

Ewa Przeszło, Rafał Blicharz

Public Procurement in Poland

Silesian Journal of Legal Studies 1, 76-87

2009

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

PUBLIC PROCUREMENT IN POLAND

1. GENESIS AND DEVELOPMENT OF PUBLIC PROCUREMENT

Public procurement is an important element of Polish market economy. Poland, upon its accession to the European Union, like other member states, set legal frameworks of public procurement and pointed to the mechanisms which aim to stimulate the development and protection of the competition and obey basic rules of union market functioning. In order to realize these aims, transparent and non-discriminating rules of awarding public contracts, the control system, supervision and sanctions were established. They contributed to decrease in corruption and undue use of authority of state administration.

The first legal act concerning public procurement was a decree of 18th December 1918 related to the creation of Distribution Office of government orders for industrial works¹.

During the period between two world wars an important role was played by the Act of 15th February 1933 on supplies and works for State Treasury, self-government and public law institutions², which transparently established the principles of awarding public contracts.

In post-war legislation public procurement was the subject of, among others, the Act of 18th November 1948 on supplies and services for State Treasury, self-government and some categories of legal persons³, which was repealed in 1957 by the Act on supplies, works and services for state entities, awarding the right for realization of orders to social economy entities. In the eighties public procurement (called 'government orders' at that time) was regulated by the Act of 26th February 1982 on social-economic planning⁴ and by autonomous resolutions of the Council of Ministers, which was in force till 1987, when the whole of problems connected with orders were again regulated by the decree of the Board of Ministers of 22nd September 1987 on specific procedure and principles for awarding government orders till 1990 and their realization⁵. At the time of planned economy we could not speak of orders within the meaning the term was used by union legislation at that time.

In the nineties, when system and economic transformations took place, works on the project of the act on public procurement commenced and it was resolved on

¹ Journal of Polish State Law, no19, item 55.

² Journal of Laws no 19, item 127.

³ Journal of Laws no 63, item 494.

⁴ Unified text – Journal of Laws from 1987, no 4, item 26 with further amendments.

⁵ Unified text – Journal of Laws from 1987, no 4, item 26 with further amendments.

10th June 1994⁶. These regulations were many times amended and they took into account many solutions of The European Union Directives concerning awarding public procurement.

In order to implement the union solutions, Poland resolved new text of the Act on 29th January 2004 – the Act on Public Procurement⁷, which removed all divergences in concluding contracts of public procurement. The Act came into force on 2nd March 2004, whereas a few regulations came into force on Poland's accession to the European Union. Besides regulation by the Act, specific problems concerning awarding contracts are defined by separate legal acts⁸, decrees issued – by authorized by the Act – organs of government administration⁹ and other legal sources, for example jurisdiction of Polish courts and sentences by Team of Arbiters (organ considering appeals of contractors from awarding entity's decisions).

Public procurement law specifies rules and procedures for awarding public contracts, law enforcement measures granted to performers and checking the award of public contracts by organs of public administration. In Polish literature on the subject, initially there was no homogenous attitude to the character of legal regulations included in the act concerning public procurement. Polish legal regulations concerning public procurement are of interdisciplinary character, since they refer to various branches of law. Thus, for example from the point of view of financial law – the important problem is the use of public finance, the regulations of civil law are the basis for concluding agreement on public orders, and administrative law is applied at the point of evaluation and functioning of organs authorized for co-ordination and control of public contracts. At present, it is emphasized in the literature, that despite the fact that the public and private spheres meet and there is a need to protect public interest¹⁰, the act on public procurement does not interfere in existing civil-legal system and the majority of regulations of the act constitute *lex specialis* to the regulations of the civil code. As Jerzy Pieróg emphasizes, solutions accepted in the act on public procurement are in agreement with basic rules of civil law. It means that the act takes precedence of the civil code, which is confirmed by the content of art. 14 p.p.l. stating that “provisions of the Act of 23rd April 1964 – the Civil Code shall apply to actions undertaken by the awarding entity and contractors in the contract award procedure, unless provisions of this Act provide otherwise”.

⁶ Unified text – Journal of Laws from 1998, no 119, item 773 with further amendments.

⁷ Unified text – Journal of Laws from 2006, no 164, item 1163 with further amendments, later called “p.p.l.”.

⁸ For example: act of 23rd April 1964 – Civil Code (Journal of Laws no 16, item 93 with further amendments), act of 17th November 1964 – Civil Procedure Code (Journal of Laws no 43, item 296 with further amendments), act of 7th July 1994 – Construction Law (Journal of Laws from 2003, no 207, item 2016 with further amendments).

⁹ For example: the decree by the President of the Board of Ministers from 19th May 2006 on the types of documents which may be requested by the awarding entity from the economic operator and forms in which these documents may be submitted (Journal of Law, No. 87, item 605), the decree by the President of the Board of Ministers from 19th May 2006 on the report on the contract award procedure (Journal of Law, No. 87, item 606), the decree by the President of the Board of Ministers from 19th May 2006 on the value threshold of contracts and design contests which imposes an obligation of dispatching the notices to the Office for Official Publications of the European Communities (Journal of Law, No. 87 item 604) etc.

¹⁰ See: E. Norek, *Public Procurement Law. Commentary*, Lexis Nexis, Warszawa 2005, p. 9–10.

