

Basic Information for Swiss Entrepreneurs Interested to Participate in Tender Proceedings in Poland

# PUBLIC PROCUREMENT LAW IN POLAND



**PUBLIC PROCUREMENT LAW IN POLAND -**  
Basic Information for Companies Intersted to Particpate in  
Tender Proceedings in Poland

**Date:** February 2016

**Language:** English

**Number of pages:** 35

**Author:** Swiss Business Hub Poland in cooperation with  
GESSEL Attorneys at Law

Other sectorial Reports: Are you interested in other Reports  
for other sectors and countries? Please find more Reports  
here: [s-ge.com/reports](http://s-ge.com/reports)

**DISCLAIMER**

The information in this report was gathered and researched from sources believed to be reliable and is written in good faith. Switzerland Global Enterprise and its network partners cannot be held liable for data, which might not be complete, accurate or up-to-date; nor for data which are from internet pages/sources on which Switzerland Global Enterprise or its network partners do not have any influence. The information in this report does not have a legal or juridical character, unless specifically noted.

# Contents

<b>1.</b>	<b>INTRODUCTION</b>	<b>5</b>	<b>11.</b>	<b>CONCLUSION OF CONTRACT WITH TENDERER</b>	<b>21</b>
<b>2.</b>	<b>EXECUTIVE SUMMARY</b>	<b>7</b>	<b>12.</b>	<b>CONTROL AND LEGAL REMEDIES</b>	<b>22</b>
<b>3.</b>	<b>SOURCES OF PUBLIC PROCUREMENT LAW</b>	<b>8</b>	12.1.	Control of the Public Contract Award Procedure	22
<b>4.</b>	<b>OBJECTIVES AND GENERAL PRINCIPLES OF PUBLIC PROCUREMENT LAW</b>	<b>10</b>	12.2.	Legal remedies	22
4.1.	Objectives of Public Procurement Law	10	<b>13.</b>	<b>PRACTICAL ADVICE, COMMON MISTAKES OF BIDDERS</b>	<b>24</b>
4.2.	General principles of Public Procurement Law	10	<b>14.</b>	<b>ATTACHMENTS</b>	<b>25</b>
<b>5.</b>	<b>SCOPE OF APPLICATION OF PUBLIC PROCUREMENT LAW</b>	<b>11</b>	14.1.	Exhibit 14.1 – Legislative acts of the European Union in the field of public procurement law	25
<b>6.</b>	<b>PARTICIPANTS OF PUBLIC PROCUREMENT PROCEEDINGS</b>	<b>13</b>	14.2.	Exhibit 14.2 – Overview of the thresholds established by the EU directives	26
<b>7.</b>	<b>TYPES OF PROCEDURES</b>	<b>14</b>	14.3.	Exhibit 14.3 – Relevant legal acts of Polish Public Procurement Law	28
7.1.	Open procedure	14	14.4.	Exhibit 14.4 – Overview of Required Documents under the Documents Regulation and Swiss equivalents	29
7.2.	Restricted procedure	14			
7.3.	Other procedures	15			
<b>8.</b>	<b>PREPARATION OF THE PROCEDURE, PUBLICATION OF CONTRACT NOTICES</b>	<b>16</b>			
8.1.	Preparation of the procedure	16			
8.2.	Publication of contract notices	16			
<b>9.</b>	<b>REQUIREMENTS CONCERNING ECONOMIC OPERATORS PARTICIPATING AS BIDDERS</b>	<b>17</b>			
<b>10.</b>	<b>TENDER EVALUATION, SELECTION OF “BEST” OFFER</b>	<b>20</b>			

# Abbreviations

## List of abbreviations

AHV/IV	Alters- und Hinterlassenenversicherung / Invalidenversicherung
AVS/AI	Assurance-veillesse et survivants / Assurance-invalidité
BZP	Biuletyn Zamówień Publicznych (Public Procurement Bulletin)
EC	European Community
EEA	European Economic Area
EFTA	European Free Trade Association
EMAS	Eco-Management and Audit Scheme
etc.	et cetera
EU	European Union
KIO	Krajowa Izba Odwoławcza (National Appeal Chamber)
KRUS	Kasa Rolniczego Ubezpieczenia Społecznego (Agricultural Social Insurance Fund)
lit.	litera
NATO	North Atlantic Treaty Organization
NFZ	Narodowy Fundusz Zdrowia (National Health Fund)
no., nos.	number, numbers
OJ	Official Journal of the European Union (until 2003 Official Journal of the European Community)
p.	Page
PPL	Public Procurement Law
PPL-Act	Public Procurement Law Act of 29 <sup>th</sup> January 2004
PPO	Public Procurement Office (Urząd Zamówień Publicznych)
R&D	research and development
SUVA	Schweizerische Unfallversicherungsanstalt
TFEU	Treaty on the Functioning of the European Union
ToR	Terms of Reference
VAT	Value-Added Tax
ZUS	Zakład Ubezpieczeń Społecznych (Social Insurance Establishment)

# 1. Introduction

Large parts of Polish economy investments are subject to the regime of public procurement law (“PPL”). This regime does not only apply to the classical investments of the government or other public authorities but also to a large part of the major projects in the sectors of energy, mining of oil, gas and coal, water and sewage nets, transport, postal services. Also twelve years after joining the European Union Poland still faces enormous needs for an improvement of the public infrastructure. It can be observed that the public procurement market plays a growing role in Polish economy. According to the Annual Report of the President of Public Procurement Office (“PPO President”) on the functioning of the public procurement system in 2014, the number of public contracts awarded in 2014 (further referred to as “Report”) amounted to 174,886 (2013: 210,352) which were worth about PLN 133.2 billion (2013: PLN 143.2 billion) corresponding to the amount of about € 31.3 billion according to the average exchange rate of the Polish National Bank announced on 31<sup>st</sup> December 2014. According to the Report, construction works constituted the primary part of the Polish public procurement market in 2014. Their share in the overall value of the awarded contracts amounted to 40% (2013: 38%). Service contracts constituted 29% (2013: 32%) of the value of the awarded contracts, while contracts on the delivery of supplies made 31% (2013: 30%). According to the Report, the average duration of the public contract award procedure amounted in 2014 to 34 days (public contracts with value below/not exceeding the EU thresholds) and 90 days (public contracts above/exceeding the EU thresholds). In individual cases – in particular in the field of large infrastructure or sectorial projects - the procedure may last significantly longer.

There can be noted some involvement of foreign entrepreneurs in the market. The Report indicates the number of 701 contracts that were awarded to foreign tenderers in 2014 which amounted to 3% of the awarded contracts. **6% of these contracts were awarded to Swiss entrepreneurs (2013: 8%)**. The overall value of public contracts awarded to foreign entities amounted in 2014 to PLN 13.5 billion (about € 3.2 billion), mostly in the field of supplies (21%), and significantly less in the areas of services (18%) and construction works (7%). Quite often the subject-matter of contracts awarded to foreign entrepreneurs is the delivery of specific or specialist goods, such as precise optic or medical devices or machines that are not offered by Polish entrepreneurs. Please note, that these figures do not specifically show the number and share of contracts awarded to Polish companies being subsidiaries of foreign groups.

The public contracts market is generally open to foreign entrepreneurs. In relation to entrepreneurs from other EU member states this follows from EU law. But Polish PPL does not establish specific restrictions for the access of foreign entrepreneurs from third countries (non EU member states) to the public procurement market. **Swiss entrepreneurs who want to pitch for public contracts in Poland do not have to operate a Polish subsidiary or branch office**. Due to practical reasons, however, foreign entrepreneurs quite often participate in public procurement procedures not individually, but jointly with a Polish partner. Stable Polish legislation and convenient conditions of conducting business activity enable foreign companies to pitch for the largest public investments, to earn on such projects and to gain experience in conducting business on the Polish market. According to Polish law, foreign entities competing for awarding of public contracts basically have to fulfil the same requirements as Polish participants and as participants from other EU Member States. This applies also to contractors based in Switzerland. They are entitled to participate in Polish public contract award procedures on equal terms as Polish entities and as those having their registered seat in one of the EU member states.

Construction works constitute a significant part of the public procurement market. As mentioned above, there is still a significant need for the improvement of the infrastructure in Poland. Thus, it may be expected that there will be large opportunities for entrepreneurs interested to work on such projects. It is also presumed that the field of supplies will develop rapidly and offer interesting business opportunities.

Since some time, a major issue of the general debate about the public procurement law is the role of price vs. quality as criterion for the selection of bids. Recent changes in Polish public procurement law show a tendency to encourage the contracting entities to apply other criteria than solely the price by establishing a broad range of alternative admissible criteria to be applied instead of only the price proposed by the competitors. Furthermore, on 29<sup>th</sup> August 2014 an amendment to the PPL-Act (“Amendment of 29<sup>th</sup> August 2014”) was adopted, that essentially restricted the admissibility of application of the price as the only criterion. The Amendment of 29<sup>th</sup> August 2014 introduced some significant preferences to those tenderers which em-

## 1. Introduction

ploy their staff on the basis of employment contracts, rather than other similar contracts. The changes in the PPL-Act try to secure a better relation between the calculation of the costs related to the performance of the contract and the stability of the contract performed. All those changes seem to constitute real chances for those competitors who offer products and services of higher quality but also at higher price and which prefer employment on the basis of regular employment contracts. These changes may also mean new opportunities for Swiss entrepreneurs.

Definitive impact on the further development of Polish Procurement Law will have the New Classic Directive (see below) and the New Sector Directive which were adopted on 26<sup>th</sup> February 2014 and shall be implemented in the legal systems of the EU Member States until 18<sup>th</sup> April 2016. Polish authorities have taken up measures for this implementation.

Taking into account that the new directives provide for major changes in the system of public procurement, the PPO recommended adopting an entire new act regulating the public procurement law in Poland. The PPO prepared a preliminary draft of a new act on the Public Procurement System. This draft act is currently subject of inter-ministerial consultation proceedings. The said draft has not been published yet. As results from information issued by the government, the draft Act on Public Procurement System should be adopted by the Council of Ministers during third quarter of 2015 and later will be approved by the Polish Parliament.

