

## Public procurement law

z dnia 11 września 2019 r. (Dz.U. tłum. gb z 2019 r. poz. 2019)

1)

(Dziennik Ustaw 2019, item 2019 with subsequent amendments: Dziennik Ustaw 2020, items 288, 1492, 1517)

**NOTE 1 [to the Act's Title]:** This Act implements the following Directives:

- 1) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65, as amended);
- 2) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243, as amended);
- 3) Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76, as amended);
- 4) Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts [OJ L 395, 30.12.1989, p. 33, as amended; *Dz.Urz. UE Polskie wydanie specjalne, rozdz. 6, t. 1, str. 246* (OJ of the European Union, the Special Polish Edition, Chap. 6, vol. 1, p. 246)];
- 5) Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors [OJ L 76, 23.3.1992, p. 14, as amended]; *Dz.Urz. UE Polskie wydanie specjalne, rozdz. 6, t. 1, str. 315* (OJ of the European Union, the Special Polish Edition, Chap. 6, vol. 1, p. 315)].

## Division I. GENERAL PROVISIONS.

### Chapter 1. Scope of Regulation.

#### Section 1. Scope of Matters Regulated by the Act.

**Art. 1** The Act shall regulate public contracts, hereinafter referred to as „contracts” and contests, and within this scope it specifies:

- 1) the subjects obliged to apply the provisions of the Act;
- 2) the scope of exclusions of application of the provisions of the Act;
- 3) the rules for awarding contracts;
- 4) the stages of preparation and conducting of contract award proceedings;
- 5) the contract award procedures and special instruments and procedures to the extent of contracts;
- 6) the requirements concerning public procurement agreements and framework agreements;

- 7) the authorities competent for the matters of contracts;
- 8) legal remedies;
- 9) out-of-court settlement of disputes concerning performance of public procurement agreements;
- 10) control of awarding contracts and pecuniary penalties.

## **Art. 2**

1. The provisions of this Act shall apply to awarding:

- 1) classic contracts and organization of contests whose value is equal to or exceeds the amount of 130,000 zloties by public awarding entities;
- 2) sectoral contracts and organization of contests whose value is equal to or exceeds the EU thresholds by sectoral awarding entities;
- 3) contracts in the fields of defence and security whose value is equal to or exceeds the EU thresholds by public and sectoral awarding entities;
- 4) classic contracts and organization of contests, whose value is equal to or exceeds the EU thresholds by subsidized awarding entities in the circumstances referred to in Article 6.

2. Award of classic contracts whose value, net of goods and services tax, concerning one-off purchase, is lower than 130,000 zloties, however is not lower than 50,000 zloties, hereinafter referred to as „de minimis contracts”, awarded by public awarding entities, shall be governed by the provisions of Article 86, Article 267, paragraph 1 and paragraph 2, subparagraph 9, Article 268, Article 269, paragraph 1, Article 271, paragraphs 1 to 3 and Article 272.

## **Art. 3**

1. The EU thresholds shall be understood as the amounts of value of contracts or contests laid down by:

- 1) Articles 4 and 13 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65, as amended), hereinafter referred to as „Directive 2014/24/EU”;
- 2) Article 15 of Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243, as amended), hereinafter referred to as „Directive 2014/25/EU”;
- 3) Article 8 of Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76, as amended), hereinafter referred to as „Directive 2009/81/EU”

- updated in implementing acts of the European Commission issued respectively under Article 6(5) of Directive 2014/24/EU, Article 17(4) of Directive 2014/25/EU and Article 68 of Directive 2009/81/EC.

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

- 1) the current EU thresholds, their equivalence in zloties, and about equivalence in zloties of the amounts denominated in euro in the Act, determined in accordance with the communication from the European Commission issued respectively under:
  - a) Article 6(3) of Directive 2014/24/EU;
  - b) Article 17(2) of Directive 2014/25/EU;
  - c) Article 68(2) and Article 68(3) of Directive 2009/81/EC;
- 2) the average exchange rate of the zloty to the euro constituting the basis for calculating the value of contracts or

contests, fixed based on the amounts specified in the communication from the European Commission referred to in subparagraph 1

- applicable to the contract award proceedings and contests initiated from the effective date of the implementing acts of the European Commission issued respectively under Article 6(5) of Directive 2014/24/EU, Article 17(4) of Directive 2014/25/EU and Article 68 of Directive 2009/81/EC.

3. The information referred to in paragraph 2 shall be published by announcement in the official gazette *Dziennik Urzędowy Rzeczypospolitej Polskiej „Monitor Polski”* and placed on the website of the Public Procurement Office, hereinafter referred to as the „Office”, forthwith after the publication of the communication from the European Commission referred to in paragraph 2 in the Official Journal of the European Union.

4. The average exchange rate of the zloty to the euro, as referred to in paragraph 2, subparagraph 2, shall apply to converting the amounts of the value of the contracts expressed in the Act.

**Art. 4** The provisions of this Act shall apply to public awarding entities, which include:

- 1) a public finance sector entities within the meaning of the provisions of the Act of 27 August 2009 on the Public Finance (*Dziennik Ustaw* 2019, items 869, 1622 and 1649);
- 2) state organizational units not having legal personality other than those specified in subparagraph 1;
- 3) legal persons other than those specified in subparagraph 1, established for the specific purpose of meeting needs of a general nature, not having industrial or commercial character, if the entities referred to in this provision and in subparagraphs 1 and 2, separately or jointly, directly or indirectly through another subject:
  - a) finance them at over 50 per cent; or
  - b) hold more than half of their shares; or
  - c) supervise their managing body; or
  - d) have the right to appoint more than half of the members of their supervisory or managing body;
- 4) associations of the subjects referred to in subparagraph 1 or 2, or the subjects referred to in subparagraph 3;

**Art. 5**

1. The provisions of this Act shall apply to sectoral awarding entities, which include:

- 1) public awarding entities to the extent to which they carry out one of the types of the sectoral activity referred to in paragraph 4;
- 2) subjects other than those specified in subparagraph 1 which conduct one of the types of the sectoral activity referred to in paragraph 4 and upon which public awarding entities, separately or jointly, directly or indirectly through another subjects exert a controlling influence, and in particular:
  - a) hold more than half of their shares or
  - b) hold more than half of the votes resulting from shares; or
  - c) have the right to appoint more than half of the members of their supervisory or managing body;
- 3) subjects other than those specified in subparagraphs 1 and 2 which conduct one of the types of the sectoral activity referred to in paragraph 4, provided that such activity is carried out under special or exclusive rights.

2. Special or exclusive rights within the meaning of paragraph 1, subparagraph 3 are the rights conferred by an Act or an administrative decision, consisting in the reservation of the conduct of specific activity for one or a larger number of subjects, exerting a significant impact on the possibility of conducting this activity by other subjects, excluding the rights conferred by a publicly announced proceedings under objective and non-discriminatory criteria, in particular the proceedings:

- 1) covering the contract notice or initiation of the proceedings for granting a concession for construction works or services;
  - 2) conducted under the provisions published in the announcement of the President of the Office referred to in paragraph 3.
3. The President of the Office shall publish, by announcement, in the official gazette *Dziennik Urzędowy*

*Rzeczypospolitej Polskiej „Monitor Polski”*, and shall place on the website of the Office the list of the legal acts implementing the provisions laid down in Annex II to Directive 2014/25/EU.

4. Sectoral activity within the scope of:

- 1) water management shall be:
  - a) making available or operation of permanent networks intended to provide public services in connection with manufacturing, transport or distribution of drinking water;
  - b) supplying drinking water to the networks referred to in letter a, unless:
    - production of drinking water by the sectoral awarding entity referred to in paragraph 1, subparagraphs 2 and 3, is necessary to carry out an activity other than the one specified in subparagraphs 1 to 4 and
    - the supply of drinking water to the networks depends on own consumption only and over the past 3 years, including the year in which the contract is awarded, has not exceeded 30 per cent of its total production,
  - c) the following actions related to the activity referred to in letter a or b, within the scope of:
    - projects in the field of water engineering, irrigation or land drainage on the condition that the amount of water consumed for the purposes of drinking water supplies constitutes over 20 per cent of total amount of water available owing to those projects or irrigation or land drainage systems;
    - sewage disposal or treatment;
- 2) electricity shall be:
  - a) making available or operation of permanent networks intended to provide public services in connection with generation, transmission or distribution of electricity;
  - b) supply of electricity to the networks referred to in letter a, unless:
    - production of electricity by the sectoral awarding entity referred to in paragraph 1, subparagraphs 2 and 3, is necessary to carry out an activity other than the one specified in subparagraphs 1 to 4; and
    - the supply of electricity to the networks depends exclusively on own consumption of the awarding entity and over the past 3 years, including the year in which the contract is awarded, has not exceeded 30 per cent of the total production of electricity;
- 3) gas and heating energy shall be:
  - a) making available or operation of permanent networks intended to provide public services in connection with production, transport or distribution of gas or heating energy;
  - b) supply of gas or heating energy to the networks referred to in letter a, unless:
    - production of gas or heating energy by the sectoral awarding entity referred to in paragraph 1, subparagraphs 2 and 3, is an unavoidable consequence of carrying out an activity other than the one specified in subparagraphs 1 to 4; and
    - the supply of gas or heating energy is aimed at exclusively economic use of production and over the past 3 years, including the year in which the contract is awarded, has not exceeded 20 per cent of the awarding entity's average revenues;
- 4) transport services - shall be the activity consisting in making available or operation of the networks intended to provide public services within the scope of the railway, tramway, trolley bus, bus transport, as well as cable car or with the use of automatic systems;
- 5) ports, harbours and airports - shall be the activity related to exploitation of a geographical area in order to make available airports, sea ports and inland ports or other terminals, respectively, to air carriers, maritime carriers and inland carriers;
- 6) postal services - shall be the activity consisting in the provision of the following services:
  - a) accepting, sorting, moving or serving postal mails;
  - b) management of the services referred to in letter a and provision of the services related to the mails not included under letter a, such as no-address printed matter, insofar as those services are provided by a subject providing the services referred to in letter a;
- 7) extracting fuels - shall be the activity consisting in extracting crude oil or gas and their natural derivatives, as well as exploring or extracting brown coal, hard coal and other solid fuels.

5. The supply and distribution referred to in paragraph 4, subparagraphs 1 to 3, shall be taken to mean also production, wholesale and retail sale.

**Art. 6** The provisions of the Act shall apply to subsidized awarding entities which are awarding entities other than public or sectoral awarding entities, provided that the following circumstances occur:

- 1) more than 50 per cent of the value of a contract awarded by such a subject is financed from public funds or by

the awarding entities referred to in Article 4 and Article 5, paragraph 1, subparagraph 1;

**2)** the value of a contract is equal to or exceeds the EU thresholds;

**3)** the subject of the contract is that of construction works in the area of civil engineering laid down in Annex II to Directive 2014/24/EU, construction of hospitals, sports and recreation or rest facilities, school buildings, buildings of schools of higher education or buildings used by public administration or services related to such construction works.

**Art. 7** Whenever in this Act there is a mention of:

**1)** price - this shall mean the price within the meaning of Article 3, paragraph 1, subparagraph 1, and paragraph 2 of the Act of 9 May 2014 on Informing about Prices of Goods and Services (Dziennik Ustaw 2019, item 178), even if this price is paid to a person who is not an entrepreneur;

**2)** life cycle - this shall mean all possible consecutive or interlinked stages throughout the existence of the subject of delivery, service or construction work, in particular research and development, industrial development, production, repair, modernization, modification, maintenance throughout the period of existence, logistics, training, wear and tear, demolition, withdrawal and disposal;

**3)** contract documents - this shall mean any documents produced or referred to by the awarding entity other than a contract notice, serving to describe or determine the terms of the contract, including the specification of the contract terms as well as the description of the needs and requirements;

**4)** supplies - this shall mean purchasing products including movable things, energy, water and property rights, provided that they may be the subject of trading, in particular under a contract of sale, supply, lease, tenancy and leasing, with or without the option of purchase, said purchasing also possibly including siting or installation;

**5)** dynamic purchasing system - this shall mean a limited in duration electronic process of awarding public contracts, having as their subject generally available services, supplies or construction works;

**6)** innovation - this shall mean the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organizational method in business practices, workplace organization or external relations;

**7)** manager of awarding entity - this shall mean a person or authority who/which, in accordance with the binding provisions, articles or deed of foundation, is authorized to manage the awarding entity, to the exclusion of attorneys appointed by the awarding entity;

**8)** contest - this shall mean a public promise in which the awarding entity shall, by a public announcement, promise a reward for the performance and transfer of a right to a contest project selected by a contest jury;

**9)** selection criteria - this shall mean objective and non-discriminatory criteria applied by the awarding entity in the proceedings for awarding a contract or in a contest in order to limit the number of contractors or participants in the contest not subject to exclusion and meeting the conditions of participation in the proceedings or in the contest, which contractors or participants will be invited by the awarding entity to submit their initial tenders or tenders, to dialogue or to submit their contest projects;

**10)** supply chain - this shall mean all the resources and actions necessary to perform the supplies, services and construction works being the subject of the contract;

**11)** sensitive construction works - this shall mean construction works for security purposes, involving, requiring or containing non-public information or information subject to protection for security reasons;

**12)** sensitive equipment - this shall mean equipment for security purposes, involving, requiring or containing non-public information or information subject to protection for security reasons;

**13)** sensitive services - this shall mean services for security purposes, involving, requiring or containing non-public information or information subject to protection for security reasons;

**14)** building object - this shall mean the outcome of all construction works in the area of construction or civil engineering that is sufficient in itself to fulfil an economic or technical function;

**15)** tender for one lot - this shall mean a tender which, in accordance with the contract documents, provides for the performance of one lot of a contract;

**16)** written nature - this shall mean the manner of expressing information by means of words, digits or other written signs which may be read and multiplied, including the signs being transmitted with the use of electronic communication means;

**17)** object-related means of proof - this shall mean the means serving to confirm the lack of grounds for exclusion, the satisfaction of the conditions of participation in the proceedings or selection criteria, save for the declaration referred to in Article 125, paragraph 1;

**18)** contract award proceedings - this shall mean the proceedings initiated by transmitting or placing a notice, transmitting an invitation to negotiations or an invitation to submit tenders, conducted as an ordered sequence of activities, the basis of which are the contract terms determined by the awarding entity leading to select the most advantageous tender or negotiate the provisions of a public procurement agreement completing with conclusion of the public procurement agreement or cancellation of such proceedings, whereas the conclusion of the public procurement agreement does not constitute an activity in these proceedings;

**19)** record of proceedings - this shall mean a document prepared by the awarding entity which confirms the course of the contract award proceedings;

**20)** subject-related means of proof - this shall mean the means serving to confirm the consistency of the offered supplies, services or construction works with the requirements, features or criteria determined in the description of the subject of the contract or the description of the tender evaluation criteria or the requirements related to the execution of the contract;

**21)** construction works - this shall mean the performance or designing and performance of the construction works laid down in Annex II to Directive 2014/24/EU, in Annex I to Directive 2014/25/EU and covered by Section 45 of Annex I to Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ L 340, 16.12.2002, p. 1, as amended), hereinafter referred to as the „Common Procurement Vocabulary”, or of a building object, as well as the execution of a building object with the use of any means, in accordance with the requirements laid down by the awarding entity;

**22)** military equipment - this shall mean equipment specifically designed or adapted for military purposes and intended for use as an arm, munitions or war material;

**23)** electronic communication means - this shall mean electronic communication means within the meaning of the Act of 18 July 2002 on Provision of Services by Electronic Means (Dziennik Ustaw 2019, items 123 and 730);

**24)** public funds - this shall mean public funds within the meaning of the provisions of the Act of 27 August 2009 on public finance;

**25)** contract award - this shall mean conclusion of a public procurement agreement;

**26)** framework agreement - this shall mean an agreement entered into by and between the awarding entity and one or more contractors for the purpose of establishing the terms of public contracts which may be awarded in the given period, and in particular, determining the prices and the predicted quantities, if required;

**27)** subcontracting agreement - this shall mean an agreement in writing for a pecuniary interest, concluded by and between the contractor and subcontractor, and in the case of a contract for construction works other than a contract in the fields of defence and security, also by and between the subcontractor and further subcontractor or by and between further subcontractors, under which the subcontractor or further subcontractor, respectively, undertakes to perform one lot of the contract;

**28)** services - this shall mean any performances which are neither construction works nor supplies;

**29)** contract terms - this shall mean the terms concerning a contract or contract award proceedings resulting in particular from the description of the subject of the contract, requirements related to the performance of the contract, the tender evaluation criteria, the procedural requirements or drafted provisions of a public procurement agreement;

**30)** contractor - this shall mean a natural person, legal person or organizational unit not having legal personality

who/which offers to execute construction works or a building object, to supply products or to provide services on the market or who/which competes for the award of a contract, has submitted its tender or has concluded a public procurement agreement;

**31)** awarding entity - this shall mean a natural person, legal person or organizational unit not having legal personality, obliged under this Act to apply this Act;

**32)** contract - this shall mean an agreement of a pecuniary nature concluded by and between the awarding entity and the contractor, the subject of which is acquisition of construction works, supplies or services by the awarding entity from the chosen contractor;

**33)** classic contract - this shall mean a contract awarded by a public awarding entity and a subsidized awarding entity other than a sectoral contract and a contract in the fields of defence and security;

**34)** contracts for social and other specific services - this shall mean classic or sectoral contracts for the services listed in Annex XIV to Directive 2014/24/EU and Annex XVII to Directive 2014/25/EU, respectively;

**35)** sectoral contract - this shall mean a contract awarded by a sectoral awarding entity for the purpose of pursuing one of the types of sectoral activity referred to in Article 5, paragraph 4;

**36)** contract in the fields of defence and security - this shall mean a contract awarded by a public awarding entity or a sectoral awarding entity, the subject of which is that of:

- a) supplies of military equipment, including any of its parts, components, subassemblies or its software;
- b) supplies of sensitive equipment, including any of its parts, components, subassemblies or its software;
- c) construction works, supplies and services related to protection of facilities put at the disposal of subjects performing contracts in the fields of defence and security or related to the equipment referred to in letters a and b, all of its parts, components and subassemblies involved in the life cycle of such product or service;
- d) construction works and services intended for military purposes, sensitive construction works or sensitive services.

## **Art. 8**

1. Unless provisions of this Act provide otherwise, activities undertaken by the awarding entity, contractors and participants of a contest in the contract award proceedings as well as public procurement agreements shall be regulated by the provisions of the Act of 23 April 1964 - The Civil Code (Dziennik Ustaw 2019, items 1145 and 1495).

2. The deadline expressed in hours shall commence with the beginning of the first hour and ends upon the elapse of the last hour.

3. If a certain event indicates the beginning of a deadline expressed in hours, the hour on which that event occurred shall not be included in the calculation of that deadline.

4. The deadline including two or more days shall include at least two business days.

5. A business day shall not be a rest day under statutory law and a Saturday.

## **Section 2. Exclusions of the Application of the Provisions of the Act.**

**Art. 9** The provisions of this Act shall not be applicable to the following classic contracts or sectoral contracts or contests:

**1)** which the awarding entity is obliged to award or which it is obliged to hold under the following procedures other than specified by the Act:

- a) of an international organization;
- b) resulting from an agreement creating an international law obligation, such as an international agreement concluded between the Republic of Poland and one or more non-member countries of the European Union in order to acquire supplies, services or construction works for the purpose of executing or running a joint undertaking;

2) financed in full by an international organization or an international financing institution, provided that the awarding entity applies to these contracts or contests a procedure of an international organization or an international financing institution other than that laid down under the Act;

3) financed at over 50 per cent by an international organization or an international financing institution, provided that the application to these contracts or contests a procedure of an international organization or an international financing institution other than that laid down under the Act has been agreed with them.

#### **Art. 10**

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

- 1) the National Bank of Poland involving:
  - a) the performance of tasks relating to the implementation of the financial policy, and in particular contracts for financial services connected with the issue, sale, purchase and transfer of securities or other financial instruments;
  - b) trading in securities issued by the State Treasury;
  - c) domestic and foreign debt management servicing;
  - d) the issue of monetary tokens and management thereof;
  - e) accumulation of foreign exchange reserves and management thereof;
  - f) accumulation of gold and precious metals;
  - g) maintaining bank accounts and carrying out financial bank settlements;
- 2) *Bank Gospodarstwa Krajowego* [the Bank of Domestic Economy]:
  - a) involving the performance of the tasks regarding the servicing of the funds established, entrusted with or transmitted to *Bank Gospodarstwa Krajowego* [the Bank of Domestic Economy] and the implementation of government programmes, in the part regarding:
    - maintaining bank accounts, effecting financial bank settlements, and activity on the interbank market,
    - obtaining financial means to ensure financial liquidity, financing the activity of the funds and programmes serviced and refinancing credit action,
  - b) involving operations on the interbank market regarding the management of the debt of the State Treasury and liquidity of the state budget;
  - c) involving the pursuit of banking activity by *Bank Gospodarstwa Krajowego* [the Bank of Domestic Economy], in the part concerning:
    - opening and maintaining bank accounts, effecting bank financial settlements and activity on the interbank market;
    - obtaining financial means for ensuring financial liquidity and refinancing credit action;
  - d) with a value lower than EU thresholds;
- 3) public awarding entities and subsidized awarding entities for the purpose of pursuing activity in the field of:
  - a) making available a public telecommunication network or
  - b) operation of a public telecommunication network; or
  - c) rendering publicly available telecommunication services via a public telecommunication network;
- 4) sectoral awarding entities referred to in Article 5, paragraph 1, subparagraph 1, pursuing sectoral activity within the scope of the postal services referred to Article 5, paragraph 4, subparagraph 6 in order to provide the following services:
  - a) of an added value, related to IT and telecommunication systems within the meaning of the Act of 18 July on Provision of Services by Electronic Means, exclusively via such systems, including the secure transmission of coded documents via communication and information systems, address management services and transmission of registered electronic mail;
  - b) financial ones, covered by the CPV codes from 66100000-1 to 66720000-3, laid down in the Common Procurement Vocabulary, in particular postal money orders and postal giro transfers;
  - c) philatelic or logistic services;
- 5) a bridge institution referred to in Article 2, subparagraph 26 of the Act of 10 June 2016 on Banking Guarantee Fund, deposit-guarantee scheme and compulsory restructuring (Dziennik Ustaw 2019, items 795, 730, 1495, 1655 and 1798), or the subject managing the assets referred to in Article 2, subparagraph 46 of this Act.

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

- 1) for services of the National Bank of Poland;



2) for services of *Bank Gospodarstwa Krajowego* [the Bank of Domestic Economy] in the scope of banking support of the units referred to in Article 4, subparagraphs 1 and 2, except for territorial self-government units;

3) awarded to a state budget management institution by a public authority exercising functions as a founding organ of that institution, if all the following conditions are met:

- a) over 80 per cent of activity of the state budget management institution concerns the performance of public tasks for the benefit of that public authority;
- b) a public authority exercises over the state budget management institution the control corresponding to the control exercised over its own units having no legal personality, consisting in influencing strategic and essential decisions concerning the managing of the affairs of this institution;
- c) the subject of the contract falls within the scope of the basic activity of the state budget management institution defined pursuant to Article 26, paragraph 2, subparagraph 2 of the Act of 27 August 2009 on Public Finance;

4) for the services awarded by a public awarding entity and sectoral awarding entity to a public awarding entity to which an exclusive right to provide such services has been granted under an Act or other normative act subject to publication.

3. While calculating the percentage of the activity, as referred to in paragraph 2, subparagraph 3, letter a, the following shall be taken into account:

- 1) the total average turnover achieved by a state budget management institution or
- 2) other alternative measure based on activity, in particular the costs incurred by a state budget management institution

- in relation to the services, supplies or construction works for the 3 years preceding the award of the contract.

4. If, due to the day of establishment or commencement of activity by a state budget management institution or reorganization of its activity, the data for the 3 years preceding the award of the contract concerning the total average turnover or other alternative measure based on activity, in particular the costs incurred by the state budget management institution are unavailable or inadequate, a reliable measure shall be applied while calculating the percentage of the activity referred to in paragraph 2, subparagraph 3, letter a, in particular forecasts concerning turnover, costs or other alternative measure.

## **Art. 11**

1. The provisions of this Act shall not apply to the contracts or contest, the subject of which is that of:

- 1) arbitration or conciliation services;
- 2) legal services:
  - a) of representation in judicial proceedings by an advocate, legal counsellor or a foreign lawyer within the meaning of the Act of 5 July 2002 on Provision by Foreign Lawyers Legal Assistance in the Republic of Poland (Dziennik Ustaw 2016, item 1874; 2019, item 730), in arbitration or conciliation proceedings or before courts, tribunals or other public authorities of a European Union Member State, third countries or before international courts, tribunals, arbitration or conciliation instances;
  - b) legal advisory carried out by an advocate, legal counsellor or a foreign lawyer within the meaning of the Act of 5 July 2002 on Provision by Foreign Lawyers Legal Assistance in the Republic of Poland within the scope of the preparation of the proceedings referred to in letter a or where it is highly probable that the matter to which this advisory relates will become the subject of these proceedings;
  - c) certification by a notary and authentication of documents;
  - d) to provision of which the contractors are designated by a court or tribunal of a given European Union Member State or designated by operation of law in order to perform specific tasks under the supervision of such tribunals or courts;
  - e) related to exercising public authority;
- 3) research or development services, unless they are covered by the CPV codes from 73000000-2 do 73120000-9, 73300000-5, 73420000-2 and 73430000-5, laid down in the Common Procurement Vocabulary, and the following conditions are jointly fulfilled:
  - a) benefits from these services accrue exclusively to the awarding entity for the purposes of its own activity;
  - b) the service provided is wholly remunerated by the awarding entity;

- 4) acquisition of a programme and materials for the programme or development thereof, production and co-production, if they are intended for the purposes of provision of audiovisual media services or radio media services - rendered by audiovisual or radio media service providers;
- 5) purchase of air time or programmes from audiovisual or radio media service providers;
- 6) acquisition of ownership or other rights to existing buildings or immovable properties;
- 7) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments (Dziennik Ustaw 2018, item 2286, as amended) and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;
- 8) loans or credits, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments, excluding the credits incurred by territorial self-government units within the frameworks of the limits of liabilities laid down in the budget resolution;
- 9) services within the field of civil defence, civil protection, and danger prevention services that are provided by non-profit organizations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 laid down in the Common Procurement Vocabulary, except patient transport ambulance services;
- 10) public passenger transport services by rail or metro;
- 11) supplies of greenhouse gas and other substances emission allowances, certified emission reduction units and emission reduction units within the meaning of provisions concerning trade in greenhouse gas and other substances emission allowances;

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

- 1) within the scope of labour law;
- 2) for concessions for construction works and concessions for services within the meaning of the Act of 21 October 2016 on Contracts for Concessions for Construction Works or Services (Dziennik Ustaw 2016, items 1528 and 1655), unless the Act provides otherwise;
- 3) referred to in Article 149, paragraph 2 of the Act of 20 July 2018 - Law on Schools of Higher Education and Science (Dziennik Ustaw 2018, item 1668, as amended).

3. The provisions of this Act shall not apply to the contracts connected with the preparation and conduct of:

- 1) the process of the payment of guaranteed funds referred to in Article 2, subparagraph 65 of the Act of 10 June 2016 on Banking Guarantee Fund, Deposit-Guarantee Scheme and Compulsory Restructuring, especially the services provided by the subject with which the contract for the payment of guaranteed funds will be entered into;
- 2) compulsory restructuring or write down or conversion of capital instruments, the subject of which is:
  - a) carrying out an estimate;
  - b) providing advising services, including strategic, economic and financial, tax, legal and IT counselling;
  - c) entrusting to an entrepreneur or a foreign entrepreneur intermediation as regards the acts listed in Articles 5 and 6 of the Act of 29 August 1997 - Banking Law (Dziennik Ustaw 2018, item 2187, as amended) on behalf and for a bank under restructuring, as well as the acts connected with the activity pursued by an investment firm under restructuring, including with the brokerage activity carried out thereby.

4. The provisions of this Act shall not apply to the contracts concerning the manufacturing of:

- 1) forms of public documents referred to in Article 5, paragraph 2 of the Act of 22 November 2018 on Public Documents (Dziennik Ustaw 2019, items 53, 1091 and 1716), as well as their personalization or individualization;
- 2) excise stamps;

3) [this subparagraph comes into force on 3 September 2022] legal marking and control stickers specified in the Act of 20 June 1997 - Road Traffic Law (Dziennik Ustaw 2018, item 1990, as amended);

3) [this subparagraph comes into force on 4 September 2022] legal marking specified in the Act of 20 June 1997 - Road Traffic Law (Dziennik Ustaw 2018, item 1990, as amended);

4) ballot papers and covers on ballot papers referred to in Article 40, paragraph 1 and Article 40a, paragraph 1, respectively, of the Act of 5 January 2011 - the Election Code (Dziennik Ustaw 2019, items 684 and 1504) and in Article 20 of the Act of 14 March 2003 on Nationwide Referendum (Dziennik Ustaw 2019, items 1444 and 1504);

5) holographic marks placed on certificates attesting to a right to vote referred to in Article 32, paragraph 1 of the Act of 5 January 2011 - the Election Code;

6) a microprocessor microcircuit with software used to manage public documents, IT systems and databases necessary for the application of the public documents referred to in Article 5, paragraph 2 of the Act of 22 November 2018 on Public Documents, including an electronic layer, in accordance with their intended use.

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

1) the subject which is that of supplies or services serving exclusively for the purposes of research, experimental, scientific or development works, which do not serve the purpose of carrying out mass production by the awarding entity, said production aiming to attain the market profitability, neither serve the purpose of covering research or development costs;

2) the subject of which is that of supplies or services to the extent of cultural activity concerning the arrangement of exhibitions, concerts, contests, festivals, shows, theatrical performances, projects regarding cultural education or the cultural activity relating to gathering library materials by libraries or museum exhibits, including archival activity concerning gathering of archival materials, provided that these contracts do not have as their purpose equipping the awarding entity with tangible assets designed for day-to-day support for its activity;

3) awarded by subjects other than those referred to in Article 1, subparagraph 4, whose subject of activity is that of production and co-production of programmes and materials for the programmes or development thereof, if the contracts are intended for the purposes of provision of audiovisual media services or radio media services;

4) the subject of which is that of supplies or services in the field of educational activity connected with gathering in libraries of textbooks, educational materials and materials for practical lessons, such materials being referred to in the Act of 7 September 1991 on the System of Education (Dziennik Ustaw 2019, items 1481 and 1818), if such contracts do not serve the purpose of equipping the awarding entity with tangible assets designed for day-to-day support for its activity;

5) whose subject is that of services or construction works serving to implement revitalization projects included in a *gmina* revitalization programme and executed within the area of a Special Revitalization Zone, said projects being referred to in Chapters 4 and 5, respectively, of the Act of 9 October 2015 on Revitalization (Dziennik Ustaw 2018, item 1398; 2019, items 730 and 1696), if those contracts are awarded:

a) by a *gmina* or *gmina* organizational units to non-governmental organizations or welfare cooperatives, and the subject of the contract is covered by the activity of the contractor as specified in its articles or

b) for the purpose of activation of the persons having their places of residence within the area of Special Revitalization Zone referred to in Chapter 5 of the Act of 9 October 2015 on Revitalization;

6) the subject of which is that of services within the scope of forestry, covered by CPV codes 77200000-2, 77210000-5, 77211000-2, 77211100-3, 77211200-4, 77211300-5, 77211400-6, 77211500-7, 77211600-8, 77220000-8, 77230000-1, 77231000-8, 77231200-0, 77231600-4 and 77231700-5, specified in the Common Procurement Vocabulary;

7) awarded as part of implementing development cooperation by military units defined under Article 5 of the Act of 17 December 1998 on the Rules for the Use or Stay of the Armed Forces of the Republic of Poland Outside the State Borders (Dziennik Ustaw 2014, item 1510; 2019, item 1726);

8) awarded by the Minister of Justice - the General Prosecutor or the organizational units under the control or supervision thereof to penitentiary workshops run as state enterprises or state budget management institutions, related to employment of persons deprived of liberty, provided that the essential part of the activity of the penitentiary workshop relates to performance of the tasks entrusted thereto by the Minister of Justice - the General Prosecutor or

the organizational units under the control or supervision thereof;

9) awarded by the manager of the special economic zone referred to in the Act of 20 October 1994 on the Special Economic Zones (Dziennik Ustaw 2019, item 482), which is the subject referred to in Article 4, subparagraph 3.

6. The essential part of the penitentiary workshop's activity, as referred to in paragraph 5, subparagraph 8, shall include the activity involving the performance of the contracts in connection with the social and professional integration of the persons referred to in Article 94, paragraph 1, subparagraph 5.

## **Art. 12**

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

1) the contracts or contests:

a) to which a clause has been attached in accordance with the provisions of the Act of 5 August 2010 on Protection of Non-Public Information (Dziennik Ustaw 2019, item 742), or which must be accompanied, under separate provisions, by special security measures or

b) if an important interest of the state security so requires - to the extent to which the protection of the important interests of the state security cannot be guaranteed in other manner, in particular with the application of the provisions of Section VI;

2) the contracts relating to production of or trade in arms, munitions or war materials referred to in Article 346 of the Treaty on the functioning of the European Union, where the essential interest of state security so requires, and awarding such a contract without applying the Act does not adversely affect the conditions of competition on the internal market regarding products which are not intended exclusively for military purposes to the extent to which the protection of the important interests of the state security cannot be guaranteed in other manner, in particular with the application of the provisions of Section VI.

2. The awarding entity may apply the provisions of the Act to the extent specified in the assessment of the occurrence of the essential interest of the state security referred to in Article 15 to awarding the contract referred to in paragraph 1, subparagraph 2. The awarding entity shall, based on the principle of proportionality in the contract notice or in the contract document initiating the proceedings, indicate the scope of application of the Act's provisions in the case referred to in the first sentence. In such a situation the awarding entity shall not exclude the application of the provisions of Sections IX and XI.

## **Art. 13**

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

1) in the cases referred to in Article 11, paragraph 1, subparagraphs 1, 3 and 6, paragraph 2, subparagraph 1 and Article 12;

2) subject to a special procedure:

a) on the basis of an international agreement or an arrangement concluded at a ministerial level, to which the Republic of Poland is a party, concluded with one or more non-member countries of the European Union;

b) under an international agreement or an arrangement concluded at a ministerial level, to which the Republic of Poland is a party, relating to the stationing of troops and concerning entrepreneurs regardless of the location of their seat or place of residence;

c) of an international organization making purchases for its purpose or to the contracts which must be awarded by the Republic of Poland under this procedure;

3) in the case of which the application of the provisions of the Act would oblige the awarding entity to provide the information the disclosure of which is contrary to the essential interests of state security;

4) awarded for the purposes of intelligence or counter-intelligence activities;

5) awarded within the framework of a programme of cooperation based on research and development conducted jointly by the Republic of Poland and at least one European Union Member State for the development of a new product and, where applicable, to the later phases of all or part of the life-cycle of this product;

6) awarded in a non-member country of the European Union, including the contracts for the supply of equipment other than the military equipment, for construction works or services for the logistic purposes, carried out during

deployment of armed forces, or forces, whose basic tasks involve protection of security, in the case where operational needs require them to be awarded to contractors located in the area of operations;

- 7) awarded by state, regional or local authorities to state, regional or local authorities of other state and related to:
- a) supplies of military equipment or sensitive equipment or
  - b) construction works and services directly linked to such equipment; or
  - c) construction works and services exclusively for military purposes or sensitive construction works or services;
- 8) the subject of which is that of financial services, with the exception of insurance services.

2. In the case of the contracts referred to in paragraph 1, subparagraph 5, the awarding entity shall, after initiating the programme, be required to notify the European Commission of the part of research and development expenditure related to overall costs of the cooperation programme, cost-sharing agreement as well as the planned contracts for each Member State, provided that they are envisaged.

#### **Art. 14**

1. The provisions of this Act shall not apply to the contracts or contests, if the subject of a contract includes aspects of defence and security, subject to a special procedure:

1) on the basis of an international agreement or an arrangement concluded at a ministerial level, to which the Republic of Poland is a party, concluded with one or more non-member countries of the European Union and concerning the construction works, supplies or services intended for the purposes of joint execution or operation of the project by the signatories;

2) under an international agreement or an arrangement concluded at a ministerial level, to which the Republic of Poland is a party, relating to the stationing of troops and concerning entrepreneurs regardless of the location of their seat or place of residence;

3) applied by an international organization

- where the contracts must be awarded by the Republic of Poland under this procedure.

2. The provisions of the Act shall apply to the contracts or contests referred to in paragraph 1:

1) financed in full by an international organization or an international financing institution, provided that the awarding entity applies to these contracts or contests a procedure of an international organization or an international financing institution other than that laid down under the Act;

2) financed at over 50 per cent by an international organization or an international financing institution, provided that the application to these contracts or contests a procedure of an international organization or an international financing institution other than that laid down under the Act has been agreed with them.

**Art. 15** The Council of Ministers shall determine, by a regulation, upon a request of the Minister of National Defence and the minister competent for internal affairs, in consultation with the minister competent for foreign affairs and the minister competent for the economy, the procedure in the matter of the assessment of the occurrence of the essential interest of the state security, the manner of determining the measures ensuring the protection of this interest, the assessment of the proportionality of the measures applied to ensure the protection of this interest and the subject competent for the qualification of the tasks as the tasks of the essential significance for the state security interest, the manner of defining the scope of application the provisions of the Act in the procedure, having regard to the need to ensure the correct application of Article 346 of the Treaty on the functioning of the European Union and the need to ensure the security of supplies of military equipment in the life cycle.

## **Chapter 2. Principles of Award of Contracts.**

**Art. 16** The awarding entity shall prepare and conduct the contract award proceedings in the manner:

- 1) ensuring the maintenance of fair competition and equal treatment of contractors;
- 2) which is transparent;
- 3) which is proportionate.

#### **Art. 17**

1. The awarding entity shall award the contract in a manner ensuring:

- 1) the best quality of supplies, services and construction works, justified by the nature of the contract, within the framework of the funds that the awarding entity may allocate for its execution; and
- 2) obtaining the best effects of the contract, including social, environmental and economic effects, insofar as any of these effects is possible to obtain in a given contract in relation to the incurred expenditure.

2. Contracts shall be awarded to contractors selected in accordance with the provisions of this Act.

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

#### **Art. 18**

1. Contract award proceedings shall be publicly accessible.

2. The awarding entity may limit the access to information connected with the contract award proceedings only under the circumstances specified in this Act.

3. Information which is considered a business secret of an enterprise, within the meaning of the provisions of the Act of 16 April 1993 on Suppression of Unfair Competition (Dziennik Ustaw 2019, items 1010 and 1649), shall not be disclosed if the contractor had made a reservation as to their non-disclosure, and demonstrated that the reserved information is a business secret of an enterprise. Such reservation may not be made by the contractor as regards the information referred to in Article 222, paragraph 5.

4. The contractor may specify in the contract documents or in the contract notice a requirement concerning the preservation of the confidential nature of the information provided to the contractor in the course of the contract award proceedings.

5. Where justified by protection of privacy or public interest, the awarding entity need not disclose:

- 1) personal data, in the case of a contract awarded under Article 214, paragraph 1, subparagraph 1, letter b;
- 2) the remuneration amount, in the case of a contract awarded under Article 214, paragraph 1, subparagraph 2

- within the scope of supplies or services to the extent of cultural activity concerning the arrangement of exhibitions, concerts, contests, festivals, shows, theatrical performances, projects regarding cultural education or the cultural activity relating to gathering library materials by libraries or museum exhibits, including archival activity concerning gathering of archival materials, provided that these contracts do not have as their purpose equipping the awarding entity with tangible assets designed for day-to-day support for its activity, insofar as the contractor stipulated, prior to signing a public procurement agreement, that said data shall not be made accessible.

6. The awarding entity shall make available the personal data referred to in Article 10 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, as amended), hereinafter referred to as „Regulation 2016/679”, in order to enable to exercise legal remedies referred to in Section VI until the expiry of the time limit for lodging the same.

#### **Art. 19**

1. The awarding entity may fulfill the information obligations referred to in Article 13(1) to Article 13(3) of Regulation

2016/679 by placing the required information in the contract notice or in the contract documents.

2. Exercising a right to rectify or supplement the personal data by a data subject, which right is referred to in Article 16 of Regulation 2016/679, shall not result either in a change of the result of the public contract award proceedings or in amendments to the public procurement agreement to the extent at variance with the Act.

3. Making a demand referred to in Article 18(1) of Regulation 2016/679 in the contract award proceedings shall not limit the processing of personal data until the completion of these proceedings.

4. The awarding entity shall inform about the restrictions to the provisions of Regulation 2016/679 referred to in paragraphs 2 and 3 in the contract notice, contract documents or in other manner available for the data subject.

5. The awarding entity shall process the personal data gathered in the contract award proceedings in a manner ensuring safeguarding the data against their unlawful dissemination.

#### **Art. 20**

1. Subject to the exceptions specified in this Act, contract award proceedings shall be conducted in writing.

2. Contract award proceedings shall be conducted in Polish.

3. In justified cases the awarding entity may permit, in the contract documents or in the contract notice, the submission of a request for participation in the proceedings, initial tenders, tenders subject to negotiations, tender, declarations or other documents in one of the languages commonly used in international trade or the language of the country where the contract is to be awarded.

4. In justified cases the awarding entity may prepare documents and carry out certain acts in contract award proceedings, especially hold negotiations in one of the languages commonly used in international trade or the language of the country where the contract is to be awarded.

### **Chapter 3. Purchasing Policy of the Country and Contract Awarding Proceedings' Plan.**

#### **Art. 21**

1. The purchasing policy of the country shall lay down the priority activities of the Republic of Poland within the area of public contracts as well as the desired direction of the awarding entities' actions with the scope of the awarded contracts, said direction covering in particular the purchase of innovative or sustainable products and services, having regard to:

- 1) standardization aspects;
- 2) calculation of costs in the products' life cycle;
- 3) social responsibility of entrepreneurs;
- 4) dissemination of good practices and purchasing tools;
- 5) application of social and health aspects.

2. The purchasing policy of the country shall take account of the goals and directions laid down in a medium-term strategy of the country development, while determining the planned activities of the government administration.

3. The country's purchasing policy shall be prepared once every 4 years.

4. The country's purchasing policy shall be adopted by the Council of Ministers by a resolution, upon request of the minister competent for the economy.

5. The minister competent for the economy shall prepare the draft country's purchasing policy and coordinate its implementation.

**Art. 22** The awarding entity which is a central authority of the government administration shall prepare the management strategy for individual purchasing categories compliant with the country's purchasing policy. The strategy shall lay down the contracts of a key nature for the implementation of the country's purchasing policy.

#### **Art. 23**

1. The public awarding entities referred to in Article 4, subparagraphs 1 and 2 and their associations shall, no later than within 30 days from the day of adoption of the budget or financial plan by an authorized body shall prepare the plan of the contract award proceedings which they envisage to conduct in a given financial year. The plan shall be published in the Public Procurement Bulletin on the terms set out in Section III, Chapter 2 and on the awarding entity's website.

2. Also awarding entities other than the ones specified in paragraph 1 may place the plan of contract award proceedings in the Public Procurement Bulletin and on the awarding entity's website.

3. The plan of the contract award proceedings shall in particular contain the information concerning:

- 1) the subject a contract;
- 2) the type of the contract according to the division between contracts for construction works, supplies or services;
- 3) the envisaged mode or procedure for the award of the contract;
- 4) the indicative contract value;
- 5) the envisaged date of initiation of the contract award proceedings.

4. The awarding entity shall ensure that the plan of the contract award proceedings be up-to-date. The update of the plan shall be published in the Public Procurement Bulletin and on the awarding entity's website.

5. The information on the plan of the contract award proceedings shall not be published if an important interest of the state security or the protection of non-public information so require.

6. The minister competent for the economy shall determine, by a regulation, the template of the contract award proceedings plan, guided by the need to ensure the correctness, transparency and update nature of the information included in the plan.

### **Chapter 4. Application of the Provisions of the Act to Mixed Contracts.**

#### **Art. 24**

1. If a contract is dividable into lots and at the same time covers the lots governed by the provisions of the Act:

- 1) concerning awarding of contracts in the fields of defence and security, sectoral contracts or classic contracts or
- 2) and the lots not governed by the provisions of the Act

- the awarding entity may award a contract lot by lot or one contract.

2. In the case of awarding a contract lot by lot, the provisions of the Act relevant to a given lot shall apply to awarding each contract, having regard to Article 29, paragraph 2 and Article 30, paragraphs 1, 2 and 4.

3. In the case of awarding one contract, the awarding entity:



- 1) need not apply the provisions of the Act if the contract covers a lot as regards which there occur the prerequisites referred to in Article 12 and the awarding of one contract is justified by objective reasons;
  - 2) shall apply the provisions of the Act concerning awarding the contracts in the fields of defence and security, provided that the contract covers the lot to which those provisions apply and awarding of one contract is justified by objective reasons;
  - 3) shall apply the provisions of the Act concerning awarding sectoral contracts in the case when:
    - a) the contract covers the lot to which those provisions apply and the value of this lot is equal to or exceeds the EU thresholds;
    - b) the contract covers the lot referred to in letter a and at the same time the lot to which the provisions of the Act of 21 October 2016 on Contracts for Concessions for Construction Works or Services are applicable;
  - 4) shall apply the provisions of the Act concerning awarding of classic contracts, provided that the contract covers the lot to which those provisions apply and the lot to which the provisions of the Act of 21 October 2016 on Contracts for Concessions for Construction Works or Services are applicable;
  - 5) if the contract covers at the same time the lot to which the provisions of the Act are not applicable and the lot to which its provisions apply, the awarding entity shall apply the provisions of the Act relevant to the lot to which the provisions of the Act apply, regardless of the value of the lot to which the provisions of the Act are inapplicable.
4. The awarding entity shall not, in the cases referred to in paragraph 3, award one contract in order to avoid the application of the provisions of the Act.

#### **Art. 25**

1. If a contract is indivisible into lots and covers at the same time the elements governed by the provisions of the Act concerning awarding contract in the fields of defence and security, sectoral contracts or classic contracts, or the elements governed by the provisions of the Act and to which these provisions are not applicable, the award of such a contract:
- 1) shall be governed by the provisions of the Act relevant to the main subject of the contract, whereas if the contract covers at the same time elements of the concession for services and contracts for supplies, the main subject of the contract shall be determined by determining which of the values of given services or supplies is the higher one;
  - 2) shall not be governed by the provisions of the Act if the contract covers the elements as regards which the prerequisites referred to in Article 12 are fulfilled;
  - 3) shall be governed by the provisions of the Act concerning contracts in the fields of defence and security if the contract covers elements of defence and security.
2. A contract shall be indivisible into lots if, for technical, organizational or economic reasons it constitutes an inseparable whole.

#### **Art. 26**

1. If a contract serves at the same time the pursuit of the sectoral activity referred to in Article 5, paragraph 4 and the pursuit of other type(s) of activity than the sectoral activity, the awarding entity may award separate contracts in order to pursue individual type of activity or may award one contract.
2. The award of separate contracts shall be governed by the provisions of the Act relevant considering the type of activity, to which each contract is appropriate.
3. The award of one contract shall be governed by the provisions of the Act relevant to the type of the activity to which the contract relates in principle. If the contract at the same time relates to the sectoral activity referred to in Article 5, paragraph 4 and the activity covering the aspects of defence and security, the provisions of Article 24, paragraph 3, subparagraphs 1 and 2 shall apply accordingly.
4. The awarding entity shall not, in the cases referred to in paragraph 3, award one contract in order to avoid the application of the provisions of the Act.

5. Provided that it is impossible to determine which type of activity is covered by the contract in principle, the award of the contract shall be governed by:

- 1) the provisions of the Act concerning awarding classic contracts, if one of the types of the activities to which the contract relates is governed by those provisions and the other one is governed by the provisions concerning the award of sectoral contracts;
- 2) the provisions of the Act concerning awarding sectoral contracts, if the contract at the same time relates to the sectoral activity referred to in Article 5, paragraph 4 and the activity to which:
  - a) the provisions of the Act of 21 October 2016 on Contracts for Concessions for Construction Works or Services are applicable or
  - b) both the provisions of the Act concerning the award of classic contracts and the provisions of the Act of 21 October 2016 on Contracts for Concessions for Construction Works or Services are inapplicable.

#### **Art. 27**

1. If a contract at the same time covers services, supplies or construction works, the award of the contract shall be governed by the provisions of the Act concerning the main subject of the contract.

2. Where the contract covers at the same time:

- 1) services and supplies or
- 2) services and social services as well as other special services

- the main subject of the contract shall be specified by determining which of the estimated values of given services or supplies is the higher one.

**Art. 28** The value of a contract shall be determined on the basis of the total estimated remuneration of the contractor, exclusive of the tax on goods and services, determined with due diligence.

#### **Art. 29**

1. The awarding entity shall not understate the contract's or contest's value or choose the manner of calculating the contract's value with the intention of avoiding the application of the provisions of this Act.

2. The awarding entity shall not divide the contract into separate contracts if this leads to non-application of the provisions of the Act, unless this is justified by objective reasons.

#### **Art. 30**

1. If the awarding entity plans to award a contract for construction works or services in lots, each of which is the subject of separate proceedings, or allows for the possibility of submitting tenders for lots, the value of the contract shall be the aggregate value of individual lots.

2. If the awarding entity plans to acquire similar supplies, the value of the contract shall be the aggregate value of similar supplies, even if the awarding entity awards the contract in lots, each of which constitutes the subject of separate proceedings, or allows for the possibility of submitting tenders for lots.

3. When calculating the value of a contract for construction works one shall also include the value of supplies and services handed over by the awarding entity for the contractor's disposal, provided that they are necessary as regards the execution of these construction works.

4. In the case of contracts awarded in lots, the awarding entity may apply, to awarding a contract for a given lot, the provisions of the Act relevant to the value of that lot of the contract, if the lot's value is less than the equivalent of EUR 80,000 denominated in zloties for supplies or services and of EUR 1,000,000 for construction works, provided that the aggregate value of those lots does not exceed 20 per cent of the contract value.

#### **Art. 31**

1. Where the awarding entity envisages the award of the contracts referred to in Article 214, paragraph 1, subparagraphs 7 and 8, Article 388, subparagraph 2, letters b and c or Article 415, paragraph 2, subparagraphs 5 and 6, the value of these contracts shall be taken into account in determining the value of the contract.

2. While determining the value of the contract, the most possible extent of this contract shall be taken account of, including options and renewals.

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

4. If the awarding entity provides for prizes in a competitive dialogue and innovation partnership, their value shall be included in the estimated value of the contract.

#### **Art. 32**

1. The value of the dynamic purchasing system shall be the aggregate value of contracts covered by this system, and which the awarding entity intends to award during the period of validity of the dynamic purchasing system.

2. The value of the framework agreement shall be the aggregate value of the contracts which the awarding entity intends to award during the period of validity of the framework agreement.

3. The value of a contest shall be the value of the prizes and the value of the refund of the costs envisaged for the participants in the contest.

4. The value of a contest in which the prize consists of the invitation to participate in contract award proceedings shall be the value of that contract and the value of additional prizes, where the awarding entity envisaged such prizes, as well as the value of the refund of the costs envisaged for the participants in the contest.

#### **Art. 33**

1. If the awarding entity consists of several organizational units, the aggregate value of the contract shall be determined for all organization units in total.

2. Where a separate, financially independent organizational unit of the awarding entity awards a contract in connection with its own activities, the value of the awarded contract shall be calculated separately from the value of contracts awarded by other financially independent organizational units of that awarding entity.

#### **Art. 34**

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

1) the investor's cost estimate made based on the design documentation and technical specifications of the performance and acceptance of the works or on the basis of the planned costs of construction works specified in the functional and utility programme where the subject of the contract involves execution of construction works within the meaning of the Act of 7 July 1994 - Building Law (Dziennik Ustaw 2019, items 1186, 1309, 1524, 1696, 1712 and 1815);

2) the planned costs of design works and the planned costs of construction works specified in the functional and utility programme - where the subject of the contract involves the design and execution of construction works within the meaning of the Act of 7 July 1994 - Building Law.

2. The minister competent for building industry, planning and spatial development, as well as housing shall, by regulation, determine the methods and bases of:

1) the investor's cost estimate preparation;

2) calculation of the planned costs of design works and the planned costs of construction works specified in the functional and utility programme

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

#### **Art. 35**

1. The basis for determining the value of contracts for services or supplies recurring, constant delivered periodically or subject to renewal within a given time limit shall be the aggregate value of those contracts:

- 1) awarded during the previous 12 months or in the preceding budget year or financial year, taking account of the quantitative changes in the contracted supplies or services and the average annual consumer price index forecast for a given year in total or
- 2) which the awarding entity intends to award during the 12 months following the first service or supply.

2. If contracts for supplies under a contract of tenancy, lease or leasing are awarded for:

- 1) an indefinite period or whose period of validity shall not be definite, the value of the contract shall be the monthly value multiplied by 48;
- 2) a definite period:
  - a) not exceeding 12 months, the contract value shall be the value established taking into account the period of performance of the contract;
  - b) exceeding 12 months, the contract value shall be the value established taking into account the period of performance of the contract, taking into account also the residual value of the subject of a public procurement agreement.

3. The basis of establishing the value of a contract for services whose aggregate price shall not be determined shall be:

- 1) the total value of the contract throughout the entire period of its performance - in the case of contracts awarded for a definite period not exceeding 48 months;
- 2) the monthly value of the contract multiplied by 48 - in the case of contracts awarded for a non-definite period or definite period exceeding 48 months.

4. Where the contract includes:

- 1) banking services or other financial services, the bank fees, commissions, interest and other payments of the kind represent the value of the contract;
- 2) insurance services, the due premium and other types of remuneration represent the value of the contract;
- 3) designing services, the remuneration, fees, commissions and other payments of the kind represent the contract value.

#### **Art. 36**

1. The contract value shall be established not earlier than 3 months prior to the date of the initiation of the contract award proceedings where the subject of the contract covers supplies or services and not earlier than 6 months prior to the date of the initiation of the contract award proceedings where construction works are the subject of the contract, with the proviso that in the event of contracts awarded in lots, the aforesaid time limits relate to the initiation of the first of the proceedings.

2. Where, with the contract value having been established, there occurs a change in the circumstances influencing this establishment, the awarding entity shall adjust the contract value prior to the date of the initiation of the proceedings.

### **Chapter 6. Awarding Entity and Contractors.**

## **Section 1. Awarding Entity.**

### **Art. 37**

1. The awarding entity shall prepare and conduct the contract award proceedings and organize a contest.
2. The awarding entity may entrust the preparation or the conduct of the contract award proceedings or organization of the contest, as part of ancillary purchasing activities, to its own organizational unit or a third party.
3. The ancillary purchasing activities shall consist in ensuring the support to the awarding entity in connection with awarding a contract or organization of a contest, especially through:
  - 1) ensuring technical infrastructure enabling the awarding entity to award contracts or conclude framework agreements;
  - 2) advice on the planning, preparation or conduct of the contract award proceedings or organization of the contest;
  - 3) preparation of the contract award proceedings;
  - 4) the conduct of the contract award proceedings on behalf of and for the awarding entity.
4. The subjects referred to in paragraph 2 shall act as attorneys of the awarding entity while performing ancillary purchasing activities.

### **Art. 38**

1. Awarding entities may jointly prepare or conduct contract award proceedings or organize a contest, award a contract, conclude a framework agreement, set up a dynamic purchasing system or award a contract under a framework agreement or a contract under a dynamic purchasing system.
2. In the cases referred to in paragraph 1, the awarding entities shall enter into an agreement.
3. The awarding entities jointly preparing or conducting contract award proceedings or organizing a contest shall be jointly liable for the conformity of these proceedings with the Act, including also in the event when one awarding entity prepares or conducts the proceedings on behalf on and for all awarding entities.
4. If contract award proceedings or a contest are not in their entirety prepared and conducted or organized on behalf of and for all awarding entities:
  - 1) each awarding entity shall bear liability for the fulfillment of its duties as laid down under the Act to the extent of the part of the proceedings or contest which it prepares and conducts or organizes on its behalf and for itself;
  - 2) all awarding entities shall bear liability for the fulfillment of their duties as laid down under the Act to the extent of the part of the proceedings or contest which is prepared and conducted or organized on behalf and for all awarding entities.
5. The provisions concerning the awarding entity shall apply accordingly to the awarding entities referred to in paragraph 1.

**Art. 39** The Chairperson of the Council of Ministers may, by a regulation, designate from among government administration authorities or organizational units under control or supervision of those authorities, the awarding entity which will be competent for conducting contract award proceedings or awarding a contract for those authorities or units and may also determine the manner of cooperation with the designated awarding entity.

**Art. 40** The minister in charge of the government administration department may, by means of an order, designate from among the organizational units under his/her control or supervision the awarding entity competent to conduct contract award proceedings or award contracts on behalf of these units, and may also determine the manner of

cooperation with the designated awarding entity.

**Art. 41** The executive body of a territorial self-government unit may designate from among the organizational units under control or supervision of this unit, the awarding entity which will be competent for conducting contract award proceedings or awarding a contract for those units and may also determine the manner of cooperation with the designated awarding entity.

#### **Art. 42**

1. Awarding entities may jointly, with the awarding entities having their places of residence or seats in other European Union Member States, prepare or conduct contract award proceedings or organize a contest, award a contract, conclude a framework agreement, set up a dynamic purchasing system or award a contract under a framework agreement or a contract under a dynamic purchasing system.

2. In the cases referred to in paragraph 1, the awarding entities shall enter into an agreement wherein they shall specify:

1) the obligations of the parties, their division and applicable provisions of the states in which they have their places of residence or seats;

2) the organization of contract award proceedings or a contest, of awarding a contract, of concluding a framework agreement or of setting up a dynamic purchasing system, including the issues of preparation and conduct of these proceedings or organization of the contest, the distribution of the construction works, supplies or services to be procured, as well as of the conclusion of agreements

- unless this has not been regulated in an international agreement concluded between the Republic of Poland and other European Union Member States.

3. The allocation of the responsibilities and the applicable provisions shall be indicated in the contract notice or the contract documents concerning the contracts awarded jointly or jointly organized contests.

4. The awarding entity shall not apply the provisions of the Act to the activities referred to in paragraph 1, provided that the provisions of another European Union Member State are applicable.

#### **Art. 43**

1. Awarding entities may, by an agreement, set up a joint subject with the awarding entities having their places of residence or seats in other European Union Member States, in particular a European grouping of territorial cooperation, referred to in Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJ L 210, 31.7.2006, p. 19, as amended).

2. In the case referred to in paragraph 1, awarding entities shall, by a decision of the competent body of the joint subject, indicate the provisions which will be applicable to the preparation and conduct of contract award proceedings or to the organization of a contest, conclusion of framework agreements and setting up of a dynamic purchasing system by the joint subject, applicable in one of the European Union and Member States in which:

1) the joint subject has its seat or

2) pursues its activity.

3. The agreement referred to in paragraph 1 may be concluded for an indefinite or definite period in order to award a contract of a certain type or one or more specific contracts.

#### **Art. 44**

1. The central awarding entity shall be the awarding entity which pursues constant activity to the extent of:

1) acquisition of products or services to be re-sold to awarding entities or

2) awarding contracts or concluding framework agreements for construction works, supplies or services for awarding entities.

2. The central awarding entity may pursue its activity within the scope of performing ancillary purchasing activities referred to in Article 37, paragraph 3.

3. Awarding entities may, without application of the Act:

1) acquire products or services from the central awarding entity pursuing the activity referred to in paragraph 1, subparagraph 1;

2) in the event when the central awarding entity pursues the activity referred to in paragraph 1, subparagraph 2, acquire construction works, supplies or services:

- a) by means of the contract awarded by this central awarding entity;
- b) by means of a dynamic purchasing system operated by this central awarding entity;
- c) under a framework agreement concluded by this central awarding entity;

3) acquire services for consideration from the central awarding entity within the scope referred to in paragraphs 1 and 2.

4. The provision of paragraph 3 shall apply in the cases of acquisition:

1) of products or services within the scope laid down in paragraph 3, subparagraph 1, by the following types of an awarding entity:

- a) a public awarding entity from the central awarding entity which is a public awarding entity;
- b) a sectoral awarding entity from the central awarding entity which is a public or sectoral awarding entity;
- c) a public or sectoral awarding entity awarding contracts in the fields of defence and security from the central awarding entity which is a public awarding entity, a sectoral awarding entity or a European public body, as long as it applies the provisions of the Act relevant to the contracts in the fields of defence and security;

2) of construction works, supplies or services within the scope laid down in paragraph 3, subparagraph 2, by the following types of an awarding entity:

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

5. The central awarding entity shall be liable for the conformity of the activity referred to in paragraph 1 with the Act.

6. The provisions referring to the awarding entity shall apply accordingly to the central awarding entity.

**Art. 45** In the event of setting up a dynamic purchasing system, the central awarding entity shall indicate in a contractor in the contract notice whether other awarding entities will be able to make use of the dynamic purchasing system operated by the central awarding entity.

**Art. 46** The awarding entity shall be liable for the conformity with the Act of the following activities:

1) the contract award proceedings conducted by it and covered by a dynamic purchasing system operated by the central awarding entity or covered by a framework agreement concluded by the central awarding entity;

2) the selection of the contractors of the contracts covered by a framework agreement concluded by the central awarding entity in the case referred to in Article 314, paragraph 1, subparagraph 1 or 2.

**Art. 47** The Chairman of the Council of Ministers may, by an order, designate the central awarding entity from

among the organizational units under the control or supervision of the government administration authorities and instruct the government administration awarding entities to acquire certain types of contracts from the central awarding entity or contractors selected by the central awarding entity and to award contracts under the framework agreement concluded by the central awarding entity or covered by a dynamic purchasing system operated by the central awarding entity, and may determine the manner of cooperation with the central awarding entity.

#### **Art. 48**

1. The minister in charge of a government administration department may, by an order, designate the central awarding entity from among the organizational units under the control or supervision of this minister and instruct the units to acquire certain types of contracts from the central awarding entity or contractors selected by the central awarding entity and to award contracts under the framework agreement concluded by the central awarding entity or covered by a dynamic purchasing system operated by the central awarding entity, and may determine the manner of cooperation with the central awarding entity.

2. A territorial self-government unit may acquire certain types of contracts from the central awarding entity designated, by an order, by the minister in charge of a government administration department or from the contractors selected by such a central awarding entity, and may award contracts under a framework agreement concluded by the central awarding entity or contracts covered by a dynamic purchasing system operated by the central awarding entity.

3. The principles of cooperation in the case referred to in paragraph 2 between the territorial self-government unit and the central awarding entity shall be laid down in an agreement concluded by and between the minister in charge of the government administration department and the territorial self-government unit.

**Art. 49** The executive body of a territorial self-government unit may designate or appoint the central awarding entity, instruct the units under its control to acquire certain types of contracts from the central awarding entity referred to in Article 48, paragraph 2, and to award contracts under a framework agreement concluded by the central awarding entity or covered by a dynamic purchasing system operated by a given central awarding entity, as well as may determine the manner of cooperation with this central awarding entity.

#### **Art. 50**

1. The awarding entity may use the services of the central awarding entity having its seat in other European Union Member State to the extent of acquisition of the products or services to be resold to awarding entities.

2. Services of the central awarding entity referred to in paragraph 1 shall be subject to the provisions on contracts applicable in this Member State in which the central awarding entity has its seat.

3. The provisions applicable in the European Union Member State in which the central awarding entity has its seat shall apply to awarding contracts covered by a dynamic purchasing system, to awarding contracts under a framework agreement and to selection of contractors of contracts under a framework agreement concluded by this entity.

**Art. 51** An awarding entity shall neither award contracts nor organize contests jointly with an awarding entity having its seat in another European Union Member State, nor make use of the possibility of acquiring services and products from the central awarding entity having its seat in another European Union Member State in order to avoid the application of the provisions of the Act implementing the law of the European Union.

#### **Art. 52**

1. The manager of an awarding entity shall be the person responsible for the preparation and conduct of the contract award proceedings.

2. The persons other than the manager of the awarding entity shall be responsible for the preparation and conduct of the contract award proceedings to the extent to which they are entrusted with the acts in the proceedings and the acts in connection with the preparation of the proceedings. The manager of the awarding entity may entrust, in writing, the performance of the acts reserved for him/her, specified in this Chapter, to the employees of the awarding entity.

3. Where the preparation and conduct of the contract award proceedings is reserved under separate provisions for a body other than the manager of the awarding entity, the provisions relating to the manager of the awarding entity shall accordingly apply to that body.



