

Note:

The English translation of the *Act of 29 January 2004 – Public Procurement Law* is provided by the Polish Public Procurement Office (PPO) solely for information purposes. The PPO takes no responsibility for the accuracy and completeness of this translation. The Polish language version published in the *Journal of Law (Dziennik Ustaw)* should be considered the only authentic text of the Act.

The first publication of the Polish version:

Journal of Law of 2004 No. 19, item 177 (Dziennik Ustaw z 2004r. Nr 19, poz. 177).

The latest publication of the Polish consolidated version:

Journal of Law of 2006 No.164, item 1163 (Dziennik Ustaw z 2006r. Nr 164, poz. 1163).

The consolidated text presented below includes the new amendment to the Act introduced in the year 2007.

The latest amendment to the Act- Public Procurement Law (amendment of 13 April 2007) was published in *Dziennik Ustaw* No. 82, item 560 of 11 May 2007.

The changed provisions introduced in the new amendment shall enter into force after 30 days from the day of the publications;

however some of the provisions shall enter into force after 5 months from the publication.

Note: The provisions marked red shall lose their legal validity after 5 months from the publication of the amendment.

**ACT
of 29 January 2004
PUBLIC PROCUREMENT LAW**

**TITLE I
GENERAL PROVISIONS**

**Chapter 1
Subject of regulation**

Article 1.

This Act specifies the rules and procedures for awarding public contracts, legal protection measures, control of the award of public contracts and the competent authorities with respect to matters addressed in this Act.

Article 2.

For the purpose of this Act:

- 1) price – shall mean price within the meaning of Article 3 paragraph 1 item 1 of the *Act of 5 July 2001 on Prices (Dz. U. of 2002 No 97 item 1050 as amended¹)*;
- 2) supplies – shall mean the acquiring of things, rights and other possessions, in particular on the basis of contracts for purchase, supply, rental or lease;
- 2a) dynamic purchasing system – shall mean a time-constrained electronic process of awarding public contracts having as their object generally available supplies purchased under contracts for purchase or generally available services;
- 3) head of the awarding entity – shall mean a person or body, who - in accordance with the provisions, statute or agreement in force – is entitled to manage the awarding entity, with the exclusion of the plenipotentiaries established by the awarding entity;

¹ The amendments to the mentioned Act were published in the Dz. U. of 2002 No. 144 item 1204, of 2003 No. 137 item 1302 and of 2004 No. 96 item 959 and No. 210 item 2135.

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- 4) works concessions – shall mean those works contracts, where the remuneration for their execution consists either in the right to exploit the work or in this right together with payment;
 - 5) the best (most advantageous) tender – shall mean either the tender providing the most advantageous balance of price and other criteria relating to the object of the contract or the tender with the lowest price; in the case of public contracts within the scope of creative or research activities where the object of the contract cannot be established in advance in an univocal and comprehensive way, the best tender shall mean the tender providing the most advantageous balance of price and other criteria relating to the object of the contract;
 - 6) tender for lot – shall mean a tender providing, in accordance with the content of the specification of essential terms of the contract, for the performance of a part of the contract (lot);
 - 7) variant (tender) – shall mean a tender providing, in accordance with the terms of specified in the specification of essential terms of the contract, for a method of the performance of the contract other than that specified by the awarding entity;
 - 8) works – shall mean the execution or the design and execution of works within the meaning of *the Act of 7 July 1994 – Construction Law (Dz. U. of 2003 No. 207, item 2016, as amended)*, as well as the realisation of the work within the meaning of *the Act of 7 July 1994 – Construction Law*, by whatever means in compliance with the requirements provided by the awarding entity;
 - 9) public funds – shall mean public funds within the meaning of provisions on public finances;
 - 9a) framework agreement – shall mean an agreement concluded between the awarding entity and one or a bigger number of economic operators for the purpose of establishing the conditions concerning the public contracts to be awarded within a given period, in particular with reference to the prices and, if necessary, envisaged quantities;
 - 10) services – shall mean any services not having as their object works or supplies;
 - 11) economic operators – shall mean natural persons, legal persons or organisational units not having legal personality, who compete for the award of a contract, have submitted their tenders or concluded a public procurement contract;
 - 12) awarding entities – shall mean natural persons, legal persons or organisational units not having legal personality, obliged to apply this Act;
 - 13) public contracts – shall mean contracts for pecuniary interest concluded between an awarding entity and an economic operator, having as their object services, supplies or works.

Article 3.

1. This Act shall apply to public contracts, hereinafter referred to as "contracts", awarded by:

- 1) the public finance sector units within the meaning of provisions on public finances;
- 2) state organisational units not having legal personality, other than those specified in item 1;

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- 3) legal persons, other than those specified in item 1, established for the specific purpose of meeting needs in the general interest, not having industrial or commercial character, if the entities referred to in these provisions and in items 1 and 2, separately or jointly, directly or indirectly through another entity:
 - a) finance them in more than 50%, or
 - b) have more than half of shares or stocks, or
 - c) supervise their managerial board, or
 - d) have the right to appoint more than half of the members of their supervisory or managerial board;
 - 3a) associations of the entities referred to in items 1 and 2, or entities referred to in item 3”;
 - 4) entities other than those specified in items 1-3a, if the contract is awarded for the purposes of exercising one of the activities referred to in Article 132, if such an activity is exercised on the basis of special or exclusive rights, or if the entities referred to in items 1-3a, separately or jointly, directly or indirectly through another entity, have a dominant influence over them, in particular:
 - a) finance them in more than 50 %, or
 - b) have more than half of the shares or stocks, or
 - c) have more than half of the votes resulting from the shares or stocks, or
 - d) supervise their managerial board, or
 - e) have the right to appoint more than half of the members of their managerial board;
 - 5) entities other than those specified in items 1 and 2, if all of the following circumstances occur:
 - a) more than 50% of the value of the contract awarded by them is financed from public funds or by the entities referred to in items 1-3a,
 - b) the value of a contract is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8,
 - c) the contract object is works comprising the activities in the field of overland and maritime engineering, construction of hospitals, sport, recreation and leisure centres, school buildings, facilities used by the universities or buildings used by the public administration or services connected with such works;
 - 6) entities, other than those specified in items 1 and 2, if the contract awarded by them is financed with the participation of funds, the allocation of which is dependant on the use of the contract award procedure provided for in this Act;
 - 7) entities which have been granted the public works concession by the entities referred to in items 1-3a, insofar as they award contracts for the purpose of the execution of that concession.

2. Special or exclusive rights within the meaning of paragraph 1 item 4 shall be rights granted by a law or an administrative decision consisting in the reservation for one or more entities of the performance of a specific activity where complying with the conditions for obtaining such a right as regulated by separate provisions does not result in obligation of the granting that right.

Article 4.

This Act shall not apply to:

- 1) contracts awarded pursuant to:
 - a) special procedure of an international organisation different from the one provided for in the Act,
 - b) international agreements relating to the stationing of troops to which the Republic of Poland is a party, if such agreements provide for contract award procedures other than those provided for in this Act,
 - c) an international agreement concluded between the Republic of Poland and one or more states non being a Member of the European Union, concerning the implementation or execution of a project by the parties to that agreement, if that agreement provides for contract award procedures other than those provided for in this Act;
- 2) contracts of the National Bank of Poland related to:
 - a) the exercise of tasks concerning the implementation of the financial policy, in particular contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments,
 - b) the trading of securities issued by the State Treasury,
 - c) the management of internal and external debt,
 - d) the issue of currency and the administering of that currency,
 - e) accumulation of foreign exchange reserves and management of those reserves,
 - f) accumulation of gold and precious metals,
 - g) the operation of bank accounts and conduct of bank financial settlements;
- 3) contracts where the object of the contract includes:
 - a) arbitration or conciliation services,
 - b) services of the National Bank of Poland,
 - c) [deleted]
 - d) [deleted]
 - e) research and development services and provision of research services, except for services wholly remunerated by the awarding entity procured in order to carry out its own activities, the results of which are owned exclusively by the awarding entity,
 - f) supplies and services being subject to Article 296 of the *Treaty establishing the European Community*,
 - g) purchase, preparation, production or co-production of programme material intended for broadcasting by radio or television broadcasters,
 - h) purchase of broadcasting time,
 - i) purchase of property rights and other rights to real estates, in particular lease and rental rights,

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- j) financial services related to the issue, sale, purchase or transfer of securities or other financial instruments, in particular when related to transactions aimed at obtaining financial resources or capital for the awarding entity;
 - 4) employment contracts;
 - 4a) [deleted]
 - 5) contracts which are declared state secret according to the provisions on protection of confidential information or when the basic interest of the State's security so requires, or the contracts declared confidential, if the basic public interest or basic state interest so requires;
 - 6) contracts for services awarded to another awarding entity, referred to in Article 3 paragraph 1 items 1-3a, which by means of an act or administrative decision has been granted with the exclusive right to render those services;
 - 7) allocation of subsidies from public funds, if these subsidies are allocated pursuant to acts;
 - 8) contracts and contests where their value does not exceed the equivalent in PLN of EUR 14 000;
 - 9) [deleted]
 - 10) contracts granted by entities performing at least one of the following types of activities:
 - a) making available a public telecommunication network,
 - b) operation of a public telecommunication network,
 - c) provision of publicly available telecommunication services by means of a public telecommunication network or provision of electronic mail services by means of such a network
 - if the contract is awarded only for the purpose of carrying out one of such activities;
 - 11) purchase of supplies, services or works from the central purchasing body or from the economic operators selected by the central purchasing body.

Article 4a.

[deleted]

Article 5.

1. In contract award procedures where the object of the contract includes:

- 1) security services with regard to persons and property, except for services related to the conveying of money and valuables,
- 2) social services,
- 3) hotel or restaurant services,
- 4) railway transport services,
- 5) sea transport or inland navigation services,
- 6) legal services,
- 7) recruitment or personnel sourcing services,
- 8) training or educational services,

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- 9) health services,
 - 10) culture, sport and entertainment services, except cable radio and television network services,
 - 11) detective services,
 - 12) services directly referred to forest management

– the awarding entity may not apply the provisions of this Act concerning: time limits for requests to participate in a procedure or time limits for submission of tenders, deposits, the prohibition to determine criteria for evaluation of tenders on the basis of the economic operator's characteristics or any preconditions for the choice of the negotiated procedure with publication, negotiated procedure without publication, request-for-quotations and electronic bidding other than those concerning the contract value, and for contracts referred to in items 3-12 also the preconditions for the choice of the single-source procurement procedure, and the obligation to obtain in these cases the consent of the President of the Public Procurement Office (PPO), hereinafter referred to as "PPO President".

2. If the contract includes at the same time services referred to in paragraph 1 and other services, supplies or works, provisions relating to the object of the contract with the largest share in the given contract in terms of value shall be applicable to the award of the contract.

3. The awarding entity may not combine other contracts with services, referred to in paragraph 1, with the intention of avoiding the application of contract award procedures specified in this Act.

Article 6.

1. If a contract includes simultaneously the provision of supplies and services, or works and services, the award of the contract shall be regulated by provisions relating to the object of the contract with the largest share in the given contract in terms of value.

2. If a contract includes simultaneously the provision of supplies and services consisting in the sitting or installation of the supplied article or other good, provisions relating to supplies shall apply to the award of such a contract.

3. If a contract includes simultaneously works and supplies necessary for their execution, provisions relating to public works shall apply to the award of such a contract.

4. If a contract includes simultaneously services and works necessary for their execution, provisions relating to services shall apply to the award of such a contract.

Chapter 2

Principles of award of contracts

Article 7.

1. Awarding entities shall prepare and conduct contract award procedures in a manner ensuring fair competition and equal treatment of economic operators.

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

3. Contracts shall be awarded only to economic operators chosen in accordance with the provisions of this Act.

Article 8.

1. Contract award procedures shall be public.

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

3. Information, which is regarded as a business secret, within the meaning of the provisions concerning the combating of unfair competition, shall not be disclosed, if not later than within the time limit for the submission of tenders an economic operator made a reservation as to their nondisclosure. The economic operator may not stipulate that the information referred to in Article 86 paragraph 4 should not be disclosed. The provision of this paragraph shall apply mutatis mutandis to design contests.

Article 9.

1. Contract award procedures shall be conducted in writing, subject to the exceptions specified in this Act.

2. Contract award procedures shall be conducted in Polish.

3. In particularly justified cases the awarding entity may agree on the submission of a request to participate in contract award procedures, statements, tenders and other documents also in a language commonly used in international trade or in a language of the country in which the contract is awarded.

Article 10.

1. The primary procedures for awarding contracts are open tendering and restricted tendering.

2. Awarding entity may award contracts by negotiated procedure with publication, competitive dialogue, negotiated procedure without publication, single-source procurement procedure, request-for-quotations procedure or by electronic bidding procedure only under the circumstances specified in this Act.

Chapter 3 Contract notices

Article 11.

1. Notices referred to in this Act:

1) shall be placed in the Public Procurement Bulletin available on the portal of Public Procurement Office, hereinafter referred to as the "PPO";

2) shall be published in the Official Journal of the European Union if they are dispatched to the Office for Official Publications of the European Communities.

2. [deleted]

3. [deleted]

4. The awarding entity may, by electronic means, submit to the PPO President request for correction of the notice placed in the Public Procurement Bulletin indicating the date of the publication and the number of notice; the correction may not concern the description of the object of contract, tender evaluation criteria, conditions for participation in a contract award procedure and description of method used for evaluation of tenders. The PPO President shall forthwith place the correction, by means of an announcement in the Public Procurement Bulletin.

5. The awarding entity may place the contract notice in Public Procurement Bulletin, the publication of which is not mandatory due to the contract value.

6. The Prime Minister shall determine, by a regulation, the standard forms of notices to be placed in the Public Procurement Bulletin, taking into consideration the types of notices and value of the contract or the design contest.

7. Notices to be dispatched to the Office of Official Publications of the European Communities shall conform to the standard forms laid down in the *Commission Regulation (EC) No. 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council* (OJ L 257 of 1.10.2005, p. 1), if the contract or design contest value exceeds the amounts provided for in the provisions issued under paragraph 8 below.

8. The Prime Minister shall determine, by a regulation, the value thresholds of contracts and design contests which require the dispatch of a notice to the Office for Official Publications of the European Communities, taking into consideration the applicable provisions of the Community law.

Article 12.

1. The notices are placed in Public Procurement Bulletin by electronic means using the standard forms available on the portal of the PPO.

2. Notices shall be dispatched to the Office for Official Publications of the European Communities in writing, by fax or by electronic means, and in cases provided for in the Act - by electronic means in accordance with the form and procedures indicated on the website, referred to in paragraph 3 of Annex VIII to *Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts* or in paragraph 3 of Annex XX to *Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors*, hereinafter referred to as the “website referred to in the directive”.

3. The awarding entity is required to prove:

- 1) that the notice was placed in the Public Procurement Bulletin, and in particular shall keep the proof thereof;
- 2) that the notice was published in the Official Journal of the European Union, and in particular shall keep the proof thereof.

4. If a notice published in the Official Journal of the European Union contains errors resulting from inconsistency of that notice with the contents of the notice dispatched for publication, the awarding entity shall immediately send a corrigendum to the notice to the Office for Official Publications of the European Communities.

5. The awarding entity may dispatch to the Office for Official Publications of the European Communities a notice, the publication of which is not mandatory because of the value of a contract or design contest.

Article 13.

1. The awarding entity, immediately following the approval or adoption of a financial plan according to the provisions, statute or agreement that the awarding entity is obliged to follow, and in the case of awarding entities which do not prepare financial plans – once a year, may submit to the Office for Official Publications of the European Communities or post on its own website in a separate section for procurement, hereinafter referred to as the “buyer’s profile”, a prior information notice about contracts or framework agreements envisaged for the following 12 months, the value of which:

- 1) for works – is equal or exceeds the threshold amount defined in the provisions issued under Article 11 paragraph 8, resulting in the mandatory dispatch of works contract notices to the Office for Official Publications of the European Communities;
- 2) when totalled for supplies of value equal to or exceeding the threshold amounts defined in the provisions issued under Article 11 paragraph 8 within a given group provided for in the *Regulation (EC) No. 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary* (OJ L 340 of 16.12.2002, p. 0001-0562, Official Journal of the European Union - Polish Special Edition, chapter 6, table 7, page 3 as amended²⁾), hereinafter referred to as the “Common Procurement Vocabulary”, is equal or exceeds the PLN equivalent of EUR 750 000;
- 3) when totalled for services of value equal to or exceeding the threshold amounts defined in the provisions issued under Article 11 paragraph 8 within a given category 1-16 defined in Annex III to the Common Procurement Vocabulary, is equal or exceeds the PLN equivalent of EUR 750 000.

2. The notice referred to in paragraph 1 may be posted by awarding entity on the buyer’s profile after dispatching a notice on the buyer’s profile to the Office for Official Publications of the European Communities by electronic means in accordance with the form and procedures indicated on the website referred to in the directive.

3. The provisions of paragraph 1 shall not apply to planned contracts for services referred to in Article 5 paragraph 1 nor to planned contracts awarded by a procedure other than open tendering, restricted tendering, negotiated procedure with publication or competitive dialogue.

TITLE II AWARD PROCEDURES

²⁾ This Regulation was amended by Commission Regulation (EC) No. 2151/2003 of 16 December 2003 amending Regulation (EC) No. 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (OJ L 329 of 17.12.2003, p. 1-270).

Chapter 1

Awarding Entity and Economic Operators

Article 14.

Provisions of *the Act of 23 April 1964 – the Civil Code (Dz. U. of 1964 No 16 item 93 as amended³)* shall apply to actions undertaken by the awarding entity and economic operators in the contract award procedure, unless provisions of this Act provide otherwise.

Article 15.

1. Contract award procedures shall be prepared and conducted by the awarding entity.
2. The awarding entity may entrust the preparation or the conduct of award procedures, to its own organisational unit or to a third party.
3. The entities referred to in paragraph 2 shall act as plenipotentiaries of the awarding entity.

Article 15a.

1. The central purchasing body may prepare and conduct contract award procedures, award contracts or conclude framework agreements for awarding entities of government administration if such contracts are connected with the activities of more than one awarding entity.
2. Awarding entities in government administration may award contracts under a framework agreement concluded by the central purchasing body if this is provided for in the framework agreement.
3. The central purchasing body may perform the activities referred to in paragraph 1, also for the purposes of other awarding entities.
4. The Prime Minister may appoint the central purchasing body from among government administration bodies or organizational units which are subordinate to or supervised by them.
5. The Prime Minister may obligate its subordinate organizational units, by order, to obtain certain types of contracts from the central purchasing body or from economic operators selected by the central purchasing body, and to award contracts on the basis of a framework agreement concluded by the central purchasing body, and to define the scope of information to be provided by such units to the central purchasing body as necessary to conduct the procedure, and the mode of cooperation with the central purchasing body.

³ The amendments to the mentioned Act were published in the Dz. U. of 1971 No. 27, item 252, of 1976 No. 19 item 122, of 1982 No. 11 item 81, No. 19 item 147 and No. 30 item 210, of 1984 No. 45 item 242, of 1985 No. 22 item 99, of 1989 No. 3 item 11, of 1990 No. 34 item 198, No. 55 item 321 and No. 79 item 464, of 1991 No. 107 item 464 and 115 item 496, of 1993 No. 17 item 78, of 1994 No. 27 item 96, No. 85 item 388 and No. 105 item 509, of 1995 No. 83 item 417, of 1996 No. 114 item 542, No. 139 item 646 and No. 149 item 703, of 1997 No. 43 item 272, No. 115 item 741, No. 117 item 751 and No. 157 item 1040, of 1998 No. 106 item 668 and No. 117 item 758, of 1999 No. 52, item 532, of 2000 No. 22 item 271, No. 74 item 855 and 857, No. 88 item 983 and 114 item 1191, of 2001 No. 11 item 91, No. 71 item 733, No. 130 item 1450 and 145 item 1638, of 2002 No. 113 item 984 and 141 item 1176, of 2003 No. 49 item 408, No. 60 item 535, No. 64 item 592 and No. 124 item 1151, of 2004 No. 91 item 870, No. 96 item 959, No. 162 item 1692, No. 172 item 1804 and No. 281 item 2783, of 2005 No. 48 item 462, No. 157 item 1316 and No. 172 item 1438 and of 2006 No. 133 item 935

6. All provisions applicable to the awarding entity shall likewise apply mutatis mutandis to the central purchasing body.

Article 16.

1. Awarding entities may conduct a procedure and award a contract jointly by appointing from among themselves the awarding entity entitled to conduct an award procedure and award the contract on their behalf.

2. [deleted]

3. The Minister in charge of a section of the government administration may appoint, by order, from among organisational units subordinate to or supervised by the Minister, a competent awarding entity with respect to the conduct an award procedure and the award of contracts on behalf of these units, and may also obligate such units to obtain certain types of contracts from the indicated central purchasing body or from economic operators selected by the central purchasing body, and to award contracts on the basis of a framework agreement concluded by the central purchasing body.

4. A unit of territorial self-government executive body may appoint by a regulation from among the subordinated local government organisational units the competent organisational unit with respect to the conduct of an award procedure and the award of contracts on behalf of these units.

5. Provisions relating to the awarding entity shall apply respectively to the awarding entities referred to in paragraph 1.

Article 17.

1. Persons performing actions in connection with the conduct of award procedures shall be subject to exclusion, if:

- 1) they are competing for a contract;
- 2) they are relatives by marriage, blood or affinity in direct line or relatives by blood or affinity in indirect line up to the second degree, or relatives by adoption or guardianship or tutelage with the economic operator, his legal deputy or members of managing or supervisory bodies of economic operators competing for a contract;
- 3) during the three years prior to the date of the start of the contract award procedure they remained in a relationship of employment or service with the economic operator or were members of managing or supervisory bodies of economic operators competing for a contract;
- 4) remain in such legal or actual relationship with the economic operator, which may raise justified doubts as to their impartiality;
- 5) have been legally sentenced for an offence committed in connection with contract award procedures, bribery, offence against economic turnover or any other offence committed with the aim of gaining financial profit.

2. Persons performing actions in connection with a contract award procedure shall provide a written statement, under the pain of penal liability for making false statements, about the absence or existence of the circumstances referred to in paragraph 1.

3. Actions in connection with the contract award procedure undertaken by a person subject to exclusion after they became aware of the circumstances referred to in paragraph 1

shall be repeated, except for the opening of tenders and other factual actions having no influence on the outcome of the procedure.

Article 18.

1. The head of the awarding entity shall be the person responsible for the preparation and conduct of the contract award procedure.

2. Other persons shall be also responsible for the preparation and conduct of the contract award procedure to the extent to which they have been entrusted with actions related to the conduct and preparation of the contract award procedure. The head of the awarding entity may entrust the performance of actions reserved for him, which are specified in this Chapter, to the employees of the awarding entity.

3. Where the preparation and conduct of the contract award procedure is reserved under separate provisions to a body other than the head of the awarding entity, the provisions relating to the head of the awarding entity shall apply to that body respectively.

Article 19.

1. The head of the awarding entity shall appoint a tender committee for the conduct of an award procedure, hereinafter referred to as the “tender committee”, where the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8.

2. Where the contract value is less than the amounts specified in the provisions issued under Article 11 paragraph 8, the head of the awarding entity may appoint a tender committee. The provisions of this Chapter shall apply accordingly.

3. Tender committee may be of a permanent character or be appointed for a particular procedure.

Article 20.

1. The tender committee is an auxiliary team of the head of the awarding entity appointed to evaluate the fulfilment of the conditions for participation by economic operators in a contract award procedure and to examine and evaluate tenders.

2. The head of the awarding entity may also entrust the tender committee with actions related to the conduct and preparation of a contract award procedure other than those specified in paragraph 1. The provisions of this Chapter shall apply accordingly.

3. The tender committee shall, in particular, submit to the head of the awarding entity proposals to exclude an economic operator, reject a tender and to select the most advantageous tender, and also, to the extent referred to in paragraph 1, shall make a request to cancel the contract award procedure.

Article 21.

1. Members of the tender committee shall be appointed and recalled by the head of the awarding entity.

2. The tender committee shall be composed of at least 3 persons.

3. The head of the awarding entity shall specify the organisation, composition, working procedure and scope of duties of members of the tender committee to ensure its efficient operation, individualisation of responsibility of its members for performed actions and transparency of its work.

4. If the performance of specific actions in connection with the preparation and conduct of a contract award procedure requires special knowledge, the head of the awarding entity may at its own initiative or at the request of the tender committee appoint experts. The provisions of Article 17 shall apply accordingly.

Article 22.

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

- 1) are authorised to perform specific activities or actions, if such authorisations are required by the law;
- 2) have the necessary knowledge and experience, and have at their disposal the technical potential and personnel capable of performing the contract;
- 3) are in a financial and economic situation ensuring the performance of the contract;
- 4) are not liable to exclusion from the award procedure.

2. The awarding entity shall not specify conditions for participation in the contract award procedure in a manner restricting fair competition.

Article 23.

1. Economic operators may compete for a contract jointly.

2. In the event referred to in paragraph 1, economic operators shall appoint a plenipotentiary to represent them in the contract award procedure or in the procedure and conclusion of a public procurement contract.

3. The provisions relating to economic operators shall apply respectively to the economic operators referred to in paragraph 1.

4. If a tender submitted by economic operators, referred to in paragraph 1, has been selected, the awarding entity may request prior to the conclusion of a public procurement contracts, an agreement resolving cooperation between those economic operators.

Article 24.