The main purpose of the draft Act on Public Procurement System is to consolidate all types of public procurement procedures to be regulated in one act. The draft Act shall regulate awarding public contracts within the scope of classic public procurement, sector public procurement and in the field of defence and security. Another objective of the draft act is to implement the New Sector Directive and the New Classic Directive and to ensure spending of the public funds in the most efficient manner.

New solutions to be introduced by the draft Act on Public Procurement System relate to:

- Conduction of procedures for awarding of public contracts by way of electronic means. The tenderers and awarding entities should communicate only electronically and the whole procedure for awarding public contract is to be held electronically. The rule that the public contract award procedure has to be conducted in writing is abandoned.
- Higher accessibility of public procurement procedures for business entities;
- Application of other criteria than solely the price by choosing the most advantageous tender which should result in choosing of tenders which are economically most advantageous;
- Control of public contract award procedures;
- Changes in the system of legal remedies and powers of PPO President;
- Legal consequences in case of breach of the respective provisions of the draft Act on public Procurement System.

However, the planned changes of the public procurement regulations are not binding yet, and they will not come into force before the first quarter of 2016.



**Christian Schmidt**  
Rechtsanwalt, Partner  
GESSEL Attorneys at Law  
ul. Sienna 39, 00-121 Warszawa

Tel. +48 22 318 69 13  
Fax +48 22 318 69 31

e-mail: [c.schmidt@gessel.pl](mailto:c.schmidt@gessel.pl)  
[www.gessel.pl](http://www.gessel.pl)



**Benjamin Schwägli**  
Head of Swiss Business Hub Poland  
c/o Embassy of Switzerland  
Al. Ujazdowskie 27, 00-540 Warszawa

Tel. +48 22 628 04 81  
Fax +48 22 621 05 48

e-mail: [benjamin.schwaegli@eda.admin.ch](mailto:benjamin.schwaegli@eda.admin.ch)  
[sge.com/sbhpoland](http://sge.com/sbhpoland)

## 2. Executive Summary

Polish public procurement law is to a large extent determined by European law. The European Union has adopted several directives in order to harmonize the legal regulations of public procurement in the member states. The most important directives are the classic directive and the “sector directive” of 2004, concerning procurement procedures in the fields of water, energy, transport and postal services. These directives are going to be replaced by three new directives adopted in 2014 – the new classic directive, the new sector directive and the concession directive.

The most important document of Polish legislation is the **Public Procurement Law Act of 2004** covering – together with the implementing regulations adopted on the basis of that act -almost the entire field of public procurement law. The applicable regulations differ depending upon the contract value. If that value is equal or above the EU Thresholds, the entire system of public procurement law provisions applies. If the contract value is below the EU Thresholds, but above € 30,000, the transaction basically is subject to public procurement law, but subject to a different regime and exempted from certain requirements established by the EU-directives. If the value is below € 30,000, the transaction is not subject to public procurement law.

Public procurement law is a field of law that is subject to permanent change. Major changes can be expected as a result of the implementation of the new EU directives.

Public procurement law pursues a broad range of objectives. The procedures established by public procurement law shall secure that funds dedicated for public purposes are spent in the most effective manner. The selection of the contractor shall be made in a transparent and fair formalised procedure, which at the same time serves the public interest in the selection of the best offer and the interest of the bidders to participate in the process at equal conditions with their competitors. Public procurement law applies in principle in all cases when governmental or other public entities acquire goods or services or commission works, spending public funds including funds granted by European Union or international organisations or foreign governments. In particular in the case of projects in the public utilities sectors public procurement law may also apply to contracts regardless of the source of financing if the awarding entity is publicly controlled. In each case of a public procurement procedure there are at least two kinds of participants – the contracting entity on one side and the bidders on the other side. In addition, the President of Public Procurement Office, the National Appeal Chamber and the courts play an important role in the functioning of the public procurement system. The two most important types of public procurement procedures are the open procedure, *i.e.* a procedure open for any potential bidder responding to the public invitation to submit tenders, and the restricted procedure, where only a limited number of bidders – who have passed a prequalification procedure open for everyone – are invited to submit a contract proposal. Key elements of the preparation of the procedure are the description of the subject-matter of the contract and the determination of the contract value. The contract value decides, in which form the contract notice and invitation to bidders has to be published. For a potential bidder it is of key importance to analyse carefully the contract notice with the description of the subject-matter of the contract and the terms of reference published simultaneously with the contract notice, in order to avoid a situation that the bidder’s proposal is rejected due to formal mistakes. A proper analysis of these documents also very much helps to prepare an appropriate proposal. It is also recommended that the potential bidder carefully analyses first whether it fulfils the general requirements for participating in public procurements procedures and is able to deliver the required evidence for that before preparing and submitting an offer which – in particular in case of larger projects – can be a rather costly matter. The bidder should also be aware of the fact, that the contract to be awarded as a result of the procedure will be based on the terms of the offer and that as a rule there will be not much room for negotiations or later amendments to the contract. The public procurement office is entitled to execute control of public procurement procedures. Participants of a public procurement procedure can in case of alleged violations file an appeal with the National Appeal Chamber. Against the decisions of the National Appeal Chamber courts may be invoked.

## 3. Sources of public procurement law

**This chapter describes the sources of the public procurement law in Poland including the laws enacted by the legislative authorities of the European Union which have significant impact on the provisions of Polish public procurement law. The main purpose of the present chapter is to present the specific sources of the Polish public procurement law taking into account the legislation of the European Union.**

Since Poland is one of the EU member states, Polish public procurement law to a large extent is determined by European law. The EU legislator has undertaken a lot of efforts to facilitate the access of entrepreneurs to public procurement procedures and to harmonise the public procurement law in the member states. The EU has adopted a number of legislative acts in this field, preferably in the form of directives, *i.e.* legislative acts, which – as a rule - are not directly applicable in the member states, but establish certain rules and guidelines which have to be implemented through the national legislation of the member states. The directives determine certain goals which have to be achieved by the legislation of the member states but determine not in all detail the form and methods how these goals shall be achieved. As far as directives establish subjective rights of individuals or entities, the directives may become applicable directly in a member state, if the member state does not implement the directive in time or in a proper manner and the non-implementation or defective implementation of the directive results in a violation of the subjective rights of individuals established by the directive.

The most important acts of EU legislation in the field of public procurement law have been the Directive 2004/17/EC of 31<sup>st</sup> March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (“**Sector Directive**”) and the Directive 2004/18/EC of 31<sup>st</sup> March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (“**Classic Directive**”). The Classic Directive and the Sector Directive have been replaced by two new directives, adopted on 26<sup>th</sup> February 2014: Directive 2014/24/EU on public procurement (“**New Classic Directive**”) and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors (“**New Sector Directive**”). In addition to the New Classic Directive and the New Sector Directive, the European Parliament and the Council adopted on 26<sup>th</sup> February 2014 the Directive 2014/23/EU on the award of concession contracts (“**Concession Directive**”) – regulating an area, which presently is subject to the basic rules of the Classic Directive. (A more comprehensive, but not exhaustive list of relevant EU legislation in the field of public procurement law is attached as **Exhibit 2.1** to this Brochure.).

The EU directives in the field of public procurement law, as a rule, apply only to contracts with a value equal or above a defined threshold (“**EU Threshold**”). The EU Thresholds differ for each type of contract. A threshold of € 5,186,000.00 applies to construction and building works contracts and concession contracts, while the thresholds in case of supply and service contracts are € 134,000.00 or € 207,000.00 - depending upon the type of the contracting authority and the subject of the contract - under the Classic Directive and € 414,000.00 under the Sector Directive. In addition, the new directives introduce specific thresholds in case of service contracts for social services of € 750,000.00 (New Classic Directive) or € 1,000,000.00 (New Sector Directive). All the above values are net of VAT. (A more detailed overview of the thresholds established by the EU directives is attached as **Exhibit 2.2** to this Brochure.) But also below the EU Thresholds, the public procurement market in the EU member states is subject to the principles of EU law as laid down in the Treaty on the Functioning of the European Union (“**TFEU**”) – in particular the principles of free movement of goods, freedom of establishment, freedom to provide services as well as the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

The main legal act of the Polish system of public procurement law is the Public Procurement Law Act of 29<sup>th</sup> January 2004 (“**PPL-Act**”) amended repeatedly since its issuance. The PPL-Act establishes the rules and procedures for awarding public contracts, regulates legal remedies, control of the award of public contracts and the authorities competent for the matters regu-

### 3. Sources of public procurement law

lated in the PPL-Act. On the basis of the PPL-Act a large number of executive regulations have been issued. The most important executive regulations are the following:

- Regulation of the President of the Council of Ministers of 23<sup>rd</sup> December 2013 on the value thresholds of contracts and design contests which require the dispatch of a notice to the Publications Office of the European Union;
- Regulation of the President of the Council of Ministers of 28<sup>th</sup> January 2010 on the list of services of priority and non-priority nature;
- Regulation of the President of the Council of Ministers of 19<sup>th</sup> February 2013 on the types of documents which the contracting entity may require from the tenderer and the forms in which such documents may be submitted (“**Documents Regulation**”).

The Regulation on the value thresholds implements the provisions of the various EU directives regarding the EU Thresholds into Polish law. As we will see later, the Polish PPL in many cases establishes different rules depending upon whether the value of a project is above or below the EU Threshold.

On 25<sup>th</sup> July 2014, the lower house of the Polish parliament adopted an amendment to the PPL-Act. On 7<sup>th</sup> August 2014, the upper house voted for some corrections of in most cases only editorial character to this amendment. The amendment came into force on 19<sup>th</sup> October 2014 (Amendment of 29<sup>th</sup> August 2014).

Subject to separate regulation is the field of concessions. In this field applies the Act of 9<sup>th</sup> January 2009 on concessions for building works or services (“**Concessions Act**”), which implements in this area the Classic Directive. The Concessions Act regulates the awarding of concession contracts in a manner deviating from the PPL-Act. On the other hand, the Concessions Act obliges concession holders to apply the PPL-Act when awarding contracts in the realm of performing their concession contract.