#### **Art. 53**

1. If the value of the contract is equal to or exceeds the EU thresholds, the manager of the awarding entity shall appoint a commission to conduct the contract award proceedings, hereinafter referred to as the „tendering commission“.
2. If the contract value is lower than the EU thresholds, the manager of the awarding entity may appoint the tendering commission.
3. The tendering commission may be a permanent one or may be appointed for the purpose of preparing and conducting specific proceedings.

#### **Art. 54**

1. The tendering commission is a team ancillary to the manager of the awarding entity appointed to evaluate requests for participation in the proceedings or tenders and to perform other activities in the proceedings or related to the preparation of the proceedings entrusted by the manager of the awarding entity.
2. The tendering commission shall in particular present to the manager of the awarding entity the results of the evaluation of requests for participation in the proceedings or tenders and a proposal for selection of the most advantageous tender or for cancellation of the contract award proceedings.

#### **Art. 55**

1. Members of the tendering commission shall be appointed and recalled by the manager of the awarding entity.
2. The tendering commission shall be composed of at least three members.
3. The manager of the awarding entity shall specify the organization, composition, procedures and the scope of responsibilities of the members of the tendering commission with the purpose of ensuring efficient operation of the commission, individualization of responsibility of its members for performed acts and transparency of its work.
4. Where performance of specific acts in connection with the preparation and conduct of the contract award proceedings requires special knowledge, the manager of the awarding entity may at its own initiative or at the request of the tendering commission appoint experts.

#### **Art. 56**

1. The manager of the awarding entity, a member of the tendering commission and other persons performing activities related to conducting contract award proceedings on the part of the awarding entity or the persons who may influence the result of these proceedings or who award a contract shall be subject to exclusion if there exists a conflict of interests on their part.
2. The conflict of interests exists when the persons listed in paragraph 1:
  - 1) compete for the award of this contract;
  - 2) remain married, are relatives by blood or affinity in direct line or relatives by blood or affinity in the collateral line up to the second degree, or are relatives by adoption, guardianship or curatorship or are in cohabitation with the contractor, his legal agent or members of managing or supervisory bodies of contractors competing for the award of a contract;
  - 3) remained, in the period of 3 years before the initiation of the contract award proceedings, in a relationship of employment or mandate with the contractor or received remuneration on other grounds from the contractor or were members of managing or supervisory bodies of contractors competing for the award of a contract;
  - 4) remain with the contractor in such a legal or actual relationship that there is a reasonable doubt as to their impartiality or independence in connection with the contract award proceedings due to having direct or indirect financial, economic or personal interest in a specific decision on the result of these proceedings.

3. The manager of the awarding entity, a member of the tendering commission and other persons performing activities related to the preparation or conduct of contract award proceedings on the part of the awarding entity or the persons who may influence the result of these proceedings or who award a contract shall be subject to exclusion if they have been convicted by a valid judgement for an offence committed in connection with the contract award proceedings:

1) which offence is referred to in Articles 228 to 230a or Article 250a of the Act of 6 June 1997 - Penal Code (Dziennik Ustaw 2019, item 1950), hereinafter referred to as the "Penal Code"; or

2) which offence is against reliability of documents, as referred to in Chapter XXXIV of the Penal Code or against property, as referred to in Chapter XXXV of the Penal Code, or against economic trading and property interests in trading under civil law, as referred to in Chapter XXXVI of the Penal Code; or

3) under Article 46 or 48 of the Act of 25 June 2010 on Sports (Dziennik Ustaw 2019, items 1468 and 1495)

- unless the conviction has not been cancelled.

4. The persons referred to in paragraphs 1 and 3 shall submit, under penalty of perjury, a declaration in writing on there existing or lack of existence of the circumstances referred to in paragraph 2 or 3, respectively. Before receipt of the declaration, the manager of the awarding entity or the person to whom he/she has entrusted the activities in the proceedings, shall warn the persons submitting the declaration against the penalty of perjury.

5. The declaration on existence of the circumstances referred to in paragraph 2 shall be submitted forthwith after becoming aware of their existence, whereas the declaration on lack of existence of these circumstances shall be submitted not later than before the conclusion of the contract award proceedings.

6. The declaration on lack of existence or existence of the circumstances referred to in paragraph 3 shall be submitted before the commencement of performance of the activities related to the preparation or conduct of the contract award proceedings.

7. The acts in contract award proceedings undertaken by a person subject to exclusion shall be repeated, except the opening of tenders and other actual acts having no influence on the outcome of the proceedings.

## **Section 2. Contractors.**

**Art. 57** The following contractors shall be eligible to compete for the award of a contract:

1) the contractors which are not subject to exclusion;

2) the contractors which fulfill the conditions of participation in the proceedings, insofar as they have been laid down by the awarding entity.

### **Art. 58**

1. Contractors may compete for the award of a contract jointly.

2. In the event referred to in paragraph 1, contractors shall appoint an attorney to represent them in contract award proceedings or in the proceedings and conclusion of a public procurement agreement.

3. The awarding entity shall not require that the contractors jointly competing for the award of a contract that they have a specific legal form in order to submit a tender or a request for participation in the proceedings.

4. In respect of the contractors jointly competing for the award of a contract the awarding entity may determine the requirements related to the execution of the contract in a manner other than in respect of single contractors, if this is justified by the nature of the contract and pro rata to its subject.

5. The provisions relating to a contractor shall apply to the contractors jointly competing for the award of a contract.

**Art. 59** If the tender of the contractors jointly competing for the award of a contract has been selected, the awarding entity may demand a copy of the contract regulating the cooperation of those contractors prior to conclusion of a public procurement agreement.

**Art. 60** The awarding entity may reserve the obligation to individual performance by particular contractors jointly competing for the award of a contract the key tasks concerning:

- 1) contracts for construction works or services;
- 2) of works involving deployment and installation, under a contract for supplies.

## **Chapter 7. Communication of Awarding Entity with Contractors.**

### **Art. 61**

1. Communication in contract award proceedings and in a contest, including submission of tenders, requests for participation in the proceedings or the contest, exchange of information and provision of documents or declarations between the awarding entity and the contractor, subject to the exceptions laid down in the Act, shall take place by electronic means.

2. Verbal communication is permissible in the course of negotiations or dialogue and with reference to the information which is insignificant, in particular the information which do not concern the contract notice or the contract documents, requests for participation in the proceedings or in the contest, confirmation of the interest, tenders or contest projects, insofar as the content of this communication is documented.

**Art. 62** Whenever in this Chapter there is a mention of a tender, this shall be understood also as an initial tender, a tender subject to negotiations, a final tender, a variant tender and a tender for one lot.

### **Art. 63**

1. In contract award proceedings or a contest with a value equal to or exceeding the EU thresholds, a tender, a request for participation in the contract award proceedings or in a contest, the request referred to in Article 371, paragraph 3 and the declaration referred to in Article 125, paragraph 1, shall be submitted in electronic form.

2. In contract award proceedings or a contest with a value lower than the EU thresholds, a request for participation in the contract award proceedings or in a contest, and the declaration referred to in Article 125, paragraph 1 shall be submitted in electronic form or in electronic form provided with a trusted signature or affixed with a personal signature, or otherwise the aforesaid documents shall be null and void.

**Art. 64** The awarding entity shall use, in contract award proceedings or in a contest, only such electronic communication tools and devices which are non-discriminatory, generally available and interoperable within the meaning of the Act of 17 February 2005 on the Computerization of the Activity of Subjects Performing Public Tasks (Dziennik Ustaw 2019, items 700, 730, 848 and 1590) with the products generally used and serving to electronically store, process and transmit data, and which do not restrict contractors' access to the contract award proceedings or a contest.

### **Art. 65**

1. The awarding entity may depart from requiring the use of electronic communication means if:

- 1) due to a specialized nature of a contract, the use of electronic communication means would require the tools, devices or file formats not generally available or not supported by generally available applications;
- 2) the applications supporting file formats that are suitable for the preparation of the tenders or contest projects use file formats that cannot be handled by any other open-source or generally available applications or are covered by a licence and cannot be made available for downloading or remote use by the awarding entity;

3) the use of electronic means of communication would require specialized office equipment to be acquired by the awarding entity;

4) the awarding entity requires the submission of a physical or scale model or a sample which cannot be transmitted by electronic means;

5) this is necessary due to violation of security of electronic communication means;

6) this is necessary due to the need to protect the particularly sensitive information which cannot be guaranteed in a sufficient manner with the use of electronic communication means or other tools or devices which are generally available for contractors or which could be made available by the awarding entity.

2. In the event when the awarding entity departs from the requirement to use electronic communication means, in particular with regard to a request for participation in the proceedings, a tender, a contest project or their part, subject-related means of proof or object-related means of proof due to occurrence of one of the circumstances referred to in paragraph 1, they shall be provided in a form other than the electronic one, through a postal operator within the meaning of the Act of 23 November 2012 - Postal Law (Dziennik Ustaw 2018, item 2188; 2019, items 1051, 1495 and 2005), in person or through a messenger.

3. In the case referred to in paragraph 2, requests for participation in the proceedings or in a contest, the requests referred to in Article 371, paragraph 3, tenders or parts thereof shall be submitted in writing under pain of nullity.

4. The awarding entity shall describe in the record of the proceedings the reasons for departure from the requirement to use electronic communication means.

#### **Art. 66**

1. The awarding entity may require that tools, devices or file formats not generally available be used when:

1) from the day of publication of an announcement initiating the contract award proceedings or a contest or from the day of sending a document initiating the contract award proceedings, the awarding entity offers to contractors or participants in the contest unrestricted, full direct access, free of charge, with the use of electronic communication means, to alternative tools, devices or file formats enabling to submit tenders or contest projects;

2) it ensures that the contractors or participants in the contest having no access to such tools, devices or file formats and no possibility of obtaining such access will be able, insofar as lack of access does not stem from the reasons concerning the contractor, within a time limit enabling to participate in the contract award proceedings, to access such tools, devices or file formats thanks to application of provisional tools of authentication made available to them free of charge at the website address indicated by the awarding entity;

3) it makes available to contractors or participants in a contest alternative path of electronic submission of tenders or contest projects.

2. The awarding entity shall provide the address of the website on which the tools, devices or file formats referred to paragraph 1, subparagraph 1 are available in a notice or a document initiating the proceedings.

**Art. 67** The awarding entity shall contain in the notice initiating the contract award proceedings or contest or in the contract document initiating the contract award proceedings the information on electronic communication means, with the use of which it will communicate with contractors or participants in the contest as well as the information on technical and organizational requirements of drawing up, transmitting and receiving electronic correspondence.

**Art. 68** Tenders, requests for participation in the contract award proceedings or in a contest, requests referred to in Article 371, paragraph 3 as well as contest projects shall be transmitted using electronic means of communication ensuring preservation of integrity, authenticity, inviolability of the data and their confidentiality as part of exchange and storage of the information, including ensuring the possibility of learning their contents exclusively after the expiry of the time limit for submitting the same.

#### **Art. 69**

1. In the case of contracts for construction works or contests, the awarding entity may require that tenders or contest projects be prepared and presented by means of building information electronic modelling tools or other similar tools which are not generally available.

2. The awarding entity shall ensure the contractors or participants in the contest the possibility of using alternative means of access to the tools referred to in paragraph 1.

**Art. 70** The Chairperson of the Council of Ministers shall, by regulation, specify:

1) the manner of preparation as well as the manner and procedure for providing requests for participation in the proceedings or in the contest, the requests referred to in Article 371, paragraph 3, tenders, contest projects, declarations referred to in Article 125, paragraph 1, subject-related and object-related means of proof, as well as other information, declarations or documents provided in the proceedings or the contest;

2) the technical requirements for electronic documents containing requests for participation in the proceedings or in the contest, the tenders, the contest projects, the declarations referred to in Article 125, paragraph 1, the subject-related and object-related means of proof as well as other information, declarations or documents transmitted in the proceedings or the contest using electronic means of communication;

3) the technical requirements regarding electronic communication means during the contract award proceedings or the contest

- having regard to the value of the contract or the contest, the need to ensure integrity and authenticity of the data as well as the need to ensure competition and efficiency of the contract award proceedings or the contest, open access of contractors to the contract award proceedings or the contest, as well as the security of the data being processed.

## **Chapter 8. Documenting the Course of Contract Award Proceedings.**

**Art. 71**

1. The awarding entity shall document the course of the contract award proceedings by preparation in its course the record of the proceedings.

2. The record of the proceedings shall not be prepared in the case when a contract is awarded on the terms laid down in the framework agreement concluded with one contractor or with several contractors, without conducting the contract award proceedings.

**Art. 72**

1. The record of the proceedings shall contain at least:

1) the name and the address of the awarding entity;

2) the indication of the subject and value of the contract;

3) the information on the contract award procedure and indication of the circumstances providing grounds for the application of the selected procedure if the provisions of the Act provide for the premises for the application of this procedure;

4) the value of the public procurement, framework agreement or dynamic purchasing system;

5) the reasons for derogation from the requirement to use electronic communication means while submitting requests for participation in the proceedings or tenders, as well as subject-related or object-related means of proof;

6) the results of examination and evaluation of tenders and requests for participation in the proceedings, along with providing the forenames and surnames or names of the contractors, NIP tax identification numbers or REGON identification numbers;

7) the reasons for cancellation of proceedings;

- 8) the information on existence of the circumstances specified in Article 56, paragraphs 2 and 3;
  - 9) the information on the submitted declarations referred to in Article 56, paragraph 4;
  - 10) the forename and surname or the business name of the contractor whose tender has been selected as the most advantageous one and the reasons for the selection of its tender, and, if it is known, the indication of the lot of the contract or the framework agreement which this contractor intends to subcontract, as well as the names and surnames or business names of subcontractors, if any, if they are already known;
  - 11) the names and surnames of members of the tendering commission and other persons who have been performing acts in the conducted proceedings;
  - 12) justification of extraordinary circumstances referred to in Article 415, paragraph 3 or Article 422, paragraph 3 in the case of contracts in the fields of defence and security;
  - 13) justification of exceeding the limit of 50 per cent of the contract value, as referred to in Article 455, paragraph 1, subparagraph 3, letter c in the case of contracts in the fields of defence and security.
2. The awarding entity shall not have the obligation to provide in the record of the proceedings the information which has been provided in the contract notice, provided that this notice has been attached to the record of the proceedings.

#### **Art. 73**

1. Tenders, expert opinions, declarations, information from the meeting with the contractors, notifications, requests, the proof of providing the notice to the Publications Office of the European Union, other documents and information submitted by the awarding entity and the contractors, as well as a public procurement agreement shall constitute appendices to the record of the proceedings.
2. If, before initiation of the contract award proceedings, the preliminary market consultations have been conducted, the information on conducting those consultations and on the subjects that participated therein shall be provided by the awarding entity in the record of the proceedings.
3. In the case of returning to the contractors the plans, designs, drawings, models, samples, patterns, computer programs and other similar materials, the information on returning shall constitute an appendix to the record of the proceedings.

#### **Art. 74**

1. The record of the proceedings shall be open and made available upon request.
  2. Appendices to the record of the proceedings shall be made available after selecting the most advantageous tender or cancellation of the proceedings, with the proviso that:
    - 1) tenders together with appendices shall be made available forthwith after opening of tenders, however not later than within 3 days from the day of opening of the tenders, taking account of Article 166, paragraph 3 or Article 291, paragraph 2, the second sentence;
    - 2) requests for participation in the proceedings along with appendices shall be made available from the day of notifying about the results of the assessment of those requests
- whereas the information of a confidential nature, including this provided in the course of negotiations or dialogue, shall not be made available.
3. If submitting the demand concerning the right referred to in Article 18(1) of Regulation 2016/679 results in restriction of processing of personal data included in the record of the proceedings and appendices to the record, the awarding entity shall not make such data available, unless the prerequisites referred to in Article 18(2) of Regulation 2016/679 occur, from the day of completion of the contract award proceedings.
  4. The disclosure referred to in paragraphs 1 and 2 shall apply to all personal data, except for the data referred to in Article 9(1) of Regulation 2016/679 gathered in the course of the contract award proceedings. The limitations of the

principle of openness, said limitations being referred to in paragraph 3 and Article 18, paragraphs 3 to 6, shall apply accordingly.

**Art. 75** In the event of exercising the right referred to in Article 15(1) to Article 15(3) by the person whose personal data are being processed by the awarding entity, the awarding entity may require that the person making the demand indicate the additional information aimed at specification in detail of the title or date of the completed contract award proceedings.

**Art. 76** Exercising by the person whose personal data are being processed the data rectification or supplementation right referred to in Article 16 of Regulation 2016/679 shall not violate the integrity of the record of the proceedings and appendices thereto.

**Art. 77**

1. The awarding entity shall return to contractors whose tenders have not been selected the plans, designs, drawings, models, samples, patterns, computer programs, and other similar materials they have submitted, at their request.

2. The awarding entity shall return to contractors whose tender has been selected as the most advantageous one the plans, designs, drawings, models, samples, patterns, computer programs and other similar materials they have submitted, at their request, unless they constitute appendices to a public procurement agreement.

3. The awarding entity may return the plans, designs, drawings, models, samples, patterns, computer programs and other similar materials submitted by the contractor, if the request referred to in paragraphs 1 and 2 has not been filed within 30 days from the day of conclusion of a public procurement agreement or cancellation of the proceedings.

**Art. 78**

1. The awarding entity shall keep the record of the proceedings together with the appendices thereto for a period of 4 years from the conclusion of the contract award proceedings in a manner which shall guarantee its integrity.

2. In the case of conducting contract award proceedings based on the tools and devices of electronic communication made available by other subject, the awarding entity may entrust this subject with storage of the record of the proceedings and appendices thereto in its IT and telecommunication system, provided that said subject provides the awarding entity with an electronic copy of all information and documents related to such proceedings.

3. The manner of storage and provision in the case referred to in paragraph 2 shall enable reading of the stored and provided documents.

4. If the period of validity of the public procurement agreement exceeds 4 years, the awarding entity shall store the record of the proceedings along with appendices throughout the period of validity of the public procurement agreement.

**Art. 79**

1. All documents, including electronic documents submitted or used for the purposes of the contract award proceedings being conducted, as well as for the purposes of the preliminary market consultations being held, constituting appendices to the record of the proceedings, shall be stored in their original form and format in which they have been prepared or provided.

2. The awarding entity shall document all significant activities and other significant events in the proceedings to the extent of the communication with contractors and other subjects, as well as in connection with making the record of the proceedings available.

**Art. 80** The minister competent for the economy shall, by regulation, determine the manner:

1) of documenting and storage of documentation of the conclusion of the proceedings, templates of the records of the proceedings and the scope of additional information contained in the record of the proceedings, having regard to the value of the contract, the mode of the contract award proceedings or the procedure;

2) and the form of making available the record of the proceedings together with appendices thereto to the persons concerned, having regard to the principle of openness of contract award proceedings.

#### **Art. 81**

1. The awarding entity shall provide to the President of the Office the information on the submitted requests for participation in the proceedings or tenders at the latest within 7 days from the day of opening of tenders or initial tenders or final tenders, respectively, or cancellation of proceedings.

2. The minister competent for the economy shall determine, by a regulation, the scope of the data contained in the information referred to in paragraph 1, its template, manner of preparation and the manner of and procedure for its provision, having regard to the obligation of the President of the Office to make an analysis of the functioning of the procurement system on an ongoing basis, including in particular the information concerning the types of awarding entities, the types and values of contracts, the number of requests for participation in the proceedings or tenders as well as the contract award procedures.

#### **Art. 82**

1. The awarding entity shall draw up an annual report on the awarded contracts, hereinafter referred to as the „report“, including on the excluded contracts under this Section, Chapter 1, Division 2, classic contracts, the value of which is lower than 130,000 zloties, as well as on sectoral contracts and contracts in the fields of defence and security, the value of which is lower than the EU thresholds.

2. The awarding entity shall submit the report to the President of the Office by 1 March of each year following the year to which the report refers.

3. The awarding entity may correct the report if it finds that the information contained therein is outdated or incorrect.

4. The minister competent for the economy shall specify, by regulation, the scope of information included in the report, its template, the manner of dispatch and the manner of its correcting, having regard to the requirements concerning the contents of the report dispatched to the European Commission and the need to ensure correct and up-to-date information for the purpose of monitoring the procurement system, as well as the reasonableness of using electronic communication means.

### **Division II. PROCEEDINGS FOR AWARDING A CLASSIC CONTRACT WITH A VALUE EQUAL TO OR EXCEEDING EU THRESHOLDS.**

#### **Chapter 1. Preparation of Proceedings.**

##### **Section 1. Analysis of Needs of the Awarding Entity, Preliminary Market Consultations and Prior Involvement of Contractors.**

#### **Art. 83**

1. A public awarding entity shall, prior to initiation of contract award proceedings, analyze the needs and requirements, having regard to the type and value of the contract.

2. The analysis referred to in paragraph 1 shall, in particular, contain:

- 1) examination of the possibility of satisfaction the identified needs with the use of its own resources;
- 2) insight into the market:



- a) in terms of alternative means of satisfaction of the identified needs;
- b) in terms of the possible variants of execution of the contract or such an insight shall indicate that there exists only one possibility of execution of the contract.

3. The analysis referred to in paragraph 1 shall indicate:

- 1) the indicative value of the contract for each of the indicated variants referred to in paragraph 2, subparagraph 2, letter b;
- 2) the possibility of dividing the contract into lots;
- 3) the envisaged contract award procedure;
- 4) the possibility of taking account of the social, environmental or innovative aspects of the contract;
- 5) the risks attached to the contract award proceedings and the contract execution.

4. The public awarding entity may derogate from conducting the needs' and requirements' analysis in the case when there are grounds for awarding a contract under negotiations without publication procedure referred to in Article 209, paragraph 1, subparagraph 4 or under the direct-award contract procedure referred to in Article 214, paragraph 1, subparagraph 5.

#### **Art. 84**

1. The awarding entity shall, prior to initiating the contract award proceedings, hold preliminary market consultations in order to prepare the proceedings and inform the contractors about its needs and requirements concerning the contract.

2. The awarding entity shall publish information about its intention to conduct preliminary market consultations and the subject thereof on its website.

3. While holding market consultations, the awarding entity may in particular make use of advice of experts, public authority or contractors. The advice may be used while planning, preparing or conducting contract award proceedings, provided that it does not cause competition to be distorted, nor the principles of equal treatment of the contractors and transparency to be violated.

4. The awarding entity shall publish the information on holding preliminary market consultations in the contract notice.

#### **Art. 85**

1. If the contractor or the subject which belongs to the same capital group with the contractor within the meaning of the Act of 16 February 2007 on Protection of Competition and Consumers (Dziennik Ustaw 2019, items 369, 1571 and 1667) advised or was otherwise involved in preparation of the proceedings for awarding this contract, the awarding entity shall take appropriate measures to guarantee that the participation of this contractor in the proceedings does not distort the competition, in particular shall provide other contractors with the important information which it provided or obtained in connection with the involvement of this contractor or this subject in the preparation of the proceedings, and shall fix the appropriate time limit for submission of the tenders. The awarding entity shall indicate, in the record of the proceedings, the measures aimed at preventing the distortion of competition.

2. The contractor involved in the preparation of the contract award proceedings shall be subject to exclusion from these proceedings only in the case when the distortion of competition caused by this involvement may not be eliminated in a manner other than by exclusion of the contractor from the participation in these proceedings. Prior to excluding the contractor, the awarding entity shall ensure to this contractor a possibility of proving that its involvement in the preparation of the contract award proceedings does not distort competition.

## **Section 2. Notices.**

**Art. 86** The notices referred to in this Section shall be provided by the awarding entity to the Publications Office of the European Union and published in the Official Journal of the European Union.

**Art. 87**

1. The awarding entity shall prepare the notices according to the template standard forms specified in Commission Implementing Regulation (EU) 2015/1986 of 11 November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011 (OJ L 296, 12.11.2015, p. 1, as amended).

2. The awarding entity shall provide the notices in accordance with the format and procedures of electronic transmission of notices established by the European Commission, available on the website referred to in paragraph 3 of Annex VIII to Directive 2014/24/EU.

3. The awarding entity shall be obliged to document the date of transmission of the notice, in particular keep the proof of transmission thereof.

**Art. 88**

1. The awarding entity shall also make the notice available on the website of the proceedings being conducted, from the day of its publication in the Official Journal of the European Union.

2. The awarding entity may additionally make the notice available in a place other than that laid down in paragraph 1.

3. The notice may not be made available in the places referred to in paragraphs 1 and 2 before its publication in the Official Journal of the European Union, except when the awarding entity has not been notified of the publication within 48 hours after confirmation of the receipt of the notice by the Publications Office of the European Union.

4. The notice made available in the places referred to in paragraphs 1 and 2:

1) shall not include any information other than the information contained in the notice transmitted to the Publications Office of the European Union for publication;

2) shall include the date of transmission of the notice to the Publications Office of the European Union for publication for publication.

**Art. 89**

1. The awarding entity may transmit to the Publications Office of the European Union or place on the awarding entity's website a prior information notice on the contracts or framework agreements scheduled within the next 12 months.

2. If the prior information notice is placed by the awarding entity on its website, the awarding entity shall transmit to the Publications Office of the European Union the notice on publication of the prior information notice on the awarding entity's website (notice on the buyer's profile).

3. The awarding entity may place the prior information notice on its website. The notice may not be placed before its publication in the Official Journal of the European Union, except when the awarding entity has not been notified of the publication within 48 hours after confirmation of the receipt of the notice by the Publications Office of the European Union.

**Art. 90**

1. The awarding entity may change the notice by transmitting a corrigendum, notice of the changes or additional information to the Publications Office of the European Union. The provisions of Articles 87 and 88 shall apply.

2. In the case when the changes to the contents of the contract notice are relevant to the preparation of requests for participation in the proceedings or of tenders, the awarding entity shall extend the deadline for submitting the requests for participation in the proceedings or the deadline for submitting the tenders, respectively, by the time necessary for their preparation.

3. In the case when the changes to the contents of the contract notice make a significant change to the nature of the contract when compared to the one originally determined, in particular when they change the scope of the contract to a significant extent, the awarding entity shall cancel the proceedings under Article 256.

### **Section 3. Establishment of Certain Terms of a Contract.**

#### **Art. 91**

1. The awarding entity may award a contract in lots, each of which shall constitute the subject of separate contract award proceedings, or may permit the possibility of submitting tenders for lots as part of single contract award proceedings, determining the scope and subject of the lots and indicating whether the tender may be submitted as regards one, several or all contract lots.

2. The awarding entity shall indicate in the contract documents the reasons for not dividing the contract into lots.

3. The awarding entity may limit the number of the lots which may be awarded to one contractor, provided that the maximum number of the lots which may be awarded to one contractor is indicated in the contract notice, and in the case of the negotiations without publication procedure - in the invitation to negotiations.

4. In the case referred to in paragraph 3, the awarding entity shall specify in the contract documents the objective and non-discriminatory criteria or rules which it shall apply for the purpose of choosing in which lots the contract will be awarded to the contractor, when, as a result of having conducted the contract award proceedings, one contractor was to obtain a larger number of the contract lots than the maximum number for which the contract may be awarded thereto.

#### **Art. 92**

1. The awarding entity may admit or require in the contract notice, and if the contract notice has not been required, in the contract documents, that a variant tender be submitted. The variant tender must be associated with the subject of the contract.

2. If the awarding entity requires or admits the possibility of submitting a variant tender, it shall determine in the contract documents:

- 1) the minimum requirements for the variant tender and the requirements concerning its submission, in particular the information on the possibility of submitting the variant tender along with the basic tender or instead of such a tender;
- 2) the tender evaluation criteria in the manner ensuring the possibility of their application both with regard to the basic tender and to the variant tender.

#### **Art. 93**

1. In the case when the communication in the contract award proceedings is carried out by electronic means of communication, the awarding entity may:

- 1) require that a tender be submitted in the form of an electronic catalogue or
- 2) require that the electronic catalogue be included in the submitted tender; or
- 3) admit the inclusion of the electronic catalogue in the submitted tender; or
- 4) envisage the obligation of submission of the electronic catalogue together with a request for participation in a dynamic purchasing system.

2. The electronic catalogue referred to in paragraph 1 shall mean a list of contracted products, construction works or services, drawn up by the contractor in accordance with the description of the contract subject and in a format suitable for automated data processing. The electronic catalogue may in particular include the description and

photos of the products, construction works or services, as well as the information on the prices.

3. The tenders submitted in the form or an electronic catalogue may be accompanied by the documents or declarations completing the tender.

4. The awarding entity shall draw up an electronic catalogue for the purposes of participation in the given contract award proceedings, pursuant to the requirements determined by the awarding entity.

5. The information concerning the format, the electronic equipment used and the technical connection arrangements and specifications for transmitting the electronic catalogue to the awarding entity shall be provided in the contract documents.

#### **Art. 94**

1. The awarding entity may stipulate in the contract notice, that the contractors eligible for competing for the award of the contract shall be exclusively the contractors having the status of a protected labour establishment, welfare cooperatives and other contractors, whose main goal or the main goal of activity of their organizationally separated units which will execute the contract is social and professional integration of the socially marginalized persons, in particular:

**1)** the disabled as defined in the Act of 27 August 1997 on Occupational and Social Rehabilitation and on Employment of the Disabled (Dziennik Ustaw 2019, items 1172, 1495, 1696 i 1818);

**2)** the unemployed within the meaning of the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions (Dziennik Ustaw 2019, items 1482, 1622 and 1818);

**3)** job-seekers, persons who are neither employed nor performing other paid work as defined in the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions;

**4)** the persons becoming self-reliant referred to in Article 140, paragraphs 1 and 2 of the Act of 9 June 2011 on Support to Family and Substitute Custody System (Dziennik Ustaw 2019, items 111, 924 and 1818);

**5)** the persons deprived of liberty or released from penal institutions, such persons being referred to in the Act of 6 June 1997 - Executive Penal Code (Dziennik Ustaw 2019, items 676, 679 and 1694), having difficulties in integration with the environment;

**6)** the persons suffering from mental disorders within the meaning of the Act of 19 August 1994 on the Protection of Mental Health (Dziennik Ustaw 2018, item 1878; 2019, items 730 and 1690);

**7)** homeless persons within the meaning of the Act of 12 March 2004 on Social Aid (Dziennik Ustaw 2019, items 1622, 1690 and 1818);

**8)** the persons who have obtained in the Republic of Poland the status of a refugee or supplementary protection, as referred to in the Act of 13 June 2003 on Granting Protection to Foreigners in the Territory of the Republic of Poland (Dziennik Ustaw 2019, item 1666);

**9)** the unemployed persons under 30 years of age and after attaining 49 years of age holding the status of job-seekers;

**10)** the persons being members of minorities in unfavourable situation, especially members of national and ethnic minorities as defined in the Act of 6 January 2005 on Ethnic and National Minorities and the Regional Language (Dziennik Ustaw 2017, item 823)

- provided that the percentage employment ratio of the persons belonging to one or more categories referred to in subparagraphs 1 to 10 is lower than 30 per cent of the persons employed with the contractor or its unit which will execute the contract.

2. In the case referred to in paragraph 1, the awarding entity may demand:

**1)** the documents confirming the status of a contractor as a protected labour establishment or confirming that the contractor or its organizationally separated unit which will execute the contract run the activity, the main goal of

which is social and professional integration of the socially marginalized persons;

2) the documents confirming the percentage employment ratio of the persons belonging to one or more categories referred to in subparagraph 1 employed with protected labour establishments or the contractor or its organizationally separated unit which will execute the contract.

#### **Art. 95**

1. The awarding entity shall determine in a contract notice or the documents of a contract for services or construction works the requirements concerning the performance of the contract to the extent of employment by the contractor or subcontractor of persons performing the activities indicated by the awarding entity as part of the execution of the contract on the basis of an employment relationship if carrying out of such activities consists in the performance of work in the manner laid down in Article 22, paragraph 1 of the Act of 26 June 1974 - Labour Code (Dziennik Ustaw 2019, items 1040, 1043 and 1495).

2. If the awarding entity provides for the requirements referred to in 1, it shall set out in the contract documents in particular:

1) the type of activities necessary for the performance of the contract to which requirements of employment under a contract of employment by a contractor or a subcontractor of persons performing activities during the contract performance apply;

2) the manner of verification of employment of such persons;

3) the awarding entity's powers in the field of inspection of the fulfillment by the contractor of the requirements related to employment of such persons and the sanctions for failure to fulfill these requirements.

#### **Art. 96**

1. The awarding entity may specify in the contract notice or the contract documents the requirements concerning the performance of a contract other than the ones laid down in Article 95, which requirements may include economic, environmental, social aspects, as well as the aspects related to innovation, employment or preservation of the confidential nature of the information provided to the contractor in the course of performance of the contract.

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

1) the application of specific measures of environmental management;

2) employment:

a) of unemployed persons within the meaning of the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions;

b) job-seekers, persons who are neither employed nor performing other paid work as defined in the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions;

c) the persons becoming self-reliant referred to in Article 140, paragraphs 1 and 2 of the Act of 9 June 2011 on Support to Family and Substitute Custody System;

d) young adults referred to in the labour law provisions, for the purpose of their occupational preparation;

e) the disabled as defined in the Act of 27 August 1997 on Occupational and Social Rehabilitation and on Employment of the Disabled;

f) other persons than the ones specified in letters a to e referred to in the Act of 13 June 2003 on Welfare Employment (Dziennik Ustaw 2019, items 217, 730 and 1818) or in the relevant provisions of the European Union Member States of the European Economic Area.

3. In the case referred to in paragraph 2, subparagraph 2, the awarding entity shall lay down in the contract documents the number of the persons and the required period of their employment, to which persons this requirement relates.

4. In the event that the awarding entity provides for the requirements referred to in paragraph 1, it shall specify, in the contract documents, in particular the manner of documenting of the fulfillment of these requirements by the contractor, the powers of the awarding entity to the extent of the inspection of fulfillment of these requirements by the contractor, as well as the sanctions for failure to meet the same.

#### **Art. 97**

1. The awarding entity may demand that contractors provide a tender security deposit.
2. The awarding entity shall define the amount of the tender security deposit in a sum not exceeding 3 per cent of the contract value.
3. Where the awarding entity allows submitting tenders for lots or awards a contract in lots, it shall specify the amount of the tender security deposit for each lot. The provision of paragraph 2 shall apply accordingly.
4. Where the awarding entity envisages the award of the contracts referred to in Article 214, paragraph 1, subparagraph 7 or 8 or Article 388, subparagraph 2, letters b and c or Article 415, paragraph 2, subparagraphs 5 and 6, it shall fix the amount of the tender security deposit for the value of the basic contract.
5. The tender security deposit shall be provided prior to the expiry of the deadline for submission of tenders and shall be maintained uninterruptedly until the day of expiry of the period of being bound by the tender, save for the cases referred to in Article 98, paragraph 1, subparagraphs 2 and 3 and paragraph 2.
6. The extension of the period of being bound by the tender shall be admissible only with a simultaneous extension of the period of validity of the tender security deposit or, if not possible, with providing a new tender security deposit for the extended period of being bound by the tender.
7. The tender security deposit may be provided in one or several of the following forms, at the awarding entity's discretion:
  - 1) in money;
  - 2) in bank guarantees;
  - 3) in insurance guarantees;
  - 4) in suretyships granted by the subjects referred to in Article 6b, paragraph 5, subparagraph 2 of the Act of 9 November 2000 on the Polish Agency for Enterprise Development (Dziennik Ustaw 2019, items 310, 836 and 1572).
8. The tender security deposit paid in money shall be paid by a bank transfer to the bank account indicated by the awarding entity.
9. The tender security deposit paid in money shall be kept by the awarding entity on a bank account.
10. If the tender security deposit is provided in the form of a guarantee or suretyship referred to in paragraph 7, subparagraphs 2 to 4, the contractor shall transmit to the awarding entity the original of the guarantees or suretyship in electronic form.

#### **Art. 98**

1. The awarding entity shall return the tender security deposit immediately, but not later than within 7 days from the day of occurrence of one of the following circumstances:
  - 1) expiry of the period of being bound by the tender;
  - 2) conclusion of a public procurement agreement;
  - 3) cancellation of the contract award proceedings, except when the appeal against the cancellation act has not been resolved or the deadline for lodging thereof has not expired.
2. The awarding entity shall immediately, not later, however, than within 7 days of the day of filing a request, return the tender security deposit to the contractor:
  - 1) which withdrew its tender before the expiry of the time limit for submission of tenders;
  - 2) whose tender has been rejected;

3) after selecting the most advantageous tender, exclusive of the contractor whose tender has been selected as the most advantageous one;

4) after the cancellation of the proceedings, except when the appeal against the cancellation act has not been resolved or the deadline for lodging thereof has not expired.

3. Filing a request for returning the tender security deposit referred to in paragraph 2 shall result in a termination of the employment relationship with the contractor and its loss of the right to exercise the legal remedies referred to in Section IX.

4. The awarding entity shall return the tender security deposit provided in money with the interest accrued under the bank account contract on which it has been kept, less the cost of maintaining the bank account and the bank commission for the transfer of the money to the bank account indicated by the contractor.

5. The awarding entity shall return the tender security deposit provided in other form than money by making a declaration on releasing the deposit to the guarantor or surety.

6. The awarding entity shall retain the tender security deposit along with interest, and in the case of a tender security deposit provided in the form of a guarantee or suretyship referred to in Article 97, paragraph 7, subparagraphs 2 to 4 shall make a demand to the guarantor or the surety for payment of the tender security deposit if:

1) the awarding entity, in response to the call referred to in Article 107, paragraph 2 or Article 128, paragraph 1, for reasons attributable to it, failed to submit the subject- or object-related means of proof confirming the circumstances referred to in Article 57 or Article 106, paragraph 1, the declaration referred to in Article 125, paragraph 1, other documents or declarations or did not give consent to correct the error referred to in Article 223, paragraph 2, subparagraph 3, which resulted in the lack of possibility to select the tender submitted by the contractor as the most advantageous one;

2) the contractor whose tender has been selected:

- a) refused to sign the public procurement agreement on the terms specified in the tender;
- b) failed to provide the required good performance bond;

3) conclusion of the public procurement agreement proved impossible for reasons attributable to the contractor whose tender had been selected.

#### **Section 4. Description of the Subject of the Contract.**

##### **Art. 99**

1. The subject of the contract should be described unequivocally and exhaustively using sufficiently precise and intelligible wording, taking into consideration the requirements and circumstances which could affect the preparation of the tender.

2. The awarding entity shall lay down, in the description of the subject of the contract, the required features of supplies, services or construction works. These features may relate in particular to the specified process, production method, delivery of the required supplies, provision of the required services or construction works, or to the specific process of a different state of their life cycle, even if these factors are not their significant element, provided that they are related to the subject of the contract and pro rata to its value and purposes.

3. The names and codes specified in the Common Procurement Vocabulary shall be used to describe the subject of the contract.

4. The subject of the contract shall not be described in a manner which could hamper fair competition, in particular by indication of trade marks, patents or origin, source or a specific process which characterizes the products or services provided by a specific contractor, if this could lead to favouring or eliminating certain contractors or products.

5. The subject of the contract shall not be described by reference to trade marks, patents or origin, source or a special process characterizing the products or services supplied by a specific contractor if the awarding entity cannot describe the subject of the contract with sufficiently precise and legible wording, and the references are accompanied by the words "or equivalent".

6. If the subject of the contract has been described in the manner referred to in paragraph 5, the awarding entity shall indicate in the description of the subject of the contract the criteria applied in order to assess equivalence.

7. The awarding entity may determine in the description of the subject of the contract the need to transfer intellectual property rights or granting licences.

#### **Art. 100**

1. In the case of the contracts intended for the use by natural persons, including employees of the awarding entity, the description of the subject of the contract shall be drawn up having regard to the requirements in respect of availability for the disabled and designing intended for all users, except where not justified by the nature of the subject of the contract.

2. If the requirements referred to in paragraph 1 result from an act of law of the European Union, the subject of the contract, to the extent of the requirements concerning availability for the disabled and designing intended for all users shall be described by reference to this act.

#### **Art. 101**

1. The subject of the contract shall be described, having regard to separate provisions, in one of the following manners by:

1) specifying the performance-related or functional requirements, including environmental requirements, on the condition that the provided parameters are sufficiently precise so as to enable the contractors to determine the subject of the contract and the awarding entity - to award the contract;

2) reference to the required features of the material, product or service, as referred to in Article 102, and, in order of preference, to:

- a) Polish Standards transposing European standards;
- b) standards applicable in other member states of the European Economic Area transposing European standards;
- c) European Technical Assessments, understood as the documented assessments of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document, within the meaning of Article 2(12) of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5, as amended);
- d) common technical specifications understood as technical specifications in the field of ICT products laid down in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12);
- e) international standards;
- f) technical specifications, the compliance with which is not compulsory, adopted by a standardisation body specialising in the production of technical specifications for repeated and continuous application;
- g) other technical reference systems established by the European standardization organizations;

3) reference to the standards, European Technical Assessments, technical specifications and technical reference systems referred to in subparagraph 2, as well as by reference to the requirements concerning performance or functionality referred to in subparagraph 1, within the scope of selected features;

4) reference to the category of requirements concerning performance or functionality referred to in subparagraph 1 and by reference to the standards, European Technical Assessments, technical specifications and technical reference systems referred to in subparagraph 2, as a means of presuming conformity with such performance-related or functional requirements.

2. A standard shall mean a technical specification adopted by a national, European or international standardization



body for repeated and continuous application, the compliance with which is not compulsory, including a Polish Standard, a European standard or an international standard.

3. In the absence of Polish Standards transposing European standards or standards of other member states of the European Economic Area transposing European standards as well as the standards, European Technical Assessments, technical specifications and technical reference systems referred to in paragraph 1, subparagraph 2, the following shall be considered while describing the subject of the contract in order of preference:

- 1) Polish Standards;
- 2) national technical assessments issued under the Act of 16 April 2004 on Construction Products (Dziennik Ustaw 2019, items 266 and 730);
- 3) the Polish technical specifications concerning the design, calculations and execution of construction works, as well as using supplies;
- 4) national declarations of conformity and national declarations of performance of a construction product.

4. The awarding entity, while describing the subject of the contract by reference to the standards, technical assessments, technical specifications, and technical reference systems referred to in paragraph 1, subparagraph 2, and paragraph 3, shall be obliged to indicate that it admits equivalent solutions to those described, such reference being accompanied by the words „or equivalent”.

5. In the event when the description of the subject of the contract refers to the standards, technical assessments, technical specifications and technical reference systems referred to in paragraph 1, subparagraph 2 and paragraph 3, the awarding entity shall not reject a tender exclusively on the ground that the construction works, supplies or services tendered for do not comply with the standards, technical assessments, technical specifications and technical reference systems to which the description of the subject of the contract relates, provided that the contractor proves in the tender, in particular by subject-related means of proof referred to in Articles 104 to 107, that the solutions proposed satisfy in an equivalent manner the requirements defined by the subject of the contract.

6. In the event that the description of the subject of the contract refers to the performance-related or functional requirements referred to in paragraph 1, subparagraph 1, the awarding entity shall not reject a tender which complies with a Polish Standard transposing a European standard, standards of other member states of the European Economic Area transposing European standards, a European Technical Assessment, common technical specification, an international standard or a technical reference system established by a European standardization authority, provided that these standards, technical assessments, specifications and technical reference systems relate to the requirements concerning performance or functionality defined by the awarding entity, on the condition that the contractor proves in the tender, in particular by subject-related means of proof referred to in Articles 104 to 107 that the building object, supply or service satisfy the requirements related to performance or functionality determined by the awarding entity.

## **Art. 102**

1. In the case referred to in Article 101, paragraph 1, subparagraph 2, the awarding entity shall prescribe in the description of the subject of the contract for construction works the characteristics required of a material, product or services, so that it fulfills the use for which it is intended by the awarding entity, and which may in particular relate to:

- 1) specific levels of environmental and climate impact;
- 2) the requirements as regards accessibility for disabled persons;
- 3) specific performance, safety or dimensions, including the quality assurance procedures;
- 4) specific terminology, symbols, testing and test methods;
- 5) specific packaging and marking;
- 6) a specific label;
- 7) user instructions;

- 8) production processes and methods at any stage of the life cycle of the building objects;
- 9) additional examinations and tests conducted by authorized units within the meaning of the Act of 13 April 2016 on the Market Surveillance and Conformity Assessment Systems (Dziennik Ustaw 2019, item 544);
- 10) specific rules relating to design and costing;
- 11) the test, inspection and acceptance conditions for building objects;
- 12) methods or techniques of construction;
- 13) all other technical conditions.

2. In the case referred to in Article 101, paragraph 1, subparagraph 2, the awarding entity shall determine in the description of the subject of the contract for supplies or services the characteristics required of a product or a service which may in particular relate to:

- 1) having the features referred to in paragraph 1, subparagraphs 1, 4 to 7 and 10 by a supply or service;
- 2) specific quality levels;
- 3) specific performance, intended use, safety or dimensions of the product, including the requirements related to the product as regards the name under which the product is sold;
- 4) production processes and methods at any stage of the life cycle of the supply or service as well as the conformity assessment procedure.

#### **Art. 103**

- 1. The contracts for construction works shall be described by means of design documentation and technical specifications of the execution and acceptance of construction works.
  - 2. Where the subject of the contract involves the design and execution of construction works within the meaning of the Act of 7 July 1994 - Building Law, the awarding entity shall describe the subject of the contract using a functional and utility programme.
  - 3. The functional and utility programme shall include the description of the construction task where the designation of the finished construction works is indicated as well as the technical, economic, architectural, material and functional requirements to be complied with.
  - 4. The minister competent for construction industry, planning and spatial development, and housing industry shall, by regulation, specify the detailed scope and form of:
    - 1) the design documentation;
    - 2) the technical specifications of the execution and acceptance of construction works;
    - 3) the functional and utility programme
- having regard to the type of construction works and also taking into consideration the names and codes of the Common Procurement Vocabulary.

### **Section 5. Subject-related Means of Proof.**

#### **Art. 104**

1. In the case of contracts with specific environmental, social or other characteristics, the awarding entity, in order to confirm the compliance of the construction works, supplies or services tendered for with the required characteristics, may in the description of the tenders' evaluation criteria or in the requirements related to the execution of the contract, demand a specific label from the contractor, if the following conditions are jointly satisfied:

- 1) the requirements for the label relate exclusively to the criteria associated with the subject of the contract and are appropriate to specify the characteristics of the construction works, supplies or services which are the subject of this contract;
- 2) the requirements for the label are based on objectively verifiable and non-discriminatory criteria;
- 3) the requirements for the label shall be developed and adopted by way of an open and transparent procedure in which all stakeholders may participate, including public administration authorities, consumers, social partners, manufacturers, distributors and non-governmental organizations;
- 4) the labels and the requirements for the label are accessible to all interested parties;
- 5) the label requirements are set by a third party over which the contractor applying for the label cannot exercise a decisive influence.

2. The label referred to in paragraph 1 shall mean any document, including a certificate or attestation confirming that the building object, product, service, process or procedure meet the requirements necessary to obtain the label.

3. If the awarding entity does not require that construction works, supplies or services satisfy all label requirements, it shall indicate the applicable label requirements.

4. If a specific label is required, the awarding entity shall accept all labels confirming that the given construction works, supplies or services satisfy equivalent requirements of the label specified by the awarding entity.

5. In the event that the awarding entity, for reasons beyond its control, cannot obtain the label specified by the awarding entity or an equivalent label, the awarding entity shall, within the deadline fixed by it, accept other relevant subject-related means of proof, in particular the manufacturer's technical documentation, insofar as the given contractor proves that the construction works, supplies or services which are to be provided by it meet the requirements for a specific label or the specific requirements indicated by the awarding entity.

6. If a given label which meets the conditions specified in paragraph 1, subparagraphs 2 to 5, also specifies the requirements not related to the subject of the contract, the awarding entity shall not demand this label. In such a case the awarding entity may describe the subject of the contract by reference to these label requirements or, where necessary, to such parts of the label which are related to the subject of the contract and are adequate for specifying the characteristics of the contracted construction works, supplies or services.

## **Art. 105**

1. In order to confirm the compliance of the construction works, supplies or services tendered for with the requirements, characteristics or the criteria laid down in the description of the subject of the contract or with the tenders' evaluation criteria or with the requirements related to the execution of the contract, the awarding entity may demand that the contractors submit a certificate issued by a conformity assessment body or a report on the tests conducted by this body.

2. A conformity assessment body shall mean a body that performs conformity assessment activities including calibration, testing, certification and inspection accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

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

4. The awarding entity shall accept the appropriate subject-related means of proof other than the ones referred to in paragraphs 1 and 3, in particular technical documentation of a manufacturer, in the event when a given contractor has neither access to the certificates or test reports referred to in paragraphs 1 and 3, nor possibility of obtaining

them within the relevant time limits, provided that the lack of access is not attributable to a given contractor and provided that the given contractor proves that the construction works, supplies or services provided by it meet the requirements, characteristics or criteria set out in the description of the subject of the contract or the tender evaluation criteria, or, as the case may be, the contract performance requirements.

#### **Art. 106**

1. The awarding entity may demand the subject-related means of proof other than the ones specified in Articles 104 and 105 to confirm that the supplies, services or construction works tendered for meet the conditions, characteristics or criteria set forth by the awarding entity, provided that such means of proof are necessary to conduct the proceedings. The awarding entity shall indicate the required subject-related means of proof in the contract notice or the contract documents.

2. The awarding entity shall demand the subject-related means of proof proportional to the subject of the contract and related to the subject of the contract.

3. A demand for subject-related criteria shall not restrict fair competition and equal treatment of contractors. The awarding entity shall accept equivalent subject-related means of proof if they confirm that the supplies, services or construction works tendered for satisfy the requirements, characteristics or criteria set out by the awarding entity.

#### **Art. 107**

1. If the awarding entity demands that the subject-related means of proof be submitted, the contractor shall submit the same together with the tender.

2. If the contractor failed to submit the subject-related means of proof or the submitted means of proof are incomplete, the awarding entity shall call for submission or completing thereof within a fixed time limit, insofar as it envisaged this in the contract notice or contract documents.

3. The provision of paragraph 2 shall not apply if the subject-related means of proof serve to confirm the conformity with the characteristics or criteria laid down in the description of the tender evaluation criteria or, despite submitting the subject-related means of proof, the tender is subject to rejection or there occur premises for cancellation of the proceedings.

4. The awarding entity may demand that the contractors clarify the contents of the subject-related means of proof.

## **Chapter 2. Qualitative Selection of Contractors.**

### **Section 1. Grounds for Exclusion from Contract Award Proceedings.**

#### **Art. 108**

1. The following contractors shall be excluded from contract award proceedings:

- 1) a contractor who is a natural person and has been validly sentenced for any of the following offences:
  - a) of participation in an organized criminal group or association having as its purpose commission of an offence or a fiscal offence referred to in Article 258 of the Penal Code;
  - b) of trafficking in human beings referred to in Article 189a of the Penal Code;
  - c) referred to in Articles 228 to 230a and Article 250a of the Penal Code or in Article 46 or 48 of the Act of 25 June 2010 on Sports;
  - d) of financing a terrorist offence referred to in Article 165a of the Penal Code or an offence of preventing or hampering determination of criminal origin of money or concealing its origin, referred to in Article 299 of the Penal Code;
  - e) a terrorist offence referred to in Article 115, paragraph 20 of the Penal Code or aimed at commission such an offence;
  - f) the offence of work of minor foreigners referred to in Article 9, paragraph 2 of the Act of 15 June 2012 on the

Effects of Entrusting the Performance of Work to Foreigners Staying on the Territory of the Republic of Poland in Breach of Law (Dziennik Ustaw 2012, item 769);

**g)** against economic trading referred to in Articles 296 to 307 of the Penal Code, an offence of fraud referred to in Article 286 of the Penal Code, an offence against reliability of documents, referred to in Article 270 to 277d of the Penal Code or a fiscal offence;

**h)** the offence specified in Article 9, paragraphs 1 and 3 or Article 10 of the Act of 15 June 2012 on the Effects of Entrusting the Performance of Work to Foreigners Staying on the Territory of the Republic of Poland in Breach of Law - or for a relevant tort laid down in provisions of foreign law;

**2)** where an acting member of its/his managing or supervising body, partner of a registered partnership or professional partnership or a general partner in a limited partnership or limited joint-stock partnership or a commercial proxy has been validly sentenced for an offence referred to in subparagraph 1;

**3)** against which/whom a valid court judgement or a final administrative decision on being in arrears with taxes, fees or premiums for social or health insurance has been issued, except when the contractor made the payment of the due taxes, fees or premiums for social or health insurance along with interest or fines or concluded a binding agreement in the matter of payment of those dues before the expiry of the time limit for filing requests for participation in the proceedings or before the expiry of the deadline for submission of tenders, respectively;

**4)** in respect of which a prohibition from competing for public contracts has been adjudicated;

**5)** if the awarding entity has sufficiently plausible indications to conclude that the contractor has entered into agreements with other contractors aimed at distorting competition, in particular if, while belonging to the same capital group within the meaning of the Act of 16 February 2007 on Protection of Competition and Consumers they have submitted separate tenders, tenders for lots or requests for participation in the proceedings, unless they demonstrate that they have prepared those tenders or requests independently of each other;

**6)** if, in the cases referred to in Article 85, paragraph 1, there occurred a distortion of competition resulting from previous involvement of this contractor or the subject which belongs with the contractor to the same capital group within the meaning of the Act of 16 February 2007 on Protection of Competition and Consumers, unless the distortion of competition caused by this may be eliminated in another way than by excluding the contractor from the participation in the contract award proceedings.

2. A contractor who/which prevents or hampers determination of criminal origin of money or conceals its origin shall be excluded from contract award proceedings in the case of a contract of the value equal to or exceeding the equivalent of EUR 20,000,000 for construction works denominated in zloties, and the equivalent of EUR 10,000,000 for supplies or services denominated in zloties, in connection with lack of possibility of determining the actual beneficiary within the meaning of Article 2, paragraph 2, subparagraph 1 of the Act of 1 March 2018 on Combating Money Laundering and the Financing of Terrorism (Dziennik Ustaw 2019, items 1115, 1520, 1655 and 1798).

#### **Art. 109**

1. The following contractors may be excluded from contract award proceedings by an awarding entity:

**1)** which/who has violated the obligations concerning payment of taxes, fees or premiums for social or health insurance, except for the case referred to in Article 108, paragraph 1, subparagraph 3, except when the contractor made the payment of the due taxes, fees or premiums for social or health insurance along with interest or fines or concluded a binding agreement in the matter of payment of those dues before the expiry of the time limit for filing requests for participation in the proceedings or before the expiry of the deadline for submission of tenders, respectively;

**2)** who/which has infringed the duties in the field of environmental protection, social law or labour law:

**a)** and who is a natural person who has been validly sentenced for an offence against environment referred to in Chapter XXII of the Penal Code or for an offence against the rights of the persons performing paid work referred to in Chapter XXVIII of the Penal Code, or for a relevant tort laid down in the provisions of foreign law;

**b)** and who is a natural person who has been validly sentenced for a petty offence against the rights of an employee or a petty offence against environment, if the penalty of detention, restriction of liberty or a penalty of fine was imposed upon him/her

**c)** in respect of which/whom a final administrative decision on violation of the duties resulting from the environmental protection law, labour law or the provisions of social security has been issued, if a pecuniary penalty was imposed by way of this decision;

**3)** where an acting member of its/his managing or supervising body, partner of a registered partnership or professional partnership or a general partner in a limited partnership or limited joint-stock partnership or a

commercial proxy has been validly sentenced for an offence or petty offence referred to in subparagraph 2, letter a or b;

4) in respect of which/whom liquidation has been opened, bankruptcy has been declared, and whose assets are managed by a liquidator or a court, who/which has concluded an arrangement with creditors or is in other situation of this type stemming from a similar procedure provided for in the provisions of the location of initiation of this procedure;

5) who/which culpably and grossly violated its professional duties, which undermines his/its honesty, in particular when the contractor, as a result of a deliberate action or gross negligence has failed to perform or has improperly performed the contract, which the awarding entity is able to demonstrate through relevant evidence;

6) if there exists a conflict of interests within the meaning of Article 56, paragraph 2, which cannot be effectively eliminated in another way than by exclusion of the contractor;

7) who/which, for reasons attributable thereto, to a considerable extent or degree failed to perform or improperly performed or was improperly performing in the long run a significant obligation under a previous public procurement agreement or a contract for a concession, which led to termination by notice of or withdrawal from the agreement/contract, indemnity, substitute performance or exercising of the rights under warranty for defects;

8) who/which, as a result of deliberate action or gross negligence, has misled the awarding entity while presenting the information that he/it is not subject to exclusion, satisfies the conditions of participation in the proceedings or the selection criteria, which could have had a significant influence on the decisions taken by the awarding entity in the contract award proceedings, or who/which has withheld such information or is not able to present the required subject-related means of proof;

9) who/which has unlawfully affected or attempted to affect the activities of the awarding entity or attempted to obtain or obtained confidential information that may confer upon him/it advantage in the contract award proceedings;

10) who/which, as a result of recklessness or negligence has presented misleading information, which could have had a significant influence on the decisions taken by the awarding entity in the contract award proceedings.

2. If the awarding entity envisages exclusion of the contractor under paragraph 1, it shall indicate the grounds for the exclusion in the contract notice or the contract documents.

3. In the cases referred to in paragraph 1, subparagraphs 1 to 5 or 7 the awarding entity need not exclude the contractor in the situation when this exclusion would be evidently disproportionate, in particular when the amount of the overdue taxes or premiums for social insurance is insignificant or when the economic or financial standing of the contractor referred to in paragraph 1, subparagraph 4 is sufficient to perform the contract.

#### **Art. 110**

1. The awarding entity may exclude the contractor at each stage of contract award proceedings.

2. The contractor shall not be subject to exclusion in the circumstances specified in Article 108, paragraph 1, subparagraphs 1, 2, 5 and 6 or Article 109, paragraph 1, subparagraphs 2 to 10, where it demonstrates to the awarding entity that it has met the following conditions jointly:

1) it has redressed or undertaken to redress damage caused by an offence, petty offence or its inappropriate conduct, including by pecuniary compensation;

2) it has exhaustively clarified the facts and circumstances related to the offence, petty offence or its misconduct and the damage caused by them, actively cooperating with the competent authorities, including prosecution authorities or the awarding entity, respectively;

3) it has taken concrete technical, organisational and personnel measures that are appropriate to prevent further offences, petty offences or misconduct, in particular:

a) it has severed all ties with the persons or subjects responsible for the contractor's misconduct;

b) it has reorganized the personnel;

c) it has implemented the control and reporting system;

d) it has established the internal audit procedures to monitor the compliance with the provisions, internal regulations or standards;

e) it has introduced internal regulations concerning responsibility and indemnities for failure to observe the provisions, internal regulations or standards.

3. The awarding entity shall evaluate whether the activities taken by the contractor and referred to in paragraph 2 are sufficient to demonstrate its reliability, having regard to the significance and special circumstances of the contractor's act. If the activities undertaken by the contractor and referred to in paragraph 2 are insufficient to demonstrate its reliability, the awarding entity shall exclude the contractor.

**Art. 111** The contractor shall be excluded:

- 1) in the cases referred to in Article 108, paragraph 1, subparagraph 1, letters a to g and subparagraph 2, for the period of 5 years from the day of a judgement confirming the existence of one of the bases of exclusion becoming valid, unless other exclusion period has been fixed in this judgement;
- 2) in the cases referred to in:
  - a) Article 108, paragraph 1, subparagraph 1, letter h and subparagraph 2, when the person referred to in these provisions has been sentenced for an offence listed in Article 108, paragraph 1, subparagraph 1, letter h;
  - b) Article 109, paragraph 1, subparagraphs 2 and 3 - for the period of 3 years from the day of a judgement confirming the occurrence of one of the bases of exclusion becoming valid or issuance of a final decision or occurrence of an event providing grounds for the exclusion, respectively, unless other period of exclusion has been fixed in the judgement or decision;
- 3) in the case referred to in paragraph 108, paragraph 1, subparagraph 4, for the period for which the prohibition from competing for public contracts was validly pronounced;
- 4) in the cases referred to in Article 108, paragraph 1, subparagraphs 5 and 6, Article 109, paragraph 1, subparagraphs 4 to 7 and 9, for the period of 3 years from the date of occurrence of an event providing the grounds for exclusion;
- 5) in the case referred to in Article 109, paragraph 1, subparagraph 8, for the period of 2 years from the date of occurrence of an event constituting the grounds for exclusion;
- 6) in the case referred to in Article 109, paragraph 1, subparagraph 10, for the period of one year from the date of occurrence of an event constituting the grounds for exclusion.

## **Section 2. Conditions for Participation in the Proceedings.**

**Art. 112**

1. The awarding entity shall set out the conditions for participation in the proceedings in a manner proportionate to the subject of the contract and enabling to assess the contractor's ability to due performance of the contract, in particular expressing them as minimum levels of ability.

2. The conditions for participation in the proceedings may relate to:

- 1) an ability to operate in economic trading;
- 2) entitlements to pursue specific economic or professional activity, insofar as this results from separate provisions;
- 3) economic or financial standing;
- 4) technical or professional ability.

**Art. 113** In respect of the condition concerning the ability to operate in economic trading, the awarding entity may demand that the contractors pursuing economic or professional activity are entered in one of the professional or commercial registers maintained in the country of their seat or place of residence.

**Art. 114** In respect of the entitlements to pursue specific economic or professional activity, the awarding entity may, in the contract award proceedings, require holding the following to be proved:

- 1) a relevant permit, licence, concession or entry into the register of regulated activity or
- 2) a relevant permit, licence, concession or entry into the register of regulated activity, provided that holding thereof is necessary to provide specific services in the country of the contractor's seat or place of residence or
- 3) the status of a member of a given organization, provided that membership of this organization is necessary to provide specific services in the country of the contractor's seat or place of residence.

**Art. 115**

1. As regards the financial or economic standing, the awarding entity may determine the conditions which will ensure that the contractors have the economic or financial ability necessary for the execution of the contract. For this purpose the awarding entity may require in particular:

- 1) that contractors have specific minimum annual revenues, including specific minimum annual revenues as regards the activity covered by the contract;
- 2) that contractors submit the information on their annual financial statements showing in particular the assets to liabilities ratio;
- 3) that the contractor has taken out adequate civil liability insurance;
- 4) that the contractor has specific credit-worthiness or financial means.

2. The awarding entity shall not require that the minimum annual revenues referred to in paragraph 1, subparagraph 1 exceed twice the value of the contract, with the exception of duly justified cases relating to the subject of the contract or the manner of its execution. The awarding entity shall indicate in the contract documents the reasons for applying such a requirement.

3. The assets to liabilities ratio referred to in paragraph 1, subparagraph 2 may be taken account of if the awarding entity sets out in the contract documents transparent and objective methods of and criteria for the fact of this ratio having been taken into account.

4. If the contract is divided into lots, the provisions of paragraphs 1 to 3 shall apply to each of these lots. The awarding entity may specify the minimum annual revenue also in respect of more than one contract lot in case that the contractor whose tender has been selected as the most advantageous one is awarded several contract lots for execution simultaneously.

5. In the event of a dynamic purchasing system, the condition of having minimum annual revenue shall be calculated on the basis of the expected maximum volume of the contracts which are to be covered by this system.

**Art. 116**

1. In respect of the technical or professional ability, the awarding entity may specify the conditions for the necessary educational and professional qualifications, experience, technical capability of the contractor or the persons assigned by the contractor to execute the performance, enabling to perform the contract at an appropriate quality level. The awarding entity may in particular require that the contractors meet the requirements of the relevant quality management standards, including to the extent of the accessibility for disabled persons, as well as the systems or standards of environmental management indicated by the awarding entity in the contract notice or contract documents.

2. While assessing the technical or professional ability, the awarding entity may, at each stage of the proceedings, conclude that the contractor does not have the required abilities if the fact that the contractor has conflicting interests, in particular involvement of technical or professional resources of the contractor in other economic undertakings, may adversely affect the execution of the contract.

**Art. 117**



1. The awarding entity may specify a special, objectively reasonable, manner of satisfaction by the contractors competing jointly for the award of a contract the conditions for participation in the proceedings, provided that this is justified by the nature of the contract and is proportionate.

2. The condition concerning the entitlements to pursue specific economic or professional activity, as referred to in Article 112, paragraph 2, subparagraph 2, shall be fulfilled if at least one of the contractor competing jointly for the award of the contract is entitled to carry out specific economic or professional activity and provides construction works, supplies or services, for the provision of which such entitlements are required.

3. In respect of the conditions concerning educational and professional qualifications or experience of the contractor, the contractors jointly competing for the award of the contract may rely on the abilities of those of the contractors which will provide the construction works or services, for the provision of which such abilities are required.