1. Excluded from contract award procedures shall be:

- 1) economic operators who during the past 3 years prior to the start of the procedure caused damage by failing to perform a contract or by performing a contract improperly and the damage has not been voluntarily remedied by the date of the start of the procedure, unless non-performance or improper performance was the result of circumstances beyond the economic operator's responsibility;
- 2) economic operators against whom the winding up procedure has been started or whose bankruptcy has been declared, except for economic operators who, upon bankruptcy declaration, entered into a composition approved by a valid

court decision, unless such a composition provides for payment to the creditors by a liquidation of the assets of the bankrupt entity;

- 3) economic operators who are in arrears with payment of taxes, charges or social insurance or health insurance premiums, with the exception of cases where they have been legally exempted, their outstanding payments have been deferred or divided into instalments or the execution of a decision of a competent authority has been stopped in its entirety;
- 4) natural persons, who have been validly sentenced for an offence committed in connection with a contract award procedure, offence against the rights of people performing paid work, for bribery, for an offence against economic turnover or for any other offence committed with the aim of gaining financial profits, as well as for treasury offence or an offence of participation in organized crime group or in a union aimed at committing an offence or treasury offence;
- 5) registered partnership whose partner has been validly sentenced for an offence committed in connection with a contract award procedure, offence against the rights of people performing paid work, for bribery, for an offence against economic turnover or for any other offence committed with the aim of gaining financial profits, as well as for treasury offence or an offence of participation in organized crime group or in a union aimed at committing an offence or treasury offence;
- 6) professional partnership whose partner or member of the management board has been validly sentenced for an offence committed in connection with a contract award procedure, offence against the rights of people performing paid work, for bribery, for an offence against economic turnover or for any other offence committed with the aim of gaining financial profits, as well as for treasury offence or an offence of participation in organized crime group or in a union aimed at committing an offence or treasury offence;
- 7) limited partnership and limited joint-stock partnership whose general partner has been validly sentenced for an offence committed in connection with a contract award procedure, offence against the rights of people performing paid work, for bribery, for an offence against economic turnover or for any other offence committed with the aim of gaining financial profits, as well as for treasury offence or an offence of participation in organized crime group or in a union aimed at committing an offence or treasury offence;
- 8) legal persons whose active member of the managing body has been validly sentenced for an offence committed in connection with a contract award procedure, offence against the rights of people performing paid work, for bribery, for an offence against economic turnover or for any other offence committed with the aim of gaining financial profits, as well as for treasury offence or an offence of participation in organized crime group or in a union aimed at committing an offence or treasury offence;
- 9) collective entities, with respect to whom a court has issued a decision prohibiting them from competing for contracts under the provisions concerning the liability of collective entities for tort under the liability to penalty;
- 10) economic operators who fail to comply with the conditions for participation in an award procedure referred to in Article 22 paragraph 1 items 1-3.

2. Excluded from contract award procedures shall also be:

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- 1) economic operators who directly performed actions in connection with the preparation of the conducted procedure or while preparing a tender used persons performing those actions, unless the participation of such economic operators in the procedure shall not distort fair competition; this provision shall not apply to any economic operators who are awarded with a contracts under Article 62 paragraph 1 item 2 or Article 67 paragraph 1 items 1 and 2;
 - 2) economic operators who provided false information having impact on the outcome of the procedure being conducted;
 - 3) economic operators who have not submitted a statement about the fulfilment of the conditions for participation in the procedure or documents confirming the fulfilment of those conditions or the submitted documents contain errors, subject to Article 26 paragraph 3;
 - 4) economic operators who have not provided a tender deposit, including the one for the extended period during which they must maintain their tenders or have not agreed to the extension of the period during which they must maintain their tenders.
3. The awarding entity shall forthwith inform the economic operator about exclusion from the award procedure providing factual and legal grounds, subject to Article 92 paragraph 1 item 3.
4. The tender of an excluded economic operator shall be considered rejected.

Article 25.

1. In contract award procedures the awarding entity may request from economic operators only declarations and documents necessary to conduct procedures. Declarations and documents proving:

- 1) that they satisfy the conditions for participation in the procedure;
 - 2) that the tendered supplies, services and works satisfy the requirements specified by the awarding entity
- the awarding entity shall indicate in the contract notice, specification of the essential terms of contract or in the invitation to tender.

2. The Prime Minister shall specify, by a regulation, the types of documents which the awarding entity may require from the economic operator and the forms in which such documents may be provided, taking into consideration that instead of such document, the economic operator may provide a declaration made before a competent authority to confirm his compliance with conditions for participation in a contract awarding procedure, and that the economic operator may prove his lack of criminal record particularly by means of information from the National Register of Criminal Records, and the confirmation that tendered supplies, services and works correspond to the requirements defined by awarding entity may be the confirmation issued particularly by the entity authorized to carry out quality controls, and likewise taking into consideration that the forms of such documents should make it possible to award contract using electronic means.

Article 26.

1. Where the value of the contract is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, the awarding entity shall request from the

economic operators documents proving that they satisfy the conditions for participation in the procedure.

2. Where the value of the contract does not exceed the amounts specified in the provisions issued under Article 11 paragraph 8, the awarding entity may request from the economic operators documents proving that they satisfy the conditions for participation in the procedure.

3. The awarding entity shall call on economic operators who did not submit declarations or documents, referred to in Article 25 paragraph 1, or the economic operators who submitted documents, referred to in Article 25 paragraph 1, that contain errors to supplement the documents in a defined time limit unless, despite the supplement, the tender of the economic operator is rejected or the cancellation of the procedure is inevitable; the declarations or documents shall confirm that the economic operator satisfies the conditions for participation in the award procedure and shall confirm the fulfilment by supplies, services or works offered by the economic operator of the conditions specified by the awarding entity, not later than on the day fixed by the awarding entity as the time limit for supplement of declarations or documents.

4. The awarding entity shall fix a time limit for explanations referring to documents and declarations, referred to in Article 25 paragraph 1.

5. The awarding entity may refrain from application of provisions of the paragraph 1-4, in case of contracts for bank, insurance and culture services, as well as the contracts awarded on the basis of Article 62 paragraph 1 item 2.

Article 27.

1. In award procedures, the awarding entity and the economic operators shall provide statements, requests, notifications and information in writing, by fax or by electronic means, as selected by the awarding entity.

2. If the awarding entity or the economic operator provides statements, requests, notifications and information by fax or by electronic means, either party at the request of the other party shall acknowledge the receipt immediately.

3. The selected method for providing statements, requests, notifications and information may not restrict competition; the written form shall be always permissible unless the Act provides otherwise.

4. The awarding entity may require in a contract notice, the requests to participate in a contract award procedure to be delivered by fax, to be confirmed in writing or in electronic form with a secure electronic signature verifiable using a valid qualified certificate.

5. The information about the submission of the request to participate in a contract award procedure may be provided by telephone prior to the expiry of the time limit for submission of the requests to participate in a contract award procedure. The request shall be deemed as made within the time limit if the request has been sent in writing to the awarding entity, prior to the expiry of the time limit for the submission of requests to participate in the award procedure and the awarding entity has received it not later than within 7 days from the expiry of the time limit for submission of such requests.

Article 28.

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Chapter 2

Preparation of a procedure

Article 29.

1. The object of the contract should be described in an unequivocal and exhaustive manner by means of sufficiently precise and comprehensive wording, taking into consideration all requirements and circumstances which could influence the preparation of a tender.

2. The object of the contract shall not be described in a manner which could restrict fair competition.

3. The object of the contract shall not be described by reference to trade marks, patents or origin unless this is justified by the nature of the object of the contract or where the awarding entity cannot otherwise describe the object of the contract with sufficient precision, provided that such references are accompanied by the words “or equivalent”.

Article 30.

1. The awarding entity shall describe the object of contract using technical and qualitative characteristics complying with the Polish Standards transposing European harmonised standards or with the standards of the European Economic Area member states transposing those standards.

2. In the absence of Polish Standards transposing European harmonised standards or the standards of the European Economic Area member states transposing those standards, the following standards shall be taken into consideration (in order):

- 1) European technical approvals;
- 2) common technical specifications;
- 3) international standards;
- 4) other technical reference systems provided for by the European standardisation bodies.

3. In the absence of Polish Standards transposing European harmonised standards or the standards of the European Economic Area member states transposing those standards and in the absence of the approvals, specifications, standards and systems referred to in paragraph 2, the following standards shall be taken into consideration (in order):

- 1) Polish Standards;
- 2) Polish technical approvals;
- 3) Polish technical specifications.

4. When describing the object of the contract with the use of standards, approvals, technical specifications and systems of references, referred to in paragraphs 1 - 3, the awarding entity shall be required to indicate, that it admits the solutions equivalent to those described ones.

5. The economic operator, when citing the solutions equivalent to the one described by the awarding entity, shall be required to point out, that its tendered supplies, services and works meet the requirements specified by the awarding entity.

6. The awarding entity may not describe the object of contract on the basis of the provisions of paragraph 1-3 if it provides a precise description of the object of contract by indicating the functional requirements. Such requirements may include a description of environmental impact.

7. In describing the object of contract, the names and codes provided for in the Common Procurement Vocabulary shall be used.

Article 31.

1. The awarding entity shall describe the object of a public works contract using design documentation and technical specification of the execution and acceptance of works.

2. Where the object of contract involves the design and execution of works within the meaning of *the Act of 7 July 1994 - Construction Law*, the awarding entity shall describe the object of the contract using a functional and utility programme.

3. The functional and utility programme shall include the description of the works where the designation of the finished works, as well as the technical, economic, architectural, material and functional requirements to be complied with, are indicated.

4. The competent Minister in the field of construction, spatial development and housing shall specify by a regulation the detailed scope and form of:

- 1) design documentation,
- 2) technical specification of the execution and acceptance of works,
- 3) functional and utility programme

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

Article 32.

1. The value of the contract shall be determined on the basis of the total estimated remuneration of the economic operator, excluding the tax on goods and services, determined by the awarding entity with due diligence.

2. The awarding entity may not split up a contract into lots or understate its value with the intention of avoiding the application of this Act.

3. When the awarding entity envisages the award of supplementary contracts referred to in Article 67 paragraph 1 items 6 and 7 or Article 134 paragraph 6 item 3 and 4, supplementary contracts shall be considered in the calculation of the value of the contract.

4. If the awarding entity allows for the possibility of submitting tenders for lots or awards the contract in lots, where each of those lots constitutes the object of a separate procedure, the value of the contract shall be the aggregate value of all those lots.

5. Where a separate, financially independent organisational 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 organisational units of that awarding entity.

6. The value of a dynamic purchasing system shall be the total value of contracts included in this system which the awarding entity intends to award over the period of the duration of the dynamic purchasing system.

7. The value of a framework agreement is the total value of contracts which the awarding entity intends to award over the period of duration of the framework agreement.

Article 33.

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

- 1) investor's cost calculation, made at the stage of preparation of the design documentation, or on the basis of the envisaged cost of works specified in the functional and utility programme - where the object of the contract involves works within the meaning of *the Act of 7 July 1994 Construction Law*;
- 2) envisaged cost of design work and the envisaged cost of works specified in the functional-utility program - where the object of the contract involves the design and execution of works within the meaning of *the Act of 7 July 1994 Construction Law*.

2. In calculating the value of a public works contract, the contract value must include also the value of supplies needed to carry out the works, which the awarding entity makes available to the economic operator.

3. The competent Minister in the field of construction, spatial development and housing shall specify by a regulation:

- 1) methods and basis for preparing investor's cost calculations;
- 2) methods and basis for calculation of envisaged costs of design work and envisaged costs of works specified in the functional and utility programme

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

Article 34.

1. The basis for calculating the value of a contract for recurring services or supplies shall be the total value of contracts of the same type:

- 1) awarded over the previous 12 months or in the previous budget year, taking into account the quantitative changes of the purchased services or supplies and the average annual index of consumer prices (ICP) of products and services forecasted for a given year, or
- 2) which the awarding entity intends to award within 12 months following the first delivery of such services or supplies.

2. The choice of the basis for calculating the value of contracts for recurring services or supplies shall not be made with the aim of avoiding the application of the provisions of this Act.

3. Where the contract is awarded:

- 1) for the indefinite duration, the contract value shall be the value determined taking into account of a 48-month time period of the contract performance;
- 2) for a determinate duration:
 - a) not exceeding 12 months - the contract value shall be the value determined taking into account the time of its duration;

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- b) exceeding 12 months – the contract value shall be the value determined taking into account the time of its duration, and in case of contracts for supplies acquired on the basis of rent, lease or leasing, along with a final value of the object of the public procurement contract.

4. Where the contract covers banking services or other financial services, the value of the contract shall be banking fees, charges, interests and other similar services.

5. Where the contract for services or supplies provides for option clauses, the basis for calculating the contract value shall be the biggest possible scope of that contract inclusive of the option clauses.

Article 35.

1. The contract value shall be calculated not earlier than 3 months prior to the date of the start of a contract award procedure where the object of the contract covers supplies or services and not earlier than 6 months prior to the date of the start of a contract award procedure in the case of works.

2. If the circumstances having influence on the calculation of the contract have changed after that calculation was made, the awarding entity shall make a change in the calculation prior to the start of the award procedure.

3. At least once in two years the Prime Minister shall specify, by a regulation, the average exchange rate of PLN with reference to EUR constituting the basis for recalculating the value of contracts, taking into account the average exchange rate announced by the European Commission in the Official Journal of European Union.

Article 36.

1. The specification of essential terms of the contract shall include at least:

- 1) name (company name) and address of the awarding entity;
- 2) procedure for awarding the contract;
- 3) description of the object of contract;
- 4) time limit for contract performance;
- 5) description of the conditions for participation in the procedure and the description of the method used for the evaluation of the fulfilment of those conditions;
- 6) information concerning declarations and documents to be provided by economic operators to confirm the fulfilment of the conditions for participation in the procedure;
- 7) information on the manner of communication between the awarding entity and economic operators as well as of delivery of declarations and documents, indication of persons authorised to communicate with the economic operators;
- 8) deposit requirements;
- 9) time limit during which an economic operator must maintain its tender;
- 10) description of the manner of the tender preparation;
- 11) date and place of the submission and of the opening of tenders;
- 12) description of the method of the price calculation;

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- 13) description of criteria which the awarding entity will apply in selecting a tender, specifying also the importance of particular criteria and method of evaluation of tenders;
 - 14) information concerning formalities which should be met following the selection of a tender in order to conclude a public procurement contract;
 - 15) requirements concerning the security on due performance of the contract;
 - 16) provisions of essence to the parties which will be introduced into the concluded public procurement contract, general terms of the contract or model contract, if the awarding entity requires the economic operator to conclude a public procurement contract with it on these terms;
 - 17) information on legal protection measures available to an economic operator during the contract award procedure.

2. Unless the Act provides otherwise, the specification of the essential terms of the contract shall also include:

- 1) description of the lots if the awarding entity admits the submission of tenders for lots;
- 2) the maximum number of economic operators with whom the awarding entity shall conclude a framework agreement if the awarding entity envisages to conclude a framework agreement;
- 3) information about the envisaged supplementary contracts as referred to in Article 67 paragraph 1 items 6 and 7 or Article 134 paragraph 6 item 3 and 4, if the awarding entity envisages the award of such contracts;
- 4) description of the method for submitting variants if admitted by the awarding entity and the minimum requirements to be met by variants;
- 5) the e-mail or website address of the awarding entity, if the awarding entity admits communication by electronic means;
- 6) information concerning foreign currencies in which settlements between the awarding entity and the economic operators can be made, if the awarding entity envisages to settle contracts in foreign currencies;
- 7) if the awarding entity envisages an electronic auction:
 - a) information about the envisaged selection of the best tender with the use of electronic auction,
 - b) requirements on the registration and identification of the economic operators, including technical requirements for computer devices,
 - c) information on which tender evaluation criteria shall be used in the electronic auction;
- 8) the amount of reimbursement of the participation costs in the award procedure, if the awarding entity admits it.

3. In contract award procedures where the value is less than the amounts specified in provisions issued under Article 11 paragraph 8, the specification of essential terms of contract may not include the information referred to in paragraph 1 items 6, 8 and 15.

4. The awarding entity requests the economic operator to indicate in its tender the parts of the contract which the economic operator intends to subcontract.

5. The awarding entity may define in the specification of the essential terms of contracts which part may not be subcontracted.

Article 37.

1. Specification of essential terms of the contract shall be made available free-of-charge, subject to Article 42 paragraph 2.

2. The awarding entity may provide the specification of essential terms of the contract on its own website from the day, on which the contract notice is placed in the Public Procurement Bulletin or published in the Official Journal of European Union until the expiry of the time limit for submission of tenders, subject to Article 42 paragraph 1.

Article 38.

1. The economic operator may request the awarding entity to explain the contents of the specification of essential terms of the contract. The awarding entity shall provide such explanation immediately unless it received such a request for explanation less than 6 days before the time limit for the submission of tenders, and in the case of restricted tendering and negotiated procedure with publication, if there is an extreme urgency of awarding a contract – less than 4 days before the time limit for the submission of tenders.

2. The awarding entity shall provide the text of the queries along with the explanations at the same time to all the economic operators who have received the specification of essential terms of contract, without disclosing the source of the query, and shall post it on its website if the specification is available on this website.

3. The awarding entity may arrange a meeting of all the economic operators to dispel any doubts concerning the contents of the specification of essential terms of contract and post likewise on its website an information concerning the date of the meeting if the specification is on the website; in that case, information shall be prepared containing all specification queries made during that meeting and the answers to such queries without disclosing the source of the queries. Information from the meeting shall be immediately provided to the economic operators who have received the specification of essential terms of contract and shall be posted on the website if the specification of essential terms of contract is placed on the website.

4. In particularly justified cases, the awarding entity may at any time prior to the time limit for the submission of tenders modify the contents of the specification of essential terms of contract. This modification shall be immediately provided to all the economic operators who have received the specification of essential terms of contract, and it shall be posted on the website of the awarding entity if the specification is available on this website.

5. Any modification of the contents of the specification of essential terms of contract may not apply to the criteria of evaluation of tenders, the terms of participation in the award procedure or the method of evaluation of compliance with such terms.

6. The awarding entity shall extend the time limit for the submission of tenders if an additional time is necessary to make changes to the tenders, as a result of the modification of the contents of the specification of essential terms of contract, however if the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, the time limit shall be extended to at least 7 days.

7. The awarding entity shall immediately inform all the economic operators who have received the specification of essential terms of contract about the extension of the time limit

for the submission of tenders, and shall likewise post this information on its website if the specification is available on this website.

Chapter 3
Procedures for awarding public contracts

Section 1
Open tendering

Article 39.

Open tendering means contract award procedures in which, following a public contract notice, all interested economic operators may submit their tenders.

Article 40.

1. In open tendering the awarding entity commences an award procedure by placing the contract notice in a place accessible to the public in its seat and on its website.

2. Where the value of the contract is less than the amounts specified in the provisions issued under Article 11 paragraph 8, the awarding entity shall place the contract notice in the Public Procurement Bulletin.

3. If the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, the awarding entity shall dispatch a contract notice to the Office for Official Publications of the European Communities.

4. Where the contract value is equal to or exceeds the PLN equivalent of EUR 20 000 000 for works, and of EUR 10 000 000 for supplies and services, the awarding entity shall place a contract notice in a national daily or periodical.

5. The awarding entity may also publish a contract notice in a different manner.

6. The contract notice placed or published mutatis mutandis in a place accessible to the public in the seat of the awarding entities, on websites referred to in paragraph 1, in a national daily or periodical or in any other manner:

- 1) shall not be placed or published prior to the day, on which the notice is placed in Public Procurement Bulletin, and in the case referred to in paragraph 3, prior to the day of its dispatch to the Office for Official Publications of the European Communities;
- 2) shall not contain information other than the one placed in Public Procurement Bulletin, and in the case referred to in paragraph 3, other than the information dispatched to the Office for Official Publications of the European Communities;
- 3) shall contain information about the day the contract notice is to be placed in the Public Procurement Bulletin, and in the case referred to in paragraph 3, on the day of its dispatch to the Office for Official Publications of the European Communities.

Article 41.

The contract referred to in Article 40 paragraph 1 shall contain at least:

- 1) name (company name) and address of the awarding entity;

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- 2) type of the contract award procedure;
 - 3) the website address where the specification of essential terms of contract is posted;
 - 4) definition of the object of contract and of the volume or scope of the contract, stating whether it is possible to submit tenders for lots;
 - 5) information concerning the possibility of submitting variants;
 - 6) contract execution date;
 - 7) description of the conditions for participation in the award procedure as well as description of how compliance with these conditions is evaluated;
 - 8) information concerning the deposit;
 - 9) criteria for evaluation of tenders and their significance;
 - 10) place and time limit for submission of tenders;
 - 11) time limit during which a economic operator must maintain his tender;
 - 12) information about the intention to conclude a framework agreement;
 - 13) information about the intention to establish a dynamic purchasing system including the website address where additional information concerning the dynamic purchasing system shall be posted;
 - 14) information about the envisaged selection of the best tender with the use of electronic auction including the address of the website where the electronic auction shall be held.

Article 42.

1. The specification of essential terms of contract shall be made available on the website from the day, on which the contract notice is placed in Public Procurement Bulletin or published in the Official Journal of European Union until the expiry of the time limit for submission of tenders.

2. The awarding entity shall provide, at the request of economic operator, the specification of essential terms of contract within 5 days. The fee, which the awarding entity may demand, may only cover printing and delivery costs.

Article 43.

1. Where the value of the contract is less than the amounts specified in a provisions issued under Article 11 paragraph 8, the awarding entity shall fix the time limit for submission of tenders taking into consideration the time necessary for preparation and submission of tender, however, in case of contracts for supplies or services, the time limit shall not be less than 7 days from the day, on which the contract notice is placed in the Public Procurement Bulletin, and in case of contracts for works- not less than 20 days..

2. If the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, the time limit for the submission of tenders shall not be less than:

- 1) 40 days - from the day of dispatch of the contract notice to the Office for Official Publications of the European Communities by electronic means with

the use of the standard form and procedures indicated on the website referred to in the directive;

- 2) 47 days - from the day of dispatch of the contract notice to the Office for Official Publications of the European Communities, in other way than specified in item 1.

3. If the contract value is equal to or exceeds the amounts specified in a provisions issued under Article 11 paragraph 8, and the information about the contract was included in the prior information notice on contracts planned within the next 12 months, dispatched or posted on the buyer's profile at least 52 days prior to the date of dispatch of the contract notice to the Office for Official Publications of the European Communities, the awarding entity may fix a time limit for submission of tenders not less than:

- 1) 29 days - from the day of dispatch of the contract notice to the Office for Official Publications of the European Communities by electronic means with the use of the form and procedures indicated on the website referred to in the directive.
- 2) 36 days - from the day of dispatch of the contract notice to the Office for Official Publications of the European Communities, in other way than specified in item 1.

Article 44.

The economic operator shall attach to his tender a declaration that he satisfies the conditions for participation in the award procedure, and where the awarding entity requires so, he shall also submit documents confirming the fulfilment of those conditions.

Article 45.

1. The awarding entity shall require the economic operators to pay a deposit where the value of the contract is equal to or exceeds the expressed in PLN equivalent of the amounts specified in the provisions issued under Article 11 paragraph 8.

2. The awarding entity may require the economic operators to pay a deposit where the value of the contract is less than the amounts specified in the provisions issued under Article 11 paragraph 8.

3. The deposit shall be paid prior to the final date for submission of tenders.

4. The awarding entity shall define the amount of the deposit within the limit of 0.5 to 3 % of the contract value.

5. If the awarding entity admits tenders for lots or awards contract in lots, it shall define the deposit amount for each lot. The provisions of paragraph 4 shall apply mutatis mutandis.

6. The deposit may be paid in one or several of the following forms:

- 1) cash;
- 2) bank sureties or guarantees of collective savings-loan fund, however the surety of collective savings-loan fund is always a financial surety;
- 3) bank guarantees;
- 4) insurance guarantees;

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- 5) sureties given by entities, referred to in Article 6b paragraph 5 item 2 of *the Act of 9 November 2000 on Establishment of Polish Agency for Enterprise Development (Dz. U. No. 109, item 1158, as amended⁴)*.

7. A deposit paid in cash shall be paid by a bank transfer to a bank account indicated by the awarding entity.

8. A deposit paid in cash shall be kept by the awarding entity in a bank account.

Article 46.

1. The awarding entity shall return a deposit forthwith, if:

- 1) the time limit during which the economic operator must maintain his tender has expired;
- 2) the public procurement contract has been concluded and the security on due performance of this contract has been provided;
- 3) the awarding entity cancelled the contract award procedure and any protests have been ultimately resolved or the time limit for the submission thereof has expired.

2. The awarding entity shall forthwith return the deposit at the request of the economic operator:

- 1) who withdrew his tender prior to the expiry of the time limit for submission of tenders;
- 2) who was excluded from the procedure;
- 3) whose tender was rejected.

3. The awarding entity may request a new deposit from the economic operators, whose deposit was returned on the basis of paragraph 2 item 2 and 3, if the exclusion of the economic operator or rejection of tender was annulled as a result of the final resolution of protest. The economic operators pay a deposit within the time limit fixed by the awarding entity.

4. If the deposit was paid in cash, the awarding entity shall return it together with interest resulting from the bank account agreement where it was kept, less the cost of bank charges for maintaining the account and commission for the transfer of money to the bank account indicated by the economic operator.

5. The awarding entity shall retain the deposit together with interest, if the economic operator whose tender has been selected:

- 1) refused to sign the public procurement contract on the terms specified in the tender;
- 2) failed to produce the required security on due performance of the contract;
- 3) the public procurement contract could not be signed due to a fault on the part of the economic operator.