The Concessions Act and the PPL-Act apply also to the selection of private partners in public-private partnerships under the Public Private Partnership Act of 19<sup>th</sup> December 2008.

For a more comprehensive and detailed list of relevant legal acts of Polish Public Procurement Law see **Exhibit 2.3** to this brochure.

# 4. Objectives and general principles of public procurement law

**This capital summarises the main objectives and principles of the public procurement law in Poland. The main purpose of the public procurement law is to ensure transparency while choosing the contractors providing services or supplies or performing works for public purposes. What is more, the system of the public procurement should make sure that public money is spent in the most efficient manner. This chapter describes the general principles governing the system of the public procurement in Poland.**

### 4.1. OBJECTIVES OF PUBLIC PROCUREMENT LAW

Public procurement law establishes specific procedures and requirements which public authorities have to observe when selecting potential contractors providing services or supplies or performing works for public purposes. These procedures shall ensure that the process of selection is conducted in a transparent manner excluding irregularities and manipulation and a situation where the contracting entity and the contractor work together in a way that would impair public interest. The system of public procurement law in particular shall make sure that public funds are spent in the most efficient manner and the services, supplies and works commissioned meet the quality requirements. On the other side, the system of public procurement law shall safeguard equal chances for bidders and fair competition between them. Within the European Union, that means also equal access for bidders from other member states. In addition, it is possible to pursue other political objectives within public procurement procedures as for example the promotion of small and medium sized enterprises or the implementation of environmental, social or labour standards.

### 4.2. GENERAL PRINCIPLES OF PUBLIC PROCUREMENT LAW

Out of these objectives certain general principles of public procurement law have developed:

- The contracting entity has to prepare and perform the procurement procedure in a manner ensuring fair competition and equal treatment of tenderers or candidates.
- The procedures shall be conducted by persons ensuring impartiality and objectivity.
- The contract shall be awarded only to a tenderer or candidate chosen in accordance with the provisions of the PPL-Act (choice in accordance with the provisions of the PPL-Act).
- Contract award procedures shall be public, limitations of the access to information may be established only on the basis of the provisions of the PPL-Act.
- As a rule, contract award procedures shall be conducted in writing (written proceedings). The contract award procedures shall be conducted in Polish language.

These principles are laid down in the PPL-Act; violations of these principles can be the basis of legal remedies.

# 5. Scope of application of public procurement law

**This chapter shall set out and describe the principles of application of public procurement law to placing orders by public entities specified in the provisions of law and to determine the scope of application of public procurement law including public entities which are obliged to apply the provisions of the public procurement law while placing the public order.**

The specific rules of public procurement law apply to the placing of orders by certain public entities and other bodies defined in Article 3 PPL-Act. These are in the first place units of the public finance sector in the meaning of the legal regulations regarding public finance, *i.e.* **virtually all entities financed through taxes or other public funds like bodies of government and public administration including government agencies, courts, units of local self-administration and their associations, units and establishments financed out of the public budget, governmental special purpose funds, the social insurance establishment (ZUS) and the agricultural social insurance fund (KRUS), the national health fund (NFZ), independent public healthcare establishments, public colleges and universities, the Polish Academy of Sciences, state and municipal cultural institutions, other legal entities established with the objective to fulfil public tasks with the exception of enterprises, research and development units, banks and commercial law companies.** In addition, PPL applies to orders awarded by state organisational units without legal personality.

PPL covers also the placing of orders by **legal entities or units created for the purpose of satisfying general needs** like water supply, supply of electrical energy, gas and heating, maintaining roads and communication, development of science, provision of education, health and social care, realisation of cultural needs *etc.*, if such units are controlled by public entities (**“Publicly Controlled Utility Providers”**). Public entities control such units, if they cover at least 50% of their financing or hold more than half of their shares or supervise their managing body or are entitled to appoint more than the half of their managing board or supervisory board.

A field of application of the PPL with major practical importance is constituted by the so-called “Utilities Contracts”. These are contracts related to certain activities in the water, energy, transport and postal services sectors. The relevant activities are:

- exploring, prospecting for or extracting natural gas, crude oil and its natural derivatives, brown coal, hard coal and other solid fuels,
- management of airports, maritime or inland ports and their provision to air, sea and inland water carriers,
- creation of networks intended to provide public services connected with the production, transmission or distribution of electricity, gas or heat or supply of electricity, gas or heat to such networks or management of such networks,
- creation of networks intended to provide public services connected with the production, transmission or distribution of drinking water or supply of drinking water to such networks or management of such networks,
- operation of networks providing public services in the fields of transport by railway, tramway, trolley bus, cable car or by use of automatic systems,
- operation of networks providing public services in the field of bus transport,
- provision of postal services.

Such contracts fall into the scope of PPL, if the related activities are carried out by Publicly Controlled Utility Providers or their associations or by entities performing these activities on the basis of special or exclusive rights, or by entities that are controlled by entities of the public finance sector, state organisational units, Publicly Controlled Utility Providers or their associations (**“Utilities Contracts”**). The contracts awarded by such providers are subject to PPL in case their value equals or exceeds the EU Threshold.

## 5. Scope of application of public procurement law

In addition, the PPL applies also to orders of entities that are not units of the public finance sector or state entities without legal personality, if all of the three following conditions are fulfilled:

- More than 50% of the contract value is financed from public funds or by entities of the public finance sector,
- the contract value equals or exceeds the EU Threshold,
- the contract subject-matter is construction works comprising overland and water engineering, construction of hospitals, sport, recreation and leisure facilities, school and university buildings, buildings used by public administration or services related to such building works.

Please note, that the terms “public finance” and “public funds” include also funds from the budget of the European Union or financial assistance granted by member states of the EFTA (in particular funds granted within the Norwegian Financial Mechanism or the EEA Financial Mechanism) or from other foreign sources (*e.g.* the Swiss-Polish Cooperation Programme). Contracts connected with the realisation of projects financed out of such funds are subject to the provisions of the PPL-Act, although some specific rules in such cases may apply.

Furthermore, the PPL-Act applies to contracts awarded by entities, who have won a concession for building works or services as far as they award an order in execution of such concession.

As mentioned above, contracts awarded by public transport providers are subject to the PPL-Act. *E.g.*, if the provider of railway transport orders new rolling stock with a value at least equalling the EU Threshold, it has to comply with the requirements of the PPL-Act. The providers of public transport services are not necessarily public entities; they can also be private entrepreneurs. The process of selection of providers of public passenger transport by road, rail, cable car, maritime transport and inland waterway transport is regulated in specific regulations, which, however, to a certain extent provide for the application of provisions of the PPL-Act and the Concessions Act.

This overview of the general rules defining the scope of application of PPL shows that it applies in many cases also to orders awarded by private entities and covers great parts of Polish economy.

There is also a large number of exceptions from the scope of application of PPL. An exception of general character applies, if the contract value does not exceed € 30,000. Another, more specific, exception applies, if an international agreement between the Polish Republic and one or more states not being members of the EU regarding the implementation or realisation of projects by the parties to the agreement, if such agreement establishes other procedures than those of the PPL-Act. As far as, for example, the Polish-Swiss agreements regarding the Swiss contribution to reduce economic and social disparities within the enlarged European Union establish such procedures for the selection of projects to be funded within this programme, such rules exclude the application of the PPL-Act.

There is no general exemption from the scope of application for contracts in the field of defence and security, but this sphere is subject to some special regulations. One of such special regulations relates to the participation of foreign bidders in the tender proceedings. In general, such proceedings are open for foreign bidders only if they have their seat or place of residence in the territory of the EU, the EEA or in a country with which the EU or Poland executed an international agreement referring to conclusion of such contracts. However, the contracting authority may allow other entities to participate in such type of public contract award procedure.

# 6. Participants of public procurement proceedings

**The present chapter shall specify participants of public procurement proceedings comprising the following entities: authorities competent for the matters related to awarding of public contracts, public entities obliged to apply the PPL-Act and the competitors applying for awarding of the public contract.**

The PPL specifies the rules and procedures for awarding public contracts, legal remedies, control of the award of public contracts, and the authorities competent for the matters regulated in the PPL-Act. This general description of the content of the PPL shows also the main groups of participants of public procurement proceedings.

At the primary level of such proceedings – the selection of bidders and the awarding of contracts – there are the awarding entity (or contracting authority or contracting entity in the terminology of the EU directives) on one side and the tenderer or candidate on the other side. The awarding entity is any public unit or other entity which is bound to apply PPL when buying goods or services or ordering construction works *etc.* Tenderer is any economic operator submitting or having submitted a tender under PPL, while candidate means an economic operator that has sought an invitation or has been invited to take part in a restricted procedure or other specific procedure under PPL. Under PPL, economic operators can jointly compete for awarding of public contracts by establishing of a consortium. The establishment of a consortium may be appropriate if the single economic operator does not meet all requirements the tenderers have to fulfil. Quite often, also the features of the contract may require the co-operation of various operators with different specialisations. Another way the tenderer may involve other entrepreneurs is to engage them as subcontractors.

The main authority competent for the matters regulated in the PPL-Act is the President of the Public Procurement Office. The PPO President has a far reaching scope of powers in the field of PPL. An important element of the tasks of the PPO President is the control of the compliance of contract award procedures with the requirements of the PPL-Act.

The primary legal remedy against eventual violations of the provisions of PPL in the award procedure is the appeal. Such appeal has to be filed with the National Appeal Chamber (“KIO”). The KIO is organised as a permanent body with not more than 100 members appointed by the council of ministers. Entitled to file an appeal with the KIO are the tenderers and candidates as well as other participants of the tender proceedings, and, in addition, certain organisations entitled to submit legal remedies and included in a list published by the PPO President (see <http://www.uzp.gov.pl/cmsws/page/?D:1290>). Among those organisations is also the Polish-Swiss Chamber of Commerce.