4. In the case referred to in paragraphs 2 and 3, the contractors jointly competing for the award of the contract shall attach to the request for participation in the proceedings or to the tender a declaration indicating which construction works, supplies or services will be performed by particular contractors.

### **Section 3. Making Resources Available.**

#### **Art. 118**

1. The contractor may, in order to confirm the satisfaction of the conditions for participation in the proceedings or the selection criteria, in relevant situations and in respect of a specific contract or its lot, rely on the technical or professional abilities or financial or economic standing of the subjects making resources available, regardless of the legal nature of the legal relationships linking the contractor with these subjects.

2. In respect of the conditions concerning educational and professional qualifications or experience, the contractors may rely on the abilities of the subjects making resources available, if these subjects will provide the construction works or services, for the provision of which such abilities are required.

3. The contractor which relies on the abilities or standing of the subjects making resources available shall submit, together with the request for participation in the proceedings or with the tender, respectively, a commitment of the subject making resources available to put at its disposal the necessary resources for the purposes of execution of a given contract or other subject-related means of proof confirming that the contractor, while performing the contract, will have at its disposal the necessary resources of those subjects.

4. The commitment of the subject making resources available referred to in paragraph 3 shall confirm that the relationship linking the contractor with the subjects making resources available ensures actual access to these resources and shall in particular determine:

- 1) the extent to which the resources of the subject making the resources available are available to the contractor;
- 2) the manner and period of making available to the contractor and using by the contractor of resources of the subject making these resources available during performance of the contract;
- 3) whether and to what extent the subject making resources available, on abilities of which the contractor relies in respect of the conditions for participation in the proceedings and concerning educational and professional qualifications or experience, will perform construction works or services to which the indicated abilities relate.

**Art. 119** The awarding entity shall assess whether the technical or professional abilities made available to the contractor by the subjects making resources available or whether the subjects' financial or economic situation allow for demonstrating by the contractor the satisfaction of the conditions for participation in the proceedings referred to in Article 112, paragraph 2, subparagraphs 3 and 4, and, if applicable, the satisfaction of the selection criteria, and shall examine whether there are any grounds for exclusion as regards this subject, which grounds have been provided for in respect of the contractor.

**Art. 120** The subject which has undertaken to make resources available shall be jointly and severally liable with the contractor which relies on its financial or economic standing for damage incurred by the awarding entity caused as a result of failing to make these resources available, unless this subject is not at fault for failing to make these

resources available.

**Art. 121** The awarding entity may stipulate the contractor's obligation to perform by the contractor itself the key tasks concerning:

- 1) contracts for construction works or services or
- 2) works involving deployment or installation, under a contract for supplies.

**Art. 122** If the technical or professional abilities as well as the economic or financial standing of the subject making the resources available do not confirm that the contractor meets the conditions for participation in the proceedings or there are grounds for exclusion as regards this subject, the awarding entity demands that the contractor, within the time limit set by the awarding entity, replace this subject with another subject or other subjects or demonstrate that it independently meets the conditions for participation in the proceedings.

**Art. 123** The contractor shall not, after the expiry of the time limit for submission of requests for participation in the proceedings or tenders, claim the abilities or standing of the subjects making resources available if, at the stage of submitting of requests for participation in the proceedings or tenders, it did not rely within a given scope on the abilities or standing of the subjects making the resources available.

#### **Section 4. Object-related Means of Proof.**

**Art. 124** In the contract award proceedings the awarding entity:

- 1) shall demand object-related means of proof to confirm the lack of grounds for exclusion;
- 2) may demand object-related means of proof to confirm the satisfaction of the conditions for participation in the proceedings or of the selection criteria.

#### **Art. 125**

1. The contractor shall attach to the request for participation in the proceedings or the tender a declaration of not being subject to exclusion, of satisfaction of the conditions for participation in the proceedings or of the selection criteria to the extent specified by the awarding entity.

2. The declaration referred to in paragraph 1 shall be submitted on a form of a European Single Procurement Document drawn up in accordance with the standard form template laid down in Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document (OJ L 3, 6.1.2016, p. 16), hereinafter referred to as the „Single Document“.

3. The declaration referred to in paragraph 1 shall constitute the evidence confirming the lack of grounds for exclusion, satisfaction of the conditions for participation in the proceedings or of the selection criteria, as at the day of submission of requests for participation in the proceedings or tenders, respectively, and constitutes the evidence temporarily replacing the object-related means of proof required by the awarding entity.

4. In the case of competing jointly by contractors for the award of a contract, the declaration referred to in paragraph 1 shall be submitted by each of the contractors. Said declarations confirm the lack of grounds for exclusion and the satisfaction of the conditions for the participation in the proceedings or of the selection criteria to the extent to which each of the contractors demonstrates the satisfaction of the conditions for the participate in the proceedings or of the selection criteria.

5. The contractor, in the event of relying on the abilities or standing of the subjects making the resources available, shall submit, together with the declaration referred to in paragraph 1, also the declaration of the subject making the resources available confirming the lack of grounds for exclusion of this subject and the satisfaction of the conditions for participation in the proceedings or of the selection criteria, respectively, to the extent to which the contractor claims the subject's resources.

6. The contractor may use a Single Document filed in separate contract award proceedings if it confirms that the

information contained therein remain correct.

#### **Art. 126**

1. The contractor shall, before the selection of the most advantageous tender, call the contractor whose tender has been ranked highest for submitting within the set time limit, not shorter than 10 days, the object-related means of proof up-to-date as at the date of their submission.
2. If this is necessary to ensure the appropriate course of the contract award proceedings, the awarding entity may, at each stage of the proceedings, including at the stage of submitting requests for participation in the proceedings or forthwith after their submission, call the contractors for submitting all or some of the object-related means of proof up-to-date as at the date of their submission.
3. If there occur reasonable grounds for concluding that the object-related means of proof submitted previously are no longer up-to-date, the awarding entity may each time call the contractor or contractors for submitting all or some of the object-related means of proof up-to-date as at the date of their submission.

#### **Art. 127**

1. The awarding entity shall not call for submitting object-related means of proof if:
  - 1) it may obtain the same with the use of free-of-charge and commonly accessible databases, in particular public registers within the meaning of the Act of 17 February 2005 on Computerization of the Activity of Subjects Performing Public Tasks, insofar as the contractor provided, in the Single Document, the data enabling to access these means;
  - 2) object-related means of proof are a declaration whose contents corresponds to the scope of the declaration referred to in Article 125, paragraph 1.
2. The contractor shall be obliged to submit the object-related means of proof which it holds if it indicates these means and confirms their correctness and up-to-date nature.

#### **Art. 128**

1. If the contractor failed to submit the declaration referred to in Article 125, paragraph 1, object-related means of proof, other documents or declarations to be submitted in the proceedings or they are incomplete or erroneous, the awarding entity shall call the contractor for their submission, correction or completion within a set time limit, unless:
  - 1) a request for participation in the proceedings or the contractor's tender are subject to rejection regardless of their submission, completion or correction or
  - 2) there occur requisites for cancellation of the proceedings.
2. The contractor shall submit object-related means of proof upon the call referred to in paragraph 1, and they shall be up-to-date as at the date of their submission.
3. The submission, completion or correction of the declaration referred to in Article 125, paragraph 1 or object-related means of proof shall not serve to confirm the satisfaction of the selection criteria.
4. The awarding entity may demand that the contractors clarify the contents of the declaration referred to in Article 125, paragraph 1, the object-related means of proof submitted or other documents or declarations to be submitted in the proceedings.
5. If the declaration filed by the contractor and referred to in Article 125, paragraph 1 of object-related means of proof raise doubts of the awarding entity, it may indirectly request the subject holding the information or documents relevant in this respect for the assessment whether the contractor satisfies the conditions for participation in the proceedings, the selection criteria or the lack of grounds for exclusion, for submission of such information or documents.
6. The minister competent for the economy shall determine, by a regulation, the types of the object-related means of proof as well as other documents or declarations which may be demanded by the awarding entity from the

contractor, the period of their validity and the forms in which they may be submitted, having regard to the need to confirm the lack of grounds for exclusion, the satisfaction of the conditions for the participation in the proceedings or of the selection criteria, as well as the need to ensure the up-to-date nature of the object-related means of proof, other documents and declarations, as well as the methods of communication between the awarding entity and the contractor.

### **Chapter 3. Contract Award Procedures.**

#### **Section 1. General Provisions.**

##### **Art. 129**

1. Public awarding entities and subsidized awarding entities shall award contracts under one of the following procedures:

- 1) open tendering;
- 2) restricted tendering;
- 3) negotiations with publication;
- 4) competitive dialogue;
- 5) innovation partnership;
- 6) negotiations without publication;
- 7) direct-award contract.

2. The awarding entity may award a contract under open tendering procedure and restricted tendering procedure, and as regards the other procedures, it may award a contract in the cases laid down in the Act.

##### **Art. 130**

1. The awarding entity shall institute contract award proceedings by providing:

- 1) a contract notice to the Publications Office of the European Union in the case of open rendering, restricted rendering, negotiations with publication, competitive dialogue or innovation partnership procedure;
- 2) invitation to negotiations in the case of the negotiations without publication or direct-award contract procedure.

2. The awarding entity may institute the contract award proceedings under the negotiations with publication or competitive dialogue procedure by providing an invitation to negotiations or dialogue in the circumstances referred to in Article 153, subparagraph 5, if it invites to negotiations or the dialogue exclusively all the contractors which are not subject to exclusion and meet the conditions for participation in the proceedings and in the proceedings under open tendering procedure or restricted tendering procedure conducted previously they submitted tenders which were not rejected under Article 226, paragraph 1, subparagraphs 1, 2, 6, 7, 9, 12 to 14 and 18.

3. The awarding entity may, after publishing a contract notice in the Official Journal of the European Union, directly notify about the initiation of contract award proceedings contractors known to it which, as part of pursuing their economic activity, provide supplies, services or perform construction works being the subject of the contract.

##### **Art. 131**

1. The awarding entity shall set the time limits for submitting requests for participation in the proceedings, initial tenders and tenders, having regard to the complexity and the nature of the subject of the contract as well as the time necessary for their preparation and submission, with the proviso that these time limits shall not be shorter than the minimum statutory time limits, if such time limits are set.

2. In the event that the awarding entity envisages such a possibility, or if this is necessary due to the specific nature of the subject of the contract, it requires that a tender be submitted after:

1) the contractor conducts a visual inspection or

2) the contractor verifies the documents necessary to execute the contract, available on-site at the awarding entity's

- and it shall fix the time limits for submission of the tenders having regard to the time necessary for the contractors to learn the information indispensable to prepare the tender, with the proviso that these time limits shall be longer than the minimum statutory time limits, insofar as they are set.

## **Section 2. Open Tendering.**

**Art. 132** Open tendering shall be a contract award procedure in which in response to a contract notice all contractors concerned may submit their tenders.

### **Art. 133**

1. The awarding entity shall ensure, on the website of the conducted proceedings, free-of-charge, full, direct and unlimited access to the specification of terms of a contract, hereinafter referred to as the „STC“, from the date of publishing the contract notice in the Official Journal of the European Union not shorter than until the date of awarding the contract.

2. If the awarding entity may not make part of the STC available on the website of the conducted proceedings due to one of the situations specified in Article 65, paragraph 1, it shall provide it in other manner determined by the awarding entity in the contract notice.

3. If the awarding entity may not make part of the STC available on the website of the conducted proceedings due to protection of the confidential nature of the information included in the STC, it shall determine, in the contract notice, the manner of accessing this information and the requirements related to the protection of its confidential nature.

### **Art. 134**

1. The STC shall contain at least:

1) the name and the address of the awarding entity, the phone number, the email address and the address of the website of the conducted proceedings;

2) the address of the website on which any changes to and clarifications of the contents of the STC, as well as other contract documents directly related to the contract award proceedings will be made available;

3) the contract award procedure;

4) the description of the subject of a contract;

5) the information on the subject-related means of proof;

6) the contract completion date;

7) the grounds for exclusion referred to in Article 108;

- 8) the information on the conditions for participation in the contract award proceedings;
- 9) a list of object-related means of proof;
- 10) the information on the means of electronic communication with the use of which the awarding entity will communicate with the contractors and the information concerning the technical and organizational requirements for the preparation, dispatch and receipt of electronic correspondence;
- 11) the information on the manner of communication between the awarding entity and the contractors in a manner other than with the use of electronic communication means, including in the case of occurrence of one of the situations determined in Article 65, paragraph 1, Articles 66 and 69;
- 12) the indication of the persons entitled to communicate with the contractors;
- 13) the period of being bound by the tender;
- 14) the description of the manner of preparation of the tender;
- 15) the manner of and the time limit for the submission of tenders;
- 16) the time limit of opening the tenders;
- 17) the manner of price calculation;
- 18) the description of the tender evaluation criteria, specifying also the weighting of these criteria and the method of evaluation of the tenders;
- 19) the information concerning formalities which should be arranged following selection of a tender in order to conclude a public procurement agreement;
- 20) drafted provisions of the public procurement agreement which will be introduced to this agreement;
- 21) the instruction concerning the legal remedies available to the contractor.

2. The following shall also be included in the STC:

- 1) the grounds for exclusion referred to in Article 109, paragraph 1, if it is envisaged by the awarding entity;
- 2) the description of contract lots, where the awarding entity allows submission of tenders for lots;
- 3) the number of the contract lots for which the contractor may submit its tender or the maximum number of the lots for which the contract may be awarded to the same contractor, as well as the criteria or principles applicable to determine which contract lots will be awarded to one contractors in the event of selection of its tender in a number of the lots exceeding the maximum number;
- 4) the requirements concerning a tender security deposit if the awarding entity envisages the obligation to pay the deposit;
- 5) the information concerning the good performance bond, if the awarding entity envisages the obligation to provide it;
- 6) the information concerning variant tenders, including the information on the manner of presenting variant tenders and the minimum conditions which the variant tenders must satisfy, if the awarding entity requires or allows submitting thereof;
- 7) the maximum number of contractors with which the awarding entity will conclude a framework agreement, where the awarding entity envisages the conclusion of the framework agreement;
- 8) the information on the envisaged contracts referred to in Article 214, paragraph 1, subparagraphs 7 and 8, where the awarding entity envisages the award of such contracts;

- 9) the information concerning conducting a visual inspection by the contractor or verification by it the documents necessary to execute the contract and referred to in Article 131, paragraph 2, if the awarding entity envisages a possibility of or requires the submission of a tender following the visual inspection or verification of those documents;
- 10) the information concerning foreign currencies in which settlements between the awarding entity and the contractor are permitted, where the awarding entity envisages foreign currency settlements;
- 11) the information on the previous evaluation of the tenders, in accordance with Article 139, if the awarding entity envisages a reversed evaluation order;
- 12) the information on the envisaged selection of the most advantageous tender by electronic auction together with the information referred to in Article 230 where the awarding entity envisages the electronic auction;
- 13) the information concerning the reimbursement of the costs of participation in the proceedings, where the awarding entity envisages their reimbursement;
- 14) the requirements as regards employment under an employment relationship in the circumstances referred to in Article 95, if the awarding entity envisages such requirements;
- 15) the requirements as regards the employment of the persons referred to in Article 96, paragraph 2, subparagraph 2, where the awarding entity envisages such requirements;
- 16) the information on the stipulation of the possibility of competing for the award of the contract exclusively by the contractors referred to in Article 94, if the awarding entity envisages such requirements;
- 17) the information on the contractor's obligation to independently perform the key tasks, where the awarding entity makes such a stipulation pursuant to Articles 60 and 121;
- 18) the requirement or possibility of submitting tenders in the form of electronic catalogues or attachment of electronic catalogues to the tender in the situation specified in Article 93.

#### **Art. 135**

1. The contractor may make a request to the awarding entity for clarification of the contents of the STC.
2. The awarding entity shall be obliged to provide the clarifications immediately, no later, however, than 6 days before the expiry of the time limit for submission of tenders or no later than 4 days before the expiry of the time limit for submission of tenders in the case referred to in Article 138, paragraph 2, subparagraph 2, provided that the request for the clarification of the contents of the STC was received by the awarding entity no later than 14 or 7 days, respectively, before the elapse of the time limit for submission of the tenders.
3. If the awarding entity fails to provide the explanations within the deadlines referred to in paragraph 2, it shall extend the time limit for the submission of tenders by the time necessary for all the contractors concerned to learn the clarifications indispensable to duly prepare and submit their tenders.
4. Extension of the time limit for submitting tenders shall not affect the running of the period of filing the request for clarification of the STC content referred to in paragraph 2.
5. In the event when the request for clarification of the contents of the STC was not received within the deadline referred to in paragraph 2, the awarding entity shall have neither an obligation to provide the clarifications of the STC, nor an obligation to extend the time limit for submission of the tenders.
6. The contents of the inquiries along with the clarifications shall be made available by the awarding entity on the website of the conducted proceedings, and in the cases referred to in Article 133, paragraphs 2 and 3, it shall transmit the same to the contractors to which it has transmitted the STC, without disclosing the source of the inquiry.

#### **Art. 136**

1. The awarding entity may convene a meeting of all contractors in order to clarify the contents of the STC. The information on the date of the meeting shall be made available by the awarding entity on the website of the

conducted proceedings.

2. The awarding entity shall prepare the information including the questions asked during the meeting aimed at clarification of the contents of the STC as well as the responses thereto, without indicating the sources of the inquiries. The information from the meeting shall be made available on the website of the conducted proceedings.

#### **Art. 137**

1. In substantiated cases the awarding entity may, before expiry of the deadline for submission of tenders, change the contents of the STC.

2. The change made to the contents of the STC shall be made available by the awarding entity on the website of the conducted proceedings.

3. If the change relates to the parts of the STC which have not been made accessible on the website of the conducted proceedings pursuant to Article 133, paragraphs 2 and 3, the change made in the contents of the STC shall be transmitted in other manner indicated in the contract notice.

4. If the change to the contents of the STC leads to a change in the contents of the contract notice, the awarding entity shall transmit to the Publications Office of the European Union the notice referred to in Article 90, paragraph 1.

5. In the case referred to in paragraph 4, the change to the contents of the STC shall not be made available on the website of the conducted proceedings before publishing the notice referred to in Article 90, paragraph 1, except when the awarding entity has not been notified of the publication within 48 hours after confirmation of the receipt of the notice by the Publications Office of the European Union.

6. In the event that the changes to the contents of the STC are relevant to the preparation of the tender or require that the contractors devote additional time to learn the change to the STC and prepare their tenders, the awarding entity shall extend the deadline for submission of the tenders by the time necessary to learn the change to the STC and prepare the tender. The provisions of paragraphs 4 and 5 shall apply.

7. In the case when the changes to the contents of the STC would lead to a significant change to the nature of the contract when compared to the one originally determined, in particular when they would lead to changing the scope of the contract to a significant extent, the awarding entity shall cancel the proceedings under Article 256.

#### **Art. 138**

1. The deadline for submission of tenders shall not be shorter than 35 days from the date of transmitting the contract notice to the Publications Office of the European Union.

2. The awarding entity may set a shorter deadline for submission of tenders than the one fixed in paragraph 1, not shorter, however, than 15 days from the date of transmitting the contract notice to the Publications Office of the European Union in the following cases:

1) publication of a prior information notice referred to in Article 89, provided that it contained all the information required for the contract notice, to the extent to which said information was available at the moment of publication of the prior information notice, and said information notice was transmitted to the Publications Office of the European Union for publication or published on the awarding entity's website at least 35 days and no more than 12 months preceding the day of the dispatch of the contract notice to the Publications Office of the European Union;

2) if there is an urgent need to award a contract and shortening of the tender submission deadline is justified.

3. In the situations laid down in Article 133, paragraphs 2 and 3, the time limits for submission of tenders referred to in paragraph 1 and paragraph 2, subparagraph 1 shall be extended by 5 days.

4. The awarding entity may fix the tender submission deadlines shorter by 5 days than the one specified in paragraph 1, if tenders are submitted entirely by electronic means, in the manner laid down in Article 63, paragraph 1.

#### **Art. 139**



1. The awarding entity may first examine and evaluation the tenders, and then make a qualitative selection of the contractor whose tender has been ranked highest, in respect of the lack of grounds for exclusion and satisfaction of the conditions for participation in the proceedings, insofar as such possibility has been provided for in the STC or in the contract notice.

2. In the case referred to in paragraph 1 the contractor shall not be obliged to file, along with the tender, a declaration referred to in Article 125, paragraph 1, if the awarding entity envisaged in the STC a possibility of demanding such a declaration exclusively from the contractor whose tender has been ranked highest.

3. If there are grounds for exclusion as regards the contractor referred to in paragraph 1, this contractor does not satisfy the conditions for participation in the proceedings, does not submit object-related means of proof or the declaration referred to in Article 125, paragraph 1 confirming the lack of grounds for exclusion or the satisfaction of the conditions for participation in the proceedings, the awarding entity shall re-examine the re-evaluate the tenders of the other contractors, and then makes the qualitative selection of the contractor whose tender has been ranked highest in respect of the lack of grounds for exclusion and satisfaction of the conditions for participation in the proceedings.

4. The awarding entity shall continue the re-examination and re-evaluation procedure regarding the tenders, as referred to in paragraph 3, in respect of the tenders of the contractors remaining in the proceedings and afterwards it shall make the qualitative selection of the contractor whose tender has been ranked highest as regards the lack of grounds for exclusion and satisfaction of the conditions for participation in the proceedings until the moment of selection of the most advantageous tender or cancellation of the contract award proceedings.

### **Section 3. Restricted Tendering.**

**Art. 140** Restricted tendering shall be a contract award procedure where in response to a contract notice, all contractors concerned may submit requests for participation in the proceedings, while tenders may be submitted exclusively by the contractors invited to submit their tenders.

**Art. 141** The awarding entity shall ensure, on the website of the conducted proceedings, free-of-charge, full, direct and unlimited access to the STC from the date of publishing the contract notice in the Official Journal of the European Union not shorter than until the date of awarding the contract. The provisions of Article 133, paragraphs 2 and 3 shall apply.

#### **Art. 142**

1. In the event of the restricted tendering procedure, the STC shall include at least the information referred to in Article 134, paragraph 1, subparagraphs 1 to 12 and 17 to 21.

2. The STC shall also include:

- 1) the information referred to in Article 134, paragraph 2, subparagraphs 1 to 10 and 12 to 18;
- 2) the information on the stages of the proceedings at which the contractors will be obliged to submit all or some of the object-related means of proof, if the awarding entity envisages such a possibility;
- 3) the information on whether the awarding entity envisages a possibility of limiting the number of the contractors which it will invite to submit tenders along with specifying the number of the contractors and the selection criteria referred to in Article 148, if they are determined;
- 4) the description of the manner of preparation of the requests for participation in the proceedings;
- 5) the manner and time limit for submitting requests for participation in the proceedings.

#### **Art. 143**

1. The provisions of Articles 135 to 137 shall apply accordingly to the clarifications of and changes to the contents of the STC, and in respect of requests for participation in the proceedings - having regard to paragraphs 2 to 4.

2. If the clarifications of the contents of the STC are necessary for the due preparation and submission of a request for participation in the proceedings, the awarding entity shall be obliged to provide the clarifications in this respect immediately, no later, however, than 6 days before the expiry of the time limit for submission of the request or no later than 4 days before the expiry of the time limit for submission of requests in the case referred to in Article 144, paragraph 2, provided that the request for the clarification of the contents of the STC was received by the awarding entity no later than 14 days, and in the case referred to in Article 144, paragraph 2 - 7 days before the elapse of the time limit for submission of the request for participation in the proceedings.

3. Extension of the time limit for submitting requests for participation in the proceedings shall not affect the running of the period of filing the request for clarification of the STC content referred to in paragraph 2.

4. Making changes to the contents of the STC after the expiry of the time limit for submission of requests for participation in the proceedings, which changes lead to a change in the contents of the contract notice, shall be inadmissible.

5. In the event when the clarifications of or changes to the contents of the STC are significant for the preparation of the requests for participation in the proceedings or require that the contractors devote additional time to learn the change to the STC and prepare the requests, the awarding entity shall extend the time limit for their submission.

#### **Art. 144**

1. The deadline for submission of requests for participation in the proceedings shall not be shorter than 30 days from the date of transmitting the contract notice to the Publications Office of the European Union.

2. In the event of an extreme urgency for the award of a contract duly justified by the awarding entity, it may fix a shorter time limit for the submission of requests for participation in the proceedings, however, not shorter than 15 days from the day of dispatch of the contract notice to the Publications Office of the European Union.

**Art. 145** Before the elapse of the time limit for submission of requests for participation in the proceedings one may not learn their contents.

#### **Art. 146**

1. The awarding entity shall reject a request for participation in the proceedings if:

- 1) it was filed after the expiry of the time limit;
- 2) it was filed by the contractor:
  - a) subject to the exclusion from contract award proceedings;
  - b) failing to meet the conditions for participation in the contract award proceedings;
  - c) which failed to submit the declaration referred to in Article 125, paragraph 1 or the object-related means of proof confirming the lack of grounds for exclusion or the satisfaction of the conditions for the participation in the proceedings as well as other documents or declarations within the envisaged time limit;
- 3) it is not in conformity with the provisions of the Act;
- 4) it is invalid under separate provisions;
- 5) it has not been drawn up or transmitted in the manner compliant with the technical and organizational requirements for drawing up or transmitting requests for participation in the proceedings with the use of the electronic communication means specified by the awarding entity.

2. The request for participation of a contractor not invited to submit tenders in the proceedings shall be deemed to have been rejected.

**Art. 147** The awarding entity shall immediately notify the contractors which have filed requests for participation in the proceedings of the results of the assessment of the requests for participation in the proceedings, providing the actual and legal substantiation.

#### **Art. 148**

1. The awarding entity may limit the number of the contractors invited to submit tenders, whose requests for participation in the proceedings were admissible, insofar as this number is sufficient to ensure competition and is not less than 5.

2. In the case referred to in paragraph 1 the awarding entity shall indicate in the contract notice and in the STC the selection criteria which it intends to apply in order to limit the number of the contractors invited to submit their tenders and shall provide the minimum number of the contractors which it will invite to submit their tenders. The awarding entity may indicate the maximum number of the contractors which it will invite to submit their tenders.

#### **Art. 149**

1. The awarding entity shall at the same time invite to submit their tenders the contractors whose requests for participation in the proceedings have not been subject to rejection and in the event of determining the selection criteria, it shall invite the contractors which satisfy these criteria, in the number prescribed by the awarding entity.

2. If the number of the contractors which submitted admissible requests for participation in the proceedings is lower than the minimum number prescribed by the awarding entity pursuant to Article 148, the awarding entity may continue the proceedings, inviting these contractors to submit their tenders or cancel the proceedings under Article 258, paragraph 1.

#### **Art. 150**

1. The invitation to submit tenders shall contain at minimum:

- 1) the name and the address of the awarding entity, the phone number, the email address and the address of the website of the conducted proceedings;
- 2) the number of the contract notice published;
- 3) the address of the website on which the STC and the changes to or clarifications of their contents, if any, are available, as well as other contract documents directly related to the contract award proceedings;
- 4) the information on the object-related means of proof to be attached to the tender, if the awarding entity envisages the requirement to submit the selected or all object-related means of proof at the stage of submitting tenders;
- 5) the manner and time limit for submitting tenders and the language or languages in which they shall be prepared, as well as the time limit for opening tenders.

2. If part of the STC has not been made available by the awarding entity on the website of the conducted proceedings for the reasons referred to in Article 133, paragraphs 2 and 3, the awarding entity shall attach to the invitation to submit tenders the part of the STC not made available and the changes to and clarifications of this part of the STC, if any, as well as other contract documents directly related to the contract award proceedings.

#### **Art. 151**

1. The deadline for submission of tenders shall not be shorter than 30 days from the date of transmitting the invitation to submit tenders.

2. The awarding entity may set a shorter deadline for submission of tenders than the one fixed in paragraph 1, not shorter, however, than 10 days from the date of transmitting the invitation to submit tenders in the following cases:

- 1) publication of a prior information notice referred to in Article 89, provided that it contained all the information required for the contract notice, to the extent to which said information was available at the moment of publication of the prior information notice, and said information notice was transmitted to the Publications Office of the European Union for publication or published on the awarding entity's website at least 35 days and no more than 12 months preceding the day of the dispatch of the contract notice to the Publications Office of the European Union;
- 2) if there is an urgent need to award a contract and shortening of the tender submission deadline is justified.

3. In the cases laid down in Article 133, paragraphs 2 and 3, the time limits for submission of tenders referred to in paragraph 1 and paragraph 2, subparagraph 1 shall be extended by 5 days.

4. The awarding entity may fix the tender submission deadlines shorter by 5 days than the one specified in paragraph 1, if tenders are submitted entirely with the use of electronic communication means, in the manner laid down in Article 63, paragraph 1.

#### **Section 4. Negotiations with Publication.**

##### **Art. 152**

1. Negotiations with publication is a contract award procedure in which replies to a contract notice and requests for participation in the proceedings may be submitted by all concerned contractors, and the awarding entity shall invite the contractors admitted to participate in the proceedings to submit their initial tenders, shall conduct negotiations with them in order to improve the contents of the initial tenders and the tenders submitted at the stage of the negotiations, after completion of which it shall invite the contractors to submit their final tenders.

2. The awarding entity may award a contract under initial tenders without negotiations insofar as it indicates in the contract notice that it reserves such a possibility.

**Art. 153** The awarding entity may award a contract under negotiations with publication procedure, if at least one of the circumstances below has occurred:

- 1) solutions available on the market may not, without their adjustment, satisfy the awarding entity's needs;
- 2) construction works, supplies or services cover the design or innovative solutions;
- 3) a contract shall not be awarded without previous negotiations due to special circumstances related to its nature, degree of complexity or legal or financial conditions, or due to a risk related to construction works, supplies or services;
- 4) if the awarding entity cannot describe the subject of the contract in a sufficiently precise manner by reference to a specific standard, the European Technical Assessment referred to in Article 101, paragraph 1, subparagraph 2, letter c, the common technical specification referred to in Article 101, paragraph 1, subparagraph 2, letter d or the technical reference;
- 5) in the proceedings conducted previously under the open tendering procedure or restricted tendering procedure, all requests for participation in the proceedings have been rejected under Article 146, paragraph 1 or all tenders have been rejected under Article 226, paragraph 1, or the awarding entity has cancelled the proceedings pursuant to Article 255, subparagraph 3.

##### **Art. 154**

1. In the case referred to in Article 153, subparagraph 5, the awarding entity may the awarding entity may derogate from publishing the contract notice if it invites to negotiations exclusively all the contractors which are not subject to exclusion and meet the conditions for participation in the proceedings and in the proceedings under open tendering procedure or restricted tendering procedure conducted previously they submitted tenders which were not rejected under Article 226, paragraph 1, subparagraphs 1, 2, 6, 7, 9, 12 to 14 and 18.

2. The tenders of the contractors referred to in paragraph 1 shall be recognized as the initial tenders subject to negotiations.

3. The awarding entity shall at the same time provide the contractors referred to in paragraph 1 with an invitation to negotiate the initial tenders, indicating the place, time limit and the manner of holding the negotiations, as well as the address of the website on which the description of the needs and requirements has been made available.

##### **Art. 155**

1. In order that the contractors may determine the nature and scope of the contract as well as the formal and procedural requirements concerning the contract award proceedings, the awarding entity shall prepare the description of the needs and requirements.

2. The awarding entity shall ensure, on the website of the conducted proceedings, a free of charge, full, direct and unlimited access to the description of the needs and requirements from the day of:

- 1) publishing of the contract notice in the Official Journal of the European Union;
- 2) providing an invitation to negotiations in the circumstances referred to in Article 154, paragraph 1

- not shorter than until the day of awarding the contract.

3. The provisions of Article 133, paragraphs 2 and 3 shall accordingly apply.

#### **Art. 156**

1. The description of the needs and requirements shall contain at minimum:

- 1) the name and the address of the awarding entity, the phone number, the email address and the address of the website of the conducted proceedings;
- 2) the address of the website on which any changes to and clarifications of the contents of the description of the needs and requirements, as well as other contract documents directly related to the contract award proceedings will be made available;
- 3) the contract award procedure;
- 4) the description of the subject of the contract;
- 5) the description of the awarding entity's needs and the characteristics of the supplies, construction works or services, constituting the subject of the contract;
- 6) the information on the subject-related means of proof, insofar as the awarding entity requires their submission together with the initial tender;
- 7) the minimum requirements concerning the description of the subject of the contract or the contract execution not subject to negotiations, which must be met by all tenders;
- 8) the description of the tender evaluation criteria, specifying also the weighting of these criteria and the method of evaluation of the tenders;
- 9) the grounds for the exclusion, as referred to in Article 108, as well as the information on the conditions for participation in the contract award proceedings;
- 10) the information on the object-related means of proof, including on the stages of the contract award proceedings at which the contractors will be obliged to submit all or certain object-related means of proof;
- 11) the information on the means of electronic communication with the use of which the awarding entity will communicate with the contractors along with the information concerning the technical and organizational requirements for the preparation, dispatch and receipt of electronic correspondence;
- 12) the information on the manner of communication between the awarding entity and the contractors in a manner other than with the use of electronic communication means, including in the case of occurrence of one of the situations specified in Article 65, paragraph 1, Articles 66 and 69;
- 13) the indication of the persons entitled to communicate with the contractors;
- 14) the description of the manner of preparation of the requests for participation in the proceedings;

- 15) the manner and time limit for submitting requests for participation in the proceedings;
- 16) the manner of notifying about the results of the assessment of requests for participation in the proceedings;
- 17) the information on whether the awarding entity envisages the possibility of awarding a contract under initial tenders without holding the negotiations;
- 18) the information on the division of negotiations into stages in order to limit the number of tenders subject to negotiations by application of the tender evaluation criteria, if the awarding entity envisages such a division;
- 19) the instruction concerning the legal remedies available to the contractor.

2. The description of the needs and requirements shall also include the information referred to in Article 134, paragraph 2, subparagraphs 1 to 10 and 12 to 18.

3. The information contained in the description of the needs and requirements shall be formulated in a sufficiently precise manner so as to enable the contractors to determine the nature and scope of the contract and make a decision regarding submission of a request for participation in the proceedings.

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

#### **Art. 157**

1. The clarifications and changes to the contents of the description of the needs and requirements to the extent necessary to submit a request for participation in the proceedings shall be governed accordingly by the provisions of Article 135, paragraphs 1, 4 and 6, Article 136, Article 137, paragraphs 2 and 4 to 6 as well as Article 143, paragraphs 2 to 4.

2. If the awarding entity reserved the possibility of awarding a contract under initial tenders without negotiations, the provisions of Articles 135 to 137 as well as Article 143, paragraph 3 shall apply accordingly to the clarifications and changes to the contents of the description of the needs and requirements necessary to submit those tenders.

#### **Art. 158**

1. The deadline for submission of requests for participation in the proceedings shall not be shorter than 30 days from the date of transmitting the contract notice to the Publications Office of the European Union.

2. The provisions of Article 145, Article 146, paragraph 1, and Article 147 shall apply to the requests for participation in the proceedings.

3. The request for participation of a contractor not invited to submit initial tenders in the proceedings shall be deemed to have been rejected.

#### **Art. 159**

1. The awarding entity may limit the number of the contractors invited to submit initial tenders, whose requests were not subject to rejection, insofar as this number is sufficient to ensure competition and is not less than 3.

2. In the case referred to in paragraph 1 the awarding entity shall indicate in the contract notice and in the description of the needs and requirements the selection criteria which it intends to apply in order to limit the number of the contractors invited to submit their initial tenders subject to negotiations and shall provide the minimum number of the contractors which it will invite to submit their initial tenders. The awarding entity may indicate the maximum number of the contractors which it will invite to submit their initial tenders.

#### **Art. 160**

1. The awarding entity shall at the same time invite to submit their initial tenders the contractors whose requests for participation in the proceedings have not been subject to rejection and in the event of determining the selection criteria, it shall invite the contractors which satisfy these criteria, in the number prescribed by the awarding entity, in

accordance with Article 159.

2. If the number of the contractors which submitted admissible requests for participation in the proceedings is lower than the minimum number prescribed by the awarding entity pursuant to Article 159, the awarding entity may continue the proceedings, inviting these contractors to submit their tenders or cancel the proceedings under Article 258, paragraph 1.

#### **Art. 161**

1. The invitation to submit initial tenders shall contain at minimum:

- 1) the name and the address of the awarding entity, the phone number, the email address and the address of the website of the conducted proceedings;
- 2) the number of the contract notice published;
- 3) the address of the website on which the description of the needs and requirements and the changes to and clarifications of their contents, if any, are available, as well as other contract documents directly related to the contract award proceedings;
- 4) the information on the object-related means of proof to be attached to the initial tender, if the awarding entity envisages the requirement to submit the selected or all object-related means of proof at the stage of submitting the initial tenders;
- 5) the manner and time limit for submitting initial tenders and the language or languages in which they shall be prepared, as well as the time limit for opening the initial tenders.

2. If part of the description of the needs and requirements has not been made available by the awarding entity on the website of the conducted proceedings for the reasons referred to in Article 133, paragraphs 2 and 3, the awarding entity shall attach to the invitation to submit initial tenders the part of the description of the needs and requirements not made available and the changes to and clarifications of this part of the description of the needs and requirements, if any, as well as other contract documents directly related to the contract award proceedings.

#### **Art. 162**

1. The deadline for submission of initial tenders shall not be shorter than 30 days from the date of transmitting the invitation to submit the initial tenders.
2. The awarding entity may set a shorter deadline for submission of initial tenders than the one fixed in paragraph 1, not shorter, however, than 10 days from the date of transmitting the invitation to submit the initial tenders in the following cases:
  - 1) publication of a prior information notice referred to in Article 89, provided that it contained all the information required for the contract notice, to the extent to which said information was available at the moment of publication of the prior information notice, and said information notice was transmitted to the Publications Office of the European Union for publication or published on the awarding entity's website at least 35 days and no more than 12 months preceding the day of the dispatch of the contract notice to the Publications Office of the European Union;
  - 2) if there is an urgent need to award a contract and shortening of the tender submission deadline is justified.
3. In the situations laid down in Article 133, paragraphs 2 and 3, the time limits for submission of the initial tenders referred to in paragraph 1 and paragraph 2, subparagraph 1 shall be extended by 5 days.
4. The awarding entity may fix the tender submission deadlines shorter by 5 days than the one specified in paragraph 1, if tenders are submitted entirely using electronic communication means, in the manner laid down in Article 63, paragraph 1.

#### **Art. 163**

1. If the awarding entity envisaged in the contract notice a possibility of awarding a contract on the basis of initial tenders without negotiations and makes the selection of the most advantageous tender on their basis, the provisions

of Article 218, Article 219, Articles 221 to 225, Article 226, paragraph 1, subparagraphs 1 to 11, 15 to 17, Articles 227 to 251 and Article 253 shall accordingly apply to the examination and evaluation of the initial tenders, with the proviso that the awarding entity shall reject the initial tender which does not meet the minimum requirements concerning the description of the subject of the contract or the contract execution, as set out by the awarding entity.

2. The provisions of Articles 218, 219, 221, Article 222, paragraphs 1 to 3, 5 and 6, Article 223 and Article 226, paragraph 1, subparagraphs 1 to 7, 9, 15 and 16 shall apply accordingly to the examination and evaluation of the initial tenders and subsequent tenders subject to negotiations, with the proviso that the awarding entity shall reject the initial tender and the subsequent tenders subject to negotiations which fail to satisfy the minimum requirements concerning the description of the subject of the contract or its execution, as set out by the awarding entity.

3. The awarding entity shall at the same time invite to negotiations all contractors which have submitted admissible initial tenders, indicating the date and place of publication of the contract notice.

4. The awarding entity may divide the negotiations into stages for the purpose of limiting the number of the tenders, applying the tender evaluation criteria set forth in the contract notice and in the description of the needs and requirements, in so far as it envisaged using this possibility in the contract notice or in the description of the needs and requirements. The number of the tenders obtained at the last stage must ensure competition, insofar as there is a sufficient number of contractors.

**Art. 164** Negotiations of tenders shall not lead to changing the minimum requirements and the tender evaluation criteria as well as the weighting of these criteria, as set out by the awarding entity in the contract notice and in the description of the needs and requirements.

#### **Art. 165**

1. During negotiations of the tenders, the awarding entity shall ensure equal treatment of all contractors.

2. The awarding entity shall not provide information in a manner which could ensure advantage for some contractors over other ones.

3. The awarding entity shall inform all contractors at the same time about the results of the qualification of the tenders to the next stage, providing the actual and legal substantiation.

4. The awarding entity shall at the same time inform all contractors whose tenders have been qualified to subsequent stages about all the changes affecting the contents of the tenders submitted at the stage of negotiations or the tenders, in particular about the changes related to the description of the needs of the awarding entity and the characteristics of the supplies, construction works or services constituting the subject of the contract and the terms of a public procurement agreement, so that the contractors have the same sufficient amount of time for modification and re-submission of the corrected tenders submitted at the stage of negotiations or tenders.

#### **Art. 166**

1. The contents of the initial tender, tenders submitted during negotiations and the conducted negotiations are confidential.

2. No party shall disclose without consent of the other one any technical and commercial information relating to the negotiations. Consent shall be granted with regard to specific information and before its disclosure.

3. The awarding entity shall make available the tenders referred to in paragraph 1 along with appendices from the day of opening of final tenders, and if it awards a contract under initial tenders - from the day of the selection of the most advantageous tender.

#### **Art. 167**

1. In the event when the awarding entity intends to complete the negotiations, it shall notify of that at the same time all the contractors remaining in the proceedings and shall fix the deadline for submission of final tenders.

2. After completion of negotiations, the awarding entity shall prepare the STC which constitutes the specification in more detail and supplementation of the information contained in the description of the needs and requirements exclusively to the extent to which this was the subject of the negotiations.



3. The STC shall include the information referred to in Article 134, paragraph 1 and paragraph 2, subparagraphs 1 to 10 and 12 to 18.

4. The provisions of Article 135, Article 136, Article 137, paragraphs 1 to 4 and 6, and Article 143, paragraph 3 shall accordingly apply.

#### **Art. 168**

1. The awarding entity shall invite to submit final tenders all the contractors remaining in the proceedings.

2. The invitation to submit final tenders shall contain at minimum:

1) the name and the address of the awarding entity, the phone number, the email address and the address of the website of the conducted proceedings;

2) the address of the website on which the STC and the changes to or clarifications of their contents, if any, are available, as well as other contract documents directly related to the contract award proceedings;

3) the information on the object-related means of proof to be attached to the tender, if the awarding entity envisages the requirement to submit the selected or all object-related means of proof at the stage of submitting final tenders;

4) the manner and time limit for submitting final tenders and the language or languages in which they shall be prepared, as well as the time limit for opening the final tenders.

3. If part of the STC has not been made available by the awarding entity on the website of the conducted proceedings for the reasons referred to in Article 133, paragraphs 2 and 3, the awarding entity shall attach to the invitation to submit final tenders the part of the STC not made available and other contract documents directly related to the contract award proceedings.

### **Section 5. Competitive dialogue.**

**Art. 169** Competitive dialogue shall be a contract award procedure where in response to a contract notice, all contractors concerned may submit requests for participation in the proceedings. The awarding entity shall conduct dialogue with the contractors invited to participate in the dialogue to the extent of the solutions proposed by them, after the completion of which it shall invite those contractors to submit their tenders.

**Art. 170** The awarding entity may award a contract under the competitive dialogue procedure if at least one of the circumstances referred to in Article 153 occurs. The provision of Article 154 shall apply accordingly.

#### **Art. 171**

1. A contract shall be awarded under the qualitative criteria referred to in Article 242, paragraph 2 and the price or cost.

2. The awarding entity shall give weighting to particular tender evaluation criteria, not later than at the time of invitation to submit tenders.

**Art. 172** In order for the contractors to determine the needs of the awarding entity concerning the nature and scope of the contract as well as the formal and procedural requirements of the contract award proceedings conducted, the awarding entity shall prepare the description of the needs and requirements.

**Art. 173** The awarding entity shall ensure, on the website of the conducted proceedings, free-of-charge, full, direct and unlimited access to the description of the needs and requirements from the date of publishing the contract notice in the Official Journal of the European Union not shorter than until the date of awarding the contract. The provisions of Article 133, paragraphs 2 and 3 shall apply accordingly.

#### **Art. 174**

1. The description of the needs and requirements shall contain at least the information referred to in Article 156, paragraph 1, subparagraphs 1 to 4, 9 to 16 and 19 and may also contain the information referred to in Article 134, paragraph 2, subparagraphs 1 to 10 and 12 to 18.

2. The description of the needs and requirements shall also contain:

1) the description of the awarding entity's needs and requirements concerning the supplies, construction works or services, constituting the subject of the contract;

2) the information on the amount of prizes for the contractors which, during the dialogue, proposed the solutions forming grounds for submitting tenders, if the awarding entity envisages such prizes;

3) the indicative schedule of the contract award proceedings;

4) the description of the criteria by which the awarding entity will be guided during the selection of the tender, together with giving the weighting of these criteria and the manner of the evaluation of the tenders, and if fixing the weighting is impossible at the stage of the initiation of the proceedings for objective reasons, the awarding entity shall indicate the tender evaluation criteria in the sequence from the most to the least significant;

5) the number of contractors which will be invited to participate in the dialogue, if the awarding entity envisages limitation of the number of the contractors;

6) the information on the division of the dialogue into stages, if the awarding entity envisages such a division for the purpose of limitation of the number of the solutions which will be the subject of the dialogue at subsequent stages.

3. The information contained in the description of the needs and requirements shall be formulated in a sufficiently precise manner so as to enable the contractors to determine the nature and scope of the contract and make a decision regarding submission of a request for participation in the proceedings.

**Art. 175** The clarifications and changes to the contents of the description of the needs and requirements to the extent necessary to submit a request for participation in the proceedings shall be governed accordingly by the provisions of Article 135, paragraphs 1, 4 and 5, Article 136, Article 137, paragraphs 2 to 4 and 6 as well as Article 143, paragraphs 2 to 4.

#### **Art. 176**

1. The deadline for submission of requests for participation in the proceedings shall not be shorter than 30 days from the date of transmitting the contract notice to the Publications Office of the European Union.

2. The provisions of Article 145, Article 146, paragraph 1, and Article 147 shall apply to the requests for participation in the proceedings.

3. The request for participation of a contractor not invited to the dialogue in the proceedings shall be deemed to have been rejected.

#### **Art. 177**

1. The awarding entity may limit the number of the contractors invited to the dialogue, whose requests were not subject to rejection, insofar as this number is sufficient to ensure competition and is not less than 3.

2. In the case referred to in paragraph 1 the awarding entity shall indicate in the contract notice and in the description of the needs and requirements the selection criteria which it intends to apply in order to limit the number of the contractors invited to the dialogue and shall provide the minimum number of the contractors which it will invite to this dialogue. The awarding entity may indicate the maximum number of the contractors which it will invite to the dialogue.

#### **Art. 178**

1. The awarding entity shall at the same time invite to the dialogue the contractors whose requests for participation in the proceedings have not been subject to rejection and in the event of determining the selection criteria, it shall invite

the contractors which satisfy these criteria, in the number prescribed by the awarding entity, in accordance with Article 177.

2. Where the number of contractors who comply with the conditions for participation in the proceedings is less than the one specified in the contract notice, the awarding entity shall invite to the dialogue the contractors selected based on the selection criteria.

3. If the number of the contractors which submitted admissible requests for participation in the proceedings is lower than the minimum number prescribed by the awarding entity pursuant to Article 177, the awarding entity may continue the proceedings, inviting these contractors to participate in the dialogue or cancel the proceedings under Article 258, paragraph 1.

#### **Art. 179**

1. The invitation to participate in the dialogue shall at minimum contain:

- 1) the name and the address of the awarding entity, the phone number, the email address and the address of the website of the conducted proceedings;
- 2) the number of the contract notice published;
- 3) the address of the website on which the description of the needs and requirements and the changes to and clarifications thereof, if any, are available, as well as other contract documents directly related to the contract award proceedings necessary for the contractors to prepare for the participation in the dialogue;
- 4) the information on the object-related means of proof, if the awarding entity envisages the requirement to submit the selected or all object-related means of proof at the stage of the dialogue;
- 5) the weighting given to the tender evaluation criteria or, where applicable, the order of those criteria from the most to the least significant, if this has not been indicated in the contract notice or in the description of the needs and requirements;
- 6) the information on the place and date of commencement of the dialogue;
- 7) the information on the language or languages in which the dialogue will be conducted.

2. If part of the description of the needs and requirements has not been made available by the awarding entity on the website of the conducted proceedings for the reasons referred to in Article 133, paragraphs 2 and 3, the awarding entity shall attach to the invitation to the dialogue the part of the description of the needs and requirements not made available and the changes to and clarifications of this part of the description of the needs and requirements, if any, as well as other contract documents directly related to the contract award proceedings.

**Art. 180** The awarding entity shall, during the dialogue, discuss all conditions of the contract with the invited contractors.

#### **Art. 181**

1. During the dialogue, the awarding entity shall ensure equal treatment of all contractors.

2. The awarding entity shall not provide information in a manner which could ensure advantage for some contractors over other ones.

3. The awarding entity shall inform all contractors at the same time about the results of the qualification of the proposals to the next stage, providing the actual and legal substantiation.

4. The awarding entity shall at the same time inform all contractors whose tenders have been qualified to subsequent stages of the dialogue under Article 183 about any and all the changes affecting the contents of the subsequent proposals, in particular about the changes related to the description of the needs of the awarding entity and the characteristics of the supplies, construction works or services constituting the subject of the contract and the terms of a public procurement agreement so that the particular contractors have the same sufficient amount of time for modification and re-submission of the subsequent corrected proposals.

**Art. 182**

1. The contents of the contractors' proposals and the conducted dialogue are confidential.
2. No party shall disclose without consent of the other one any technical and commercial information related to the dialogue. Consent shall be granted with regard to specific information and before its disclosure.

**Art. 183** The awarding entity may divide the dialogue into stages for the purpose of limiting the number of solutions, applying the tender evaluation criteria set forth in the contract notice and in the description of the needs and requirements, in so far as it envisaged using this possibility in the contract notice or in the description of the needs and requirements. The number of the solutions obtained at the last stage must ensure competition, insofar as there is a sufficient number of contractors.

**Art. 184**

1. The awarding entity shall conduct the dialogue until it is able to determine the solution or solutions that most suit its needs.
2. The awarding entity shall at the same time notify all remaining contractors participating in the dialogue of its completion.

**Art. 185**

1. After completion of the dialogue, the awarding entity shall prepare the STC which constitutes the specification in more detail and supplementation of the information contained in the description of the needs and requirements based on the solutions presented during the dialogue.
2. The STC shall contain the information referred to in Article 134, paragraph 1 and paragraph 2, subparagraphs 1 to 10 and 12 to 18.
3. The provisions of Article 135, Article 136, Article 137, paragraphs 1 to 4 and 6, and Article 143, paragraph 3 shall accordingly apply.

**Art. 186**

1. The awarding entity shall invite to submit tenders the contractors with which it has conducted dialogue and which have not been eliminated from the proceedings at particular stages.
2. The invitation to submit tenders shall contain at minimum:
  - 1) the name and the address of the awarding entity, the phone number, the email address and the address of the website of the conducted proceedings;
  - 2) the address of the website on which the STC and the changes to or clarifications of their contents, if any, are available, as well as other contract documents directly related to the contract award proceedings;
  - 3) the information on the object-related means of proof to be attached to the tender, if the awarding entity envisages the requirement to submit the selected or all object-related means of proof at the stage of submitting the tenders;
  - 4) the weighting of particular tender evaluation criteria if such weighting has not been given at an earlier stage of the contract award proceedings;
  - 5) the manner and time limit for submitting tenders and the language or languages in which they shall be prepared, as well as the time limit for opening the tenders.
3. If part of the STC has not been made available by the awarding entity on the website of the conducted proceedings for the reasons referred to in Article 133, paragraphs 2 and 3, the awarding entity shall attach to the invitation to submit tenders the part of the STC not made available and other contract documents directly related to the contract award proceedings.

**Art. 187** In the course of examining tenders, the awarding entity may require contractors to make the contents of their tenders more precise and refine them and to provide additional information, however, it shall be unacceptable to make significant changes in the contents of the tenders or changes in the requirements contained in the description of the needs and requirements or the STC.

**Art. 188** The awarding entity may, before selecting the most advantageous tender, in order to confirm the financial liabilities or other terms and conditions contained in the tender, negotiate with the contractor whose tender has been ranked highest, the final terms of the agreement, unless this results in changes in essential elements of the tender or changes in the needs and requirements laid down in the contract notice or in the description of the needs and requirements or leads to distortion of competition or unequal treatment of contractors.

## **Section 6. Innovation Partnership.**

### **Art. 189**

1. The awarding entity may award a contract under the innovation partnership procedure in the event of demand for an innovative product, service or construction works, unless they are available on the market.

2. Innovation partnership is a contract award procedure in which in response to a contract notice all contractors concerned may submit requests for participation in the proceedings. The awarding entity shall invite the contractors admitted to participate in the proceedings to submit their initial tenders, holds negotiations with them in order to refine the contents of their initial tenders and tenders submitted at the stage of the negotiations, after completion of which it shall invite them to submit tenders for research and development works, the purpose of which is the development of an innovative product, service or construction works, and afterwards it shall purchase the supplies, services or constructions works being the result of the research and development works based on which the innovative product, service or construction works have been developed, provided that they comply with the performance levels and maximum costs agreed upon between the awarding entity and the contractor or contractors.

### **Art. 190**

1. The awarding entity may make a decision on establishing innovation partnership with one or several partners performing separate research and development works, in particular in order to prevent from the limitation or distortion of competition.

2. Whenever in this Division there is a reference to a partner, this shall mean the contractor which has concluded a public procurement agreement, the subject of which is the establishment of innovation partnership.

### **Art. 191**

1. The awarding entity shall prepare the description of the needs and requirements in order that the partners determine the nature and scope of the required solution concerning the development of an innovative product, service or construction works, as well as the formal and procedural requirements related to the contract award proceedings.

2. The awarding entity shall ensure, on the website of the conducted proceedings, free-of-charge, full, direct and unlimited access to the description of the needs and requirements from the date of publishing the contract notice in the Official Journal of the European Union not shorter than until the date of awarding the contract. The provisions of Article 133, paragraphs 2 and 3 shall apply accordingly.

### **Art. 192**

1. The description of the needs and requirements shall contain at least the information referred to in Article 156, paragraph 1, subparagraphs 1 to 6, 9 to 16 and 19 and may also contain the information referred to in Article 134, paragraph 2, subparagraphs 1 to 9 and 11 to 17.

2. The description of the needs and requirements shall also contain:

- 1) determination of the demand for an innovative product, service or construction works, which demand cannot be satisfied by the purchase of the products, services or construction works already available on the market;
- 2) the information on which elements of the description of the needs and requirements constitute minimum requirements not subject to negotiations, which must be met by all tenders;
- 3) the minimum requirements to be met by variant tenders if the awarding entity envisages a possibility of submitting variant tenders;
- 4) the information on establishing innovation partnership with only one partner or the possibility of its establishment with numerous partners;
- 5) the principles governing the selection of a partner or partners;
- 6) the criteria by which the awarding entity will be guided while selecting the tender, together with providing the weighting of these criteria, and if fixing the weighting is impossible at the stage of the initiation of the proceedings for objective reasons, the awarding entity shall indicate the tender evaluation criteria in the sequence from the most to the least significant;
- 7) the information on the amount of prizes for the contractors which, during the negotiations, proposed the innovative solutions as regards the subject of the contract, if the awarding entity envisages such prizes;
- 8) the information on payment of remuneration in parts.

3. The information contained in the description of the needs and requirements shall be formulated in a sufficiently precise manner so as to enable the contractors to determine the nature and scope of the required solution and make a decision regarding submission of a request for participation in the proceedings.

4. The clarifications to the contents of the description of the needs and requirements to the extent necessary to submit a request for participation in the proceedings shall be governed accordingly by the provisions of Article 135, paragraphs 1 and 5, Article 136, Article 137, paragraphs 2 to 4 and 6.

5. In substantiated cases the awarding entity may, before the expiry of the deadline for submission of requests for participation in the proceedings, change the contents of the description of the needs and requirements. The provisions of Article 143, paragraphs 3 and 4 shall apply accordingly.

#### **Art. 193**

1. The awarding entity shall, while determining the fulfillment of the conditions for participation in the proceedings by the contractor, take account in particular of the abilities of the contractors within the scope of research and development as well as development and implementation of innovative products, services or construction works.

2. The awarding entity may limit the number of the contractors invited to submit initial tenders, whose requests for participation in the proceedings were admissible. The provisions of Articles 159 and 160 shall apply.

#### **Art. 194**

1. The deadline for submission of requests for participation in the proceedings shall not be shorter than 30 days from the date of transmitting the contract notice to the Publications Office of the European Union.

2. Requests for participation in the proceedings shall be governed by the provisions of Article 145, Article 146, paragraph 1 and Article 147.

#### **Art. 195**

1. The awarding entity shall at the same time invite to submit their initial tenders the contractors whose requests for participation in the proceedings have not been subject to rejection and in the event of determining the selection criteria, it shall invite the contractors which satisfy these criteria, in the number prescribed by the awarding entity, in accordance with Article 159. The provisions of Article 258 shall apply.

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

3. The awarding entity shall also indicate, in an invitation to submit initial tenders, the tender evaluation criteria together with providing the weighting of these criteria, and if fixing the weighting is impossible at this stage of the proceedings for objective reasons, the awarding entity shall indicate the tender evaluation criteria in the sequence from the most to the least significant.

4. If part of the description of the needs and requirements has not been made available by the awarding entity on the website of the conducted proceedings for the reasons referred to in Article 133, paragraphs 2 and 3, the awarding entity shall attach to the invitation to submit initial tenders the part of the description of the needs and requirements not made available and the changes to and clarifications of this part of the description of the needs and requirements, if any, as well as other contract documents directly related to the contract award proceedings.

**Art. 196** The deadline for submission of initial tenders shall not be shorter than 30 days from the date of transmitting the invitation to submit the initial tenders to contractors.

#### **Art. 197**

1. The provisions of Articles 218, 219, 221, Article 222, paragraphs 1 to 3, 5 and 6, Article 223 and Article 226, paragraph 1, subparagraphs 1 to 7, 9, 15 and 16 shall apply accordingly to the examination and evaluation of the initial tenders and subsequent tenders submitted at the stage of negotiations, with the proviso that the awarding entity shall reject the initial tender and the subsequent tenders submitted at the stage of negotiations which fail to satisfy the minimum requirements set out by the awarding entity.

2. The awarding entity shall at the same time invite to negotiations all contractors which have submitted admissible initial tenders, indicating the number of the published contract notice as well as the date and place of conducting the negotiations.

**Art. 198** The awarding entity may divide negotiations into stages in order to limit the numbers of tenders. The provision of Article 163, paragraph 4 shall apply.

**Art. 199** Negotiations of tenders shall not lead to changing the minimum requirements and the tender evaluation criteria set out by the awarding entity in the contract notice and in the description of the needs and requirements.

**Art. 200** The provisions of Articles 165 and 166 shall apply to negotiations of the initial tender and the tenders submitted during the negotiations.

**Art. 201** In the event when the awarding entity intends to conclude a stage of the negotiations, it shall inform about that all the remaining contractors at the same time.

#### **Art. 202**

1. After completion of negotiations, the awarding entity shall prepare the description of the needs and requirements which constitutes the specification in more detail and supplementation of the information contained in the description of the needs and requirements made available from the day of publishing the contract notice in the Official Journal of the European Union exclusively to the extent to which this was the subject of the negotiations.

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

3. The description of the needs and requirements referred to in paragraph 1 shall also contain:

1) a description of the criteria which the awarding entity will apply in selecting a tender, specifying also the weighting of these criteria;

2) the information on the object-related means of proof to be attached to the tender, if the awarding entity envisages the requirement to submit the selected or all object-related means of proof at the stage of submitting tenders;

3) the information on the stages of innovation partnership, goals to be achieved after each of them and indirect goals to be attained by partners;

- 4) the information on a possibility of ending the innovation partnership or reducing the number of partners after each stage as well as the terms of taking advantage of these possibilities if the awarding entity envisages such a possibility;
- 5) the objective criteria for selecting the most advantageous development of an innovative product, service or construction works, which development is a result of the research and development works created as part of the innovation partnership, provided that the awarding entity envisages the establishment of innovation partnership with numerous partners;
- 6) the rules under which the supplies, services or construction works which are a result of the research and development works created as part of the innovation partnership will be purchased, provided that the awarding entity envisages the purchase of supplies, services or construction works from numerous partners;
- 7) the solutions applicable to intellectual property rights.

#### **Art. 203**

1. The awarding entity shall invite to submit tenders the contractors with which it has conducted negotiations and which have not been eliminated from the proceedings at particular stages.
2. The invitation to submit tenders shall contain at minimum:
  - 1) the name and the address of the awarding entity, the phone number, the email address and the address of the website of the conducted proceedings;
  - 2) the address of the website on which the description of the needs and requirements referred to in Article 202 and the changes and clarifications to the description, if any, are available, as well as other contract documents directly related to the contract award proceedings;
  - 3) the manner and time limit for submitting tenders and the language or languages in which they shall be prepared, as well as the time limit for opening tenders.
3. If part of the description of the needs and requirements referred to in Article 202 has not been made available by the awarding entity on the website of the conducted proceedings for the reasons referred to in Article 133, paragraphs 2 and 3, the awarding entity shall attach to the invitation to submit tenders the part of the description of the needs and requirements not made available and other contract documents directly related to the contract award proceedings.
4. The provisions of Article 135, Article 136, Article 137, paragraphs 1 to 4 and 6, and Article 143, paragraph 3 shall apply to the clarifications and changes to the contents of the description of the needs and requirements referred to in Article 202.

#### **Art. 204**

1. The awarding entity shall select the most advantageous tender which represents the most beneficial price or cost balance and the qualitative criteria regarding the subject of the contract.
2. The awarding entity may select several tenders submitted by several contractors.

#### **Art. 205**

1. The awarding entity shall conclude a public procurement agreement, the subject of which is establishment of innovation partnership with one partner, and in the case referred to in Article 190, paragraph 1, shall enter into agreements with several partners.
2. The public procurement agreement, the subject of which is that of establishment of the innovation partnership, shall contain at least the provisions concerning the cases referred to in Article 192, paragraph 2, subparagraphs 1, 2, 4 and 8, and Article 202, paragraph 3, subparagraphs 3 to 6.

#### **Art. 206**



1. Innovation partnership shall consist of the stages corresponding to the sequence of activities in the research and development process, in particular it can encompass the development of prototypes and creation of products, provision of services or completion of construction works.

2. The awarding entity shall ensure that the structure of the innovation partnership, in particular the period of its validity and value of particular stages, reflect the degree of innovation of the proposed solution and the sequence of activities necessary to develop an innovative product, service or construction works. The estimated value of the innovative products, services or construction works shall be pro rata to the value of the investment necessary for their development.

3. The awarding entity shall, as part of the innovation partnership, set the goals to be achieved after each stage of the partnership or indirect goals, as well as shall envisage remuneration in the parts taking account of the partnership stages or the indirect goals.

4. Based on the goals referred to in paragraph 3, the awarding entity may, after each stage, end the innovation partnership or, in the case of the innovation partnership with several partners, reduce their number by termination of particular agreements by notice, provided that the awarding entity envisaged, in the description of the needs and requirements referred to in Article 202, such a possibility and laid down the conditions for taking advantage thereof.

5. In the event of innovation partnership with several partners, the awarding entity shall not disclose to other partners the proposed solutions or other confidential information provided as part of the innovation partnership by one of the partners without its consent. The provisions of Article 165, paragraph 2 and Article 166, paragraph 2 shall apply accordingly.

**Art. 207** In the event of establishment of innovation partnership with numerous partners, the awarding entity shall select the most advantageous solution or solutions applying the objective criteria referred to in Article 202, paragraph 3, subparagraph 5 as well as shall purchase supplies, services or construction works from one or several partners applying the rules for the purchase referred to in Article 202, paragraph 3, subparagraph 6.

## **Section 7. Negotiations without Publication.**

### **Art. 208**

1. Negotiations without publication shall be a contract award procedure where the awarding entity negotiates the terms of a public procurement agreement with contractors of its choice and subsequently invites them to submit their tenders.

2. The awarding entity may, after initiation of the proceedings, transmit to the Publications Office of the European Union, for publication, a notice on the intention to conclude the agreement.