⁴ The amendments to the mentioned Act were published in the Dz. U. of 2002 No. 25 item 253, No. 66 item 596 and No. 216 item 1824, of 2004 No. 145 item 1537 and No. 281 item 2785, of 2005 No. 132 item 1110, No. 179 item 1484 and No. 249 item 2104 and of 2006 No. 149 item 1074.

Section 2
Restricted tendering

Article 47.

Restricted tendering means contract award procedures in which, following a public contract notice, economic operators submit requests to participate in a contract award procedure, and tenders may be submitted by economic operators invited to submit their tenders.

Article 48.

1. Article 40 shall apply accordingly to the start of a restricted procedure.
2. The contract notice, referred to in Article 47, shall include at least the following:
 - 1) name (company name) and address of the awarding entity;
 - 2) type of contract award procedure;
 - 3) description of the object of the contract providing information concerning the possibility of submitting tenders for lots;
 - 4) information concerning the possibility of submitting variants;
 - 5) contract execution date;
 - 6) description of the conditions in a procedure, including those which refer to characteristics of the economic operator, along with provision of their meaning and description of the manner for evaluation of fulfilment of these conditions;
 - 7) information about declarations and documents to be delivered by economic operators to prove the fulfilment of the conditions for participation in the award procedure;
 - 8) number of economic operators to be invited to submit their tenders;
 - 9) information on a deposit;
 - 10) criteria for evaluation of tenders and their relative weightings;
 - 11) place and time limit for submitting requests to participate in the award procedure;
 - 12) website address where the specification of essential terms of contract is posted, if the awarding entity posts the specification on the website;
 - 13) information about the intention to conclude a framework agreement;
 - 14) information about the envisaged selection of the best tender with the use of electronic auction including the address of the website where the electronic auction shall be held.

Article 49.

1. If the contract value is less than the amounts specified in the provisions issued under Article 11 paragraph 8, the awarding entity shall fix in the contract notice a time limit for submission of requests to participate in a procedure taking into consideration the time necessary for preparation and lodging of the required documents, however the time limit may not be less than 7 days from the day, on which the contract notice is placed in the Public Procurement Bulletin.

2. If the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, the time limit for submitting requests to participate in a restricted tendering procedure may not be shorter than:

- 1) 30 days – from the day the contract notice is dispatched to the Office for Official Publications of the European Communities by electronic means with the use of the form and procedures posted on the website referred to in a directive;
- 2) 37 days – from the day the contract notice is dispatched to the Office for Official Publications of the European Communities in other way than referred to in item 1.

3. In the event of extreme urgency for the award of a contract the awarding entity may, in the cases referred to in paragraph 2, fix a shorter time limit for the submission of requests to participate in a restricted tendering procedure, however not shorter than:

- 1) 10 days - from the day the contract notice is dispatched to the Office for Official Publications of the European Communities by electronic means with the use of the form posted on the website referred to in a directive;
- 2) 15 days - from the day the contract notice is dispatched to the Office for Official Publications of the European Communities by fax.

Article 50.

The economic operator shall attach to his request to participate in tendering a declaration that he satisfies the conditions for participation in the award procedure, and where the awarding entity requires so, he shall also submit documents confirming the fulfilment of those conditions.

Article 51.

1. The awarding entity shall invite tenders from economic operators satisfying the conditions for participation in the procedure in such a number, as specified in the contract notice, which shall ensure competition and shall not be less than 5 and not more than 20.

1a. The awarding entity shall immediately inform the economic operators satisfying the conditions for participation in the procedure about the results of the assessment of compliance with such conditions and the received compliance scores.

2. Where the number of economic operators satisfying the conditions for participation in the procedure exceeds the number specified in the contract notice, the awarding entity shall invite to submit the tenders those economic operators who received the highest compliance scores. Economic operators who have not been invited to submit the tenders shall be deemed excluded from the contract award procedure.

3. Where the number of economic operators satisfying the conditions for participation in the procedure is less than specified in the contract notice, the awarding entity shall invite all economic operators satisfying those conditions to submit tenders.

4. Along with the invitation to tender, the awarding entity shall provide the economic operators with the specification of essential terms of contract and shall indicate the day and place of publication of the contract notice as referred to in Article 47. The provisions of Article 36 paragraph 1 items 5 and 6 shall not apply.

Article 52.

1. Where the contract value is less than the amounts specified in the provisions issued under Article 11 paragraph 8, the awarding entity shall fix a time limit for submission of tenders taking into consideration the time necessary to prepare and submit a tender, however, this shall not be less than 7 days from the date of dispatch of the invitation to tender for supplies and services, and not less than 14 days for works.

2. If the contract value is equal to or exceeds the amounts defined in the provisions issued under Article 11 paragraph 8, the time limit for the submission of tenders may not be shorter than 40 days from the date the invitation to submit tenders is dispatched.

3. In the event referred to in paragraph 2, the awarding entity may fix a time limit for the submission of tenders not shorter than 36 days if the information about the contract was included in the prior information notice concerning contracts planned within 12 months, dispatched or posted on the buyer's profile at least 52 days prior to the date of dispatching the contract notice to the Office for Official Publications of the European Communities.

4. In the event of an extreme urgency for the award of a contract the awarding entity may, in the cases referred to in paragraph 2, fix a shorter time limit for submission of tenders, which shall not, however, be less than 10 days.

5. The awarding entity may fix the time limits referred to in paragraphs 2 five days shorter, if the specification of essential terms of contract is available on its website from the date when the contract notice is published in the Public Procurement Bulletin or in the Official Journal of the European Union until the expiry of the time limit for the submission of tenders.

Article 53.

The provisions of Article 45 and 46 shall apply to restricted tendering.

Section 3 Negotiated procedure with publication

Article 54.

Negotiated procedure with publication means contract award procedures in which, following a public contract notice, the awarding entity shall invite economic operators admitted to participate in the contract award procedure to submit initial tenders not containing prices, negotiate the terms, and then invite them to submit the tenders.

Article 55.

1. The awarding entities may award contracts by negotiated procedure with publication if at least one of the circumstances listed below has occurred:

- 1) during the prior award procedure under open tendering, restricted tendering or competitive dialogue all the tenders have been rejected and the original conditions of the contract are not substantially altered;
- 2) in exceptional circumstances, where the nature of the supplies, services or works or the entailed risks make prior pricing impossible;

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- 3) the specific characteristics of the services to be procured can not be established in advance in such a way so as to enable the selection of the best tender under the procedure of open or restricted tendering;
 - 4) the object of the contract is works carried out purely for the purpose of research, experiment or development, and not to provide profits or to recover any incurred research and development costs;
 - 5) the contract value is less than the amounts specified in the provisions issued under Article 11 paragraph 8.

2. Where the value of a works contract is equal to or exceeds the PLN equivalent of EUR 20 000 000 or EUR 10 000 000 for supplies or services, the awarding entity shall inform the PPO President about the start of a procedure, stating the factual and judicial justification for the contract award procedure within 3 days from the start of a procedure.

Article 56.

1. In commencing a negotiated procedure with publication, the provisions of Article 40 and of Article 48 paragraph 2 shall apply *mutatis mutandis*.

2. For the submission of the requests to participate in a negotiated procedure with publication, the provisions of Article 49 and 50 shall apply *mutatis mutandis*.

Article 57.

1. The awarding entity shall immediately inform the economic operators who submitted requests to participate in a procedure on the results of compliance assessment and about the received compliance scores.

2. The awarding entity shall invite to submit initial tenders the economic operators who comply with the participation requirements; in a number provided for in the contact notice that ensures fair competition, however not less than 3 and in the case where the value of the works contract is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, not less than 5. The provisions of Articles 82-84, Article 89 paragraph 1 items 1-3, 5, 8 and Article 93 paragraph 1 items 1, 6-7 and paragraphs 2-4 shall apply *mutatis mutandis*.

3. If the number of economic operators who comply with the participation requirements is bigger than the one provided for in the notice, the awarding entity shall invite to submit initial tenders the economic operators who have received the highest compliance scores. All economic operators who have not been invited to submit an initial tender shall be deemed as excluded from the contract award procedure.

4. If the number of economic operators who comply with the participation requirements is less than that provided for in the notice, the awarding entity shall invite to submit initial tenders all the economic operators who have complied with the requirements.

5. Along with the invitation to submit initial tenders, the awarding entity shall provide the specification of essential terms of contract. The provisions of Article 36 paragraph 1 items 5, 6, 9, and 11 shall not apply.

6. The awarding entity shall fix a time limit for the submission of initial tenders taking into account the time necessary to prepare and submit an initial tender, however this time limit may not be shorter than 10 days from the date of invitation to submit initial tenders.

Article 58.

1. The awarding entity shall invite to negotiations all the economic operators whose initial tenders are non-rejectable, indicating the date and place of publication of the contract notice.

2. The awarding entity shall conduct negotiation to supplement or to make more precise the description of the object of contract or the conditions for the public procurement contract.

3. The negotiations shall be confidential. Without the other party's consent, neither party may disclose any technical nor business information connected with the negotiations.

4. Any requirements, explanations and information or documents related to the negotiations shall be provided to the economic operators on equal terms.

Article 59.

1. After conducting the negotiations, the awarding entity may supplement or make more precise the specification of essential terms of contract only insofar as it was the subject of the negotiations.

2. The change referred to in paragraph 1 may not result in a substantial modification of the object of contract or of the initial terms of contract.

Article 60.

1. The awarding entity shall invite the economic operators with whom it conducted the negotiations to submit their tenders. The provisions of Article 45 and 46 shall apply.

2. The invitation to tender shall at least contain information about:

- 1) place and date for the submission and for the opening of tenders;
- 2) required deposit;
- 3) time limit during which an economic operator must maintain its tender.

3. The awarding entity shall fix a time limit for the submission of tenders taking into account the time necessary to prepare and submit the tender; however that time limit may not be shorter than 10 days from the date the invitation to tender is made.

4. In the event of any changes referred to in Article 59 paragraph 1, made by the awarding entity, along with the invitation to submit tenders, the awarding entity shall provide the specification of essential terms of contract or shall place it on its website, if the specification is available on this website.

Section 3a

Competitive dialogue

Article 60a.

Competitive dialogue means contract award procedure in which, following a public contract notice the awarding entity conducts a dialogue with selected economic operators, and then invites them to tender.

Article 60b.

1. The awarding entity may award a contract by competitive dialogue if the following conditions are all met:

- 1) in particular, due to the complex nature of the contract, and in particular when it is not possible to describe the object of the contract in accordance with Articles 30 and 31 or to objectively define the legal or financial conditions of contract performance, it is not possible to award contract by the open tendering procedure or restricted tendering procedure;
- 2) the price is not the only criterion of the selection of the best tender.

2. If the value of a works contract is equal to or exceeds the PLN equivalent of EUR 20 000 000, or EUR 10 000 000 for supplies or services contract, the awarding entity shall inform the PPO President about launching the procedure by stating factual and legal justification of a procedure for awarding a contract, within 3 days from its start.

Article 60c.

1. To commence the competitive dialogue procedure, the provisions of Article 40 and Article 48 paragraph 2 shall apply mutatis mutandis, however the contract notice shall also include:

1) a description of needs and requirements of the awarding entity defined in a way that enables the economic operators to prepare for participation in the dialogue, or an information on the manner of obtaining such a description;

2) Information on the value of reward for the economic operators who, during the dialogue, presented the solutions which constitute the basis for submission of tenders, if the reward is envisaged by the awarding entity.

2. For the submission of the requests to participate in the dialogue, the provisions of Articles 49 and 50 shall apply mutatis mutandis.

Article 60d.

1. The awarding entity shall immediately inform the economic operators who have submitted requests to participate in a procedure about the results of the assessment of their compliance with the participation requirements and about their compliance scores.

2. The awarding entity shall invite to competitive dialogue the economic operators who comply with the participation requirements; in a number specified in the contract notice which shall ensure competition, not less than 3, however in the case where the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, not less than 5.

3. If the number of economic operators who comply with the participation requirements is bigger than the one provided for in the notice, the awarding entity shall invite to participate in the dialogue those economic operators who have received the highest compliance scores. All economic operators who have not been invited to participate in the dialogue shall be deemed as excluded from the contract award procedure.

4. If the number of economic operators who comply with the participation requirements is less than that provided for in the notice, the awarding entity shall invite to participate in the dialogue all economic operators who have complied with the requirements.

5. The invitation to participate in the dialogue shall include at least:

- 1) information about the date and place of publication of the contract notice;
- 2) description of the needs and requirements of the awarding entity specified in a manner that allows the economic operators preparation to participate in a dialogue, or information concerning the way of obtaining such description;
- 3) information about the place and date of the start of the dialogue.

6. All requirements, explanation and information or documents connected with the dialogue shall be provided to the economic operators on equal terms.

7. The conducted dialogue shall be confidential and may concern all the aspects of the contract. Without the other party's consent, neither party may disclose any technical nor business information connected with the dialogue.

Article 60e.

1. The awarding entity conducts the dialogue until it is capable of determining – by comparing the solutions proposed by the economic operators, if necessary – the solution(s) that best meet(s) its needs. The awarding entity shall immediately inform the participating economic operators about the conclusion of the dialogue.

2. Prior to the invitation to tender, the awarding entity may make changes to the technical and qualitative requirements concerning the object of contract which are the subject of the dialogue.

3. Along with the invitation to submit tenders based on the solutions proposed during the dialogue, the awarding entity shall provide the specification of essential terms of contract. The provisions of Article 36 paragraph 1 items 5 and 6 shall not apply.

4. The awarding entity shall fix a time limit for the submission of tenders, taking into account the time necessary to prepare and submit the tender, however the time limit may not be shorter than 10 days from the date the invitation to tender is made. The provisions of Articles 45 and 46 shall apply.

Section 4

Negotiated procedure without publication

Article 61.

Negotiated procedure without publication means contract award procedures in which the awarding entity negotiates the terms of the contract with economic operators of his choice and subsequently invites them to submit their tenders.

Article 62.

1. The awarding entities may award their contracts by negotiated procedure without publication, if at least one of the following circumstances has occurred:

- 1) during the prior award procedure under open or restricted tendering no request to participate in the procedure has been submitted, no tenders has been submitted or all the tenders have been rejected pursuant to the Article 89 paragraph 1 item 2 in view of the incompatibility with the description of the

object of contract, and the original terms of the contract are not substantially altered;

- 2) the design contest referred to in Article 110 has been held, the prize of which consisted in the invitation of at least two authors of the selected contest projects to participate in negotiations without publication;
- 3) the object of the contract is products manufactured purely for the purpose of research, experiment or development, and not to provide profits or to recover research or development costs incurred;
- 4) due to a previously unforeseeable extreme urgency for the award of a contract not resulting from the events brought about by the awarding entity, the time limits provided for open tendering, restricted tendering or negotiations with publication may not be observed.

2. Where the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, which require a dispatch of a contract notice for supplies or services to the Office for Official Publications of the European Communities, the awarding entity informs the PPO President about launching the procedure, within 3 days from its start, stating factual and judicial justification of a procedure for awarding a contract.

3. If the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8 the awarding entity shall, prior to commencing the negotiating procedure without publication under paragraph 1 item 1, provide the European Commission with information about the cancellation of the procedure, provided that the European Commission requested for it.

Article 63.

1. The awarding entity shall commence a negotiated procedure without publication dispatching the invitation to negotiate to economic operators of his choice.

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

- 1) name (company name) and address of the awarding entity;
- 2) description of the object of the contract including information concerning the possibility of submitting tender for lots;
- 3) information concerning the possibility of submitting variants;
- 4) contract completion date;
- 5) description of conditions for participation in the procedure and the manner of evaluating compliance with these conditions;
- 6) indication of a contract award procedure and legal basis thereof;
- 7) criteria for evaluation of tenders and their weightings;
- 8) place and time limit for negotiations with the awarding entity.

3. The awarding entity shall invite to negotiate a sufficient number of economic operators to ensure competition, which shall not be less than 5, and where the contract value is equal to or exceeds the equivalent in PLN of EUR 20 000 000 for works and of EUR 10 000 000 for supplies and services, this number shall not be less than 7, unless due to a very specialist nature of the contract there are less economic operators capable of performing the contract, however the number shall not be less than 2.

4. In the case referred to in Article 62 paragraph 1 item 1 the awarding entity shall invite to negotiate at least those economic operators who submitted tenders under open or restricted tendering. The provisions of paragraph 3 shall apply.

Article 64.

1. The awarding entity shall fix a time limit for submission of tenders taking account of the time necessary to prepare and submit a tender.

2. When inviting to tender the awarding entity may require economic operators to provide a deposit. The provisions of Article 45 paragraphs 3-8 and Article 46 shall apply accordingly.

3. The awarding entity shall dispatch the specification of the essential terms of the contract together with the invitation to tender. The provisions of Article 36 paragraph 1 item 5 shall not apply.

Article 65.

In negotiated procedure without publication, the provisions of Article 58 paragraphs 3 and 4, and of Article 60 paragraphs 1 and 2 shall apply *mutatis mutandis*.

Section 5 Single-source procurement

Article 66.

Single-source procurement means contract award procedures in which the awarding entity awards a contract after having negotiated with only one economic operator.

Article 67.

1. The awarding entities may award their contracts by single-source procurement procedure only if at least one of the following circumstances has occurred:

- 1) supplies, services or works may be provided by only one economic operator:
 - a) for technical reasons of objective character,
 - b) for reasons connected with protection of exclusive rights, resulting from separate provisions,
 - c) in the case of the award of contracts in the field of creative and artistic activities;
- 2) the design contest referred to in Article 110 has been held, in which the prize consisted in the invitation for the author of the selected contest project to negotiate under the single-source procurement procedure;
- 3) due to an exceptional situation, not resulting from events brought about by the awarding entity, there is a need for prompt execution of the contract, and the time limits provided for other procedures may not be observed;
- 4) during successive award procedure of which at least one was conducted under open or restricted tendering no request to participate in the procedure has been submitted, no tenders has been submitted or all the tenders have been rejected

pursuant to the Article 89 paragraph 1 item 2 due to their incompatibility with the description of the object of contract, and the original terms of the contract are not substantially altered;

- 5) where a hitherto economic operator of services or works is awarded additional contracts not included in the main contract, which in total do not exceed 50% of the value of that contract, are necessary for its proper performance and their execution became necessary as a result of unforeseeable circumstances, if :
 - a) for technical or economic reasons the separation of an additional contract from the main contract would require incomparably high costs to be incurred or
 - b) the completion of the main contract is conditional upon the performance of the additional contract;
- 6) in the case of the award, within 3 years of the award of the main contract, to the hitherto economic operator of services or works, of supplementary contracts constituting not more than 50% of the main contract value and involving the repetition of the same type of contracts, if the main contract was awarded under the open or restricted tendering procedure and the supplementary contract was provided for in the specification of essential terms of the contract for the main contract and concerns the object of the contract described therein;
- 7) in the case of the award, within 3 years of the award of the main contract, to the hitherto economic operator of supplies, of supplementary contracts constituting not more than 20% of the main contract value and involving the expansion of supplies, if the change of economic operator would make it necessary to purchase items of different technical parameters, what would result in technical incompatibility or disproportionately serious technical difficulties in use and care, if the main contract was awarded under the open or restricted tendering procedure and the supplementary contract was provided for in the specification of essential terms of the contract for the main contract and concerns the object of the contract described therein;
- 8) it is possible to award a supply contract on particularly advantageous terms, in connection with the winding-up procedure of the business activity of another entity, enforcement proceedings or bankruptcy proceedings;
- 9) supplies contracts shall be made at a commodity exchange within the meaning of the regulations on commodity exchanges, including the commodity exchange of other member states of the European Economic Area;
- 10) the contract is awarded by a Polish mission abroad within the meaning of the foreign service regulations, and its value is less than the amounts specified in the provisions issued under Article 11 paragraph 8.

2. Where the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, which require a dispatch of a contract notice for supplies or services to the Office for Official Publications of the European Communities, the awarding entity informs the PPO President about launching of a procedure, within 3 days from its start, stating factual and judicial justification of a procedure for awarding a contract.

3. The provisions of paragraph 2 shall not apply in the case of contracts awarded under paragraph 1:

- 1) item 1 Letter a, where the objects include:

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- a) supply of water via a water network system or disposal of sewage to the sewage network system,
 - b) supply of electricity from a power network,
 - c) supply of natural gas from the gas mains,
 - d) supply of heat from the heat network,
 - e) general postal services within the meaning of *the Act of 12 June 2003 – Postal Law (Dz. U. No. 130, item 1188, as amended*⁵⁾,
 - f) electricity, heat and gas fuels transmission services;
- 2) item 3, in order to reduce the consequences of a random event caused by external factors which could not be foreseen with certainty, in particular one that posed a direct threat to the life or health of people, or one that posed the threat of causing a serious damage;
 - 3) items 8 and 9.

4. In the case of the award of contracts on the basis of paragraph 1 item 1 letter b, c and item 2, as well as contracts, referred to in paragraph 3, the awarding entity may refrain from application of the provisions of Article 19-21, 24, 26 paragraph 1 - 3 and Article 68.

Article 68.

1. Along with the invitation to negotiation, the awarding entity shall provide information necessary to conduct the procedure, including provisions that are important for the parties, which shall be inserted in the content of the public contract, general terms of contract or the standard form of the contract. The provisions of Article 36 paragraph 1-3 and Article 37 and 38 shall not apply. The provisions of Article 36 paragraph 4 and 5 shall apply *mutatis mutandis*.

2. At the latest upon the conclusion of the public procurement contract, the economic operator shall submit a declaration that it complies with the participation requirements, and if the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, it shall also provide documents to prove such compliance. The provisions of Article 25 shall apply *mutatis mutandis*.

Section 6

Request-for-quotations

Article 69.

Request-for-quotations means contract award procedures in which the awarding entity sends a request-for-quotations to economic operators of his choice and invites them to submit tenders.

Article 70.

The awarding entity may award a contract under the request-for-quotations procedure, if the objects of the contract are generally available supplies or services of fixed quality

⁵⁾ The amendments to the mentioned Act were published in the Dz. U. of 2004 No.. 69, item 627, No.. 96, item 959, No.. 171, item 1800 and No.. 173, item 1808.

standards, where the contract value is less than the amounts specified in the regulation under Article 11 paragraph 8.

Article 71.

1. The awarding entity shall commence a request-for-quotations procedure by inviting such a number of economic operators, providing supplies or services being the object of the contract within the framework of their conducted business activities, which ensures competition and the choice of the best tender, not less than 5.

2. Along with the invitation to tender, the awarding entity shall provide the specification of essential terms of contract. The provisions of Article 36 paragraph 1 items 8 and 15 shall not apply.

Article 72.

1. Each of the economic operators may propose only one price and shall not change it. Prices shall not be negotiable.

2. The awarding entity shall award a contract to the economic operator who offered the lowest price.

Article 73.

The provisions of Article 44 and Article 64 paragraph 1 shall apply accordingly to the request-for-quotations.

Section 7

Electronic bidding

Article 74.

1. Electronic bidding means contract award procedures in which using a form available on the website allowing to enter the necessary data on-line, economic operators shall submit successive more advantageous tenders (bid increments), subject to automatic classification.

2. The awarding entity may award a contract under the electronic auction procedure, where the object of the contract includes generally available supplies of fixed quality standards and the contract value is less than the amounts specified in the provisions issued under Article 11 paragraph 8.

Article 75.

1. The awarding entity shall commence an electronic auction procedure by placing a notice on its website and on the site where the auction is to be conducted.

2. Notice about the electronic auction, referred to in paragraph 1, shall contain at least:

- 1) name (company name) and address of the awarding entity;
- 2) indication of a contract award procedure;
- 3) description of the object of the contract;

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- 4) requirements concerning registration and identification of economic operators, including technical requirements of IT equipment;
 - 5) manner of proceeding during electronic bidding, and in particular the minimum bid increment;
 - 6) information about the number of stages of the electronic bidding and their duration;
 - 7) time-limit for the submission of requests to participate in the electronic bidding;
 - 8) the opening date of the electronic bidding and the date and terms of its closing;
 - 9) description of the conditions for participation in the procedure and description of the manner of evaluating compliance with these conditions;
 - 10) information on declarations and documents to be provided by the economic operators to confirm compliance with the conditions for participation in the procedure;
 - 11) time limit during which a economic operator must maintain his tender;
 - 12) contract completion date;
 - 13) requirement concerning security on due performance of the contract;
 - 14) provisions essential to the parties to be incorporated into the contents of the concluded procurement contract or general terms of the procurement contract, or standard contract, if the awarding entity shall require from the economic operators to conclude a procurement contract on such terms;
 - 15) website address where the electronic bidding is to be conducted.

Article 76.

1. The awarding entity shall fix a time limit for the submission of requests to participate in the electronic bidding, which shall not be less than 7 days from the date of the notice.

2. The awarding entity shall allow all economic operators complying with the conditions for participation in the procedure to participate in the electronic bidding and shall invite them to tender, specifying in the invitation the time limit during which the economic operator with the lowest price must maintain his tender.

3. The awarding entity may require the economic operators to pay a deposit within a time limit specified by him, not later, however, than prior to the expiry of the opening date of the electronic bidding. The provisions of Article 45 and 46 shall apply *mutatis mutandis*.

4. The awarding entity shall open the electronic bidding within the time limit specified in the notice, which however shall not be less than 5 days as from the date on which the invitation to tender was transmitted to economic operators.

Article 77.

From the moment of opening till the closing of the electronic bidding the awarding entity and economic operators shall transmit requests, declarations and other information by electronic means of communication.

Article 78.

1. Tenders shall be submitted, under the pain of nullity, in electronic form with a secure electronic signature verifiable using a valid qualified certificate.