The parties and participants of the appeal procedure may lodge complaints against the KIO rulings with the courts. The complaint against the KIO ruling has to be lodged with the district court at the seat or place of residence of the contracting entity.

# 7. Types of procedures

**The present chapter describes the following most commonly applied procedures for awarding public contract: open procedure and restricted procedure. The remaining procedures regulated in the PPL-Act are merely mentioned and are not particularly described. The above description of the most commonly used procedures comprises their course and prerequisites for application.**

The PPL-Act distinguishes eight types of procedures for awarding public contracts. The primary procedures for awarding public contracts are open procedure and restricted procedure. Both of them can be applied in every case. In 2014, about 82 % of all public contracts in Poland were awarded in the open procedure, while 13% of all contracts were awarded in single-source procurement (see the Report).

### 7.1. OPEN PROCEDURE

Open procedure is a contract award procedure where in reply to a publicly made contract notice all interested entities may submit tenders. Within this procedure the contracting entity initiates the contract award procedure by placing the contract notice in a place accessible to the public at its seat and on its website. If the value of the contract is lower than the EU Threshold, the contract notice has to be published in the Public Procurement Bulletin. If the contract value equal to or exceeds the EU Threshold, the contract notice shall be dispatched to the Publications Office of the European Union. The open procedure shall result in the contract award to the tenderer which has submitted the most advantageous offer. The contracting entity is bound to prepare the terms of reference (“**ToR**”) and to publish the ToR on its website from the day on which the contract notice was placed in the Public Procurement Bulletin or in the Official Journal of European Union. The ToR should be available as long as the time limit for submission of tenders has not expired. The ToR is a document of vital importance in the procedure, as it shall contain all data necessary for the preparation of tenders. The ToR shall include, *inter alia*, a description of the subject-matter of the contract, time limit for the performance of the contract, terms for participation in the procedure, deposit requirements, list of documents to be submitted within the procedure, time limit for tender submission, description of criteria applied by the contracting entity to select a tender, requirements referring to securities for due performance of the contract *etc.* Each of the tenderers may request the contracting authority to clarify particular terms of the ToR. Responses to these enquiries shall be made available to all participating tenderers.

In public contract award procedures with a contract equal to or exceeding the EU-Threshold the contracting entity shall require the tenderer to place a pecuniary deposit. In other cases the contracting entity may ask for such a deposit. The amount of the required deposit may not exceed 3% of the entire contract value. The deposit may be placed in one or several of the following forms specified in the PPL-Act: cash, bank sureties or guarantees of collective savings loan-fund, bank guarantees and insurance guarantees. The contracting entity shall return the deposit to the successful tenderer immediately after the conclusion of the public procurement contract and the provision of the due performance contract deposit. The deposit has to be returned to the other tenderers immediately after the selection of the most advantageous offer or the cancellation of the procedure.

### 7.2. RESTRICTED PROCEDURE

The restricted procedure is a two phase procedure, which also starts with a publicly made contract notice. In reply to such contract notice the tenderers submit a petition to be admitted to participate in the contract award procedure. In the second phase, those tenderers which have received an invitation to participate may submit their offers. The contracting entity invites the tenderers which comply with the requirements in the number specified in the contract notice (5 - 20 participants) to submit their tenders and provides them with the ToR. Then, the contracting entity establishes a time limit for the submission of offers taking into account the time necessary for the preparation and submission of the offers. If the contract value is below the EU Threshold, the time limit for the preparation of the offer may not be shorter than 7 days in general (or 14 days in case of

## **7. Types of procedures**

construction works). If the contract value equals or exceeds the EU Threshold, the time limit has to be not shorter than 40 days.

### **7.3. OTHER PROCEDURES**

In addition, the PPL stipulates the following other procedures:

- negotiated procedure with prior publication of a contract notice,
- competitive dialogue,
- negotiated procedure without publication of a contract notice,
- single-source procurement,
- request for quotations and
- electronic bidding.

These other types of procedures may be applied only in exceptional cases, precisely defined in the PPL-Act.

# 8. Preparation of the procedure, publication of contract notices

**The chapter below describes necessary actions related to the preparation of the procedure for awarding of public contract, particularly with reference to necessary technical actions, as well as obligatory publication of contract notices including some useful tips for potential bidders.**

## 8.1. PREPARATION OF THE PROCEDURE

A key element of the preparation of the procedure is the description of the subject-matter of the contract. This description forms a part of the mandatory documentation of the procedure and is a referral basis with regard to various decisions in the later procedure. The description has to be made in an unequivocal and exhaustive manner by means of precise and comprehensive wording, taking into consideration all requirements and circumstances which could influence the preparation of the offer. The subject-matter shall not be described in a manner which could restrict fair competition. The PPL-Act prohibits as a rule the reference to trademarks, patents or origin in the description and allows it only in specifically justified cases, but requires in such cases the addition of the words “or equivalent”. The subject-matter description may contain certain requirements regarding the staffing on the side of the tenderer. It may demand *e.g.* the hiring of unemployed or juvenile persons for the purpose of professional training, of disabled persons or other persons being subject of social employment legislation. There is an ongoing discussion in Poland about the need of political measures to combat the tendency to engage staff on the basis of service and similar contracts instead of regular employment agreements. The Amendment of 29<sup>th</sup> August 2014 provides for the possibility to lay down in the subject-matter description the requirement for the tenderer and its sub-contractors to engage staff on the basis of regular employment agreements.

Another crucial element of the preparation of the procedure is the determination of the contract value. Implementing the corresponding provisions of the EU directives, the PPL-Act establishes very detailed rules how the contract value has to be determined. The amount of the contract value has far-reaching consequences for the subsequent procedure: If it is not higher than € 30,000, the PPL-Act does not apply at all. If the value is below the EU Thresholds, only a part of the provisions of the PPL-Act applies, and certain types of contracts (*e.g.* Utility Contracts) are not within the scope of application of the entire PPL-Act.

## 8.2. PUBLICATION OF CONTRACT NOTICES

If the contract value is below the EU Threshold, the contract notice (as well as other notices) shall be placed in the Public Procurement Bulletin (BZP), which can be accessed on the portal of the Public Procurement Office (<http://www.uzp.gov.pl/cmsws/page/?D:1052>). The BZP is available only in Polish language.

Contract notices (and other notices) for projects with a contract value equal or above the EU Threshold, have to be dispatched to the Publications Office of the European Union and published in the Official Journal of the European Union ([http://publications.europa.eu/official/chapter2\\_en.htm](http://publications.europa.eu/official/chapter2_en.htm), <http://ted.europa.eu/TED/browse/browseByBO.do>). The Official Journal including the supplement containing corresponding notices is available in all official languages of the EU.

According to the PPL-Act contracting entities which prepare periodical financial plans may immediately following the approval or adoption of such a plan (and other contracting entities once a year) dispatch to the Publications Office of the European Union or post on its website in a separate section for procurement a prior information notice about contracts or framework agreements for the following 12 months, if certain value thresholds are achieved or exceeded. For entrepreneurs, searching for potential contracts in the field of public procurement it may be useful to follow such information notices, in order to know in advance about eventual procurement procedures.

## 9. Requirements concerning economic operators participating as bidders

**The present chapter presents the requirements to be met by the participants so as to take part in the proceedings for awarding public contracts in Poland and current tendencies in specifying the requirements. Additionally, it includes a description of requirements for both, Polish and foreign entities including specific requirements for the latter. Also the grounds for exclusion from the proceedings for awarding of public contract are discussed. In addition, some practically useful tips and information are provided for in this chapter.**

Bidders who want to participate in an award procedure under PPL have to fulfil certain prerequisites regarding their ability to perform the contract. These are prerequisites related to

- their possession of the authorisations to perform specific activities, if such authorisations are required by provisions of law,
- their possession of knowledge and experience,
- their appropriate technical potential and the staff capable to perform the contract,
- the appropriate economic and financial standing of the bidder.

In addition, the contracting entity may impose a condition, that more than 50% of the staff employed by potential participants in the award procedure has the status of disabled persons.

The contract notice – and in procedures without contract notice the invitation to negotiate – shall specify the manner of fulfilment of the prerequisites. The manner of fulfilment of the prerequisites shall be related to the subject-matter of the contract and proportional to it.

The Documents Regulation regulates in detail the documents which may be demanded as evidence for the fulfilment of the above mentioned prerequisites. The contracting entity may call for *e.g.* - as evidence of the tenderer's experience - a list of all relevant works executed within the last five years or as evidence of the appropriate economic and financial standing a paid civil liability insurance policy.

The PPL-Act establishes a catalogue of reasons for the exclusion of tenderers from the participation in contract award proceedings. This catalogue lists, *inter alia*, the following cases:

- 1) economic operators against whom a winding up procedure has been started or whose bankruptcy has been declared,
- 2) economic operators who are in arrears with payment of taxes, charges or social insurance or health insurance contributions,
- 3) natural persons, who have been validly sentenced for an offence committed in connection with a contract award procedure, an offence against the rights of people performing paid work, an offence against environment, for bribery, for an offence against economic turnover or for any other offence committed with the aim of gaining financial profits, as well as for a treasury offence or an offence of participation in an organised crime group or association aimed at committing an offence or treasury offence,
- 4) partnerships, companies and legal persons whose respectively partner, member of the management board, general partner, active member of the managing body has been validly sentenced for such an offence,
- 5) collective entities, with respect to whom a court has issued a decision prohibiting them from competing for contracts under the provisions concerning the liability of collective entities for tort under the liability to penalty,
- 6) partnerships, companies and legal persons whose respectively: partner, member of the management board, general partner, active member of the managing board has been validly sentenced for an offence in connection with the engagement of foreigners illegally residing in Poland.

## 9. Requirements concerning economic operators participating as bidders

The Amendment of 29<sup>th</sup> August 2014 provides for the exclusion of bidders who have committed within the last three years a serious violation of professional obligations, in particular who have intentionally or by gross negligence not performed or not properly performed a contract.