### **Art. 209**

1. The awarding entity may award a contract under a procedure of negotiations without publication if at least one of the following circumstances has occurred:

**1)** during the prior proceedings under the open or restricted tendering procedure no request for participation in the proceedings was submitted or all requests for participation in the proceedings were rejected under Article 146, paragraph 1, subparagraph 2 or no tenders were submitted or all the tenders were rejected pursuant to Article 226, paragraph 1, subparagraph 2 or due to their non-compliance with the description of the subject of the contract pursuant to Article 226, paragraph 1, subparagraph 5, while the original terms of the contract have not been substantially altered;

**2)** the contest referred to in Article 326, subparagraph 2 has been conducted, in which the prize consisted in the invitation of at least two authors of the selected contest projects to participate in the negotiations without publication;

**3)** the subject of the contract for supplies is that of things manufactured exclusively for purposes of research, experiments, science or development, which do not serve the purpose of carrying out mass production by the awarding entity, said production aiming to attain the market profitability, neither serve the purpose of covering

research or development costs;

4) due to a previously unforeseeable extreme urgency for the award of a contract not attributable to the awarding entity, the time limits provided for open tendering, restricted tendering or negotiations with publication cannot be observed.

2. In the case referred to in paragraph 1, subparagraph 1, the awarding entity shall transmit to the European Commission the record of the proceedings if the European Commission made a request for transmission thereof.

#### **Art. 210**

1. The awarding entity shall initiate proceedings under the negotiations without publication procedure dispatching the invitation to negotiations to contractors of its choice.

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

1) the name and the address of the awarding entity, the phone number, the email address and the address of the website of the conducted proceedings;

2) the description of the contract procedure and the legal grounds therefor;

3) the description of the subject of the contract, providing the information concerning the possibility of submitting tenders for lots;

4) the information concerning the possibility of submitting a variant tender;

5) the contract completion date;

6) the conditions for participation in the proceedings;

7) the tender evaluation criteria and their significance;

8) the place and date as well as the manner of conducting negotiations with the awarding entity.

3. The awarding entity shall invite to negotiate the contractors in a number ensuring competition, and which shall not be less than 3, unless due to the very professional nature of the contract the number of contractors capable of performing it is less, however not less than 2.

4. In the case referred to in Article 209, paragraph 1, subparagraph 1, the awarding entity shall invite to negotiations at least those contractors which have submitted tenders under an open or restricted tendering procedure. The provision of paragraph 3 shall apply.

#### **Art. 211**

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

2. The provisions of Article 165, paragraphs 1 and 2 shall apply accordingly to the negotiations.

#### **Art. 212**

1. The awarding entity shall notify simultaneously all the other contractors of completion of the negotiations, and afterwards it shall invite the contractors with which it conducted negotiations and which remained in the proceedings to submit their tenders.

2. The invitation to submit tenders shall at least include the information referred to in Article 168, paragraph 2.

3. Together with the invitation to submit tenders the awarding entity shall provide the STC containing at least the information referred to in Article 134, paragraph 1.

4. In the case referred to in Article 209, paragraph 1, subparagraph 4, the awarding entity may derogate from the

demand that the contractor make the declaration referred to in Article 125, paragraph 1.

5. The provisions of Article 135, paragraph 1, Article 136, Article 137, paragraphs 1 to 3 and 5 shall accordingly apply to the clarification and changes to the contents of the STC.

## **Section 8. Direct-award Contract.**

### **Art. 213**

1. The direct-award contract shall be a contract award procedure where the awarding entity awards a contract after negotiations with only one contractor.

2. The awarding entity may, after initiation of the proceedings, transmit to the Publications Office of the European Union a notice of the intention to conclude the agreement for publication, subject to Article 216, paragraph 1.

### **Art. 214**

1. The awarding entity may award a contract by a direct-award contract procedure if at least one of the following circumstances has occurred:

- 1) supplies, services or construction works can be provided by only one contractor due to:
  - a) technical reasons of an objective nature;
  - b) reasons connected with the protection of exclusive rights resulting from separate provisions - when no reasonable alternative or substitute solution exists and the absence of competition is not the result of an intentional narrowing down of the parameters of the contract;
- 2) supplies, services or construction works can be provided by only one contractor in the event of awarding a contract in the field of creative or artistic activity;
- 3) the subject of the contract for supplies is that of things manufactured exclusively for purposes of research, experiments, science or development, which do not serve the purpose of carrying out mass production by the awarding entity, said production aiming to attain the market profitability, neither serve the purpose of covering research or development costs, and which things may be manufactured exclusively by one contractor;
- 4) the contest referred to in Article 326, subparagraph 2 has been conducted and the prize consisted in the invitation for the author of the selected contest project to take part in negotiations under a direct-award contract procedure;
- 5) due to extraordinary circumstances not attributable to the awarding entity and which it could not have foreseen, prompt performance of the contract is required and the time limits provided for other contract award procedures cannot be observed;
- 6) during the prior proceedings under the open or restricted tendering procedure no request for participation in the proceedings was submitted or all requests for participation in the proceedings were rejected under Article 146, paragraph 1, subparagraph 2 or no tenders were submitted or all the tenders were rejected pursuant to Article 226, paragraph 1, subparagraph 2 or due to their non-compliance with the description of the subject of the contract pursuant to Article 226, paragraph 1, subparagraph 5, while the original terms of the contract have not been substantially altered;
- 7) in the event of awarding, within 3 years from the day of awarding a basic contract, to the existing contractor of services or construction works, a contract consisting in the repeating of similar services or construction works, provided that such a contract was envisaged in the contract notice for the basic contract and complies with its subject, and the total value of this contract has been included while calculating its value;
- 8) in the event of awarding to the existing contractor the basic contract, a contract for additional supplies intended either as a partial replacement of the supplied products or installations or as the extension of current supplies or existing installations where a change of the contractor would oblige the awarding entity to acquire materials having different technical characteristics, which would result in technical incompatibility or disproportionately high technical difficulties in operation and maintenance of those products or installations;

**9)** it is possible to award a supply contract on specially advantageous terms in connection with the liquidation of activity of another subject, enforcement or bankruptcy proceedings;

**10)** supply contracts are made on a commodity market, on which a multilateral trading structure naturally guarantees market prices, including on a commodity exchange within the meaning of the Act of 26 October 2000 on Commodity Exchanges (Dziennik Ustaw 2019, item 312), a commodity exchange of other European Economic Area member states, or when the awarding entity purchases certificates of origin, certificates of origin of agricultural biogas, certificates of origin from cogeneration, and certificates of energy efficiency on a commodity exchange within the meaning of the Act of 26 October 2000 on Commodity Exchanges or on a commodity exchange of other European Economic Area member states;

**11)** the contract is awarded by the awarding entity referred to in Article 4, and Article 5, paragraph 1, subparagraph 1 to a legal person if all of the following conditions are satisfied:

- a)** the awarding entity exercises control over this legal person, corresponding to the control exercised over the entity's own units, consisting in the controlling influence on the strategic goals and significant decisions concerning the management of affairs of this legal person; this condition is also satisfied when such control is exercised by another legal person controlled by the awarding entity in the same manner;
- b)** over 90 per cent of the activity of the controlled legal person relates to performance of the tasks entrusted to it by the awarding entity exercising control or by another legal person over which this awarding entity exercises the control referred to in letter a;
- c)** there is no direct private capital share in the controlled legal person;

**12)** the contract is awarded by the awarding entity referred to in Article 4 and Article 5, paragraph 1, subparagraph 1 to another awarding entity referred to in Article 4 and Article 5, paragraph 1, subparagraph 1, which exercises control over the awarding entity awarding the contract or to another legal person controlled by the same awarding entity, provided that all the following conditions are satisfied:

- a)** the awarding entity to which the contract is awarded exercises control over the awarding entity awarding the contract corresponding to the control exercised over the entity's own units, consisting in the controlling influence on the strategic goals and significant decisions concerning the management of affairs of the controlled awarding entity; this condition is also satisfied when such control is exercised by another legal person controlled by the awarding entity to which the contract is awarded;
- b)** over 90 per cent of the activity of the controlled awarding entity relates to performance of the tasks entrusted to it by the awarding entity exercising the control referred to in letter a or by another legal person over which this awarding entity exercises the control referred to in letter a;
- c)** there is no direct private capital share in the controlled awarding entity and in the awarding entity exercising control;

**13)** the contract is awarded by the awarding entity referred to in Article 4 and Article 5, paragraph 1, subparagraph 1 to a legal person if all of the following conditions are jointly satisfied:

- a)** the awarding entity, together with other awarding entities referred to in Article 4 and Article 5, paragraph 1, subparagraph 1, exercises over a given legal person the control corresponding to the control exercised by them over their own units, whereas joint exercising of the control takes place where all of the following conditions are jointly fulfilled:
  - decision-making bodies of the controlled legal person compose of representatives of all participating awarding entities, with the proviso that an individual representative shall not represent more than one awarding entity,
  - the participating awarding entities may jointly exert controlling impact on the strategic goals and significant decision of the controlled legal person,
  - the controlled legal person does not pursue any interests which are contrary to those of the awarding entities exercising control over such a person,
- b)** over 90 per cent of the activity of the controlled legal person relates to performance of the tasks entrusted to it by the awarding entities exercising the control over this person or by other legal persons controlled by those awarding entities;
- c)** there is no direct private capital share in the controlled legal person;

**14)** an agreement is to be concluded exclusively between at least two awarding entities referred to in Article 4 and Article 5, paragraph 1, subparagraph 1 if all of the following conditions are satisfied:

- a)** the agreements establishes or implements cooperation between the participating awarding entities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
- b)** the implementation of that cooperation is governed solely by considerations relating to the public interest;
- c)** the cooperating awarding entities perform on the open market less than 10 per cent of the activities concerned by the cooperation.

2. The description of the basic contract referred to in paragraph 1, subparagraph 7 the scope of these services or construction works, if any, shall be specified, as well as the conditions on which they will be awarded.

3. The duration of a public procurement agreement concluded as a result of awarding a contract referred to in paragraph 1, subparagraph 8 shall not exceed 3 years.

4. The existence of the circumstances referred to in paragraph 1, subparagraphs 11 to 14 shall be required over the entire period for which the public procurement agreement has been concluded. The awarding entity shall publish in the official gazette *Biuletyn Zamówień Publicznych* [the Public Procurement Bulletin] the announcement on fulfillment of the prerequisites referred to in paragraph 1, subparagraphs 11 to 14, within 30 days after the elapse of each 12 months from the day of conclusion of the public procurement agreement on the terms laid down in Section III, Chapter 2.

5. The average revenue earned by a legal person or the awarding entity with regard to services, supplies or construction works for the 3 years preceding the award of a contract shall be included in the calculation of the percentage of the activity referred to in paragraph 1, subparagraph 11, letter b, subparagraph 12, letter b, subparagraph 13, letter b and subparagraph 14, letter c.

6. In the event when, because of the date on which a legal person or the awarding entity was created or commenced its activities or reorganization of their activities, the data concerning the average revenue for the 3 years preceding the award of the contract are unavailable or inadequate, the percentage of the activity, as referred to in paragraph 1, subparagraph 11, letter b, subparagraph 12, letter b, subparagraph 13, letter b and subparagraph 14, letter c, shall be established by means of credible business projections.

7. The requirement of the activity percentage referred to in paragraph 1, subparagraph 11, letter b, subparagraph 12, letter b, subparagraph 13, letter b and subparagraph 14, letter c is not satisfied if the reorganization of the activity referred to in paragraph 6 was carried out for the sake of appearance.

8. The prohibition of the private capital share referred to in paragraph 1, subparagraph 11, letter c, subparagraph 12, letter c and subparagraph 13, letter c shall not apply to:

1) legal persons with a shareholding of a private partner selected under the Act of 19 December 2008 on Public and Private Partnership (*Dziennik Ustaw* 2019, items 1445 and 1572) or

2) [*this subparagraph is valid until 28 February 2021*] the share of employees representing in total up to 15 per cent of the company's initial capital and holding in aggregate up to 15 per cent of votes at the meeting of shareholders or at a general meeting.

2) [*this subparagraph comes into force on 1 March 2021*] the share of employees representing in total up to 15 per cent of the company's initial capital, and in the case of a simple joint-stock company - up to 15 per cent of shares of this company, and holding in aggregate up to 15 per cent of votes at the meeting of shareholders or at a general meeting.

9. The contractor to which a contract has been awarded under paragraph 1, subparagraphs 11 to 13, shall not entrust the performance of the contract lot to a subcontractor, said part concerning the main subject of the contract.

## **Art. 215**

1. The awarding entity may derogate from the application of the provisions of Articles 53 to 55, Article 108, paragraph 1, subparagraphs 1 and 2 as well as Article 217, paragraph 1 in the case of the contracts awarded pursuant to Article 214, paragraph 1:

1) subparagraph 1, letter b, subparagraphs 2, 4, 9 and 10;

2) subparagraph 5, in order to limit the effects of a fortuitous event caused by external factors, which event could not have been foreseen, in particular endangering the lives or health of persons or posing a threat of substantial damage;

3) subparagraph 1, letter a, whose subject is that of:

- a) the supplies of water via a water supply system or disposal of sewage to A sewage network system;
- b) the supply of gas from a gas grid;
- c) the supply of heat from a heating network;

d) electricity, heat or gas fuels transmission or distribution services;

2. In the case referred to in Article 214, paragraph 1, subparagraph 6, the awarding entity shall transmit to the European Commission the record of the proceedings if the European Commission made a request for transmission thereof.

#### **Art. 216**

1. The awarding entity shall publish in the official gazette *Biuletyn Zamówień Publicznych* [the Public Procurement Bulletin] a notice of the intention to enter into an agreement before awarding a contract under Article 214, paragraph 1, subparagraphs 11 to 14 on the terms laid down in Section III, Chapter 2.

2. The awarding entity may enter into the agreement for the contract awarded pursuant to Article 214, paragraph 1, subparagraphs 11 to 14 not earlier than after the elapse of 14 days from the day of publishing the notice referred to in paragraph 1.

3. The awarding entity shall publish in the official gazette *Biuletyn Zamówień Publicznych* [the Public Procurement Bulletin] a notice of the result of the proceedings immediately, but not later than within 14 days from the day of conclusion of the contract award proceedings under Article 214, paragraph 1, subparagraphs 11 to 14 on the terms laid down in Section III, Chapter 2.

#### **Art. 217**

1. The awarding entity shall, together with the invitation to negotiations, provide the contractor with the information necessary to conduct the proceedings, including the drafted provisions which will be introduced into the contents of the public procurement agreement being concluded.

2. The contractor shall submit object-related means of proof not later than at the time of conclusion of the public procurement agreement.

3. The awarding entity may derogate from the demand that the contractor make the declaration referred to in Article 125, paragraph 1.

### **Chapter 4. Submission and Opening of Tenders.**

#### **Section 1. Submission of Tenders.**

#### **Art. 218**

1. The contractor may submit only one tender, save for the cases laid down in the Act.

2. The contents of the tender shall comply with the requirements of the awarding entity specified in the contract documents.

#### **Art. 219**

1. A tender may be submitted only until the expiry of the deadline for submission of tenders.

2. The contractor may withdraw its tender until the expiry of the deadline for submission of tenders.

#### **Art. 220**

1. The contractor shall be bound by the tender not longer than:

1) 90 days;

2) 120 days - where the contract value is equal to or exceeds the equivalent of EUR 20,000,000 denominated in zloties for construction works, and of EUR 10,000,000 for supplies or services

- from the day of expiry of the time limit for submission of tenders.

2. The awarding entity shall fix in the contract documents the period of being bound by the tender by indicating a date.

3. In the case when the most advantageous tender is not selected before the expiry of the period of being bound by the tender referred to in paragraph 2, the awarding entity shall, before the expiry of the said time limit, make a one-off request to contractors for expressing their consent to extend this time limit by the period indicated by the awarding entity, not exceeding 60 days.

4. The extension of the period of being bound by the tender, as referred to in paragraph 2, shall require that the contractor make a written declaration on expressing its consent for the extension of this time limit.

5. If the awarding entity demands that the tender security deposit be provided, the period of being bound by the tender, as referred to in paragraph 2, shall be extended with a simultaneous extension of the period of validity of the tender security deposit or, if not possible, with providing a new tender security deposit for the extended period of being bound by the tender.

## **Section 2. Opening of Tenders.**

**Art. 221** The awarding entity shall ensure that the contents of tenders shall not be disclosed before the date of opening the tenders.

### **Art. 222**

1. The tenders shall be opened forthwith after the expiry of the time limit for the submission of the tenders, however not later than on the next day after the day on which the time limit for the submission of tenders expired.

2. If the tenders are opened via an IT and telecommunication system, they shall be opened, in the event of a failure of that system causing lack of possibility of opening the tenders on the date set by the awarding entity, forthwith after elimination of the failure.

3. The awarding entity shall inform on changing the date of opening the tenders on the website of the conducted proceedings.

4. The awarding entity shall, at the latest before opening of the tenders, make available on the website of the conducted proceedings the information on the amount which it intends to allocate for financing the contract.

5. The awarding entity shall, forthwith after opening of the tenders, make available on the website of the conducted proceedings the information on:

1) the business names or forenames and surnames as well as the seats or locations of the pursued economic activity or the places of residence of the contractors, whose tenders have been opened;

2) the prices or costs contained in the tenders.

6. In the event of the tenders which are subject to negotiations, the awarding entity shall make available the information referred to in paragraph 5, subparagraph 2, immediately after opening the final tenders or cancellation of the proceedings.

## **Chapter 5. Tender Evaluation.**

#### **Art. 223**

1. During the examination and evaluation of tenders, the awarding entity may require contractors to provide explanations concerning the contents of submitted tenders and subject-related means of proof or other submitted documents or declarations. Negotiations between the awarding entity and a contractor concerning the submitted tender and, subject to paragraph 2 and Article 187, making any changes in the contents thereof shall not be allowed.

2. The awarding entity shall correct in the tender:

- 1) obvious clerical mistakes;
- 2) obvious computational errors, taking into account the computational consequences of their corrections;
- 3) other errors involving non-compliance of the tender with the contract documents not causing significant changes in the contents of the tender

- forthwith notifying thereof the contractor whose tender has been corrected.

3. In the event referred to in paragraph 2, subparagraph 3, the awarding entity shall set for the contractor the appropriate time limit for expressing consent to correct a given error in the tender or challenging the manner of its correction. Lack of response within the fixed time limit shall be deemed to be consent to correct the error.

#### **Art. 224**

1. If the offered price or cost, or their significant components appear to be abnormally low in relation to the subject of the contract or give rise to the awarding entity's doubts as to the possibilities of performing the subject of the contract in compliance with the requirements specified in the contract documents or those resulting from separate provisions, the awarding entity shall demand that the contractor provide explanations, including submitting evidence concerning calculation of the price or cost or their significant components.

2. If the total price of the tender submitted within the appropriate time limit is lower by at least 30 per cent than:

- 1) the contract value increased by the output tax on goods and services, said value having been determined before initiation of the proceedings or the arithmetic mean of the prices of all submitted tenders not subject to rejection under Article 226, paragraph 1, subparagraphs 1, 5 and 10, the awarding entity shall make a request for providing the explanations referred to in paragraph 1, unless the discrepancy stems from obvious circumstances which do not require to be explained;
- 2) the contract value increased by the output tax on goods and services, said value having been updated taking account of the circumstances which occurred after initiation of the proceedings, in particular a significant change in market prices, the awarding entity may make a request for providing the explanations referred to in paragraph 1.

3. The explanations referred to in paragraph 1 shall, in particular, relate to:

- 1) management of the production process, provided services or the construction method;
- 2) the technical solutions chosen or any exceptionally favourable conditions for supplies, services or for the execution of construction works;
- 3) the originality of the supplies, services or construction works proposed by the contractor;
- 4) compliance with the provisions concerning the costs of labour, the value of which adopted to determine the price shall not be lower than the minimum remuneration for work or the minimum hourly rate determined pursuant to the provisions of the Act of 10 October 2002 on the Minimum Remuneration for Work (Dziennik Ustaw 2018, item 2177; 2019, item 1564) or the separate provisions relevant to the matters with which the performed contract is connected;
- 5) compliance with law within the meaning of the provisions on proceedings in matters concerning public aid;



6) compliance with the labour law and social security provisions applicable in the place where the contract is executed;

7) compliance with the provisions concerning the environmental protection;

8) fulfillment of the obligations related to entrusting the performance of a contract lot to a subcontractor.

4. In the case of contracts for construction works or services, the awarding entity shall be obliged to require the explanations referred to in paragraph 1, at least to the extent specified in paragraph 3, subparagraphs 4 and 6.

5. The contractor shall be required to demonstrate that the tender does not contain an abnormally low price or cost.

6. A tender of the contractor which failed to provide the explanations within the fixed deadline, or when the provided deadlines along with proofs do not provide grounds for the abnormally low price or cost of this tender shall be rejected, as a tender with the abnormally low price or cost.

7. Where the contract value is equal to or exceeds the EU thresholds, the awarding entity shall inform the President of the Office and the European Commission of having rejected the tenders which, according to the awarding entity, contained an abnormally low price or costs because the contractor has obtained public aid, and the contractor was unable to prove, within the time limit fixed by the awarding entity, that the aid in question is lawful within the meaning of the provisions on proceedings in matters concerning public aid.

#### **Art. 225**

1. If the tender, the selection of which would lead to arising of tax liability for the awarding entity, in accordance with the Act of 11 March 2004 on Goods and Services Tax (Dziennik Ustaw 2018, item 2174, as amended), has been submitted, the awarding entity shall, for the purposes of application of the price or cost criterion, add to the price presented in this tender the amount of the goods and services tax which it would be obliged to settle.

2. In the tender referred to in paragraph 1, the contractor shall:

1) inform the awarding entity that the selection of its tender would lead to arising of tax liability for the awarding entity;

2) indicate the name (type) of the goods or service, the supply or provision of which would lead to arising of tax liability;

3) indicate the value of the goods or service covered by the awarding entity's tax liability, without the tax amount;

4) indicate the rate of the goods and services tax which, in accordance with the contractor's knowledge, will be applicable.

#### **Art. 226**

1. The awarding entity shall reject a tender, where:

1) it was filed after the expiry of the time limit for submission of tenders;

2) it was filed by the contractor:

a) subject to the exclusion from the proceedings or

b) failing to meet the conditions for participation in the proceedings; or

c) which failed to submit the declaration referred to in Article 125, paragraph 1 or the object-related means of proof confirming the lack of grounds for exclusion or the satisfaction of the conditions for the participation in the proceedings or other documents or declarations within the envisaged time limit;

3) it is not in conformity with the Act;

4) it is not valid under separate provisions;

5) its content does not comply with the contract terms;

- 6) it has not been drawn up or transmitted in the manner compliant with the technical and organizational requirements for drawing up or transmitting tenders with the use of electronic communication means specified by the awarding entity;
- 7) it has been submitted in the circumstances of an act of unfair competition within the meaning of the Act of 16 April 1993 on Combating Unfair Competition;
- 8) it includes an abnormally low price or cost in relation to the subject of the contract;
- 9) it has been submitted by a contractor not invited to file tenders;
- 10) it contains miscalculations of the price or cost;
- 11) the contractor challenged the correction of an error referred to in Article 223, paragraph 2, subparagraph 3 within the fixed time limit;
- 12) the contractor has not expressed its written consent to extend the period of being bound by the tender;
- 13) the contractor has not expressed its written consent to selection of its tender after the expiry of the period of being bound by the tender;
- 14) the contractor has not provided a tender security deposit, or has provided it in an appropriate manner or failed to maintain the tender security deposit uninterruptedly until the expiry of the period of being bound by the tender or filed a request for the return of the tender security deposit in the event referred to in Article 98, paragraph 2, subparagraph 3;
- 15) a variant tender has not been filed or fails to meet the minimum requirements specified by the awarding entity in the case when the awarding entity required that it be submitted;
- 16) its acceptance would violate public security or an important interest of the state security, and this security or interest cannot be guaranteed in another manner;
- 17) it covers IT devices or software indicated in the recommendation referred to in Article 33, paragraph 4 of the Act of 5 July 2018 on the National Cyber-Security System (Dziennik Ustaw 2018, item 1560) ascertaining their negative impact on the public or national security;
- 18) it has been submitted with no visual inspection having been conducted or without verifying the documents necessary to perform the contract and available on-site at the awarding entity's premises if the awarding entity required so in the contract documents.

2. The variant tender shall be governed by the provision of paragraph 1, with the proviso that in the proceedings for the award of a contract for supplies or services the variant tender shall not be subject to rejection only because of the fact that its selection would lead to awarding a contract for services instead of a contract for supplies or to awarding a contract for supplies instead of a contract for services.

## **Chapter 6. Electronic Auction.**

### **Art. 227**

1. In the case of contract award proceedings conducted under the open tendering procedure, restricted tendering procedure or under the procedure of negotiations with publication, the awarding entity may provide for in the contract notice that the selection of the most advantageous tender will be preceded by an electronic auction if the contract terms, in particular the description of the subject of the contract, are specified in the contract documents in a precise way and the performances may be ranked using methods of automatic evaluation and at least 2 tenders not subject to rejection have been submitted.

2. The awarding entity may hold an electronic auction in order to obtain new, reduced prices or new values as

regards certain elements of the tenders subject to evaluation as part of the tender evaluation criteria.

**Art. 228**

1. An electronic auction shall be held with the use of an IT and telecommunication system in the form of a repetitive electronic process enabling to rank tenders using automatic evaluation methods, after an initial examination and evaluation of the tenders in accordance with the criteria of awarding a contract and the weighting given thereto.

2. An electronic auction shall not be applicable to the contracts for the services or construction works, whose subject is that of intellectual performances which cannot be ranked using automatic evaluation methods.

**Art. 229** An electronic auction may be based on the following elements of tenders:

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

**Art. 230** In the event of holding an electronic auction, the contract notice or contract documents shall lay down at least:

- 1) the elements, the values of which will be the subject of electronic auction, provided that such elements are quantifiable and can be expressed in figures or percentages;
- 2) any limitations on the values which may be submitted, as they result from the description of the subject of the contract;
- 3) the information which will be made available to contractors in the course of the electronic auction and, where appropriate, when it will be made available to them;
- 4) the information concerning the electronic auction process;
- 5) the conditions under which contractors will be able to bid and, in particular, the minimum values of bid increments which will be required when bidding;
- 6) the information concerning the parameters of the electronic equipment used and the solutions and technical specifications for connection.

**Art. 231** The electronic auction shall be a one-stage or a multi-stage procedure.

**Art. 232**

1. The awarding entity shall simultaneously invite to participation in an electronic auction all contractors who submitted tenders not subject to rejection with the use of electronic connections indicated in the invitation.

2. The awarding entity shall notify the contractor in the invitation of:

- 1) the outcome of the examination and evaluation of this contractor's tender;
- 2) the minimum values of bid increments submitted in the course of the electronic auction;
- 3) the opening date of the electronic auction;
- 4) the closing date and terms of the electronic auction;
- 5) the manner of evaluation of tenders in the course of the electronic auction;
- 6) the mathematical formula to be used in the electronic auction to determine the automatic re-rankings on the basis of the new prices or new values submitted;

7) the timetable for each phase of the auction if the awarding entity intends to close the electronic auction under Article 237, subparagraph 3.

3. Save for the cases when the most advantageous tender is selected based on the price, the mathematical formula referred to in paragraph 2, subparagraph 6 shall incorporate the weightings of particular tender evaluation criteria in order to select the most advantageous tender indicated in the contract notice or the contract documents, and in the event of admitting variant tenders, a separate formula for each variant shall be determined.

4. The opening date of the electronic auction may not be sooner than 2 business days after the date on which invitation is transmitted.

#### **Art. 233**

1. In the course of the electronic auction, the awarding entity shall provide each contractor the information enabling it to ascertain the ranking of its tender in ranking of tenders, in particular the information on the points received by the tender which scored highest.

2. The awarding entity may, if this has been provided for in the contract documents, at the time it has determined, announce the number of participants of a given phase of the electronic auction.

3. Until closing the electronic auction, no information enabling to identify the contractors participating in a given phase of an electronic auction shall be disclosed.

#### **Art. 234**

1. In the course of the electronic bidding contractors, using a form available on a website, which form allows to enter the necessary data by means of direct connection to this website, submit successively more advantageous bid increments, subject to automatic evaluation and ranking.

2. Bid increments shall be placed, under pain of nullity, in electronic form.

#### **Art. 235**

1. A tender submitted by a contractor shall cease to be binding insofar as the contractor submits a more advantageous tender in the course of the electronic auction.

2. In the situation specified in paragraph 1 the running of the period of being bound by the tender shall not be interrupted.

**Art. 236** In the event when a failure of an IT and telecommunication system causes interruption of the electronic auction, the awarding entity shall fix the date of continuation of the electronic auction on the next business day after removal of the failure, having regard to the condition of the tenders after the last approved bid increment.

**Art. 237** The awarding entity shall close the electronic auction:

- 1) within the time limit specified in the invitation to participate in the electronic auction;
- 2) if no new bid increments are submitted during the specified time limit;
- 3) following the end of the last stipulated phase.

**Art. 238** The awarding entity shall, after closing the electronic auction, evaluate tenders based on the tender evaluation criteria indicated in the contract notice and contract documents, having regard to the outcomes of the electronic auction.

### **Chapter 7. Selection of the Most Advantageous Tender.**

**Art. 239**

1. The awarding entity shall select the most advantageous tender on the basis of the tender evaluation criteria laid down in the contract documents.
2. The most advantageous tender is the tender showing the most advantageous quality-price ratio or quality-cost ratio or the tender with the lowest price or cost.

**Art. 240**

1. The awarding entity shall describe tender evaluation criteria in an unambiguous and legible manner.
2. Tender evaluation criteria and their description shall not confer an unrestricted freedom of selection of the most advantageous tender on the awarding entity and shall enable to verify and compare the level of the proposed execution of the subject of the contract based on the information provided in the tenders.

**Art. 241**

1. The tender evaluation criteria shall be related to the subject of the contract.
2. Relation of the tender evaluation criteria with the subject of the contract exists when these criteria concerning the construction works, supplies or services which are the subject of the contract in any aspects and with reference to any stages of their life cycle, including to the constituent elements of the production and delivery process, as well as the process of introducing into the market, even if those elements are not a significant feature of the subject of the contract.
3. Tender evaluation criteria shall not refer to the contractor's characteristics, and in particular its economic, technical or financial reliability.

**Art. 242**

1. The most advantageous tender may be selected on the basis of:
  - 1) qualitative criteria, and the price or cost;
  - 2) the price or cost.
2. The qualitative criteria may in particular be the criteria relating to:
  - 1) the quality, including to the technical parameters, aesthetic and functional characteristics such as accessibility for the disabled persons or taking account of the users' needs;
  - 2) social aspects, including professional and social integration of the persons referred to in Article 94, paragraph 1;
  - 3) environmental aspects, including energy efficiency of the subject of the contract;
  - 4) innovation aspects;
  - 5) organization, professional qualifications and experience of the persons designated to execute the contract, provided that they may have a significant impact on the quality of performance of the contract;
  - 6) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process or delivery period, as well as the period of completion.
3. The most advantageous tender shall be selected exclusively on the basis of qualitative criteria when, based on commonly applicable provisions or decision of the competent authorities, the price or cost is constant.

**Art. 243** In the proceedings, in which the subject of the contract covers performances within the scope of creative or scientific activity, the outcome of which may not be described in advance unambiguously or exhaustively, the most

advantageous tender shall be selected exclusively on the basis of the price or cost as well as qualitative criteria.

**Art. 244** The minister competent for the economy shall determine, by regulation, other tender evaluation criteria than the price, said criteria being applicable to certain kinds of contracts, as well as the manner of description and evaluation of those criteria, being guided by the need to implement provisions of European Union law and having regard to the special nature or purpose of the contract and the facilitation of application of these tender evaluation criteria.

#### **Art. 245**

1. The cost criterion shall not be based on the cost-effectiveness approach, i.e. life-cycle costing.

2. The life-cycle costing may cover, within a relevant scope, certain or all the costs incurred during the product, service or construction works' life cycle.

3. The costs referred to in paragraph 1 shall, in particular, contain:

- 1) the costs incurred by the awarding entity or other users, related to:
  - a) the costs of acquisition;
  - b) the costs of use, such as consumption of energy and other resources;
  - c) the maintenance costs;
  - d) end of life costs, in particular collection and recycling costs;
- 2) costs imputed to environmental externalities linked to the product, service or construction works during their life cycle, provided their monetary value can be determined and verified, and in particular the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

4. In the event of estimating the costs using a life-cycle costing approach, the contract documents shall indicate the data to be provided by the contractors and the method which the awarding entity will use to estimate the life-cycle costs on the basis of those data.

5. The method used for the estimation of costs imputed to environmental externalities shall fulfil all of the following conditions:

- 1) it is based on objectively verifiable and non-discriminatory criteria;
- 2) it is accessible to all interested parties;
- 3) it shall ensure that the provision of data by contractors acting with due diligence is not overly burdensome, also for contractors from third countries which are parties to the World Trade Organisation Agreement on government procurement or other international agreements to which the European Union is a party.

6. Where, under provisions of the European Union law laid down in Annex XIII to Directive 2014/24/EU, a common method of calculating life cycle costs will become compulsory, the life cycle costs shall be estimated using this method.

7. The minister competent for building industry, planning and spatial development, as well as housing shall, by regulation, define the method of calculation of the buildings' life cycle costs incorporating the costs determined in paragraph 3, subparagraph 1, letters a to c, as well as the manner of presenting the information concerning said costs, being guided by the need to ensure standardization and reliability of those calculations.

#### **Art. 246**

1. The public awarding entities referred to in Article 4, subparagraphs 1 and 2, as well as their associations shall not apply the price criterion as the only tender evaluation criterion or as a criterion of a weighting exceeding 60 per cent.

2. The public awarding entities referred to in Article 4, subparagraphs 1 and 2, as well as their associations may apply the price criterion as the only tender evaluation criterion or as a criterion of a weighting exceeding 60 per cent, if they determine, in the description of the subject of the contract, the qualitative criteria relating to at least main elements composing the subject of the contract.

#### **Art. 247**

1. The awarding entity shall specify, in the contract notice or the contract documents, the weighting given to each of the criteria selected for the purposes of determining the most advantageous tender, except when the most advantageous tender is determined only based on the price.

2. The weightings given to each of the criteria may be expressed by providing for a range with an appropriate maximum spread.

#### **Art. 248**

1. Where the most advantageous tender cannot be selected due to the fact that two or more tenders represent the same price or cost balance and other tender evaluation criteria, the awarding entity shall choose from among those tenders the one which ranked highest in the criterion of the highest weighting.

2. If tenders received the same ranking in the criterion of the highest weighting, the awarding entity shall select the tender with the lowest price or cost.

3. If a tender cannot be selected in the manner referred to in paragraph 2, the awarding entity shall call for the contractors which submitted those tenders to submit additional tenders containing a new price or cost within the time limit set by the awarding entity.

**Art. 249** Where, in contract award proceedings in which price or cost is the only tender evaluation criterion, it is not possible to select the most advantageous tender for the reason that tenders quoting the same price or cost have been submitted, the awarding entity shall call for the contractors which have submitted these tenders to submit additional tenders containing a new price or cost within the time limit specified by the awarding entity.

#### **Art. 250**

1. Where, in contract award proceedings in which the only tender evaluation criterion is cost understood as the total of acquisition cost and other life cycle costs it is not possible to select the most advantageous tender due to the fact that tenders quoting the same cost have been submitted, the awarding entity shall select the tender:

1) quoting the lower acquisition cost or

2) quoting other lower life cycle costs

- on condition of permitting such a solution in the contract documents.

2. If a tender cannot be selected in the manner referred to in paragraph 1, the awarding entity shall call for the contractors which submitted those tenders to submit additional tenders containing a new acquisition cost within the time limit set by the awarding entity.

**Art. 251** Contractors, when submitting additional tenders, shall not propose prices or costs higher than the ones proposed in the tenders they submitted previously.

#### **Art. 252**

1. The awarding entity shall select the most advantageous tender on the basis of the tender evaluation criteria laid down in the contract documents.

2. If the period of being bound by the tender expired before the selection of the most advantageous tender, the awarding entity shall call the contractor whose tender ranked highest for expressing, within the time limit set by the awarding entity, written consent for selection of its tender.

3. In the lack of the consent referred to in paragraph 2, the awarding entity shall make a request for expressing such consent to the next contractor whose tender ranked highest, unless there occur prerequisites for cancellation of proceedings.

#### **Art. 253**

1. Immediately following the selection of the most advantageous tender, the awarding entity shall simultaneously notify the contractors who submitted tenders of:

1) the choice of the most advantageous tender, providing the business name, or forename and surname, seat or place of residence if it is the place of pursuit of activity by the contractor whose tender has been selected, as well as the business names or forenames and surnames, seats or places of residence provided that they are the places of pursuit of activity by the contractors who submitted tenders and the number of points received by the tenders under each tender evaluation criterion and the total number of points achieved;

2) the contractors whose tenders have been rejected

- providing factual and legal grounds.

2. The awarding entity shall forthwith make available the information referred to in paragraph 1, subparagraph 1 on the website of the conducted proceedings.

3. The awarding entity need not disclose the information referred to in paragraph 1 if its disclosure would be contrary to important public interest.

## **Chapter 8. Completion of Proceedings.**

**Art. 254** Contract award proceedings shall be completed upon:

1) conclusion of a public procurement agreement or

2) cancellation of the proceedings.

### **Art. 255**

1. The awarding entity shall cancel the contract award proceedings, if:

1) no request for participation in the proceedings or no tender has been submitted;

2) all submitted requests for participation in the proceedings or tenders have been subject to rejection;

3) the price or cost of the most advantageous tender or the tender with the lowest price exceeds the amount which the awarding entity intends to allocate for financing the contract, unless the awarding entity is able to increase that amount to the price or cost of the most advantageous tender;

4) in the cases referred to in Article 248, paragraph 3, Article 249 and Article 250, paragraph 2 additional tenders have been submitted at the same price or cost;

5) a material change in the circumstances has occurred which causes that the conduct of proceedings or the execution of the contract is no longer in the public interest, which could not have been foreseen earlier;

6) the proceedings are burdened with irremovable defect which prevents the conclusion of a public procurement agreement which may not be invalidated;

7) the contractor failed to provide the required good performance bond or refrained from the conclusion of the public procurement agreement, having regard to Article 263;

8) under a direct-award contract procedure, negotiations have not led to conclusion of a public procurement agreement.

**Art. 256** The awarding entity may cancel contract award proceedings prior to the expiry of the deadline for submission of requests for participation in the proceedings or prior to the expiry of the deadline for submission of tenders, respectively, provided that there occurred circumstances causing further conduct of the proceedings to be



unjustified.

**Art. 257** The awarding entity may cancel contract award proceedings, if the public funds which the awarding entity intended to allocate to finance the whole or part of the contract were not granted to it and the possibility of cancellation of the proceedings on these grounds was envisaged in:

- 1) a contract notice - in proceedings conducted under open rendering, restricted rendering, negotiations with publication, competitive dialogue or innovation partnership procedure or
- 2) invitation to negotiations - in proceedings conducted under negotiations without publication or direct-award contract procedure.

**Art. 258**

1. The awarding entity may cancel the contract award proceedings where the number of contractors which have submitted requests for participation in the proceedings not subject to rejection is less than the one specified in the contract notice or the contract documents, which contractors the awarding entity intended to invite to submit their tenders, initial tenders, or to competitive dialogue.
2. The awarding entity may cancel contract award proceedings if the number of initial tenders not subject to rejection or the tenders subject to negotiations, or of the number of the solutions presented by contractors during competitive dialogue is less than the minimum number laid down in the contract notice or contract documents.
3. The awarding entity may cancel contract award proceedings if the number of tenders not subject to rejection which are subject to negotiations at the last stage is less than 2.
4. The awarding entity may cancel the proceedings for conclusion of a framework agreement which was to be concluded with more than one contractor, if less than two tenders have been submitted or less than two requests for participation in the proceedings not subject to rejection have been submitted.

**Art. 259** Where the awarding entity allowed the possibility of submitting tenders for lots, the provisions of Articles 255 to 258 shall apply to the cancellation of contract award proceedings in part.

**Art. 260**

1. The awarding entity shall simultaneously notify of the cancellation of contract award proceedings the contractors which have submitted tenders or requests for participation in the proceedings or have been invited to negotiations, providing the factual and legal grounds.
2. The awarding entity shall make available on the website of the conducted proceedings the information referred to in paragraph 1.

**Art. 261** In the event of cancellation of the contract award proceedings for reasons attributable to the awarding entity, contractors which have submitted tenders not subject to rejection shall be entitled to claim reimbursement of the reasonable costs of participation in the proceedings, and in particular, the costs incurred for the preparation of the tender.

**Art. 262** In the case of cancellation of the contract award proceedings the awarding entity shall forthwith notify the contractors which competed for the award of the contract in these proceedings of the initiation of successive proceedings which concern the same subject of the contract or which cover the same subject of the contract.

**Art. 263** If the contractor whose tender has been selected as the most advantageous one refrains from the conclusion of a public procurement agreement or fails to provide the required good performance bond, the awarding entity may re-examine and re-evaluate the tenders from among the tenders of the contractors remaining in the proceedings or may cancel the proceedings.

**Art. 264**

1. The awarding entity shall conclude a public procurement agreement taking account of Article 577 within no less than 10 days from the date of sending the notice about the selection of the most advantageous tender if this notice was sent using the means of electronic communication, or within no less than 15 days - if it was sent in other manner.

2. The awarding entity may conclude a public procurement agreement before the expiry of the time limit referred to in paragraph 1, if:

- 1) in contract award proceedings conducted under the following procedures:
  - a) an open tendering procedure, only one tender has been submitted;
  - b) restricted tendering procedure, negotiations with publication procedure, competitive dialogue procedure or innovation partnership procedure, only one request or only one tender was submitted and the time limit for filing an appeal against rejection of the request expired or, as a consequence of filing the appeal, the National Appeals Chamber announced a judgment or a ruling ending the appeal proceedings;
- 2) the public procurement agreement involves a contract awarded under the negotiations without publication procedure, under the dynamic purchasing system or under the framework agreement.

#### **Art. 265**

1. The awarding entity shall, no later than within 30 days from the day of completion of the contract award proceedings, transmit to the Publications Office of the European Union for publication a contract award notice containing the information on the results of these proceedings.
2. The awarding entity may, in the notice referred to in paragraph 1, mark certain information as not designed for publication, provided that its disclosure in the contents of the notice being published could impede the enforcement of law or would be contrary to the public interest, could harm the legitimate economic interests of a specific contractor or could adversely affect fair competition between contractors.

### **Division III. PROCEEDINGS FOR AWARDING A CLASSIC CONTRACT WITH A VALUE LOWER THAN EU THRESHOLDS.**

#### **Chapter 1. Scope of Application.**

**Art. 266** The preparation and conduct of proceedings for awarding a classic contract with a value lower than EU thresholds by public awarding entities shall be governed by the provisions of Section II, exclusive of the provisions of Article 83, Article 86, Article 87, paragraph 3, Articles 88 to 90, Article 97, paragraph 2, Article 124, Article 125, paragraphs 2 and 6, Article 126, Article 127, paragraph 1, Article 129, Article 130, Articles 132 to 188, Article 220, Article 227, paragraph 1, Article 257, Articles 264 and Article 265.

#### **Chapter 2. Notices.**

#### **Art. 267**

1. The notices referred to in this Section shall be published in the Public Procurement Bulletin made available on the websites of the Internet portal of the Office.
2. The awarding entity shall, in the Public Procurement Bulletin, publish the following types of the notices:
  - 1) a contract notice;
  - 2) a notice of the intention to conclude an agreement;
  - 3) a notice on the result of proceedings;

- 4) a notice on a contest;
- 5) a notice on the results of the contest;
- 6) a notice on amending the notice;
- 7) a notice on amending the agreement;
- 8) a notice on performance of the agreement;
- 9) a notice on a de minimis contract.

3. The awarding entity shall be obliged to document the publication of the notice in the Public Procurement Bulletin and keep the proof of its publication.

#### **Art. 268**

1. The awarding entity shall publish a notice on a de minimis contract in the Public Procurement Bulletin along with transmission to potential contractors the information on the intention to award such a contract.

2. The notice on the de minimis contract shall include the information necessary due to the circumstances of awarding the same, in particular the deadline for submission of tenders corresponding to the deadline for submission of the tenders by potential contractors to which the information on the intention to award the contract has been transmitted.

3. In a justified case the awarding entity may derogate from publishing the notice on the de minimis contract in the Public Procurement Bulletin.

#### **Art. 269**

1. The awarding entity shall publish a notice in the Public Procurement Bulletin with the use of electronic means of communication, using the forms placed on the Office's Internet portal.

2. In the case of the personal data published by the awarding entity in the Public Procurement Bulletin, the rights referred to in Articles 15 and 16 of Regulation 2016/679 shall be exercised by a demand addressed to the awarding entity.

3. The President of the Office shall ensure technical maintenance of an IT and telecommunication system with the use of which the Public Procurement Bulletin is made available, and shall determine the period of storing the personal data placed in the Public Procurement Bulletin.

#### **Art. 270**

1. The awarding entity may additionally make the notice available in a manner other than that laid down in Article 269, paragraph 1, in particular on its website.

2. The awarding entity may additionally transmit the notice for publication in the Official Journal of the European Union. The provisions of Article 87, paragraphs 1 and 2 shall apply accordingly.

3. Making available or transmission of the notice in the manner referred to in paragraph 1 or 2 shall not take place prior to its publication in the Public Procurement Bulletin.

4. The notice made available or transmitted in the manner referred to in paragraph 1 or 2:

1) shall not include any information other than the information contained in the notice published in the Public Procurement Bulletin;

2) shall indicate the date of publishing the notice in the Public Procurement Bulletin.

#### **Art. 271**

1. The awarding entity may change the notice, publishing a notification on changing the notice in the Public Procurement Bulletin.

2. In the event of amending the contents of the contract notice, the awarding entity shall extend the time limit for submission of requests for participation in the proceedings or the time limit for submission of tenders by the time needed to amend the requests or tenders, if necessary.

3. Where the amendment referred to in paragraph 2 is material and concerns, in particular, the determination of the subject, size or scope of the contract, the tender evaluation criteria, the conditions for participation in the proceedings or the manner of evaluating compliance with these conditions, the awarding entity shall extend the time limit for submission of requests for participation in the proceedings or the time limit for submission of tenders by the time needed to prepare the same or making amendments to the requests or tenders.

4. The awarding entity shall, forthwith after publishing an amendment to the contents of the notice in the Public Procurement Bulletin, make available or transmit the notification of the amendment to the notice in the manner referred to in Article 270, paragraph 1 or 2, insofar as it has published the contract notice in that manner.

#### **Art. 272**

1. The notice published in the Public Procurement Bulletin shall contain in particular the business name and address of the awarding entity as well as the subject of the contract or contest.

2. The minister competent for the economy shall determine, by a regulation, the scope of the information contained in the notices published in the Public Procurement Bulletin, including in the notices referred to in Article 216, paragraphs 1 and 3 and in Article 448, as well as the procedure for transmitting the notices, having regard to the types of the notices, contract award procedures and the special instruments and procedures.

### **Chapter 3. Qualitative Selection of Contractors.**

#### **Art. 273**

1. In the contract award proceedings the awarding entity may demand the object-related means of proof to confirm:

- 1) the lack of exclusion grounds;
- 2) compliance with the conditions for participation in the proceedings or the selection criteria.

2. Under the basic procedure, the declaration referred to in Article 125, paragraph 1 shall be attached by the contractor to the tender submitted in response to the contract notice.

#### **Art. 274**

1. The awarding entity shall request the contractor whose tender ranked highest to file within the set deadline, no less than 5 days from the day of making the request, object-related means of proof if it required them to be filed in the contract notice or the contract documents, valid as at the day of filing, unless the awarding entity holds or has access to these object-related means of proof.

2. If this is necessary to ensure the appropriate course of the contract award proceedings, the awarding entity may, at each stage of the proceedings, including at the stage of submitting tenders subject to negotiations or forthwith after their submission, call the contractors for submitting all or some of the object-related means of proof up-to-date as at the date of their submission, if the awarding entity required their submission in the contract notice or contract documents.

3. If there occur reasonable grounds for concluding that the object-related means of proof submitted previously are no longer up-to-date, the awarding entity may each time call the contractor or contractors for submitting all or some of the object-related means of proof up-to-date as at the date of their submission.

## **Chapter 4. Contract Award Procedures.**

### **Section 1. Basic Procedure.**

**Art. 275** The awarding entity shall award the contract under the basic procedure, in which in reply to the contract notice tenders may be submitted by all interested contractors, and afterwards the awarding entity:

- 1) shall select the most advantageous tender without holding negotiations or
- 2) may negotiate the contents of the tenders in order to improve them, insofar as it has envisaged such a possibility; or
- 3) shall negotiate the contents of the submitted tenders in order to improve them.

#### **Art. 276**

1. The awarding entity shall initiate the contract award proceedings under the basic procedure by publishing a contract notice in the Public Procurement Bulletin.

2. The awarding entity may, after publishing a contract notice in the Public Procurement Bulletin, directly notify about the initiation of contract award proceedings contractors known to it which, as part of conducting their economic activity, provide supplies, services or perform construction works being the subject of the contract.

#### **Art. 277**

1. In the cases referred to in paragraph 275, subparagraphs 1 and 2, the awarding entity shall draw up the STC.

2. In the case referred to in paragraph 275, subparagraph 3, the awarding entity shall draw up the description of the needs and requirements, and after conducting the negotiations, it shall draw up the STC.

**Art. 278** In the case referred to in Article 275, subparagraph 2, negotiations of the contents of tenders:

- 1) shall not lead to amending the contents of the STC;
- 2) shall concern only those elements of the contents of the tenders which are subject to assessment as part of the tender evaluation criteria.

**Art. 279** In the case referred to in Article 275, subparagraph 3, negotiations of the contents of tenders:

- 1) shall not lead to amendment of the minimum requirements concerning the subject of the contract or the performance of the contract, as laid down in the description of the needs and requirements;
- 2) shall not concern the conditions of the contract in order to improve its efficiency.

#### **Art. 280**

1. Since the day of publishing the contract notice in the Public Procurement Bulletin, the awarding entity shall ensure, on the website of the conducted proceedings, a free of charge, full, direct and unlimited access to:

- 1) the STC - in the cases referred to in Article 275, subparagraphs 1 and 2;
- 2) the description of the needs and requirements - in the case referred to in Article 275, subparagraph 3.

2. If the awarding entity may not make part of the STC or part of the description of the needs and requirements available on the website of the conducted proceedings due to one of the situations specified in Article 65, paragraph 1, it shall make the same available in other manner determined in the contract notice.

3. If the awarding entity may not make part of the STC or part of the description of the needs and requirements available on the website of the conducted proceedings due to protection of the confidential nature of the information included therein, it shall determine, in the contract notice, the manner of accessing this information and the requirements related to the protection of its confidential nature.

#### **Art. 281**

1. In the cases referred to in Article 275, subparagraphs 1 and 2, the STC shall include at least:

1) the name and the address of the awarding entity, the phone number, the email address and the address of the website of the conducted proceedings;

2) the address of the website on which any changes to and clarifications of the contents of the STC, as well as other contract documents directly related to the contract award proceedings will be made available;

3) the contract award procedure;

4) the information on whether the awarding entity envisages the selection of the most advantageous tender with the possibility of conducting negotiations;

5) the description of the subject of the contract;

6) the contract completion date;

7) drafted provisions of the public procurement agreement which will be introduced to the contents thereof;

8) the information on the means of electronic communication with the use of which the awarding entity will communicate with the contractors and the information concerning the technical and organizational requirements for the preparation, dispatch and receipt of electronic correspondence;

9) the information on the manner of communication between the awarding entity and the contractors in a manner other than with the use of electronic communication means, including in the case of occurrence of one of the situations specified in Article 65, paragraph 1, Articles 66 and 69;

10) the indication of the persons entitled to communicate with the contractors;

11) the time limit of being bound by the tender;

12) the description of the manner of preparation of the tender;

13) the manner of and the time limit for the submission of tenders;

14) the time limit of opening of tenders;

15) the grounds for exclusion referred to in Article 108, paragraph 1;

16) the manner of price calculation;

17) the description of the tender evaluation criteria, specifying also the weighting of these criteria and the method of evaluation of the tenders;

18) the information concerning formalities which should be arranged following selection of a tender in order to conclude a public procurement agreement;

19) the instruction concerning the legal remedies available to the contractor.

2. In the cases referred to in Article 275, subparagraphs 1 and 2, the STC shall also include:

- 1) the grounds for exclusion referred to in Article 109, paragraph 1, if this is envisaged by the awarding entity;
- 2) the information on the conditions for participation in the proceedings, if this is envisaged by the awarding entity;
- 3) the information on the object-related means of proof if the awarding entity requires their submission;
- 4) the description of contract lots, where the awarding entity allows submission of tenders for lots;
- 5) the number of the contract lots for which the contractor may submit its tender or the maximum number of the lots for which the contract may be awarded to the same contractor, as well as the criteria or principles applicable to determine which contract lots will be awarded to one contractors in the event of selection of its tender in a number of the lots exceeding the maximum number;
- 6) the information concerning variant tenders, including the information on the manner of presenting variant tenders and the minimum conditions which the variant tenders must satisfy, if the awarding entity requires or allows submitting thereof;
- 7) the requirements as regards employment under an employment relationship in the circumstances referred to in Article 95;
- 8) the requirements as regards the employment of the persons referred to in Article 96, paragraph 2, subparagraph 2, where the awarding entity envisages such requirements;
- 9) the information on the stipulation of the possibility of competing for the award of the contract exclusively by the contractors referred to in Article 94, if the awarding entity envisages such requirements;
- 10) the requirements concerning the tender security deposit, including its amount of the value not exceeding 1.5 per cent of the contract value, if the awarding entity envisages the obligation of providing the tender security deposit;
- 11) the information on the envisaged contracts referred to in Article 214, paragraph 1, subparagraphs 7 and 8, where the awarding entity envisages the award of such contracts;
- 12) the information concerning conducting a visual inspection by the contractor or verification by it the documents necessary to execute the contract and referred to in Article 131, paragraph 2, if the awarding entity envisages a possibility of or requires the submission of a tender following the visual inspection or verification of those documents;
- 13) the information concerning foreign currency in which settlements between the awarding entity and contractors are permitted, where the awarding entity envisages foreign currency settlements;
- 14) the information concerning the reimbursement of the costs of participation in the proceedings, where the awarding entity envisages their reimbursement;
- 15) the information on the contractor's obligation to independently perform the key tasks, where the awarding entity makes such a stipulation pursuant to Articles 60 and 121;
- 16) the maximum number of contractors with which the awarding entity will conclude a framework agreement, where the awarding entity envisages the conclusion of the framework agreement;
- 17) the information on the envisaged selection of the most advantageous tender by electronic auction together with the information referred to in Article 230 where the awarding entity envisages the electronic auction;
- 18) the requirement or possibility of submitting tenders in the form of electronic catalogues or attachment of electronic catalogues to the tender in the situation specified in Article 93;
- 19) the information concerning the good performance bond, if the awarding entity envisages such a bond.

3. In the case referred to in Article 275, subparagraph 2, the STC shall also include the information on whether the awarding entity envisages the possibility of limiting the number of the contractors which it will invite to negotiations, applying the tender evaluation criteria.

## **Art. 282**

1. In the case referred to in Article 275, subparagraph 3, the description of the needs and requirements shall contain the information referred to in Article 281, paragraph 1, subparagraphs 1 to 3, 8 to 10, 12 to 15 and subparagraph 19, respectively.

2. The description of the needs and requirements shall also contain:

- 1) the information referred to in Article 281, paragraph 2, subparagraphs 1 to 9 and 11 to 19;
- 2) the description of the subject of the contract;
- 3) the description of the awarding entity's needs and the characteristics of the supplies, construction works or services, constituting the subject of the contract;
- 4) the minimum requirements concerning the subject of the contract or the contract execution not subject to negotiations, which must be met by all tenders;
- 5) the description of the tender evaluation criteria by which the awarding entity will be guided during the selection of the tender, together with giving the weighting of these criteria and the manner of the evaluation of the tenders, and if fixing the weighting is impossible at the stage of the initiation of the proceedings for objective reasons, the awarding entity shall indicate the tender evaluation criteria in the sequence from the most to the least significant.

3. The information contained in the description of the needs and requirements shall be sufficiently precise so as to enable the contractors to determine the nature and scope of the contract and make a decision regarding submission of a tender subject to negotiations.

**Art. 283** The awarding entity shall set the time limit for submission of tenders having regard to the complexity of the contract and the time needed to prepare the tenders, however, this time limit in the case of supplies and services shall not be shorter than 7 days from the day of publishing a notice in the Public Procurement Bulletin, and in the case of construction works, it shall not be shorter than 14 days from the day of publishing the notice in the Public Procurement Bulletin.

## **Art. 284**

1. The contractor may make a request to the awarding entity for clarification of the contents of the STC or the description of the needs and requirements, respectively.

2. The awarding entity shall be obliged to provide clarifications forthwith, but not later than 2 days before the expiry of the time limit for submission of tenders or tenders subject to negotiations, respectively, provided that the request for clarification of the contents of the STC or the description of the needs and requirements, respectively, was received by the awarding entity not later than 4 days before the expiry of the time limit for submission of tenders or tenders subject to negotiations, respectively.

3. If the awarding entity fails to provide the explanations within the time limit referred to in paragraph 2, it shall extend the time limit for the submission of tenders or tenders subject to negotiations, respectively, by the time necessary for all the contractors concerned to learn the clarifications indispensable to duly prepare and submit their tenders or tenders subject to negotiations, respectively.

4. In the event when the request for clarification of the contents of the STC or the description of the needs and requirements was not received within the deadline referred to in paragraph 2, the awarding entity shall have neither an obligation to provide the clarifications of the STC or the description of the needs and requirements, nor an obligation to extend the time limit for submission of the tenders or tenders subject to negotiations, respectively.

5. Extension of the time limit for submitting the tenders referred to in paragraph 4 shall not affect the running of the period of filing the request for clarification of the STC content or the description of the needs and requirements, respectively.

6. The contents of the inquiries along with the clarifications shall be made available, without disclosing the source of the inquiry, by the awarding entity on the website of the conducted proceedings, and in the cases referred to in Article 280, paragraphs 2 and 3, it shall transmit the same to the contractors to which it has made available the STC



or the description of the needs and requirements.

#### **Art. 285**

1. The awarding entity may convene a meeting of all contractors in order to clarify the contents of the STC or the description of the needs and requirements, respectively. The information on the date of the meeting shall be made available by the awarding entity on the website of the conducted proceedings.

2. The awarding entity shall prepare the information including the questions asked during the meeting aimed at clarification of the contents of the STC or the description of the needs and requirements, respectively, as well as the responses thereto, without indicating the sources of the inquiries. The information from the meeting shall be made available on the website of the conducted proceedings.

#### **Art. 286**

1. In substantiated cases the awarding entity may, before expiry of the deadline for submission of tenders, change the contents of the STC.

2. In substantiated cases the awarding entity may, before expiry of the deadline for submission of tenders subject to negotiations, change the description of the needs and requirements.

3. In the event that the change to the contents of the STC is relevant to the preparation of the tender or requires that the contractors devote additional time to learn the change to the STC and prepare their tenders, the awarding entity shall extend the deadline for submission of the tenders by the time necessary to prepare the same.

4. In the event that the change to the contents of the needs and requirements is relevant to the preparation of the tenders subject to negotiations or requires that the contractors devote additional time to learn the change to the contents of the needs and requirements and prepare these tenders, the awarding entity shall extend the deadline for submission of the tenders by the time necessary to prepare the same.

5. The awarding entity shall inform the contractors about the extended time limit for submission of tenders or the tenders subject to negotiations, respectively, by placing the information on the website of the conducted proceedings on which the STC or the description of the needs and requirements, respectively, has been made available.

6. The information on the extended time limit for submission of tenders or the tenders subject to negotiations, respectively, shall be placed by the awarding entity in the notice referred to in Article 267, paragraph 2, subparagraph 6.

7. The change made to the contents of the STC or the description of the needs and requirements shall be made available by the awarding entity on the website of the conducted proceedings.

8. If the change relates to the parts of the STC or the description of the needs and requirements, respectively, which have not been made accessible on the website of the conducted proceedings pursuant to Article 280, paragraphs 2 and 3, the change made in the contents of the STC or the description of the needs and requirements, respectively, shall be transmitted in other manner indicated in the contract notice.

**Art. 287** If the change to the contents of the STC or the description of the needs and requirements, respectively, leads to a change in the contents of the contract notice, the awarding entity shall publish in the Public Procurement Bulletin the notice referred to in Article 267, paragraph 2, subparagraph 6.

#### **Art. 288**

1. In the cases referred to in Article 275, subparagraphs 2 and 3, the awarding entity may limit the number of the contractors which it will invite to negotiate their tenders, insofar as this number is sufficient to ensure competition and is not less than 3.

2. In the case referred to in paragraph 1 the awarding entity shall indicate in the contract notice and in the STC or the description of the needs and requirements, respectively, the tender evaluation criteria which it intends to apply in order to limit the number of the contractors invited to negotiate the tenders as well as shall indicate the maximum number of the contractors which it will invite to negotiate the tenders.

#### **Art. 289**

1. In the event referred to in Article 275, subparagraph 2, the awarding entity may invite, and in the case referred to in Article 275, subparagraph 3, it shall invite the contractors to negotiate the tenders submitted in response to the contract notice simultaneously, provided that the tenders have not been subject to rejection, and if the awarding entity has determined the criteria referred to in Article 288, paragraph 2, it shall transmit the invitation to those contractors whose tenders satisfy those requirements to the greatest extent, in the number determined by the awarding entity.

2. A tender of the contractor not invited to negotiations shall be considered rejected.

3. The awarding entity shall immediately notify contractors of the results of the evaluation of the tenders, providing factual and legal grounds therefor.

4. If the number of the contractors which have submitted tenders not subject to rejection pursuant to Article 226, paragraph 1, subparagraphs 1 to 6 is less than 3, the awarding entity:

1) in the case referred to in Article 275, subparagraph 2 - shall continue the proceedings;

2) in the case referred to in Article 275, paragraph 3 - may continue the proceedings, inviting those contractors to negotiate the tenders or shall cancel the proceedings under Article 258, paragraph 2.

#### **Art. 290**

1. During negotiations of the tenders, the awarding entity shall ensure equal treatment of all contractors.

2. The awarding entity shall not provide information in a manner which could ensure advantage for some contractors over other ones.

#### **Art. 291**

1. In the case referred to in Article 275, subparagraph 2, the conducted negotiations are confidential. The awarding entity shall make available tenders together with appendices submitted in response to the contract notice forthwith after opening those tenders, however, not later than within 3 days from the day of their opening.

2. In the case referred to in Article 275, subparagraph 3, the contents of the tenders subject to negotiations and the conducted negotiations are confidential. The awarding entity shall make available those tenders together with appendices from the day of opening the final tenders.

3. No party shall disclose without consent of the other one any technical and commercial information relating to the negotiations. Consent shall be granted with regard to specific information and before its disclosure.

4. In the case referred to in Article 275, subparagraph 3, the awarding entity shall conduct negotiations of the contents of the tenders submitted in response to the contract notice until specifying in more detail or supplementing all conditions of the contract subject to negotiations.

#### **Art. 292**

1. In the case referred to in Article 275, subparagraph 3, after completion of negotiations, the awarding entity shall prepare the STC which specifies in more detail and supplements the information contained in the description of the needs and requirements to the extent to which this was the subject of the negotiations.

2. The STC shall not include any provisions that lead to amendment of the minimum requirements concerning the subject of the contract or the performance of the contract, as laid down in the description of the needs and requirements, and to any amendments of the essential elements of the contents of the contract notice.

**Art. 293** In the cases referred to in Article 275, subparagraphs 2 and 3, the awarding entity shall notify simultaneously all contractors which have remained in the proceedings of the completion of the negotiations and shall invite them to submit final tenders.

**Art. 294** In the case referred to in Article 275, subparagraph 2, the invitation to submit final tenders shall include at

least:

- 1) the name and the address of the awarding entity, the phone number, the email address and the address of the website of the conducted proceedings;
- 2) the manner and time limit for submitting final tenders and the language or languages in which they shall be prepared, as well as the time limit for opening the final tenders.

#### **Art. 295**

1. In the case referred to in Article 275, subparagraph 3, the invitation to submit final tenders shall include at least:

- 1) the name and the address of the awarding entity, the phone number, the email address and the address of the website of the conducted proceedings;
- 2) the address of the website on which the STC and the changes to or clarifications thereof, if any, are available, as well as other contract documents directly related to the contract award proceedings;
- 3) the information on the object-related means of proof to be attached to the final tender, if the awarding entity envisages the requirement to submit the selected or all object-related means of proof at the stage of submitting final tenders;
- 4) the weightings of particular tender evaluation criteria if such weightings have not been given in the description of the needs and requirements at an earlier stage of the contract award proceedings;
- 5) the manner and time limit for submitting final tenders and the language or languages in which they shall be prepared, as well as the time limit for opening the final tenders.