2. Tenders submitted by economic operators shall be subject to automatic classification based on price.

3. An economic operator must maintain his tender submitted in the course of bidding until another economic operator submits better tender.

Article 79.

1. The electronic bidding may be a one-stage or multi-stage procedure.

2. The awarding entities may, if they had made an appropriate reservation in the notice, following the end of each stage of the electronic bidding, not qualify to the next stage those economic operators who have failed to submit new (bid increments), informing them of the fact forthwith.

3. During each stage of the electronic bidding the awarding entity shall transmit, on a current basis, to all economic operators information about the position of their tenders, the number of economic operators participating in each stage of the bidding, as well as their quotations, however, information allowing identification of economic operators shall not be disclosed until the closing of the electronic bidding.

Article 80.

1. The awarding entity shall close an electronic bidding:

- 1) within the time limit specified in the notice;
- 2) if no new bid increments are submitted by the period specified in the notice, or
- 3) following the end of the last stage specified in the notice.

2. Directly following the closing of the electronic bidding the awarding entity shall provide the name (company name) and address of the economic operator whose tender has been chosen at the website address indicated in the notice.

3. The awarding entity shall award the contract to the economic operator who offered the lowest price.

Article 81.

1. The provisions of Articles 36-38, Articles 82-92 shall not apply to the electronic bidding.

Chapter 4

Selection of the best tender

Article 82.

1. An economic operator may submit one tender.
2. The tender shall, under the pain of nullity, be submitted in writing or if the awarding entity agrees, in electronic form with a secure electronic signature verifiable using a valid qualified certificate.
3. The contents of the tender should correspond to the contents of the specification of essential terms of the contract.

Article 83.

1. The awarding entity may permit the possibility of submitting variants, where the price is not the only award criterion.
2. The awarding entity may permit the possibility of submitting tenders for lots, where the object of the contract is divisible.
3. In the case, referred to in paragraph 2, the economic operator may submit tenders for one or more lots, unless the awarding entity specified the maximum number of lots for which one economic operator may submit his tenders.

Article 84.

1. An economic operator may change or withdraw his tender prior to the expiry of the time limit for submission of tenders.
2. Tenders submitted after the expiry of the time limit for submission of tenders shall be returned without opening after the expiry of the time limit for lodging protests.

Article 85.

1. An economic operator must maintain his tender until the expiry of the time limit specified in the specification of essential terms of the contract, however not longer than:
 - 1) 30 days – if the contract value is less than the amounts specified in the provisions issued under Article 11 paragraph 8;
 - 2) 90 days – if the contract value is equal to or exceeds the PLN equivalent of EUR 20 000 000 for works, and of EUR 10 000 000 for supplies and services;
 - 3) 60 days – if the contract value is different than that specified in items 1 and 2.
2. In justified cases, at least 7 days prior to the expiry of the time limit during which the economic operator must maintain his tender, the awarding entity may once request the economic operators to give their consent to extend this time limit by an indicated period, which however shall not be longer than 60 days.
3. Refusal to give consent, referred to in paragraph 2, shall not result in the forfeiture of the deposit.
4. Economic operator's consent to extend the period of maintenance of his tender shall be admissible only with simultaneous extension of the period of validity of the deposit or, if not possible, with contribution of a new deposit for the extended period of maintaining the tender.

5. The period, during which a economic operator must maintain his tender, shall commence with the expiry of the time limit for submission of tenders.

Article 86.

1. The contents of tenders shall not be disclosed prior to the opening of tenders.

2. The opening of tenders shall be public and shall take place directly following the expiry of the time limit for their submission; however, the final date for the submission of tenders shall be the date on which they are opened.

3. Directly prior to the opening of tenders the awarding entity shall state the amount they intend to allocate to finance the contract.

4. During the opening of tenders the names (company names) and addresses of economic operators shall be given as well as information included in the tenders concerning the price, time limit for the completion of the contract, period of guarantee and terms of payment.

5. The information, referred to in paragraph 3 and 4, shall be communicated to economic operators who were absent during the opening of tenders upon their request.

Article 87.

1. During examination and evaluation of tenders the awarding entity may require explanations of the tenders' contents submitted by the economic operators. Negotiations between the awarding entity and the economic operator concerning the submitted tender and, subject to paragraph 1a and 2, any changes in the contents thereof shall not be admissible.

1a. In course of the examination and evaluation of tenders in a competitive dialogue procedure, the awarding entity may require from the economic operators to specify, improve tenders and provide additional information; the essential changes in tenders or the changes of the requirements specified in the specification of essential terms of contract are not, however, admissible.

2. The awarding entity shall correct the text of the tender in terms of any obvious misprints and computational errors made in the calculation of prices, notifying forthwith all economic operators who submitted their tenders.

Article 88.

1. The awarding entity shall correct computational errors in the calculation of prices in the following manner:

- 1) in the case of multiplication of unit prices and numbers of measurement units:
 - a) where the calculated price does not correspond to the product of unit price times number of measurement units, it shall be assumed that the number of measurement units and the unit price have been given correctly,
 - b) where there is a discrepancy between the unit price given in words and the one given in numbers, it shall be assumed that the number of measurement units and the unit price which matches the provided price calculation have been given correctly;
- 2) in the case of addition of prices for individual lots:

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- a) if the calculated price does not correspond to the total sum of prices for individual lots it shall be assumed that prices for individual lots have been given correctly,
 - b) where there is a discrepancy between the amount for an individual lot given in words and the one given in numbers, it shall be assumed that the correct entry was that which matches the provided price calculation,
 - c) if neither the price for the lot given in numbers nor that given in words corresponds to the calculated price, it shall be assumed that the prices given in words have been given correctly;
- 3) in the case of a tender with a price for the whole object of the contract or lot (lump sum price):
 - a) it shall be assumed that the provided lump sum amount was correct regardless of the method of calculation,
 - b) where there is a discrepancy between the lump sum amount given in numbers and that given in words, it shall be assumed that the lump sum given in words has been given correctly,
 - c) where the calculated price does not correspond to the sum of all lump sums, it shall be assumed that the individual lump sums have been given correctly.

2. The awarding entity shall consider the computational consequences of corrections when correcting the computational errors in accordance with paragraph 1

Article 89.

1. The awarding entity shall reject a tender, if:

- 1) it is not in conformity with this Act;
- 2) its contents do not correspond to the contents of the specification of essential terms of the contract;
- 3) its submission is an act of unfair competition within the meaning of the provisions concerning the combating of unfair competition;
- 4) contains an abnormally low price in relation to the object of the contract;
- 5) has been submitted by a economic operator excluded from the award procedure or one that was not been invited to tender;
- 6) contains computational errors in the calculation of prices, which may not be corrected under Article 88 or miscalculations of the price;
- 7) the economic operator did not agree to the correction of a computational error in the calculation of the price within 7 days from the delivery of notification;
- 8) is not valid under separate provisions.

2. [deleted]

Article 90.

1. In order to determinate whether the submitted tender contains an abnormally low price with regard to the object of the contract the awarding entity shall request in writing the economic operator to provide, within a fixed time limit, explanations concerning those parts of a tender that have an impact on the price level.

2. In evaluating explanations the awarding entity shall take into consideration any explanation which is justified on objective grounds, and in particular, the economy of a performance method, technical solutions chosen, exceptionally favourable conditions available to the economic operator for the performance of the contract, originality of the economic operator's project and impact of the public aid provided under separate provisions.

3. The awarding entity shall reject a tender submitted by an economic operator who failed to provide explanations or where the evaluation of explanations confirms that the submitted offer contains an abnormally low price with regard to the object of the contract.

4. If the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, the awarding entity shall inform the PPO President and the European Commission about the rejection of tenders which, according to the awarding entity, contained abnormally low prices because of state aid granted and the economic operator did not prove that such aid was in compliance with the provisions concerning state aid proceedings within the time limit fixed by the awarding entity.

Article 91.

1. The awarding entity shall select the best tender on the basis of tender evaluation criteria laid down in the specification of essential terms of the contract.

2. Tender evaluation criteria shall be price or price and other criteria linked to the object of the contract, in particular quality, functionality, technical parameters, use of best available technologies with regard to the impact on the environment, exploitation costs, after-sales service and period of contract performance.

3. Tender evaluation criteria shall not pertain to the characteristics of the economic operator, and in particular to its economic, technical or financial credibility.

3a. If a tender has been submitted, the selection of which would result in a tax liability on the awarding entity under the regulations on the intra-community purchasing of goods, the awarding entity shall, in order to evaluate such a tender, add the value added tax (VAT) payable under the applicable regulations to the tender price.

4. Where the best tender cannot be selected as two or more tenders represent the same balance of price and other tender evaluation criteria, the awarding entity shall choose from among those tenders the one with a lower price.

5. Where the price is the only award criterion in a contract award procedure and it is impossible to select the best tender as tenders with the same price have been submitted, the awarding entity shall call upon the economic operators to submit additional tenders within a specified period.

6. When submitting additional tenders economic operators shall not submit tenders with higher prices than those submitted previously.

7. Immediately after the selection of the best tender, however within the time limit not less than 14 days, the awarding entity shall offer rewards to the economic operators who during the dialogue presented the solutions which constitute the basis for submission of tenders, if such rewards are provided by the awarding entity.

Article 91a.

1. Where the procedure is conducted by open tendering, restricted tendering or negotiated procedure with publication under Article 55 paragraph 1 item 1, the awarding entity, after evaluation of the tenders, shall hold an electronic auction to select the best tender if such an electronic auction was provided for in the contract notice, and if at least three non-rejectable tenders have been submitted. The provisions of Article 91 paragraphs 4-6 shall not apply.

2. The provisions of paragraph 1 shall not apply in the case of contracts for artistic or scientific activity or if the tender price is not a lump sum price.

3. The criteria for tender evaluation in an electronic auction shall be only those provided for in the specification of essential terms of contract, making possible the automatic evaluation of the tender without any interference of the awarding entity, indicated among the criteria based on which the tenders were evaluated prior to commencing the electronic auction.

4. Electronic auction shall be a one-stage procedure.

Article 91b.

1. The awarding entity shall invite by electronic means all the economic operators who have submitted non-rejectable tenders to participate in an electronic auction.

2. In the invitation referred to in paragraph 1, the awarding entity shall inform the economic operators about:

- 1) ranking places and scores of their tenders;
- 2) minimal values of the bid increments in the electronic auction;
- 3) date of the opening of the electronic auction;
- 4) date and terms of the closing of the electronic auction;
- 5) the manner for evaluation of tenders in the electronic auction.

3. The opening date of the electronic auction may not be shorter than 2 working days from the date of dispatching the invitation referred to in paragraph 1.

4. The tender evaluation method in an electronic auction should include the recalculation of the bid increments into tender evaluation scores taking into account the score received prior to the opening of the electronic auction.

Article 91c

1. During an electronic auction, economic operators use a form posted on the website for entering the necessary data through a direct connection with the website to make successive, more advantageous bid increments which are subject to automatic evaluation and classification. The provisions of Article 82 paragraphs 1 and 2, Articles 83 and 84, and Articles 86-89 shall not apply.

2. Bid increments, under the pain of nullity, must have a secure electronic signature verifiable using a valid qualified certificate.

3. During an electronic auction, the awarding entity shall provide each of the economic operators on an ongoing basis with information about the ranking place of its respective tender and its score as well as of the score of the best tender. Until the electronic

auction is closed, no information shall be disclosed that can make it possible to identify the economic operators.

4. The tender of an economic operator ceases to be binding insofar as it has made a better tender during the electronic auction. The period in which the tender must be maintained shall not be interrupted.

5. The provisions of Article 77, Article 80 paragraph 1 item 1 and 2, and paragraph 2 shall apply mutatis mutandis.

Article 92.

1. The awarding entity shall inform forthwith the economic operators who submitted tenders about:

- 1) the selection of the best tender, stating the name (company name), seat and address of the economic operator, whose tender has been selected, as well as justification for its selection, as well as names (companies names), seats and addresses of the economic operators who submitted their tenders, together with summary of the evaluation and comparison of the submitted tenders containing the scoring of tenders in every tender evaluation criterion and the total score.
- 2) the economic operators whose tenders were rejected stating factual and judicial justification;
- 3) the economic operators who were excluded from the contract award procedure stating factual and judicial justification - if the contract is awarded in open tendering, negotiated procedure without publication or request- for- quotation.

2. Immediately after the selection of the best tender, the awarding entity shall also post the information referred to in paragraph 1 item 1, on its website and in a publicly accessible location in its own seat, and if the value of contract is equal to or exceeds the amounts, referred to in Article 167 paragraph 2, the awarding entity shall also submit it to the PPO President and the Head of the Central Anticorruption Bureau.

Article 93.

1. The awarding entity shall cancel a contract award procedure, if:

- 1) subject to items 2 and 3, no tender has been submitted or no request to participate in the procedure from a non-excludable economic operator has been received;
- 2) less than two non-rejectable tenders have been submitted in the request-for-quotations procedure;
- 3) in a procedure by electronic bidding, fewer than two requests to participate in electronic bidding have been made, or tenders have been made by fewer than two non-rejectable economic operators;
- 4) the price of the best tender exceeds the amount which the awarding entity can allocate to finance the contract;
- 5) in the cases referred to in Article 91 paragraph 5 additional tenders with the same price have been submitted;

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- 6) a material change in the circumstances has occurred which causes the conduct of the procedure or the execution of the contract to be no longer in the public interest and which could not have been foreseen earlier;
 - 7) the award procedure is encumbered with a defect which prevents the conclusion of a valid public procurement contract.

2. If the awarding entity allows the possibility of submitting tenders for lots, the provisions of paragraph 1 shall apply mutatis mutandis to the cancellation of the procedure for the award of lots.

3. About the cancellation of the procedure, the awarding entity shall notify simultaneously all economic operators who:

- 1) competed for the award - in the event of cancellation of a procedure prior to the final date for submission of tenders,
- 2) submitted tenders - in the event of cancellation of a procedure after the final date for submission of tenders

- providing factual and legal grounds.

4. In the event of the cancellation of a contract award procedure due to the fault of the awarding entity, economic operators who submitted non-rejectable tenders shall be entitled to claim reimbursement of the justified costs of participation in the procedure, and in particular, the costs incurred for the preparation of their tenders.

5. In the case of a cancellation of the contract award procedure, at the request of an economic operator who competed for the contract, the awarding entity shall inform about the start of another procedure which concerns or includes the same object of contract.

Article 94.

1. The awarding entity shall conclude a public procurement contract within not less than 7 days from the day on which contract award notice was submitted, however, not later than prior to the expiry of the time limit during which an economic operator must maintain his tender, subject to paragraph 1a.

1a. The public procurement contract may be concluded after the expiry of the time limit during which an economic operator must maintain his tender, if the awarding entity submitted to economic operators the information on the selection of the best tender prior to the expiry of the time limit during which the economic operator must maintain his tender, and the economic operator agreed to conclude a contract on terms specified in the submitted tender.

2. If the economic operator whose tender has been selected refuses to conclude a public procurement contract or fails to provide the required security on due performance of the contract the awarding entity may select the best of the remaining tenders without their re-evaluation unless the circumstances referred to in Article 93 paragraph 1 occur.

Article 95.

1. If the value of the contract or of the framework agreement is less than the amounts specified in the provisions issued under Article 11 paragraph 8, the awarding entity shall immediately, after the conclusion of the public procurement contract or the framework agreement, place a contract award notice in the Public Procurement Bulletin

2. If the value of the contract or of the framework agreement is equal to or exceeds the amounts defined in the provisions issued under Article 11 paragraph 8, the awarding entity shall, immediately upon concluding a public procurement contract or a framework agreement, dispatch a contract award notice to the Office for Official Publications of the European Communities.

3. The awarding entity shall not dispatch any contract award notice if the contract was awarded on the basis of a framework agreement.

4. In the case of awarding contracts under a dynamic purchasing system, the awarding entity may depart from dispatching the contract notices as referred to in paragraphs 2 and dispatch contract award notices once in every three months.

Chapter 5

Record of proceedings

Article 96.

1. In the course of the conduct of an award procedure the awarding entity shall prepare a written record of the contract award procedure, hereinafter referred to as the "record", which shall include at least:

- 1) description of the object of the contract;
- 2) information on the contract award procedure;
- 3) information on economic operators;
- 4) price and other essential elements of the tender;
- 5) indication of the selected tender or tenders.

2. Tenders, opinions of experts, declarations, information from the meeting referred to in Article 38 paragraph 3, notifications, requests, other documents and information submitted by the awarding entity and economic operators and the public procurement contract, shall constitute annexes to the record.

3. The record together with the annexes attached thereto shall be open to the public. The annexes to the record shall be made available after the best tender is chosen or after the cancellation of the procedure, however, tenders shall be available from the moment of their opening, and requests to participate in the procedure shall be available after the expiry of the time limit for their submission.

4. [deleted]

5. The Prime Minister shall specify by a regulation:

- 1) standard record form and the scope of additional information to be included in the record, having regard to the contract value, contract award procedure and aiming to ensure the possibility of submitting comments on the contents of the record by persons performing actions in connection with the conduct of a contract award procedure;
- 2) manner and form in which the record together with its annexes is to be made available to the persons concerned, having regard to the requirement to ensure the public nature of award procedures.

Article 97.

1. The awarding entity shall keep the record together with its annexes for a period of 4 years from the closing date of the contract award procedure in a manner which shall guarantee its inviolability.

2. The awarding entity shall return to economic operators whose tenders were not chosen, upon their request, any plans, designs, drawings, models, samples, patterns, computer applications and similar materials submitted by them.

Article 98.

1. The awarding entity shall prepare an annual report about the conducted contract award procedures hereinafter referred to as the "report".

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

3. [deleted]

4. . The Prime Minister shall specify by a regulation the scope of information to be included in the report and its standard form and rules of dispatching, having regard to the requirements concerning the contents of report provided to the European Commission, including the type of the awarding entity, the country of origin of the selected economic operator, the value of the awarded contracts, the type of contract and the type of the awarding procedure, the legal basis for their application, and in the case of contracts with a value equal to or exceeding the PLN equivalent of EUR 20 000 000 for works or EUR 10 000 000 for supplies or services, also the method of contract performance.

**TITLE III
SPECIFIC PROVISIONS**

**Chapter 1
Framework agreements**

Article 99.

The awarding entity may conclude a framework agreement after conducting the procedure governed by the relevant rules concerning the awarding of contracts by open tendering, restricted tendering or negotiated procedure with publication.

Article 100.

1. A framework agreement is concluded for a period not longer than 4 years; however the agreement may be concluded for a longer period of time for reasons related to the object of contract and to the particular interests of the awarding entity.

2. The awarding entity shall notify forthwith to the PPO President the fact of concluding a framework agreement for a period longer than 4 years, stating the value and the object of contract as well as factual and judicial justification.

3. A framework agreement shall be concluded with:

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- 1) one economic operator, if concluding a framework agreement with a bigger number of economic operators would be disadvantageous to the awarding entity for technical or organizational reasons;
 - 2) at least three economic operators, unless a smaller number of economic operators have submitted non-rejectable tenders.
4. The awarding entity may not use a framework agreement to restrict competition.

Article 101.

1. The awarding entity may award contract based on the framework agreement:
 - 1) to the economic operator, with whom the awarding entity concluded a framework agreement on conditions not less advantageous than the ones specified in the framework agreement; the provisions of Article 68 paragraph 1 shall apply mutatis mutandis;
 - 2) to the economic operators, with whom the awarding entity concluded a framework agreement by inviting them to submit their tenders; the provisions of Article 45 and 46, Article 60 paragraph 2 as well as Article 64 paragraph 1 and 3 shall apply mutatis mutandis.
2. When awarding the contract as referred to in paragraph 1, the awarding entity may change the terms of the contract with regard to terms specified in a framework agreement, provided that this change is not essential. The awarding entity may not change the criteria for evaluation of tenders provided for in the framework agreement.
3. The tender submitted as a result of invitation, referred to in paragraph 1 item 2, shall not be less advantageous than the tender submitted in the framework agreement procedure.
4. The provisions of Article 26, Article 167 paragraphs 2 and 3 shall not apply to contracts based on the framework agreement.

Chapter 2 Dynamic purchasing system

Article 102.

1. The awarding entity may set up a dynamic purchasing system and to award contracts under the system, applying the relevant rules concerning the awarding of contracts by open tendering unless the provisions of this Chapter provide otherwise.
2. A dynamic purchasing system shall be set up for a period not longer than 4 years; however the system may be set up for a longer period of time for reasons related to the object of contract and to the particular interests of the awarding entity.
3. The awarding entity shall notify within 3 days to the PPO President the fact of setting up a dynamic purchasing system for a period longer than 4 years, stating the value and the object of contract as well as factual and judicial justification.
4. The awarding entity may not use a dynamic purchasing system to restrict competition.

Article 103.

1. In a procedure conducted in order to set up a dynamic purchasing system and in a contract award procedure under dynamic purchasing system, the awarding entity and the economic operators shall provide declarations, documents, requests, notices, invitations and other information by electronic means.

2. In the procedures referred to in paragraph 1, tenders must be submitted, under the pain of nullity, by electronic means with a secure electronic signature verified by a valid qualified certificate.

3. The notices are placed in the Public Procurement Bulletin by electronic means with the use of the form posted on the portal of the PPO, and dispatch to the Office for Official Publications of the European Communities by electronic means with the use of the form posted on the website referred to in a directive.

Article 104.

1. From the day on which the contract notice is placed in the Public Procurement Bulletin or published in the Official Journal of the European Union, the awarding entity shall make available on its website the specification of essential terms of contract and information about the dynamic purchasing system, in particular:

- 1) definition of the object of contract included in the scope of the dynamic purchasing system;
- 2) duration of the dynamic purchasing system;
- 3) envisaged dates for awarding contracts;
- 4) technical requirements for telecommunications and computer devices necessary to ensure communication between the awarding entity and the economic operators, including the submission of tenders.

2. The specification of essential terms of contract and the information referred to in paragraph 1 shall be available on the website throughout the duration of the dynamic purchasing system.

Article 105.

1. In order to participate in a dynamic purchasing system the economic operators may submit tenders, hereinafter referred to as “indicative tenders”, throughout the duration of the dynamic purchasing system. The provisions of Articles 45 and 46, Article 82 paragraphs 1 and 2 and Articles 83 – 86 shall not apply.

2. The economic operator shall together with the indicative tender submit a declaration of compliance with the requirements to participate in a contract award procedure and, if the awarding entity requests to submit documents proving compliance with those requirements also such documents.

3. An indicative tender may be updated at any time by submitting a new indicative tender. In case of updating of the indicative tender, the provision of paragraph 2 shall not apply.

4. The awarding entity shall evaluate indicative tenders within 15 days of their receipt.

5. The awarding entity shall immediately inform the economic operator about its admission to participate in a dynamic purchasing system or about its refusal to admit it to participate, providing factual and legal grounds for such refusal.

6. The awarding entity may extend the time limit referred to in paragraph 4, however within the extension period it may not commence a procedure to award a contract under a dynamic purchasing system.

Article 106.

1. Prior to commencing a procedure to award a contract under a dynamic purchasing system, the awarding entity shall post a simplified contract notice on its website. The provisions of Article 40 paragraphs 2-6 shall apply mutatis mutandis.

2. A simplified contract notice shall contain at least:

- 1) date and place of publication of the notice concerning the setting up of the dynamic purchasing system;
- 2) name (company name) of the awarding entity;
- 3) description of the object of contract and volume or scope of contract;
- 4) address of the website on which the specification of essential terms of contract and the information referred to in Article 104 paragraph 1 are available;
- 5) time limit for the submission of indicative tenders.

3. Prior to the publication of a simplified contract notice the awarding entity may modify the contents of the specification of essential terms of contract. The awarding entity shall immediately inform all the economic operators, admitted to participate in the dynamic purchasing system, about the modification, and the information shall also be posted on its website. The provisions of Article 38 paragraphs 4, 6 and 7 shall not apply.

Article 107.

1. In response to a simplified contract notice, an economic operator who was not previously admitted to participate in a dynamic purchasing system shall make an indicative tender within the time limit fixed by the awarding entity, which shall not be less than 15 days from the day on which the contract notice was placed in the Public Procurement Bulletin or dispatched to the Office for Official Publications of the European Communities.

2. The awarding entity shall evaluate indicative tenders forthwith. Article 105 paragraph 5 shall apply.

Article 108.

1. The awarding entity shall commence a contract award procedure under the dynamic purchasing system by inviting all the economic operators admitted to participate in the system to submit tenders forthwith upon completing the evaluation of indicative tenders.

2. The awarding entity shall fix a time limit for the submission of tenders, taking into account the time necessary to prepare and submit the tender.

Article 109.

1. Tenders submitted in a contract award procedure under a dynamic purchasing system shall be evaluated solely on the basis of the criteria provided for in the specification of essential terms of contract as referred to in Article 104.

2. A tender submitted by an economic operator in a contract award procedure under a dynamic purchasing system may not be less advantageous than the indicative tender.

3. The economic operator shall provide documents proving its compliance with the conditions for participation in the contract award procedure if so requested by the awarding entity in the invitation to tender.

Chapter 3 Design contest

Article 110.

A design contest is a public promise, in which by means of a public notice the awarding entity promises a prize for the execution and transfer of rights to the design selected by the jury, in particular in the fields of spatial planning, town planning, architecture and construction, and data processing.

Article 111.

1. The prize of a design contest may be:

- 1) in money or in kind;
- 2) an invitation to negotiate under the negotiated procedure without publication for at least two authors of selected contest projects or
- 3) an invitation to negotiate under the single-source-procurement procedure for the author of the selected contest project.

