#### **Section 1**

#### **General provisions**

#### **Article 603.**

1. The PPO President shall conduct a control in the scope of compliance of the contracting body's actions or failures to act with the provisions of the Act.

2. The provisions of this Chapter shall apply to the control of the procurement procedure, the conclusion or amendment of a contract. The provisions of this Chapter shall apply accordingly to the control of the procedure for concluding a framework agreement, to the dynamic purchasing system, to a system for qualification of economic operators or to a design contest, and to the conclusion or modification of a framework agreement.

3. The control shall be conducted in the seat of the PPO, however control concerning documents that include classified information with a "confidential" or "strictly confidential" clause, might be conducted at the seat of contracting body.

4. In case of lack of grounds for launching the control, the President of PPO shall inform the applicant on the refusal of launching the control.

#### **Article 604.**

1. The PPO employee shall be excluded from participation in control procedure if:
  - 1) participated in the procedure being the subject of control or activities directly connected with their preparation on the side of the contracting body or economic operator;
  - 2) remains 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 body 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 body or economic operator or was a member of managing or supervisory bodies of legal persons competing for the controlled contract;
  - 4) remains in such legal or actual relationship with the person acting on the side of the contracting body 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 605.**

1. In course of a control, the PPO President may:
  - 1) request from the head of the contracting body to submit the documentation related to the procurement procedure certified by the head of the contracting body to be in conformity with the original, either in written or in electronic form;
  - 2) request from the head of the contracting body or from its employees and other actors, explanations in cases concerning the subject of control, either in written or in electronic form;
  - 3) ask for the expert 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 Title III Chapter 2 of the Act of 28 July 2005 on the court costs in civil cases.
3. The factual state of the case shall be based on the whole evidence gathered in the course of the control, in particular based on the documentation related to the procurement procedure, explanation of the head of the contracting body and employees of the contracting body, experts' opinions and explanations of other actors.
4. Documentation and explanations to be submitted in electronic form and further notices in this

form shall be submitted through the PPO's electronic mailbox or on a storage device.

#### **Article 606.**

1. A control report shall be prepared following the control.
2. A report shall contain in particular:
  - 1) the name and address of the contracting body;
  - 2) launching and closing dates of the control;
  - 3) names of persons performing the control;
  - 4) indication of the procurement procedure, which was the subject-matter of the control;
  - 5) information on findings of breaches of provisions of the Act or lack of them.

### **Section 2**

#### **Ad hoc control**

#### **Article 607.**

1. The PPO President may launch an ad hoc control, ex officio or on request, in case of justified presumption, that a breach of the provisions of the Act appeared, which might have influenced the result of the procedure or a design contest, or a contract or a framework agreement was concluded or modified in breach of the provisions of the Act.
2. Ad hoc control launched upon request shall be conducted only in respect of allegations arising from the information from the request for the launch of control. In case of disclosure that there has been another breach of the provisions of the Act not indicated in the request for the launch of controls, which might have influenced the result of the procedure or a design contest, or the conclusion or modification of a contract or framework agreement with a breach of the provisions of the Act, the PPO President may extend the scope of ex officio control.
3. (repealed)
4. The ad hoc control may be launched not later than within 4 years from the day of the award of the contract or cancellation of the procurement procedure. If the control is launched before the conclusion of public contract, the provisions of Article 613 para. 4, Article 615 para. 2, and Article 171 para. 1, 3 and 5 shall apply.
5. The PPO President shall inform the contracting body and in the case of control launched upon request - the applicant and the contracting body, of launching an ad-hoc control.
6. The PPO President shall launch an ad hoc control on request of the managing authority, referred to in the Act of 20 April 2004 on the National Development Programme (Journal of Laws of 2019, items 1465 and 2020), in the Act of 6 December 2006 on rules of development policy (Journal of Laws of 2019, item 1295 and 2020 and of 2020 items 1378 and 2327), in the Act of 11 July 2014 on implementation of cohesion policy programmes in the 2014-2020 financial perspective (Journal of Laws of 2020 item 818), in the Act of 7 March 2007 on support for rural development by the European Agricultural Fund for Rural Development within Rural Development Programme for