2. If part of the STC has not been made available by the awarding entity on the website of the conducted proceedings for the reasons referred to in Article 280, paragraphs 2 and 3, the awarding entity shall attach to the invitation to submit final tenders the part of the STC not made available and other contract documents directly related to the contract award proceedings.

3. The STC shall include the information referred to in Article 281, paragraphs 1 and 2.

4. The provisions of Article 284, Article 285, Article 286, paragraphs 1, 3 and 5 to 8, as well as Article 287 shall accordingly apply to the clarification of and changes to the contents of the STC.

**Art. 296** The awarding entity shall set the time limit for submission of final tenders having regard to the complexity of the contract and the time needed to prepare the tenders, however, this time limit in the case of supplies and services shall not be shorter than 5 days from the day of transmitting the invitation to submit final tenders, and in the case of construction works, it shall not be shorter than 10 days from the day of transmitting the invitation to submit the final tenders.

## **Section 2. Innovation Partnership.**

**Art. 297** The provisions of Section II, Chapter 3, Division 6, with amendments as laid down in this Division, shall apply to awarding a contract under the innovation partnership procedure.

#### **Art. 298**

1. The awarding entity shall initiate the contract award proceedings under the innovation partnership procedure by publishing a contract notice in the Public Procurement Bulletin.

2. The awarding entity shall ensure, on the website of the conducted proceedings, a free of charge, full, direct and unlimited access to the description of the needs and requirements from the day of placing the contract notice in the Public Procurement Bulletin.

#### **Art. 299**

1. The deadline for submission of requests for participation in the proceedings shall not be shorter than 7 days from the date of publishing the contract notice in the Public Procurement Bulletin.
2. The awarding entity shall set the time limit for submission of the initial tender or a tender, respectively, having regard to the complexity of the contract and the time needed to prepare the tenders. The time limit for submission of the initial tender or the tender, respectively, in the case of supplies and services, shall not be shorter than 7 days from the day of transmitting the invitation to submit the initial tenders or the tenders, respectively, and in the case of construction works, it shall not be shorter than 14 days from the day of transmitting the invitation to submit the initial tenders or the tenders, respectively.
3. In the event that the awarding entity demands that contractors provide a tender security deposit, it shall specify the amount thereof at no more than 1.5 per cent of the contract value.

### **Section 3. Negotiations without Publication.**

**Art. 300** The provisions of Section II, Chapter 3, Division 7, with amendments as laid down in this Division, shall apply to awarding a contract under the negotiations without publication procedure.

#### **Art. 301**

1. The awarding entity may award a contract under the negotiations without publication procedure, if:
  - 1) one of the circumstances referred to in Article 209, paragraph 1, subparagraphs 2 and 3 has occurred;
  - 2) during the proceedings conducted previously under the basic procedure no tender was submitted or all tenders were rejected under Article 226, paragraph 1, subparagraph 5, while the original terms of the contract were significantly altered;
  - 3) due to a previously unforeseeable extreme urgency for the award of a contract not resulting from reasons attributable to the awarding entity, the time limits provided for the basic procedure cannot be observed;
  - 4) within 3 years from awarding a contract for construction works, the awarding entity has withdrawn from a public procurement agreement for the reasons attributable to the contractor and the award of the contract is necessary to complete the construction works constituting the subject of the previous contract.
2. In the case referred to in paragraph 1, subparagraph 4, the awarding entity shall invite, within 3 months from the day of withdrawal from the public procurement agreement, to negotiations at least those contractors which submitted tenders in the previous proceedings, with the exception of the contractor with which the agreement was concluded, from which the awarding entity has withdrawn.

**Art. 302** The awarding entity may, after initiation of the proceedings, publish in the Public Procurement Bulletin a notice of the intention to conclude an agreement.

#### **Art. 303**

1. Together with the invitation to submit tenders, the awarding entity shall provide the contract documents containing at least the information referred to in Article 281, paragraph 1.
2. The provisions of Article 284, Article 285, and Article 286, paragraphs 1, 3, 5, 7 and 8 shall apply accordingly to the clarification and changes to the contract documents.
3. The provision of Article 299, paragraph 3 shall apply.

#### **Section 4. Direct-award Contract.**

**Art. 304** The provisions of Section II, Chapter 3, Division 8, with amendments as laid down in this Division, shall apply to awarding a contract under the direct-award contract procedure.

**Art. 305** The awarding entity may award a contract under the direct-award contract procedure, if:

- 1) one of the circumstances referred to in Article 214, paragraph 1, subparagraphs 1 to 5, and 7 to 14 has occurred;
- 2) during the proceedings conducted previously under the basic procedure no tender was submitted or all tenders were rejected under Article 226, paragraph 1, subparagraph 5, while the original terms of the contract were significantly altered;
- 3) a contract is awarded by a foreign institution within the meaning of the Act of 27 July 2001 on Foreign Service (Dziennik Ustaw 2018, item 2040; 2019, item 9);
- 4) a contract is awarded for own needs of a military unit within the meaning of the Act of 17 December 1998 on the Rules for the Use or Stay of the Armed Forces of the Republic of Poland Outside the State Borders;
- 5) a contract is awarded by awarding entities having their seat outside the state borders and is performed outside those borders.

#### **Art. 306**

1. The awarding entity may, after initiation of proceedings, publish in the Public Procurement Bulletin a notice of the intention to conclude an agreement.
2. The awarding entity may demand that the contractor make the declaration referred to in Article 125, paragraph 1 or submit object-related means of proof before awarding a contract.

#### **Chapter 5. Selection of the Most Advantageous Tender.**

#### **Art. 307**

1. The contractor shall be bound by a tender until the expiry of the time limit prescribed by the date in the contract documents, however not in excess of 30 days from the day of expiry of the time limit for submission of tenders.
2. In the case when the most advantageous tender is not selected before the expiry of the period of being bound by the tender set in the contract documents, the awarding entity shall, before the expiry of the said time limit, make a one-off request to contractors for expressing their consent to extend this time limit by the period indicated by the awarding entity, not exceeding 30 days.
3. The extension of the period of being bound by the tender, as referred to in paragraph 2, shall require that the contractor make a written declaration on expressing its consent for the extension of this time limit.
4. If the awarding entity demands that the tender security deposit be provided, the period of being bound by the tender, as referred to in paragraph 2, shall be extended with a simultaneous extension of the period of validity of the tender security deposit or, if not possible, with providing a new tender security deposit for the extended period of being bound by the tender.

#### **Art. 308**

1. In the case of contract award proceedings conducted under the basic procedure, the awarding entity may provide for in the contract notice and the contract documents that the selection of the most advantageous tender will be preceded by an electronic auction if the contract terms, in particular the description of the subject of the contract, are specified in the contract documents in a precise way and the performances may be ranked using methods of

automatic evaluation and at least 2 tenders not subject to rejection have been submitted.

2. The awarding entity shall conclude a public procurement agreement taking account of Article 577 within no less than 5 days from the date of sending the notice about the selection of the most advantageous tender if this notice was sent using the means of electronic communication, or within no less than 10 days - if it was sent in other manner.

3. The awarding entity may conclude a public procurement agreement before the expiry of the time limit referred to in paragraph 2, if:

- 1) in contract award proceedings conducted under the following procedures:
  - a) a basic procedure, only one tender has been submitted;
  - b) an innovation partnership procedure, only one request or only one tender was submitted and the time limit for filing an appeal against rejection of the request expired or, as a consequence of filing the appeal, the National Appeals Chamber announced a judgment or a ruling ending the appeal proceedings;
- 2) the public procurement agreement involves a contract awarded under the negotiations without publication procedure or under the framework agreement.

#### **Art. 309**

1. The awarding entity shall, no later than within 30 days from the day of completion of the contract award proceedings, publish in the Public Procurement Bulletin a notice containing the information on the results of these proceedings or cancellation of the proceedings.

2. The awarding entity need not include certain information in the notice referred to in paragraph 1, provided that its disclosure in the contents of the notice being published could impede the enforcement of law or would be contrary to the public interest, could harm the legitimate economic interests of a specific contractor or could adversely affect fair competition between contractors.

**Art. 310** The awarding entity may cancel contract award proceedings, if the public funds which the awarding entity intended to allocate to finance the whole or part of the contract were not granted to it and the possibility of cancellation of proceedings on these grounds was envisaged in:

- 1) a contract notice - in proceedings conducted under basic procedure or innovation partnership procedure or
- 2) invitation to negotiations - in proceedings conducted under negotiations without publication or direct-award contract procedure.

### **Division IV. SPECIAL INSTRUMENTS AND PROCEDURES IN THE SCOPE OF CLASSIC CONTRACTS.**

#### **Chapter 1. Framework Agreement.**

#### **Art. 311**

1. The awarding entity may conclude a framework agreement after conducting proceedings, applying accordingly the provisions concerning the following contract award procedures:

- 1) open tendering, restricted tendering, negotiations with publication, competitive dialogue or innovation partnership, in the case when the value of the classic contract is equal to or exceeds the EU thresholds;
- 2) basic procedure or innovation partnership referred to in Section III, Chapter 2, Division 4, in the case when the value of the classic contract is less than the EU thresholds.

2. Framework agreements shall be governed by the provisions of Section VII.

3. The framework agreement shall be entered into for a period not exceeding 4 years, however, due to the subject of the contract and the special interest of the awarding entity, this agreement may be entered into for a longer period.

4. The awarding entity shall not use the framework agreement for the purpose of restricting competition.

#### **Art. 312**

1. A contract covered by a framework agreement may be awarded exclusively between the awarding entities indicated in the contract notice and the contractors which are parties to the framework agreement.

2. The awarding entity, while awarding a contract, shall not make any significant changes to the terms of the contract laid down in the framework agreement.

#### **Art. 313**

1. In the event that a framework agreement has been concluded with only one contractor, the awarding entity shall award a contract under the contract terms set out in the framework agreement, without conducting contract award proceedings.

2. If not all conditions of providing construction works, services or supplies have been set out in the framework agreement, the awarding entity may request the contractor in writing to supplement the tender.

#### **Art. 314**

1. In the case when a framework agreement has been concluded with a greater number of contractors, the awarding entity shall award:

1) contracts in accordance with the contract terms laid down in the framework agreement, without conducting contract award proceedings, if the framework agreement specifies all conditions for providing construction works, services or supplies, as well as the conditions of the selection of the contractors which will execute the contract;

2) a part of contracts without conducting contract award proceedings pursuant to subparagraph 1, and a part after conducting contract award proceedings under subparagraph 3, if the framework agreement sets out all the conditions for the provisions of construction works, services or supplies, and the awarding entity, in the contract documents concerning the framework agreements, envisaged such a possibility and determined jointly:

- a) the criteria for taking a decision on which construction works, supplies or services will be awarded after conducting or without conducting contract award proceedings;
- b) which contract terms may be the subject of new contract award proceedings;

3) contracts after conducting contract award proceedings in the case when not all conditions for the provision of construction works, services or supplies have been laid down in the framework agreement.

2. The provision of paragraph 1, subparagraph 2 shall apply also to those parts of the framework agreement for which all the conditions for the performance of construction works, services or supplies have been specified, irrespective of whether all the conditions for the performance of construction works, services or supplies have been set forth in such agreement for the remaining parts of this agreement.

3. In the case of the contract award proceedings referred to in paragraph 1, subparagraph 2 or 3, the awarding entity shall award a contract on the same contract terms and, where necessary, contract terms specified in more detail, which were applied while concluding the framework agreement and, where applicable, under other contract terms indicated in the contract documents concerning the framework agreement. In the case referred to in Article 115, paragraph 1, subparagraph 1, the condition for earning the minimum annual revenue shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time or, in the absence of such information, based on the value of the framework agreement.

4. In the case referred to in paragraph 3, the awarding entity shall award a contract after conducting an electronic auction, under the terms laid down in Section II, Chapter 6, or under the following procedure:

1) before awarding each contract the awarding entity shall invite to submit tenders the contractors capable of performing a specific contract;

2) it shall fix the time limit for submission of tenders taking account of the complexity of the subject of the contract and the time needed to prepare and submit the tenders as regards each contract;

3) tenders shall be submitted in writing, using the means of electronic communication, and their contents shall not be learnt before the expiry of the deadline for their submission;

4) the awarding entity shall award a contract to the contractor which has submitted the most advantageous tender under the tender evaluation criteria set out in the contract notice or the contract documents concerning the framework agreement; the provision of Article 253, paragraph 1 shall apply.

5. The provisions of Articles 255 to 261 shall apply to cancelling the contract award proceedings referred to in paragraph 1, subparagraph 2 or 3.

6. The awarding entity need not transmit to the Publications Office of the European Union a contract notice or need not place a notice on the result of the proceedings in the Public Procurement Bulletin including the information on awarding a contract covered by a framework agreement or on cancellation of the contract award proceedings referred to in paragraph 1, subparagraph 2 or 3.

7. If the awarding entity transmits to the Publications Office of the European Union or publishes in the Public Procurement Bulletin the notices referred to in paragraph 6, the provisions of Article 265, paragraph 2 or Article 309, paragraph 2 shall apply accordingly.

#### **Art. 315**

1. Where the framework agreement was entered into with a greater number of contractors and after submission of all tenders in the form of electronic catalogues, the awarding entity may decide that the contract award proceedings will be conducted based on updated electronic catalogues.

2. In the case referred to in paragraph 1, the awarding entity shall:

1) invite contractors to resubmit electronic catalogues adjusted to the requirements of a given contract or

2) inform the contractors that it will download, from the electronic catalogues already submitted, the data necessary to prepare the tenders adjusted to the requirements of a given contract, provided that the awarding entity informed about it in the contract notice or the contract documents concerning the framework agreement.

3. In the case referred to in paragraph 2, subparagraph 2, the awarding entity shall:

1) inform, sufficiently in advance, the contractors on the date and time of downloading the data needed to prepare the tenders adjusted to the requirements of a given contract and ensure to the contractors the possibility of updating electronic catalogues or refusing consent for such data download;

2) present to the contractor to which it intends to award a contract, before its award, the downloaded data and set for this contractor a reasonable time limit for challenging or confirmation that the tender prepared in such a manner does not contain any significant errors, with the proviso that when the contractor fails to challenge the tender prepared in such a manner within the set time limit, the tender shall be deemed to have been submitted by the contractor.

## **Chapter 2. Dynamic Purchasing System.**

#### **Art. 316**

1. In the event when the value of a classic contract is equal to or exceeds the EU thresholds, the awarding entity may establish the dynamic purchasing system and award contracts covered by this system, applying the provisions concerning contract award under the restricted tendering procedure, unless the provisions of this Chapter provide otherwise.



2. The dynamic purchasing system may be divided into categories of supplies, services or construction works defined pursuant to the characteristics of the contracts that will be awarded as part of a given category. Said characteristics may, in particular, concern the admissible volume of later contracts or a geographical area on which such later contracts will be performed.

3. In the event of a change in the period of validity of the dynamic purchasing system, the awarding entity shall inform about this change, transmitting to the Publications Office of the European Union the notice referred to in Article 90, paragraph 1.

4. In the event when a change in the period of validity of the dynamic purchasing system leads to its ending, the awarding entity shall inform about this change, transmitting to the Publications Office of the European Union the notice containing the information on awarding the contract.

5. The access to the dynamic purchasing system shall be free of charge.

6. The awarding entity shall not resort use the dynamic purchasing system to restrict competition.

**Art. 317** In the proceedings conducted for the purpose of establishing a dynamic purchasing system and in proceedings for the award of a contract covered by a dynamic purchasing system, the awarding entity and contractors shall transmit declarations, documents, requests, notices, invitations and other information using electronic means of communication.

#### **Art. 318**

1. From the date of publication of the contract notice in the Official Journal of the European Union, the awarding entity shall make available on the website of the dynamic purchasing system the information on the application of the dynamic purchasing system along with the information concerning the dynamic purchasing system, and in particular:

- 1) the description of the subject of the contracts covered by the dynamic purchasing system accompanied by the estimated volume;
- 2) the period of validity of the dynamic purchasing system;
- 3) the envisaged dates of effecting contracts;
- 4) the technical requirements of IT and telecommunication equipment necessary for communication between the awarding entity and contractors, including transmission of tenders.
- 5) the manner of operation of the dynamic purchasing system;
- 6) the division into categories of supplies, services or construction works, along with the characteristics defining such categories, insofar as the dynamic purchasing system is divided into categories;
- 7) whether a requirement to submit tenders in the form of an electronic catalogue or by attaching the electronic catalogue to a given tender is envisaged.

2. The information referred to in paragraph 1 shall be available on the website of the dynamic purchasing system throughout the entire period of validity of the dynamic purchasing system.

#### **Art. 319**

1. The awarding entity shall set the deadline for submission of requests for participation in a dynamic purchasing system not shorter than 30 days from the day of transmitting of the contract notice to the Publications Office of the European Union or, when a prior information notice contains the information required for the contract notice, from the day of transmitting the invitation to confirm the interest. After transmission of the invitation to submit tenders concerning the first contract covered by the dynamic purchasing system, no subsequent deadlines for submission of requests for participation in the dynamic purchasing system shall be set.

2. Throughout the period of validity of the dynamic purchasing system the awarding entity shall ensure to the contractors not covered by this system a possibility of filing requests for participation in the dynamic purchasing

system.

#### **Art. 320**

1. The awarding entity shall make a qualitative selection of the contractor within 10 days of the day of receiving the request for participation in the dynamic purchasing system.
2. The time limit referred to in paragraph 1 may be extended up to 15 days.
3. If the invitation to submit tenders for the first contract covered by the dynamic purchasing system was not transmitted, the time limit referred to in paragraph 1 may be extended provided that no invitation to submit tenders is issued within the extended period. The awarding entity shall notify the contractor whose request is being subject to examination of the length of the extended time limit.

#### **Art. 321**

1. The awarding entity shall invite to participate in the dynamic purchasing system the contractors whose requests are not subject to rejection under Article 146, paragraph 1, subparagraphs 2 to 5. The provision of Article 148 shall not apply.
2. Where the dynamic purchasing system was divided into categories of supplies, services or construction works, the awarding entity shall invite to participate in the dynamic purchasing system the contractors which are not subject to exclusion and satisfy the conditions for participation in the proceedings, which conditions correspond to one of the categories.

**Art. 322** The awarding entity may, at any moment within the validity of the dynamic purchasing system, call the admitted contractors for submission, within 5 business days of the day of dispatching the call, a new and updated single document. The provisions of Articles 126 and 127 shall apply.

#### **Art. 323**

1. The awarding entity shall simultaneously invite all the dynamic purchasing system participants to submit tenders for each contract awarded under this system within the time limit not shorter than 10 days of the dispatch of the invitation to submit tenders. The provision of Article 151 shall not apply.
2. If the dynamic purchasing system was divided into categories of supplies, services or construction works, the awarding entity shall simultaneously invite to submit tenders all the contractors which have been admitted to submit tenders concerning a given category.
3. The invitation referred to in paragraph 1 shall contain, as a minimum:
  - 1) the website address where the STC is available;
  - 2) the information concerning the date and place of the publication of the contract notice referred to in Article 318, paragraph 1;
  - 3) the time limit for submission of tenders, the address at which the tenders need to be sent, as well as the language or languages in which they have to be prepared;
  - 4) the list of declarations or documents confirming the lack of grounds for exclusion;
  - 5) the weighting attributed to the tender evaluation criteria, where not provided in the contract notice or the notice of the contractors' qualification system.
4. The awarding entity shall select the most advantageous tender on the basis of the tender evaluation criteria laid down in the contract notice.
5. The awarding entity shall specify in more detail the tender evaluation criteria laid down in the contract notice.
6. An electronic auction may be conducted in the event of awarding a contract under the dynamic purchasing system, under the terms laid down in Section II, Chapter 6.

7. The awarding entity shall, within 30 days from the day of completion of the contract award proceedings covered by the dynamic purchasing system at the latest, transmit to the Publications Office of the European Union a contract award notice including the information on the results of these proceedings. The contract award notice may be grouped on a quarterly basis and transmit the same for publication within 30 days from the last day of each quarter.

#### **Art. 324**

1. The awarding entity may require that the tenders within the dynamic purchasing system are submitted in the form of electronic catalogues or by attaching electronic catalogues to a request for participation in the dynamic purchasing system.

2. If more than one contractor has been admitted to participate in the dynamic purchasing system, and electronic catalogues have been submitted along with all the requests for participation in the dynamic purchasing system, the awarding entity may, prior to awarding a contract, invite the contractors to resubmit or update the electronic catalogues.

3. In the case referred to in paragraph 2, the awarding entity shall:

1) inform the contractors that it will download, from the electronic catalogues already submitted, the data necessary to prepare the tenders adjusted to the requirements of a given contract, provided that the awarding entity informed about it in the contract notice or the STC concerning the establishing of the dynamic purchasing system;

2) inform, sufficiently in advance, the contractors on the date and time of downloading the data, as referred to in subparagraph 1, and ensure to the contractors the possibility of supplementing and updating electronic catalogues, respectively, or refusing consent for such data download;

3) present to the contractor to which it intends to award a contract, before its award, the downloaded data and set for this contractor a reasonable time limit for challenging or confirmation that the tender prepared in such a manner does not contain any significant errors, with the proviso that when the contractor fails to challenge the tender prepared in such a manner within the set time limit, the tender shall be deemed to have been submitted by the contractor.

### **Chapter 3. Contest.**

#### **Section 1. General Provisions.**

#### **Art. 325**

1. The awarding entity may organize a contest in order to select the contest project of a creative nature, concerning in particular spatial planning, urban designing, architectural designing as well as architectural and construction designing, data processing, IT designing and innovative intent.

2. If the awarding entity intends to award a contract for the architectural designing or architectural and construction designing services, such a contract shall be preceded by a contest.

3. The provision of paragraph 2 shall not apply to the contracts:

1) awarded under negotiations with publication, competitive dialogue, negotiations without publication or direct-award contract procedure;

2) with a value lower than EU thresholds.

4. The provisions of Section I, Chapter 2 shall apply accordingly, however, the provision of Article 17 shall not apply.

**Art. 326** The following prizes shall relate to a contest:

- 1) a monetary prize or a prize in kind granted to an author or authors of the selected contest projects or
- 2) invitation of an author or authors of the selected contest projects to negotiations under a direct-award contract procedure or negotiations without publication procedure, respectively, in order to provide a service based on the selected contest project, or such an invitation together with a monetary prize or a prize in kind.

**Art. 327** A contest shall be conducted under an unrestricted or restricted contest procedure.

**Art. 328**

1. The provisions of Articles 23, 53 to 55, and Articles 57 to 60 shall not apply to the preparation and conduct of a contest.
2. The awarding entity shall ensure anonymity of contest projects.
3. The awarding entity shall make available solely prize-winning contest projects and study projects, based on which those projects have been executed, from the moment of transmission of the notification referred to in Article 354. The manner of making the prize-winning contest projects and study projects available shall be prescribed by the awarding entity having regard to the provisions concerning the protection of copyrights.

**Art. 329**

1. A contest may be a one-stage or two-stage contest.
2. In a two-stage contest, the first stage involves a selection of study projects complying with the requirements set forth in the contest regulations. At the second stage the contest jury shall, by applying the criteria laid down in the contest regulations, evaluate contest projects executed based on the study projects selected at the first stage.
3. In a two-stage contest the awarding entity may restrict the number of the contest participants which will be invited to the second stage of the contest, applying in respect of study projects all or certain evaluation criteria of the contest projects laid down in the contest regulations.
4. In a two-stage contest the awarding entity shall invite the contest participants to submit contest projects in a number ensuring competition.
5. The awarding entity shall immediately notify the contest participants which have submitted study projects of the results of the evaluation of the projects, providing factual and legal grounds therefor.
6. In a two-stage contest the provisions concerning contest projects shall apply accordingly to study projects.

**Art. 330**

1. The participants in the contest shall be natural persons, legal persons or organizational units without legal personality.
2. Where special provisions require that one holds powers to develop a contest project, participants in the contest may include exclusively natural persons holding the required powers or the subjects employing natural persons holding the required powers.
3. In the case of a restricted contest, the awarding entity shall lay down also other objective requirements than the ones set out in paragraph 2, the failure to meet which shall render participation in the contest impossible.
4. The objective criteria may include the grounds for exclusion, the terms of participation in the proceedings or the selection criteria. The provisions of Articles 108 to 123 shall apply accordingly.
5. In the circumstances referred to in paragraphs 2 to 4 the awarding entity may demand the object-related means of proof referred to in Article 124. The provisions of Articles 127 and 128 shall apply.

6. The awarding entity reserve in the contest notice and the contest regulations that the contest is reserved for the participants employing the persons belonging to the category of socially marginalized persons pursuant to Article 94.

7. Participants in the contest may take part in the contest jointly. The provisions relating to a participant in the contest shall apply accordingly to participants taking part in the contest jointly.

**Art. 331** The subject of the contest shall be described in a unambiguous and understandable manner, having regard to the requirements and circumstances that could affect the preparation of a contest project.

**Art. 332** The provision of Article 56 shall apply accordingly to the persons performing acts on the part of the awarding entity.

## **Section 2. Contest Regulations.**

### **Art. 333**

1. The awarding entity shall organize the contest in accordance with the contest regulations it established.

2. The contest regulations shall specify, in particular:

- 1) the name and the address of the awarding entity;
- 2) the type of the contest project and the procedure for conducting the contest;
- 3) the description of the subject of the contest;
- 4) the maximum envisaged aggregate cost of the works to be performed on the basis of the contest project;
- 5) the requirements to be met by the contest participants;
- 6) the information on the object-related means of proof confirming the satisfaction of requirements;
- 7) the manner of communication between the awarding entity and participants in the contest as well as of the provisions of object-related means of proof, clarifications or information;
- 8) the manner of and the deadline for submission of study projects or contest projects in the case of an unrestricted contest or requests for participation in the contest - in the case of a restricted contest;
- 9) the material scope and the form of development as well as the mode of presentation of the contest project;
- 10) the criteria for evaluation of contest projects providing also criteria significance;
- 11) the evaluation criteria of study projects providing the criteria significance, in the case referred to in Article 329, paragraph 3;
- 12) the composition of the contest jury;
- 13) the type and value of prizes;
- 14) the deadline for payment of a monetary prize or handing over of a prize in kind;
- 15) the amount of the reimbursement of the costs for contest projects preparation, where the awarding entity envisages such reimbursement;
- 16) the provisions of a future agreement concerning the transfer of proprietary copyrights to the selected project

together with a detailed specification of the fields of use of the contest projects;

17) the maximum amount of reimbursement of the costs for the preparation and submission of a contest project, if the contest is cancelled, in circumstances referred to in Article 355, paragraph 4;

18) the manner of making contest results publicly known;

19) the instruction concerning legal remedies available to the participants in the contest.

3. In the case of the contest referred to in Article 326, subparagraph 2, the contest regulations:

1) need not include the information referred to in paragraph 2, subparagraph 13;

2) shall also include the information on:

a) the planned date of invitation to negotiations under the negotiations without publication procedure or the direct-award contract procedure, for the purpose of providing a service based on the selected contest project;

b) the subject of the service to be provided in the proceedings conducted under a direct-award contract procedure or negotiations without publication procedure, based on the selected contest project;

c) the essential provisions which will be introduced to the public procurement agreement;

d) the grounds for exclusion from the proceedings and the condition for participation in the proceedings, to be laid down in the proceedings conducted under the direct-award contract procedure or the negotiations without publication procedure;

e) the indicative deadline for the provision of the service.

4. The awarding entity shall make available the contest regulations on the website of the conducted contest.

**Art. 334** The awarding entity may convene a meeting of the subjects interested in submission of contest projects in order to clarify the doubts concerning the contents of the contest regulations. The information on the date of the meeting shall be made available by the awarding entity on the website of the conducted contest.

### **Section 3. Contest Jury.**

#### **Art. 335**

1. The manager of the awarding entity shall appoint a contest jury and lay down its organization, composition and procedure of operation.

2. A contest jury shall be composed of at least 3 persons appointed and dismissed by the manager of the awarding entity.

3. The members of the contest jury shall be impartial. The provisions of Article 56 shall apply accordingly to the members of the contest jury.

4. The contest jury shall be composed of persons having the knowledge and experience permitting evaluation of the submitted contest projects, with the proviso that where special provisions require that one holds powers to develop the contest project, at least one-third of the contest jury's composition, including its chairperson, must hold the required powers.

#### **Art. 336**

1. The contest jury shall be appointed to evaluate contest projects and select the best ones.

2. The contest jury shall prepare, in particular, the information about the contest projects, reasons for the decision on the contest's results, and also shall lodge a request for the cancellation of the contest.

3. To the extent referred to in paragraphs 1 and 2, the contest jury shall be independent.

4. The manager of the awarding entity may entrust the contest jury with activities other than the ones specified in paragraph 1 in connection with the preparation and holding of the contest.

**Art. 337** The manager of the awarding entity or a person authorized by it shall supervise the contest jury with respect to compliance of the contest with the provisions of the Act and the contest regulations, and in particular:

- 1) shall cancel the contest;
- 2) shall approve the contest results.

#### **Section 4. Unrestricted Contest and Restricted Contest.**

**Art. 338** An unrestricted contest shall be a contest conduct procedure in which in response to a public contest notice all contest participants concerned may submit their contest projects.

**Art. 339** A restricted contest shall be a contest conduct procedure in which in response to a contest notice all contest participants concerned shall submit requests for participation in the contest, and the contest projects may be submitted exclusively by the participants invited to submit the same.

#### **Art. 340**

1. The awarding entity shall initiate the contest by:

- 1) transmitting a contest notice to the Publications Office of the European Union in the case when the contest value is equal to or exceeds the EU thresholds;
- 2) publishing a contest notice in the Public Procurement Bulletin in the case when the contest value is less than the EU thresholds.

2. The provisions of Articles 86 to 88 and Article 90 shall apply accordingly to the contest notices, and if the contest value is less than the EU thresholds - the provisions of Article 267 and Articles 269 to 272 shall be applicable.

3. The awarding entity shall ensure, on the website of the conducted contest, free-of-charge, full, direct and unlimited access to the contest regulations, from the day of publishing the contest notice in the Official Journal of the European Union or placing the contest notice in the Public Procurement Bulletin, respectively, not shorter than until the expiry of the deadline for submitting contest projects.

#### **Art. 341**

1. The contest participant may make a request to the awarding entity for clarification of the contents of the contest regulations.

2. Clarification of the contents of the contest regulations shall be governed accordingly by the provision of Article 284.

#### **Art. 342**

1. In substantiated cases the awarding entity may amend the contents of the contest regulations:

- 1) in an unrestricted contest, before the expiry of the time limit for submission of contest projects;
- 2) in a restricted contest, before the expiry of the time limit for submission of requests for participation in the contest.

2. Amending the contents of the contest regulations after the expiry of the time limits referred to in paragraph 1 shall be inadmissible, unless it relates to changing the composition of the contest jury.

3. The awarding entity shall make available the amendment to the contents of the contest regulations on the website of the conducted contest.

4. The provisions of Article 137, paragraphs 1, 2 and 4 to 7 shall apply accordingly to the amendments to the contents of the contest regulations, and if the contest value is less than the EU thresholds - the provisions of Article 286, paragraphs 1, 3 and 5 to 7, as well as Article 287 shall be applicable.

#### **Art. 343**

1. In a restricted contest, the awarding entity shall set the time limit for submitting requests for participation in the contest, having regard to the time for filing the required object-related means of proof, with the proviso that the said time limit shall not be shorter than 21 days from the day of transmitting the contest notice to the Publications Office of the European Union for publication. The provisions of Article 145, Article 146, paragraph 2 and Article 148 shall apply accordingly.

2. If the contest value is less than the EU thresholds, the awarding entity shall, in a restricted contest, set the time limit for submitting requests for participation in the contest, having regard to the time for filing the required object-related means of proof, with the proviso that the said time limit shall not be shorter than 14 days from the day of placing the contest notice in the Public Procurement Bulletin. The provisions of Article 145, Article 146, paragraph 2 and Article 148 shall apply accordingly.

3. The awarding entity shall reject a request for participation in the contest if:

- 1) it was filed after the expiry of the time limit for submission of the requests;
- 2) it was filed by the contest participant which failed to demonstrate the satisfaction of the awarding entity's requirements indicated in the contest notice and the contest regulations;
- 3) it is not in conformity with the Act;
- 4) it is not valid under separate provisions;
- 5) it has not been drawn up or transmitted in the manner compliant with the technical and organizational requirements for drawing up or transmitting requests with the use of electronic communication means specified by the awarding entity;

4. The awarding entity shall notify all the contest participants of the results of the evaluation of the requests for participation in the contest.

5. The awarding entity shall simultaneously invite to submit contest projects the contest participants whose requests for participation in the proceedings are not subject to rejection.

**Art. 344** The awarding entity shall fix a time limit for submission of contest projects taking account of the time needed to prepare and submit the contest project.

#### **Art. 345**

1. A contest participant may submit one contest project.

2. A contest project not corresponding to the contest notice or the contest regulations and submitted after the expiry of the relevant time limit by a participant whose request has been rejected shall not be evaluated.

**Art. 346** The contest jury shall make itself familiar with the contents of the contest projects prior to the expiry of the time limit for their submission.

#### **Art. 347**

1. The contest jury shall evaluate contest projects in accordance with the criteria specified in the contest notice and the contest regulations.

2. The awarding entity shall specify the evaluation criteria of contest projects in a unambiguous and understandable



manner ensuring the possibility of selecting the best contest project, having regard to the maximum planned aggregate cost of the performance of works carried out on the basis of the contest project.

3. The criteria for evaluation of contest projects shall not relate to the characteristics of the contest participant.

#### **Art. 348**

1. In the event when explanations of the contest participant may be helpful in the evaluation of the contest project, the contest jury may, through the awarding entity, request the contest participant for explanation. The provision of Article 223, paragraph 1 shall apply accordingly.

2. The awarding entity shall organize the explanations of contest projects in a manner rendering the contest participant's identification impossible.

#### **Art. 349**

1. Minutes shall be drawn up from the proceedings of the contest jury.

2. The minutes shall contain, in particular, the list of contest projects, their ranking, as well as the remarks of the contest jury members along with conclusions and recommendations, including the indication of the aspects of a contest project requiring clarifications. The clarifications of the contest participants shall constitute an appendix to these minutes.

3. The minutes from the proceedings of the contest jury shall be an element of the contest documentation.

#### **Art. 350**

1. The contest jury shall decide on the contest results by selecting the best contest project or projects from among contest projects.

2. The contest jury shall identify all contest projects after a decision is made on the contest result.

**Art. 351** The contest participants shall submit their contest projects together with the information on the aggregate planned costs of performance of the works performed under a contest project, unless this is impossible to determine the costs due to the specific nature of the contest.

#### **Art. 352**

1. The participants of an unrestricted contest shall submit contest projects and a written application for participation in the contest.

2. The application for participation in the contest shall include the forename and surname as well as the business name and address of the contest participant.

#### **Art. 353**

1. The awarding entity shall, forthwith after decision is made on the unrestricted contest result, request the author(s) of the selected contest project(s) to file the object-related means of proof confirming holding of the powers referred to in Article 330, paragraph 2, fixing the time limit for their submission.

2. A contest participant which fails to prove the holding of the powers referred to in Article 330, paragraph 2, shall not, in the circumstances referred to in paragraph 1, obtain the prize.

### **Section 5. Ending of the Contest.**

**Art. 354** The awarding entity shall, immediately after the decision made on the contest results is approved, simultaneously notify the contest participants of the results and the received evaluation, providing the forename and

surname and the place of residence or the business name and seat of the pursued economic activity of the author(s) of the selected contest project(s).

#### **Art. 355**

1. The awarding entity shall cancel the contest if:

- 1) no request for participation in the contest or no contest project has been submitted;
- 2) all submitted requests for participation in the contest have been subject to rejection or all the contest projects have not been subject to evaluation;
- 3) a change in the circumstances has occurred which causes that the conduct of the contest is not in the public interest, which could not have been foreseen earlier;
- 4) the contest is burdened with a defect which affects or could affect the decision to be made on the contest results.

2. The awarding entity may cancel the contest if only one contest project or only one requests for participation in the contest is submitted.

3. The awarding entity may cancel the contest referred to in Article 326, subparagraph 2, if the public funds which the awarding entity intended to allocate for financing the contract awarded under a direct-award contract procedure or under the negotiations without publication procedure have not been granted to it.

4. The awarding entity shall envisage the reimburse the contest participants which have submitted contest projects subject to evaluation for the costs of preparation of the preparation of the contest project, if the contest has been cancelled for the reasons attributable to the awarding entity.

#### **Art. 356**

1. Within the time limit specified in the contest regulations, no shorter than 15 days from the day of approval of the decision made on the contest results, the awarding entity shall, in the case referred to in Article 326, subparagraph 1, pay the monetary prize or hand over a prize in kind, and in the case referred to in Article 326, subparagraph 2, it shall invite to negotiations, under the negotiations without publication procedure or the direct-award contract procedure the author(s) of the selected contest project(s) and, if it has envisaged a prize, it shall hand over or pay the prize.

2. If negotiations conducted under the direct-award contract procedure with the author of the selected contest project did not led to conclusion of a public procurement agreement, the awarding entity may invite to negotiations under this procedure the contest participant whose contest project ranked highest as the second in sequence, and the awarding entity envisaged such a possibility in the contest regulations.

**Art. 357** Forthwith after the approval of the decision made on the contest results or forthwith after its cancellation, the awarding entity shall transmit the notice on its results to the Publications Office of the European Union for publication, and if the contest value is less than the EU thresholds, it shall publish the notice on the results in the Public Procurement Bulletin.

#### **Art. 358**

1. The awarding entity shall keep the contest documentation for a period of 4 years from the day of establishing the results of the contest in the form in which it was prepared or transmitted, in a manner ensuring its integrity and readability.

2. The awarding entity shall return the submitted contest projects upon an application of the contest participants whose projects have not won the prize.

3. The awarding entity shall, upon an application of the contest participants, return the study projects submitted by them, with the exception of the study project, based on which the contest project has been selected.

4. The contest projects which have not won the prize and the study project shall not be made available.

5. The provisions of Article 74, paragraphs 3 and 4, Article 75, Article 76, Article 78, paragraph 2 and Article 79, paragraph 2 shall apply accordingly.

#### **Chapter 4. Contracts for Social Services and other Special Services.**

**Art. 359** Award of the contracts for social services and other special services shall be governed by the provisions of the Act relevant to:

- 1) classic contracts with the value equal to or exceeding the EU thresholds - if the contract value expressed in zloties is equal to or exceeds the equivalent of the amount of EUR 750,000, having regard to the changes stemming from this Chapter;
- 2) classic contracts with the value less than the EU thresholds - if the contract value expressed in zloties is less than the equivalent of EUR 750,000, not less, however, than the equivalent of the amount of 130,000 zloties.

**Art. 360** The awarding entity, while awarding the contracts referred to in Article 359, subparagraph 1, need not apply the provisions of the Act concerning:

- 1) an obligation to appoint a tendering commission;
- 2) an obligation to make the statement referred to in Article 125, paragraph 1, on a form of a single document;
- 3) the minimum time limits for submission of requests for participation in the proceedings or the time limits for submission of tenders;
- 4) an obligation to demand documents as object-related means of proof;
- 5) prerequisites for the selection of the contract award procedure in the case of the negotiations with publication procedure or the competitive dialogue.

#### **Art. 361**

1. In the case of the contracts referred to in Article 359, subparagraphs 1 and 2, the awarding entity may reserve in a contract notice or a prior information notice, that the award of a contract for health, social and cultural services covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, 98133110-8, specified in the Common Procurement Vocabulary, may be applied for exclusively by the contractors which jointly fulfill the following conditions:

- 1) the goal of their activity is the performance of tasks in the field of public utility concerning the provision of those services as well as social and professional integration of the persons referred to in Article 94;
- 2) they do not operate in order to earn profit, allocate all of their income for the implementation of the objectives as stated under their articles and do not allocate their profit for distribution among their shareholders and employees;
- 3) their management or ownership structure relies on co-management in the case of a cooperative, employee shareholding or rules for participation of employees, which shall be laid down by the contractor in its articles;
- 4) they were not awarded a contract under this provision by the same awarding entity within the last 3 years preceding the day of initiation of proceedings for award of a contract for social services.

2. In the cases referred to in paragraph 1, the public procurement agreement may not be concluded for a period longer than 3 years.

#### **Division V. SECTORAL CONTRACTS.**

## **Chapter 1. Scope of Application.**

**Art. 362** Award of sectoral contracts shall be governed by the following provisions:

- 1)** of Section II, except Article 83, Article 89, Article 91, paragraph 2, Article 115, paragraph 2 and except the provisions of Chapter 3, unless the provisions of this Section provide otherwise;
- 2)** of Section IV, except the provisions of Chapter 1, Article 319, paragraph 1 and Article 325, paragraph 2.

### **Art. 363**

1. The provisions of the Act shall not apply to sectoral contracts awarded for the purpose of resale, lease or rental of the subject of a contract to third persons, provided that the awarding entity holds no special or exclusive right to the sale, lease or rental of the subject of the contract, and other entities may sell, lease or rent it without any restrictions on the same terms as the awarding entity.
2. The provisions of the Act shall not apply to sectoral contracts and contests awarded for the purpose of pursuing sectoral activity referred to in Article 5, paragraph 4, beyond the territory of the European Union, if a network located within the territory of the European Union or the territory of the European Union itself is not used in the pursuit of this activity.
3. The awarding entity shall be obliged to provide to the European Commission, at its request, the information to the extent referred to in paragraphs 1 and 2.

### **Art. 364**

1. The awarding entities conducting the sectoral activity referred to in Article 5, paragraph 4, subparagraphs 2, 3 and 7 shall not apply the provisions of the Act to the award of sectoral contracts for:
  - 1)** the supplies of energy and fuels for generation of energy;
  - 2)** the services of transmission, storage and distribution of gaseous fuels, liquefaction of natural gas and regasification of the liquefied natural gas.
2. The awarding entities conducting the sectoral activity referred to in Article 5, paragraph 4, subparagraph 1 shall not apply the provisions of the Act to the award of contracts for the supplies of water.

### **Art. 365**

1. The provisions of the Act shall not apply to sectoral contracts for supplies awarded to the subjects:
  - 1)** whose data, together with the awarding entity's data, are covered by annual consolidated financial statements within the meaning of the Act of 29 September 1994 on Accounting (Dziennik Ustaw 2019, items 351, 1495, 1571, 1655, 1680);
  - 2)** in which the awarding entity holds over half of the shares, hold over half of the votes in these shares, exercise supervision over the managing body or are entitled to appoint over half of the members of their supervisory or managing bodies;
  - 3)** which hold over half of the awarding entity's shares, hold over half of the votes in these shares, exercise supervision over its managing body or are entitled to appoint over half of the members of their supervisory or managing bodies;
  - 4)** which, together with the awarding entity, are subject to the influence of another entrepreneur as specified in subparagraph 3

- if in the period of preceding 3 years at least 80 per cent of average revenues of these subjects earned on account of provision of supplies were earned on account of provision of the supplies for the awarding entity or the subjects referred to in subparagraphs 1 to 4.

2. The provisions of the Act shall not apply to sectoral contracts for services awarded to the subjects:

1) whose data, together with the awarding entity's data, are covered by annual consolidated financial statements within the meaning of the Act of 29 September 1994 on Accounting;

2) in which the awarding entity holds over half of the shares, hold over half of the votes in these shares, exercise supervision over the managing body or are entitled to appoint over half of the members of their supervisory or managing bodies;

3) which hold over half of the awarding entity's shares, hold over half of the votes in these shares, exercise supervision over its managing body or are entitled to appoint over half of the members of their supervisory or managing bodies;

4) which, together with the awarding entity, are subject to the influence of another entrepreneur as specified in subparagraph 3

- if in the period of preceding 3 years at least 80 per cent of average revenues of these subjects earned on account of provision of services were earned on account of provision of the services for the awarding entity or the subjects referred to in subparagraphs 1 to 4.

3. The provisions of the Act shall not apply to sectoral contracts for construction services awarded to the subjects:

1) whose data, together with the awarding entity's data, are covered by annual consolidated financial statements within the meaning of the Act of 29 September 1994 on Accounting;

2) in which the awarding entity holds over half of the shares, hold over half of the votes in these shares, exercise supervision over the managing body or are entitled to appoint over half of the members of their supervisory or managing bodies;

3) which hold over half of the awarding entity's shares, hold over half of the votes in these shares, exercise supervision over its managing body or are entitled to appoint over half of the members of their supervisory or managing bodies;

4) which, together with the awarding entity, are subject to the influence of another entrepreneur as specified in subparagraph 3

- if in the period of preceding 3 years at least 80 per cent of average revenues of these subjects earned on account of performance of construction works were earned on account of provision of the construction works for the awarding entity or the subjects referred to in subparagraphs 1 to 4.

4. In the case when the period of the pursuit of the activity referred to in paragraphs 1 to 3 is shorter than 3 years, the revenues earned within the period of this activity shall be incorporated as well as the revenues expected to be earned within the remaining period until the elapse of 3 years.

#### **Art. 366**

1. The provisions of the Act shall not apply to sectoral contracts awarded by a subject established by the awarding entities for the purpose of joint performance of the sectoral activity referred to in Article 5, paragraph 4:

1) to one of these awarding entities or

2) to a subject linked with one of these awarding entities in a manner as specified in Article 365, if in the previous 3-year period at least 80 per cent of the average revenues of this subject earned on account of the provision of supplies, services or performing construction works were earned on account of the provision of supplies, services or performing construction works, respectively, for the subjects with which it is linked.

2. The provisions of the Act shall not apply to sectoral contracts awarded to a subject set up by awarding entities for the purpose of joint performance of the sectoral activity referred to in Article 5, paragraph 4 by one of these awarding entities, provided that this subject was set up for a period of at least 3 years and the document on the basis of which it was established stipulates that the awarding entities shall remain its members during this period.

**Art. 367** Where from among the subjects referred to in Article 365, more than one renders the same or similar services or executes the same or similar supplies or performs the same or similar construction works for the awarding entity, the total revenues of all these subjects earned from provision of the services or supplies or performance of the construction works shall be incorporated.

**Art. 368** The awarding entity shall be obliged to provide to the European Commission, at its request, the information within the scope referred to in paragraphs 365 and 366.

## **Chapter 2. Periodical Information Notice.**

### **Art. 369**

1. The awarding entity may transmit to the Publications Office of the European Union for publication or place on the awarding entity's website a periodical information notice on the contracts or framework agreements scheduled within a period not exceeding 12 months.

2. If the periodical information notice is placed by the awarding entity on its website, the awarding entity shall transmit to the Publications Office of the European Union the notice on publication of the periodical information notice on the awarding entity's website.

### **Art. 370**

1. The periodical information notice concerning the scheduled sectoral contracts may constitute an invitation to compete for a sectoral contract. In this case, the awarding entity, while awarding the contract under the restricted tendering procedure and sectoral negotiations with publication procedure shall not publish the contract notice.

2. The periodical information notice may be placed by the awarding entity on its website after the publication of this notice in the Official Journal of the European Union or after the elapse of 48 hours from the confirmation of obtaining the notice by the Publications Office of the European Union.

3. In the case referred to in paragraph 1, the awarding entity shall invite contractors that, following the publication of the periodical information notice, communicated to the awarding entity their interest in the participation in the proceedings, to confirm that interest, notifying at the same time of the time limit for the submission of requests for participation in the proceedings.

4. The periodical information notice shall include:

1) an explicit reference to the supplies, construction works or services which are the subject of the sectoral contract to be awarded;

2) an indication that the sectoral contract will be awarded under the restricted tendering procedure or sectoral negotiations with publication procedure, with no further publication of the contract notice, based on the invitation to confirm the interest;

3) an invitation of the contractors to express their interest;

4) additional information determined in Annex VI, Part A, Sections I and II to Directive 2014/25/EU;

5. The periodical information notice shall be transmitted to the Publications Office of the European Union at least 35 days and no more than 12 months prior to the day of the dispatch of the invitation to confirm the interest.

6. The invitation to confirm the interest shall at minimum contain:

- 1) the name and the address of the awarding entity;
- 2) the type and size or scope of the contract, having regard to the options and renewals and, if possible, the envisaged deadline for exercising these options and renewals;
- 3) the type and size or scope of the recurring contracts and, if possible, the envisaged deadline for publication of future notices concerning those contracts;
- 4) the information concerning the sectoral contract award procedure;
- 5) where applicable, the time limit of commencement or completion of supplies, construction works or services;
- 6) economic and technical conditions, financial guarantees and information required from the contractors;
- 7) the tender evaluation criteria and their weighting or, where applicable, the order of those criteria according to their importance from the most important to the least important, where this was not specified in the periodical information notice, the description of the subject of the contract or the invitation to submit tenders or to negotiations;
- 8) the website address where the STC is available;
- 9) in the cases specified in Article 65, the place and time limit of making the STC available, as well as the language or languages in which it has been drawn up.

### **Chapter 3. Contractor Qualification System.**

#### **Art. 371**

1. The awarding entity may establish and apply the contractor qualification system, to which it will admit contractors not subject to exclusion from the system and which comply with the conditions of participation in the system, said conditions relating to a specific category of sectoral contracts, and shall enter the contractors into the list of qualified contractors.
2. The awarding entity shall set out in the notice of the contractor qualification system the grounds for exclusion from and the conditions for participation in the contractor qualification system, as well as objective criteria and rules for the operation of this system regulating in particular the entry into the list of qualified contractors, a periodical update, if any, as regards the conditions for participation and grounds for exclusion, as well as the period of validity of the system. If the conditions for participation in the contractor qualification system relate to the required characteristics of supplies, services or construction works, the provisions of Articles 99 to 106 shall apply accordingly.
3. The contractor qualification system shall be established for a specified period of time, in a manner allowing contractors to submit requests for admission to the system and their updating throughout the validity of the system.
4. The contractor may specify in the contract documents or in the contract notice a requirement concerning the preservation of the confidential nature of the information provided to the contractor in connection with the contractor qualification system.
5. To determine:
  - 1) the grounds for exclusion in the contractor qualification system, the provisions of Section II, Chapter 2, Division 1 and Article 393, paragraph 1, subparagraph 2 shall apply;
  - 2) the conditions for participation in the contractor qualification system, the provisions of Section II, Chapter 2, Divisions 2 and 3, and Article 393, paragraph 1, subparagraph 2 shall apply accordingly.

#### **Art. 372**

1. The awarding entity shall establish the contractor qualification system by transmitting for publication in the Official

Journal of the European Union the notice of the contractor qualification system.

2. Where the contractor qualification system is established for a period exceeding 3 years, the notice of the system shall be subject to annual publication in the Official Journal of the European Union.

3. The awarding entity shall, throughout the validity of the system, shall make the notice of the contractor qualification system available on the website.

4. The awarding entity may change the validity period of the contractor qualification system:

**1)** without termination of the operation of this system, by transmitting for publication in the Official Journal of the European Union the notice referred to in paragraph 1;

**2)** in the case of termination of the operation of this system, by transmitting for publication in the Official Journal of the European Union the notice referred to in Article 265, paragraph 1.

#### **Art. 373**

1. A contractor seeking to be admitted to participate in the contractor qualification system shall submit an application together with a declaration on not being subject to exclusion from and compliance with the conditions for participation in the contractor qualification system specified by the awarding entity in the notice of the contractor qualification system, and if the awarding entity demands object-related or subject-related means of proof, also such means of proof. The provisions of Article 125, paragraphs 2 to 6, Articles 127 and 128 and Article 393, paragraph 1, subparagraphs 1 and 3 shall apply accordingly.

2. The awarding entity shall inform the contractor of a decision concerning qualifying it to participate in the contractor qualification system immediately, not later than within 4 months from the day of submitting the application.

3. If, in the opinion of the awarding entity, the decision referred to in paragraph 2 is taken later than within 4 months from the day of submitting the application, the awarding entity shall inform the applicant within 2 months from the day of submitting the application about the reasons for extending this time limit and the date by which its application will be examined. The information on the decision on qualifying the contractor shall not be provided later than within 6 months from the day of submitting the application by the contractor.

4. The awarding entity shall immediately inform the contractor of refusal to admit it to participate in the contractor qualification system, not later, however, than within 15 days of the day of taking the decision, providing factual and legal grounds therefor, taking account of the time limit referred to in paragraph 3, the second sentence.

#### **Art. 374**

1. Contractors admitted to participate in the contractor qualification system are entered into the list of qualified contractors, in the appropriate category of sectoral contracts, kept by the awarding entity and updated throughout the validity of the system.

2. The contractors entered into the list of qualified contractors, in the appropriate category of sectoral contracts, shall not be obliged to confirm the lack of grounds for exclusion from and compliance with the conditions for participation indicated in the notice of the contractor qualification system as regards subsequent contracts covered by this category of sectoral contracts.

3. The awarding entity shall inform on the intention to remove from the list referred to in paragraph 1 the contractor which ceased to meet the criteria for qualification of the contractors, not later than 15 days before the planned removal.

#### **Art. 375**

1. The awarding entity may initiate the proceedings for awarding of a sectoral contract under the restricted tendering procedure, sectoral negotiations with publication procedure, competitive dialogue procedure or innovation partnership procedure, by transmitting for publication in the Official Journal of the European Union the notice of the contractor qualification system constituting an invitation to compete for the contract.

2. In the circumstances referred to in paragraph 1:



- 1) the awarding entity shall not publish a notice of a contract;
- 2) the contractors admitted to participate in the contractor qualification system, in the specified category of sectoral contracts, shall be regarded as admitted to participate in the proceedings;
- 3) the awarding entity shall simultaneously provide the contractors admitted to participate in the system an invitation to submit tenders, initial tenders, to participate in the dialogue or to negotiations in the case of restricted rendering, innovation partnership, competitive dialogue or sectoral negotiations with publication, respectively;
- 4) the awarding entity shall forthwith ensure, on the website of the conducted proceedings, free-of-charge, direct and unlimited access to the contract documents, not later, however than until the day of dispatch of an invitation to submit tenders, initial tenders, to participate in the dialogue or to negotiations in the case of restricted rendering, innovation partnership, competitive dialogue or sectoral negotiations with publication, respectively.

#### **Chapter 4. Sectoral Contract Award Procedures.**

##### **Art. 376**

1. The sectoral awarding entities shall award contracts under one of the following procedures:

- 1) open tendering;
- 2) restricted tendering;
- 3) sectoral negotiations with publication;
- 4) competitive dialogue;
- 5) innovation partnership.

2. Sectoral awarding entities may award a contract under the negotiations without publication procedure or the direct-award contract procedure in the cases laid down in this Chapter.

##### **Art. 377**

1. Sectoral awarding entities shall initiate the contract award proceedings by providing an invitation to compete for a contract by means of:

- 1) a contract notice in the case of open rendering, restricted rendering, negotiations with publication, competitive dialogue or innovation partnership procedure;
- 2) a notice on the contractor qualification system constituting an invitation to compete for a contract in the case of restricted rendering procedure, sectoral negotiations with publication, competitive dialogue or innovation partnership procedure;
- 3) a periodical information notice constituting an invitation to compete for a contract in the case of restricted rendering procedure or sectoral negotiations with publication;
- 4) an invitation to negotiations in the case of the negotiations without publication or direct-award contract procedure.

2. The awarding entity shall provide the notices in accordance with the format and procedures of electronic transmission of notices established by the European Commission, available on the website referred to in point 3 of Annex IX to Directive 2014/25/EU.

##### **Art. 378**

1. The provisions of Articles 132 to 139 shall apply to open tendering.

2. In the proceedings conducted under open tendering procedure, the awarding entity may fix the time limit for submission of tenders not shorter than 15 days - from the day of transmission of the contract notice to the Publications Office of the European Union, if the information on the contract has been included in a periodical information notice concerning the contracts scheduled within 12 months, provided or placed on the website of the awarding entity at least 35 days before the day of transmitting the contract notice to the Publications Office of the European Union.

#### **Art. 379**

1. The provisions of Article 140 and Articles 142 to 151 shall apply accordingly to restricted tendering.

2. The awarding entity shall ensure, on the website of the conducted proceedings, free-of-charge, full, direct and unlimited access to the STC from the date of publishing the contract notice in the Official Journal of the European Union or from the date of sending the invitation to confirm interest, not shorter than until the date of awarding the contract. The provisions of Article 133, paragraphs 2 and 3 shall apply.

3. In proceedings conducted under the restricted tendering procedure the awarding entity may fix:

1) the time limit for the submission of requests for participation in the proceedings which shall be not shorter than 30 days of the day of the transmitting the contract notice to the Publications Office of the European Union or the transmission of the invitation to confirm interest, whereas in exceptional cases - not shorter than 15 days of the day of the transmission of the contract notice to the Publications Office of the European Union or transmission of the invitation to confirm interest;

2) the time limit for submission of tenders which shall be not shorter than 10 days, taking into account the time needed to prepare and submit the tender;

3) any time limit for submission of tenders, if all contractors which are invited to submit tenders agree thereto.

**Art. 380** Sectoral negotiations with publication shall be the contract award procedure in which in response to the notice published in the Official Journal of the European Union and constituting an invitation to compete for a contract, contractors shall submit requests for participation in the proceedings, the awarding entity shall invite to negotiations the contractors admitted to participate in the proceedings, shall hold negotiations with them, and subsequently shall invite them to submit tenders.

#### **Art. 381**

1. The provisions of Article 155, subparagraph 1, Article 156, paragraph 1, subparagraphs 1 to 16, 18 to 19, paragraphs 2 and 3, Article 157, paragraph 1, Article 158, paragraph 2 and Article 203 shall apply to sectoral negotiations with publication.

2. The awarding entity shall ensure, on the website of the conducted proceedings, free-of-charge, full, direct and unlimited access to the description of the needs and requirements from the date of publishing the contract notice in the Official Journal of the European Union or from the date of sending the invitation to confirm interest, not shorter than until the date of awarding the contract. The provisions of Article 133, paragraphs 2 and 3 shall apply accordingly.

3. In proceedings conducted under sectoral negotiations with publication procedure the awarding entity may fix:

1) the time limit for the submission of requests for participation in the proceedings which shall be not shorter than 30 days of the day of the transmitting the contract notice to the Publications Office of the European Union or the transmission of the invitation to confirm interest, whereas in exceptional cases - not shorter than 15 days of the day of the transmission of the contract notice to the Publications Office of the European Union or transmission of the invitation to confirm interest;

2) the time limit for submission of tenders which shall be not shorter than 10 days from the day of providing the invitation to submit tenders, taking into account the time needed to prepare and submit the tender;

3) any time limit for submission of tenders, if all contractors who are invited to submit tenders agree thereto.

4. The awarding entity shall simultaneously invite to negotiations the contractors whose requests for participation in the proceedings were not subject to rejection.

5. The awarding entity may limit the number of the contractors invited to negotiations, whose requests were not subject to rejection, insofar as this number is sufficient to ensure competition and is not less than 3.

6. In the case referred to in paragraph 5 the awarding entity shall indicate in the contract notice and in the description of the needs and requirements the selection criteria which it intends to apply in order to limit the number of the contractors invited to negotiations and shall provide the minimum number of the contractors which it will invite to these negotiations. The awarding entity may indicate the maximum number of the contractors which it will invite to the negotiations.

7. The request for participation of a contractor not invited to the negotiations in the proceedings shall be deemed to have been rejected.

8. Negotiations shall not lead to changing the minimum requirements and the tender evaluation criteria as well as the weighting of these criteria, as set out by the awarding entity in the notice initiating proceedings and in the description of the needs and requirements.

9. During the negotiations, the awarding entity shall ensure equal treatment of all contractors. The negotiations held are confidential.

**Art. 382** The provisions of Articles 169, 171 to 175 and Articles 177 to 178 shall apply to competitive dialogue.

**Art. 383** The provisions of Articles 189 to 193, Article 195 Articles 197 to 207 shall apply to innovation partnership.

**Art. 384** In the proceedings conducted under the competitive dialogue procedure or innovation partnership procedure the awarding entity may set the time limit for submission of:

1) the time limit for the submission of requests for participation in the proceedings which shall be not shorter than 30 days of the day of the transmitting the contract notice to the Publications Office of the European Union or the transmission of the invitation to confirm interest, whereas in exceptional cases - not shorter than 15 days of the day of the transmission of the contract notice to the Publications Office of the European Union or transmission of the invitation to confirm interest;

2) tenders, taking into account the time needed to prepare and submit the tender.

**Art. 385**

1. In the event of a sectoral contract award proceedings conducted under the restricted tendering procedure, sectoral negotiations with publication procedure, competitive dialogue procedure or innovation partnership, the awarding entity may limit the number of the contractors which it will invite to submit tenders, to negotiations or to participate in the dialogue, or to submit initial tenders, respectively.

2. The awarding entity shall indicate in the contract notice, notice of the contractor qualification system or in an invitation to confirm interest the selection criteria it intends to apply, as well as the number of contractors which it intends to invite to ensure competition.

**Art. 386** Negotiations without publication shall be governed by the provisions of Articles 208 to 212.

**Art. 387** Direct-award contracts shall be governed by the provisions of Article 213 and Articles 215 to 217.

**Art. 388** A sectoral contract may be awarded under the direct-award contract procedure:

1) in the cases specified in Article 214, paragraph 1, subparagraphs 1 to 6 and 9 to 14;

2) if:

- a) in connection with a short period of exceptionally advantageous conditions it is possible to award a contract at a significantly lower price than the market prices;
- b) in the event of awarding to the existing contractor the basic contract, a contract for additional supplies

intended either as a partial replacement of the supplied products or installations or as the extension of current supplies or existing installations where a change of the contractor would oblige the awarding entity to acquire materials having different technical characteristics, which would result in technical incompatibility or disproportionately high technical difficulties in operation and maintenance of those products or installations;

c) the contract is awarded to the existing contractor of services or construction works and consists in repeating similar services or construction works where such contract was provided for in the contract notice for the basic contract and corresponds to the subject thereof, and the total value of this contract was taken account of when estimating its value, whereas in the basic contract description the scope of those services or construction works, as well as the conditions under which they will be awarded, was indicated.

## **Chapter 5. Special Instruments and Procedures in the Scope of Sectoral Contracts.**

### **Art. 389**

1. The awarding entity may enter into a framework agreement after conducting proceedings in one of the procedures for awarding a sectoral contract provided for in the Act.

2. Contracts under a framework agreement shall be awarded based on objective principles and criteria which could cover reopening the contract to competition between the contractors which are a party to the concluded framework agreement.

3. The awarding entity shall determine the rules for and manner of awarding contracts under a framework agreement in the STC or description of the needs and requirements, respectively.

4. The awarding entity may enter into a framework agreement for a period not exceeding 8 years, provided that no exceptional situations justified by the subject of the agreement occur.

5. A contract covered by a framework agreement may be awarded exclusively between the awarding entities indicated in the contract notice and the contractors which are parties to the framework agreement.

6. The provision of Article 253, paragraph 1 shall apply to the contracts covered by a framework agreement awarded after reopening the contract to competition between the contractors being a party to the concluded framework agreement.

7. Where the framework agreement was entered into with a greater number of contractors after submission of all tenders in the form of electronic catalogues, the awarding entity may decide that the contract will be reopened to competition based on updated electronic catalogues.

8. In the case referred to in paragraph 7, the awarding entity shall:

- 1) invite contractors to resubmit electronic catalogues adjusted to the requirements of a given contract or
- 2) inform the contractors that it will download, from the electronic catalogues already submitted, the data necessary to prepare the tenders adjusted to the requirements of a given contract, provided that the awarding entity informed about it in the contract notice or the contract documents concerning the framework agreement.

9. In the case referred to in paragraph 8, subparagraph 2, the awarding entity shall:

- 1) inform, sufficiently in advance, the contractors on the date and time of downloading the data needed to prepare the tenders adjusted to the requirements of a given contract and ensure to the contractors the possibility of updating electronic catalogues or refusing consent for such data download;
- 2) present to the contractor to which it intends to award a contract, before its award, the downloaded data and set for this contractor a reasonable time limit for challenging or confirmation that the tender prepared in such a manner does not contain any significant errors, with the proviso that when the contractor fails to challenge the tender prepared in such a manner within the set time limit, the tender shall be deemed to have been submitted by the contractor.

#### **Art. 390**

1. The awarding entity need not provide to the Publications Office of the European Union the notice containing the information on having awarded a contract covered by a framework agreement or having cancelled the proceedings for awarding such a contract.