2. In the cases referred to in paragraph 1 items 2 and 3, the object of contract shall be the comprehensive development of a design contest project.

3. The value of a design contest shall be the value of prizes.

4. The value of a design contest, in which the prize consists in the invitation to participate in the contract award procedure, shall be the value of the contract and of additional prizes where the awarding entity provided for such prizes.

5. For the purposes of the calculation of the design contest value, the provisions of Article 35 shall apply mutatis mutandis.

Article 112.

1. Design contests shall be organised by awarding entities. The provisions of Article 15 paragraph 2 and Article 18 shall apply mutatis mutandis.

2. The head of the awarding entity shall appoint a jury and set forth the rules concerning its organisation, composition and working procedure.

3. The jury shall be composed of at least 3 persons appointed and recalled by the head of the awarding entity.

4. Article 17 shall apply mutatis mutandis to members of the jury.

5. The jury shall be composed exclusively of persons having the qualifications enabling them to evaluate the submitted designs, and where specific provisions require from participants in the contest particular professional authorisations to execute the design, at least a third of the jury members, including its chairman, must likewise hold the required authorisations.

Article 113.

1. The jury is an auxiliary team of the head of the awarding entity appointed to evaluate compliance of participants in the design contest with the requirements laid down in the Rules of Procedures for the design contest, to evaluate the designs and to choose the best design.

2. The jury shall in particular prepare information about the designs, justification of the design contest's result, and also, to the extent referred to in paragraph 1, lodge a request to cancel the design contest.

3. In terms of the issues referred to in paragraphs 1 and 2, the jury shall be independent.

4. The head of the awarding entity may entrust the jury with tasks related to the preparation and conduct of the design contest other than those defined in paragraph 1.

Article 114.

The head of the awarding entity or a person authorised by the same shall supervise the jury in terms of the design contest's compliance with the provisions of this Act and with the Rules of Procedures for the design contest and shall in particular:

- 1) cancel the design contest;
- 2) approve the result of a design contest.

Article 115.

1. The awarding entity shall place the design contest notice in a publicly available location in its seat and on its website.

2. A design contest notice shall contain at least:

- 1) name (official address) and address of the awarding entity;
- 2) definition of the object of design contest;
- 3) requirements to be complied with by design contest participants, however if the design contest prize consists in an invitation to participate in negotiations by a negotiated procedure without publication to be issued to at least two authors of selected contest projects or an invitation to participate in a single-source procurement procedure for the author of the selected contest project, the provisions of Article 22 shall apply mutatis mutandis;

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- 4) criteria for evaluating contest projects along with the weightings of those criteria;
 - 5) information on how the Rules of Procedure for the design contest can be obtained;
 - 6) time limit for submitting designs;
 - 7) type and value of prizes.

3. Where the value of a design contest is less than the amount provided for in the provisions issued under Article 11 paragraph 8, the awarding entity shall place the contract notice in the Public Procurement Bulletin.

4. If the value of a design contest is equal to or exceeds the amount provided for in the provisions issued under Article 11 paragraph 8, the awarding entity shall dispatch a design contest notice to the Office for Official Publications of the European Communities.

5. For dispatching design contest notices, the provisions of Article 40 paragraphs 5 and 6 shall apply *mutatis mutandis*.

Article 116.

1. The awarding entity shall conduct the design contests under the Rules of Procedure established by itself.

2. The Rules of Procedure for a design contest shall in particular specify:

- 1) name and surname or name (company name) and address and place of residence (seat) of the awarding entity;
- 2) form of the design contest;
- 3) detailed description of the design contest object;
- 4) maximum envisaged total cost of performing the work based on the contest project;
- 5) In the cases referred to in Article 111 paragraph 1 items 2 and 3, the scope of the detailed preparation of the contest project which is the object of a contract awarded by a negotiated procedure without publication or by single-source procurement procedure;
- 6) information about the declarations and documents to be provided by the participants in the design contest to prove their compliance with the relevant requirements, the provisions of Article 25 shall apply *mutatis mutandis*;
- 7) means of communication between the awarding entity and the participants in the contest, and of providing declarations and documents;
- 8) place and time limit for the submission of the requests to participate in the design contest;
- 9) scope of content, form and method of presentation of the contest project;
- 10) place and time limit for submitting contest projects by the admitted participants;
- 11) criteria for evaluation contest projects, together with their weightings;
- 12) composition of the jury;
- 13) type and value of prizes;

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- 14) time limit for the awarding (payment) of the prize and, in the cases referred to in Article 111 paragraph 1 items 2 and 3, for the invitation to participate in a negotiated procedure without publication or in a single-source procurement procedure;
 - 15) amounts reimbursed for the preparation of the contest projects if the awarding entity plans to reimburse such costs;
 - 16) provisions concerning the transfer of financial copyright to the selected contest project including a detailed specification of the areas of use of the contest projects, and in the cases referred to in Article 111 paragraph 1 items 2 and 3 also the essential provisions to be included in the contract;
 - 17) manner of public announcement of the result of the design contest;
 - 18) manner of providing explanations concerning the Rules of Procedure for the design contest;
 - 19) information on legal protection measures available to design contest participants.

3. The awarding entity shall provide the design contest participant with the Rules of Procedure for the design contest within 5 days from the date of the submission of a request to provide it. The admissible price to be charged for the Rules of Procedure for the design contest may only cover the costs of its printing and provision to the participants.

4. In communication between the awarding entity and the design contest participants, the provisions of Article 27 shall apply *mutatis mutandis*.

Article 117.

1. A design contest may be organized as a one-stage or a two-stage procedure.

2. In a two-stage design contest, the first stage involves the selection of study projects complying with the requirements set forth in the Rules of Procedure for the design contest. At the second stage the jury shall evaluate designs based on the study projects selected at the first stage applying the criteria laid down in the Rules of Procedure for the design contest.

Article 118.

1. Participants in the design contest may be natural persons, legal persons and organisational units not having legal personality.

2. Where specific provisions require that the participants in the design contest should have professional authorisations to execute a contest project, the participants may only be natural persons having the required authorisations or entities using natural persons having the required authorisations.

3. Participants may take part in the design contest jointly. The provisions relating to a participant in a design contest shall apply respectively to participants taking part jointly.

Article 119.

The awarding entity shall fix a time limit for submission of requests to participate in the design contest with regard to the time period necessary to submit the required documents. However, this time limit shall not be less than 21 days from the day:

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- 1) on which the design contest notice was placed in the Public Procurement Bulletin;
 - 2) on which the design contest notice was dispatched to the Office for Official Publications of the European Communities – if the value of the design contest is equal to or exceeds the amounts provided for in the provisions issued under Article 11 paragraph 8.

Article 120.

1. The awarding entity shall allow participants complying with the requirements laid down in the Rules of Procedure for the design contest to participate in the design contest, and shall invite them to submit their designs.

2. Participants who fail to meet the requirements laid down in the Rules of Procedure for the design contest shall be subject to exclusion.

3. The provisions of Article 26 paragraphs 3 and 4 shall apply accordingly to the evaluation of requests to participate in a design contest.

Article 121.

1. Subject to paragraph 2, participants in the design contest shall submit their contest projects together with information on the envisaged aggregate cost of execution of the object of a contest project.

2. Participants in the design contest shall submit their contest projects without the information referred to in paragraph 1 if it is not possible to define the costs owing to the specific nature of the object of the contest project.

3. The contents of the contest projects shall not be disclosed to the jury until the expiry of the time limit for submission of contest projects.

4. The awarding entity ensures that it must not be possible to identify the authors of submitted contest projects until the jury selects the winner of the design contest.

Article 122.

1. The jury shall evaluate the contest projects according to the criteria laid down in the design contest notice. Article 87 paragraph 1 shall apply *mutatis mutandis*.

2. The jury shall resolve the design contest by selecting one or more winning contest projects out of all the contest projects.

3. The jury shall identify all submitted projects, after the resolution of the design contest or after its cancellation.

Article 123.

1. The awarding entity shall, immediately following the resolution of the design contest, notify participants about the results and granted scores, giving the name and surname or company name, address and place of residence (seat) of the successful author of the selected contest project or of the authors of selected projects.

2. The protocol shall be made concerning the work of the jury.

Article 124.

The awarding entity shall cancel the design contest where no request to participate in the design contest or no contest project has been submitted, and in the case referred to in Article 111 paragraph 1 item 2 - at least two contest projects, or where the design contest has not been resolved. The provision of the Article 93, paragraph 1, items 6 and 7 shall apply mutatis mutandis to the cancellation of the design contest.

Article 125.

According to the time limit specified in the Rules of Procedure for the design contest, which shall not however be less than 15 days from the date of the final resolution of the design contest, the awarding entity shall release (pay out) the prize, and in the cases referred to in Article 111 paragraph 1 items 2 and 3 - respectively invites to negotiate under the negotiated procedure without publication or single-source-procurement procedure.

Article 126.

1. Where the value of the design contest is less than the amounts provided for in the provisions issued under Article 11 paragraph 8, the awarding entity shall place a notice on the results of the design contest in the Public Procurement Bulletin, immediately following the resolution of the design contest.

2. Where the value of the design contest is equal to or exceeds the amounts defined in the provisions issued under Article 11 paragraph 8, following the resolution of the design contest, the awarding entity shall dispatch a notice on the results of a design contest to the Office for Official Publications of the European Communities.

Article 127.

1. The awarding entity shall keep the documentation of the design contest for a period of 4 years from the date of its final resolution, in a manner guaranteeing its inviolability.

2. The awarding entity shall return contest projects, which have not been selected, to the participants of the design contest upon their request.

Chapter 4

Award and execution of concessions

Article 128.

1. The procedure aimed at awarding a public works concession, hereinafter referred to as "concession", shall be initiated by the awarding entity referred to in Article 3 paragraph 1 items 1-3a by posting a concession notice in a publicly accessible location in its seat and on its website.

2. If the concession value is less than the amount provided for in the provisions issued under Article 11 paragraph 8 on which the requirement to dispatch a works contract notice to the Office for Official Publications of the European Communities depends, the awarding entity shall place such a concession notice in the Public Procurement Bulletin.

3. If the concession value is equal to or exceeds the amount provided for in the provisions issued under Article 11 paragraph 8 on which the requirement to dispatch a works contract notice to the Office for Official Publications of the European Communities depends, the awarding entity shall dispatch such a concession notice to the Office for Official Publications of the European Communities.

4. The notice of a concession shall include at least:

- 1) name (company name) and address of the awarding entity;
- 2) description of the object of concession;
- 3) description of the procedure to be used for awarding the concession;
- 4) time limit for the submission of the requests to participate in the procedure or for submitting tenders;
- 5) description of the participation requirements and a description of the method of evaluating the compliance with such requirements, and in the case of concessions awarded by restricted tender or by a negotiated procedure with publication, also the weight of participation requirements;
- 6) information about the declarations and documents to be provided by economic operators to prove their compliance with participation requirements;
- 7) criteria for evaluation of tenders and weightings of the criteria.

5. For dispatching notices of concession, the provisions of Article 40 paragraphs 5 and 6 shall apply *mutatis mutandis*.

6. Only economic operators complying with the participation requirements provided for by the awarding entity may participate in the procedure referred to in paragraph 1.

7. Concessions shall be awarded by applying accordingly the relevant regulations on awarding contracts by open tendering, restricted tendering or by a negotiated procedure with publication. The provisions of Article 55 shall not apply.

8. If the concession value is less than the amount provided for in the provisions issued under Article 11 paragraph 8 on which the requirement to dispatch a works contract notice to the Office for Official Publications of the European Communities depends, the time limit for the submission of the requests to participate in the procedure may not be less than 30 days from the day, on which the concessions notice is placed in the Public Procurement Bulletin.

9. If the concession value exceeds the amount provided for in the provisions issued under Article 11 paragraph 8 on which the requirement to dispatch a works contract notice to the Office for Official Publications of the European Communities depends, the time limit for the submission of the requests to participate in the procedure may not be shorter than:

- 1) 45 days - from the date of dispatching the concession notice to the Office for Official Publications of the European Communities by electronic means with the use of the form posted on the website referred to in a directive;
- 2) 52 days - from the date of dispatching the concession notice to the Office for Official Publications of the European Communities by any other means.

Article 129.

The provisions of Article 91 paragraph 3 shall not apply to the evaluation of tenders in a procedure aimed at awarding a concession.

Article 130.

1. In the specification of essential terms of the contract the awarding entity may require the economic operator to whom the concession has been granted (concessionaire) to subcontract to other entities at least 30% of the total value of the works being the object of the concession.

2. Agreements concluded between economic operators for the purpose of competing jointly for the award of concession and agreements between economic operators and entities being dependant on or dominated by them within the meaning of *the Act of 29 July 2005 on public offer and conditions for implementation of the financial instruments into organised turnover system and on public partnerships (Dz.U. No. 184, item 1539 and of 2006 No. 157, item 1119)* shall not be considered as subcontracting within the meaning of paragraph 1.

3. Economic operators shall enclose to their tenders a list of the entities referred to in paragraph 2. In the event of any changes in relations between the economic operator and those entities, the economic operator shall be required to place updated list.

Article 131.

1. A concessionaire who is himself an awarding entity within the meaning of Article 3 paragraph 1 items 1-3a and 5, must apply the provisions of this Act when awarding contracts resulting from the execution of the concession.

2. When awarding works contracts resulting from the execution of the concession, the value of which is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, the concessionaire, who is not an awarding entity within the meaning of Article 3 paragraph 1 items 1-3a and 5, shall:

- 1) apply the provisions of this Act concerning:
 - a) contract notice,
 - b) calculation of the value of the works contract,
 - c) time limits for submission of requests to participate in procedure in accordance with Article 49 paragraphs 1 and 2, and time limits for submission of tenders, referred to in Article 52 paragraph 2;
- 2) conduct the procedure in compliance with the rules referred to in Article 7 paragraph 1;
- 3) may not apply the provisions referred to in item 1 if at least one of the circumstances referred to in Article 62 paragraph 1 and Article 67 paragraph 1 applies.

3. The provisions of paragraph 2 shall not apply to the award of contracts to entities being dependant on or dominated by the economic operator within the meaning of *the Act of 29 July 2005 on public offer and conditions for implementation of the financial instruments into organised turnover system and on public partnerships* and to the entities with whom the concessionaire has concluded an agreement in order to compete jointly for the award of a concession.

Chapter 5

Utilities contracts

Article 132.

1. The provisions of this Chapter shall apply to contracts awarded by the awarding entities referred to in Article 3 paragraph 1 item 3 and by their unions, and by the awarding entities referred to in Article 3 paragraph 1 item 4, hereinafter referred to as “utilities contracts”, subject to Article 3 paragraph 1 items 5 and 6, if the contract is awarded for the purposes of performing one of the following types of activities:

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

2. The awarding entities awarding the contracts referred to in paragraph 1 item 4 shall apply the provisions of this Chapter also to the award of contracts related to sewage systems and waste water treatment, and to the activities related to obtaining drinking water.

3. The awarding entities awarding the contracts referred to in paragraph 1 item 7 shall apply the provisions of this Chapter also to contracts related to the provision of the following services: management of postal services, transmission of coded documents using electronic means of communication, management of address databases, transmission of registered electronic mail, financial, philatelic and logistical services, particularly the transportation of commodity shipments and their confectioning and storage.

Article 133.

1. This Act shall apply to the awarding of utilities contracts where the contract value is equal to or exceeds the amounts provided for in the provisions issued under Article 11 paragraph 8.

2. The awarding entities which award utilities contracts shall be also obliged to include in the report, referred to in Article 98, information concerning awarded utilities contracts, the value of which is less than amounts provided for in the provisions issued under Article 11 paragraph 8.

3. The provisions of Article 100 paragraph 2 and Article 102 paragraph 3 shall not apply to utilities contracts.

Article 134.

1. The awarding entity may award a utilities contract by open tendering, restricted tendering or by a negotiated procedure with publication. The provisions of Article 55 shall not apply.

2. The awarding entity may conclude a framework agreement after conducting the procedure, applying *mutatis mutandis* the regulations relating to the award of contracts by open tendering, restricted tendering or by a negotiated procedure with publication. The provisions of Article 55 shall not apply.

3. In a restricted tendering procedure or a negotiated procedure with publication, the awarding entity may fix:

- 1) a time limit for the submission of requests to participate in a procedure, which is not shorter than:
 - a) 22 days from the day of dispatch of the contract notice to the Office for Official Publications of the European Communities by electronic means or fax,
 - b) 37 days from the day of dispatch of the contract notice to the Office for Official Publications of the European Communities in other manner than the one referred to in letter a,
 - c) 15 days from the day of dispatch of the contract notice to the Office for Official Publications of the European Communities by electronic means in line with form and procedures specified on the website, referred to in a directive;
- 2) a time limit for the submission of tenders that is not shorter than 10 days, taking into account the time required to prepare and submit a tender;
- 3) any time limit for the submission of tenders, provided that all the economic operators who will be invited to submit tenders, agreed on this.

4. In the case referred to in paragraph 1, the awarding entity may select the best tender using an electronic auction.

5. A utilities contract may be awarded by a negotiated procedure without publication:

- 1) where any one of the circumstances referred to in Article 62 paragraph 1 applies;
- 2) in a previously conducted negotiated procedure with publication no request to participate in a procedure have been submitted, or no tenders have been submitted, or all tenders have been rejected based on the Article 89 paragraph 1 item 2 due to their inconsistency with the description of the object of contract, and the original terms of contracts have not been substantially altered.

6. A utilities contract may be awarded by single-source procedure:

- 1) where one of the circumstances referred to in Article 67 paragraph 1 items 1 – 5 as well as 8 and 9, occur;
- 2) where it is possible to award a contract for a price that is much lower than the market price owing to particularly advantageous circumstances existing for a very limited period of time only;
- 3) where in the case of award, within 3 years of the award of the main contract, to the hitherto economic operator of works, of supplementary contracts constituting not more than 50% of the main contract value and involving the repetition of the same type of contracts, if the main contract was awarded

under the open tendering procedure, restricted tendering procedure or negotiated procedure with publication and the supplementary contract was provided in a contract notice for main contract and concerns the object of the contract described therein.

- 4) in the case of the award, within 3 years of the award of the main contract, to the hitherto economic operator of supplies, of supplementary contracts accounting for not more than 50% of the main contract value and involving the extension of supplies, if the change of economic operator would make it necessary to purchase items of different technical parameters, what would result in technical incompatibility or disproportionately serious technical difficulties in use and supervision, if the main contract was awarded under the open or restricted tendering procedure and the supplementary contract was provided for in the specification of essential terms of the contract for the main contract and concerns the object of the contract described therein.

Article 135.

1. At least once a year, the awarding entity may either dispatch to the Office for Official Publications of the European Communities, or post on its buyer's profile, a periodic indicative notice about the utilities contracts or framework agreements planned within the next 12 months, the value of which:

- 1) for works – is equal to or exceeds the amount provided for in the provisions issued under Article 11 paragraph 8 which requires that a works contract notice should be dispatched to the Office for Official Publications of the European Communities;
- 2) for supplies – when totalled up within a given group of the Common Procurement Vocabulary, subject to Article 133 paragraph 1, is equal to or exceeds the PLN equivalent of EUR 750 000;
- 3) for services – when totalled up within category 1 - 16 defined in Appendix 3 to the Common Procurement Vocabulary, subject to Article 133 paragraph 1, is equal to or exceeds the PLN equivalent of EUR 750 000.

2. The awarding entity may post the notice referred to in paragraph 1 on the buyer's profile after dispatching a notice on the buyer's profile to the Office for Official Publications of the European Communities by electronic means with the use of the form and procedures posted on the website referred to in the directive.

3. The provisions of paragraph 1 shall not apply to any planned contract for services, referred to in Article 5 paragraph 1, or to any planned contract to be awarded in a procedure other than open tendering, restricted tendering, negotiated procedure with publication.

4. If the contract notice was enclosed in a prior information notice about contracts envisaged for the following 12 months, submitted or posted at "buyer's profile" at least 52 days prior to the dispatch of the contract notice to the Office for Official Publications of the European Communities, the awarding entity may fix in the open tendering the time limit for submission of tenders not less than:

- 1) 24 days – from the day the contract notice is dispatched to the Office for Official Publications of the European Communities by electronic means with the use of the form and procedures posted on the website referred to in a directive;

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- 2) 31 days – from the day the contract notice is dispatched to the Office for Official Publications of the European Communities in other way than referred to in item 1.

5. The periodic indicative notice about planned utilities contracts may include a call for competition. In that case, the awarding entity, when awarding a contract by restricted tendering or by a negotiated procedure with publication, may choose not to publish the contract notice.

6. In the event referred to in paragraph 5, the awarding entity shall invite the economic operators who, after the publication of the periodic indicative notice, informed the awarding entity of their interest in participating in the procedure, to confirm that interest, and at the same time providing information about the time limit for the submission of the requests to participate in the procedure.

7. The provisions of Article 48 paragraph 2 shall apply mutatis mutandis to the invitation referred to in paragraph 6.

Article 136.

1. The Act shall not apply to utilities contracts for services or works awarded to, and in case referred to in Article 3 paragraph 1 item 3 or 4 to utilities contracts for supplies if they are granted to:

- 1) entities with which the awarding entities prepare the annual consolidated financial reports within the meaning of accounting regulations,
- 2) entities in which the awarding entities hold over half of the shares or interests, hold more than half of the votes resulting from the shares or stocks, control the managing body or are entitled to appoint over half of the members of their supervisory or management body,
- 3) entities which hold over half of the awarding entities shares or interests, hold more than half of the votes resulting from the awarding entities shares or stocks, control its managing body or are entitled to appoint over half of the members of their supervisory or management body,
- 4) entities who together with the awarding entity are subjected to the influence of another entity as specified in item 3

- if at least 80% of the average income of these entities generated over the previous 3 years by providing services, supplies or performing works came from providing services, supplies or performing works for the awarding entity or entities referred to in items 1-4.

Where the period of business activity is shorter than three years, income generated over the total period of business activity plus the projected income for the remaining part of the three-year period shall be taken into account.

2. This Act shall not apply to utilities contracts for services or works awarded by an entity established by the awarding entities for the purposes of jointly performing the activity referred to in Article 132:

- 1) to one of those awarding entities or
- 2) to an entity related to one of those awarding entities as defined in paragraph 1, if at least 80% of the average income of this entity generated over the previous 3 years by providing services or performing works came from services

rendered to, or works performed for, the related entities as referred to in paragraph 1.

3. The Act shall not apply to utilities contracts awarded to an entity established by the awarding entities for the purposes of jointly performing the activity referred to in Article 132 by one of the awarding entities, provided that this entity was established for a period of at least 3 years, and the document on the basis of which it was established provides that the awarding entities shall remain its members throughout this period.

4. Upon the request of the European Commission, the awarding entity shall dispatch information in the scope, as referred to in paragraphs 1 – 3.

5. Where more than one of the entities referred to in paragraph 1 provides the same or similar services, or performs the same or similar works for the awarding entity, the total income generated by those entities by providing services or performing works shall be taken into account.

Article 137.

1. The Act shall not apply to utilities contracts awarded for the purposes of performing an activity consisting in providing gas or heat to the networks referred to in Article 132 paragraph 1 item 3, if:

- 1) the production of gas or heat is a necessary consequence of conducting an activity other than that described in Article 132 and
- 2) the purpose of the provision of gas or heat is only to utilize the production for economic purposes, and it does not exceed 20% of the economic operator's average turnover over the period of the previous three years, including the year in which the contract is awarded.

2. The Act shall not apply to utilities contracts awarded for the purposes of performing an activity consisting in providing electricity to the networks referred to in Article 132 paragraph 1 item 3, if:

- 1) the production of electricity is necessary to conduct an activity other than that defined in Article 132 and
- 2) the provision of electricity is dependent solely on own consumption, and it does not exceed 30% of the total production over the period of the previous three years, including the year in which the contract is awarded.

3. The Act shall not apply to utilities contracts awarded for the purposes of performing an activity consisting in providing drinking water to the networks referred to in Article 132 paragraph 1 item 4, if:

- 1) production of drinking water is necessary to conduct an activity other than that defined in Article 132 and
- 2) the provision of drinking water is solely dependent on own consumption, and does not exceed 30% of the total production over the period of the previous three years, including the year in which the contract is awarded.

Article 138.

1. The Act shall not apply to utilities contracts awarded for the purposes of resale or lease the object of contract to third parties, provided that the awarding entity does not have a

special or exclusive right to sell or lease the object of contract, and other entities may sell or lease it without restrictions and on the same conditions as the awarding entity.

2. The Act shall not apply to utilities contracts if awarded for the purposes of granting a concession for works, if such concessions are granted for the purpose of performing the activity referred to in Article 132.

3. The Act shall not apply to utilities contracts if awarded for the purposes of performing the activity referred to in Article 132 outside of the European Union, provided that no network or area located within the European Union is used for such performance.

4. Upon the request of the European Commission, the awarding entity shall dispatch information in the scope, as referred to in paragraphs 1 and 2.

Article 138a.

1. The awarding entities conducting the activity referred to in Article 132 paragraph 1 items 1 and 3 shall not apply this Act to award utilities contracts for supplies of electricity or heat and for fuels used to generate energy.

2. The awarding entities conducting the activity referred to in Article 132 paragraph 1 item 4 shall not apply this Act to award contracts for supplies of water.

3. The awarding entity conducting the activity referred to in Article 132 paragraph 1 item 6 based on special rights shall not apply this Act if regular transportation services may be also provided by other carriers in the same area and on the same conditions.

Article 138b.

