



SIGMA

**Support for Improvement in Governance and Management
in Central and Eastern European Countries**

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POLAND PUBLIC PROCUREMENT SYSTEM ASSESSMENT 2001¹

Public Procurement Legislation

The existing Public Procurement Law (PPL) became effective on 1 January 1995 and was amended in 1995, 1997 and 1999. A major amendment of the law was passed on 22 June 2001 (entry into force October 2001 after a three months *vacatio-legis*) with an aim to fully harmonise the Polish legal framework to the Acquis. The main changes include: expanding the scope of the PPL to cover private utilities, dividing into two separate stages the evaluation of the supplier and its offer, including into the advertising rules the requirement to publish Prior Indicative Notices (PIN's), harmonising with the Directives the award procedures and the circumstances when they can be used, and including the full right to appeal to a court of Law, lowering the level of tender securities.

The PPL covers all central, regional and local authorities, public associations disbursing public funds, and public undertakings in the utilities sectors. Private utilities operating a public service under special or exclusive rights are now included.

The contracting entity may grant a maximum of 20 per cent domestic preference in the evaluation of tenders in cases where the domestic content of the tender exceeds 50 per cent of the total contract value. The intended application of domestic preference must be mentioned in the tender documents.

In general, the PPL is a well-structured document and meets international standards for procurement legislation. The main issues that remained to be resolved — rules on value threshold, time limits, exemptions, technical specifications, evaluation criteria, and inclusion of public/private utilities have been dealt within the June 2001 amendment. The inclusion of domestic preference is not in conformity with the EC Directives and needs to be removed.

The NPPL will allow for a full harmonisation of the technical requirements with the Acquis. The provisions on domestic preference will be retained in the new PPL until the date of Poland's accession to the European Union. However, it would be desirable to have these protective clauses removed sooner and to adopt a PPL that is in full compliance with the EC Directives.

[1999 and 2000 Baselines substantially achieved]

Central Public Procurement Organisation

The Office of Public Procurement (PPO), established in 1995, is a central government institution. The Chairman of the PPO is responsible to the Prime Minister. The Office has 75 employees and is organised into five departments; (i) Legal, (ii) Procurement Bulletin, (iii) Monitoring, Analysis and Training, (iv) Financial and Administrative issues, and (v) European Integration and External Relations. The PPL has a special chapter regulating the role and mandate of the PPO. Its work has contributed strongly to an effective implementation of the PPL, an imaginative national staff development and training programme,

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1. At the request of the Commission, this assessment has been made on the basis of a rapid, desk review of information, especially of legal texts supplied by Candidate countries. Given the limited resources we did not have the opportunity systematically to corroborate the information independently *sur place* and can not reliably assess the extent of real implementation. For this reason we did not update the ratings, but for ease of reference we have provided the 2000 and 1999 ratings in brackets. *Pour mémoire*, the rating has four categories: baseline achieved; baseline substantially achieved; baseline partially achieved; baseline not achieved.

and the creation of unified, strongly enforced procurement procedures. The PPO has a broad range of responsibilities and tasks in order to ensure a correct and consistent application of the PPL. The PPO made 15 673 administrative decisions in 2000. The majority of these decisions dealt with the reduction of time limits for submission of tenders, but some also involved waivers relating to the use of open tendering and the rule on domestic preference.

All state authorities and large municipalities have special procurement departments. These departments carry out operational purchasing functions and provide advisory services to the various internal procuring entities. In 2000, there were 70 234 announcements published in the Procurement Bulletin. The Bulletin is published daily and available on the Internet (www.uzp.gov.pl).

Since April 1998 the PPO publishes on a monthly basis an Information Monthly, which is distributed (for free) in electronic and — if necessary — paper form.

The PPO does have some limited control powers. Based on article 9 paragraph 2 points 2 and 3 of the PPL the PPO in 2000 had undertaken 460 investigation proceedings (in 1999 — 515). In 28 the Office drew up a notification on the violation of the provisions of the PPL, and directed this notification to the competent bodies that adjudicate cases involving the violation of budgetary discipline.

The central institutional capacity on public procurement remains satisfactory.

[1999 and 2000 Baselines achieved]

Complaints Review Procedures

The PPL contains a chapter on the handling of complaints from dissatisfied tenderers. A Ordinance lays down the detailed organisational arrangements for processing complaints [Ordinance of the Prime Minister of August 20, 1999 on the rules and regulations for reviewing appeals in cases involving public procurement (JoL no. 73 item 815)].

The complaints review procedure is in two stages. Stage one involves only the contracting entity. In cases where a tenderer is not satisfied with a decision, it may file an appeal with the Chairman of the PPO. Stage two then begins. An arbitration panel of three members is appointed — one by the contracting entity; one by the supplier; and one by the Chairman of the PPO. The tender proceedings are suspended during the review period (maximum 14 days). The arbitration panel may decide to reject the complaint or to accept it. In the latter case, the arbitration panel may request the contracting entity to reverse a proposed award decision, to cancel the tender proceedings and to re-tender. Only a legal court under the Civil Code can only challenge a decision by the arbitration panel. The number of appeals is still increasing (real terms, not percentage of overall tenders) and amounted in 2000 to 1565 (1999 — 1 327).

The June 2001 amendment added to the PPL the explicit right to appeal an arbitration panel verdict to the Regional Court in Warsaw.

The complaints review system once the NPPL comes into force will be fully in compliance with the EC Remedy Directives. The existing arbitration system is regarded as efficient and fair.

[1999 and 2000 Baselines substantially achieved]

Summary

The public procurement system in most respects meets EU requirements and other aspects of the baseline. Capacity for further development is high. Further adaptation of the system is required in a few areas: e.g. phasing out domestic preference, strengthening dispute settlement arrangements, finalising the alignment process and extending the use of electronic information systems. The presence of corruption and fraud in the awarding of public contracts needs to be seriously addressed by the Government.