2. If the awarding entity provides to the Publications Office of the European Union the notice containing the information on having awarded a contract covered by a framework agreement or having cancelled the proceedings for awarding such a contract, the provision of Article 265, paragraph 2 shall apply.

#### **Art. 391**

1. The awarding entity may establish a dynamic purchasing system.

2. From the date of publishing the contract notice in the Official Journal of the European Union or, in the event when the periodical information notice is applied as an invitation to compete for a contract, from the date of transmission of the invitation to confirm interest, the awarding entity shall make available on the website of the dynamic purchasing system the information on the application of the dynamic purchasing system along with the information concerning the dynamic purchasing system, and in particular:

- 1) the description of the subject of the contracts covered by the dynamic purchasing system accompanied by the estimated volume;
- 2) the period of validity of the dynamic purchasing system;
- 3) the envisaged dates of effecting contracts;
- 4) the technical requirements of IT and telecommunication equipment necessary for communication between the awarding entity and contractors, including transmission of tenders.
- 5) the manner of operation of the dynamic purchasing system;
- 6) the division into categories of supplies, services or construction works, along with the characteristics defining such categories, insofar as the dynamic purchasing system is divided into categories;
- 7) whether a requirement to submit tenders in the form of an electronic catalogue or by attaching the electronic catalogue to a given tender is envisaged.

3. The information referred to in paragraph 1 shall be available on the website of the dynamic purchasing system throughout the entire period of validity of the dynamic purchasing system.

4. In the dynamic purchasing system the minimum deadline for submitting requests for participation in the dynamic purchasing system is, as a rule, at least 30 days from the day of transmission of a contract notice or in the event when a periodical information notice is used as an invitation to compete for a contract, from the day of transmission of the invitation until confirmation of interest and shall not in either case be shorter than 15 days.

5. In the dynamic purchasing system the deadline for submitting tenders may be fixed by a mutual agreement between the awarding entity and the contractors admitted to participation in the proceedings, provided that all contractors have equal amount of time to prepare and submit their tenders. Should no agreement be reached as regards the deadline for filing tenders, this deadline shall be at least 10 days from the day of transmission of the invitation to submit tenders.

6. The provisions of Article 316, Article 317, Article 319, paragraph 2, Articles 320 to 322, Article 323, paragraphs 2 to 7 and Article 324 shall apply to the dynamic purchasing system.

#### **Art. 392**

1. The provisions of the Act relevant to sectoral contracts shall apply to awarding sectoral contracts for social services and other special services, if the value of the contract is equal to or exceeds the equivalent amount in zloties of EUR 1,000,000.

2. The awarding entity, while awarding the contracts referred to in paragraph 1, need not apply the provisions of the Act concerning:

- 1) an obligation to make the statement referred to in Article 125, paragraph 1, on a form of a single document;
- 2) the minimum time limits for submission of requests for participation in the proceedings or the time limits for submission of tenders;
- 3) an obligation to demand documents as object-related means of proof.

3. The awarding entity may reserve in a contract notice, periodical information notice or a notice on the contractor qualification system that the award of a contract for health, social and cultural services falling within the CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, od 85000000-9 do 85323000-9, 92500000-6, 92600000-7, 98133000-4 and 98133110-8, specified in the Common Procurement Vocabulary, may be applied for exclusively by the contractors which jointly fulfill the following conditions;

4. In the cases referred to in paragraph 3, the public procurement agreement may not be concluded for a period longer than 3 years.

## **Chapter 6. Certain Powers of Sectoral Awarding Entity.**

### **Art. 393**

1. In sectoral contract award proceedings:

- 1) the awarding entity referred to in Article 5, paragraph 1, subparagraphs 2 and 3 need not examine the grounds for exclusion of the contractor, as referred to in Article 108;
- 2) the awarding entity may apply the grounds for exclusion and the conditions for participation in the proceedings other than the ones laid down in Article 108, Article 109 and Article 112, insofar as they have an objective nature and have been set out in the contract documents;
- 3) the awarding entity may demand that also other object-related means of proof than the ones laid down in the provisions issued under Article 128, paragraph 6 are presented, provided that this is necessary to assess whether contractors satisfy the conditions and to assess the lack of grounds for exclusion, as referred to in subparagraph 2;
- 4) the awarding entity may, in the case of a contract for supplies, reject a tender, where the share of goods or software used in the equipment of the telecommunication networks originating in the Member States of the European Union, states with which the European Union concluded agreements on equal treatment of entrepreneurs, or states to which the provisions of Directive 2014/25/EU shall apply under the Council's decision, is less than 50 per cent, if the awarding entity envisaged this in a contract notice and, if the proceedings are not instituted by means of a contract notice - in the STC.

2. If it is not possible to select the most advantageous tender due to the fact that two or more tenders were submitted with equivalent prices or presenting the same balance of price and other tender evaluation criteria, while the STC does not provide for a rejection of a tender pursuant to paragraph 1, subparagraph 4, the awarding entity shall select a tender which could not be rejected pursuant to paragraph 1, subparagraph 4. The prices of those tenders shall be the same if the difference between the price of the most advantageous tender and the prices of other tenders which could not be rejected pursuant to paragraph 1, subparagraph 4, does not exceed 3 per cent.

3. The provision of paragraph 2 shall not apply where its application would lead to acquire equipment incompatible with the equipment at the disposal of the awarding entity, other technical difficulties in operation and maintenance of this equipment or would require incurring incommensurately high costs.

4. In a sectoral contract award proceedings the contractor shall not be subject to exclusion in the case referred to in Article 108, paragraph 1, subparagraph 1, letter h, as well as in the case referred to in Article 108, paragraph 1, subparagraph 2, if the person mentioned in this provision was convicted for the offence enumerated in Article 108, paragraph 1, subparagraph 1, letter h.

5. While awarding a sectoral contract, the manager of the awarding entity may waive the appointment of the tendering commission. Waiving the appointment of the commission, the manager of the awarding entity shall specify the manner of conducting proceedings to ensure the efficient awarding of contracts, individualization of the responsibility for performed acts and the transparency of its work.

#### **Art. 394**

1. The awarding entity or the competent authority at its own initiative or at the request of the awarding entity may, having analyzed the relevant market, make a request to the European Commission for ascertaining that the awarding entities performing the sectoral activity referred to in Article 5, paragraph 4, operate on a competitive market, the access to which is not limited. The awarding entity shall forthwith transmit the request's copy to the competent authority.

2. The awarding entity or the competent authority shall analyze the market with respect to the given activity and draw up the request in accordance with the requirements specified in Commission Implementing Decision (EU) 2016/1804 of 10 October 2016 on the detailed rules for the application of Articles 34 and 35 of Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 275, 12.10.2016, p. 39).

3. The awarding entities that, in accordance with the published decision of the European Commission, operate on a competitive market to which access is not limited, shall not apply the provisions of the Act. This provision shall apply accordingly should the European Commission fail to issue the decision within 7 months from the date of the receipt of the request referred to in paragraph 1.

4. The Council of Ministers shall, by regulation, specify the authorities competent to submit the request referred to in paragraph 1, taking into account the type of the activity and the scope of operation of the authorities as well as their knowledge of the functioning of the market with respect to the given activity.

### **Division VI. CONTRACTS IN THE FIELDS OF DEFENCE AND SECURITY.**

#### **Chapter 1. Scope of Application.**

#### **Art. 395**

1. Contracts in the fields of defence and security:

1) shall be governed by the provisions:

a) of Section II:

- exclusive of Article 83, Article 87, paragraph 2, Article 89, Article 91, paragraph 2, Article 92, Article 94, Article 97, paragraph 10, Articles 100 to 102, Article 110, paragraphs 2 and 3, Article 115, paragraph 2, Article 125, paragraphs 2, 3 and 6, Article 126, paragraphs 1 and 2, Article 127, Article 222, paragraphs 2 to 5, Article 245, paragraph 6 and Article 262,

- of Chapter 3, exclusive of Article 129 and Article 130, paragraph 2, unless the provisions of this Chapter provide otherwise,

b) of Section IV, Chapter 1, exclusive of Article 311, paragraphs 1 and 3;

2) shall not be governed by the provisions of Articles 21 to 23, Article 72, paragraph 1, subparagraph 5, Article 78, paragraph 4, Article 442, paragraphs 1 and 2, Articles 443, 446 and Article 448.

2. Contracts in the fields of defence and security shall not be governed by the provisions of Section I, Chapter 7 to the extent to which they provide for an obligation of communication with the contractor exclusively with the use of electronic communication means.

3. Contracts in the fields of defence and security shall not be governed by the provisions of the Act relevant to open tendering, innovation partnership, dynamic purchasing system and a contest.

#### **Art. 396**

1. The provisions of this Section shall also apply to the contracts which include simultaneously contracts in the fields of defence and security and other contracts, to which the provisions of the Act shall apply, where the award of a single contract is justified for objective reasons.

2. The awarding entity shall not combine other contracts with contracts in the fields of defence and security in order to avoid the procedures specified in the Act.

**Art. 397** If a contract in the fields of defence and security covers prioritized and non-prioritized services laid down in Annexes I and II to Directive 2009/81/EC, the provisions concerning the services, the estimated value of which is higher, shall apply to awarding the contract.

**Art. 398** Proceedings for awarding a contract, the subject of which is that of non-prioritized services specified in Annex II to Directive 2009/81/EC shall not be governed by the provisions of the Act concerning:

- 1) prerequisites for the selection of the competitive dialogue procedure;
- 2) examination of the grounds for exclusion of the contractor, as referred to in Article 108;
- 3) the minimum time limits for submission of requests for participation in the proceedings or the time limits for submission of tenders;
- 4) an obligation to demand documents as object-related means of proof.

### **Chapter 2. Proceedings for Award of a Contract in the Fields of Defence and Security.**

**Art. 399** Notices in proceedings for award of a contract in the fields of defence and security shall be provided to the Publications Office of the European Union for publication pursuant to the format and procedures for electronic sending of notices established by the European Commission and available on the website referred to in paragraph 3 of Annex VI to Directive 2009/81/EC.

#### **Art. 400**

1. In the proceedings for award of a contract in the fields of defence and security the subject of the contract shall be described having regard to separate provisions, including those related to the security of a product as well as international standardization agreements in one of the following manners:

- 1) by reference to the required features of the material, product or service, as referred to in Article 102, and, in order of preference, to:
  - a) Polish Standards transposing European standards;
  - b) civil standards applicable in other member states of the European Economic Area transposing European standards;
  - c) European Technical Assessments, understood as the documented assessments of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document, within the meaning of Article 2(12) of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC;
  - d) common civil technical specifications understood as technical specifications in the field of ICT products laid down in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council;
  - e) Polish Standards transposing international standards;
  - f) civil standards applicable in other member states of the European Economic Area transposing international standards;
  - g) civil international standards;



- h) technical reference systems established by European standardization bodies;
- i) civil technical specifications;
- j) national defence standards and specifications in the field of defence equipment similar to those standards;

2) by specifying the performance-related or functional requirements, including environmental requirements, on the condition that the provided parameters are sufficiently precise so as to enable the contractors to determine the subject of the contract and the awarding entity - to award the contract;

3) by reference to the category of requirements concerning performance or functionality referred to in subparagraph 2 and by reference to the standards, European Technical Assessments, technical specifications and technical reference systems referred to in subparagraph 1, constituting a means of presuming conformity with such performance-related or functional requirements;

4) by reference to the standards, European Technical Assessments, technical specifications and technical reference systems referred to in subparagraph 1, as well as by reference to the requirements concerning performance or functionality referred to in subparagraph 2, within the scope of selected features.

2. In the case of lack of the technical reference systems referred to in paragraph 1, subparagraph 1, letter h, the description of the subject of the contract shall include, in order of preference:

- 1) Polish Standards;
- 2) civil standards applicable in member states of the European Economic Area;
- 3) national technical assessments issued under the Act of 16 April 2004 on Construction Products;
- 4) the Polish technical specifications concerning the design, calculations and execution of construction works, as well as using supplies;
- 5) national declarations of conformity and national declarations of performance of a construction product.

3. The awarding entity, while describing the subject of the contract by reference to standards, technical assessments, technical specifications and technical reference systems referred to in paragraph 1, subparagraph 1, and paragraph 2, shall be obliged to indicate that it admits equivalent solutions to those described, such reference being accompanied by the words „or equivalent”.

4. In the event when the awarding entity uses the possibility of reference to the standards, technical assessments, technical specifications and technical reference systems referred to in paragraph 1, subparagraph 1 and paragraph 2, the awarding entity shall not reject a tender on the grounds of the fact that the products and services which are the subject of the tender do not comply with these standards, technical assessments, technical specifications and technical reference systems, provided that the contractor proves in its tender that the solutions proposed satisfy in an equivalent manner the requirements defined by the awarding entity.

5. If the awarding entity uses the possibility of describing the subject of the contract by setting out the performance- or functionality-related requirements, as referred to in paragraph 1, subparagraph 2, the awarding entity shall not reject the tender for construction works, products or services compliant with a national standard transposing a European standard, with a European technical assessment, common technical specification, an international standard or a technical reference system developed by a European standardization body, if the contractor demonstrates in its tender that they correspond to the characteristics and requirements related to performance or functionality as specified by the awarding entity.

6. A conformity assessment body referred to in Article 105, paragraph 2 shall also mean a body performing actions in the field of conformity assessment under the provisions on the conformity evaluation system of the products intended for the purposes of defence and security of the state.

7. In the case referred to in paragraph 1, subparagraph 1, the awarding entity shall prescribe in the description of the subject of the contract for construction works the characteristics required of a material, product or services, so that it fulfills the use for which it is intended by the awarding entity, and which may in particular relate to:

- 1) specific levels of environmental and climate impact;
- 2) requirements regarding availability for disabled persons;

- 3) specific performance, safety or dimensions, including the quality assurance procedures;
- 4) specific terminology, symbols, testing and test methods;
- 5) specific packaging and marking;
- 6) a specific label;
- 7) user instructions;
- 8) production processes and methods at any stage of the life cycle of the building objects;
- 9) additional examinations and tests conducted by authorized units within the meaning of the Act of 13 April 2016 on the Market Surveillance and Conformity Assessment Systems;
- 10) specific rules relating to design and costing;
- 11) the test, inspection and acceptance conditions for building objects;
- 12) methods or techniques of construction;
- 13) all other technical conditions.

8. In the case referred to in paragraph 1, subparagraph 1, the awarding entity shall determine in the description of the subject of the contract for supplies or services the characteristics required of a product or a service which may in particular relate to:

- 1) having the features referred to in paragraph 7, subparagraphs 1, 4 to 7 and 10 by a supply or service;
- 2) specific quality levels;
- 3) specific performance, intended use, safety or dimensions of the product, including the requirements related to the product as regards the name under which the product is sold;
- 4) production processes and methods at any stage of the life cycle of the supply or service as well as the conformity assessment procedure.

#### **Art. 401**

1. In proceedings for award of a contract in the fields of defence and security the communication between the awarding entity and the contractors shall take place, as chosen by the awarding entity, through a postal operator as understood in the Act of 23 November 2012 - Postal Law, whether in person or through a messenger, by fax or by electronic communication means.

2. Information shall be communicated, exchanged and stored in a manner ensuring integrity, authenticity, inviolability and confidentiality of this information, including in the manner ensuring a possibility of learning the contents of the requests for participation in the proceedings or tenders, exclusively after expiry of the time limit for their submission.

3. A request for participation in contract-award proceedings may be notified by telephone before the expiry of the time limit for the submission of requests for participation in proceedings. The request shall be deemed submitted within the set time limit, if it had been sent before the expiry of the time limit for the submission of requests for participation in proceedings and the awarding entity received it no later than within 14 days after the expiry of the time limit for the submission of requests.

4. The awarding entity may require that requests for participation in the proceedings, submitted by fax, be confirmed within the time limit set by the awarding entity through a postal operator within the meaning of the Act of 23 November 2012 - Postal Law or with the use of electronic communication means. Such a requirement, including the time limit for sending confirmation through a postal operator within the meaning of the Act of 23 November 2012 -

Postal Law, or with the use of electronic communication means, shall be indicated by the awarding entity in the contract notice.

5. A tender, a request for participation in the proceedings, and a statement referred to in Article 125, paragraph 1, shall be submitted, on pain of nullity, in writing or, with consent of the awarding entity, in electronic form.

#### **Art. 402**

1. The awarding entity, following the approval or adoption of the financial plan in accordance with the provisions, articles or deed of foundation binding thereon, and in the case of awarding entities which do not prepare financial plans - once a year, may dispatch to the Publications Office of the European Union for publication or place on the awarding entity's website a prior information notice of contracts or framework agreements scheduled to be awarded under restricted tendering procedure, negotiations with publication or competitive dialogue procedure.

2. The notice referred to in paragraph 1 shall provide:

**1)** for construction works - the basic features of the contracts or framework agreements for construction works, which the awarding entity intends to award;

**2)** for supplies - the total value of contracts or framework agreements for supplies, broken down by product groups within the given group specified in the Common Procurement Vocabulary, which the awarding entity intends to award over the next 12 months;

**3)** for services - the total value of contracts or framework agreements for services, in each of the categories of services specified in the Common Procurement Vocabulary, which the awarding entity intends to award over the next 12 months.

3. If the prior information notice is placed by the awarding entity on its website, the awarding entity shall transmit to the Publications Office of the European Union for publication the notice on the buyer's profile.

4. The prior information notice shall not be placed by the awarding entity on its website before transmitting to the Publications Office of the European Union for publication the notice on the buyer's profile.

#### **Art. 403**

1. The awarding entity may admit in the contract notice that a variant tender be submitted. The variant tender must be associated with the subject of the contract.

2. If the awarding entity admits the possibility of submitting the variant tender, it shall determine in the contract documents:

**1)** the minimum requirements to be satisfied by variant tenders and any and all special requirements concerning their submission, in particular the information on the possibility of submitting the variant tender along with the basic tender or instead of such a tender;

**2)** the tender evaluation criteria in the manner ensuring the possibility of their application both with regard to the basic tender and to the variant tender.

#### **Art. 404**

1. Contractors having their seat or place of residence in one of the European Union Member States or Member States of the European Economic Area or a state with which the European Union or the Republic of Poland concluded an international agreement concerning contracts in the fields of defence and security may compete for the award of such contract.

2. The awarding entity may specify in the contract notice that also contractors from countries other than those specified in paragraph 1 may compete for a contract in the fields of defence and security.

#### **Art. 405**

1. The contractors referred to in Article 108 may be excluded from contract award proceedings in the fields of

defence and security.

2. In the proceedings for award of a contract in the fields of defence and security the awarding entity may exclude a contractor:

- 1) who is a natural person, or which is a registered partnership, professional partnership, limited partnership, limited joint-stock partnership or a legal person, if in respect of such persons or, respectively, the partnership's or legal person's partner, member of the management board, general partner or active managing body's member, or in relation to any action undertaken or omission committed by him/her a decision was taken to withdraw security attestation referred to in Article 33, paragraph 11 of the Act of 5 August 2010 on the Protection of Non-Public Information;
- 2) which has violated the obligations to the extent of security of information or supplies;
- 3) which has been considered to have no credibility necessary to eliminate threat to the defence of security of the state, also in a manner other than by issuing a decision to withdraw the facility security clearance referred to in Article 66 of the Act of 5 August 2010 on the Protection of Non-Public Information;
- 4) having its/his/her seat or place of residence in any other state than those referred to in Article 404, paragraph 1, subject to Article 404, paragraph 2;
- 5) referred to in Article 109;
- 6) who is a natural person and violated his/her obligations concerning security of information or supplies in connection with the performance, non-performance or improper performance of the contract;
- 7) where an acting member of its managing or supervising body, partner of a registered partnership or professional partnership or a general partner in a limited partnership or limited joint-stock partnership or a commercial proxy violated the duties concerning the security of information or security of supplies as regards non-performance or improper performance of the contract.

3. In the cases referred to in paragraph 2, subparagraphs 2, 6 and 7, the contractors shall be excluded if 5 years have not yet elapsed from finding the violation referred to in these provisions.

4. A request for participation in the proceedings, and in the case of negotiations without publication - a tender, shall be accompanied by the contractor with the statement referred to in Article 125, paragraph 1, as well as object-related means of proof.

5. The statement referred to in Article 125, paragraph 1 and object-related means of proof shall confirm the lack of grounds for exclusion, satisfaction of the conditions for participation in the proceedings or of the selection criteria not later than as at the day of submission of requests for participation in the proceedings, and in the case of negotiations without publication - not later than as at the day of submitting the tenders.

6. Exclusion, pursuant to paragraph 2, subparagraph 3, may take place also in the event that the contracting authority obtains, directly or indirectly, a written notification from the institutions competent for the matters of the protection of internal or external security of the state, which have the information in this respect, of occurrence of a threat to defence and security, in particular furnishing the information on a decision on withdrawal of the facility security clearance, as referred to in Article 66 of the Act of 5 August 2010 on the Protection of Non-Public Information.

7. The awarding entity shall derogate from rejecting a request for participation in the proceedings or a tender, under paragraph 2, subparagraph 3, in the event that the justification of the grounds for exclusion is non-public or it is reserved that no consent shall be granted for providing the contractor with the information on the contents of the notification referred to in paragraph 6 or the party providing such information failed to indicate to the awarding entity any detailed information to the extent of occurrence of a threat to defence and security.

8. The awarding entity may derogate from the rejection of a request for participation in the proceedings or a tender of the contractor, in respect of which the grounds for exclusion referred to in paragraphs 1 and 2 occur, if a relevant reservation has been provided for in the contract notice and if this is justified by the general interest.

**Art. 406** The awarding entity may obligate a contractor to inform subcontractors about their duty to protect non-public information which they obtained during the award proceedings for a contract in the fields of defence and

security.

**Art. 407** In the case of the contracts including non-public information, the awarding entity shall specify in the contract notice or the contract documents the requirements related to performance of the contract necessary to ensure security of this information. For this purpose the awarding entity may, in particular:

- 1) demand that the following be filed together with a tender:
  - a) the contractor's and the already known subcontractors' commitment to protect non-public information in their possession or of which they will become aware during the implementation of the contract and after its completion;
  - b) the contractor's commitment to obtain from other subcontractors which it will entrust with subcontracting during the implementation of the contract the commitments referred to in letter a, and to submit the same to the awarding entity before entering into a subcontracting agreement;
  - c) the information concerning the already known subcontractors, including provision of their forenames and surnames as well as the place of residence or business name and seat, as well as the data which allow the awarding entity to determine that each of them has the qualifications required to protect the non-public information to which they have access or which will be generated in connection with the performance of the subcontracting agreement;
  - d) the contractor's commitment to furnish the information referred to in letter c concerning new subcontractors, before entering into a subcontracting agreement;
- 2) determine the right to verify or dismiss the contractor's employees who are to participate in the execution of the contract, both at the stage of conducting the contract award proceedings, as well as at the stage of the performance of the public procurement agreement in the fields of defence and security, where the protection of essential security interest of the state so requires or where it is necessary to increase the safety of the implemented contracts.

#### **Art. 408**

1. The awarding entity shall specify in the contract notice or the contract documents the requirements related to execution of the contract to the extent of security of supplies. For this purpose the awarding entity may demand that the following, in particular, be submitted with the tender:

- 1) the documentation guaranteeing compliance with the requirements of exportation, transfer or transit of goods related to a contract in the fields of defence and security, including any accompanying documents obtained from a given Member State of the European Union;
- 2) the information on the restrictions imposed on the awarding entity with respect to the disclosure, transfer or use of products and services or results connected with these products and services resulting from exportation control or security provisions;
- 3) the documentation guaranteeing that the organization and location of the contractor's supply chain permit it to meet the requirements of the awarding entity with respect to the security of supplies specified in the contract notice or contract documents, and also a commitment to guarantee that any possible changes in the supply chain during the implementation of the contract do not adversely affect compliance with these requirements;
- 4) the contractor's commitment to ensure, on the agreed terms and conditions, a possibility of executing the contract in the case of increase in the needs of the awarding entity as a result of a crisis situation, including by establishment or maintenance of capability at the required level;
- 5) the documentation obtained from the contractor's state authorities in respect of ensuring the possibility of the implementation of the contract in the case of increase in the needs of the awarding entity resulting from a crisis situation;
- 6) the contractor's commitment to ensure the maintenance, modernization or adaptation of the supplies constituting the subject of the contract;
- 7) the contractor's commitment to immediately notify the awarding entity of each and every change which occurred in its organization, supply chain or industrial strategy which could influence its obligations towards the awarding entity;
- 8) the contractor's commitment to ensure, according to the agreed terms and conditions, in the case where it will no longer be able to ensure supplies to the awarding entity, any specific means necessary for the production of spare parts, components, assemblies and special testing equipment, including technical drawings, licenses and

instructions for use.

2. Specification of the requirements referred to in paragraph 1 shall not result in obligating a contractor to obtain a commitment from the authorities of a European Union Member State that would prejudice that Member State's freedom to apply, in accordance with relevant international or Community law, its national export, transfer or transit licensing criteria.

3. The crisis situation referred to in paragraph 1, subparagraphs 4 and 5, shall mean:

- 1) a war;
- 2) an armed conflict;
- 3) other situation in which damage has occurred or is impending which clearly exceeds the dimensions of damage occurring in everyday life and which endangers the life and health of many people, or has a substantial impact on property values, or requires measures in order to supply the population with necessities.

#### **Art. 409**

1. The awarding entity may specify in the contract notice or other document initiating proceedings the requirements related to the execution of a contract as regards subcontracting concerning:

- 1) the indication in the tender of the contract lot, the performance of which will be entrusted to subcontractors and providing the business names of subcontractors together with the subject of subcontracting agreements for which they are proposed - in the case where the awarding entity does not require a contractor to select subcontractors in compliance with the procedure specified in Articles 423 to 430;
- 2) notifying immediately of any changes relating to subcontractors, which will occur during performance of the contract;
- 3) the application of the procedure laid down in Articles 423 to 430 for the selection of subcontractors of all or some contract lots, which the contractor intends to entrust to subcontractors;
- 4) imposing on the contractor an obligation to conclude subcontracting agreements, specifying the range of values covering the minimum and maximum percentage of the value of a procurement agreement in the fields of defence and security, which percentage is to be the subject of those agreements.

2. In the case referred to in paragraph 1, subparagraph 4:

- 1) the awarding entity shall determine the range referred to in paragraph 1, subparagraph 4, in the manner pro rata to the subject and value of the contract as well as the nature of the industry sector involved, including the level of competition on a given market and the relevant technical capabilities of the industrial base;
- 2) the aggregate value of the subcontracting agreements which a contractor will be required to conclude shall not exceed 30 per cent of the value of a contract awarded to the contractor;
- 3) any percentage of the subcontracting agreement falling within the range set out in paragraph 1, subparagraph 4 shall be considered to fulfil the subcontracting requirements;
- 4) the provisions of Articles 423 to 430 shall apply to the conclusion of a subcontracting agreement;
- 5) the contractor shall indicate in the tender the contract lot which it will entrust to subcontractors in order to fulfil the obligation to conclude subcontracting agreements.

3. Entrusting the performance of a contract lot to subcontractors shall not release the contractor from liability for the performance of a contract in the fields of defence and security.

### **Chapter 3. Procedures for Award of Contracts in the Fields of Defence and Security.**

#### **Art. 410**

1. The awarding entity may award a contract in the fields of defence and security under the restricted tendering or negotiations with publication procedure.
2. The awarding entity may make award a contract in the fields of defence and security under the competitive dialogue procedure, negotiations without publication or direct-award contract procedure in the cases laid down in this Chapter.
3. In the cases referred to in paragraph 1, the awarding entity may select the most advantageous tender applying an electronic auction. The provisions of Articles 227 to 238 shall apply accordingly.
4. The awarding entity may convene a meeting of all contractors in order to clarify the contents of the STC or the description of the needs and requirements, respectively. The information on the date of the meeting shall be provided by the awarding entity to contractors or made available by the awarding entity on the website of the conducted proceedings in the cases referred to in Article 411, paragraph 3, Article 412, paragraph 3 and Article 413, paragraph 4.
5. The awarding entity shall prepare the information including the questions submitted during the meeting concerning clarification of the contents of the STC or the description of the needs and requirements, respectively and replies thereto, without indicating the sources of the inquiries. The information from the meeting shall be provided by the awarding entity to contractors or made available by the awarding entity on the website of the conducted proceedings in the cases referred to in Article 411, paragraph 3, Article 412, paragraph 3 and Article 413, paragraph 4.

#### **Art. 411**

1. The restricted tendering shall not be governed by the provisions of Article 141, Article 142, Article 143, paragraphs 1 to 3, Article 144, paragraph 2 and Articles 148 to 151.
2. In the case where the STC is provided to contractors together with an invitation to submit tenders, the STC shall include at least:
  - 1) the name and the address of the awarding entity;
  - 2) the information referred to in Article 134, paragraph 1, subparagraphs 3 to 6, and 13 to 21 and subparagraphs 2 to 5, 7, 9, 10, 12 to 15, 17 and 18;
  - 3) the information on the awarding entity's manner of communication with contractors, as well as the indication of the persons authorized to communicate with contractors;
  - 4) the information concerning variant tenders, including the information on the manner of presenting variant tenders and the minimum conditions which the variant tenders must satisfy, if the awarding entity allows submitting thereof;
  - 5) the information on the envisaged contracts referred to in Article 415, paragraph 2, subparagraphs 5 and 6, where the awarding entity envisages the award of such contracts.
3. If the awarding entity provides, on the website of the conducted proceedings, free-of-charge, full, direct and unlimited access to the STC from the date of publishing the contract notice in the Official Journal of the European Union not shorter than until the date of awarding the contract, the STC shall include at least:
  - 1) the information referred to in Article 134, paragraph 1, subparagraphs 2 to 9 and 17 to 21, as well as paragraph 2, subparagraphs 2 to 5, 9, 19, 12 to 15, 17 and 18;
  - 2) the information referred to in paragraph 2, subparagraphs 1 and 3 to 5;
  - 3) the grounds for exclusion referred to in Article 405, paragraph 2, if the awarding entity provides for them;

- 4) the information on whether the awarding entity envisages a possibility of limiting the number of the contractors which it will invite to submit tenders along with specifying the number of the contractors and the selection criteria, if they are determined;
- 5) the description of the manner of preparation of the requests for participation in the proceedings;
- 6) the manner and time limit for submitting requests for participation in the proceedings.

4. If the clarifications of the contents of the STC are necessary to duly prepare and submit a request for participation in the proceedings, the awarding entity shall be obliged to provide clarifications in this respect immediately, not later, however, than 6 days before the expiry of the time limit for submission of the request or not later than 4 days before the expiry of the time limit for submission of requests in the case referred to in paragraph 7, provided that the request for clarification of the contents of the STC was received by the awarding entity not later than 14 days or 7 days, respectively, before the expiry of the time limit for submitting a request for participation in the proceedings.

5. Extension of the time limit for submitting requests for participation in the proceedings shall not affect the running of the period of filing the request for clarification of the STC content referred to in paragraph 4.

6. The provisions of Articles 135 and 137 shall accordingly apply to clarifications of and changes to the contents of the STC.

7. In the event of an extreme urgency for the award of a contract, the awarding entity may fix a shorter time limit for the submission of requests for participation in the proceedings, however, not shorter than 10 days from the day of dispatch of the contract notice to the Publications Office of the European Union.

8. The awarding entity may limit the number of the contractors invited to submit tenders, whose requests for participation in the proceedings were admissible, insofar as this number is sufficient to ensure competition and is not less than 3.

9. In the case referred to in paragraph 8 the awarding entity shall indicate in the contract notice and, in the case referred to in paragraph 3, in the STC, the selection criteria which it intends to apply in order to limit the number of the contractors invited to submit their tenders and shall provide the minimum number of the contractors which it will invite to submit their tenders. The awarding entity may indicate the maximum number of the contractors which it will invite to submit their tenders.

10. The awarding entity shall at the same time invite to submit their tenders the contractors whose requests for participation in the proceedings have not been subject to rejection and in the event of determining the selection criteria, it shall invite the contractors which satisfy these criteria, in the number prescribed by the awarding entity.

11. If the number of the contractors which submitted requests for participation in the proceedings not subject to rejection is lower than the minimum number prescribed by the awarding entity pursuant to paragraphs 8 and 9, the awarding entity may:

- 1) continue the proceedings, inviting these contractors to submit their tenders or
- 2) suspend the proceedings and publish the contract notice again specifying, with the application of the provisions concerning the time limits for submission of requests for participation in the proceedings, a new time limit for submission of the requests and notifying contractors who comply with the conditions for participation in the proceedings to this effect; or
- 3) cancel the proceedings pursuant to Article 258, paragraph 1.

12. An invitation to submit tenders shall include at least the business name and address of the awarding entity, the information on the subject-related means of proof to be attached to the tender, as well as the information referred to in Article 150, paragraph 1, subparagraphs 2 and 5. The awarding entity shall attach to the invitation to submit tenders the STC and changes thereto, if any, as well as the clarifications of the contents of the STC, and other contract documents directly related to the contract award proceedings, unless they have been made accessible on the website in accordance with paragraph 3.

13. The awarding entity shall fix a time limit for submission of tenders taking into account the time needed to prepare and submit the tender, which shall not, however, be less than 40 days from the date of the dispatch of the invitation to submit tenders.



14. In the case referred to in paragraph 3 the minimum time limit referred to in paragraph 13 may be reduced to 35 days from the day of the dispatch of the invitation to submit tenders.

15. If the information on the contract was contained in the prior information notice, provided that the prior information notice included all information required for the contract notice, to the extent to which said information is available at the moment of publication of the prior information notice, and said information notice was dispatched to the Publications Office of the European Union for publication at least 52 days and no more than 12 months preceding the day of the dispatch of the contract notice, the awarding entity may fix the time limit for submission of tenders not shorter, however, than 22 days of the day of the dispatch of the invitation to submit tenders.

16. In the event of an extreme urgency for the award of a contract, the awarding entity may fix a shorter time limit for the submission of tenders, not shorter, however, than 10 days from the day of dispatching an invitation to submit tenders.

## **Art. 412**

1. The provisions of Article 152, paragraph 2, Article 153, Article 154, Article 155 paragraphs 2 and 3, Article 156, paragraphs 1, 2 and 4, Article 157, paragraph 2, Articles 160 to 162, Article 163, paragraph 1, Article 167 paragraph 3 and Article 168, paragraph 2, subparagraphs 1 to 3 and paragraph 3 shall not apply to negotiations with publication.

2. In the case where the description of the needs and requirements is provided to contractors together with an invitation to submit initial tenders, the description of the needs and requirements shall include at least:

1) the information referred to in Article 134, paragraph 2, subparagraphs 2 to 5, 7, 9, 10, 12 to 15, 17 and 18 and in Article 156, paragraph 1, subparagraphs 3 to 8, 18 and 19;

2) the declarations referred to in Article 411, paragraph 2, subparagraphs 1 and 3 to 5.

3. If the awarding entity provides, on the website of the conducted proceedings, free-of-charge, full, direct and unlimited access to the description of the needs and requirements and other contract documents from the date of publishing the contract notice in the Official Journal of the European Union not shorter than until the date of awarding the contract, the description of the needs and requirements shall include at least:

1) the information referred to in Article 134, paragraph 2, subparagraphs 2 to 5, 7, 9, 10, 12 to 15, 17 and 18 and in Article 156, paragraph 1, subparagraphs 2 to 10, 14 to 16, 18 and 19;

2) the information referred to in Article 411, paragraph 2, subparagraphs 1 and 3 to 5;

3) the grounds for exclusion referred to in Article 405, paragraph 2, if they are envisaged by the awarding entity;

4) the information on whether the awarding entity envisages a possibility of limiting the number of the contractors which it will invite to submit initial tenders along with specifying the number of the contractors and the selection criteria, if they are determined;

4. In the event of an extreme urgency for the award of a contract, the awarding entity may fix a shorter time limit for the submission of requests for participation in the proceedings, however, not shorter than 10 days from the day of dispatch of the contract notice to the Publications Office of the European Union.

5. The awarding entity shall at the same time invite to submit their initial tenders the contractors whose requests for participation in the proceedings have not been subject to rejection and in the event of determining the selection criteria, it shall invite the contractors which satisfy these criteria, in the number prescribed by the awarding entity, in accordance with Article 159.

6. If the number of the contractors which submitted requests for participation in the proceedings not subject to rejection is lower than the minimum number prescribed by the awarding entity pursuant to Article 159, the awarding entity may:

1) continue the proceedings, inviting these contractors to submit their initial tenders or

2) suspend the proceedings and publish the contract notice again specifying, with the application of the provisions concerning the time limits for submission of requests for participation in the proceedings, a new time limit for submission of the requests and notifying contractors who comply with the conditions for participation in the proceedings to this effect; or

3) cancel the proceedings pursuant to Article 258, paragraph 1.

7. An invitation to submit initial tenders shall include at least the business name and address of the awarding entity and the information referred to in Article 161, paragraph 1, subparagraphs 2 and 5. The awarding entity shall attach to the invitation to submit initial tenders the description of the needs and requirements and changes to and clarifications thereof, if any, as well as other contract documents directly related to the contract award proceedings, unless the description of the needs and requirements has been made accessible on the website in accordance with paragraph 3. The time limits for submission of initial tenders shall be governed by the provisions of Article 411, paragraphs 13 to 16.

8. After completion of negotiations the awarding entity shall provide the contractors remaining in the proceedings with an invitation to submit final tenders, which includes at least the business name and address of the awarding entity and the information referred to in Article 168, paragraph 2, subparagraph 4. The awarding entity shall attach to the invitation to submit final tenders the STC, which shall contain at least the information referred to in Article 411, paragraph 2.

#### **Art. 413**

1. The provisions of Article 170, Article 173, Article 174, paragraph 1, Article 178, paragraphs 1 and 3, Article 179, Article 185, paragraph 2, and Article 186, paragraph 2 shall not be applicable to competitive dialogue.

2. A contract in the fields of defence and security may be awarded under a competitive dialogue procedure, if, due to especially complex nature of the contract it is not possible to grant a contract under restricted tendering procedure or negotiations with publication procedure. In such a case, the price shall not be the exclusive criterion of choosing the most advantageous tender.

3. In the case where the description of the needs and requirements is provided to contractors together with an invitation to dialogue, the description of the needs and requirements shall include at least:

1) the information referred to in Article 134, paragraph 2, subparagraphs 2 to 5, 7, 9, 10, 12 to 15, 17 and 18 and in Article 156, paragraph 1, subparagraphs 3, 4 and 19;

2) the information referred to in Article 174, paragraph 2;

3) the information referred to in Article 411, paragraph 2, subparagraphs 1 and 3 to 5.

4. If the awarding entity provides, on the website of the conducted proceedings, free-of-charge, full, direct and unlimited access to the description of the needs and requirements and other contract documents from the date of publishing the contract notice in the Official Journal of the European Union not shorter than until the date of awarding the contract, the description of the needs and requirements shall include at least:

1) the information referred to in Article 134, paragraph 2, subparagraphs 2 to 5, 7, 9, 10 and 12 to 15, 17 and 18 and in Article 156, paragraph 1, subparagraphs 2 to 4, 9, 10, 14 to 16 and 19;

2) the information referred to in Article 174, paragraph 2;

3) the information referred to in Article 411, paragraph 2, subparagraphs 1 and 3 to 5;

4) the grounds for exclusion referred to in Article 405, paragraph 2, if they are envisaged by the awarding entity;

5) the information on whether the awarding entity envisages a possibility of limiting the number of the contractors which it will invite to dialogue along with specifying the number of the contractors and the selection criteria, if they are determined.

5. The awarding entity shall at the same time invite to the dialogue the contractors whose requests for participation in the proceedings have not been subject to rejection and in the event of determining the selection criteria, it shall invite the contractors which satisfy these criteria, in the number prescribed by the awarding entity, in accordance with

#### Article 177.

6. If the number of the contractors which submitted requests for participation in the proceedings not subject to rejection is lower than the minimum number prescribed by the awarding entity pursuant to Article 177, the awarding entity may:

- 1) continue the proceedings, inviting these contractors to dialogue or
- 2) suspend the proceedings and publish the contract notice again specifying, with the application of the provisions concerning the time limits for submission of requests for participation in the proceedings, a new time limit for submission of the requests and notifying contractors who comply with the conditions for participation in the proceedings to this effect; or
- 3) cancel the proceedings pursuant to Article 258, paragraph 1.

7. An invitation to dialogue shall include at least the business name and address of the awarding entity and the information referred to in Article 179, paragraph 1, subparagraphs 2 and 5 to 7. The awarding entity shall attach to the invitation to dialogue the description of the needs and requirements and changes to and clarifications thereof, if any, as well as other contract documents directly related to the contract award proceedings, unless the description of the needs and requirements has been made accessible on the website in accordance with paragraph 4.

8. After completion of the dialogue, the awarding entity shall provide the contractors with which it conducted the dialogue and which have not been eliminated from the proceedings at particular stages, an invitation to submit tenders, which includes at least the business name and address of the awarding entity and the information referred to in Article 186, paragraph 2, subparagraphs 4 and 5. The awarding entity shall attach to the invitation to submit tenders the STC, which shall contain at least the information referred to in Article 411, paragraph 2.

#### Art. 414

1. The provisions of Article 209 and Article 210, paragraphs 3 and 4 shall not apply to negotiations without publication.

2. Contracts in the fields of defence and security may be awarded under negotiations without publication procedure, where at least one of the following circumstances has occurred:

- 1) products manufactured purely for purposes of research and development are the subject of the contract, with the exception of batch production aimed at making profit or covering incurred research and development costs;
- 2) during the proceedings conducted previously under the restricted tendering procedure, negotiations with publication procedure or competitive dialogue procedure no request for participation in the proceedings was submitted or all requests for participation in the proceedings were rejected under Article 146, paragraph 1, subparagraph 2 or no tenders were submitted or all the tenders were rejected pursuant to Article 226, paragraph 1, subparagraph 2 or due to their non-compliance with the description of the subject of the contract pursuant to Article 226, paragraph 1, subparagraph 5, while the original terms of the contract have not been substantially altered;
- 3) due to extreme urgency for the award of a contract resulting from a crisis situation referred to in Article 408, paragraph 3, the time limits, including shortened time limits, provided for restricted tendering or negotiations with publication cannot be observed;
- 4) due to a previously unforeseeable extreme urgency for the award of a contract not attributable to the awarding entity, the time limits, including shortened time limits, provided for restricted tendering or negotiations with publication cannot be observed;
- 5) the subject of the contract for services or supplies is intended for the purposes of research or development services other than the services referred to in Article 11, paragraph 1, subparagraph 3;
- 6) in the case of contracts involving air and maritime transport services for the Armed Forces of the Republic of Poland, and also forces responsible for the protection of security in connection with participation in a foreign mission, if the awarding entity must seek such services from contractors which guarantee the validity of their tenders for only such a short period of time that the time limits, including shortened time limits, provided for restricted tendering or negotiations with publication cannot be observed;

7) in the proceedings conducted previously under restricted tendering procedure, negotiations with publication procedure or competitive dialogue procedure, all requests for participation in the proceedings have been rejected under Article 146, paragraph 1 or all tenders have been rejected under Article 226, paragraph 1, or the awarding entity cancelled under Article 255, subparagraph 3, provided that the original contract terms have not been materially altered and the awarding entity invites to negotiations exclusively all contractors which are not subject to exclusion and satisfy the conditions for participation in the proceedings and the proceedings conducted previously under restricted rendering, negotiations with publication or competitive dialogue procedure have submitted the tenders which have not been rejected under Article 226, paragraph 1, subparagraphs 1, 2, 6, 7, 9, 12 to 14 or 18.

3. The invitation to negotiations without publication shall contain at least the business name and address of the awarding entity, as well as the information referred to in Article 210, paragraph 2, subparagraphs 2 to 8.

#### **Art. 415**

1. The provisions of Article 214, paragraph 1, subparagraphs 2 to 8, and paragraphs 2 and 3 shall not apply to direct-award contract.

2. Contracts in the fields of defence and security may be awarded under a direct-award contract procedure where at least one of the following circumstances has occurred:

1) the circumstances defined in the provisions of Article 214, paragraph 1, subparagraphs 1 and 9 to 14;

2) the circumstances defined in the provisions of Article 414, paragraph 2, subparagraphs 1 and 3 to 7, if requesting other contractors is inexpedient or impossible or where this is required by urgent operational needs;

3) due to a crisis situation referred to in Article 408, paragraph 3, prompt performance of the contract is required and the time limits, including shortened time limits, determined for restricted tendering or negotiations with publication cannot be observed;

4) due to extraordinary circumstances not resulting from reasons attributable to the awarding entity and which it could not have foreseen, prompt performance of the contract is required and the time limits, including shortened time limits, determined for restricted tendering or negotiations with publication cannot be observed;

5) the contract involves additional supplies effected by the original contractor, intended either as a partial repeat of supplies or refinement of installations or as an increase in the supplies or extension of the existing installations where a change of the contractor would oblige the awarding entity to acquire materials having different technical characteristics, which would result in incompatibility or disproportionately huge technical difficulties in operation and maintenance, it being understood that the duration of such contracts may not exceed 5 years;

6) in the period of 5 years from the award of the basic contract, the original contractor of services or construction works is awarded a supplementing contract of the same kind as the basic contract, provided that the basic contract was awarded under the restricted tendering or negotiations with publication or competitive dialogue procedure and the supplementary contract was provided for in the contract notice for the basic contract and complies with the subject of the basic contract;

7) during the proceedings conducted previously under the restricted tendering procedure, negotiations with publication procedure or competitive dialogue procedure no request for participation in the proceedings was submitted or all requests for participation in the proceedings were rejected under Article 146, paragraph 1, subparagraph 2 or no tenders were submitted or all the tenders were rejected pursuant to Article 226, paragraph 1, subparagraph 2 or due to their non-compliance with the description of the subject of the contract pursuant to Article 226, paragraph 1, subparagraph 5, while the original terms of the contract have not been substantially altered.

3. In extraordinary circumstances connected with the expected service life of any delivered equipment, installations or systems, and the technical difficulties which a change of the contractor may cause, to contracts in the fields of defence and security awarded under direct-award contract procedure pursuant to:

1) paragraph 2, subparagraph 5 - the requirement that the duration of such contract not exceed 5 years shall not apply;

2) paragraph 2, subparagraph 6 - the requirement of awarding a contract within the period of 5 years from awarding the basic contract shall not apply.

**Art. 416** In the event that the STC or the description of the needs and requirements is held by a subject other than the awarding entity, the invitation to submit tenders, to negotiations or to participate in the dialogue shall contain the address of the institution which may be requested for such a documentation as well as the date by which requests for making such documentation available may be submitted, and the amount due for making the same available together with determining the manner of payment. The competent subject shall send the demanded documentation to contractor immediately after obtaining their requests along with the proof of making the payment of the amount due for making it available.

**Art. 417**

1. In the case of contracts in the fields of defence and security the tender evaluation criteria shall include the price or price or cost and other criteria relating to the subject of the contract referred to in Article 242, paragraph 2 or other criteria such as cost-effectiveness, security of supplies, interoperability and operational characteristics defined in the STC. The provisions issued pursuant to Article 244 shall not apply to contracts in the fields of defence and security.

2. The awarding entity, while awarding a contract in the fields of defence and security under the restricted tendering, negotiations with publication, competitive dialogue or negotiations without publication procedure, shall define in the contract documents the tender evaluation criteria together with their description, giving the weighting of those criteria and the method of evaluating tenders.

**Art. 418**

1. The awarding entity may:

1) reject the tender on the grounds of the prerequisites for rejection of a tender other than the prerequisites referred to in Article 226, paragraph 1;

2) cancel the proceedings on the grounds of the prerequisites for cancellation of the proceedings other than the prerequisites referred to in Articles 255 to 258

- provided that they have been defined in the contract notice and the STC or in the description of the needs and requirements in an unequivocal and exhaustive manner ensuring observance of fair competition and equal treatment of contractors.

2. The awarding entity shall notify about cancellation of proceedings for reasons referred to in paragraph 1, subparagraph 2 the contractors which:

1) competed for the award of the contract - in the case of cancellation of proceedings before the expiry of the time limit for submission of tenders;

2) submitted their tenders - in the case of cancellation of proceedings after the expiry of the time limit for submission of tenders

- providing factual and legal grounds.

3. In the case of cancellation of the contract award proceedings the awarding entity shall, at the request of the contractors which competed for the award of a contract, notify them immediately of the initiation of subsequent proceedings which concern the same subject of the contract or which cover the same subject of the contract.

**Art. 419** In the proceedings for award of a contract in the fields of defence and security:

1) to furnishing information, the provisions of Article 18, paragraph 1, Article 147, Article 253 and Article 260 shall apply, however the awarding entity may refuse to furnish the information, if its disclosure could hinder the application of laws or would be contrary to public interest, in particular interests relating to defence or security, or could harm legitimate commercial interests of contractors, or could prejudice fair competition between them;

2) the subjects participating therein may learn non-public documents.

**Art. 420**

1. The awarding entity may make advanced payments for the performance of a contract in the fields of defence and

security, if:

- 1) such a possibility was provided for in the contract notice or the contract documents; or
- 2) the contractor was selected under the negotiations without publication or direct-award contract procedure.

2. The awarding entity may make advanced payments in the case of the award of a contract in the fields of defence and security under the negotiations without publication or direct-award contract procedure, if:

- 1) the amount of the one-off advanced payment does not exceed 33% of the value of the contractor's remuneration;
- 2) the principles for making advanced payments have been defined in the invitation to negotiations and will remain unchanged in the course of the performance of the procurement agreement.

3. The awarding entity may grant further advance payments on condition that the contractor, as part of the performance of the contract:

- 1) settles the funds to the extent of the values of previously granted advance payments or
- 2) demonstrates that it allocated the entire funds to the extent of the values of previously granted advance payments.

#### **Art. 421**

1. The awarding entity shall conclude a public procurement agreement taking account of Article 577 within no less than 10 days from the date of sending the notice about the selection of the most advantageous tender if this notice was sent using the means of electronic communication or fax, or within no less than 15 days - if it was sent in other manner.

2. The awarding entity may conclude a public procurement agreement before the expiry of the time limit referred to in paragraph 1, if:

- 1) only one request or one tender was submitted in the case of restricted tendering, negotiations with publication or competitive dialogue procedure, and the time limit for submitting appeals against the act of rejection of the request expired or in consequence of its submission the National Appeals Chamber issued a judgment or a ruling ending the appeal proceedings;
- 2) the public procurement agreement involves a contract awarded under the negotiations without publication procedure or under the framework agreement.

3. The awarding entity may conclude the public procurement agreement for a period exceeding 4 years, if this is justified by the public interest, provided that performance of the contract within a longer period results in savings of the costs of performance of the contract in relation to the four-year period or it results from the programme of development of the Armed Forces referred to in the Act of 25 May 2001 on Reconstruction and Technical Modernization, as well as on Financing the Armed Forces of the Republic of Poland (Dziennik Ustaw 2019, item 1453).

4. If the term of the public procurement agreement exceeds 4 years, the awarding entity shall, after expiry of this period, keep the record along with appendices until the end of this term, except the request for participation in the proceedings, tenders and other documents concerning the contractors with which the agreement has not been concluded.

5. The awarding entity shall, within 30 days from performance of the public procurement agreement, provide the President of the Office with the information on performance of this agreement including at least:

- 1) the name and the address of the awarding entity, the phone number, the email address and the address of the website of the awarding entity;
- 2) the number of the contract award notice;

- 3) a description of the subject of the contract;
- 4) indication of the amount of remuneration of a contractor determined in the agreement and the final remuneration amount spent for execution of the contract;
- 5) the information on whether the contract has been performed properly, including the information on whether the contract has been performed timely;
- 6) the information concerning subcontractors;
- 7) the information on amendments to the public procurement agreement.

## **Chapter 4. Framework Agreement.**

### **Art. 422**

1. The awarding entity, while awarding a contract in the fields of defence and security, may conclude a framework agreement after conducting proceedings, applying provisions on the award of a contract under the restricted tendering or negotiations with publication or competitive dialogue procedure, respectively.
2. A framework agreement shall be concluded for a period not exceeding 7 years.
3. A framework agreement may be concluded for a period longer than 7 years where necessary due to exceptional circumstances by taking into account the expected service life of any delivered equipment, installations or systems, and the technical difficulties which a change of a contractor may cause.
4. Should a framework agreement be concluded for a period exceeding 7 years, the awarding entity shall provide in the contract notice reasons for the exceptional circumstances referred to in paragraph 3.
5. If the framework agreement is concluded with several contractors, their number shall not be less than 3, insofar as the sufficient number of contractors exists.

## **Chapter 5. Requirements for Subcontracting.**

### **Art. 423**

1. The contractor required to conclude a subcontracting agreement in accordance with Article 409, paragraph 1, subparagraph 4 shall initiate proceedings for the selection of subcontractors by publishing a notice of a subcontract. The contractor shall apply the provisions concerning the contract notice accordingly.
2. In the subcontract notice the contractor shall indicate the grounds for exclusion and the conditions for participation in the proceedings or the selection criteria envisaged by the awarding entity in the contract award proceedings, as well as any other criteria which the contractor intends to apply to selection of subcontractors. Any and all criteria that the contractor intends to apply to the selection of subcontractors must be objective, non-discriminatory and consistent with the grounds for exclusion and the conditions for participation in the proceedings applied by the awarding entity in the contract award proceedings. The required conditions for participation in the proceedings or the selection criteria shall be directly related to the subject of the subcontracting agreement and shall be commensurate with this subject.
3. The provision of paragraph 1 shall not apply in the case where at least one prerequisite for awarding a contract under negotiations without publication or direct-award procedure referred to in Articles 414, and 415 has been met.

**Art. 424** If the contractor obliged to conclude a subcontracting agreement, pursuant to Article 409, paragraph 1, subparagraph 4, is the awarding entity referred to in Article 4 or Article 5, paragraph 4, the provisions of the Act concerning the award of contracts shall apply to the selection of subcontractors.

**Art. 425** The contractor may comply with the requirements of the awarding entity concerning selection of a subcontractor also by concluding a framework subcontracting agreement. The provision of Article 422 shall apply.

**Art. 426**

1. In the tender, the contractor may propose to perform, by subcontracting, a part of the value of a public procurement agreement in the fields of defence and security, which exceeds the range referred to in Article 409, paragraph 1, subparagraph 4.

2. In the case referred to in paragraph 1, the contractor shall indicate in the tender, on demand of the awarding entity, the contract lots which it intends to entrust to subcontractors, and shall provide names of subcontractors, if any were selected.

**Art. 427**

1. The awarding entity, during proceedings for the award of a contract in the fields of defence and security or at the time of performance of a public procurement agreement in the fields of defence and security, may refuse to agree to conclude an agreement with a subcontractor proposed by the contractor in the case of occurrence of the grounds for exclusion or where the subcontractor fails to meet the conditions for participation in the proceedings provided for the contractor.

2. The awarding entity shall notify the contractor of the reasons for its refusal to agree to conclude an agreement with the subcontractor, indicating conditions for participation in the proceedings which the proposed subcontractor failed to meet or the grounds for exclusion which relate to the subcontractor.

3. The awarding entity shall, during the performance of the public procurement agreement in the fields of defence and security, in the event that the subcontractor has lost credibility necessary to exclude a threat to the state security, oblige the contractor, within the set time limit, to change the subcontractor or perform this lot of the contract on its own.

4. Where the exclusion of or changing the subcontractor concerns the subject the resources of which were claimed by the contractor, the awarding entity demands that the contractor, within the time limit set by the awarding entity, demonstrate that the proposed another subcontractor or the contractor complies on its own with the characteristics of these resources to a no lesser degree than the subcontractor the resources of which the contractor claimed during the contract award proceedings.

**Art. 428**

1. While determining the value of a subcontract, the provisions of Articles 28 to 36 shall apply accordingly.

2. The provisions of Articles 423 and 424 shall not apply to entrusting the performance of only a lot of a contract in the fields of defence and security awarded to the contractor, where the value of the subcontracting agreement is less than the EU thresholds.

3. In the case referred to in paragraph 2, the contractor, while concluding a subcontracting agreement, shall apply the rules laid down in the Treaty on the functioning of the European Union, and in particular those concerning equal treatment, fair competition and transparency.

**Art. 429** The contractor shall not award a subcontract, if:

1) none of the subcontractors participating in the subcontractor selection proceedings meets the conditions for participation in the proceedings or

2) none of the tenders submitted by subcontractors participating in the subcontractor selection proceedings meets the requirements specified in the subcontract notice

- and this may result in the failure by the contractor to comply with the requirements under the public procurement agreement in the fields of defence and security.

**Art. 430**



1. In the event that the awarding entity set out the requirements as regards subcontracting concerning the application of the procedure referred to in Article 409, paragraph 1, subparagraph 3 or imposed upon the contractors the obligation referred to in Article 409, paragraph 1, subparagraph 4, a subcontractor shall be deemed to be none of the following subjects or groups of subjects:

1) a subject over which the contractor may have a controlling influence, whether direct or indirect, a subject which may have a controlling influence over the contractor, a subject which as a contractor is subject to a controlling influence of another subject resulting from ownership relationship, financial share or principles determining its conduct, in connection with:

- a) holding over half of the shares of a subject remaining under the controlling influence or
- b) holding over half of the votes resulting from shares of this subject; or
- c) the right to appoint more than half of the members of the managing or supervisory body of this subject;

2) groups of subjects established for the purpose of being awarded a contract;

3) a subject linked with the group referred to in subparagraph 2, in a manner specified in subparagraph 1.

2. The contractor shall provide in the tender a list of subjects which cannot be considered as subcontractors and shall update it after any changes in relations between these subjects occur.

## **Division VII. PUBLIC PROCUREMENT AGREEMENT AND ITS PERFORMANCE.**

### **Chapter 1. General Provisions.**

**Art. 431** The awarding entity and the contractor selected in the contract award proceedings shall be obliged to cooperate in performance of a public procurement agreement, hereinafter referred to as an „agreement”, for the purpose of proper execution of the contract.

**Art. 432** An agreement shall, under pain of nullity, require a written form, unless separate provisions provide for a special form.

**Art. 433** The draft provisions of the agreement shall not provide for:

- 1) the contractor's liability for a delay, unless this is justified by the circumstances or the scope of the contract;
- 2) charging contractual penalties for the contractor's conduct not related directly or indirectly with the subject of the agreement or its proper performance;
- 3) the contractor's liability for the circumstances exclusively attributable to the awarding entity;
- 4) a possibility of limiting the scope of the contract by the awarding entity without indicating the minimum value or volume of the parties' performance.

#### **Art. 434**

1. An agreement shall be concluded for a definite period not exceeding 4 years.

2. The awarding entity may enter into an agreement whose subject is that of repeated or continuous performances for a period longer than 4 years, if the completion of the contract in the extended period results in savings on the costs of the contract's execution as compared to the four-year period or such agreement is justified by the awarding entity's paying capacity or the scope of envisaged outlays and the period necessary for their repayment.

#### **Art. 435**

1. An agreement may be concluded for a non-specified period, if its subject is the supply:

- 1) of water via a water and sewage network or disposal of sewage to such a network;
- 2) of gas from a gas grid;
- 3) of heat from a heating network;
- 4) of licences for computer software.

2. An agreement whose subject is the transmission or distribution services of electricity or natural gas may also be concluded for a non-specified period.

**Art. 436** The agreement shall contain the provisions specifying in particular:

- 1) the planned date of completion of the service, supply or construction works and, if necessary, the planned dates of completion of individual parts of the service, supply or construction works determined in days, weeks, months or years, unless the indication of the date of performance of the agreement is justified by an objective reason;
- 2) the terms of payment of the remuneration;
- 3) the total maximum amount of contractual penalties which may be sought by the parties;
- 4) in the case of agreements concluded for a period exceeding 12 months:
  - a) the amount of the contractual penalties charged to the contractor for lack of payment or untimely payment of the remuneration payable to subcontractors for a change in the amount of remuneration, as referred to in Article 439, paragraph 5;
  - b) the rule for introducing changes in the amount of remuneration in the event of a change in:
    - goods and services tax rate and excise duty rate,
    - the amount of the minimum remuneration for work or the amount of the minimum hourly rate determined pursuant to the Act of 10 October 2002 on the Minimum Remuneration for Work,
    - the principles of being subject to social insurance or health insurance or the amount of social or health insurance premiums,
    - the principles of accumulation and amount of payments to employee capital plans referred to in the Act of 4 October 2018 on Employee Capital Plans (Dziennik Ustaw 2018, item 2215; 2019, items 1074 and 1572)
    - if these changes have any influence on the cost of the contract's performance by the contractor.

**Art. 437**

1. The agreement whose subject is that of construction works shall also contain the provisions concerning:

- 1) the contractor's obligation to submit to the awarding entity the draft subcontract having as its subject construction works, and also the draft amendment thereto, as well as a certified true copy of the concluded subcontract having as its subject construction works and any amendments thereto;
- 2) the indication of the time limit for submitting by the awarding entity reservations to the draft subcontract having as its subject construction works, and the draft amendment thereto or objection against the subcontract having as its subject construction works, and to its amendments;
- 3) the obligation of the contractor to submit to the awarding entity a certified true copy of the concluded subcontracts having as their subject supplies or services as well as any amendments thereto;
- 4) the terms of payment of remuneration to a contractor conditional upon the contractor presenting proofs of having made the payment of the remuneration due to subcontractors or further subcontractors;
- 5) the payment date of the remuneration to subcontractors or further subcontractors;
- 6) the terms of concluding subcontracts with further subcontractors;
- 7) the amounts of contractual penalties regarding:

- a) failure to pay or untimely payment of the remuneration due to subcontractors or further subcontractors;
- b) failure to submit for acceptance the draft subcontract having as its subject construction works or any draft amendment thereto;
- c) failure to submit a certified true copy of the subcontract or any amendments thereto;
- d) failure to amend the subcontracting agreement with respect to the date of payment, pursuant to Article 464, paragraph 10.

2. In the cases referred to in paragraph 1, subparagraphs 1 and 3, the submitting party may certify a copy of the subcontract as a true copy.

#### **Art. 438**

1. In the case of an agreement whose subject is that of construction works or services, providing for the requirements referred to in Article 95, paragraph 1, its content shall contain the provisions concerning the manner of documenting employment and the control of meeting by the contractor or subcontractor the requirements regarding employment based on an employment contract as well as the provisions concerning sanctions on the grounds of failure to satisfy the requirements laid down in Article 95, paragraph 1.

2. In order to verify employment by the contractor or subcontractor, on the basis of an employment contract, of persons carrying out the operations indicated by the awarding entity to the extent of execution of the procurement contract, the agreement shall provide for a possibility of demanding by the awarding entity, in particular:

- 1) a declaration of the recruited employee;
- 2) a declaration of the contractor or subcontractor on employment an employee based on an employment contract;
- 3) a certified true copy of an employment contract of the recruited employee;
- 4) other documents

- containing the information, including personal data, necessary for the verification of employment on the basis of an employment contract, in particular the forename and surname of the recruited employee, the date of conclusion of the employment contract, the type of such contract, as well as the employee's responsibilities.

#### **Art. 439**

1. The agreement having as its subject construction works or services, concluded for a period exceeding 12 months, shall contain the provisions concerning the rules for introducing changes in the amount of the remuneration due to the contractor, in the case of a change in the prices of materials or the costs related to execution of the contract.

2. The agreement shall specify:

- 1) the level of the change in the price of materials or costs related in paragraph 1 entitling the parties to the agreement to demand the remuneration to be changed and shall specify the initial deadline for determining the change in the remuneration;
- 2) the method for determining the change in the remuneration:
  - a) with the use of a reference to the index of change in the price of materials or costs, in particular the index announced in the communication of the President of the Statistics Poland or
  - b) by indicating other grounds, especially the list of the types of materials or costs with regard to which the change in the price authorizes the parties to the agreement to demand the remuneration to be changed;
- 3) the method of determining the impact of the change in the price of materials or costs on the cost of executing the contract and shall specify the periods in which a change in the contractor's remuneration may be made;
- 4) the maximum value of the change in the remuneration allowed by the awarding entity as a result of application of the provisions on the rules for introducing changes in the remuneration amount.

3. If the agreement was concluded upon the elapse of 180 days from the day of expiry of the tender submission deadline, the difference between the average price of materials or costs valid on the day of opening tenders and the price of acquisition of materials or the costs actually incurred by the contractor in accordance with paragraph 2 shall be calculated in order to establish the change in the amount of the remuneration due to the contractor.

4. A change in the price of the materials or costs shall mean an increase of the prices or costs, respectively, as well as their reduction, in relation to the price or cost adopted for the purpose of determining the remuneration of the contractor included in the tender.