1. When awarding a utilities contract, the head of the awarding entity may choose not to appoint a tender committee.

2. When choosing not to appoint a tender committee, the head of the awarding entity shall specify a manner of conducting the procedure that ensures efficient awarding of contracts, individual responsibility for the performed tasks and transparency of the work

Article 138c.

1. The awarding entity may:

- 1) request the economic operators to keep any information provided under the contract award procedure confidential;
- 2) demand that the economic operators should provide documents other than those listed in the provisions issued under Article 25 paragraph 2 to prove their compliance with the participation requirements if necessary to evaluate such compliance;
- 3) choose not to request a deposit or a security on due contract performance;
- 4) in the case of a supply contract, reject a tender in which the proportion of commodities originating either from the member states of the European Union or from other states with which the European Community has concluded agreements on the equal treatment of entrepreneurs does not exceed 50%, if this requirement is provided for in the specification of essential terms of contract;

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- 5) refrain from the obligation of excluding from the contract award procedure such economic operators being a subject of exclusion under Article 24 paragraph 1 item 1, 2 or 3, if such a provision was placed in the specification of essential terms of contract.

2. Where the most advantageous tender cannot be selected as two or more tenders with the same price or representing the same balance of price and other tender evaluation criteria have been submitted, and in the specification of essential terms of contract the rejection of the tender has not been included in accordance with paragraph 1 item 4, the awarding entity shall choose the tender, which could not be rejected under the provisions of paragraph 1 item 4. Prices stated in the tenders are equal, provided that the difference between the price of the most advantageous tender and the prices of other tenders, which could not be rejected under the provisions of paragraph 1 item 4, does not exceed 3%.

Article 138d.

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Article 138e.

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Article 138f.

1. The awarding entities who, in accordance with the published decision of the European Commission operate on a competitive market access to which is not restricted shall not apply the provisions of this Act. This provision shall apply *mutatis mutandis* in the case where the European Commission fails to issue the decision within 7 months from the day of receiving the request, as referred to in paragraph 2.

2. After analysing the relevant market, the competent authority, acting either on its own initiative or at the request of the awarding entity, may lodge an application to the European Commission to rule that the awarding entities conducting the activity referred to in Article 132 operate on a competitive market access to which is not restricted.

3. The competent authority shall analyse the market in terms of the relevant activity and prepare the application in accordance with the requirements laid down in the Decision of the European Commission of 7 January 2005 concerning the detailed rules for applying the procedure envisaged in Article 30 of Directive 2004/17/EC of the European Parliament and Council on the coordination of procedures for the award of public contracts in the water, energy, transport and postal services sectors (OJ L 7 of 11.01.2005, p. 7). This application shall be harmonised with the President of the Office for Competition and Consumer Protection and with the PPO President.

4. The Council of Ministers shall indicate, by a regulation, the competent authorities to make the applications referred to in paragraph 2, taking into account the type of activity and the scope of operation of the relevant authorities and the competent authority's knowledge of the functioning of the relevant market in terms of a given activity.

**TITLE IV
PUBLIC PROCUREMENT CONTRACTS**

Article 139.

1. Public procurement contracts, hereinafter referred to as "procurement contracts" shall be regulated by the provisions of *the Act of 23 April 1964 - Civil Code*, unless the provisions of this Act provide otherwise.

2. A procurement contract shall, under the pain of nullity, require a written form, unless separate provisions provide for a special form.

3. Procurement contracts shall be open and shall be made accessible pursuant to rules laid down in the provisions concerning public information.

Article 140.

1. The scope of economic operator's performance resulting from the procurement contract shall be identical with the commitment undertaken in the tender.

2. In highly justified cases, it is acceptable to change the performance resulting from the commitment undertaken in the tender prior to the conclusion of a contract as a result of the circumstances, which could not be foreseen while selecting the best tender or such changes are advantageous for the awarding entity, and the economic operator gave its assent. Changes of performance resulting from the commitment shall not concern the commitments of the economic operator included in the tender, which were evaluated in the course of a procedure.

3. The contract shall remain void in the part which exceeds the object of contract specified in the specification of essential terms of contract.

Article 141.

The economic operators, referred to in Article 23 paragraph 1, shall be jointly responsible for the execution of the public contract and provision of security on due performance of the contract.

Article 142.

1. A procurement contract shall be concluded for a definite duration.

2. The awarding entity may conclude a public contract, having as its object periodical or continuous services, for a period longer than 4 years, if the performance of a contract results in lower costs of the performance of contract for a longer period of time than the costs of the performance of contract in 4 year-period or it is justified by the payment capacity of the awarding entity or the scope of envisaged outlays and the period necessary for repayment.

3. If the contract value, referred to in paragraph 2 is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, the awarding entity informs the PPO President about the intention of concluding a contract for a longer period than 4 years within 3 days from the start of a procedure giving factual and legal justification.

4. The provisions of paragraph 3 shall not apply to contracts on:

- 1) credit and loan;
- 2) bank account, if the contract period does not exceed 5 years;
- 3) insurance, if the contract period does not exceed 5 years;

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- 4) concession.

Article 143.

1. Contracts may be concluded for indefinite duration, if the contract object is the supply of:

- 1) water via the water and sewage network or disposal of sewage to such a network;
 - 2) electrical energy from the power network;
 - 3) gas from the gas grid;
 - 4) heat from the heat distribution network;
 - 5) license for software
2. Article 142 paragraph 3 shall not apply

Article 144.

1. No amendments in reference to the content of the concluded procurement contract shall be permitted where taking them into account would require a change in the content of the tender which was the basis for the choice of the economic operator, unless the necessity to introduce such modifications results from circumstances, which could not have been foreseen at the time of concluding the procurement contract or where these modifications are advantageous for the awarding entity.

2. Any modification of the procurement contract in breach of the provision of paragraph 1 above shall be null and void.

Article 145.

1. In the event of a material change of circumstances which causes that the execution of the procurement contract is no longer in the public interest, and which could not have been foreseen at the time of concluding the contract, the awarding entities may renounce a contract within a period of 30 days from the date on which they became aware of these circumstances.

2. In the case referred to in paragraph 1, the economic operator may demand remuneration due for the performed part of the procurement contract.

Article 146.

1. Without prejudice to separate provisions, a procurement contract shall be null and void if:

- 1) the contract notice was not placed in the Public Procurement Bulletin or published in the Official Journal of the European Union, unless there is no obligation of publication of notices in view of provisions of the Act;
- 2) the awarding entity awarded a contract without obtaining the required administrative decision and in particular concluded a procurement contract without the required consent prior to the final result of a protest;
- 3) the awarding entity concluded a procurement contract prior to the end of the control referred to in Article 167;

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- 4) the awarding entity concluded a procurement contract prior to the expiry of the time limit for initiating the control referred to in Article 167;
 - 5) the awarding entity selected the tender in a gross breach of this Act;
 - 6) there was a breach of the provisions of this Act in the award procedure which influenced the results of the procedure;
 - 7) the awarding entity concluded a contract prior to the expiry of 7 days from the day, on which the information on selection of the best is submitted.
2. The PPO President may apply to the court for a decision of invalidity of:
- 1) the procurement contract referred to in paragraph 1;
 - 2) part of the procurement contract, referred to in Article 140 paragraph 2;
 - 3) modifications of the procurement contract in breach of Article 144 paragraph 1.

Article 147.

1. The awarding entity may request the economic operator to provide security on due performance of the contract, hereinafter referred to as „security”.

2. Security shall serve to cover claims in respect of non-performance or improper performance of a contract. If an economic operator is at the same time a guarantor, this security shall also serve to cover claims in respect of quality guarantee.

3. The awarding entity shall require the economic operator to provide security, if:

- 1) the value of a contract for works is equal to or exceeds the amounts specified in provisions issued under Article 11 paragraph 8;
- 2) the value of a contract for supplies or services is equal to or exceeds PLN equivalent of EUR 10 000 000, with the exception of contracts for credits and loans;
- 3) the contract is to be concluded for a period longer than 4 years, with the exception of contracts referred to in Article 142 paragraph 4 and Article 143.

4. In exceptional cases, in particular where the request for a security could prevent the award of a contract or result in a significant increase in the price of tenders, the awarding entity may refrain from demanding a security.

Article 148.

1. The security may be provided at the economic operator's choice in one or several of the following forms:

- 1) cash;
- 2) bank sureties or guarantees of collective savings-loan fund, however the surety of collective savings - loan fund is always a financial surety;
- 3) bank guarantees;
- 4) insurance guarantees;

5) sureties granted by entities, referred to in Article 6b paragraph 5 item 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 a security may be provided also:

- 1) bills of exchange with the surety of bank or collective savings-loan fund;
- 2) by establishing a pledge on securities issued by the State Treasury or unit of territorial self-government;
- 3) by establishing a registered pledge, in accordance with the principles laid down in the provisions concerning registered pledges and the pledge register.

3. An economic operator shall remit security to be provided in cash by bank transfer to a bank account indicated by the awarding entity.

4. In the event of a deposit made in cash an economic operator may agree to count the amount of the deposit towards the security.

5. In the event of a cash security the awarding entity shall keep it on a bank account bearing interest. The awarding entity shall return security provided in cash together with interest resulting from the bank account agreement on which it has been kept less the cost of its operation and bank commission for transfer of funds to the economic operator's bank account.

Article 149.

1. In the course of the execution of procurement contract the economic operator may change the form of security to one or several of those referred to in Article 148 paragraph 1.

2. With the approval of the awarding entity the economic operator may change the form of the security to one or several of those referred to in Article 148 paragraph 2.

3. The change of the form of security shall be made preserving its continuity and without decreasing its amount.

Article 150.

1. The amount of the security shall be determined on a percentage-wise basis in relation to the aggregate price quoted in the tender or the maximum nominal value of the awarding entity's commitment under the contract, if unit price or unit prices have been quoted in the tender.

2. A security shall be fixed at 2 to 10% of the price quoted in the tender or the maximum nominal value of the awarding entity's commitment under the contract.

3. If the time for the completion of the contract exceeds one year, the security, with the consent of the awarding entity, may be established by deductions from dues for the already performed part of supplies, services or works.

4. In the case, referred to in paragraph 3, an economic operator shall be required to contribute at least 30% of the security amount on the date of the contract.

5. The awarding entity shall pay the amounts deducted to the bank account on the same day on which it pays invoices.

6. In the case, referred to in paragraph 3, payment of the full amount of the security shall be done not later than by the end of the first half of the period for which the contract was concluded.

Article 151.

1. The awarding entity shall return the security within 30 days of the completion of the contract and acknowledgement by the awarding entity as duly performed.

2. The amount retained to secure claims for warranty for defect or guarantee of quality shall not exceed 30% of the amount of the security.

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 defect or quality guarantee.

TITLE V PRESIDENT OF THE PUBLIC PROCUREMENT OFFICE (PPO PRESIDENT)

Chapter 1

Scope of activities

Article 152.

1. The PPO President is a central government body competent for matters concerning public contracts.

2. The PPO President shall be subordinate to the Prime Minister.

3. The PPO President shall be assisted in his work by the PPO.

4. The organisation of the PPO shall be defined by a statute issued by the Prime Minister by an order.

Article 153.

1. The PPO President shall be appointed by the Prime Minister from among persons belonging to the state personnel reserve. The Prime Minister shall recall the PPO President.

2. [deleted]

Article 154.

The PPO President:

- 1) prepares drafts of normative acts on public contracts;
- 2) takes decisions on individual issues stipulated in this Act;
- 3) publishes by electronic means the Public Procurement Bulletin, where all the notices provided for in this Act are placed;
- 4) keeps and publishes in the Public Procurement Bulletin a list of arbitrators examining appeals against dismissal or rejection of protest lodged in contract award procedures;
- 4) [deleted];

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- 5) keeps and publishes on the PPO website a list of organisations authorised to submit legal protection measures;
 - 6) ensures the functioning of the system of legal protection measures;
 - 7) prepares training programmes, organises and encourages training in the field of public procurement;
 - 8) prepares and disseminates standard criteria for assessment of the substance of the training;
 - 9) [deleted]
 - 10) disseminates standard forms of public procurement contracts, rules of procedures and other documents used in awarding public contracts;
 - 11) watches over observance of the public procurement system rules and in particular carries out controls of the contract award process within the scope stipulated in this Act;
 - 12) disseminates the principles of professional ethics of persons performing tasks within the public procurement system;
 - 13) aspires to provide uniform application of the procurement provisions, considering the judicature of courts and the Constitutional Court, in particular dissemination of decisions of arbitration panels, referred to in Article 186 paragraph 1, decisions of courts and Constitutional Court;
 - 13) aspires to provide uniform application of the procurement provisions, considering the judicature of courts and the Constitutional Court, in particular dissemination of decisions on public procurement of the National Appeal Chamber, courts and Constitutional Court;
 - 14) maintains international co-operation on issues relating to public contracts;
 - 15) analyses the functioning of the system of public contracts;
 - 16) prepares and submits to the (Polish) Council of Ministers and to the European Commission annual reports on the functioning of the system of public contracts;
 - 17) presents to the Prime Minister an annual information on the functioning of the National Appeal Chamber, which considers the problems resulting from the adjudication;
 - 18) proposes candidates for the post of Chairman and Vice-chairman of the National Appeal Chamber;
 - 19) puts forward a motion to appoint the disciplinary agent of the National Appeal Chamber;
 - 20) carries out activities which refer to E-procurement.

Article 155.

1. The PPO President shall perform the tasks provided for in this Act with the assistance of no more than two Vice-Presidents.

2. The Vice-Presidents of the PPO shall be appointed by the Prime Minister from among persons belonging to the state personnel reserve at the request of the PPO President.

The Prime Minister shall recall the Vice-Presidents of the PPO at the request of the PPO President.

3. [deleted]

Article 156.

[deleted]

Chapter 2

Public Procurement Council

Article 157.

1. The Public Procurement Council shall hereby be established, hereinafter referred to as the "Council", which is an advisory and consultative body of the PPO President.

2. The Council shall in particular:

- 1) express its opinions on particularly important matters of the public contracts system presented to it by the PPO President;
- 2) give its opinion on normative acts concerning public contracts;
- 3) give its opinion on the annual reports of the PPO President concerning the functioning of the public contracts system;
- 4) establish the principles of professional ethics of persons performing tasks specified in this Act within the public contracts system;
- 5) describe in line with rules, referred to in the Act, reservations to the post control recommendations of the PPO President;
- 5) [deleted]

Article 158.

1. The Council shall be composed of 10 to 15 members appointed by the Prime Minister.
2. Parliamentary groups, national self-government organisations and national entrepreneurs' organisations shall be in particular entitled to offer candidates.
3. The Prime Minister shall appoint members of the Council from among persons who:
 - 1) are Polish citizens;
 - 2) enjoy all public rights;
 - 3) have not been convicted of an offence committed in connection with a contract award procedure, bribery or any other offence committed in order to gain a financial benefit;
 - 4) have the knowledge and authority guaranteeing proper performance of the Council's tasks.

4. The Prime Minister shall appoint from among the persons, referred to in paragraph 1, the Chairman of the Council. The Council shall appoint the Vice-Chairman of the Council from among its members.

5. Members of the Council are entitled to remuneration for participation in the Council's works.

6. The proceedings of the Council shall be regulated by the Rules of Procedure adopted by the Council.

Article 159.

1. The term of office of the Council shall expire together with the term of office of the PPO President.

2. Membership in the Council shall expire in the event of expiry of the term of office of the Council, death of its member, his dismissal or resignation.

3. The Prime Minister shall recall a member of the Council if he ceased to satisfy one of the conditions referred to in Article 158 paragraph 3, and at the request of the PPO President in the event of:

- 1) failure to fulfil the obligations of a Council's member;
- 2) loss of authority guaranteeing proper performance of the Council's tasks;
- 3) illness preventing him from carrying out the functions of a member of the Council.

Article 160.

1. The PPO provides assistance to the proceedings of the Council.

2. The Prime Minister shall specify, by a regulation, the amount of remuneration of the Chairman, Vice-Chairman and other members of the Council, taking into consideration performed functions and the scope of duties of the Chairman, Vice-Chairman and other members of the Council.

Chapter 3

Control of the award of contracts

Article 161.

1. The PPO President shall control the award of contracts.

2. The objective of controls is to verify the conformity of contract award procedures with this Act.

3. The control shall take place in the seat of the PPO.

4. The PPO President carries out a control, referred to in paragraph 1, also at the request of a managing institution, referred to in the provisions on the National Development Program and in the provisions concerning rules for conducting the development policy.

Article 162.

1. Excluded from participation in the controls shall be employees of the PPO who:
 - 1) participated in the procedure being controlled or actions directly connected with their preparation on the part of the awarding entity or an economic operator;
 - 2) are relatives by marriage, blood or affinity in direct line or are relatives by blood or affinity in indirect line up to the second degree, or relatives by adoption or guardianship with the person appearing on the part of the awarding entity or an economic operator in the procedure being controlled, his legal agent or members of managing or supervisory bodies of legal persons competing for the contract being controlled;
 - 3) during the three years prior to the date of the start of the award procedure being controlled remained in a relationship of employment or freelance agreement with the awarding entity or economic operator or if the persons were members of managing or supervisory bodies of legal persons competing for the contract being controlled;
 - 4) remain in such legal or actual relationship with the person appearing on the part of the awarding entity or economic operator in the procedure being controlled, which may raise justified doubts as to their impartiality.
2. The employee of the PPO shall inform the PPO President about reasons of his exclusion from the participation in a control.
3. The PPO President shall decide on the exclusion of the employee by a decision.

Article 163.

1. The start of a control shall be made by the delivery to the awarding entity of a request to submit the contract award procedure documentation which is certified by the head of the awarding entity to be in conformity to the original, subject to Article 167 paragraph 3.
2. Facts are established on the basis of collected evidence.
3. Documents and explanations, referred to in Article 164 paragraph 2, and also expert opinions shall, in particular, constitute evidence.
4. The evidence shall be enclosed as an annex to the control report, referred to in Article 165.

Article 164.

1. The PPO President may request from the head of the awarding entity to forthwith submit copies of the documents relating to the contract award procedure certified for the conformity with the original.
2. The PPO President may request from the head of the awarding entity and his employees to provide written explanations of matters relating to the object of a control within the time limit laid down by him.
3. Where determining or evaluation of the factual state of affairs or performance of any other control actions requires special knowledge the PPO President may consult experts. The expert shall be entitled to receive remuneration payable by the PPO President in

accordance with the regulations on dues for the witnesses, experts and parties in judicial proceedings.

Article 165.

1. Following the control a control report shall be prepared.
2. The control report shall include in particular:
 - 1) name (company name) and address of the awarding entity;
 - 2) date of start and end of a control;
 - 3) names of persons performing the control;
 - 4) indication of the contract award procedure, which were the object of the control;
 - 5) information on findings of breaches and names of persons responsible;
 - 6) list of annexes.

Article 166.

1. [deleted]
2. Post-control recommendations, referred to in Article 169 paragraph 1, or information about the results of the control shall be constitute an annex to the control report and to the report referred to in Article 96

Article 167.

1. The PPO President may control the award of contracts prior to the conclusion of a procurement contract (ex-ante control).

2. . The PPO President shall carry out an ex-ante control if the value of the contract or of the framework agreement:

- 1) for works - is equal to or exceeds the PLN equivalent of EUR 20 000 000;
- 2) for supplies or services - is equal to or exceeds the PLN equivalent of EUR 10 000 000.

3. In the case of procedures referred to in paragraph 2, the awarding entity shall submit to the PPO President for ex-ante control copies of the documentation of the contract award procedure certified by the head of the awarding entity for the conformity with the original, immediately after selecting the best tender, and if the protest concerning the selection of the best tender has been lodged - after its final resolution but prior to the conclusion of a contract.

4. In the case of a contract awarded in lots, where the value of individual lots does not exceed the amounts referred to in paragraph 2, the PPO President may choose not to carry out an ex-ante control, informing the awarding entity about that fact immediately after receiving a copy of the documentation referred to in paragraph 3.

Article 168.

1. The ex-ante control shall be commenced not later than within 7 days from the day, on which the information on the selection of the best tender was submitted to the PPO President, subject to Article 167 paragraph 3, or from the day of the receipt of the notice,

referred to Article 55 paragraph 2, Article 60b paragraph 2, Article 62 paragraph 2 and Article 67 paragraph 2.

2. In the case of the lodge of a protest after the start of an ex-ante control, the PPO President shall suspend its execution until the final resolution of the protest.

3. In the case of the start of ex-ante control, no procurement contract shall be concluded until:

- 1) the breaches listed in post control recommendations, referred to in Article 169 paragraph 1 item 2, are removed;
- 2) the resolution, referred to in Article 169a paragraph 3, is dispatched.

4. The start of ex-ante control shall suspend the term during which an economic operator must maintain his tender, until its completion.

5. Final examination of the reservations shall be the expiry of the time limit for their lodging or dispatch of the resolution, referred to in Article 169a paragraph 3.

6. In the case of the expiry of the validity of a deposit during the control, the provisions of Article 24 paragraph 2 item 4 shall not apply.

Article 169.

1. The end of an ex-ante control shall be the delivery of the post control recommendations or information on the result of the control, which point at:

- 1) the obligation of cancellation of the procedure on account of the breaches, referred to in Article 146 paragraph 1;
- 2) the obligation of removing of the confirmed breaches;
- 3) lack of breaches or confirmation of breaches, which did not have impact on the result of the contract award procedure.

2. The submission of the post- control recommendations or information on the results of ex-ante control shall occur not later than within 14 days from the day of submission of the required documents, and in case of the highly complicated control- not later than within 30 days from the day of submission of the required documents. The PPO President shall inform the awarding entity that the control is highly complicated not later than within 14 days from the day of submission of the required documents.

2a. The end of the ex-ante control shall also mean a failure to submit the post-control recommendations within the time limits, referred to in paragraph 2; in such case it is considered that the PPO President has not found any infringement in contract award procedure.

3. The head of the awarding entity shall inform in writing the PPO President and the economic operator, whose tender has been selected, about the performance of the action specified in the post control recommendations, referred to in paragraph 1 item 1 and 2, or shall make reservations, referred to in Article 169a paragraph 1.

Article 169a

1. The head of the awarding entity possess the right of making justified reservations to the PPO President within 7 days from the receipt of the post control recommendations, referred to in Article 169.

2. The PPO President examines the reservations, referred to in paragraph 1, within 7 days from their receipt. In case of not admitting reservations, which refer to the obligation of cancellation of the procedure, referred to in Article 169 paragraph 1 item 1, dispatches those reservations for an opinion to the Council, however not later than the expire date of this time limit.

3. The Council prepares an opinion on the reservations in form of resolution, within 30 days from the day of their dispatch by the PPO President.

4. The opinion of the Council is binding for the PPO President.

2. The PPO President examines the reservations, referred to in paragraph 1, within 7 days from their receipt. In case of not admitting reservations, which refer to the obligation of cancellation of the procedure, referred to in Article 169 paragraph 1 item 1, shall submit those reservations for an opinion to the National Appeal Chamber, however not later than the expire date of this time limit.

3. The National Appeal Chamber composed of 3 members shall prepare an opinion on the reservations in form of resolution, within 15 days from the day of their submission by the PPO President. The provisions of Article 186 paragraph 2 shall apply mutatis mutandis.

4. The opinion of the National Appeal Chamber is binding for the PPO President.

5. The PPO President shall inform the head of the awarding entity about the final examination of the reservations within 3 days from the resolution, referred to in paragraph 3.

6. Article 162 shall apply mutatis mutandis to the members of the National Appeal Chamber who examine the reservations..

Article 170.

1. The PPO President may carry out a control of the awarded contract within 4 years of its award (ex-post control).

2. Following the end of the ex-post control the PPO President shall send the entity subject to control information about the results of the ex-post control, which shall include:

- 1) description of the object of the contract, which was the object of the control;
- 2) information on confirmation of breach or lack of breach.

Article 171.

In the event of disclosed breach of the provisions of this Act, the PPO President may:

- 1) notify the competent agent for public finance discipline of the breach of public finance discipline or make a request to the relevant enforcement committee to impose a penalty for the breach of public finance discipline;
- 2) impose a financial penalty referred to in Title VII;
- 3) apply to the court for the statement of invalidity of the procurement contract in whole or in part.

Chapter 4 Arbitrators

Article 172.

1. The PPO President shall maintain and publish in the Public Procurement Bulletin the list of arbitrators who examine appeals against dismissal or rejection of protests lodged in contract award procedures.

2. The following personal data of arbitrators shall be advertised:

- 1) name;
- 2) education;
- 3) profession;
- 4) degree or academic title.

3. The PPO President shall additionally collect and process the following personal data concerning arbitrators:

- 1) date and place of birth;
- 2) parents' names and mother's maiden name;
- 3) place of residence and address for correspondence;
- 4) data concerning education and professional career;
- 5) NIP number /taxpayer identification number;
- 6) bank account number;
- 7) information concerning criminal record.

Article 173.

1. A person who satisfies the following conditions shall be eligible to become an arbitrator:

- 1) is a Polish citizen;
- 2) has higher education;
- 3) has full legal capacity to enter into legal transactions;
- 4) enjoys all public rights;
- 5) has not been validly convicted of offences committed intentionally;
- 6) during the past 5 years has not been stricken off the list of arbitrators for gross flagrant breach of duty as an arbitrator.

2. The PPO President shall enter in the list of arbitrators persons satisfying the conditions referred to in paragraph 1, who passed the exam on the knowledge of rules governing the award of contracts before an examination board appointed by the PPO President with the best results. Persons shall enter in the list of arbitrators by an administrative decision.

3. An arbitrator shall submit to the PPO President by 31 March of each year a statement on:

- 1) currently pending penal procedures against him together with information about the object of these procedures;
- 2) his financial standing as of 31 December of the previous year.