In addition, the PPL-Act provides for the exclusion of a tenderer from the participation in the contract award procedure in the following situations:

- 1) the tenderer has been directly involved in the preparation of the conducted procedure or the tenderer has used for the preparation of the offer such persons,
- 2) the tenderer has not placed the required deposit in time,
- 3) the tenderer has provided false information having impact on the outcome of the procedure,
- 4) the tenderer failed to evidence the fulfilment of the prerequisites for the participation in the procedure,
- 5) several tenderers belonging to the same capital group have submitted separate offers or applications to participate in the same contract award procedure.

As already mentioned above, **foreign entrepreneurs are eligible to compete for a contract awarded under PPL on equal terms as Polish entities**. In general, the foreign competitor has to meet the same requirements as the tenderer having its seat in Poland. Application of different requirements to foreign competitors would constitute a clear violation of EU law (at least as far as foreign competitors from EU or EEA member states are concerned); therefore the offers of foreign tenderers have to be evaluated on the basis of the same criteria as those of their Polish competitors. However, **as far as justified by differences between Polish and foreign legal systems or systems of public administration, some specific modifications of requirements with regard to foreign tenderers may apply**. This concerns in particular the presentation of certain documents provided for by Polish law. In such cases, the Documents Regulation establishes the rule that the contracting entity may require with relation to foreign tenderers only the presentation of an equivalent document, issued in the home country of the respective tenderer or the individual persons concerned. If in the home country such equivalent documents are not issued, the Documents Regulation provides for the possibility to replace them by a formal declaration made by the tenderer (or the persons entitled to represent the tenderer) before a competent court authority, governmental authority or body of professional or economic self-governing corporation or a public notary. Same applies to Polish competitors in respect of individual persons with no place of residence within the country – *e.g.* to Polish entities whose partners and board members reside abroad – in the event that documents concerning those individuals are required.

The exact type, validity period and further criteria for the equivalent documents presented by foreign tenderers to be accepted by the contracting entity are specified by provisions of the Documents Regulation's. The equal footing established by the Documents Regulation allows for such equivalent foreign official documents to be acknowledged automatically: the contracting entity's acknowledgment does not depend on its goodwill and is not subject to any leeway in its decision-making, provided that the Documents Regulation's conditions are met. Foreign documents are then accepted instead of their domestic counterparts. It is only if the contracting entity has doubts regarding the actual content of the foreign documents that it may enquire further information and approach the competent authorities of the relevant country with a request for clarification.

The main body of foreign documents suitable as substitutes under the Documents Regulation concerns the general good standing of foreign tenderers and their ability to perform the contract. In this regard, following documents are to be submitted *in lieu* of specific items required from Polish tenderers:

- 1) documents issued in the country where the tenderer has its seat confirming that
  - a) neither winding up has been commenced nor bankruptcy has been declared with respect to the tenderer – issued not later than 6 months prior to the lapse of the time limit for submitting offers,
  - b) the tenderer is not in arrears with the payment of taxes, fees and contributions payable towards health and social insurance or certificates confirming the eventual exemption or spreading of payment into instalments – issued not later than 3 months prior to the lapse of time limit for submitting offers,
  - c) the tenderer has not been prohibited from competing for contract (issued not later than 6 months prior to the lapse of the time limit for submitting the offer),
- 2) a certificate issued by the competent judicial or administrative authority for the place of residence confirming that the person concerned has not been validly sentenced for any offence against rights of people performing paid

## 9. Requirements concerning economic operators participating as bidders

work, offence against environment, for bribery, for an offence against economic turnover or for any other offence committed with the aim of gaining financial profits, as well as a treasury offence or an offence of participation in an organised crime group or in an association aimed at committing an offence or treasury offence (issued not later than 6 months prior to the lapse of the time limit for submitting the tender).

Further specific allowances have been made for documents concerning regulated industries and business licences: as a rule, foreign tenderers can submit equivalents of the corresponding concessions, permits and licences issued under Polish law. The foreign tenderer may also opt in to present equivalent documents certifying that quality assurance and environmental management standards are being met according to specific systems and schemes. An additional carve-out has been provided in the fields of defence and security procurement: classified information and industrial security clearance certificates issued by foreign countries may be accepted *in lieu* of relevant clearances under the Polish law required from domestic tenderers provided that such certificates correspond to domestic clearances of equivalent level pursuant to relevant Polish regulations. However, the somewhat ambiguous wording of the Documents Regulation in this respect (especially in terms of EU and NATO international classified information) and the delicate nature of the procurement in those fields itself may render a more specific approach advisable.

A general feature of the regulations described above is the tendency to facilitate the participation of foreign bidders in public procurement proceedings in Poland and to avoid their discrimination by establishing documentation requirements which only domestic entities are able to fulfil. In practice, however, in case of doubts regarding the equivalency of foreign documents such doubts are not always resolved in favour of the foreign tenderer. As mentioned above, the PPL-Act provides for the exclusion of tenderers organised as companies from the participation in contract award proceedings, if an active member of the managing body has been validly sentenced for a specific offence, and hence, if the tenderer does not present criminal records excerpts for all active members of its managing body. Thus, in case of a Swiss tenderer organised as joint stock company there may be doubts whether this requirement applies to all members of the Company's administrative council (Verwaltungsrat) or only to those who execute a management function. Although the function of the "non-executive" members of the administrative council can be compared to the supervisory board members of a Polish company – who are not subject to the above requirement, the National Appeal Chamber has confirmed the exclusion of a tenderer, which presented criminal records excerpts only for the "executive" members of the administrative council of the Swiss participant in the contract award proceeding.

In general, the tenderer can submit the original documents or copies, certified by it. For electronic documents a secure electronic signature verified using a valid qualified certificate is also required. In case of doubts as to the authenticity of the submitted copies of documents the contracting entity may request the presentation of original documents or copies certified by a notary. Documents set up in a foreign language have to be submitted together with a translation into Polish language. However, the contracting entity may grant consent to the submission of documents without translation. There is no necessity to submit translations made by a sworn translator.

An overview of required documents under the Documents Regulation and their Swiss equivalents is included as Exhibit 14.4.

## 10. Tender evaluation, selection of “best” offer

**The following chapter presents the process of tender evaluation made by the contracting entity so as to select the most advantageous offer including the admissible criteria to be used by the contracting entity so as to select the best offer. In addition, the admissible criteria specified by law are discussed in this chapter with specific reference to the price as an evaluation criterion. The below chapter also takes into account the current tendencies concerning alternative criteria to be applied in the tender evaluation process.**

Before selecting the best offer, the contracting entity examines the offers and rejects offers which do not meet general criteria, *e.g.* are not in conformity with the PPL-Act, are inconsistent with essential elements of the ToR, are submitted by a tenderer excluded from the procedure, *etc.* One of the possible reasons for a rejection may be an abnormally low price in relation to the subject-matter of contract. Before rejecting an offer on such grounds, the contracting entity shall ask the tenderer for explanations regarding those elements of the offer which have impact on the price level. When evaluating these explanations, the contracting entity has to consider any explanation which is justified on objective grounds, and in particular, the economy of a performance method, technical solutions chosen, exceptionally favourable conditions available to the tenderer for the performance of the contract, originality of the tenderer's project and impact of public aid. The Amendment of 29<sup>th</sup> August 2014 tries to sharpen the control of “price dumping” in public procurement by establishing a rule that, if the offered price is less than 30% of the estimated contract value or the average price of all offers, the contracting entity shall ask the tenderer for explanations and by imposing the burden of proof that the offer does not contain an abnormally low price on the side of the tenderer. In addition, the Amendment of 29<sup>th</sup> August 2014 tries to combat wage dumping by obliging the tenderer who is asked for explanations also to specify the labour cost which may not be lower than the statutory minimum wages.

In the stadium of selecting the best offer, the submitted offers shall be evaluated on the basis of criteria determined in the ToR. The PPL-Act lists as criteria the price proposed by a tenderer or the price and other criteria such as in particular: quality, functionality, technical parameters, use of technologies regarding the impact on the natural environment, period of contract performance *etc.* The criteria listed in the ToR and used by the contracting entity may refer only to the subject-matter of the contract and shall not pertain to the characteristics of the tenderer, in particular to its economic, technical or financial creditability. Despite the fact, that presently the law allows applying other criteria than only the price, in practice so far in the vast majority of cases awarded under the PPL-Act the price constitutes the only criterion. The Amendment of 29<sup>th</sup> August 2014 intends to encourage the application of other criteria than the price by broadening the catalogue of such “additional” criteria and by establishing the rule that the price may be the only criterion only, if the subject-matter of contract is generally available and if there are generally established quality standards. In addition, contracting entities in the public finance sector have to document how the whole life cycle cost of the subject-matter of contract have been taken into account. Thus, it seems that the chances of tenderers offering products of higher quality at appropriate prices in public procurement will rise in Poland.

## 11. Conclusion of contract with tenderer

**The following chapter presents the manner of conclusion of the public contract with a tenderer chosen with in the procedure of awarding public contract.**

The next step in the public contract award procedure is the conclusion of a contract with the tenderer whose offer has been identified as the most advantageous. As a rule, there is no room for negotiations concerning the terms proposed in the offer both before and after conclusion of the contract. Immediately after selection of the most advantageous offer the contracting entity has to inform all participants which submitted offers about the selection of the best offer and give a justification of such a selection. Moreover, the information on selection of the best offer has to be posted on the contracting entity's website and in a publicly accessible location in its seat and in some cases the contracting entity has to dispatch the information to the President of Public Procurement Office and the Head of Central Anticorruption Bureau. Within the time limit defined in the PPL-Act from the day of submission of contract award notice the contracting entity executes the contract with the selected tenderer. If the selected tenderer refuses to conclude the contract or is not able to provide the appropriate security for proper performance of the contract, the contracting entity is entitled to select the most advantageous of the remaining offers without a renewed evaluation of the previously submitted offer. After the execution of the contract the contracting entity places the contract award notice in the Public Procurement Bulletin (contracts not exceeding the EU threshold) or dispatches a contract award notice to the Publications Office of the European Union (contracts equal to or exceeding the abovementioned threshold).