5. The contractor whose remuneration has been changed in accordance with paragraphs 1 to 3 shall be obliged to change the remuneration due to the subcontractor with which it has concluded an agreement, to the extent corresponding to the changes in the prices of materials or costs related to the subcontractor's obligation, if all of the following conditions are jointly satisfied:

- 1) the subject of the agreement is that of construction works or services;
- 2) the agreement term exceeds 12 months.

**Art. 440** In the event that the awarding entity provides for inclusion of the provisions concerning the rules for introducing the changes in the remuneration amount in an agreement other than that indicated in Article 439, paragraph 1, the provisions of Article 439, paragraphs 2 to 4 shall apply to determining those rules.

**Art. 441**

1. The awarding entity may make use of an option if it has provided for an option in the contract notice or the contract documents in the form of legible, precise and unequivocal contractual provisions which jointly fulfill the following conditions:

- 1) they determine the type and the maximum value of the option;
- 2) they determine the circumstances of making use of the option;
- 3) they do not modify the general nature of the agreement.

2. The acts performed on the basis of the contractual provisions providing for options in violation of paragraph 1 shall be invalidated.

**Art. 442**

1. The awarding entity may grant advance payments towards the performance of the contract, if such a possibility was envisaged in the contract notice or in the contract documents.

2. The awarding entity may grant further advance payments on condition that the contractor proves that it performed the contract in the scope of the value of the advance payments granted previously.

3. The awarding entity may demand the contractor to contribute the security of the advance payment in one or several following forms:

- 1) bank suretyships or suretyships of the cooperative savings and credit fund, however, the obligation of the fund shall always be a pecuniary obligation;
- 2) bank guarantees;
- 3) insurance guarantees;
- 4) suretyships granted by the subjects referred to in Article 6b, paragraph 5, subparagraph 2 of the Act of 9 November 2000 on the Establishment of the Polish Agency for Enterprise Development;
- 5) in bills of exchange with a bank's or the cooperative savings and credit fund's bill guarantee;
- 6) by establishing a pledge on securities issued by the State Treasury or a territorial self-government unit;
- 7) by establishing a registered pledge under the rules laid down in the Act of 6 December 1996 on Registered Pledge and Register of Pledges (Dziennik Ustaw 2018, item 2017).

4. The awarding entity shall demand the contribution of the security of the advance payment, if the envisaged value of advance payments exceeds 20 per cent of the contractor's remuneration amount.

5. In the case of demanding the contribution of the security of the advance payment, the form or forms of security of the advance payment, the security amount, and the method of security contribution and return shall be set out in the agreement. The agreement may also provide for a possibility of changing the form of security of the advance payment during the performance of the agreement.

6. The provisions of paragraphs 2 and 4 shall not apply to the awarding entities referred to in Article 4, subparagraphs 2 and 3.

#### **Art. 443**

1. The awarding entity shall pay remuneration in instalments after having performed a part of an agreement or shall grant an advance payment on account of performance of the contract in the case of the agreements concluded for a period exceeding 12 months.

2. The awarding entity shall set out in the agreement the percentage of the remuneration paid for individual parts. The percentage value of the last part of the remuneration shall not exceed 50 per cent of the remuneration due to the contractor.

3. The advance payment shall not be less than 5 per cent of the remuneration due to the contractor.

#### **Art. 444**

1. The authority exercising financial supervision over the public awarding entity shall, should it has any doubts as to the correctness of application of the direct-award contract award procedure under Article 214, paragraph 1, subparagraphs 11 to 14, prohibit conclusion of the agreement for the period of explaining the matter, however for not longer than 21 days.

2. If the authority exercising supervision ascertains that there exist no grounds for awarding the contract under Article 214, paragraph 1, subparagraphs 11 to 14, it shall prohibit the conclusion of the agreement, and if such agreement has been concluded, it shall request the awarding entity to give notice of termination of the agreement or withdraw from the same within the time limit fixed by this authority.

3. In the event of ineffective elapse of the time limit referred to in paragraph 2, the authority exercising supervision shall request a court for invalidation of the agreement in full or in part.

4. The provisions of paragraphs 1 to 3 shall not prejudice the rights and duties of authorities exercising financial supervision over the awarding entity resulting from separate provisions.

#### **Art. 445**

1. The contractors referred to in Article 58, paragraph 1 shall bear joint and several liability for the performance of the agreement and provision of a good performance bond.

2. The provision of paragraph 1 shall not apply to a contract awarded under innovation partnership procedure to contractors jointly competing for the award of the contract. In such a case the contractors referred to in Article 58, paragraph 1, shall be liable for the performance of the agreement and provision of a good performance bond in the part which they carry out pursuant to the agreement entered into by and between those contractors.

#### **Art. 446**

1. The awarding entity shall prepare a report on the contract execution in which it shall make the assessment of this execution in the event when:

1) an amount at least 10 per cent higher than the value of the price indicated in the tender has been incurred for the contract execution;

2) contractual penalties in the amount of at least 10 per cent of the value of the price indicated in the tender have

been imposed on the contractor;

3) there occurred delays in the performance of the agreement exceeding at least 30 days;

4) the awarding entity or the contractor has withdrawn from the agreement in whole or in part or has given a notice of its termination in whole or in part.

2. The awarding entity may prepare the report in cases other than the ones specified under paragraph 1.

3. The report shall contain:

1) the indicated amount incurred for the contract execution and its comparison with the amount resulting from estimation of the contract value and the total price provided in the tender or the maximum nominal amount of the awarding entity's liability as laid down in the agreement if the unit price or unit prices were provided in the tender;

2) the indication of the circumstances referred to in paragraph 1 and the reasons for their occurrence;

3) the assessment of the method of the contract execution, including the value of its execution;

4) the conclusions as regards a change, if any, of the method of executing future contracts or as regards the determination of the subject of the contract, having regard to the appropriateness, economic effectiveness and efficiency of expenditure of public funds.

4. The awarding entity shall prepare the report within one month from the day of:

1) drawing up an acceptance certificate or deeming the agreement to have been performed or

2) termination of the agreement as a result of filing a declaration on giving a notice of its termination or withdrawal therefrom.

#### **Art. 447**

1. In the case of contracts for construction works whose performance time limit is longer than 12 months, where the agreement provides for the payment:

1) of remuneration due to the contractor in instalments - the payment by the awarding entity of the second and subsequent instalments of the remuneration due for the accepted construction works shall be conditional upon the presentation of the proofs of the payment of the required remuneration to subcontractors and further subcontractors referred to in Article 464, paragraph 1, participating in the execution of the accepted construction works;

2) of the total remuneration due to the contractor following the completion of all construction works - the awarding entity is obliged to envisage making advance payments, with the proviso that making subsequent advance payments by the awarding entity shall require the presentation of proofs of payment of the required remuneration to subcontractors and further subcontractors referred to in Article 464, paragraph 1 participating in the performance of the part of the contract for which the advance payment has been made.

2. In the case of the contractor's failure to present all proofs of payment referred to in paragraph 1, the following shall be withheld accordingly:

1) payment of the remuneration due for the accepted construction works;

2) making a subsequent advance payment

- in the part equal to the total amounts resulting from proofs of payment which have not been presented.

3. In the case referred to in paragraph 1, subparagraph 1, the awarding entity may indicate in the STC the percentage value of the last instalment of the remuneration, which shall not exceed 50 per cent of the remuneration due to the contractor.

**Art. 448** The awarding entity shall publish in the Public Procurement Bulletin a notice of the performance of an

agreement within 30 days of its performance.

## **Chapter 2. Good Performance Bond.**

### **Art. 449**

1. Whenever in this Chapter there is a reference to a bond, this shall mean a good performance bond.
2. The bond shall serve to cover claims in respect of non-performance or improper performance of an agreement.
3. The bond shall be provided before concluding the agreement, unless the Act provides otherwise or the awarding entity sets other time limit in the contract documents.

### **Art. 450**

1. The bond may be provided at the contractor's choice in one or several of the following forms:
  - 1) in money;
  - 2) bank suretyships or suretyships of the cooperative savings and credit fund, however, the obligation of the fund shall always be a pecuniary obligation;
  - 3) bank guarantees;
  - 4) insurance guarantees;
  - 5) suretyships granted by the subjects referred to in Article 6b, paragraph 5, subparagraph 2 of the Act of 9 November 2000 on the Establishment of the Polish Agency for Enterprise Development.
2. With the approval of the awarding entity the bond may be provided also:
  - 1) in bills of exchange with a bank's or the cooperative savings and credit fund's bill guarantee;
  - 2) by establishing a pledge on securities issued by the State Treasury or a territorial self-government unit;
  - 3) by establishing a registered pledge in accordance with the principles specified in the Act of 6 December 1996 on Registered Pledge and Register of Pledges.
3. A contractor shall transfer bond provided in money to a bank account indicated by the awarding entity.
4. In the event of the contribution of a tender security deposit in money, the contractor may agree to count the amount of the deposit towards the bond.
5. In the event of the bond contributed in money, the awarding entity shall keep it on an interest-bearing bank account. The awarding entity shall return the bond contributed in money together with interest resulting from the contract of bank account on which it has been kept, less the cost of the account maintenance and bank commission for the transfer of money to the contractor's bank account.

### **Art. 451**

1. In the course of the performance of the agreement a contractor may change the form of the bond to one or several of those referred to in Article 450, paragraph 1.
2. With the consent of the awarding entity the contractor may change the form of the bond to one or several of those referred to in Article 450, paragraph 2.

3. The change of the form of the bond shall be made preserving the bond continuity and without decreasing its amount.

#### **Art. 452**

1. The amount of the bond shall be determined on a percentage-wise basis in relation to the total price quoted in the tender or the maximum nominal value of the awarding entity's commitment under the agreement, if unit price or unit prices have been quoted in the tender.

2. The bond shall be determined in the value of up to 5 per cent of the total price quoted in the tender or the maximum nominal value of the awarding entity's commitment under the agreement.

3. The bond may be determined in the amount higher than the one fixed in paragraph 2, not exceeding, however, 10 per cent of the total price quoted in the tender or the maximum nominal value of the awarding entity's commitment under the agreement, provided that it is justified by the subject of the contract or occurrence of a risk related to its execution, which was described by the awarding entity in the STC or other contract documents.

4. If the time for the completion of the contract exceeds one year, the bond may be created, with the consent of the awarding entity, by deductions from receivables for the already performed part of supplies, services or construction works.

5. In the case referred to in paragraph 4, the contractor shall be required to contribute at least 30 per cent of the bond amount on the date of the conclusion of the agreement.

6. The awarding entity shall pay the amounts deducted to the bank account on the same day on which it pays the invoice amount.

7. In the case referred to in paragraph 4, payment of the full amount of the bond shall not be made later than by the end of the period for which the agreement has been concluded.

8. If the period for which the bond is to be contributed is in excess of 5 years, the bond in money shall be contributed for whole this period, whereas a bond in another form shall be contributed for a period not shorter than 5 years, the contractor at the same time undertaking to extend the bond or contribute a new bond for subsequent periods.

9. In the case of a failure to extend or contribute a new bond within 30 days at the latest prior to the expiry of the validity period of the existing bond contributed in a form other than money, the awarding entity shall change the form into a bond in money by payment of the amount out of the existing bond.

10. The payment referred to in paragraph 9 shall be made not later than on the last day of the validity of the existing bond.

#### **Art. 453**

1. The awarding entity shall return the bond within 30 days of the completion of the contract and its acknowledgment by the awarding entity as duly performed.

2. The awarding entity may retain the amount not exceeding 30 per cent of the bond to secure claims under the warranty for defects or guarantee.

3. The amount referred to in paragraph 2 shall be returned not later than on the 15th day following the expiry of the period of warranty for defects or guarantee.

4. The awarding entity may make a partial return of the bond after completion of a part of the contract, if it provided for such a possibility in the contract documents.

### **Chapter 3. Amendments to a Procurement Agreement.**

#### **Art. 454**



1. A material amendment to the concluded agreement requires conducting new contract award proceedings.
2. An amendment to the agreement shall be material if it makes the nature of the agreement change in a material manner as compared to the original agreement, and in particular if the amendment:
  - 1) introduces the conditions which, if they were applied in the contract award proceedings, other contractors would participate or could participate in these proceedings, or tenders of another content would be accepted;
  - 2) distorts the economic balance of the parties to the agreement in favour of the contractor in a way not envisaged in the original agreement;
  - 3) extends or reduces the scope of performances and obligations under the agreement to a significant extent;
  - 4) consists in the replacement of the contractor to which the awarding entity awarded the contract by a new contractor in the cases other than those enumerated in Article 455, paragraph 1, subparagraph 2.

#### **Art. 455**

1. An amendment to the agreement shall be admissible without conducting new contract award proceedings:
  - 1) regardless of the value of this amendment, insofar as it has been provided for in the contract notice or the contract documents in the form of clear, precise and unequivocal contractual provisions which may include provisions concerning the rules for introducing changes in the price amount, provided that they jointly fulfill the following conditions:
    - a) they specify the type and scope of the amendments;
    - b) they specify the conditions for introducing the amendments;
    - c) they do not provide for such amendments which would modify the overall nature of the agreement;
  - 2) when a new contractor is to replace the existing contractor:
    - a) if such a possibility has been provided for in the contractual provisions referred to in subparagraph 1; or
    - b) as a result of a succession, by assuming the rights and duties of the contractor, as a result of a takeover, merger, division, transformation, bankruptcy, restructuring, succession under inheritance law or acquisition of the existing contractor or its enterprise, insofar as the new contractor fulfills the conditions for participation in the proceedings, the grounds for exclusion do not apply thereto, and this does not entail any other material amendments to the agreement, and does not aim at avoiding the application of the provisions of the Act; or
    - c) as a result of taking over by the awarding entity of the contractor's obligations towards its subcontractors in the case referred to in Article 465, paragraph 1;
  - 3) if it relates to carrying out additional supplies, services or construction works by the existing contractor, and in the case of the contract in the fields of defence and security - the services or construction works which have not been included in the basic contract, insofar as they have become necessary and the following conditions have been jointly satisfied:
    - a) a replacement of the contractor may not be made for economic or technical reasons, especially concerning interchangeability or interoperability of equipment, services or installations ordered under the basic contract;
    - b) a replacement of the contractor would cause significant inconvenience or substantial increase in costs for the awarding entity;
    - c) an increase in the price caused by each subsequent amendment does not exceed 50 per cent of the value of the original agreement, and in the case of contracts in the fields of defence and security - the total value of the amendments does not exceed 50 per cent of the value of the original contract, except duly justified cases;
  - 4) if the need to amend the agreement is caused by the circumstances which the awarding entity, acting with due diligence, could not have foreseen, insofar as the amendment does not modify the overall nature of the agreement and the increase in the price caused by each subsequent amendment does not exceed 50 per cent of the value of the original agreement.
2. Amendments to the agreement without conducting new contract award proceedings are also permitted, provided that the total value of those amendments is lower than the EU thresholds and lower than 10 per cent of the value of the original agreement, in the case of contracts for services or supplies or 15 per cent - in the case of contracts for construction works, and those amendments do not cause a modification of the overall nature of the agreement.
3. In the cases referred to in paragraph 1, subparagraphs 3 and 4, the awarding entity:

1) shall not introduce subsequent amendments to the agreement in order to avoid the application of the provisions of the Act;

2) after amending the agreement, shall place a notice of the agreement amendment in the Public Procurement Bulletin or shall dispatch it to the Publications Office of the European Union.

4. If the agreement includes the provisions concerning the rules for introducing changes in the amounts of prices, the permissible value of the price change referred to in paragraph 1, subparagraph 3, letter c and subparagraph 4 or the permissible value of the amendment of the agreement referred to in paragraph 2 shall be determined based on the changed price.

#### **Chapter 4. Withdrawal from Agreement and its Invalidation.**

##### **Art. 456**

1. The awarding entity may withdraw from the agreement:

1) within 30 days from the day of becoming aware of occurrence of a material change of the circumstance causing the performance of the agreement to be no longer in the public interest, which could not have been foreseen at the time of entering into the agreement, or causing that further performance of the agreement may pose a threat to basic interest of the state security or public security;

2) if at least one of the following circumstances occurs:

a) an amendment to the agreement has been made in breach of Article 454 and Article 455;

b) the contractor, upon entering into the agreement, was subject to exclusion under Article 108;

c) the Court of Justice of the European Union ascertained, as part of the procedure provided for in Article 258 of the Treaty on the Functioning of the European Union, that the Republic of Poland was in default of the obligations imposed thereupon under the Treaties, Directive 2014/24/EU, Directive 2014/25/EU and Directive 2009/81/EU due to the fact that the awarding entity awarded the contract in violation of the provisions of the European Union law.

2. In the case referred to in paragraph 1, subparagraph 2, letter a, the awarding entity shall withdraw from the agreement in the part to which the amendment relates.

3. In the cases referred to in paragraph 1, the contractor may demand remuneration due for the performed part of the agreement only.

##### **Art. 457**

1. The agreement shall be subject to invalidation if the awarding entity:

1) has awarded a contract, concluded a framework agreement or established a dynamic purchasing system in violation of the Act, without prior publication in the Public Procurement Bulletin or transmission to the Publications Office of the European Union the notice initiating the proceedings or without the required notice amending the notice initiating the proceedings, if the amendments affected the preparation of requests for participation in the proceedings or the preparation of tenders;

2) has concluded an agreement in violation of Article 264 or Article 308, paragraph 2 or 3 or Article 421, paragraph 1 or 2 or Article 577, provided that it has made it impossible for the National Appeals Chamber to grant an appeal before concluding the agreement;

3) entered into the agreement before the expiry of the time limit referred to in Article 216, paragraph 2;

4) has awarded a contract covered by a framework agreement in breach of Article 314, paragraph 1, subparagraph 3, paragraphs 3 and 4, Article 315 or Article 422, paragraph 2 or 3;

5) has awarded a contract covered by a dynamic purchasing system in breach of Article 323, Article 324 or Article

391, paragraph 4 or 5.

2. The agreement shall not be subject to invalidation if:

1) in the case referred to in paragraph 1, subparagraph 1, the awarding entity had justified grounds to believe that it was acting in compliance with the Act and the agreement was concluded respectively after the elapse of 5 days from the date of placement of the notice of intention to conclude the agreement in the Public Procurement Bulletin or after the lapse of 10 days from the date of publication of such a notice in the Official Journal of the European Union;

2) in the cases referred to in paragraph 1, subparagraphs 4 and 5, the awarding entity had justified grounds to believe that it was acting in compliance with the Act and the agreement was concluded after the expiration of the time limit set forth in Article 264, paragraph 1 or Article 308, paragraph 2 or Article 421, paragraph 1.

3. The invalidation of the agreement shall be effective as of the date of its conclusion, subject to Article 554, paragraph 3, subparagraph 2, letter b.

4. It shall not possible to demand that the agreement be declared invalid under Article 189 of the Act of 17 November 1964 - the Code of Civil Procedure (Dziennik Ustaw 2019, item 1460, as amended) due to the reasons referred to in paragraph 1 and Article 458.

5. The provision of paragraph 1 shall not exclude the possibility to demand that the agreement be invalidated pursuant to Article 70<sup>5</sup> of the Act of 23 April 1964 - the Civil Code.

**Art. 458** An amendment to the agreement shall be invalidated if it was made in breach of Articles 454 and 455. In such a case the contractual provision in the wording binding before this amendment shall apply.

#### **Art. 459**

1. The President of the Office may request the court for the invalidation:

1) of an amendment to the agreement made in violation of Articles 454 and 455;

2) of the agreement referred to in Article 457, paragraph 1

- if performing an act or an omission to perform the same by the awarding entity in violation of the Act had an influence or could have had an influence on the result of the proceedings.

2. The right referred to in paragraph 1 shall expire upon the elapse of 4 years from the date of the conclusion of the agreement or from the date of making an amendment thereto.

**Art. 460** The contractor which has or had an interest in obtaining a give contract may make a request for invalidation of an agreement in the case referred to in Article 457, paragraph 1, subparagraph 1. This right shall expire upon the elapse of 4 years from the date of conclusion of the agreement.

**Art. 461** The agreement concluded under the procedure laid down in Article 214, paragraph 1, subparagraphs 11 to 13 shall expire upon the elapse of 3 months of the day on which private capital obtained participation in the controlled legal person referred to in Article 214, paragraph 1, subparagraph 11, letter c, subparagraph 12, letter c or subparagraph 13, letter c, save for the cases referred to in Article 214, paragraph 8.

## **Chapter 5. Subcontracting.**

#### **Art. 462**

1. The contractor may entrust the performance of a contract lot to a subcontractor.

2. The awarding entity may demand that the contractor indicate in the tender the contract lots, the performance of which it intends to entrust to subcontractors, as well as quote the names of the subcontractors, if any, provided that

they are already known.

3. In the case of contracts for construction works and services which are to be provided in the place subject to direct supervision of the awarding entity, the awarding entity demands that before commencement of execution of the contract the contractor provide names, contact details, as well as representatives and subcontractors involved in such construction works or services, if they are already known. The contractor shall notify the awarding entity of any and all changes as regards the information referred to in the first sentence in the course of the contract execution, and shall also provide the required information on new subcontractors which it intends to entrust with the performance of construction works or services in a later period.

4. The awarding entity may demand the information referred to in paragraph 3:

1) in the case of contracts for supplies and contracts for services other than the ones relating to the services which are to be provided in the place subject to direct supervision of the awarding entity or

2) concerning further subcontractors; or

3) concerning the suppliers participating in the performance of a contract for construction works or services.

5. In the cases referred to in paragraphs 2 and 3 and paragraph 4, subparagraph 1, the awarding entity may examine whether there occur or not the grounds for exclusion as regards a subcontractor not being a subject making resources available, said grounds being referred to in Articles 108 and 109, insofar as the awarding entity provided for this in the contract documents. The contractor shall, upon the demand of the awarding entity, present the declaration referred to in Article 125, paragraph 1, or the object-related means of proof related to this subcontractor.

6. In the case referred to in paragraph 5, if there occur grounds for exclusion as regards the subcontractor, the awarding entity shall demand that the contractor, within the time limit set by the awarding entity, replaced this subcontractor under pain of not admitting the subcontractor to execute a contract lot.

7. Where a change or abandonment of the subcontractor concerns a subject the resources which were claimed by the contractor, pursuant to the rules specified in Article 118, paragraph 1, to demonstrate compliance with the conditions of participation in the proceedings, the contractor shall be required to demonstrate to the awarding entity that the proposed another subcontractor or the contractor complies with such conditions itself to a no lesser degree than the subcontractor the resources of which were claimed by the contractor during the contract award proceedings. The provision of Article 122 shall apply accordingly.

8. Entrusting the performance of a contract lot to subcontractors shall not release the contractor from liability for the proper performance of said contract.

**Art. 463** A subcontract shall not contain any provisions shaping rights and duties of a subcontractor to the extent of contractual penalties and the provisions concerning the terms of payment of remuneration, in a way less favourable for the subcontractor than the rights and duties of the contractor shaped by the provisions of the agreement concluded by and between the awarding entity and the contractor.

#### **Art. 464**

1. The contractor, subcontractor or further subcontractor of a contract for construction works intending to conclude a subcontract having as its subject construction works shall be required to submit to the awarding entity, during the performance of the contract, a draft of this subcontract, with the proviso that the subcontractor or further subcontractor shall be required to attach contractor's consent to conclude the subcontract with the contents compliant with the draft subcontract.

2. The payment date of remuneration to the subcontractor or further subcontractor provided for in the subcontract shall not exceed 30 days from the date of delivery to the contractor, subcontractor or further subcontractor of an invoice or a bill.

3. The awarding entity shall, within the time limit specified in Article 437, paragraph 1, subparagraph 2, submit written reservations to the draft subcontract having as its subject construction works in the event that:

1) this subcontract fails to fulfil the requirements set out in the contract documents;

2) it provides for a remuneration payment deadline longer than the one specified in paragraph 2;

3) it contains provisions inconsistent with Article 463.

4. The failure to submit the reservations referred to in paragraph 3 to the submitted draft subcontract having as its subject construction works within the time limit specified pursuant to Article 437, paragraph 1, subparagraph 2, shall be regarded as acceptance of the draft subcontract by the awarding entity.

5. The contractor, subcontractor or further subcontractor of a construction works contract shall submit to the awarding entity a certified true copy of the concluded subcontract having as its subject construction works within 7 days of the date of its conclusion.

6. The awarding entity shall, within the time limit specified in Article 437, paragraph 1, subparagraph 2, submit a written objection, under pain of nullity, to the subcontract having as its subject construction works in the cases referred to in paragraph 3.

7. The failure to lodge the objection referred to in paragraph 6 to the submitted subcontract having as its subject construction works within the time limit specified pursuant to Article 437, paragraph 1, subparagraph 2, shall be regarded as acceptance of the subcontract by the awarding entity.

8. The contractor, subcontractor or further subcontractor shall, as regards subcontracts having as their subject construction works, submit to the awarding entity a certified true copy of the concluded subcontract having as its subject supplies or services, except for subcontracts with a value less than 0.5 per cent of the agreement and subcontracts whose subject was indicated by the awarding entity in the contract documents. The exclusion referred to in the first sentence shall not apply to subcontracts with a value exceeding 50,000 zloties. The awarding entity may specify a lower value from which the requirement to submit a subcontract will take effect.

9. In the case referred to in paragraph 8, the subcontractor or further subcontractor shall submit a certified true copy of the subcontract also to the contractor.

10. In the case referred to in paragraph 8, where the remuneration payment deadline is longer than the one specified in paragraph 2, the awarding entity shall notify the contractor thereof and call upon it to amend this subcontract under pain of requesting the payment of a contractual penalty.

11. The provisions of paragraphs 1 to 10 shall apply accordingly to amendments of the subcontract.

#### **Art. 465**

1. In the case of agreements having as its subject construction works, the awarding entity shall make a direct payment of the remuneration due to a subcontractor or further subcontractor which concluded a subcontract having as its subject construction works which was accepted by the awarding entity, or which concluded a subcontract having as its subject supplies or services, said subcontract having been submitted to the awarding entity, in the case of evasion of the payment obligation by the contractor, subcontractor or further subcontractor, respectively.

2. The remuneration referred to in paragraph 1 concerns only receivables accruing after the awarding entity's acceptance of the subcontract, having as its subject construction works, or after submission to the awarding entity of a certified true copy of the subcontracting agreement, having as its subject supplies or services.

3. The direct payment shall include the remuneration due only, without any interest due to the subcontractor or further subcontractor.

4. The awarding entity shall be obliged, before making the direct payment, to enable the contractor to submit in writing the comments concerning the grounds for the direct payment of the remuneration to the subcontractor or further subcontractor. The awarding entity shall inform about the deadline for submitting comments which shall be not shorter than 7 days from the day of serving this information. In the comments one shall not invoke a deduction of the contractor's claims towards the subcontractor not related to the performance of the subcontract.

5. In the case of submitting comments referred to in paragraph 4 within the time limit indicated by the awarding entity, the awarding entity:

1) need not make the direct payment of the remuneration to the subcontractor or further subcontractor, where the contractor shows there are no grounds for such payment or

**2)** may deposit with a court an amount needed to cover the remuneration of a subcontractor or further subcontractor in the case of any serious doubt on the part of the awarding entity as to the amount of the payment due or the subject to which the payment is due; or

**3)** may make a direct payment of the remuneration to the subcontractor or further subcontractor, where the subcontractor or further subcontractor shows grounds for such payment.

6. In the case of a direct payment made to the subcontractor or further subcontractor, the awarding entity shall set off the amount of the remuneration paid against the remuneration due to the contractor.

7. The necessity of making repeated direct payments to the subcontractor or further subcontractor or the necessity of making direct payments for an amount exceeding 5 per cent of the value of the agreement may constitute grounds for withdrawal from the agreement.

8. The provisions of the Act of 23 April 1964 - the Civil Code, shall apply to the principles of the awarding entity's, contractor's or further subcontractor's liability for completed construction works, unless the provisions of this Act provide otherwise.

## **Division VIII. AUTHORITIES COMPETENT IN THE MATTERS OF PROCUREMENT CONTRACTS.**

### **Chapter 1. President of the Office.**

#### **Art. 466**

1. The President of the Office shall be the main government administration authority competent with respect to matters of procurement contracts.

2. The minister competent for the economy shall exercise supervision over the President of the Office.

3. As part of the supervision over the President of the Office, the minister competent for the economy:

**1)** shall exercise control over the President of the Office under the procedure and on the terms specified in the provisions of the Act of 15 July 2011 on the Control in the Government Administration (Dziennik Ustaw 2011, item 1092; 2019, item 730);

**2)** shall approve the plan referred to in Article 469, subparagraph 18;

**3)** shall assess the President of the Office's activity under the report referred to in Article 469, subparagraph 20 by 30 September each year;

**4)** may demand that the President of the Office provide the information or make available the documents related to the fulfillment of his/her tasks.

#### **Art. 467**

1. The President of the Office shall be supported in his/her work by the Office.

2. The minister competent for the economy shall, by means of an order, provide the Office with a statute defining its organization, having regard to ensuring the proper support for the President of the Office and the National Appeals Chamber.

#### **Art. 468**

1. The President of the Office shall be appointed by the minister competent for the economy from among the

persons selected in open and competitive recruitment.

2. The post of the President of the Office may be held by a person who:

- 1) holds at least the professional title of MA or MSc or an equivalent title;
- 2) is a Polish citizen;
- 3) enjoys full public rights;
- 4) has not been sentenced, by a valid judgement, for an intentional offence or intentional fiscal offence;
- 5) has executive competences;
- 6) has at least 6-year employment duration, including at least 3-year employment duration at an executive post;
- 7) has knowledge and experience in the field of procurement contracts.

3. The information on recruitment for the post of the President of the Office shall be announced by placing the announcement in a publicly accessible place in the seat of the Office, as well as in the Public Information Bulletin, on the dedicated website of the office providing support for the minister competent for the economy as well as on the dedicated website of the Chancellery of the Chairperson of the Council of Ministers.

4. The announcement referred to in paragraph 3 shall contain:

- 1) the name and the address of the Office;
- 2) the specification of the post for which the recruitment is conducted;
- 3) the requirements connected with the post resulting from the provisions of law;
- 4) the scope of the tasks performed at the post for which the recruitment is conducted;
- 5) indication of the required documents;
- 6) the time limit and place for filing the documents;
- 7) the information about the recruitment methods and techniques.

5. The time limit referred to in paragraph 4, subparagraph 6 shall not be shorter than 10 days of the day of publishing the announcement in the Public Information Bulletin, on the dedicated website of the office providing support for the minister competent for the economy.

6. The recruitment for the post of the President of the Office shall be conducted by a pre-selection committee appointed by the minister competent for the economy and composed of at least 3 persons whose expertise and experience give a guarantee that the best candidates will be selected. In the course of recruitment, the committee shall examine the satisfaction of the requirements referred to in paragraph 4, subparagraph 3, including the assessment of the experience and expertise indispensable to perform the tasks involved at the post for which the recruitment is conducted, as well as his/her executive competences.

7. The committee may commission the assessment of expertise, experience and executive competences of the candidate to a person who is not a team member but holds knowledge, experience and qualifications guaranteeing making the assessment in a manner ensuring the selection of the best candidates.

8. A member of the pre-selection committee and the person referred to in paragraph 7 shall be obliged to keep the information concerning the persons applying for the post for which the recruitment is conducted obtained during the recruitment secret.

9. In the course of the recruitment the pre-selection committee shall select no more than 3 candidates whom it shall present to the minister competent for the economy.

10. The pre-selection committee shall draw up a record of the recruitment, said record including:

- 1) the name and the address of the Office;
- 2) the specification of the post for which the recruitment was made and the number of candidates;
- 3) the names and surnames of no more than 3 best candidates organized according to the level at which they fulfill the requirements defined in the announcement;
- 4) the information about the recruitment methods and techniques applied;
- 5) a justification of the selection made or the reasons for failing to select the candidate;
- 6) the composition of the pre-selection committee.

11. The result of the recruitment shall be announced without delay by placing the information in the seat of the Office and in the Public Information Bulletin, on the dedicated website of the Office, the dedicated website of the office providing support for the minister competent for the economy as well as on the dedicated website of the Chancellery of the Chairperson of the Council of Ministers.

12. The announcement referred to in paragraph 11 shall contain:

- 1) the name and the address of the Office;
- 2) the specification of the post for which the recruitment was made;
- 3) the name and surname of the selected candidate as well as his/her places of residence or the information on failure to select the candidate.

13. Placing the announcement referred to in paragraph 4 as well as the announcement referred to in paragraph 12 in the Public Information Bulletin, on the dedicated website of the Office, the dedicated website of the office providing support for the minister competent for the economy as well as on the dedicated website of the Chancellery of the Chairperson of the Council of Ministers shall be free of charge.

14. The President of the Office shall be dismissed by the minister competent for the economy.

**Art. 469** The President of the Office shall:

- 1) keep surveillance over the procurement system, in particular he/she shall keep surveillance over the observance of the rules for awarding contracts and shall exercise control over the procurement award process to the extent provided for in the Act, as well as shall disseminate the principles of professional ethics of the persons performing tasks within the procurement system;
- 2) take decisions on individual issues envisaged in the Act;
- 3) maintain international cooperation on issues relating to procurement;
- 4) analyze the operation of the procurement system;
- 5) draft and provide opinions on draft legislative instruments on procurement;
- 6) seek to ensure uniform application of legislation on procurement, taking into account jurisprudence of courts and tribunals, and in particular shall disseminate the pronouncements of the National Appeals Chamber, common courts, the Supreme Court, the Court of Justice of the European Union and the Constitutional Tribunal relating to procurement;
- 7) prepare and disseminate sample public procurement agreements, regulations and other documents used in the award of contracts;



- 8) prepare, under the jurisprudence of the National Appeals Chamber and the public procurement court, and make available to the public, sample contractual provisions which may not be in compliance with Article 453;
- 9) carry out education and information activity in the fields of procurement;
- 10) provide information in the field of procurement by means of a call centre and by means of electronic communication;
- 11) disseminate knowledge on procurement, including to the extent of analytical information;
- 12) perform the actions related to the computerization of the procurement system;
- 13) publish, in electronic form, the Public Procurement Bulletin, in which notices provided for in this Act are placed;
- 14) ensure the operation of the system of legal remedies within the scope of appeal proceedings;
- 15) keep and publish on the Office website the list of organizations authorized to lodge legal remedies;
- 16) propose candidates for the Chairperson and Vice-Chairperson of the National Appeals Chamber;
- 17) submit a motion for appointment of a disciplinary spokesperson of the National Appeals Chamber;
- 18) present to the minister competent for the economy, for approval, by 31 October each year, a plan of the manner of performance of the tasks specified in subparagraphs 7 and 9 in the subsequent calendar year;
- 19) present to the minister competent for the economy a report on the National Appeals Chamber operations for the previous calendar year, taking into account the problems arising in connection with its jurisprudence;
- 20) prepare and present, to the Council of Ministers, by 31 July each year, and to the appropriate *Seym* committee, a report on operation of the procurement system, including to the extent of performance of the tasks referred to in subparagraphs 6 and 7 in the previous calendar year, taking into account in said report the analysis of his/her activity;
- 21) submit to the European Commission, every three years, a report on monitoring the operation of the procurement system as well as a statistical report concerning procurement contracts, the value of which is less than the EU thresholds;
- 22) submit to the European Commission, on an annual basis, by 31 March, judgments of the National Appeals Chamber from the preceding calendar year relating to appeals in cases of contract award proceedings, in which agreements were not pronounced invalid for reasons of important public interest referred to in Article 554, paragraph 3, subparagraph 2, letter c, together with their justification;
- 23) present a standpoint in connection with doubts as to the interpretation between the control authorities referred to in Article 596, paragraph 2, upon request of a control authority;
- 24) provide opinions regarding the control questionnaire referred to in Article 599, paragraph 1, provided that the control authority makes a request for providing an opinion.

#### **Art. 470**

1. Entry in the list referred to in Article 469, subparagraph 15 may be sought by subjects operating under the provisions on:

- 1) chambers of commerce;
- 2) craft;
- 3) professional self-government of certain entrepreneurs;
- 4) employers' organizations;

5) professional self-governments of architects and civil engineers;

6) trade unions.

2. An entry in the list, as well as the refusal of the entry or removal from the list shall be made by the President of the Office by means of an administrative decision.

#### **Art. 471**

1. The President of the Office, while attaining at ensuring uniform application of the provisions of the Act by the awarding entities, shall in particular issue - ex officio or upon application - opinions in which it presents the interpretation of the provisions of the Act which rise serious doubts or result in discrepancies in jurisprudence, taking account of jurisprudence of the Supreme Court, the Constitutional Tribunal, the Court of Justice of the European Union, common courts or the National Appeals Chamber.

2. The application for the issue of the opinion referred to in paragraph 1 shall include the substantiation which, in particular:

1) presents the gist of the legal issue and indicates the provisions of the Act requiring the issue of the opinion;

2) justifies the need to issue the opinion.

3. The President of the Office shall leave the application for issuing the opinion referred to in paragraph 1 unexamined, where the conditions referred to in paragraph 1 have not been met, or the application for issuing an opinion does not include the substantiation.

4. The opinion referred to in paragraph 1 shall, in particular, contain:

1) the description of the legal issue in connection with which the provisions of this Act are interpreted;

2) the interpretation of the provisions of the Act along with the legal grounds therefor.

5. The President of the Office shall place the opinion referred to in paragraph 1, issued ex officio, on the Office's website.

#### **Art. 472**

1. The President of the Office shall perform the tasks stipulated in the Act, assisted by not more than two vice presidents of the Office.

2. A Vice-President of the Office shall be appointed by the minister competent for the economy from among the persons selected in an open and competitive recruitment upon a motion of the President of the Office. The Vice-President of the Office shall be dismissed by the minister competent for the economy upon a motion of the President of the Office.

3. A person who meets the conditions set out in Article 468, paragraph 2 may occupy the post of the Vice-President of the Office.

4. The pre-selection committee conducting recruitment for the post of the Vice-President of the Office shall be appointed by the President of the Office.

5. The provisions of Article 468, paragraphs 4, 5, 7, 8 and 10 to 12 shall apply to conducting the recruitment for the post of the Vice-President of the Office. The provisions of Article 468, paragraphs 3, 6, 9 and 13 shall apply accordingly.

### **Chapter 2. National Appeals Chamber.**

## **Section 1. Tasks and System of the National Appeals Chamber.**

### **Art. 473**

1. The National Appeals Chamber, hereinafter referred to as the „Chamber”, shall be an authority competent to:

- 1) examine appeals in the cases referred to in Article 513;
- 2) examine applications for abolishing a prohibition to conclude the agreement, referred to in Article 578, paragraph 1;
- 3) adopt resolutions containing an opinion concerning reservations of the awarding entity as regards the result of the ex-ante control and ad hoc control conducted by the President of the Office.

2. Organizational and technical, as well as accounting support of the Chamber shall be ensured by the Office.

### **Art. 474**

1. The Chamber shall be composed of no more than 100 members appointed by the minister competent for the economy from among the persons who meet the requirements referred to in paragraph 2 and who achieved the best results in the qualification proceedings.

2. A member of the Chamber may be any person who:

- 1) is a Polish citizen;
- 2) has a university degree in law;
- 3) passed a judge's, prosecutor's, notary's, advocate's or legal counsellor's examination or held the post of a judge or prosecutor, practised the profession of a notary or has a professional title of an advocate or a legal counsellor;
- 4) is known for his/her expertise in the field of procurement or civil law and has had at least five-year professional experience in this respect;
- 5) has full capacity for acts in law;
- 6) enjoys full public rights;
- 7) enjoys an impeccable reputation;
- 8) has not been sentenced, by a valid judgement, for an intentional offence or intentional fiscal offence;
- 9) has attained the age of 29;
- 10) holds a security certificate authorizing him/her to have access to non-public information classified as „confidential” or above or has submitted a declaration on expressing his/her consent to conduct the verifying proceedings referred to in Article 22, paragraph 1, subparagraph 1 or 2 of the Act of 5 August 2010 on Protection of Non-Public Information, depending on the classification assigned to the information, the access to which is applied for a member of the Chamber, or the function he/she is to perform.

3. Before taking up his/her duties, a member of the Chamber shall be obliged to take an oath before the minister competent for the economy in the following wording:

„I hereby solemnly swear to diligently fulfill the duties of Chamber member, to take impartial decisions in accordance with the provisions of law, and to act in accord with the principles of dignity and honesty”. The person taking the oath may add:

"So help me God" at the end. Chamber members shall confirm taking of the oath by subscribing their signatures thereto.

#### **Art. 475**

1. To the extent of performance of the acts specified in this Act, Chamber members shall enjoy legal protection to which public officials are entitled.

2. When adjudicating, members of the Chamber shall be independent and bound by the provisions of law in force only.

#### **Art. 476**

1. Membership in the Chamber shall not be combined with:

- 1) the mandate of a *Seym* deputy or a senator;
- 2) the mandate of a councillor or *voit* (mayor, president of a city) or membership in the board of a *powiat* or *voivodeship*;
- 3) membership in a regional accounting chamber board or self-government board of appeal;
- 4) membership in a political party or the pursuit of political activity.

2. Chamber members shall not:

- 1) undertake, without consent of the President of the Chamber, additional profit-gaining occupations, except for employment at a teaching, scientific and teaching, or scientific post in the total amount of working time not exceeding employment on a full-time basis of employees employed at those posts;
- 2) carry on economic activity on one's own account or together with other persons or manage such activity or be a representative or an attorney in the carrying on of such activity;
- 3) be members of the management board, supervisory board or audit commission, nor attorneys of commercial companies or partnerships;
- 4) be a member of the management board of a foundation or association carrying on economic activity;
- 5) hold, in commercial companies or partnerships, more than 10 per cent of shares or shares representing more than 10 per cent of initial capital - in any of such companies or partnerships.

3. Additional activities undertaken by a member of the Chamber shall not be contrary to fulfillment of the duties of the member of the Chamber and shall not undermine trust in his/her impartiality or be incompatible with the dignity of the fulfilled function.

4. Each member of the Chamber shall submit to the President of the Office by 31 March, on an annual basis, a declaration:

- 1) on whether any criminal proceedings are pending against him/her along with the information regarding the subject matter of the proceedings;
- 2) on their financial standing as at 31 December of the preceding year, applying accordingly the form whose template is specified in the Act of 21 August 1997 on Limitation of Carrying on of Economic Activity by Persons Performing Public Functions (*Dziennik Ustaw* 2017, item 1393; 2019, items 371 and 492).

#### **Art. 477**

1. Chamber members shall be selected by way of qualification proceedings consisting of:

- 1) a written exam on the theoretical and practical knowledge of the provisions governing the award of public

contracts and of civil law provisions;

2) a job interview.

2. The qualification proceedings shall be announced by the minister competent for the economy upon a motion of the President of the Office.

3. The announcement shall be published in the Public Information Bulletin, on the dedicated website of the Office, the dedicated website of the office providing support for the minister competent for the economy as well as on the dedicated website of the Chancellery of the Chairperson of the Council of Ministers, and in the press of countrywide circulation.

4. The announcement shall include:

1) the information on the number of persons who may be appointed as Chamber members in given qualification proceedings;

2) the specification of the time limit, form and place of receiving the applications;

3) the list of the documents to be attached confirming the satisfaction of the conditions referred to in Article 474, paragraph 2;

4) fixing the time limit for conducting the qualification proceedings;

5) the information on the necessary minimum number of points to be gained.

5. The time limit referred to in paragraph 4, subparagraph 2 shall not be shorter than 30 days of the day of publishing the announcement in the Public Information Bulletin on the dedicated website of the Office.

6. A qualification committee shall be appointed by the minister competent for the economy from among the persons identified by the President of the Office to conduct the qualification proceedings.

7. The qualification committee shall consist of seven members. A member of the committee may only be a person whose knowledge and experience in the field of the provisions concerning awarding contracts or in the area of civil law, and whose authority give the guarantee of proper and impartial course of the qualification proceedings.

8. If in the qualification proceedings the minimum number of points is gained by the number of persons lower than indicated in the limit determined under paragraph 4, subparagraph 1, the minister competent for the economy may announce supplementary qualification proceedings for Chamber members not later than within 30 days after the completion of the qualification proceedings. The provisions of paragraphs 1 to 7 shall apply to the supplementary qualification proceedings.

9. A subsequent person who has gained the minimum number of points and has not been appointed as a member of the Chamber as a result of qualification proceedings or supplementary qualification proceedings may be appointed as a member of the Chamber instead of the candidate chosen by qualification proceedings or supplementary qualification proceedings who, after announcement of the result of the proceedings, resigned from being appointed as the Chamber member, insofar as the subsequent person is appointed within a year from the day of completion of the qualification proceedings or supplementary qualification proceedings, respectively.

10. The Chairperson of the Council of Ministers shall, by regulation, specify:

1) the procedure for conducting qualification proceedings or supplementary qualification proceedings;

2) the documents to be enclosed confirming the satisfaction of the conditions referred to in Article 474, paragraph 2;

3) the detailed scope of the issues based on which the qualification proceedings and supplementary qualification proceedings are conducted;

4) the procedure for and the manner of appointing the qualification committee, the detailed requirements regarding members of the committee and organization of its work

- guided by the need to ensure proper and efficient conduct of qualification proceedings and supplementary qualification proceedings, the need to ensure effective and impartial work of the qualification committee, as well as having regard to the need to ensure objective verification of theoretical and practical preparation of candidates for members of the Chamber, which verification will ensure proper and efficient conduct of appeal proceedings, and taking account of the circumstance that the documents and declarations, including the ones containing information subject to protection of personal data may confirm meeting the conditions referred to in Article 474, paragraph 2.

#### **Art. 478**

1. Membership in the Chamber shall expire due to death or dismissal.
2. A Chamber member shall be dismissed by the minister competent for the economy in the event of:
  - 1) loss of Polish citizenship;
  - 2) loss or limitation of capacity for acts in law;
  - 3) loss of public rights;
  - 4) loss of an impeccable reputation;
  - 5) having been sentenced, by a valid judgement, for an intentional offence or an intentional fiscal offence;
  - 6) the expiry of 6 months of the suspension period referred to in Article 486;
  - 7) pronouncement of a disciplinary penalty of exclusion from the Chamber membership;
  - 8) a failure to timely submission of one of the declarations referred to in Article 476, paragraph 4;
  - 9) a refusal to issue or withdrawal of his/her security certificate referred to in the Act of 5 August 2010 on the Protection of Non-public Information;
  - 10) a refusal to take an oath;
  - 11) a failure to take up the post within the time limit set in the appointment letter;
  - 12) the submission by a Chamber member of an application for being dismissed.

3. A subsequent person who has gained the minimum number of points and has not been appointed as a member of the Chamber as a result of qualification proceedings or supplementary qualification proceedings may be appointed as a member of the Chamber instead of the Chamber member dismissed under paragraph 2, subparagraph 10 or 11, insofar as the proceedings were completed not earlier than a year before the day of dismissal.

#### **Art. 479**

1. The Chamber bodies shall be:
  - 1) the President of the Chamber;
  - 2) the general assembly of the Chamber;
2. The President of the Chamber shall manage the Chamber work, and in particular shall:
  - 1) represent the Chamber before third parties;
  - 2) chair the Chamber's general assembly;
  - 3) set the dates of sessions of the adjudicating benches and also order the joint examination of appeals;

4) designate the adjudicating bench to examine an appeal, including its chairperson, as well as the bench to adopt a resolution referred to in Article 473, paragraph 1, subparagraph 3, including its chairperson;

5) see to the efficiency of the Chamber work;

6) conduct an analysis of the Chamber's, common courts', the Supreme Court's, the Court of Justice of the European Union's and the Constitutional Tribunal's jurisprudence concerning the procurement and prepare conclusions based on those analyses;

7) submit to the President of the Office the annual information on the operation of the Chamber taking into consideration any problems resulting from jurisprudence, after the information has been approved by the Chamber's general assembly.

3. The President of the Chamber shall perform his/her tasks with the assistance of the Vice-President of the Chamber who substitutes for the President should the latter be absent.

4. The Chamber's general assembly shall be composed of Chamber members.

5. The tasks of the Chamber's general assembly shall include:

1) preparation and acceptance of the annual information on the operation of the Chamber, taking into consideration any problems resulting from jurisprudence;

2) designation of the composition of the disciplinary court;

3) consideration of appeals against the disciplinary court pronouncements;

4) consideration of or providing opinions on other matters submitted by the President of the Chamber or reported by the Chamber's general assembly members.

#### **Art. 480**

1. The President and the Vice-President of the Chamber shall be appointed, upon a motion of the President of the Office, by the minister competent for the economy for a three-year term of office.

2. The President and the Vice-President of the Chamber shall be appointed from among the Chamber members who hold the security certificate authorizing them to access non-public information marked with the „top secret“ clause or submitted a declaration on expressing consent to conduct the verifying proceedings referred to in Article 22, paragraph 1, subparagraph 2 of the Act of 5 August 2010 on the Protection of Non-Public Information.

3. The President of the Chamber and the Vice-President of the Chamber may be appointed also from among the candidates satisfying the conditions referred to in Article 474, paragraph 2, selected in the course of a competition. A candidate shall, before his/her appointment, present the security certificate referred to in paragraph 2.

4. A competition for the position of the President or Vice-President of the Chamber referred to in paragraph 2 shall be announced by the minister competent for the economy upon a motion of the President of the Office. The provisions of Article 477, paragraphs 1 and 3, paragraph 4, subparagraphs 2 to 5 and paragraphs 5 to 7 shall apply to holding the competition, and the provisions issued under Article 477, paragraph 10 shall apply accordingly.

5. The minister competent for the economy shall dismiss the President of the Chamber or the Vice-President of the Chamber if the issuance of the security certificate referred to in paragraph 2 has been refused to him/her or the security certificate has been withdrawn from him/her.

6. Dismissal of the President of the Chamber or the Vice-President of the Chamber shall be governed by the provision of Article 478, paragraph 2.

#### **Art. 481**

1. The general assembly of the Chamber shall be convened by the President of the Chamber at least twice a year and also on a written motion of at least one half of Chamber members or the chairperson of the disciplinary court

within 14 days after the day of its submission.

2. Resolutions of the general assembly of the Chamber shall be adopted by a majority of votes in the presence of at least one half of the Chamber members. In the event of equal number of votes, the President of the Chamber shall have the casting vote.

**Art. 482** The President of the Chamber shall determine, by an order, the internal regulations of the Chamber's work organization as well as the tasks of the Chamber's Vice-President, having regard to the need for ensuring efficient and accurate performance of the tasks entrusted to the Chamber.

**Art. 483**

1. An employment relationship with a Chamber member shall be established based on appointment, within the time limit fixed in the appointment letter. Acts in the matter within the scope of labour law concerning a Chamber member shall be carried out by the President of the Office.

2. In matters not regulated in the Act concerning employment relationship of a Chamber member the provisions of the Act of 26 June 1974 - the Labour Code shall apply accordingly.

**Art. 484**

1. The basis for calculating the basic remuneration of the President of the Chamber, Vice-President and other members of the Chamber shall be the multiple of the base amount determined in the State Budget Act for a given year pursuant to Article 9, paragraph 1, subparagraph 2 of the Act of 23 December 1999 on the Formation of Remuneration in the State Budget Sector and on Amendments to Certain Acts (Dziennik Ustaw 2018, 2288) for the state budget sector employees referred to in Article 5, subparagraph 1 letter a of said Act.

2. A Chamber member shall be entitled to an additional allowance for many years of work, starting from the sixth year of work, in the amount of 5 per cent of monthly basic remuneration, increasing by 1 per cent after each year of work until reaching 20 per cent of the monthly basic remuneration.

3. A Chamber member shall be entitled to a jubilee reward in the amount of:

- 1) 75 per cent of monthly remuneration - after 20 years of work;
- 2) 100 per cent of monthly remuneration - after 25 years of work;
- 3) 150 per cent of monthly remuneration - after 30 years of work;
- 4) 200 per cent of monthly remuneration - after 35 years of work;
- 5) 300 per cent of monthly remuneration - after 40 years of work;
- 6) 350 per cent of monthly remuneration - after 45 years of work.

4. The period of work giving entitlement to the jubilee award shall include all previous completed employment periods and other periods, if by virtue of separate provisions of law they shall be included in the period of work on which employee's rights depend. The provisions on jubilee awards referred to in the provisions on employees of state offices shall apply accordingly to the calculation and payment of the jubilee award.

5. The Chairperson of the Council of Ministers shall, by regulation, determine the multiple of the base amount referred to in paragraph 1, taking into consideration the function performed by the Chamber member and the fact that the multiple shall not be less than 4.5.

**Art. 485**

1. A Chamber member shall be subject to disciplinary liability for infringement of his/her duties and breach of professional dignity.

2. The following shall be disciplinary penalties:



- 1) an admonition;
- 2) dismissal from the function occupied;
- 3) exclusion from Chamber membership.

3. The pronouncement of the penalty referred to in paragraph 2, subparagraph 2 shall mean that the person penalized cannot act in the capacity of the Chamber President, Vice-President, disciplinary spokesman or member of the disciplinary court for 5 years.

4. The following bodies shall adjudicate in the disciplinary matters of Chamber members:

- 1) in the first instance - the disciplinary court, judging by five members of the Chamber, appointed by the Chamber's general assembly from among the Chamber members;
- 2) in the second instance - the Chamber's general assembly.

5. The prosecutor before the disciplinary court shall be the disciplinary spokesperson.

6. The disciplinary spokesperson shall be appointed from among the Chamber members for a three-year term of office by the minister competent for the economy upon a motion of the President of the Office. The disciplinary spokesperson may be dismissed at any time and shall carry out his/her duties until the appointment of a new disciplinary spokesperson.

7. A disciplinary pronouncement issued in the second instance may be appealed against to the appellate court - labour court and social insurance court competent for the seat of the Office within 14 days after delivery of the pronouncement with the justification thereof. The pronouncement of the appellate court cannot be appealed against in the form of a cassation complaint.

8. The procedure for conducting disciplinary proceedings and the procedure for appointing the adjudicating bench of the disciplinary court shall be set out in the regulations adopted by the Chamber's general assembly.

#### **Art. 486**

1. The minister competent for the economy shall suspend a Chamber member in his/her rights and duties where a charge of commitment of an intentional offence or intentional fiscal offence is lodged against him/her.
2. The suspension period referred to in paragraph 1 shall last until the completion of the criminal proceedings but no longer than for 6 months.
3. During said suspension the Chamber member shall retain the right to a half of his/her remuneration.

### **Section 2. Chamber's Operation Rules.**

#### **Art. 487**

1. The Chamber shall examine the appeal acting by:

- 1) three persons, in the case of contracts with a value equal to or exceeding the EU thresholds;
- 2) one person, in the case of contracts with a value less than the EU thresholds

- hereinafter referred to as the „adjudicating bench”, unless the Act provides otherwise.

2. The President of the Chamber may order examination of the appeal with the Chamber acting by one person in the

case of contracts with a value equal to or exceeding the EU thresholds or acting by three persons in the case of contracts with a value less than the EU thresholds, provided that he/she finds it suitable due to the degree of the matter's complexity.

3. Resolutions containing an opinion concerning the awarding entity's reservations to the result of the ad hoc control or ex-ante control shall be adopted by the Chamber acting by three persons.

#### **Art. 488**

1. The President of the Chamber shall assign cases and designate the adjudicating bench as well as the formation participating in adopting the resolution referred to in Article 487, paragraph 3.

2. Cases shall be assigned according to the alphabetic list of the Chamber members:

- 1) in the order of reception of appeals, open to the parties to the appeal proceedings;
  - 2) in the order of reception of reservations to the result of the ad hoc control or before-award control, open to the awarding entity submitting the reservations.
3. Departure from the assignment of the cases under paragraph 2 shall be admissible due to an illness of the Chamber member or due to other important reason, which shall be pointed out in the order on convening a session of the adjudicating bench or the formation participating in adoption of the resolution referred to in Article 487, paragraph 3, respectively.

4. A change in the designated adjudicating bench and the formation participating in adoption of the resolution referred to in Article 487, paragraph 3 may be made due to the reasons referred to in paragraph 3.

5. The circumstances referred to in paragraph 3 shall be notified in writing to the President of the Chamber by a member of the adjudicating bench or a member of the formation participating in adoption of the resolution referred to in Article 487, paragraph 3.

**Art. 489** The President of the Chamber shall designate, from among the designated members of the formation, the chairperson:

- 1) of the adjudicating bench;
- 2) of the formation participating in adoption of the resolution referred to in Article 487, paragraph 3.

#### **Art. 490**

1. A member of the adjudicating bench and a member of the formation participating in adoption of the resolution referred to in Article 487, paragraph 3 shall be excluded by operation of statutory law in the cases:

- 1) in which he/she is a party or remains with one of the parties in such a legal relationship that the outcome of the case affects his/her rights or duties;
- 2) of his/her spouse, relatives by blood or by affinity in the direct line, lateral relatives by blood within the fourth degree and lateral relatives by affinity within the second degree;
- 3) the persons related to him/her by adoption, guardianship or curatorship;
- 4) in which he/she was or is an attorney of one of the parties;
- 5) in which he/she provided legal assistance for the benefit of one of the parties or any other services connected with the case.

2. The reasons for the exclusion shall also continue after the cessation of the marriage, adoption, guardianship or curatorship providing grounds therefor.

#### **Art. 491**

1. The President of the Chamber shall exclude a member of the adjudicating bench upon his/her demand or motion of a party if the circumstances justifying exclusion of the member occur, in particular when factual or legal circumstances occur which may raise justified doubts as to his/her impartiality.

2. A member of the adjudicating bench shall notify in writing the President of the Chamber on the grounds for his/her exclusion.

3. A party shall file a motion for exclusion of a member of the adjudicating bench in writing, showing with a reasonable degree of probability the circumstances justifying the exclusion. A repeated motion based on the same circumstances shall be left unexamined. The President of the Chamber shall decide on leaving the motion unexamined.

4. The provisions of paragraphs 1 to 3 shall apply accordingly to a member of the formation participating in adoption of the resolution referred to in Article 487, paragraph 3.

#### **Art. 492**

1. Exclusion of a member of the adjudicating bench or refusal to exclude him/her shall be decided by the President of the Chamber by a ruling which may not be complained against to a court.

2. Where the circumstances referred to in Article 490, paragraph 1 and Article 491, paragraph 1 concern the President of the Chamber, the minister competent for the economy shall decide on his/her exclusion or refusal to exclude him/her.

3. In the cases referred to in Article 490, paragraph 1 and Article 491, paragraph 1, the President of the Chamber shall appoint to the adjudicating bench another member of the Chamber in order according to the alphabetic list of the Chamber members.

4. The provisions of paragraphs 1 to 3 shall apply accordingly to a member of the formation participating in adoption of the resolution referred to in Article 487, paragraph 3.

### **Chapter 3. Committee Competent for Control in Public Contracts.**

**Art. 493** The Committee Competent for Control in Public Contracts, hereinafter referred to as the „Committee“, shall be an advisory body of the minister competent for the economy.

**Art. 494** The tasks of the Committee shall include:

1) monitoring and analysis of the operation of control authorities referred to in Article 596, paragraph 2, to the extent of control of lawfulness of awarding contracts, including the conduct of analysis of the cases in which the actions of those authorities disclosed irregularities in compliance with the provisions on procurement, as well as the discrepancies in application or understanding of those provisions, as well as preparation of the conclusions based on this analysis;

2) proposing actions, including preventive actions, corresponding to the conclusions based on the analysis referred to in subparagraph 1;

3) ensuring the possibility of cooperation of the control authorities referred to in Article 596, paragraph 2, to the extent of the conducted control activities referred to in subparagraph 1;

4) making requests to the President of the Supreme for conducting training for control institutions, issuing opinions or taking other actions aimed at ensuring proper and uniform understanding of the provisions on procurement;

5) proposing solutions within the scope of a change in the procurement control system, including in the purchasing policy of the country;

6) proposing, upon a motion of the authority referred to in Article 495, paragraph 1, subparagraph 2 and paragraph

2, the wording of the standpoint regarding reservations submitted by the European Commission in reference to the application of the procurement provisions;

7) promoting good practices as regards the procurement control standards;

8) cooperation in the matters related to the development of the procurement control system with other states, organizations as well as international and foreign institutions.

#### **Art. 495**

1. The Committee shall be composed of:

1) the Committee's chairperson - designated by the minister competent for the economy from among the employees of the office providing support to such minister.

2) one representative designated by each of the following persons and institution:

a) the Chairperson of the Council of Ministers;

b) the President of the Office;

c) the President of the Office of Competition and Consumer Protection;

d) the minister competent for regional development who is in charge of coordination of operational programmes within the meaning of the implementation of programmes concerning the cohesion policy;

e) an audit authority within the meaning of the provisions on the implementation of programmes concerning the cohesion policy;

3) the President of the Chamber.

2. A representative of the Supreme Audit Office designated by the President of the Supreme Audit Office and a representative of regional accounting chambers designated by the National Council of Regional Accounting Chambers shall be invited to perform works of the Committee as an authorized member.

3. Representatives of the government administration authorities invited by the chairperson of the Committee may participate in the works of the Committee on their own initiative or upon a motion of a member of the Committee.

4. The Committee's meetings may also be attended by, in advisory capacity, the persons having adequate knowledge or experience in the area of the issues covered by the Committee's tasks, invited by the chairperson of the Committee on their own initiative or upon a motion of a member of the Committee.

#### **Art. 496**

1. The chairman of the Committee shall be in charge of the Committee's works.

2. The chairperson of the Committee may, on his/her own initiative or upon a motion of a member of the Committee, set up working teams determining their composition, scope of tasks as well as the procedure for and schedule of works.

#### **Art. 497**

1. The Committee shall take decisions by way of resolutions, during meetings.

2. Resolutions of the Committee shall be adopted by a majority of two-thirds of votes in the presence of at least one half of the Committee members in an open voting. In the event of equal number of votes, the chairperson of the Committee shall have the casting vote.

3. Resolutions shall be signed by the chairperson of the Committee on behalf of the Committee.

4. Draft resolutions of the Committee may be put to voting under the circulation procedure.

5. The persons invited to participate in a meeting of the Committee, as referred to in Article 495, paragraphs 3 and 4, shall not have the right to vote on the resolutions.

6. The minister competent for the economy shall specify, by an order, the regulations of the Committee's works.

**Art. 498**

1. Support for the Committee shall be provided by the office supporting the minister competent for the economy.
2. The costs of the support for the Committee shall be covered from the part of the state budget which is put to disposal of the minister competent for the economy.

**Art. 499** The chairperson of the Committee shall submit to the minister competent for the economy, by 30 June each year, the information on the operations of the Committee for the previous calendar year.

**Chapter 4. Council for Public Procurement.****Art. 500**

1. The Council for Public Procurement shall act within the office of the President of the Office, hereinafter referred to as the „Council”, which is the President's opinion-giving and advisory body.
2. The tasks of the Council shall be:
  - 1) expressing opinions on particularly important matters of the procurement system presented to it by the President of the Office;
  - 2) expressing opinions on draft normative acts concerning procurement, presented to it by the President of the Office;
  - 3) expressing opinions on the report on the operation of the procurement system, referred to in Article 469, subparagraph 21;
  - 4) determining the principles of professional ethics of persons performing tasks specified in the Act within the procurement system;
  - 5) discharging other tasks commissioned by the President of the Office.
3. The Office shall provide support for the Council.

**Art. 501**

1. The Council shall be composed of 10 to 15 members appointed by the minister competent for the economy.
2. Candidates for members of the Council may be proposed by the following person and bodies, within 60 days from the day of publishing in the Public Information Bulletin on the dedicated website of the office providing support for the minister competent for the economy of the information on appointing as the Council member:
  - 1) the President of the Office;
  - 2) other authorities of the government administration;
  - 3) the Joint Committee of the Government and Territorial Self-Government;
  - 4) the Social Dialogue Council.
3. The minister competent for the economy shall appoint members of the Council from among the persons who:
  - 1) are Polish citizens;

- 2) enjoy full public rights;
- 3) have not been sentenced, by a valid judgement, for an intentional offence or intentional fiscal offence;
- 4) have the knowledge and authority giving a guarantee of proper performance of the Council's tasks.

4. The minister competent for the economy shall appoint from among the persons referred to in paragraph 1 the chairperson of the Council. The Council shall appoint a Vice Chairperson of the Council from among its members.

5. The President of the Office shall specify by an order the regulations of the Council's work.

#### **Art. 502**

1. The Council shall be dissolved upon dismissal of the President of the Office.

2. Membership in the Council shall expire in the case referred to in paragraph 1, as well as in the event of death of its member, his/her dismissal or resignation.