2007-2013 (Journal of Laws of 2020 item 1371), in the Act from 20 February 2015 on support for rural development by the European Agricultural Fund for Rural Development within Rural Development Programme for 2014-2020 (Journal of Laws of 2020 items 217, 300, 695, 1440 and 2320), or in the Act from 12 March 2004 on social assistance (Journal of Laws of 2020 items 1876 and 2369), hereinafter referred to as “the managing authority”, or on request of the paying agency, referred to in the Act of 20 February 2015 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 the procurement procedure the breach of provisions of the Act appeared.

#### **Article 608.**

1. The explanatory proceeding is an initial stage in the ad hoc control and is aimed to determine whether there is a justified presumption, that a breach of the provisions of the Act appeared, which might have influenced the result of the procedure or a design contest, or that a contract or framework agreement was concluded or modified with a breach of the provisions of the Act.
2. In the case a justified presumption referred to in para. 1 has not been confirmed, the explanatory proceeding ends with the information on the absence of grounds for further conduction of the control. The provisions of Article 606, Article 609 para. 1 point 2 and Article 610 shall not apply to the explanatory proceeding.
3. The explanatory proceeding must be completed without undue delay, but not later than 6 months from the launching date of the ad-hoc control.

#### **Article 609.**

1. The ad hoc control concludes after the conduction of:
  - 1) the explanatory proceeding, in the absence of a justified presumption that in the procurement procedure or in a design contest a breach of the provisions of the Act appeared, which might have influenced the result, or that a contract or framework agreement was concluded or modified with a breach of the provisions of the Act by submitting to the applicant and the contracting body an information on the absence of the grounds for a further conduction of the control;
  - 2) the control procedure, by submitting the contracting body of the information on the result of the control, which contains in particular:
    - a) description of the procurement procedure, which was the subject-matter of the control,
    - b) information on confirmation of breach or lack of breach.
2. In the case of reservations, as referred to in Article 610 para. 1, the conclusion of the ad hoc control shall be the submission to the contracting body of information on the final resolution of reservations.

#### **Article 610.**

1. The contracting body 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 Chamber.

3. The Chamber shall prepare an opinion on the reservations in form of a resolution, within 15 days from the date of their receipt.

4. The opinion of the Chamber is binding for the PPO President.

5. The PPO President shall immediately inform the head of the contracting body on the final examination of the reservations.

#### **Article 611.**

In case of disclosed breach of the provisions of this Act, the PPO President may:

- 1) impose a financial penalty referred to in Title XII;
- 2) apply to the court for the annulment of procurement contract in its entirety or in part.

#### **Article 612.**

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**

#### **Article 613.**

1. The provisions of this Section shall apply to contracts, including those co-financed by the European Union.

2. The PPO President shall conduct control of the awarded contracts prior to the conclusion of contract (ex-ante control) co-financed by the European Union, if the value of contract 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. In case of tender for lots, tenders where the value of separate lots is equal to or exceeds the PLN equivalent of EUR 1000000 shall subject to the control referred to in para. 2,

4. The submission of the copy of the procurement documentation to the PPO President shall launch the ex-ante control.

5. On request of the management authority, the PPO President may refrain from conducting ex-ante control, if based on the assessment of this management authority, the procurement procedure was conducted in accordance with provisions of the Act. The PPO President shall immediately dispatch such an information to contracting body and to applicant.

#### **Article 614.**

1. In the case of tenders where the value is equal to or exceeds the EU thresholds, which include innovation-related aspects or having as their subject-matter an innovative product other than tenders referred to in Article 613 para. 2, the PPO President may conduct an ex-ante control of the procurement documentation on request of the contracting body.
2. The control referred to in para.1, does not include the technical part of the procurement documentation.
3. Ex-ante control of procurement documentation may include in its scope the whole procedure or the stage of invitation to request to participate or to tender, the stage of the negotiation or evaluation of tenders.
4. The provisions of Articles 615 and 616 para 1 shall apply accordingly to the control referred to in para. 1. In case the ex-ante control of procurement documentation include the whole procedure, the provisions of Article 616 para. 2-5 and Article 617 shall apply accordingly.