It should be underlined that material amendments to the concluded contract cannot be made unless such a possibility was provided for in the ToR or in the contract notice.

# 12. Control and legal remedies

**The present chapter sets forth the control activities to be taken by the competent authority with reference to the finished contract award proceedings specified in the PPL-Act, both the so called *ad hoc* control and *ex ante* control, mentioning the authorities eligible to commence control proceedings and the subject of control proceedings. Additionally, this chapter describes the legal remedies which may be applied in order to question the decisions of the authorities involved in the proceedings of awarding contract under Polish law.**

### 12.1. CONTROL OF THE PUBLIC CONTRACT AWARD PROCEDURE

The President of the PPO conducts the control of contract award procedures. The PPL-Act distinguishes two types of control measures: *ad hoc* control and *ex ante* control. The objective of the control is the verification of the compliance of the award procedure with the PPL-Act. A reason for commencement of control is the existence of a justified presumption that within a contract award procedure a violation of PPL has occurred. As a rule, control measures should be preceded by explanatory proceedings. The objective of such explanatory proceedings is to determine whether there is a justified presumption of a violation of provisions of the PPL-Act. Within these proceedings the President of PPO is empowered to request from the head of the contracting entity the submission of copies of the contract award procedure documentation, written explanations regarding issues being subject of the control and to take an expert's opinion, if the establishment or the assessment of the actual facts or the conduction of other control activities requires specific knowledge. The *ad hoc* control can be initiated at each stage of the procedure, but not later than four years after the public contract award procedure has ended. In case violations of the PPL-Act are disclosed as a result of an inspection, the PPO President is entitled to impose a financial penalty up to PLN 150,000 (about € 36,000) or to apply to the court for invalidation of all or a part of the contract concerned.

The *ex ante* control applies to contracts co-financed from EU funds if the contract value is equal to or exceeds the amount of € 20,000,000 (works contracts) or € 10,000,000 (supplies or services contracts). The *ex ante* control is mandatory and should be carried out before the contract is concluded. It can be initiated at each stage of the contract award procedure. The inspection begins with the submission of the contract award procedure documentation by the contracting entity to the PPO President or immediately after the Chamber issues an award or a decision ending an appeal procedure or after expiry of the time limit for appeal. After completion of the *ex ante* inspection, the PPO President informs the contracting entity about identified violations of the PPL and gives post-inspection recommendations.

### 12.2. LEGAL REMEDIES

The PPL provides for two different legal remedies that can be applied in the contract award procedure: appeal to the National Appeal Chamber (KIO) and court claims. Both of them may be used by a tenderer, design contest participant and any other entity being interested in being awarded the contract. In practice, legal remedies are not only applied as a measure protecting the tenderer from negative decisions of the contracting entity against the respective tenderer, but sometimes also as an instrument to improve the tenderer's position in a procedure by *e.g.* questioning the admission of other competitors to the respective award procedure. Besides tenderers, certain organisations may appeal to KIO against the contract notice and the ToR.

An appeal to the KIO may be filed against an action of the contracting entity taken within the award procedure in breach of the provisions of the PPL or against any omission of the contracting entity in violation of the PPL. In case of contracts with a value below the EU Threshold the scope of violations of the PPL-Act which can be basis of an appeal is rather limited. The appeal can be based only on the following issues:

- (1) Choice of negotiated procedure, single source procurement or request of quotations,
- (2) Description of the manner of assessment of the conditions for the participation in the procedure,
- (3) exclusion of the appealing entity from the contract award procedure and
- (4) rejection of the appellant's offer.

## 12. Control and legal remedies

The appeal should be filed with the PPO President in writing or by electronic means with a valid qualified signature certificate within time limits specified in the PPL-Act. The time limits are significantly shorter for contracts with a value below the EU Threshold.

As a rule, filing of an appeal results in suspending of the contract conclusion until the KIO issues a judgment or a decision ending the appeal procedure. However, the Chamber may set aside the suspension of contract conclusion on motion of the contracting entity, if non conclusion of the contract may lead to negative consequences for the public interest. The contracting entity has to inform the other participants of the procedure of an appeal that has been filed and to provide them with a copy of the appeal. If the appeal concerns the publication of the contract notice or the specification of essential terms of the contract, such information has also to be placed on the website. For the appeal procedure a fee has to be paid. The amount of the fee reaches from PLN 7,500 to PLN 20,000 (corresponding respectively the amount of about € 1,800 to € 4,800) and depends upon the contract value. During the appeal procedure the parties have to present evidence in support of their statements. The KIO admits the appeal if it finds a violation of the PPL that had or may have a substantial impact on the result of the contract award procedure. Admitting the appeal the KIO is entitled to order that the contracting entity performs a specific action, an action is repeated or cancelled, if a contract has not been concluded. If the contract is already concluded, the KIO may invalidate it entirely or invalidate the part of the contract regarding obligations which so far have not been performed and impose financial penalty or rule that the contract term is to be shortened. In principle the cost accrued within the appeal procedure shall be borne by the parties but under certain circumstances listed in the PPL-Act they can be mutually cancelled or borne only by the contracting entity.

The second legal remedy laid down in the PPL-Act is a claim to the court filed against Chamber's ruling issued in the appeal procedure. The claim can be filed by the participants of the appeal procedure within 7 days of the receipt of the Chamber's ruling. In addition, the President of PPO can file a claim as well or accede to an ongoing procedure, acting like a prosecutor in the civil procedure. If the court admits the claim it may change the challenged judgment of the KIO and rule on the merit of the case. The costs of this procedure are borne by the parties in accordance with the result of the procedure. The fee of a claim against a KIO ruling is relatively high and amounts to five times the value of the fee for the filing of an appeal to the Chamber. The ruling of the court is final for the parties with the exception that the President of PPO is entitled to make a revocation complaint to the Supreme Court.

## 13. Practical advice, common mistakes of bidders

**The main purpose of this chapter is to give some useful advice to entities interested in participation in the proceedings of awarding public contracts and to point out the mistakes commonly made by bidders. The information included in this chapter should make it easier for foreign entities to take part in the proceedings of awarding the public contracts in Poland.**

A major practical problem for potential tenderers is the **access to information about procurement procedures**. Only in case of projects with a contract value equal to or above the EU Thresholds the contract notices have to be published in other languages than in Polish. In addition to the official sources mentioned earlier (the Public Procurement Bulletin BZP published on the website of the PPO and the Supplement to the Official Journal of the European Union), there are some commercial sources where the notices are published. Quite popular free of charge portals are *e.g.*:

[www.komunikaty.pl](http://www.komunikaty.pl);  
[www.przetargi.egospodarka.pl](http://www.przetargi.egospodarka.pl).

There are also some paid portals where the notices can be found like [www.portalzp.pl](http://www.portalzp.pl) or [www.biznes-polska.pl](http://www.biznes-polska.pl). However, such commercial web sites are usually maintained only in Polish language and eventually only the headings of the notices are translated into English. Also the notices provided by them are not always up to date.

The principle, that the offers have to be presented in Polish language and attached documents in a translation to Polish language, in practice can be a significant burden for foreign tenderers - especially in case of complicated projects requiring extensive documentation. Although not all documents have to be submitted in a sworn translation, the translation cost can be rather high.

A general practical advice is to analyse very carefully the ToR before preparing the offer. The contracting entity shall reject offers which do not correspond to the ToR. It is crucial that the offer is in line with the ToR. If elements of the ToR are not clear, the tenderer has the possibility to ask the contracting entity for clarification. The PPL provides for a specific procedure for such clarifications. A diligent analysis of the ToR helps also to avoid quite common formal mistakes like presentation of the offer not in a closed envelope while the ToR usually require such form, incorrect addresses on the envelopes, submission of documents in a wrong form, lack of translation of foreign language documents *etc.* Another crucial issue is that the offer and attached documents are signed by the appropriate persons duly entitled to represent the tenderer.

According to the PPL-Act, the contracting entity shall also reject a proposal with a wrong price calculation. Also in the tenderer's interest it is recommended to pay huge attention to the proper calculation of the offered price.

## 14. Attachments

### 14.1. EXHIBIT 14.1 – LEGISLATIVE ACTS OF THE EUROPEAN UNION IN THE FIELD OF PUBLIC PROCUREMENT LAW

- 1) Directive 2004/17/EC of the European Parliament and of the Council of 31<sup>st</sup> March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p.1) - “**Sector Directive**”;
- 2) Directive 2004/18/EC of the European Parliament and of the Council of 31<sup>st</sup> March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p.114) - “**Classic Directive**”;
- 3) Directive 2009/81/EC of the European Parliament and of the Council of 13<sup>th</sup> 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 - Text with EEA relevance (OJ L 216, 20.8.2009, p. 76–136) – “**Defence and Security Directive**”;
- 4) Commission Regulation (EC) No 213/2008 of 28<sup>th</sup> November 2007 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV - Text with EEA relevance (OJ L 74, 15.3.2008, p. 1–375);
- 5) Commission Regulation (EU) No 1336/2013 of 13<sup>th</sup> December 2013 amending Directives 2004/17/EC, 2004/18/EC and 2009/81/EC of the European Parliament and of the Council in respect of the application thresholds for the procedures for the awards of contract - Text with EEA relevance (OJ L 335, 14.12.2013, p. 17–18);
- 6) Commission Implementing Regulation (EU) No 842/2011 of 19<sup>th</sup> August 2011 establishing standard forms for the publication of notices in the field of public procurement and repealing Regulation (EC) No 1564/2005 - Text with EEA relevance (OJ L 222, 27.8.2011, p. 1–187);
- 7) Directive 2014/23/EU of the European Parliament and of the Council of 26<sup>th</sup> February 2014 on the award of concession contracts - Text with EEA relevance (OJ L 94, 28.3.2014, p. 1–64) - “**Concession Directive**”;
- 8) Directive 2014/24/EU of the European Parliament and of the Council of 26<sup>th</sup> February 2014 on public procurement and repealing Directive 2004/18/EC - Text with EEA relevance (OJ L 94, 28.3.2014, p. 65–242) - “**New Classic Directive**”;
- 9) Directive 2014/25/EU of the European Parliament and of the Council of 26<sup>th</sup> February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC - Text with EEA relevance (OJ L 94, 28.3.2014, p. 243–374) - “**New Sector Directive**”.