4. An arbitrator shall submit the statement referred to in paragraph 3 item 2 on the form, which is specified in the provisions on restriction of performing economic activities by persons performing public functions.

5. An arbitrator's term of office shall be 6 years from the day on which his name was entered in the list of arbitrators.

6. An arbitrator shall be deleted from the list before the expiry of his term of office only in the following circumstances:

- 1) loss of Polish citizenship;
- 2) loss or restriction of capacity to enter into legal transactions;
- 3) loss of the enjoyment of all public rights;
- 4) valid conviction for an offence committed intentionally;
- 5) gross breach or persistent breach of the duties of an arbitrator;
- 6) refusal to take an oath;
- 7) failure to submit the statement referred to in paragraph 3;
- 8) submission by the arbitrator of a request to be deleted from the list.

7. Gross breach of the duties of an arbitrator referred to in paragraph 6 item 5, shall be regarded a partial performance of arbitrator's functions, acting as an attorney-in-fact in appeal procedures concerning public contracts, failure to submit a request for exclusion from the procedure in the case of the circumstances preventing the arbitrator from performing his duties.

8. Arbitrators are deleted from the list by the PPO President by an administrative decision.

9. The PPO President shall suspend, by an administrative decision, an arbitrator in his rights and duties where he is charged with having committed an offence of bribery or any other offence committed in order to obtain financial benefit.

10. Entry in the list of arbitrators, deletion from the list, expiry of the term of office of an arbitrator or suspension in the rights and duties thereof shall be announced by the PPO President in the Public Procurement Bulletin.

Article 174.

1. Arbitrators shall be recruited to the list by the PPO President once every three years.

2. Recruitment notice shall be published in the Public Procurement Bulletin.

3. The notice shall in particular include:

- 1) information about the maximum number of persons who will be entered in the list of arbitrators in the given recruitment proceedings;
- 2) time limit for receiving applications of candidates for arbitrators, which shall not be less than 30 days from the date the notice appeared in the Public Procurement Bulletin;
- 3) a list of documents which should be submitted together with the candidate's application;
- 4) the date of the examination referred to in Article 173 paragraph 2, and information about the minimum number of points needed to pass the examination.

4. Authorised to propose candidates for arbitrators shall be:

- 1) the PPO President;
- 2) ministers, heads of central government authorities and voivodes;
- 3) organisations referred to in Article 179 paragraph 2;
- 4) national self government organisations;
- 5) regional clearing chambers;
- 6) regional chamber of legal advisors;
- 7) regional chamber of advocates.

Article 175.

1. Prior to undertaking their responsibilities arbitrators are obliged to take an oath before the PPO President by repeating the following words: „I hereby solemnly swear to diligently fulfil the duties of an arbitrator, to take impartial decisions, in accordance with the provisions of law, abide by the rules of ethics relating to arbitrators and to act being guided by the principles of dignity and honesty". Arbitrators confirm the taking of the oath by subscribing their signatures thereto.

2. Arbitrators shall be bound to act in line with the rules of ethics relating to arbitrators and in particular to fulfil their function with dignity and utmost diligence in an impartial manner. When examining an appeal the arbitrator represents neither the participants in the procedure nor the PPO President.

3. A person entered in the list of arbitrators shall not act as an attorney-in-fact in appeal procedures concerning public contracts.

4. An arbitrator shall be subject to legal protection provided for public officials.

5. An employer shall be bound to exempt an arbitrator from his duties for the time necessary for him to fulfil his function without the right to remuneration for that period.

6. Arbitrators are entitled to remuneration for activities performed.

Article 176.

The Council of Ministers shall define, by a regulation, the procedure and conditions regulating entries on the list of arbitrators, the manner of appointing the examination board and conducting the examination as well as the scope of examination - taking into consideration the need to ensure objective verification of candidate's knowledge, the efficient conduct of the appeal procedure and the fact that documents containing information subject to personal data protection and in particular the information from the National Register of Criminal Records may be required to confirm a candidate's compliance with the conditions referred to in Article 173 paragraph 1.

Chapter 4
National Appeal Chamber

Article 172.

1. The National Appeal Chamber hereinafter referred to as the “Chamber” shall be established by the PPO President and shall be competent for the examination of the appeals against resolution of protests lodged in contract award procedures.

2. The bodies of the Chamber are:

- 1) Chairman;
- 2) Vice-chairman;
- 3) General Assembly composed of the members of the Chamber.

3. The Chairman of the Chamber conducts the works of the Chamber, in particular:

- 1) represents the Chamber outside;
- 2) presides over the General Assembly;
- 3) fixes the dates of sessions of adjudication panels and orders the joint examination of the appeals;
- 4) appoints the adjudication panel of the Chamber for examination of the appeal, including its Chairman;
- 5) supervises the efficiency of the Chamber’s work;
- 6) submits to the PPO President, the annual information on the functioning of the Chamber considering the problems resulting from the adjudication, after it is passed by the General Assembly.

4. The General Assembly of the Chamber:

- 1) prepares and passes the annual information on functioning of the Chamber considering the problems resulting from the adjudication;
- 2) appoints the composition of the disciplinary court;
- 3) examines the appeal against the decision of the disciplinary court;
- 4) examines and gives opinion other subject matters submitted by the PPO President or raised by members of General Assembly.

5. The PPO President calls the General Assembly of the Chamber at least two times a year, and at written request of at least half of its members or the chairman of the disciplinary court within 14 days of the date it was put forward. The resolutions of the General Assembly are passed by a majority vote in the presence of at least half of the Chamber’s composition; in case of equal number of votes, the Chairman of the Chamber has a casting vote.

Article 173.

1. The Chamber consists of no more than 100 members appointed and dismissed by the Prime Minister from among persons satisfying the requirements, referred to in paragraph 2, who obtained the best results in qualifying procedure.

2. A person eligible to become member of the Chamber::

- 7) is a Polish citizen;
- 8) has higher law education;
- 9) has full legal capacity to enter into legal transactions;
- 10) enjoys all public rights;

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- 11) has an unblemished reputation;
 - 12) has not been validly convicted of offences committed intentionally;
 - 13) has minimum 5 year work experience in public administration or at the positions connected with giving legal advice, preparing legal opinions, preparing drafts of legal acts as well as acting before courts and offices.
 - 14) is at least at the age of 29.

3. The Chairman and Vice-chairman are appointed for a 3-year term of office by the Prime Minister on the motion of the PPO President from among candidates proposed by the members of the Chamber. The provisions of Article 174 paragraph 5 shall apply *mutatis mutandis* to the recall of the Chairman and Vice-chairman of the Chamber before the expiry of term of office.

4. The employment relationship is established based on the appointment and date fixed in the appointment act. The PPO President shall perform actions within the labour law concerning the members of the Chamber. In matters concerning the employment relationship of the members not regulated by this Act, the provisions of the Act of 26 June 1974- Labour Code (Dz. U. of 1998 No 21 item 94 as amended⁶) shall apply *mutatis mutandis*.

5. Prior to undertaking their responsibilities, the members of Chamber are obliged to take an oath before the Prime Minister by repeating the following words: „I hereby solemnly swear to diligently fulfil the duties of the member of Chamber, to act being guided by the principles of dignity and honesty“; the oath can be ended with “so help me God”. The members of the Chamber confirm the taking of the oath by subscribing their signatures thereto.

6. The basis for determining the base remuneration for the Chairman and the Vice-chairman, as well as the other members the Chamber is the multiple base amount determined in the budget act for the given year, pursuant to Article 9 paragraph 1 item 2 of *the Act of 23 December 1999 on the remuneration in the state-budget sector and on amendments to certain acts (Dz. U. No 110 item 1255, as amended⁷)* for the employees of the state-budget sector referred to in Article 5 item 1 letter b) of that Act;

7. The members of the Chamber are entitled for seniority anniversary reward, starting from the 6th year of work, which amounts to 5% of the monthly base remuneration and increases 1% after each year of work, until it reaches 20% of the monthly base remuneration.

8. The members of the Chamber are entitled for anniversary reward, which amounts to:

- 1) 75% of the monthly remuneration- after 20 years of work;
- 2) 100% of the monthly remuneration- after 25 years of work;

⁶ The amendments to the uniform text of the mentioned Act were published in the Dz. U. of 1998 No. 106 item 668 and No. 113 item 717, of 1999 No. 99 item 1152, of 2000 No. 19 item 239, No. 43 item 489, No. 107 item 1127 and No. 120 item 1268, of 2001 No. 11 item 84, No. 28 item 301, No. 52 item 538, No. 99 item 1075, No. 111 item 1194, No. 123 item 1354, No. 128 item 1405 and 154 item 1805, of 2002 No. 74 item 676, No. 135 item 1146, No. 196 item 1660, No. 199 item 1673 and No. 200 item 1679, of 2003 No. 166 item 1608 and No. 213 item 2081, of 2004 No. 96 item 959, No. 99 item 1001, No. 120 item 1252 and No. 240 item 2407, of 2005 No. 10 item 71, No. 68 item 610, No. 86 item 732 and No. 167 item 1398 and of 2006 No. 104 item 708 and No. 133 item 935, No. 217 item 1587 and No. 221 item 1615 and of 2007 No. 64 item 426.

⁷ The amendments to the mentioned Act were published in the Dz. U. of 2000 No. 19 item 239, of 2001 No. 85 item 924, No. 100 item 1080 and No. 154 item 1784 and 1799, of 2002 No. 74 item 676, No. 152 item 1267, No. 213 item 1802 and No. 214 item 1805, of 2003 No. 149 item 1454, No. 166 item 1609, No. 179 item 1750, No. 199 item 1939 and No. 228 item 2256, of 2004 No. 240 item 2407 and No. 273 item 2703, of 2005 No. 164 item 1365 and No. 249 item 2104 and of 2006 No. 104 item 708 and 711 and of 2007 No. 64 item 433.

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- 3) 150% of the monthly remuneration- after 30 years of work;
 - 4) 200% of the monthly remuneration- after 35 years of work;
 - 5) 300% of the monthly remuneration- after 40 years of work;
 - 6) 350% of the monthly remuneration- after 45 years of work.

9. The work period, which entitles for anniversary reward, includes all the previous employment periods and other periods, if they, in view of separate provisions, are to be included in the work period, which determines the employee rights. The provisions on anniversary reward, referred to in provisions on the public office employees, shall apply *mutatis mutandis* to evaluation and payout of anniversary reward.

10. The Prime Minister shall determine by means of a regulation, the multiple base amount, referred to in paragraph 6, considering the function performed by a member of the Chamber and the fact, that the multiplicity of the base amount cannot be less than 4,5.

11. The organizational- technical support and accountant service for the Chamber are provided by the Office.

Article 174.

1. The membership in the Chamber cannot be joined with:

- 1) mandate of the Member of Parliament or Senator,
- 2) a mandate of the councilor, borough leader (mayor, president of the city) or the membership in board of poviats or voivodships;
- 3) a membership in regional clearing chamber or self governmental appeal bodies;
- 4) membership of a political party or performance of political function.

2. The Chamber members may not:

- 1) take up additional employment and other paid work, except for the work as teaching staff, academic teacher or a research worker if it is less than the full time work at this position, if this employment does not interfere with the duties as a member of the Chamber ;
- 2) perform business activity individually or together with other persons, as well as manage such activity or be a representative or plenipotentiary in conducting such activity;
- 3) be a member of board, a supervisory board or an audit committee or plenipotentiary of commercial companies;
- 4) be a member of foundation board, which performs business activity;
- 5) own more than 10% of stocks or shares which accounts for more than 10% of the seed capital of such commercial companies..

3. A member of the Chamber shall submit to the PPO President by 31 March of each year a statement on:

- 3) currently pending penal procedures against him together with information about the object of these procedures;
- 4) his financial standing as for 31 December of the previous year by using *mutatis mutandis* the form, specified in provisions on restriction of performing economic activities by persons performing public functions.

4. Membership in the Chamber shall expire in the event of the death of its member or his dismissal.

5. The Prime Minister shall recall the member of the Chamber in case of:

- 9) loss of Polish citizenship;
- 10) loss or restriction of capacity to enter into legal transactions;
- 11) loss of the public rights;
- 12) loss of authority which gave a guarantee of the correct fulfilment of responsibilities of a member of the Chamber;
- 13) valid conviction for an offence committed intentionally or intentional tax fraud;
- 14) expiry of the 6 month period of suspension, referred to in Article 176 paragraph 1;
- 15) the disciplinary sanction resulting in exclusion from the composition of the Chamber;
- 16) failure to submit one the statements, referred to in paragraph 3;
- 17) refusal to take an oath;
- 18) failure to take the post within the time limit specified in the act of appointment
- 19) motion of dismissal put forward by the member of Chamber.

6. The members of the Chamber, within the scope of the responsibilities provided for in the Act, exercise the right to the legal protection for the public functionaries.

7. The members of the adjudication panels of the Chamber are independent and bound solely by the provisions of the binding law.

Article 175.

1. The members of Chamber are liable for the disciplinary responsibility for breach of the duties and professional dignity.

2. The disciplinary penalties are:

- 1) admonition;
- 2) dismissal from the performed function;
- 3) exclusion from the composition of the Chamber.

3. The penalty, referred to in paragraph 2 item 2, means the inability to perform the function of Chairman, Vice-chairman, Disciplinary agent or a member of disciplinary court for 3 years.

4. In disciplinary matters concerning the members of the Chambers, the following bodies are authorized to give a ruling:

- 1) in the first instance- disciplinary court in composition of 5 members of the Chamber, appointed by the General Assembly form among the members of the Chamber;
- 2) in the second instance- General Assembly of the Chamber.

5. The disciplinary agent acts as the prosecutor before the disciplinary court. The Prime Minister at the request of the PPO President shall appoint a disciplinary agent from among the members of the Chamber for the 3-year term of office. The disciplinary agent may be dismissed at any time and performs its duties until the new disciplinary agent is appointed.

6. The disciplinary ruling issued in the second instance may be appealed before the appeal court- industrial and national insurance tribunal, competent for the seat of the Office, within 14 days from the date of submission of the ruling together with the justification. There is no complaint for annulment against the decision of the appeal court.

7. The detailed course of the disciplinary proceeding and selection of adjudication panel of the disciplinary court are specified in the rules of procedure passed by the General Assembly of the Chamber.

Article 176.

1. The Prime Minister shall suspend the member of the Chamber in his rights and obligations in case of accusation of committing the offence intentionally or intentional tax fraud.

2. The suspension period, referred to in paragraph 1, shall last until the end of the criminal proceedings, however not more than 6 months.

3. During the suspension period, the member of the Chamber has the right to receive half of the remuneration.

Article 176a.

1. The members of the Chamber are selected by qualifying procedure, which consists of:

- 1) a written exam in theoretical and practical knowledge of the contract award procedure rules
- 2) an interview.

2. The notice on qualifying procedure for the members of the Chamber is issued by the Prime Minister at the request of the PPO President, if the increase in composition of the Chamber is needed.

3. The notice, referred to in paragraph 2, is placed in the Public Information Bulletin of the Office and Chancellery of the Prime Minister, as well as in the national daily.

4. The notice shall include:

- 1) information on the number of persons to be appointed in the given qualifying procedure;
- 2) time limit and place for collecting the applications; however the time limit shall not be less than 30 days of the date of the notice;
- 3) list of the documents to be enclosed to the application for the member of the Chamber;
- 4) The date of the qualifying procedure, referred to in paragraph 1;
- 5) minimum number of points to be obtained.

5. In order to the conduct the qualifying procedure for the members of the Chamber, the Prime Minister appoints the qualifying committee, which consists only of persons whose knowledge and experience in the field of rules for conducting contract award procedures as well as authority guarantee the correct and impartial conduct of the contract award procedure.

6. If in qualifying procedure the minimum number of points is received by a smaller number of persons than the limit specified in the notice, referred to in paragraph 4 item 1, the Prime Minister shall call the supplementary qualifying procedure for the members of the Chamber within 30 day of the end of the previous qualifying procedure. The provisions of paragraphs 1-5 shall apply.

7. The Prime Minister specifies by means of a regulation of the manner of conducting the qualifying procedure, referred to in paragraphs 1-6, the manner of appointing the qualifying committee, as well as the scope of the qualifying procedure, taking into consideration the need to ensure objective verification of candidate's theoretical and practical preparation, the efficient conduct of the appeal procedure and the fact that documents containing information subject to personal data protection and in particular the information from the National Register of Criminal Records may be required to confirm a candidate's compliance with the conditions referred to in Article 173 paragraph 2.

Chapter 5

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TITLE VI

LEGAL PROTECTION MEASURES

Chapter 1

Common provisions

Article 179.

1. Economic operators and participants in the contest, as well as other persons whose legal interest in obtaining a contract has been or might have been prejudiced as a result of the breach by the awarding entity of the provisions of this Act shall be entitled to legal protection measures specified in this Title, subject to paragraph 1b.

1a. The awarding entity is also entitled to legal protection measure, referred to in Chapter 4 of this Title.

1b. Legal protection measures do not apply to jury decisions on the evaluation of the designs and selection of the best design.

2. Prior to the final date for submission of tenders in the case of a breach by the awarding entity of the provisions of this Act, legal protection measures shall be also available to organisations of economic operators entered in the list of organisations authorised to lodge legal protection measures maintained by the PPO President.

3. Organisations of economic operators, referred to in paragraph 2, should be understood as entities operating under the provisions concerning:

- 1) commercial chambers;
- 2) crafts;
- 3) professional self-government of certain entrepreneurs;
- 4) employers' organisations;
- 5) professional self-governments of architects, civil engineers and urban planners.

4. The PPO President shall make entries, rejections of entry and deletes with regard to the list referred to in paragraph 2, by an administrative decision.

5. The list of organisations referred to in paragraph 2 shall be subject to announcement in the Public Procurement Bulletin.

Chapter 2

Protest

Article 180.

1. A written protest may be lodged to the awarding entity against the contents of the notice, actions performed by the awarding entity in the course of procedure and in the event of a failure by the awarding entity to act as it is bound to perform under this Act. The provisions of Article 27 paragraphs 1-3 shall apply *mutatis mutandis*.

2. Protest shall be lodged within 7 days from the date on which the economic operator may have become or actually became aware of the circumstances constituting the basis thereof. The protest shall be deemed as lodged when delivered to the awarding entity in a manner allowing it to become familiarised with its contents.

3. The protest which refers to the contract notice, and if the procedure is carried out in the open tendering, the provisions of the specification of essential terms of contract, shall be lodged within:

- 1) 7 days from the publication of the contract notice in Public Procurement Bulletin or publication of specification of essential terms of contract on the website – if the contract value is less than the amounts specified in provision issued under Article 11 paragraph 8;
- 2) 14 days from the publication of the contract notice in the Official Journal of the European Union or publication of the specification of essential terms of contract on the website – if the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8

- the provision of paragraph 2 sentence 1 shall not apply.

4. If the procedure is carried out in any other type than the open tendering, the protest which refer to the provisions of specification of essential terms of contract shall be lodged

within 7 days from the dispatch of specification of essential terms of contract, however not later than:

- 1) 3 days prior to the expiry of the time limit for submission of tenders - if the contract value is less than the amounts specified in the provisions issued under Article 11 paragraph 8;
- 2) 6 days prior to the expiry of the time limit for submission of tenders - if the contract value is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8

- the provisions of paragraph 2 sentence 1 does not apply.

5. If case of lodging the protest which concerns the contract notice or provisions of specification of essential terms of contract, the awarding entity may extend the time limit for submission of tenders.

6. The lodging of a protest shall be admissible only before the conclusion of a contract.

7. The awarding entity shall reject any protest lodged after the final date or protest lodged by an unauthorised entity or an inadmissible protest on the basis of Article 181 paragraph 6.

8. A protest should indicate action or failure to act of the awarding entity under protest and should also include a demand, brief description of charges as well as factual and legal circumstances providing grounds for the protest.

Article 181.

1. In the event of a protest lodged after the final date for submission of tenders, the period during which the economic operator must maintain his tender shall be suspended until the final resolution of the protest.

2. The awarding entity shall forthwith inform the economic operators who submitted their tenders about the suspension of the period during which the economic operators must maintain their tenders.

2a. The awarding entity calls upon the economic operators, under the pain of exclusion from the procedure, in any time, however not later than 7 days prior to the expiry of the deposit, to prolong the validity of the deposit or to pay a new deposit for a period necessary for the security of the procedure until the conclusion of the contract, after the final examination of the protest.

3. The awarding entity dispatches a copy of the protest being lodged to the economic operators who participate in a contract award procedure, and if the protest refers to the content of contract notice or provisions of specification of essential terms of contract, places it also on the website, where the specification is available, and calls upon the economic operators to participate in a procedure as a result of protest being lodged.

4. The participants of a procedure as a result of protest being lodged are the economic operators who have a legal interest in resolving the protest in favor of one of the parties, and who joined the procedure:

- 1) within 3 days from the receipt of the call, referred to in paragraph 3;
- 2) until the deadline, referred to in Article 180 paragraph 3, if the protest refers to the contract notice or provisions of the specification of essential terms of contract in an open tendering.

5. The economic operator expresses the accession to the procedure as a result of a protest being lodged, by indicating his legal interest in accession and stating his request referring to accusations contained in a protest. The request referring to accession is lodged to the awarding entity, dispatching its copy to the economic operator who lodges the protest.

6. The economic operator who lodges the protest and the economic operator, who is called upon, referred to in paragraph 3, may not exercise legal protection measures in addition to final resolution of a protest in a procedure being a result of lodging the protest.

7. The economic operator who lodges the protest and the economic operator, who is called upon, referred to in paragraph 3, may not forthwith lodge a protest by referring to the same circumstances.

Article 182.

1. The awarding entity shall not conclude a contract until the final resolution of the protest.

2. The protest is finally resolved:

- 1) where no appeal is possible - with the resolution of a protest by the awarding entity or the deadline for its resolution;
- 2) where no appeal has been lodged – upon the expiry of the final date for the lodging of appeals;
- 3) in case of lodging the appeal:
 - a) on the day, on which the decision ending the appeal procedure or the decision of the arbitration panel is issued or
 - a) on the day, on which the decision ending the appeal procedure or the decision of the Chamber is issued or
 - b) on the day, on which the judgment or a decision ending the procedure in the case is issued by the district court referred to in Article 195 paragraph 1, or upon the expiry of the final date for lodging petitions as referred to in Article 195 paragraph 2 if the contract value is equal to or exceeds the PLN equivalent of EUR 20 000 000 for works and EUR 10 000 000 for supplies and services.

3. At the request of the awarding entity the PPO President may, by an administrative decision, express consent for conclusion of the contract prior to the final resolution of the protest, if, due to social or economic considerations which could not have been foreseen beforehand and which did not result from any fault on the part of the awarding entity, there is an urgent need to award the contract.

4. The provisions of paragraph 3 shall not apply, if the value of a contract for works is equal to or exceeds the PLN equivalent of EUR 20 000 000, and EUR 10 000 000 for supplies or services.

Article 183.

1. The awarding entity resolves at the same time all protests referring to:

- 1) the content of the contract notice,
- 2) the provisions of the specification of essential terms of contract,

-
- 3) exclusions of the economic operator from the contract award procedure, rejections of tender and selection of the best tender – under open tendering, negotiated procedure without publication and request- for- quotation,
 - 4) exclusions of the economic operator from the contract award procedure or rejection of tender and selection of the best tender – under restricted tendering, negotiated procedure with publication, competitive dialogue

- 10 days from the expiry of the last time limit for lodging the protest.

2. The protest, other than the one referred to in paragraph 1, shall be resolved by the awarding entity within 10 days from the day on which it was lodged.

3. Lack of resolution of protest within the time limits, referred to in paragraph 1 and 2, is considered as its dismissal.

4. The awarding entity dispatches the resolution along with justification and the cautions on the manner and time limit for lodging the appeal to the economic operator, who lodged the protest and the economic operators who joined the procedure as a result of protest being lodged, and if the protest refers to the content of the contract notice or the provisions of specification of essential terms of contract under open tendering, also places on the website where the specification is available.

5. In the case when the protest is admitted, the awarding entity shall repeat the action subject to protest or perform the illegally omitted action:

- 1) forthwith - if all the requests were admitted;
- 2) after the final resolution of a protest – if at least one of the requests was not admitted.

6. The awarding entity shall forthwith inform all economic operators of any repetition or performance of the action.

Chapter 3 Appeal

Article 184.

1. The appeal shall be available against a resolution of a protest, if the contract value is equal to or exceeds the amounts specified in provisions issued on the basis of the Article 11 paragraph 8, the value of which sets the obligation to dispatch the contract notice for supplies or services to the Office for Official Publications of the European Communities.

2. The appeal is lodged to the PPO President within 5 days from the dispatch of the resolution of protest or the expiry of the deadline for the resolution of protest, at the same time dispatching the copy to the awarding entity. The appeal delivered at the Polish post office shall be regarded as submitted to the PPO President.

3. The copy of the appeal is also dispatched to all the participants of the procedure as a result of protest being lodged, however not later than 2 days from its receipt, calling them to participate in an appeal procedure.

4. The economic operator may express the accession to the appeal procedure not later than at the time of opening of the meeting of the arbitration panel, specifying its legal interest in accession and the party he chooses to support. The accession is dispatched to the PPO President, and the copy of an appeal is delivered to the awarding entity and the economic operator who lodges the appeal.

5. The actions of the economic operator who joined the appeal procedure shall not stand in contradiction to actions and declarations of the party, he chooses to support.