#### **Article 615.**

1. The contracting body shall immediately, after the Chamber passes its judgement or decision which ends the appeal procedure, with regard to the selection of the most advantageous tender, or after the expiry of the time limit for lodging the appeal, but prior the conclusion of contract, submit to the PPO President, in written form, the copy of the documentation on procurement procedure, confirmed by the head of the contracting body to be in conformity with the original, by hand signature, or in electronic form, for the purposes of conducting an ad-hoc control.
2. The contracting body shall immediately 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 Chamber passes the judgement or decision which ends the appeal procedure, taking account of Article 578 para. 2.
3. Taking into account Article 613 para. 3, in case of tender for lots where the value of separate lots is less than the amounts, as referred to in Article 613 para. 2, The PPO President may refrain from conducting ex-ante control, and shall notify it to the contracting body immediately after the receipt of the copy of documentation, as referred to in para. 1.

#### **Article 616.**

1. The end of an ex-ante control shall be the submission to the contracting body of the information on the result of the ex-ante control, which contains in particular:
  - 1) description of the procurement procedure, which was the subject-matter of the ex-ante control;
  - 2) information on confirmation of breach or lack of breach;
  - 3) post control recommendations – if in course of the ex-ante 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 617, the submission to the contracting body of the information on the final resolution of reservations shall end the ex-ante control procedure.

3. The submission of information on ex-ante control results shall occur not later than within 14 days from the day of submission of the documentation, as referred to in Article 605 para. 1, and in case of the highly complicated ex-ante control - not later than within 30 days from the day of submission of the documentation, as referred to in Article 605 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 body, shall inform in writing the PPO President on the manner of performing post control recommendations.

#### **Article 617.**

The contracting body shall have the right to file justified reservations to the PPO President within 7 days from the submission of the information on the ex-ante control results. The provisions of Article 610 para. 2-5 shall apply accordingly.

#### **TITLE XIa.**

#### **Actions taken by the President of the Office regarding foreign subsidies that distort the internal market in the context of procurement procedures**

#### **Article 617a.**

The President of the Office, when performing the duties of the Member State regarding foreign subsidies that distort the internal market in the context of procurement procedures, shall take action pursuant to Article 13 para. 5, Article 14 para. 5-7, Article 36 para. 1, and Article 38 para. 3 of Regulation 2022/2560.

#### **Article 617b.**

1. The President of the Office, as part of the actions taken pursuant to Article 13 para. 5) Article 14 para. 5-7, and Article 36 para. 1 of Regulation 2022/2560, may request the contracting body or the economic operator to provide information or submit documents. The contracting body and the economic operator shall provide information and submit documents within the time limit set by the President of the Office.

2. The provisions of Articles 604 and 605 shall apply mutatis mutandis to actions taken pursuant to Article 13 para. 5, Article 14 para. 5-7, and Article 36 para. 1 of Regulation 2022/2560.

#### **Article 617c.**

1. If necessary to carry out the activities referred to in Art. 14 para. 5-7 of Regulation 2022/2560, the President of the Office may request assistance from the Police.

2. The assistance of the Police consists of maintaining order at the location where the activities are carried out, ensuring the personal safety of persons present at that location, and establishing the identity of such persons.

3. The President of the Office shall submit a written request for assistance to the Provincial Police

Commander or the Metropolitan Police Commander with jurisdiction over the location where the activities are to be conducted, at least 7 days prior to the scheduled date of the activities; in urgent cases, the request must be submitted at least 3 days prior to the scheduled date.