## 14. Attachments

### 14.2. EXHIBIT 14.2 – OVERVIEW OF THE THRESHOLDS ESTABLISHED BY THE EU DIRECTIVES

No.	Relevant directive	Type of contract	Threshold amount
1.1	Classic Directive, Defence and Security Directive	<u>Public supply and service contracts</u> , others than listed under 1.2 below and awarded by central government authorities listed in Annex IV to the Directive – in the field of defence only with regard to products listed in Annex V to the Directive	134,000.00 €
1.2		<ul style="list-style-type: none"> <li>– <u>Public supply and service contracts</u>, awarded by other contracting authorities than the central government authorities listed in Annex IV to the Directive</li> <li>– <u>public supply contracts</u> awarded by central government authorities listed in Annex IV and operating in the field of defence, as far as these contracts involve products not covered by Annex V to the Directive</li> <li>– <u>public service contracts</u> awarded by any contracting authority in the field of telecommunication services (Category 5 in Annex IIA to the Directive) or in the categories of services listed in Annex IIB to the Directive</li> </ul>	207,000.00 € (414,000.00 € in the field of defence and security)
1.3		Construction works	5,186,000.00 €
1.4		<u>Service contracts</u> which are subsidised directly by contracting authorities by more than 50 %	207,000.00 €
1.5		Contracts which are subsidised directly by contracting authorities by more than 50 % involving <ul style="list-style-type: none"> <li>– <u>civil engineering activities</u> within the meaning of Annex I to the Directive or</li> <li>– <u>building work</u> for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes</li> </ul>	5,186,000.00 €

## 14. Attachments

No.	Relevant directive	Type of contract	Threshold amount
2.1	New Classic Directive	<u>Public works contracts</u>	5,186,000.00 €
2.2		<u>Public supply and service contracts, awarded by central government authorities and design contests organised by such authorities; in the field of defence this threshold shall apply only to contracts concerning products covered by Annex III to the Directive</u>	134,000.00 €
2.3		<u>Public supply and service contracts, awarded by sub-central government authorities and design contests organised by such authorities; in the field of defence this threshold shall apply only to contracts concerning products not covered by Annex III to the Directive</u>	207,000.00 €
2.4		<u>Public service contracts for social services and other specific services listed in Annex XIV to the Directive</u>	750,000.00 €
3.1	Sector Directive	<u>Supply and service contracts</u>	414,000 €
3.2		<u>Works contracts</u>	5,186,000.00 €
4.1	New Sector Directive	<u>Supply and service contracts</u>	414,000 €
4.2		<u>Works contracts</u>	5,186,000.00 €
4.3		<u>Service contracts for social services and other specific services listed in Annex XVII to the Directive</u>	1,000,000.00 €
5.	Concession Directive	<u>Concessions</u>	5,186,000.00 €

## 14. Attachments

### 14.3. EXHIBIT 14.3 – RELEVANT LEGAL ACTS OF POLISH PUBLIC PROCUREMENT LAW

Act of 29<sup>th</sup> January 2004 - Public Procurement Law (Journal of Laws of 2013, item 907, 984, 1047, 1473, of 2014 item 423, 768, 811, 915, 1146, 1232, of 2015 item 349, 478, 605)

#### SECONDARY LEGISLATION

Regulation of the Prime Minister of 23<sup>rd</sup> December 2013 on the value of contracts and design contests imposing an obligation to submit the notices to the EU Publications Office (Journal of Laws of 2013, item 1735)

Regulation of the Prime Minister of 23<sup>rd</sup> December 2013 on the average exchange rate of Polish zloty against Euro being the basis for converting the value of public contracts (Journal of Laws of 2013, item 1692)

Regulation of the Prime Minister of 12<sup>th</sup> December 2013 on the scope of information included in annual report on conducted contract award procedures, its standard form and a manner of its submission (Journal of Laws of 2013, item 1530)

Regulation of the Prime Minister of 19<sup>th</sup> February 2013 amending the regulation on the rules of procedure for examining the appeals (Journal of Laws of 2013, item 232)

Regulation of the Prime Minister of 19<sup>th</sup> February 2013 on the types of documents which may be requested by the contracting entity from the economic operator and forms in which these documents may be submitted (Journal of Laws of 2013, item 231)

Regulation of the Prime Minister of 22<sup>nd</sup> March 2010 on the rules of procedure for examining appeals (Journal of Laws of 2014, item 964)

Regulation of the Prime Minister of 28<sup>th</sup> January 2010 on the standard forms of notices placed in the Public Procurement Bulletin (Journal of Laws of 2014, item 1481)

Regulation of the Prime Minister of 3<sup>rd</sup> December 2012 on the list of construction works (Journal of Laws of 2012, item 1372)

Regulation of the Prime Minister of 3<sup>rd</sup> December 2012 on the list of priority and non-priority services in the field of defence and security (Journal of Laws of 2012, item 1361)

Regulation of the Prime Minister of 10<sup>th</sup> May 2011 on non-price mandatory tender evaluation criteria with respect to certain types of public contracts (Journal of Laws of 2011, No. 96, item 559)

Regulation of the Prime Minister of 26<sup>th</sup> October 2010 on report on contract award procedure (Journal of Laws of 2010, No. 223, item 1458)

Regulation of the Prime Minister of 15<sup>th</sup> March 2010 on the amount of and the manner for collecting the registration fee for the appeal, kinds of costs in the appeal procedure and the manner for their calculation (Journal of Laws of 2010, No. 41, item 238)

Regulation of the Prime Minister of 28<sup>th</sup> January 2010 on the list of priority and non-priority services (Journal of Laws of 2010, No. 12, item 68)

Regulation of the Prime Minister of 2<sup>nd</sup> July 2007 on the manner of conducting the qualifying procedure for members of the National Appeal Chamber, the manner of appointing the qualifying committee, as well as detailed scope of the qualifying procedure (Journal of Laws of 2007, No. 120, item 820)

Regulation of the Prime Minister of 22<sup>nd</sup> March 2004 on the amount of remuneration of the Chairman, Vice Chairman and other members of the Council of Public Procurement (Journal of Laws of 2004, No. 49, item 470)

## 14. Attachments

### 14.4. EXHIBIT 14.4 – OVERVIEW OF REQUIRED DOCUMENTS UNDER THE DOCUMENTS REGULATION AND SWISS EQUIVALENTS

Legal basis:	Documents required from domestic tenderers/domestic individuals:	Legal basis:	General document provisions for circumstances involving a foreign element:	Documents available especially for Swiss tenderers or individuals with place of residence in Switzerland respectively:
<b>1. Documents regarding individuals connected with tenderers</b>				
<b>§ 3 section 1</b>	<p>An up-to-date National Criminal Register criminal record certificate concerning:</p> <ul style="list-style-type: none"> <li>• partners of general partnerships,</li> <li>• partners or board members of professional partnerships,</li> <li>• general partners of limited partnerships or partnerships limited by shares,</li> <li>• incumbent members of legal persons' managing bodies,</li> </ul> <p>in respect of offences:</p> <ul style="list-style-type: none"> <li>• related to a contract award procedure,</li> <li>• against rights of people performing paid work,</li> <li>• against environment,</li> <li>• offences of bribery,</li> <li>• against economic turnover,</li> <li>• other offences committed with the aim of gaining financial profits,</li> <li>• treasury offences,</li> <li>• offences of participation in an organised crime group or in an association aimed at committing an offence or treasury offence,</li> <li>• related to engagement of foreigners illegally residing in Poland – for a period of 1 year once the sentence has become valid,</li> </ul> <p>issued not later than 6 months prior to the lapse of the time limit for submitting the offer.</p>	<b>§ 3 section 3</b>	<b>a) Equivalent documents in case of individuals with no domestic place of residence</b>	Criminal records excerpts ( <i>Privatauszug aus dem Strafregister / Extrait du casier judiciaire destiné à des particuliers</i> ).
			A certificate issued by the competent judicial or administrative authority for the place of residence confirming that the person concerned has not been validly sentenced for any of those offences, issued 6 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date,	
			<b>b) Alternative documents in case of individuals with no domestic place of residence</b>	Not applicable to individuals with place of residence in Switzerland due to equivalent Swiss criminal record certificates being available (see above: 1.a).
			Alternatively, if such certificates are not being issued at the place of residence of the person concerned, a document containing a declaration made before a competent judicial or administrative authority or a competent professional or trade body for the place of residence of the person concerned, or before a notary.	

## 14. Attachments

Legal basis:	Documents required from domestic tenderers/domestic individuals:	Legal basis:	General document provisions for circumstances involving a foreign element:	Documents available especially for Swiss tenderers or individuals with place of residence in Switzerland respectively:
<b>2. Documents required from foreign tenderers</b>				
<b>a) Regulated business: licence certificates</b>				
<b>§ 1 section 1 no. 1)</b>	Documents certifying possession of the authorisation to perform specific activities, if so required by provisions of law, in particular concessions, permits or licences.	<b>§ 2 section 3</b>	Documents issued in the country of place of residence or of the tenderer's seat, certifying possession of such an authorisation correspondingly.	Relevant licence certificates for the business, industry, sector or activity in question.
<b>b) Good standing requirements: credibility, criminal record, social security contribution compliance, tax clearance. Equivalent documents</b>				
<b>§ 3 section 1 no. 2)</b>	An up-to-date excerpt from the relevant register or from the Central Registration and Information on Business Activities records, if an entry in a register or a record is required by relevant provisions, the excerpt issued 6 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date, as evidence for the absence of grounds of exclusion on merits of winding-up having been commenced or bankruptcy having been declared.	<b>§ 4 section 1 no. 1) lit. a), first indent</b>	A document or documents issued in the country of residence or of the tenderer's seat, certifying respectively that winding-up has not been commenced and that bankruptcy has not been declared, issued 6 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date.	Commercial register extracts ( <i>Handelsregisterauszug, Extrait du registre de commerce</i> ).
<b>§ 3 section 1 no. 3)</b>	An up-to-date certificate issued by the head of the competent local tax office confirming that the tenderer is not in arrears with the payment of taxes, or confirming the eventual exemption or spreading of payment into instalments – issued 3 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date.	<b>§ 4 section 1 no. 1) lit. a), second indent [taxes]</b>	A document or documents issued in the country of residence or of the tenderer's seat, certifying respectively that the tenderer is not in arrears with the payment of taxes or that an exemption or spreading of payment into instalments has been granted, issued 3 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date.	Tax clearance certificates issued by the relevant federal and cantonal tax administration authorities.
<b>§ 3 section 1 no. 4)</b>	An up-to-date certificate issued by the competent local Social Insurance Establishment (ZUS) office confirming that the tenderer is not in arrears with the payment of fees and contributions payable	<b>§ 4 section 1 no. 1) lit. a), second indent [health and social insurance charges]</b>	A document or documents issued in the country of residence or of the tenderer's seat, certifying respectively that the tenderer is not in arrears with the payment of fees	Clearance certificates issued by the relevant compensation and social insurance authorities in respect of mandatory fees and contributions ( <i>AHV/IV – AVS-AI, SUVA etc.</i> ).