6. Appeal procedures shall be regulated by appropriate provisions of the *[Polish] Code of Civil Procedure of 17 November 1964 (Dz. U. No. 43 item 296 as amended)* on the court of arbitration, unless this Act provides otherwise.

2. The appeal is lodged to the PPO President within 5 days from the submission of the resolution of protest or the expiry of the deadline for the resolution of protest, at the same time submitting the copy to the awarding entity. The appeal submitted at the Polish post office shall be regarded as submitted to the PPO President.

3. The copy of the appeal is also dispatched to all the participants of the procedure as a result of protest being lodged, however not later than 2 days from its receipt, calling them to participate in an appeal procedure.

4. The economic operator may express the accession to the appeal procedure not later than at the time of opening of the meeting by the adjudication panel of the Chamber, specifying its legal interest in accession and the party he chooses to support. The accession is dispatched to the PPO President, and the copy of an appeal is delivered to the awarding entity and the economic operator who lodges the appeal.

5. The actions of the economic operator who joined the appeal procedure shall not stand in contradiction to actions and declarations of the party, he chooses to support.

6. Appeal procedures shall be regulated by appropriate provisions of the *[Polish] Code of Civil Procedure of 17 November 1964 (Dz. U. No. 43 item 296 as amended⁸)* on the court of arbitration, unless this Act provides otherwise.

Article 185.

1. The appeal shall be examined if the registration fee has been paid. The proof of payment should be attached to the appeal.

2. The amount of the registration fee may not exceed the costs of the procedure.

⁸ The amendments to the mentioned Act were published in Dz. U. of 1965 No. 15, item 113, of 1974 No. 27, item 157 and No. 39, item 231, of 1975 No. 45, item 234, of 1982 No. 11, item 82 and No. 30, item 210, of 1983 No. 5, item 33, of 1984 No. 45, item 241 and 242, of 1985 No. 20, item 86, of 1987 No. 21, item 123, of 1988 No. 41, item 324, of 1989 No. 4, item 21 and No. 33, item 175, of 1990 No. 14, item 88, No. 34, item 198, No. 53, item 306, No. 55, item 318 and No. 79, item 464, of 1991 No. 7, item 24, No. 22, item 92 and No. 115, item 496, of 1993 No. 12, item 53, of 1994 No. 105, item 509, of 1995 No. 83, item 417, of 1996 No. 24, item 110, No. 43, item 189, No. 73, item 350 and No. 149, item 703, of 1997 No. 43, item 270, No. 54, item 348, No. 75, item 471, No. 102, item 643, No. 117, item 752, No. 121, item 769 and 770, No. 133, item 882, No. 139, item 934, No. 140, item 940 and No. 141, item 944, of 1998 No. 106, item 668 and No. 117, item 757, of 1999 No. 52, item 532, of 2000 No. 22, item 269 and 271, No. 48, item 552 and 554, No. 55, item 665, No. 73, item 852, No. 94, item 1037, No. 114, item 1191 and 1193 and No. 122, item 1314, 1319 and 1322, of 2001 No. 4, item 27, No. 49, item 508, No. 63, item 635, No. 98, item 1069, 1070 and 1071, No. 123, item 1353, No. 125, item 1368 and No. 138, item 1546, of 2002 No. 25, item 253, No. 26, item 265, No. 74, item 676, No. 84, item 764, No. 126, item 1069 and 1070, No. 129, item 1102, No. 153, item 1271, No. 219, item 1849 and No. 240, item 2058, of 2003 No. 41, item 360, No. 42, item 363, No. 60, item 535, No. 109, item 1035, No. 119, item 1121, No. 130, item 1188, No. 139, item 1323, No. 199, item 1939 and No. 228, item 2255, of 2004 No. 9, item 75, No. 11, item 101, No. 68, item 623, No. 91, item 871, No. 93, item 891, No. 121, item 1264, No. 162, item 1691, No. 169, item 1783, No. 172, item 1804, No. 204, item 2091, No. 210, item 2135, No. 236, item 2356 and No. 237, item 2384, of 2005 No. 13, item 98, No. 22, item 185, No. 86, item 732, No. 122, item 1024, No. 143, item 1199, No. 150, item 1239, No. 167, item 1398, No. 169, item 1413 and 1417, No. 172, item 1438, No. 178, item 1478, No. 183, item 1538, No. 264, item 2205 and No. 267, item 2258 and of 2006 No. 12, item 66, No. 66, item 466 and No. 104, item 708 and 711, No. 186, item 1379, No. 208, item 1537 and 1540, No. 226, item 1656, No. 235, item 235, item 1699 and of 2007 No. 7, item 58, No. 47, item 319 and No. 50, item 331.

3. Where the registration fee has not been paid the PPO President shall return the appeal. The PPO President decides about the return of the appeal by issuing a decision.

Article 186.

1. The appeal shall be examined by a panel of three arbitrators appointed by the PPO President from the list referred to in Article 172 paragraph 1.

2. The PPO President shall appoint arbitrators by public computer drawing. The chairman of the arbitration panel shall be drawn from persons with education in law.

3. Arbitrator shall notify the PPO President about circumstances preventing him from performing his duties and in particular reasons for his disqualification. In the event of circumstances preventing the arbitrator from performing his duties the PPO President shall appoint another arbitrator in accordance with the rules, referred to in paragraph 2.

4. The parties and the arbitrators may request the exclusion of the arbitrators if there are factual or legal circumstances, which may raise justified doubts concerning his impartiality. The exclusion of arbitrator or the refusal of his exclusion is being a subject of a decision of the PPO President. No petition against the exclusion or refusal of exclusion of the arbitrator is possible.

Article 187.

1. The arbitration panel examines the appeal within 15 days from the day on which the appeal was dispatched to the PPO President. The PPO President may order a combined examination by the arbitration panel of all the appeals, which were lodged in the course of the same contract award procedure or refer to the same actions of the awarding entity.

2. The arbitration panel shall examine the appeal at an open session, unless the appeal is subject to rejection, subject to paragraph 3.

3. As a request of the party or *ex-officio*, the arbitration panel closes the whole or part of the procedure for the public, if confidential information protected by the law may be revealed while examining the appeal. The procedure is open only for the parties concerned and their representatives.

4. The arbitration panel rejects the appeal at a closed session, if it finds that:

- 1) the provisions of this Act are not applicable to the case;
- 2) the appeal was not preceded by a protest; subject to Article 181 paragraph 4;
- 3) the protest or appeal has been lodged by an unauthorised entity;
- 4) the protest or appeal has been lodged in breach of the time limits specified in this Act;
- 5) the appellant bases his appeal on the same circumstances which were the object of a decision of an arbitration panel concerning another appeal lodged by the same appellant in the same procedure;
- 6) [deleted]
- 7) appeal, lodged by the economic operator who lodged e protest or was called upon, in accordance with Article 181 paragraph 3, refers to actions which were carried out by the awarding entity in accordance with the final resolution of the protest;

8) The appellant did not dispatch the copy of an appeal, in accordance with Article 184 paragraph 2.

5. Should the arbitration panel consider this necessary, it may permit the parties, witnesses or experts to participate in the closed session.

6. If no grounds for rejection are found, the chairman of the arbitration panel closes the session and opens a hearing.

Article 188.

1. The parties are bound to adduce evidence in support of facts they derive legal consequences from. The parties may present evidence in support of their arguments or against the arguments of the opposing party throughout all the hearing until its closing.

2. The arbitration panel may admit evidence not adduced by the party.

3. Documents, depositions of witnesses, expert opinions and depositions of the parties shall in particular be regarded as evidence.

3a. The panel of arbitrators may appoint an expert from among the persons duly entered in the list of forensic experts appointed at the District Court in Warsaw if the determining or evaluation of the factual state of affairs requires special knowledge. The expert shall be entitled to receive remuneration in amount determined in accordance with the regulations on dues for the witnesses, experts and parties in judicial proceedings.

4. Facts of general knowledge shall not require the support of evidence. Evidence shall not be required in the case of facts admitted in the course of the procedure by the opposing party, if the arbitration panel considers that this admission raises no doubts as to its conformity with the actual state of affairs.

5. The arbitration panel shall refuse to examine the evidence if facts on which they are based have already been confirmed by other evidence or if they have been adduced only for the purpose of causing delay.

6. The arbitration panel shall evaluate the reliability and importance of the evidence in accordance with their own belief and on the basis of thorough examination of the collected material.

Article 189.

1. An appellant may withdraw his appeal. In the case of withdrawal the arbitration panel shall discontinue the appeal procedure.

2. If the appeal was withdrawn before the opening of the hearing, the appellant shall be reimbursed for half of the registration fee.

Article 190.

1. The chairman of the arbitration panel shall close the hearing if in the opinion of the panel the case has been sufficiently clarified.

2. The arbitration panel bases its judgement on the state of affairs determined in the course of the procedure.

3. The chairman of the arbitration panel shall reopen a session or a hearing if new circumstances material to the resolution of the appeal have been disclosed thereafter.

4. A judgement may only be issued by the arbitration panel before which the procedure was conducted.

Article 191.

1. The arbitration panel issues a judgement on the dismissal or admission of an appeal. In all other cases the arbitration panel issues decisions.

2. In admitting an appeal, the arbitration panel may order the awarding entity to perform or repeat the performance of an action or cancel it.

3. The arbitration panel shall not decide on charges which have not been included in the protest. Circumstances resulting in the cancellation of the contract award procedure shall be considered by the arbitration panel *ex-officio*.

3a. In case, referred to in Article 187 paragraph 1 sentence 2, the arbitration panel may give a common decision with regard to the appeals being lodged.

4. The arbitration panel shall not order parties to conclude a contract.

5. In the judgement and in the decision ending the appeal procedure the arbitration panel settles the issue of the costs of the appeal procedure.

6. The parties shall bear the costs of the procedure appropriately to the results thereof.

Article 192.

1. The arbitration panel shall prepare *ex-officio* reasons to the judgement and to the final decision ending the appeal procedure.

2. The reasons, referred to in paragraph 1, shall contain the indication of the factual grounds of the decision including established facts, which the panel recognised 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 indication of the legal grounds of the judgement quoting also the provisions of the law.

3. Immediately after drafting of the judgement or the decision ending the appeal procedure the chairman of the arbitration panel announces its decision. Decisions are announced at open sessions. Non-attendance of the parties shall not prevent the decision from being announced.

4. If the case is complex the arbitration panel may defer the announcement of the judgement or the decision ending the appeal procedure for no more than 5 days. In the decision to defer the announcement the panel fixes the date of the announcement. Deferred decisions may be subsequently announced by the chairman of the arbitration panel alone.

5. Transcripts of the judgement or the final decision ending the appeal procedure along with the reasons shall be delivered forthwith to the parties and the participants of the appeal procedure or their plenipotentiaries. In the procedure, where the contract value for works is equal to or exceeds the PLN equivalent of EUR 20 000 000, and for supplies or services - EUR 10 000 000, the decision is dispatched on the day of its announcement at the request of the party who was present during the announcement.

Article 193.

The Prime Minister shall define by a regulation:

-
- 1) the rules of procedure concerning the examination of appeals, taking into consideration the need to ensure efficient organisation of the session and the hearing, fast progress of appeal procedures and the public nature of hearings;
 - 2) the amount of remuneration for actions performed by arbitrators, taking into consideration the fact that the amount constituting the basis for determining the remuneration for actions of arbitrators examining appeals lodged during the contract award procedure should be the base amount determined in the budget act for the given year, pursuant to Article 9 paragraph 1 item 2 of *the Act of 23 December 1999 on the remuneration in the state-budget sector and on amending certain acts (Dz. U. No 110 item 1255, as amended)* for the employees of the state-budget sector referred to in Article 5 item 1 letter b) of that Act;
 - 3) the amount and detailed rules for collecting appeal registration fees and detailed rules for allocating costs in the appeal procedures, taking into consideration the diversified amount of the registration fee which depend on the contract value and the legitimacy of the reimbursement of the costs to the party, necessary for the appropriate pursuit of rights and appropriate legal protection.

Article 185.

1. The appeal shall be examined if the registration fee has been paid. The registration fee shall be paid at the latest on the day the appeal is lodged and the proof of payment shall be attached to the appeal.

2. Where the registration fee has not been paid the PPO President shall return the appeal. The PPO President decides about the return of the appeal by issuing a decision, which shall not be appealed.

Article 186.

1. The appeal shall be examined by the Chamber in a panel of three members. The Chairman of the Chamber shall appoint the chairman of the adjudication panel from among appointed members.

2. The adjudication panel of the Chamber, hereinafter referred to “the adjudication panel”, is appointed by the Chairman of the Chamber in a manner considering date of submission of the appeals and alphabetical list of the members of the Chamber, open to the parties of the appeal procedure. Exception from this order is acceptable only in case when the member of the Chamber is ill or for other important reason, which shall be stated in an order on appointment of composition the adjudication panel.

3. The change in composition of the adjudication panel may occur only for reasons, referred to in paragraph 2 sentence 2.

4. The member of the adjudication panel shall notify in writing to the Chairman of the Chamber the circumstances, referred to in paragraph 2 sentence 2.

5. The member of the adjudication panel or the party of the appeal procedure shall notify to the PPO President the circumstances justifying the exclusion of the member, in case of factual and legal circumstances, which may raise justified doubts concerning his impartiality. The exclusion of a member of the Chamber or the refusal of his exclusion is being a subject of a decision of the PPO President. No complaint against the exclusion or refusal of exclusion of the member is possible.

6. In case of circumstances, referred to in paragraph 4 and 5, the Chairman shall appoint other member of the adjudication panel from the alphabetical list of the members of the Chamber.

Article 187.

1. The Chamber examines the appeal within 15 days from the date of its submission to the PPO President. The Chairman of the Chamber may order a combined examination by the Chamber of all the appeals, which were lodged in the course of the same contract award procedure and refer to the same actions of the awarding entity.

2. The Chamber shall examine the appeal at an open session, unless the appeal is subject to rejection, subject to paragraph 3.

3. As a request of the party or *ex-officio*, the Chamber closes the whole or part of the procedure for the public, if confidential information protected by the law may be revealed while examining the appeal. The procedure is open only for the parties concerned and their representatives.

4. The Chamber shall reject the appeal at a closed session, if it finds that:

9) the provisions of this Act are not applicable to the case;

10) the appeal was not preceded by a protest; subject to Article 181 paragraph 4;

11) the protest or appeal has been lodged by an unauthorised entity;

12) the protest or appeal has been lodged in breach of the time limits specified in this Act;

13) the appellant bases his appeal on the same circumstances which were the object of a decision of the Chamber concerning another appeal lodged by the same appellant in the same procedure;

14) appeal, lodged by the economic operator who lodged a protest or was called upon, in accordance with Article 181 paragraph 3, refers to actions which were carried out by the awarding entity in accordance with the final resolution of the protest;

15) The appellant did not submit to the awarding entity the copy of an appeal, in accordance with Article 184 paragraph 2.

5. Should the Chamber consider this necessary, it may permit the parties, witnesses or experts to participate in the closed session.

6. If no grounds for rejection are found, the chairman of the adjudication panel closes the session and opens a hearing.

Article 188.

1. The parties are bound to adduce evidence in support of facts they derive legal consequences from. The parties may present evidence in support of their arguments or against the arguments of the opposing party throughout all the hearing until its closing.

2. The Chamber may admit evidence not adduced by the party.

3. Documents, depositions of witnesses, expert opinions and depositions of the parties shall in particular be regarded as evidence.

4. The Chamber may appoint an expert from among the persons duly entered in the list of forensic experts appointed at the District Court in Warsaw if the determination of the factual state of affairs requires special knowledge. The expert shall be entitled to receive remuneration in amount determined in accordance with the regulations on dues for the witnesses, experts and parties in judicial proceedings.

5. Facts of general knowledge shall not require the support of evidence. Evidence shall not be required in the case of facts admitted in the course of the procedure by the opposing party, if the Chamber considers that this admission raises no doubts as to its conformity with the actual state of affairs.

6. The Chamber shall refuse to examine the evidence if facts on which they are based have already been confirmed by other evidence or if they have been adduced only for the purpose of causing delay.

7. The Chamber shall evaluate the reliability and importance of the evidence in accordance with their own belief and on the basis of thorough examination of the collected material.

Article 189.

1. An appellant may withdraw his appeal. In the case of withdrawal the Chamber shall discontinue the appeal procedure.

2. If the appeal was withdrawn before the opening of the hearing, the appellant shall be reimbursed for 90% of the registration fee.

Article 190.

1. The chairman of the adjudication panel shall close the hearing if in the opinion of the panel the case has been sufficiently clarified.

2. The Chamber bases its judgement on the state of affairs determined in the course of the procedure.

3. The chairman of the adjudication panel shall re-open a session or a hearing if new circumstances material to the resolution of the appeal have been disclosed thereafter.

4. A judgement may only be issued by the adjudication panel before which the procedure was conducted.

Article 191.

1. The Chamber issues a judgement on the dismissal or admission of an appeal. In all other cases the Chamber issues decisions.

2. In admitting an appeal, the Chamber may:

- 1) demand performance or repetition of action by the awarding entity;
- 2) demand the cancellation of action performed by the awarding entity;
- 3) annul the contract award procedure.

3. The Chamber shall not decide on charges, which have not been included in the protest. Circumstances resulting in the cancellation of the contract award procedure shall be considered by the Chamber panel *ex-officio*; in such case the Chamber issues the judgement.

4. In case, referred to in Article 187 paragraph 1 sentence 2, the Chamber may give a common decision with regard to the appeals being lodged.

5. The Chamber shall not order parties to conclude a contract.

6. In the judgement and in the decision ending the appeal procedure the Chamber settles the issue of the costs of the appeal procedure.

7. The parties shall bear the costs of the procedure appropriately to the results thereof.

Article 192.

1. The Chamber shall prepare *ex-officio* justification to the judgement and to the final decision ending the appeal procedure.

2. The justification, referred to in paragraph 1, shall contain the indication of the factual grounds of the decision including established facts, which the Chamber recognised 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 indication of the legal grounds of the judgement quoting also the provisions of the law.

3. Immediately after drafting of the judgement or the decision ending the appeal procedure the chairman of the adjudication panel announces its decision. Decisions are announced at open sessions. Non-attendance of the parties shall not prevent the decision from being announced.

4. If the case is complex, the Chamber may defer the announcement of the judgement or the decision ending the appeal procedure for no more than 5 days. The Chamber fixes the date of the announcement in the decision to defer the announcement. If the announcement was deferred, it may be made by the chairman of the adjudication panel.

5. Transcripts of the judgement or the final decision ending the appeal procedure along with the justification shall be delivered within 3 days to the parties and the participants of the appeal procedure or their plenipotentiaries.

Article 193.

1. The decision of the Chamber, after its enforceability is stated by the court, is equally binding as the court's decision. The provisions of Article 781 paragraph 2 of the Act of 17 November 1964- Civil Procedure Code shall apply *mutatis mutandis*.

2. The enforceability of the Chamber's decision is stated by the court at the request of the party. The party is obliged to enclose to its request the original or a copy of the Chamber's decision certified by the Chairman of the Chamber.

3. The court states the enforceability of the Chamber's decision by a warrant of execution.

Article 193a.

The Prime Minister shall define by means of a regulation:

- 4) the rules of procedure concerning the examination of appeals specifying in particular the formal requirements concerning the appeal, actions with the appeal being lodged, preparation of procedures and hearings taking into consideration the need to ensure efficient organisation of the session and the hearing, fast progress of appeal procedures and the public nature of hearings;

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- 5) the amount and detailed rules for collecting appeal registration fees and detailed rules for allocating costs in the appeal procedures, taking into consideration the diversified amount of the registration fee which depend on the value and type of contract, as well as legitimacy of the reimbursement of the costs to the party, necessary for the appropriate pursuit of rights and appropriate legal protection.

Chapter 4

Petitions to the court

Article 194.

1. The petition to the court may be lodged against the judgement or the final decision of the arbitration panel ending the appeal procedure.

1. Against the decision of Chamber, the parties and participants of the appeal procedure may lodge a petition to court.

2. Appropriate provisions of the *Code of Civil Procedure of 17 November 1964* concerning appeals shall apply accordingly to procedures pending as a result of a lodged petition, unless the provisions of this Chapter provide otherwise.

Article 195.

1. Petitions shall be lodged to the district court competent for the seat or place of residence of the awarding entity.

2. Petitions are lodged through the PPO President within 7 days of the delivery of the arbitration panel decision, sending at the same time its copy to the opposing party of the petition.

2. Petitions are lodged through the PPO President within 7 days of submission of the Chamber's decision, sending at the same time its copy to the opposing party of the petition.

3. The PPO President shall deliver the petition together with the files of the appeal procedure to the competent court within not more than 7 days from the date of its receipt.

4. Within not more than 21 days of the issuance of the decision the petition may be lodged also by PPO President. The provisions of the *Code of Civil Procedure 17 November 1964* on prosecutor shall apply respectively to actions taken by the PPO President.

Article 196.

1. The petition should satisfy the requirements provided for a pleading and should contain the indication of the decision complained against, description of charges with a brief substantiation, adduced evidence, as well as a request to change the decision in whole or in part.

2. Where the contract value for works is equal to or exceeds the PLN equivalent of EUR 20 000 000 and for supplies and services of EUR 10 000 000, the awarding entity may, in the petition or in the response to the petition, request the prohibition on concluding the contract to be revoked before the final decision on the protest. The court shall forthwith examine the request to revoke the prohibition on concluding the contract before the final

decision on the protest, not later however, than within 7 days of the date on which it was submitted.

3. The court may, at closed session, revoke the prohibition on concluding a contract before the final resolution of the protest where permitted by the current state of the award procedure and the awarding entity shall lend credence to fact that the decision of the Chamber arbitration panel complained against constitutes a flagrant breach of the provisions concerning appeal procedures.

3. The court may, at closed session, revoke the prohibition on concluding a contract before the final resolution of the protest where permitted by the current state of the award procedure or the awarding entity shall lend credence to fact that the decision of the Chamber arbitration panel complained against constitutes a flagrant breach of the provisions concerning appeal procedures.

Article 197.

1. The court shall, at closed session, reject a petition which has been lodged after the final date or is inadmissible for other reasons, as well as a petition, the defects of which have not been remedied by the party within the specified time limit.

2. Where the party failed to perform any legal action within the specified time limit not because of its own fault, the court shall reinstate the said time limit upon its request. A decision on this matter may be issued at closed session.

3. The pleading with the request to reinstate the time limit should be submitted to the court within 7 days from the end of the cause of the default.

Article 198.

1. The court shall examine the case forthwith, however not later than within 1 month from the date of its receipt by the court.

2. The court shall dismiss the petition if it considers it unjustified. If the petition is admitted the court shall reverse the decision complained against and decide on the merit of the case.

3. If the appeal is rejected or there are grounds to discontinue the procedure, the court shall cancel the judgement and reject the appeal or discontinue the procedure.

4. Cassation shall not be available in the case of the judgement. The provisions shall not apply to the PPO President.

TITLE VII

LIABILITY FOR BREACH OF PROVISIONS OF THIS ACT

Article 199.

The provisions of this Title are not applicable to the awarding entities mentioned in Article 3 paragraph 1 items 1, 5 and 6.

Article 200.

1. The awarding entity who:

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- 1) awards a contract:
 - a) infringing upon the provisions of this Act laying down the prerequisites for the application of the individual contract award procedures,
 - b) without the required notice;
 - c) without applying this Act;
 - 2) cancels the contract award procedure infringing upon the provisions of this Act laying down the prerequisites for cancellation,
 - 3) performs acts provided for in this Act without the required consent of the PPO President or violates the provisions of the Act concerning the requirement of submission of the notification to the PPO President,
 - 4) modifies the concluded contract infringing upon the provisions of this Act
- shall be subject to a financial penalty.

2. Awarding entities shall also be subject to a penalty in the following cases:

- 1) where the requirements to participate in a contract award procedure as defined by the awarding entity distort fair competition,
 - 2) where the awarding entity describes the object of contract in a way that restricts fair competition,
 - 3) where the awarding entity conducts a contract award procedure in breach of the rule of openness,
 - 4) where the awarding entity fails to comply with the respective time limits fixed for in this Act,
 - 5) where the awarding entity excludes an economic operator from the contract award procedure in breach of the provisions of the Act governing the preconditions for such exclusion,
 - 6) where the awarding entity rejects a tender in breach of the provisions of the Act governing the preconditions for such rejection,
 - 7) where the awarding entity selects the best tender in breach of the provisions of this Act
- if such a breach has an impact on the outcome of the contract award procedure.

Article 201.

1. The amount of the financial penalty, referred to in Article 200, shall be determined depending on the contract value.

2. Where the contract value:

- 1) is less than the amounts specified in the provisions issued under Article 11 paragraph 8 - the financial penalty shall be PLN 3 000;
- 2) is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8, but is less than EUR 10 000 000 for services and supplies and EUR 20 000 000 for works - the financial penalty shall be PLN 30 000;

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- 3) is equal to or exceeds the expressed in PLN equivalent of EUR 10 000 000 for services and supplies and EUR 20 000 000 for works - the financial penalty shall be PLN 150 000.

Article 202.

1. The financial penalty shall be imposed by the PPO President by an administrative decision.

2. The decision to impose a financial penalty shall not be issued with the clause of immediate enforceability.

Article 203.

1. The financial penalty constitutes the revenue of the state budget.

2. Financial penalties shall be subject to collection under the provisions concerning execution proceedings in administration with regard to the execution of duties of pecuniary nature.

TITLE VIII

AMENDMENTS TO THE EXISTING PROVISIONS

Articles 204 to 219 – omitted.

TITLE IX

INTERIM AND FINAL PROVISIONS

Articles 220 to 227 – omitted.