3. The minister competent for the economy shall dismiss a member of the Council if he/she has ceased to satisfy one of the conditions referred to in Article 501, paragraph 3, subparagraphs 1 to 3 and on the request of the President of the Office in the event of:

- 1) a failure to fulfil the duties of a Council member;
- 2) loss of authority guaranteeing proper performance of the Council's tasks;
- 3) loss of ability to fulfill his/her duties as a result of an at least 6-month long-lasting illness.

#### **Art. 503**

1. At the time the President of the Office fulfills his/her function, the Council's composition:

1) shall be supplemented if, as a result of expiry of the membership in the Council, due to death of its member, his/her dismissal or resignation, the number of members would be less than 10;

2) may be supplemented in accordance with Article 501, paragraph 1, if the number of the Council members is not less than 10.

2. Candidates for members of the Council may be proposed by the subjects referred to in Article 501, paragraph 2, within 60 days from the day of publishing in the Public Information Bulletin on the dedicated website of the office providing support for the minister competent for the economy of the information on supplementing the Council's composition.

#### **Art. 504**

1. Members of the Council shall be entitled to remuneration for participation in the Council's works. The amount of the remuneration depends on the scope of the duties related to the function fulfilled in the Council and the number of meetings attended by the Council's member.

2. The minister competent for the economy shall determine, by a regulation, the amount of the remuneration of the chairperson, vice-chairperson and other Council's members due for one meeting, having regard to the scope of the duties related to the function they fulfill and the fact that remuneration shall not be less than 5 per cent of average remuneration in the national economy in the calendar year preceding the year of appointment of the Council, published by the President of the Statistics Poland under Article 20, subparagraph 1, letter a of the Act of 17 December 1998 on Retirement and Disability Pensions from the Social Insurance Fund (Dziennik Ustaw 2018, item 1270, as amended) and shall not exceed 25 per cent of this remuneration.

3. Members of the Council having their places of residence in another location than the seat of the Office shall be entitled to daily allowances and reimbursement of the travel and accommodation expenses under the conditions specified in the provisions issued on the basis of Article 77<sup>5</sup>, paragraph 2 of the Act of 26 June 1974 - Labour Code.

## **Division IX. REMEDIES.**

### **Chapter 1. General Provision.**

#### **Art. 505**

1. Contractors, participants in a contest, and other subjects which/who have or had an interest in obtaining a given contract or a prize in the contest and have suffered or may suffer a damage as a result of the infringement by the awarding entity of the provisions of the Act, shall be entitled to legal remedies specified in this section.
2. Organizations entered in the list referred to in Article 469, subparagraph 15 and the Spokesperson for Small and Medium-Sized Enterprises shall be entitled to legal remedies with respect to the notice initiating contract award proceedings or a notice of the contest as well as the contract documents.

### **Chapter 2. Appeal Proceedings.**

#### **Section 1. General Provisions.**

#### **Art. 506**

1. Appeal proceedings shall be conducted in Polish.
2. All documents shall be presented in Polish, and if they have been drawn up in a foreign language, the party to and the participant in the appeal proceedings which/who invokes them, shall present their translation into the Polish language. In substantiated cases the Chamber may demand that the translation of a document into Polish certified by a sworn translator be presented.

**Art. 507** Letters submitted in the course of the appeal proceedings by the parties to and participants of the appeal proceedings shall be submitted with copies for the parties to and participants of these proceedings.

#### **Art. 508**

1. Letters in appeal proceedings shall be submitted in writing or in electronic form, with the proviso that an appeal and joining the appeal proceedings submitted in electronic form require to bear a trusted signature.
2. The letters in writing shall be filed through a postal operator within the meaning of the Act of 23 November 2012 - Postal Law, in person, through a messenger, whereas the letters in electronic form shall be filed using electronic communication means.

#### **Art. 509**

1. Time limits shall be counted in accordance to the provisions of civil law.
2. If the end of a time limit for the performance of an act falls on a Saturday or a public holiday, the time limit shall expire on the day following the public holiday or public holidays.

#### **Art. 510**

1. An attorney may be an advocate or a legal counsellor as well as a person administering the property or interests of a party, and a person remaining in a relationship of mandate with a party, provided that the subject matter of the case is covered by this mandate.

2. An attorney of a legal person or an entrepreneur, including the one having no legal personality, may also be an employee of this entity.

#### **Art. 511**

1. An attorney is obliged, while performing his/her first act before the President of the Chamber or before the Chamber, attach to the case files the power of attorney together with the signature of the principal or a certified copy of the power of attorney along with a copy for the parties to and participants in appeal proceedings, unless the copy of the power of attorney has been delivered by the attorney directly to such a party and participant. An advocate and a legal counsellor may alone certify the copy of the power of attorney and the copies of other documents showing their authorization.

2. If lacks regarding power of attorney or composition of the competent authorities are possible to be supplemented, the Chamber shall set the appropriate time limit for this purpose.

3. The Chamber may temporarily admit to activities a person who is not able to present his/her power of attorney, with the reservation that before the expiry of the set time limit those lacks will be supplemented and activities approved by the person appointed to do so.

**Art. 512** Members of the Chamber shall preserve confidentiality of the information included in documents submitted by the parties to and participants in the appeal proceedings and those joining appeal proceedings and shall act in the appeal proceedings in compliance with the public interest, in particular in the fields of defence and security.

### **Section 2. Appeal.**

**Art. 513** An appeal may be lodged against:

**1)** an act of the awarding entity non-compliant with the provisions of the Act, undertaken in contract award proceedings, procedure for conclusion of a framework agreement, dynamic purchasing system, contractor qualification system or a contest, including against a drafted provision of the agreement;

**2)** omission of an act in contract award proceedings, procedure for conclusion of a framework agreement, dynamic purchasing system, contractor qualification system or a contest, to perform which act the awarding entity has been obliged pursuant to the Act;

**3)** omission of the conduct of contract award proceedings or organization of a contest under the Act, despite the fact that the awarding entity was obliged to do so.

#### **Art. 514**

1. An appeal shall be lodged to the President of the Chamber.

2. The appellant shall submit a copy of the appeal to the awarding entity prior to the elapse of the time limit for lodging the appeal in such a manner that the awarding entity can learn its contents prior to expiry of this time limit.

3. It shall be presumed that the awarding entity could have learnt the contents of the appeal prior to the elapse of the time limit for its submission, where the copy thereof was submitted prior to the elapse of the time limit for its submission by electronic communication means.

#### **Art. 515**

1. An appeal shall be lodged:



- 1) in the case of the contracts whose value is equal to or exceeds the EU thresholds within:
  - a) 10 days from the date of furnishing the information on the act of the awarding entity providing the grounds for its lodging, if the information has been transmitted by means of electronic communication;
  - b) 15 days from the date of furnishing the information on the act of the awarding entity providing the grounds for its lodging, if the information has been transmitted in a manner other than that laid down in letter a;
- 2) in the case of the contracts whose value is less than the EU thresholds within:
  - a) 5 days from the date of furnishing the information on the act of the awarding entity providing the grounds for its lodging, if the information has been transmitted by means of electronic communication;
  - b) 10 days from the date of furnishing the information on the act of the awarding entity providing the grounds for its lodging, if the information has been transmitted in a manner other than that laid down in letter a;

2. An appeal against the contents of a notice initiating contract award proceedings or a contest or against the contents of the contract documents shall be lodged within:

- 1) 10 days from the day of publication of the notice in the Official Journal of the European Union or placing of the contract documents on a website in the case of the contracts whose value is equal to or exceeds the EU thresholds;
- 2) 5 days from the day of publication of the notice in the Public Procurement Bulletin or the contract documents on a website in the case of the contracts whose value is less than the EU thresholds.

3. An appeal in the cases other than those specified in paragraphs 1 and 2 shall be lodged within:

- 1) 10 days from the day of becoming aware, or, acting with due diligence, one could have become aware of the circumstances providing grounds for its lodging in the case of the contracts whose value is equal to or exceeds the EU thresholds;
- 2) 5 days from the day of becoming aware, or, acting with due diligence, one could have become aware of the circumstances providing grounds for its lodging in the case of the contracts whose value is less than the EU thresholds.

4. If the awarding entity failed to publish the notice of its intention to conclude an agreement or despite such requirement failed to send to a contractor the notice of the choice of the most advantageous tender or failed to invite the contractor to submit a tender under the dynamic purchasing system or a framework agreement, the appeal shall be lodged not later than within:

- 1) 15 days of placing the announcement of the result of the proceedings in the Public Procurement Bulletin or 30 days of publication of the contract award notice in the Official Journal of the European Union and in the case of a awarding a contract under negotiations without publication procedure or under direct-award contract procedure - the announcement of the result of the proceedings or the contract award notice containing the substantiation of awarding the contract under the negotiations without publication procedure or the direct-award contract procedure;
- 2) 6 months from the date of entering into the agreement, if the awarding entity:
  - a) failed to publish the contract award notice in the Official Journal of the European Union or
  - b) published a contract award notice in the Official Journal of the European Union, which notice does not contain the reasons for awarding a contract under the negotiations without publication procedure or direct-award contract procedure;
- 3) 1 month from the date of entering into the agreement, if the awarding entity:
  - a) failed to publish the announcement of the result of the proceedings in the Public Procurement Bulletin or
  - b) published the announcement of the result of the proceedings in the Public Procurement Bulletin, which announcement does not contain the reasons for awarding a contract under the negotiations without publication procedure or direct-award contract procedure.

#### **Art. 516**

1. An appeal shall contain:

- 1) the forename and surname or name, place of residence or seat, the phone number and electronic mail address of the appellant as well as the forename and surname of the appellant's representative (representatives);

- 2) the name and the address of the awarding entity, the phone number and the email address of the awarding entity;
- 3) the National Electronic Population Registration System (PESEL) number or the NIP number of the appellant who is a natural person, provided that he/she is obliged to hold such a number or holds the same without being obliged to do so;
- 4) the number in the National Court Register, and in the case of lack of such a number - a number in other relevant register, records or the NIP of the appellant which is not a natural person, which is not obliged to be entered into a relevant register or records, provided that it is obliged to hold such an entry number;
- 5) the description of the subject of the contract;
- 6) the indication of the announcement number in the event of publication of the same in the Public Procurement Bulletin or in the Official Journal of the European Union;
- 7) the indication of the awarding entity's act or omission charged as being at variance with the provisions of the Act;
- 8) a brief summary of the charges;
- 9) the demand regarding the manner of resolving the appeal;
- 10) the indication of the factual and legal circumstances justifying the lodging of the appeal and the evidence in support of the mentioned circumstances;
- 11) the signature of the appellant or the representative or representatives of the appellant;
- 12) the list of appendices.

2. The following shall be attached to the application:

- 1) the receipt confirming the payment of the court fee for the appeal in the required amount;
- 2) the receipt confirming sending the appeal's copy to the awarding entity;
- 3) the document confirming authorization to represent the appellant.

#### **Art. 517**

1. The appeal shall be examined, if:

- 1) it is free of any formal deficiencies;
- 2) the entry fee has been paid in the required amount.

2. The entry fee shall be paid by the expiration date for lodging the appeal at the latest.

#### **Art. 518**

1. If the appeal period cannot run properly as a result of failure to comply with formal requirements, lack of a power of attorney or lack of timely payment of the entry fee referred to in Article 517, paragraph 2, the President of the Chamber shall request the appellant, under the pain of returning the appeal, to rectify or complete the appeal or to deliver the receipt confirming payment of the fee within 3 days of the date of delivery of the request.

2. Erroneous designation of the appeal or any other obvious inaccuracies shall not be an obstacle to commencing the running of the appeal period and it being examined by the Chamber.

3. The President of the Chamber shall caution in the request referred to in paragraph 1, that in the case of a failure to rectify, complete or attach the receipt confirming payment of the fee within 3 days, the appeal shall be returned.

4. In the event the request referred to in paragraph 1 is served on the appellant earlier than 3 days prior to the expiration of the time limit for lodging the appeal, the appellant may submit the lacking receipt confirming payment of the fee by the expiration date of the time limit for submitting the appeal, at the latest.

#### **Art. 519**

1. Should the entry fee be not paid within the deadline referred to in Article 517, paragraph 2, and after ineffective lapse of the deadline referred to in Article 518, paragraph 1, the President of the Chamber shall return the appeal in the form of a ruling.

2. The returned appeal shall not bring about the effects which under the Act are binding upon lodging the appeal to the President of the Chamber.

3. The President of the Chamber shall inform the awarding entity about returning the appeal sending a copy of the ruling.

4. The provisions of paragraphs 1 to 3 shall apply in the case of failure to comply with the formal conditions for the appeal or lack of a power of attorney ascertained by the adjudicating bench. The adjudicating bench shall enjoy the competences of the President of the Chamber.

#### **Art. 520**

1. The appellant may withdraw an appeal until closing a hearing.

2. The withdrawn appeal shall not bring about the legal effects which under the Act are binding upon lodging the appeal to the President of the Chamber.

#### **Art. 521**

1. The awarding entity may submit a response to an appeal until opening of a hearing.

2. The awarding entity shall, in response to the appeal, address the contents of the appeal, indicate statements and evidence in support of substantiation of its conclusions or for the purpose of rebutting the conclusions and statements invoked in the appeal.

### **Section 3. Granting Appeal by Awarding Entity.**

#### **Art. 522**

1. In the event that the awarding entity grants all allegations presented in the appeal, the Chamber may discontinue appeal proceedings at a closed session without the appearance of the parties to and the participants of the appeal proceedings who joined the proceedings on the contractor's side, provided that no contractor joined the appeal proceedings on the awarding entity's side within the set time limit. In such a case the awarding entity shall perform, repeat or annul acts in contract award proceedings as demanded in the appeal.

2. If a participant in the appeal proceedings who joined the proceedings on the awarding entity's side does not object to granting all allegations presented in the appeal by the awarding entity, the Chamber shall discontinue the proceedings and the awarding entity shall perform, repeat or annul acts in contract award proceedings as demanded in the appeal.

3. In the event that the awarding entity grants part of the allegations presented in the appeal and the appellant withdraws the other allegations, the Chamber may discontinue appeal proceedings at a closed session without the appearance of the parties to and the participants in the appeal proceedings that joined the proceedings on the awarding entity's side, provided that no contractor joined the appeal proceedings on the awarding entity's side within the set time limit or the contractor which joined the appeal proceedings on the awarding entity's side did not lodge any objection against granting part of the allegations. In such a case the awarding entity shall perform, repeat or annul acts in contract award proceedings as demanded in the appeal to the extent of the allegations granted.

4. In the event that the awarding entity grants part of the allegations presented in the appeal, the Chamber may discontinue appeal proceedings in the part concerning those allegations, provided that no contractor joined the appeal proceedings on the awarding entity's side within the set time limit or the contractor which joined the appeal proceedings on the awarding entity's side did not lodge any objection against granting those allegations. In such a case the Chamber shall examine the other allegations of the appeal. The awarding entity shall perform, repeat or annul acts in contract award proceedings as demanded in the appeal to the extent of the allegations granted.

#### **Art. 523**

1. A participant in the appeal proceedings that joined the proceedings on the awarding entity's side may lodge an objection to granting the allegations presented in the appeal by the awarding entity in whole or in part.

2. The objection shall be lodged in accordance with Article 508, paragraph 1 or orally to be put on record.

3. If a participant in the appeal proceedings who joined in the proceedings on the awarding entity's side lodges an objection against granting the allegations presented in the appeal in full or in part, when the appellant does not withdraw the remaining objections contained in the appeal, the Chamber shall examine the appeal.

### **Section 4. Joining Appeal Proceedings.**

**Art. 524** The awarding entity shall immediately, however not later than within 2 days of the date of its receipt, send a copy of the appeal to other contractors participating in the contract award proceedings, and if the appeal concerns the contents of the contract notice or the contract documents, it shall place it also on the website where the contract notice is placed or the contract documents are made available, calling upon the contractors to join the appeal proceedings.

#### **Art. 525**

1. A contractor may notify of its joining the appeal proceedings within 3 days of the date of receiving the copy of the appeal, indicating the party which it is joining and an interest in obtaining a resolution to the benefit of the party it is joining.

2. The notification of joining in shall be delivered to the President of the Chamber and its copy shall be sent to the awarding entity and the contractor lodging the appeal. The notification of joining shall be enclosed with a proof of sending the copy of joining to the awarding entity and the contractor lodging the appeal.

3. The contractors which joined the appeal proceedings shall become participants in the appeal proceedings if they have an interest in obtaining a resolution to the benefit of one of the parties.

4. The acts of the participant in the appeal proceedings shall not be at variance with the acts and declarations of the party which it joined, save for the objection referred to in Article 523, paragraph 1 being lodged by the participant that joined the proceedings on the awarding entity's side.

#### **Art. 526**

1. The awarding entity or the appellant may lodge opposition against joining by other contractor until opening a hearing at the latest.

2. The Chamber shall grant the opposition if the party lodging it demonstrates with a reasonable degree of probability that the contractor has no interest in obtaining resolution for the benefit of the party it joined. Otherwise the Chamber shall dismiss the opposition.

3. A ruling on granting or dismissing the opposition may be issued by the Chamber at a closed session.

4. The ruling on granting or dismissing the opposition shall not be complained against to a court.

**Art. 527** No legal remedies shall be enjoyed by the appellant or the contractor called upon pursuant to Article 524 as

regards an act of the awarding entity carried out in accordance with the contents of a judgment of the Chamber or a court, or in the case of granting allegations presented in the appeal, said act having been performed as per the demand contained in the appeal.

## **Section 5. Rejection of Appeal.**

**Art. 528** The Chamber shall reject an appeal where it finds that:

- 1) the provisions of the Act are not applicable to a case;
- 2) the appeal has been lodged by an unauthorized subject;
- 3) the appeal has been lodged after the expiry of the time limit specified in the Act;
- 4) the appellant invokes solely the same circumstances which were the subject of a resolution of the Chamber concerning another appeal lodged by the same appellant concerning the same proceedings;
- 5) the appeal concerns an act that the awarding entity performed in accordance with the contents of the judgment of the Chamber or a court, or in the event of allegations in the appeal being granted, the act which it performed in compliance with the demand contained in the appeal;
- 6) the appellant has failed to send a copy of the appeal to the awarding entity in compliance with Article 514, paragraph 2.

### **Art. 529**

1. The Chamber may reject the appeal at a closed session.
2. Should the Chamber consider it necessary, it may permit the parties, witnesses or experts to participate in the session.

**Art. 530** If no grounds for rejection of the appeal are found, the Chamber shall submit the case to a hearing.

## **Section 6. Evidence.**

**Art. 531** The subject of evidence shall be that of the facts of significant importance for resolution of a case.

### **Art. 532**

1. The commonly known facts shall not require evidence.
2. The same applies to the facts known to the Chamber ex officio; however, the Chamber shall, during a hearing, point the parties' to and the participants' in the appeal proceedings attention to those facts.

### **Art. 533**

1. Evidence shall also not be required in the case of facts admitted in the course of appeal proceedings by the opposing party, if the Chamber considers that this admission raises no doubts as to its conformity with the actual state of affairs.
2. If a party makes no comments regarding the statements of the opposing party concerning facts, the Chamber, having regard to the outcome of the entire hearing, may consider those facts as admitted.

#### **Art. 534**

1. The parties to and participants in the appeal proceedings are obliged to indicate the evidence for ascertaining the facts to which they attribute legal effects.

2. The Chamber may ex officio allow evidence not adduced by a party.

**Art. 535** The evidence in support of the parties' to or participants' statements or rebutting the statements of the opposing party may be presented by the said parties and participants in the appeal proceedings until closing a hearing.

**Art. 536** The adjudicating bench may oblige the parties to or participants in appeal proceedings to present documents or other evidence relevant for resolution of the appeal.

**Art. 537** The burden of proof that the tender does not contain abnormally low price is on:

- 1) the contractor which submitted it if it is a party to or a participant in the appeal proceedings;
- 2) the awarding entity if the contractor which submitted a tender is not a participant in the appeal proceedings.

**Art. 538** Documents, testimonies of witnesses, expert opinions and statements of the interrogated parties shall in particular be regarded as evidence.

#### **Art. 539**

1. The Chamber may appoint an expert from among the persons entered into the list of court experts or outside the list, if ascertaining the state affairs in the case requires special knowledge. An expert shall be entitled to remuneration in an amount determined in accordance with the provisions of Title III, Section 2 of the Act of 28 July 2005 on Costs of Judicial Proceedings in Civil Cases (Dziennik Ustaw 2019, item 785, as amended).

2. Admitting evidence from an expert's opinion, the adjudicating bench shall appoint the expert and determine the object of the opinion as well as shall postpone the hearing until the expert draws up a written opinion.

3. In the case of appeal proceedings, the documentation of which contains non-public information, the adjudicating bench shall appoint an expert who has access to non-public information.

4. In the event of admitting an evidence from the expert's opinion at a hearing by the adjudicating bench, the record shall include a ruling on admitting the evidence from the expert's opinion which shall determine the object of the opinion and the area regarding his/her appointment, as well as shall indicate the documentation necessary to draw up an opinion.

5. The adjudicating bench shall, at a closed session without the parties' participation, issue a ruling in which it shall show the forename and surname of the expert appointed to issue an opinion.

6. The President of the Chamber shall, by an order, fix the deadline for drawing up the opinion and carry out organizational activities resulting from appointment of the expert; in particular he/she shall provide the expert with a copy of the ruling on appointment of the expert certified to be a true copy of the original, and with a copy of the documentation of the contract award proceedings or the documentation of the proceedings in electronic form, necessary to prepare the opinion, along with a copy of the hearing record certified to be a true copy of the original, in the course of which hearing the ruling on admitting the evidence from the expert's opinion was adopted.

7. Following the preparation of the opinion by the expert, the adjudicating bench shall, in agreement with the President of the Chamber, set the date of the postponed hearing and notify thereof the parties to and participants in the appeal proceedings. The adjudicating bench may demand that the expert present an oral supplementary opinion during the hearing, to be written down in the record.

8. The President of the Chamber shall, prior to fixing the date of the postponed hearing, send to the parties to and participants in the appeal proceedings, the copy of the expert's opinion certified to be a true copy of the original.

9. The Chamber may demand an opinion by a relevant subject referred to in Article 7 of the Act of 20 July 2018 - Law on Schools of Higher Education and Science. The opinion shall indicate the persons who conducted the examination

and issued the opinion. The provisions of paragraphs 2 to 8 shall apply accordingly.

**Art. 540** In the event of hearing evidence from the witness's testimonies, the chairperson of the adjudicating bench shall instruct the witness on penalty of perjury.

**Art. 541** The Chamber shall refuse to examine the motioned evidence, if facts on which it is based have already been confirmed by other evidence, or if they have been adduced only for the purpose of causing delay.

**Art. 542**

1. The Chamber shall evaluate the reliability and validity of the evidence in accordance with its own belief and on the basis of thorough examination of the collected material.

2. The Chamber shall evaluate, on the same basis, what significance shall be given to refusal to present, by a party to or participant in appeal proceedings, evidence or to obstacles placed by them in taking the evidence contrary to the their obligation imposed by the Chamber.

**Art. 543** If an agreement is entered into, the Chamber may conduct explanatory proceedings to determine the preconditions for annulment of the agreement, imposition of a pecuniary penalty or shortening the agreement's term.

## **Section 7. Considering an Appeal.**

**Art. 544**

1. The Chamber shall consider the appeal within 15 days of serving thereof upon the President of the Chamber.

2. The President of the Chamber may order that appeals be considered jointly by the Chamber if they have been filed in the same contract award proceedings or relate to identical acts and omissions to perform acts by the awarding entity.

3. The date of a hearing shall be fixed by the President of the Chamber.

4. The Chairperson of the Council of Ministers shall determine, by a regulation, a detailed procedure concerning the examination of appeals, a detailed manner of filing an appeal and other letters in appeal proceedings, the procedure to be followed in respect of an appeal lodged, and the manner regarding the preparation of a hearing, taking into consideration the need to ensure efficient organization of the hearing, fast progress of the appeal proceedings and the open character of the hearing.

**Art. 545**

1. The Chamber shall examine the appeal at an open hearing, unless the Act provides otherwise.

2. Either at the request of the party or ex officio, the Chamber shall exclude an open character of the hearing, whether in whole or in part, if information constituting a secret protected under separate provisions other than non-public information, may be disclosed in the course of the consideration of the appeal. The hearing shall then take place exclusively with the participation of the parties to and participants in the appeal proceedings or their attorneys.

3. The Chamber may, upon request or ex officio, restrict, within the necessary scope, a right to access to the evidence material attached to the case files for the parties to and participants in the appeal proceedings, if making this material available would pose a threat of disclosing the information constituting a secret protected under separate provisions, other than non-public information.

**Art. 546**

1. The Chamber shall examine the appeal at a closed session, if non-public information may be disclosed in the course of examining the appeal.

2. In the case specified in paragraph 1, the Chamber may decide to consider the appeal at a hearing, the open character of which was excluded in whole, if justified by an important interest of a party.

**Art. 547** In the case of lodging an appeal against the proceedings of award of a contract in the fields of defence and security, whose documentation includes non-public information, the President of the Office shall, at the motion of the President of the Chamber, having regard for ensuring protection of non-public information, indicate the place where the Chamber will examine the appeal.

## **Section 8. Hearing.**

**Art. 548** A party to and a participant in appeal proceedings who do not have command of Polish, shall take place in a hearing with the participation of an interpreter.

### **Art. 549**

1. A hearing shall be chaired by the chairperson of the adjudicating bench; he/she shall in particular open the hearing, order breaks during the hearing, give the floor to the parties to and participants in the appeal proceedings, ask questions, enable members of the adjudicating bench to ask questions, states the wording of the entries in the minutes as well as close the hearing and announce the decision.

2. After opening the hearing, the chairperson of the adjudicating bench shall verify whether the parties to and participants in the appeal proceedings have been properly notified of the date of the hearing and whether the persons representing the parties and participants are authorized to represent them.

3. In the event that a party to or participant in the appeal proceedings fails to appear at the hearing and should the evidence of effective serving the notification about the hearing date be lacking, the chairperson of the adjudicating bench shall postpone the hearing and set, in agreement with the President of the Chamber, a new date of the hearing.

4. Failure to appear on the part of the party or participant of appeal proceedings, provided that they have been properly notified of the hearing date, shall not stay the examination of the appeal

### **Art. 550**

1. The adjudicating bench may postpone a hearing in order to take evidence, the taking of which was not possible on the fixed date, or for other important reasons, and shall set a new date of the hearing.

2. In the case referred to in paragraph 1, the chairperson of the adjudicating bench shall instruct the parties to and participants in the appeal proceedings to appear on the new date without a separate notification. The parties to and the participants in the appeal proceedings absent at the hearing shall be notified of a new date.

### **Art. 551**

1. The chairperson of the adjudicating bench shall close the hearing after having taken evidence and giving the floor to the parties and also if the Chamber finds the case sufficiently clarified.

2. The Chamber shall reopen the closed hearing if new circumstances material to the resolution of the appeal have been disclosed thereafter.

## **Section 9. Pronouncements of the Chamber.**

### **Art. 552**



1. While issuing a judgment, the Chamber shall base it on the state of affairs established in the course of the appeal proceedings.

2. The judgment may only be issued by the adjudicating bench before which the appeal proceedings were conducted.

**Art. 553** The Chamber shall decide on dismissing or granting an appeal in a judgment. In all other cases the Chamber shall issue rulings.

**Art. 554**

1. The Chamber shall grant an appeal in whole or in part, if it finds that:

1) there has been a violation of the provisions of the Act which have had or could have a material influence on the result of the contract award proceedings, contest or contractor qualification system;

2) there has been a nonconformity of the drafted agreement provision with the requirements as laid down in the provisions of the Act.

2. If the appeal is granted in part, the Chamber shall indicate, in the operative part of the judgment, which allegations it has found legitimate and which it has found illegitimate.

3. When granting the appeal, the Chamber may:

1) in the event an agreement has not been concluded:

a) order that the awarding entity's acts be performed or repeated or

b) order that the awarding entity's acts be invalidated; or

c) order that the drafted provision of the agreement be amended or removed, if it fails to comply with the provisions of the Act; or

2) in the event the agreement was concluded and one of the circumstances referred to in Article 457, paragraph 1, has occurred:

a) invalidate the agreement or

b) invalidate the agreement with respect to the non-performed obligations and impose a pecuniary penalty in justified cases, in particular, when return of the performances fulfilled under the agreement subject to invalidated is not possible; or

c) impose a pecuniary penalty or issue a ruling on shortening the term of the agreement if it is found that maintaining the agreement in force serves an important public interest, in particular in the fields of defence and security; or

3) in the event that the agreement was concluded under the circumstances permitted by the Act - declare the infringement of the provisions of the Act.

4. When adjudicating pursuant to paragraph 3, subparagraph 2, the Chamber shall take into account all material circumstances, including the gravity of the infringement, the behaviour of the awarding entity and the consequences of invalidation of the agreement or a provision thereof.

5. An important public interest, within the meaning of paragraph 3, subparagraph 2, letter c, shall not be an economic interest directly connected with the contract, which shall include in particular the consequences of incurring costs resulting from delay in the performance of the contract, initiation of new public contract award proceedings, awarding a contract to another contractor, and from legal obligations connected with the invalidation of the agreement. The economic interest in maintaining the agreement valid may be recognized as important public interest only in the case where agreement invalidation causes incommensurate consequences.

6. The Chamber shall not order that the agreement be entered into or that a provision of specific contents be introduced into the agreement.

7. The Chamber shall not invalidate the agreement, if it could constitute a real threat to a wider defence and security programme necessary due to interests relating to the security of the Republic of Poland.

**Art. 555** The Chamber shall not decide on allegations which have not been included in the appeal.

**Art. 556** In the case referred to in Article 544, paragraph 2, the Chamber may issue a joint pronouncement on matters of the lodged appeals.

**Art. 557** In the judgment and in the ruling ending the appeal proceedings the Chamber shall decide on the costs of the appeal proceedings.

**Art. 558**

1. The Chamber shall announce the pronouncement after the hearing is closed, at an open session and shall provide grounds for the resolution in an oral statement. Non-attendance of the parties shall not stop the announcement of the pronouncement.

2. If the case is complex, the Chamber may defer announcement of the pronouncement for no more than 5 days. In the ruling to defer the announcement of the pronouncement, the Chamber shall fix the date of the announcement. If the announcement was deferred, it may be made by the chairperson of the adjudicating bench or a member of the adjudication bench appointed by the President of the Chamber.

**Art. 559**

1. The Chamber shall prepare, ex officio, a justification of the pronouncement within 7 days from announcement thereof.

2. The justification of the judgment shall contain the indication of the factual grounds of the decision, including established facts which the Chamber recognized as proven, evidence on which it based its decision and reasons for which it found other evidence unreliable and devoid of probative value, as well as the indication of the legal grounds of the judgment quoting the provisions of the law.

**Art. 560** Copies of the pronouncement together with the justification shall be served upon the parties to and participants in the appeal proceedings or their attorneys forthwith after the preparation of the justification.

**Art. 561**

1. The Chamber may correct, upon application or ex officio, by way of a ruling, any spelling or computational errors or any other obvious errors made in the pronouncement. In such a case the chairperson of the adjudicating bench shall make an annotation of the correction on the original pronouncement. The President of the Chamber shall immediately deliver to the parties and participants in the appeal proceedings or their attorneys copies of the corrected pronouncement together with a copy of the ruling concerning the correction.

2. An application for correction of the pronouncement may be filed by a party to or participant in the appeal proceedings.

**Art. 562**

1. The Chamber pronouncement, after its enforceability has been declared by the court, shall have legal force equal to the one of a court judgment. The provision of Article 781, paragraph 2 of the Act of 17 November 1964 - the Code of Civil Procedure shall apply accordingly.

2. The court shall adjudicate to declare the enforceability of the Chamber pronouncement on a party's motion. The party shall append to its motion the original pronouncement of the Chamber or its copy certified by the President of the Chamber.

3. The court shall declare the enforceability of the Chamber pronouncement enforceable by execution, assigning the clause of enforceability to the pronouncement.

**Art. 563** Pecuniary penalties referred to in Article 554, paragraph 3, subparagraph 2, letters b and c shall be imposed on the awarding entity in an amount of up to 10 per cent of the value of a contractor's remuneration provided for in the concluded agreement, taking into account the type and scope of an infringement on account of which the penalty is adjudged as well as the value of a contractor's remuneration provided for in the concluded agreement.

**Art. 564** Finding a violation of Article 264, paragraph 1, Article 308, paragraph 2 or Article 577, which was not combined with an infringement of another provision of the Act, the Chamber shall impose a pecuniary penalty on the

awarding entity of up to 5 per cent of the value of a contractor's remuneration provided for in the agreement concluded, taking into account all material circumstances concerning the contract award.

**Art. 565**

1. Chamber pronouncements issued pursuant to Article 554, paragraph 3, subparagraph 2, letter b or c shall become valid respectively on the date of the expiration of the time limit for lodging a complaint or the date of issue by a court of a judgment dismissing the complaint, as a result of considering a complaint against a Chamber pronouncement.

2. A pronouncement of a court considering a complaint against the Chamber pronouncement concerning imposition of a pecuniary penalty shall be valid on the date of its issue.

**Art. 566**

1. The President of the Chamber or the president of the court considering the complaint against a pronouncement of the Chamber shall immediately send a copy of a valid pronouncement concerning imposed pecuniary penalty to the President of the Office, and in the event of a court pronouncement - together with a copy of the Chamber pronouncement complained against.

2. Within the meaning of the provisions of the Act of 17 June 1966 on enforcement proceedings in administration (Dziennik Ustaw 2019, item 1438, as amended), the President of the Office is a creditor.

**Art. 567**

1. A pecuniary penalty shall be paid to the bank account of the Office within 30 days from the date when the pronouncement of the Chamber or the court on imposing a pecuniary penalty becomes valid.

2. In the case of the lapse of the time limit referred to in paragraph 1, the pecuniary penalty shall be recoverable under the provisions on enforcement proceedings in administration.

3. No interest shall be collected for untimely payment of the pecuniary penalty.

4. Proceeds from pecuniary penalties constitute an income of the state budget.

**Art. 568** The Chamber shall discontinue appeal proceedings, by a ruling, in the case:

- 1) of withdrawal of an appeal;
- 2) of finding that further proceedings have become unnecessary or inadmissible for other reasons;
- 3) referred to in Article 522.

**Section 10. Minutes.**

**Art. 569**

1. Minutes from the course of an open session shall be drawn up.

2. The minutes shall also be prepared from announcement of a judgment or a ruling issued after closing a closed session with participation of the parties to, participants in appeal proceedings, witnesses or experts.

**Art. 570**

1. Minutes shall be drawn up in which the course of a session shall be recorded by means of a sound-recording and picture-recording device, as well as in writing, under the direction of the chairperson of the adjudicating bench.

2. If recording of the course of the session by means of a sound-recording or picture-recording devices impossible for technical reasons, the minutes shall be drawn up exclusively in writing, under the direction of the chairperson of the adjudicating bench.

#### **Art. 571**

1. The minutes drawn up in writing shall include:

1) designation of the place and date of the session, forenames and surnames of the members of the adjudicating bench, the recording clerk, the parties to and participants in the appeal proceedings, as well as the statutory representatives and attorneys present during the session, and also the designation of the case and a mention of whether the session is public or closed;

2) the course of the session, in particular motions and statements of the parties to and participants in the appeal proceedings, listing orders and pronouncements issued at the session and stating whether they have been announced;

3) acts of the parties to and participants in the appeal proceedings relevant to resolution of the case.

2. If the course of a public session is not recorded by means of a sound-recording or picture-recording device, the minutes drawn up in writing shall include, apart from the data and circumstances indicated in paragraph 1, also motions and statements of the parties to and participants in the appeal proceedings, as well as other circumstances relevant to the course of the proceedings.

3. The minutes drawn up by means of a sound-recording or picture-recording devices shall be signed by the recording clerk by means of an electronic signature guaranteeing identification of the person who is the recording clerk and recognizability of any later amendment to the minutes.

4. The minutes drawn up in writing shall be signed by the chairperson of the adjudicating bench and the recording clerk.

#### **Art. 572**

1. The minutes may be corrected upon motion or ex officio.

2. The chairperson of the adjudicating bench shall decide on the correction of the minutes.

3. While making the correction, a mention of that shall be made in the minutes.

4. The adjudicating bench shall decide on refusal to correct the minutes by a ruling against which a complaint may not be filed with the court.

### **Section 11. Costs of Appeal Proceedings.**

**Art. 573** Until closing the hearing, the party to or, as the case may be, the participant in the appeal proceedings lodging an objection or their attorneys may file a motion concerning the costs of the appeal proceedings.

**Art. 574** The costs of the appeal has expired shall include the court fee and justified costs of the parties to the appeal proceedings.

**Art. 575** The parties to and the participant in the appeal proceedings lodging an objection shall bear the costs of the appeal proceedings in accordance with the result thereof.

**Art. 576** The Chairman of the Council of Ministers shall, by regulation, specify:

1) the amount and the manner of collecting a court fee for an appeal, having regard to the varying amounts of the

court fee dependent on the value and type of the contract, as well as the fact that the court fee shall not exceed 20,000 zloties, and taking into account the available forms of payment of the fee;

2) the detailed types of the costs of the appeal proceedings covered by the court fee and substantiated costs of the parties, as well as the manner of and the procedure for their settlement, taking into account the varying amounts of the court fee which depends on the value and type of the contract, and the grounds for the reimbursement to the party of the costs required for purposeful claiming rights or purposeful defence, as well as the contents of the pronouncement issued by the Chamber.

## **Section 12. Ban on Agreement Conclusion.**

**Art. 577** In the event of lodging an appeal, the awarding entity may not enter into an agreement until the Chamber announces its judgment or a final ruling ending the appeal proceedings.

### **Art. 578**

1. The awarding entity may file with the Chamber a motion for abolishing a ban on conclusion of the agreement, as referred to in Article 577.

2. The Chamber may abolish the ban on conclusion of the agreement in the case when:

1) failure to conclude the agreement could result in adverse effects for the public interest, in excess of the benefits related to the need to protect all the interests likely to be harmed as a result of the acts taken by the awarding entity in the contract award proceedings;

2) the awarding entity proved with a reasonable degree of likelihood that the appeal is lodged exclusively in order to prohibit from conclusion of the agreement.

3. The motion referred to in paragraph 1 shall be examined by the adjudicating bench appointed to examine the appeal. The provisions of Article 488, paragraphs 4 and 5, and Articles 490 to 492 shall apply.

4. The Chamber shall decide the issue of the motion referred to in paragraph 1 at a closed session by way of a ruling, not later than within 5 days of its submission. No complaint shall be allowed against the ruling of the Chamber.

5. The Chamber shall discontinue, by way of a ruling, the proceedings initiated in consequence of the submitted motion referred to in paragraph 1, in the case when:

1) the Chamber issues the pronouncement prior to the examination of the motion;

2) the motion is withdrawn;

3) it is found that further proceedings have become unnecessary or inadmissible for other reasons.

## **Chapter 3. Complaint Proceedings.**

### **Art. 579**

1. The parties to and participants in the appeal proceedings shall be vested with the right to lodge a complaint with a court against a pronouncement of the Chamber and a ruling of the President of the Chamber referred to in Article 519, paragraph 1.

2. The provisions of the Act of 17 November 1964 - the Code of Civil Procedure concerning appeals shall apply accordingly to proceedings pending as a result of a lodged complaint, unless the provisions of this Chapter provide otherwise.

#### **Art. 580**

1. A complaint shall be filed with the District Court in Warsaw - the public procurement court, hereinafter referred to as the „public procurement court”.

2. Complaints shall be lodged through the President of the Chamber within 14 days of the day of delivery of the pronouncement of the Chamber or the ruling of the President of the Chamber, as referred to in Article 519, paragraph 1, while at the same time sending a copy of the complaint to the opposing party of the complaint. Handing in of a complaint at a post office of an operator appointed within the meaning of the Act of 23 November 2012 - The Postal Law shall be tantamount to it being lodged.

3. The President of the Chamber shall refer the complaint together with the files of the appeal proceedings to the public procurement court within 7 days from the date of its receipt.

4. Within 30 days of the issuance of the pronouncement of the Chamber or the ruling of the President of the Chamber, as referred to in Article 519, paragraph 1, the complaint may be lodged also by the President of the Office. The President of the Office may also join the pending proceedings. The provisions of the Act of 17 November 1964 - the Code of Civil Procedure concerning a prosecutor shall accordingly apply to actions taken by the President of the Office.

**Art. 581** The complaint shall satisfy the requirements provided for a pleading and contain the designation of the pronouncement complained against, with the indication of whether the pronouncement is complained against in whole or in part, citation of the charges with a brief substantiation, adducing evidence, as well as a motion for revocation of the pronouncement or changing the pronouncement in whole or in part, indicating the scope of the demanded change.

**Art. 582** In the proceedings pending as a result of a lodged complaint, neither the demand for the appeal may be expanded nor new demands may be made.

**Art. 583** The court shall not decide on the charges which have not been the subject of the appeal.

**Art. 584** The court shall, at a closed session, reject a complaint which has been lodged past the time limit or is inadmissible for other reasons, as well as a complaint the defects of which have not been corrected by the party within the specified time limit.

#### **Art. 585**

1. Where the party or intervenor has failed to perform an act under proceedings within the specified time limit not of its/his own fault, the court shall at its/his request restore the said time limit. A ruling on this matter may be issued at a closed session.

2. The pleading with a request to restore the time limit should be submitted to the court within 7 days from the end of the cause of the failure to observe the time limit. The pleading shall render likely the circumstances justifying the request. The party shall carry out the act under proceedings in parallel with submitting the request.

**Art. 586** The burden of proof that the tender does not contain abnormally low price is on:

- 1) the contractor which submitted it, if it is a party to the proceedings or an intervenor;
- 2) the awarding entity if the contractor which submitted a tender is not a participant to the proceedings or an intervenor.

#### **Art. 587**

1. The court shall examine the case forthwith, however not later than within 1 month of the date of a complaint's receipt by the court.

2. The provisions of Article 545, paragraphs 2 and 3 shall accordingly apply to examining the complaint.

#### **Art. 588**

1. The court shall dismiss a complaint by a judgment, provided that the complaint is groundless.
2. If the complaint is granted, the court shall amend the pronouncement complained against and decide on the merit of the case by a judgment, and it shall issue rulings in all other cases. The provisions of Articles 553 to 557 and Articles 563 to 567 shall apply accordingly. The provision of Article 386, paragraph 4 of the Act of 17 November 1964 - the Code of Civil Procedure shall not apply.
3. If the appeal is rejected or there are grounds to discontinue proceedings, the court shall revoke the judgment or amend the ruling and reject the appeal or discontinue the proceedings.

**Art. 589**

1. The parties shall bear the costs of the proceedings irrespective of its result.
2. When determining the amount of costs in the contents of the pronouncement, the court shall take into account also the costs incurred by the parties in connection with the examination of the appeal.

**Art. 590**

1. The court judgment or a ruling ending proceedings in a case may not be appealed against in the form of a cassation complaint.
2. The cassation complaint may be filed by a party and the President of the Office. The provisions of Part One of Title VI, Section Va of the Act of 17 November 1964 - the Code of Civil Procedure shall apply.
3. The provisions on the Public Prosecutor specified in Part One, Book I, Title VI, Section Va of the Act of 17 November 1964 - the Code of Civil Procedure shall apply accordingly to actions taken by the President of the Office.

**Division X. OUT-OF-COURT DISPUTE SETTLEMENT.**

**Art. 591**

1. In a case concerning property, in which making a settlement is allowed, each of the parties of an agreement, in the event of a dispute resulting from a contract, may file a motion for conducting mediations or other amicable settlement of a dispute with a Court of Arbitration acting at the General Prosecutor's Office of the Republic of Poland, the chosen mediator or a person handling other amicable dispute settlement.
2. An agreement or a framework agreement may contain provisions on mediation or other amicable dispute settlement. An agreement for mediation or other amicable dispute settlement may be entered into also by expressing consent by a party to mediation or other amicable dispute settlement if the other party has filed the motion referred to in paragraph 1.

**Art. 592** Making a settlement shall not result in violation of the provisions of Section VII, Chapter 3.

**Art. 593**

1. A lawsuit or a response to a lawsuit of the awarding entity shall contain the information on whether the parties have made an attempt at mediation or other amicable settlement of a dispute, and where no such attempts have been made, such information shall contain clarification of the reasons for not making them.
2. If the lawsuit or the response to the lawsuit of the awarding entity does not contain the information referred to in paragraph 1 in the event that the estimated value of a contract has been determined as equal to or exceeding the equivalent in zloties of the amount of EUR 10,000,000 for supplies or services and EUR 20,000,000 for construction works, and the value of the object of the dispute exceeds 100,000 zloties, the court shall refer the parties to mediation or other amicable settlement of the dispute to the Arbitration Court acting at the General Prosecutor's Office of the Republic of Poland, unless the parties have designated a mediator or a person handling other amicable settlement of the dispute.

3. In the event of refusal to conduct mediation or other amicable settlement of the dispute by the Arbitration Court acting at the General Prosecutor's Office of the Republic of Poland, the court shall refer the parties to mediation or other amicable settlement of the dispute:

- 1) to a mediator or a person handling other amicable settlement of the dispute, in accordance with the choice of the parties or
- 2) if the parties failed to choose the mediator or the person handling other amicable settlement, the court shall appoint, respectively:
  - a) a mediator pursuant to Article 183<sup>9</sup> of the Act of 17 November 1964 - the Code of Civil Procedure or
  - b) by a ruling, a person having adequate knowledge and skills in the field of conducting other amicable settlement of a dispute in civil cases and the cases concerning public procurement.

#### **Art. 594**

1. The Arbitration Court acting at the General Prosecutor's Office of the Republic of Poland shall conduct mediation or other amicable dispute settlement based on the provisions of the Act of 15 December 2016 on the General Prosecutor's Office of the Republic of Poland (Dziennik Ustaw 2019, items 1285 and 1309).

2. In the matters not governed by this Section, the provisions of Part One of Book One, Title VI, Section II, Chapter 1, Division 1 of the Act of 17 November 1964 - the Code of Civil Procedure shall apply, respectively.

3. The provision of Article 54a of the Act of 27 August 2009 on Public Finance shall apply.

**Art. 595** A mediator and a person handling other amicable dispute settlement shall not act as attorneys before a court in the proceedings concerning a dispute covered by a mediation or other amicable settlement dispute, as well as shall not participate in these judicial proceedings in any other manner.

### **Division XI. CONTRACT AWARD CONTROL.**

#### **Chapter 1. General Provisions.**

#### **Art. 596**

1. The provisions of the Act and separate provisions, relevant as regards the authority authorized to conduct control, shall apply to contract award control to the extent of its compliance with the provisions of the Act, hereinafter referred to as the „control”, conducted by control authorities.

2. Whenever in this Act there is a reference to control authorities, they shall mean:

- 1) the President of the Office;
- 2) the authorities referred to in Article 6 of the Act of 15 July 2011 on the Control in Government Administration, excluding the Chairperson of the Council of Ministers;
- 3) regional accounting chambers;
- 4) an audit authority and managing institutions within the meaning of the provisions on the implementation of programmes concerning the cohesion policy

- conducting controls to the extent of awarding public contracts.

3. In the event of conflict between the provisions of this Chapter and separate provisions referred to in paragraph 1,



the provisions of this Chapter shall apply.

#### **Art. 597**

1. Control authorities, in connection with a control being conducted, shall cooperate with each other, exchanging the information on the controls conducted and their results.

2. If a control authority becomes aware of the fact that a given contract was previously controlled by other control authority, the former control authority shall:

1) make a request for making the information of the control result available, including the document concluding the control, to the authority which conducted this control, unless the former control authority obtained this information in other way;

2) take into account the results of the control conducted previously by other control authority.

3. The control authority shall make available the information referred to in paragraph 2 no later, however, than within 30 days of the date of receiving a request for making it available.

#### **Art. 598**

1. Control authorities shall plan and conduct a control having conducted an analysis of likelihood of violation of law as part of awarding a contract.

2. The analysis shall include the identification of the object- and subject-related areas in which the risk of law violation is the highest.

3. The manner of conducting the analysis shall be determined by a control authority or its superordinate authority.

4. The analysis shall not be conducted in the case of a control initiated upon motion.

5. A control authority shall conduct the analysis before developing a control programme referred to in Article 14, paragraph 1 of the Act of 15 July 2011 on Control in Government Administration, insofar as it is obliged to develop such a programme on the basis of the Act.

#### **Art. 599**

1. A control authority shall determine the template of the control questionnaire containing a detailed description of the issues subject to verification during the control, the scope of the documents that the control authority may demand from the awarding entity during the control, as well as the place for presenting by the awarding entity the information on the contract award control conducted by the President of the Office or other control authority.

2. The template of the control questionnaire shall be made available on the dedicated website of the control authority in the Public Information Bulletin.

#### **Art. 600**

1. The control authority shall provide the awarding entity which is to be controlled the control questionnaire or the information of making it available along with a notification of initiation of the control, insofar as such notification is to be provided.

2. In the course of the control the control authority shall not go beyond the description of the issues included in the control questionnaire.

#### **Art. 601**

1. The basis for a statement that contract award proceedings have been conducted at variance with the Act shall be such a violation of a provision of the Act which affected the result of these proceedings.

2. The provision referred to in paragraph 1 shall not apply in the event of the control of the contract award

proceedings co-financed with the European Union funds.

**Art. 602** Control authorities shall place the information on the conducted controls and results thereof, including the document concluding the control, in the Public Information Bulletin on their dedicated websites, within 30 days of the day of conclusion of the control.

## **Chapter 2. Control by the President of the Office.**

### **Section 1. General Provisions.**

#### **Art. 603**

1. The President of the Office shall conduct control.
2. The objective of the control is to check the conformity with the provisions of the Act of the following activities:
  - 1) contract award proceedings;
  - 2) making amendments to a procurement agreement.
3. The control shall be carried out in the seat of the Office, however, the contract involving documents which include non-public information to which the "secret" or "top secret" clause has been assigned, may be carried out in the seat of the awarding entity.
4. In the event of lack of the grounds for initiation of the control, the President of the Office shall inform the applicant of a refusal to initiate the control.

#### **Art. 604**

1. An employee of the Office shall be subject to exclusion from participation in the control, if:
  - 1) he/she participated in the proceedings under control or activities directly connected with preparation of the proceedings on the part of the awarding entity or a contractor;
  - 2) he/she remains married, in actual cohabitation, or is a relative by blood or affinity in the direct line or a relative by blood or affinity in the collateral line up to the second degree, or is related by adoption, guardianship or curatorship with the person appearing in the proceedings under control on the part of the awarding entity or on the part of the contractor, his/her legal agent or members of the governing bodies of legal persons competing for awarding the contract under control;
  - 3) before elapse of 3 years from the date of the initiation of the proceedings under control remained in a relationship of employment or mandate with the awarding entity or the contractor or he/she was a member of the governing bodies of legal persons competing for awarding the contract under control;
  - 4) he/she remains in such legal or actual relationship with the person appearing in the proceedings under control on the part of the awarding entity or contractor that may raise justified doubts as to his/her impartiality.
2. An employee of the Office shall notify the President of the Office of reasons for his/her exclusion from participation in the control.
3. The President of the Office shall decide about the exclusion of an employee by a ruling.

#### **Art. 605**

1. When conducting control, the President of the Office may:

- 1) demand from the manager of the awarding entity to forthwith submit the copies of the documents relating to the contract award proceedings certified by the manager of the awarding entity to be true copies of the original in writing or in electronic form;
- 2) demand from the manager of the awarding entity, the employees of the awarding entity and other entities to provide written explanations of matters relating to the subject of the control within the time limit laid down by him/her in writing or in electronic form;
- 3) consult experts, where determining or evaluating the facts of the case or performance of any other control actions requires special knowledge.

2. An expert shall be entitled to remuneration to be covered by the President of the Office in the amount fixed in accordance with the provisions of Title III, Section 2 of the Act of 28 July 2005 on Costs of Judicial Proceedings in Civil Cases.

3. The facts of the case shall be determined on the basis of the whole material collected in the course of the control, and in particular on the basis of the documents connected with proceedings, explanations of the manager and employees of the awarding entity, as well as opinions of experts and explanations of other entities.

4. The documents and explanations submitted in electronic form as well as further letters in the case submitted in such a form shall be transmitted to the electronic submission box of the Office or on an IT data carrier.

#### **Art. 606**

1. A record shall be prepared following the control.

2. The control record shall in particular include:

- 1) the name and the address of the awarding entity;
- 2) the date of commencement and conclusion of the control;
- 3) the forenames and surnames of the persons conducting the control;
- 4) the designation of the contract award proceedings which were the subject of the control;
- 5) the information on finding any infringements of the provisions of the Act or their absence.

### **Section 2. Ad hoc control.**

#### **Art. 607**

1. The President of the Office may initiate ad hoc control ex officio or upon application in the event of a substantiated suspicion of an infringement of the provisions of the Act in the contract award proceedings or in a contest which could have affected their outcome.

2. The ad hoc control initiated upon application shall be conducted exclusively within the scope of the allegations resulting from the information contained in the application for initiating the control. In the case of finding any other violations of the Act which could affect the outcome of the proceedings, not indicated in the application for initiation of the control, the President of the Office may extend the scope of the control ex officio. In such a case the provisions on control conducted ex officio shall apply.

3. The provisions of Articles 613 to 617 shall not apply to the ad hoc control initiated upon application referred to in paragraph 2, the first sentence, and paragraph 6.

4. An ad hoc control may be initiated not later than within 4 years from the date of awarding a contract or cancellation of contract award proceedings. Where this control is initiated prior to the conclusion of the procurement agreement, the provisions of Article 613, paragraph 4, Article 615, paragraph 2, as well as Article 616, paragraphs 1, 3 and 5 shall apply.

5. The President of the Office shall inform the applicant and the awarding entity about initiation of the ad hoc control or about refusal to initiate the same in the event referred to in Article 603, paragraph 4.

4. The President of the Office shall initiate the ad hoc control upon application of the managing institution referred to in the Act of 20 April 2004 on the National Development Plan (Dziennik Ustaw 2019, item 1465), the Act of 6 December 2006 on the rules for conducting the development policy (Dziennik Ustaw 2019, item 1295), the Act of 11 July 2014 on the rules for the implementation of programmes within the scope of the cohesion policy financed in the 2014-2020 financial perspective (Dziennik Ustaw 2018, items 1431 and 1544; 2019, items 60, 730 and 1572), the Act of 7 March 2007 on support for development of rural areas with participation of funds from the European Agricultural Fund for Rural Development as part of the Rural Development Programme for the years 2007-2013 (Dziennik Ustaw 2018, item 1936; 2019, item 1824), the Act of 20 February 2015 on support for development of rural areas with participation of funds from the European Agricultural Fund for Rural Development as part of the Rural Development Programme for the years 2014-2020 (Dziennik Ustaw 2018, item 627; 2019, items 83, 504 and 1824), hereinafter referred to as the „managing institution”, or upon application of a payment agency referred to in the Act of 20 February 2015 on support for development of rural areas with participation of funds from the European Agricultural Fund for Rural Development as part of the Rural Development Programme for the years 2014-2020, if it ensues from the grounds for the application of the managing institution or payment agency that there is a substantiated suspicion of an infringement of the provisions of the Act in the contract award proceedings.

#### **Art. 608**

1. Explanatory proceedings aimed at determining whether there is a substantiated suspicion of a violation of the provisions of the Act in the contract award proceedings or a contest which could have affected their result shall be the preliminary stage of the ad hoc control.

2. In the event when a substantiated suspicion of a violation of the provisions of the Act in the contract award proceedings which could have affected its result is not confirmed, explanatory proceedings shall conclude with the information on lack of grounds for further conduct of the control. The provisions of Article 606, Article 609, paragraph 1, subparagraph 2 and Article 610 shall not apply.

3. Explanatory proceedings shall be completed without undue delay, however, not later than within 6 months from the date of initiation of the ad hoc control.

#### **Art. 609**

1. The ad hoc control shall be completed after conducting:

1) explanatory proceedings, in the situation when a substantiated suspicion of a violation of the provisions of the Act in the contract award proceedings or a contest which could have affected its result is not confirmed, by providing information about lack of grounds for further conduct of the control;

2) control proceedings, by delivering to the awarding entity the information on the findings of the control, said information including in particular:

- a) a description of the proceedings which were the subject of the control;
- b) the information on finding any violations or their absence.

2. In the event of lodging the reservations referred to in Article 610, paragraph 1, the conclusion of the control shall be the moment of serving on the awarding entity the information on final resolution of the objections.

#### **Art. 610**

1. The awarding entity shall be entitled to lodge substantiated reservations regarding the control findings with the President of the Office within 7 days of the date of serving the information on findings of the control.

2. The President of the Office shall consider the reservations within 15 days of their receipt. In the case of non-acceptance of the reservations, the President of the Office shall refer the reservations to the Chamber in order to seek its opinion.

3. The Chamber shall express its opinion with respect to the reservations in the form of a resolution, within 15 days from the date of their receipt.

4. The opinion of the Chamber shall be binding upon the President of the Office.

5. The President of the Office shall forthwith notify the manager of the awarding entity of the final examination of the reservations.

**Art. 611** In the event of a disclosure of an infringement of the provisions of the Act, the President of the Office may:

- 1) impose a pecuniary penalty referred to in Section XII;
- 2) request the court to invalidate the procurement agreement in whole or in part.

**Art. 612** If an infringement of the provisions of this Act is revealed, such infringement constituting an act violating the public finance discipline, the President of the Office shall notify the competent commissioner of public finance discipline about the violation of the public finance discipline.

### **Section 3. Ex-ante Control.**

#### **Art. 613**

1. The provisions of this Chapter shall apply to contracts or framework agreements, including the ones co-financed with the European Union funds.

2. The President of the Office shall carry out a control of the public contracts being awarded prior to the conclusion of an agreement (ex-ante control), co-financed with EU funds, where the value of the contract or framework agreement for:

- 1) construction works - is equal to or exceeds the equivalent of EUR 20,000,000 denominated in zloties;
- 2) supplies or services - is equal to or exceeds the equivalent of EUR 10,000,000 denominated in zloties.

3. In the event of awarding a contract in lots, the control referred to in paragraph 2 shall apply to the contracts whose value determined for a given lot is equal to or exceeds the equivalent of EUR 1,000,000 denominated in zloties.

4. The ex-ante control shall be initiated by serving on the President of the Office a copy of documents relating to the contract award proceedings in order to conduct the ex-ante control.

5. At the request of the managing institution, the President of the Office may waive the ex-ante control, if in the opinion of the institution the proceedings were conducted in compliance with the provisions of the Act. The President of the Office shall immediately dispatch the information concerning waiver of the ex-ante control to the awarding entity and the requesting institution.

#### **Art. 614**

1. In the event of contracts with a value equal to or exceeding EU thresholds which cover the aspects related to innovation or whose subject is an innovative product, such contracts being other than the contracts referred to in Article 613, paragraph 2, the President of the Office may conduct ex-ante control of the contract documents upon application of the awarding entity.

2. The control referred to in paragraph 1 shall not cover the technical part of the contract documents.

3. The ex-ante control of the contract documents may cover by its scope the entire proceedings or the stage of invitation to submit requests or tenders, the stage of negotiations or the stage of evaluation of tenders.

4. The provisions of Article 615 and Article 616, paragraph 1 shall accordingly apply to the control referred to in paragraph 1. In the event when the ex-ante control of the contract documents covers with its scope the entire proceedings, the provisions of Article 616, paragraphs 2 to 5 and Article 617 shall apply accordingly.

#### **Art. 615**

1. Immediately following the Chamber's issuance of a judgment or ruling ending the appeal proceedings, such judgment or ruling concerning the selection of the most advantageous tender, or after the expiration of the time limit for lodging an appeal and before the conclusion of an agreement, the awarding entity shall, for the purpose of conducting ex-ante control, submit to the President of the Office a copy of documents relating to the contract award proceedings in writing, certified by the manager of the awarding entity for conformity with the original with a handwritten signature or in electronic form.

2. The awarding entity shall forthwith notify the President of the Office about any appeal or complaint lodged after submission of documents for the ex-ante control. The President of the Office shall suspend the ex-ante control until the Chamber issues a judgment or ruling ending the appeal proceedings, subject to Article 578, paragraph 2.

3. Where a contract is awarded in lots, the value of the individual lots being less than the amounts referred to in Article 613, paragraph 2, the President of the Office may waive the ex-ante control, informing the awarding entity of this fact immediately after the receipt of a copy of the documents referred to in paragraph 1, subject to Article 613, paragraph 3.

#### **Art. 616**

1. The service upon the awarding entity of the information concerning the findings of the ex-ante control shall be deemed the end of the ex-ante control, said information including in particular:

- 1) a description of the proceedings which were the subject of the ex-ante control;
- 2) the information on finding any infringements or their absence;
- 3) post-control recommendations - if it has been found during the ex-ante control that cancellation of proceedings or remedy of infringements found is justified.

2. In the event of lodging the reservations referred to in Article 617, the end of the ex-ante control shall be the moment of serving on the awarding entity the information concerning the final examination of the reservations.

3. Information concerning the findings of the ex-ante control shall be served not later than within 14 days from the date of service of the materials referred to in Article 605, paragraph 1, and in the case of a particularly complicated ex-ante control - not later than within 30 days from the date of service of the materials referred to in Article 605, paragraph 1.

4. No agreement may be entered into until delivery of the information referred to in paragraph 1.

5. The awarding entity's manager shall, at the request of the President of the Office, notify in writing about the manner of implementation of the post-control recommendations.

**Art. 617** The awarding entity shall be entitled to lodge substantiated reservations regarding the findings of the ex-ante control with the President of the Office within 7 days from the date of delivery of the information concerning the findings of the ex-ante control. The provisions of Article 610, paragraphs 2 to 5 shall apply.

### **Division XII. PROVISIONS ON PECUNIARY PENALTIES.**

**Art. 618** The provisions of this Section shall apply to the awarding entities referred to in Article 4, subparagraph 3, including to those pursuing sectoral activity, and to the awarding entities referred to in Article 5, paragraph 1, subparagraphs 2 and 3.

#### **Art. 619**

1. The awarding entity which:

- 1) awards a contract:
    - a) in breach of the provisions laying down the prerequisites for the application of the direct-award contract procedure or negotiations without publication procedure;
    - b) without the required notice initiating contract award proceedings or without the required notice amending the notice initiating the proceedings, if the amendments were relevant to the preparation of the requests for participation in the proceedings or to tenders;
    - c) without applying the Act;
  - 2) makes amendments to the concluded agreement or framework agreement in breach of Article 454 or Article 455
- shall be subject to a pecuniary penalty.

2. An awarding entity shall also be subject to a pecuniary penalty if it:

- 1) sets out the conditions for participation in contract award proceedings in a way which hinders preserving fair competition;
  - 2) describes a contract subject or a contest subject in a way which hinders preserving fair competition;
  - 3) conducts contract award proceedings in breach of Article 18;
  - 4) fails to observe the time limits specified in the Act;
  - 5) rejects a tender, a request for participation in proceedings or a request for participation in a contest in violation of the provisions of the Act laying down the rationale for rejecting the tender or such requests;
  - 6) selects the most advantageous tender in violation of the provisions of the Act in a way other than that set out in paragraph 1, subparagraph 1 or paragraph 2, subparagraphs 1 to 5
- if this infringement has any influence on the result of the contract award proceedings.

#### **Art. 620**

1. The amount of the pecuniary penalty referred to in Article 619 shall be determined depending on the contract value.

2. Where the contract value:

- 1) is lower than EU thresholds - the pecuniary penalty shall amount to 3,000 zloties;
- 2) is equal to or exceeds EU thresholds and is lower than the equivalent of EUR 10,000,000 denominated in zloties for supplies or services and of EUR 20,000,000 for construction works - the pecuniary penalty shall be 30,000 zloties;
- 3) is equal to or exceeds the equivalent of EUR 10,000,000 denominated in zloties for supplies or services and of EUR 20,000,000 for construction works - the pecuniary penalty shall be 150,000 zloties.

#### **Art. 621**

1. The pecuniary penalty shall be imposed by the President of the Office by means of an administrative decision.

2. The President of the Office shall not impose a pecuniary penalty if, in connection with infringement of a provision of the Act, the Chamber or court have already imposed a pecuniary penalty.

3. The decision to impose a pecuniary penalty shall not be assigned the clause of immediate enforceability.

#### **Art. 622**

1. Proceeds from pecuniary penalties shall constitute an income of the state budget.
2. Pecuniary penalties shall be collected in accordance with the procedure specified in the provisions on enforcement proceedings in administration.

#### **Division XIII. FINAL PROVISION.**

**Art. 623** This Act shall come into force on the date laid down in the Act of 11 September 2019 - Provisions introducing the Act - Public Procurement Law (Dziennik Ustaw 2019, item 2020).