## 14. Attachments

Legal basis:	Documents required from domestic tenderers/domestic individuals:	Legal basis:	General document provisions for circumstances involving a foreign element:	Documents available especially for Swiss tenderers or individuals with place of residence in Switzerland respectively:
	towards health and social insurance or confirming the eventual exemption or spreading of payment into instalments – issued 3 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date.		and contributions payable towards health and social insurance or that an exemption or spreading of payment into instalments has been granted, issued 3 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date.	
<b>§ 3 section 1 no. 6)</b>	An up-to-date National Criminal Register criminal record certificate confirming that the tenderer as a corporate body has not been prohibited from competing for contract on grounds of corporate criminal liability provisions, issued 6 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date.	<b>§ 4 section 1 no. 1) lit. a), third indent</b>	A document or documents issued in the country of the tenderer's seat, certifying respectively that the tenderer has not been prohibited from competing for contracts, issued 6 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date.	Not available due to Swiss criminal record entries concerning natural persons only.  ⇒ Rule according § 4 section 3 applies and document may be replaced by a declaration made before a competent judicial or administrative authority or a competent professional or trade body for the place of residence of the person concerned or of the tenderer's seat respectively, or before a notary, also specifying the tenderer's authorised representatives, observing the time limits otherwise applicable for the relevant documents.
<b>§ 3 section 1 nos. 5), 7)</b>	An up-to-date National Criminal Register criminal record certificate concerning: <ul style="list-style-type: none"> <li>• tenderers being natural persons, or</li> <li>• partners of general partnerships,</li> <li>• partners or board members of professional partnerships,</li> <li>• general partners of limited partnerships or partnerships limited by shares,</li> <li>• incumbent members of legal persons' managing bodies</li> </ul> in respect of offences: <ul style="list-style-type: none"> <li>• related to a contract award procedure,</li> </ul>	<b>§ 4 section 1 no. 1) lit. b)</b>	A certificate issued by the competent judicial or administrative authority for the place of residence confirming that the person concerned has not been validly sentenced for any of those offences, issued 6 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date.	Criminal records excerpts ( <i>Privatauszug aus dem Strafregister / extrait du casier judiciaire destiné à des particuliers</i> ).

## 14. Attachments

Legal basis:	Documents required from domestic tenderers/domestic individuals:	Legal basis:	General document provisions for circumstances involving a foreign element:	Documents available especially for Swiss tenderers or individuals with place of residence in Switzerland respectively:
	<ul style="list-style-type: none"> <li>• against rights of people performing paid work,</li> <li>• against environment,</li> <li>• of bribery,</li> <li>• against economic turnover,</li> <li>• other offences committed with the aim of gaining financial profits,</li> <li>• treasury offences,</li> <li>• offences of participation in an organised crime group or in an association aimed at committing an offence or treasury offence,</li> <li>• related to engagement of foreigners illegally residing in Poland – for a period of 1 year once the sentence has become valid, issued 6 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date.</li> </ul>			
<b>c) Quality assurance and environmental management certificates</b>				
<b>§ 6 section 1 nos. 2) to 4)</b>	Certificates drawn up by relevant competent independent bodies attesting that: <ul style="list-style-type: none"> <li>• goods being delivered meet particular standards of quality or technical specifications,</li> <li>• the economic operator complies with certain quality assurance standards pursuant to relevant European standards and guidelines for quality assurance,</li> <li>• the economic operator complies with European relevant environmental management standards including EMAS.</li> </ul>	<b>§ 6 section 3</b>	<b>Equivalent documents.</b> Equivalent certificates drawn up by EEA-resident bodies.	Facultative equivalent and alternative options for the tenderer.
		<b>§ 6 section 4</b>	<b>Alternative documents.</b> Alternatively, other documents certifying accordingly that equivalent quality assurance and environmental management measures are being taken by the tenderer.  [As the documents listed in § 6 section 1 nos. 2) to 4) mostly refer to EU-standards and Switzerland is not part of the EEA, quite often Swiss tenderers may be in a situation to present alternative documents according § 6 section 4.	
<b>d) Public procurement in the fields of defence and security – specific requirements on classified information and security clearance certificates</b>				
<b>§ 2 section 1 no. 2) lit. e), § 2 section 2, in principio</b>	Documents certifying the tenderer's ability to process classified information pursuant to the relevant regulations on protection of classified information, including Personnel	<b>§ 2 section 2, second sentence</b>	Security clearance certificates of equivalent level issued by foreign countries corresponding to clearances issued pursuant to the relevant regula-	Relevant personal or industrial security clearances ( <i>Personensicherheitsprüfung bzw. Betriebssicherheitsklärung / contrôle de sécurité des personnes, dé-</i>

## 14. Attachments

Legal basis:	Documents required from domestic tenderers/domestic individuals:	Legal basis:	General document provisions for circumstances involving a foreign element:	Documents available especially for Swiss tenderers or individuals with place of residence in Switzerland respectively:
	Security Clearance Certificates, Facility Security Clearances and Classified Information Training Completion Certificates.		tions on protection of classified information.	<i>claration de sécurité de l'entreprise).</i>
<b>§ 3 section 2 no. 1)</b>	An up-to-date National Criminal Register criminal record certificate concerning tenderers being natural persons, or in the instance of <ul style="list-style-type: none"> <li>• a general partnership,</li> <li>• a professional partnership,</li> <li>• a limited partnership,</li> <li>• a partnership limited by shares, or</li> <li>• a legal person</li> </ul> respectively <ul style="list-style-type: none"> <li>• a partner,</li> <li>• a partner or a board member,</li> <li>• a general partner, or</li> <li>• an incumbent member of that legal person's managing body</li> </ul> in respect of terrorist or terrorism financing offences, issued 6 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date.	<b>§ 4 section 1 no. 2) lit. a)</b>	A certificate issued by the competent judicial or administrative authority for the place of residence of the respective individual, confirming that the person concerned has not been validly sentenced for any of those offences, issued 6 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date.	Criminal records excerpts ( <i>Privatauszug aus dem Strafregister / extrait du casier judiciaire destiné à des particuliers</i> ).
<b>§ 3 section 2 nos. 2), 3)</b>	An up-to-date relevant Personnel Security Clearance Certificate and an up-to-date Facility Security Clearance within the meaning of the Polish Protection of Classified Information Act.	<b>§ 4 section 1 no. 2) lit. b)</b>	A security clearance certificate authorising access to NATO or EU classified information, issued 6 months prior to the lapse of the time limit for submitting the offer at the earliest or at a later date.	Not applicable.  [⇒ Theoretically, rule according § 4 section 3 applies and document may be replaced by a declaration made before a competent judicial or administrative authority or a competent professional or trade body for the place of residence of the person concerned or of the tenderer's seat respectively, or before a notary, also specifying the tenderer's authorised representatives, observing the time limits otherwise applicable for the relevant documents. In practice, however,

## 14. Attachments

Legal basis:	Documents required from domestic tenderers/domestic individuals:	Legal basis:	General document provisions for circumstances involving a foreign element:	Documents available especially for Swiss tenderers or individuals with place of residence in Switzerland respectively:
				we would recommend to present in addition relevant personal or industrial security clearances ( <i>Personensicherheitsprüfung bzw. Betriebssicherheitserklärung / contrôle de sécurité des personnes, déclaration de sécurité de l'entreprise</i> ) and to make a reference to these documents in the declaration made according § 4 section 3.]
<p><b>§ 6 section 2 no. 2) in conjunction with section 5</b></p>	<p>Description of technical installations, manuals and measures utilised by the tenderer, as well as of the tenderer's R&amp;D facilities, in order to establish that classified information is being protected; the evidence is to be made pursuant to the standard of relevant regulations on protection of classified information.</p>	<p><b>§ 6 section 5</b></p>	<p>Relevant parts of the description which constitute evidence regarding classified information protection measures should consist of security clearance certificates of equivalent level issued by foreign countries corresponding to clearances issued pursuant to the relevant regulations on protection of classified information.</p>	<p>Description in question should include relevant personal or industrial security clearances (<i>Personensicherheitsprüfung bzw. Betriebssicherheitserklärung / contrôle de sécurité des personnes, déclaration de sécurité de l'entreprise</i>).</p>

## **ExportHelp**

s-ge.com/exporthelp  
exporthelp@s-ge.com  
T 0844 811 812



Switzerland Global Enterprise  
Stampfenbachstrasse 85  
CH-8006 Zürich  
T +41 44 365 51 51

Switzerland Global Enterprise  
Corso Elvezia 16 – CP 5399  
CH-6901 Lugano  
T +41 91 601 86 86

Switzerland Global Enterprise  
Avenue d'Ouchy 47 – CP 315  
CH-1001 Lausanne  
T +41 21 545 94 94

s-ge.com