#### **Article 617d.**

The information obtained in connection with the performance of official duties pursuant to Art. 13 para. 5, Art. 14 para. 5-7, Article 36 para. 1 and Article 38 para. 3 of Regulation 2022/2560, which constitute trade secret, as well as other information subject to protection under separate regulations, as well as other information requiring protection due to its confidential nature, shall not be disclosed. This provision does not apply to the exchange of information with the European Commission pursuant to Regulation 2022/2560.

#### **Article 617e.**

1. In the course of the control, referred to in Title XI, Section 2, the President of the Office shall verify whether the contracting body has fulfilled the obligations referred to in Articles 28 and 29 of Regulation 2022/2560.

2. An information shall be prepared based on the verification conducted during the control regarding the contracting body's compliance with the obligations referred to in Articles 28 and 29 of Regulation 2022/2560. The President of the Office shall attach this information to the report on the outcome of the control referred to in Article 609 para. 1 item 2 and Article 616 para. 1.

3. The right to raise substantiated objections referred to in Articles 610 and 617 does not apply to the information referred to in the first sentence of para. 2.

3. The right to submit justified reservations, referred to in Article 610 and Article 617, shall not apply to the information referred to in the first sentence of paragraph 2.

## **TITLE XII**

### **Provisions on financial penalties**

#### **Article 618.**

The provisions of this title shall apply to contracting bodies, referred to in Article 4 point 3, including those engaged in activities in utilities sectors, and referred to in article 5 para. 1 points 2 and 3.

#### **Article 619.**

1. An contracting body who:

1) awards a public contract:

- a) in breach of the provisions specifying the conditions for the use of single-source procurement or negotiated procedures without publication,
- b) without the required notice initiating the procurement procedure or without the required notice amending the notice initiating the procedure, if the changes were relevant for the preparation of requests to participate in the procedure or tenders,
- c) without applying the Act,

- 2) amends the contract or framework agreement concluded in breach of Article 454 or Article 455 – shall be subject to a financial penalty.

2. The contracting body shall also be subject to a financial penalty in the case where:

- 1) lays down the conditions for participation in a procurement procedure in a manner which distorts competition,
- 2) describes the subject matter of the public contract or the subject matter of the design contest in such a way as to distort competition,
- 3) conducts the procurement procedure in breach of Article 18,
- 4) does not comply with the time limits set out in the Act,
- 5) rejects a tender, an request to participate in a procedure or a request to participate in a design contest in breach of the provisions of the Act specifying the grounds for rejection of a tender or such requests,
- 6) selects the most advantageous tender in breach of the provisions of the Act in a manner other than that specified in para. 1 point 1 or points 1 to 5.

— if the infringement affects the outcome of the procurement procedure.

#### **Article 620.**

1. The amount of the financial penalty referred to in Article 619 shall be determined according to the value of the public contract.

2. If the value of the public contract:

- 1) is less than the EU thresholds – the financial penalty is PLN 3000;
- 2) is equal to or exceeds the EU thresholds, and is less than the equivalent in PLN of EUR 10 000 000 for supplies or services and EUR 20 000 000 for works – the financial penalty is PLN 30 000;
- 3) is equal to or exceeds the equivalent in PLN of EUR 10 000 000 for supplies or services and EUR 20 000 000 for works – the financial penalty is PLN 150,000.

#### **Article 621.**

1. The financial penalty is imposed by the President of the Public Procurement Office by an administrative decision.

2. The President of the Public Procurement Office shall not impose a financial penalty if, in connection with a breach of a provision of the Act, the National Appeal Chamber or the court imposed a financial penalty.

3. The decision to impose a financial penalty shall not be issued with the clause of immediate enforceability.

#### **Article 622.**

1. The proceeds from financial penalties represent the revenue of the state budget.

2. Financial penalties shall be levied in accordance with the provisions concerning execution

proceedings in administration.

### **TITLE XIII**

#### **Final provision**

#### **Article 623.**

The Act shall enter into force within the period specified in the Act of 11 September 2019 – Provisions implementing the Act – Public Procurement Law (Journal of Laws, item 2020).