2. THE CONCEPT OF PUBLIC CONTRACTS (SUBJECT-OBJECT SCOPE OF APPLICATION OF THE ACT)

Awarding public contracts must be in accordance with basic rules specified by the legislator, which are: the rule of fair competition, equal treatment of contractors both native and foreign ones, the rule of impartiality and objectivism, which should be obeyed by the awarding entity at the stage of activities related to preparation and conducting the procedure for awarding a contract. Contract award procedures shall be public¹¹ and conducted in writing¹², however, in justified cases the awarding entity may agree on the submission of statements in a language commonly used in international trade or in a language of the country in which the contract is awarded. Another rule is applying tendering procedures (unlimited and restricted tendering) and awarding contracts in other procedures is only possible in cases specified in the Act p.p.l. In Polish literature¹³ other rules are also pointed out, for example the rule of purposefulness of procedures for awarding a contract, which says that the awarding entity is bound by the purpose of each procedure aimed at awarding a contract.

Public procurement is paid agreement concluded between an awarding entity and a contractor, the object of which are services, supplies or construction works. The Act is applied when two premises appear together, it means the object of a contract are services, supplies or construction works and when the awarding subject specified in the Act is obliged to apply the Act.

Object scope

According to the regulation of p.p.l. act *services* mean “all services the object of which are not public works or supply contracts”. *Supplies* are “acquisition of things, rights and other goods, particularly on the basis of sale contract, delivery, rental, hire or lease”. *Public works* contracts are either the execution or both the execution and design of construction works as understood by the Act of 7th July 1994 – Construction Law¹⁴, and also the execution of construction works as understood by the Act of 7th July 1994 – Construction Law as well as realisation of the work within the meaning with the requirements provided by the awarding entity.

The Act of Public Procurements Law introduces a few so-called *thresholds of awarding public contracts*. The so-called thresholds values decide about the range of formalization of the procedure of awarding public contracts. Basic value thresholds (expressed in PLN equivalent of EUR values) are:

¹¹ Polish legislator separately regulated the issue of announcing contracts and sending announcements to the Office for Official Publications of the European Communities, which reflects the rule of transparency formulated in Union Directives on public contracts.

¹² Retaining written form takes place at the moment of setting one's signature on the document – art. 78 par. 1 of the Civil Code of 23rd April 1964 (further called “C.C.”). The equivalent of written form is also statement of will. In electronic form with a secure electronic signature verifiable using a valid qualified certificate (art. 78 2 CC)

¹³ See: R. Szostak, *Review of changes in the system of public procurement*, part II, “Public Procurement. Advisor” 2004, no 3, p. 10.

¹⁴ Journal of Laws from 2006, no 156, item 1118.

- exceeding 14 000 EUR, which is the decisive value about the application of the Act;
- the value of a contract is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8 (which are the issue of the decree by the President of the Board of Ministers from 19th May 2006 on the value threshold of contracts and design contests which imposes an obligation of dispatching the notices to the Office for Official Publications of the European Communities).¹⁵
- equal to or exceeding 10 million EUR; for example in case of supplies and services, the awarding entity shall place a contract notice in a national daily or periodical,
- equal to exceeding 20 million EUR; for example in case of contracts for public works the awarding entity shall place a contract notice in a national daily or periodical.

One of important matters while applying the Act is to calculate the contract value. The base for calculating the contract value is a complete estimated payment to the contractor, excluding the tax on goods and services, specified within 6 months prior to the date of initiation of the procedure for awarding the contract for construction works and three months in case of supplies and services. Dependant on the object of contract, the awarding entity shall calculate its value based on various regulations, and in case of supplies and services Common Procurement Vocabulary (CPV) is important.

The Act Public Procurement Law has a catalogue of **releases from obligation of applying the Act by awarding entities**. The regulations of the Act do not apply to procurement contracts awarded on the basis of international agreements, for contracts by National Bank of Poland (for example related to issue of currency, accumulation of gold and precious metals, exercise of tasks concerning the implementation of the financial policy, etc.), contracts the object of which are arbitration or conciliation services, purchase of ownership and other rights to real properties, employment contracts, contracts which are declared state secret. These are just examples of exclusion from applying the Act. The full catalogue is contained in art. 4 of the p.p.l. Act, and partial exclusions in applying some regulations in a chosen category of services (for example legal, hotel, restaurant, etc.) are contained in art. 5 of the p.p.l. Act. The Act does not apply to some sectorial contracts, for example transportation and supply of electric energy, heat and gas fuels, etc.

Subject scope

The **contracting authority** is a natural person, legal person or organizational unit without legal personality obliged to apply the Act (art. 2 item 12 of the p.p.l. Act).

The circle of subjects obliged to apply the act was specified by the regulations. The contracting authorities in Poland may be;

- A. Public finance sector entities within the meaning of regulations of the Act of 26th June 2005 on public finance¹⁶. Among these subjects are for example organs of public authorities, government administration organs (for example ministries, central offices, voivodship offices), state control organs and legal protection (for

¹⁵ Journal of Law, No. 87 item 604.

¹⁶ Journal of Laws, no 249, item 2104 with further amendments.

example the Highest Control Chamber, Spokesman for Civil Rights), courts and tribunals (for example Superior Court, common, administrative courts), territorial self-government units (municipalities, counties, voivodships) and their organs and organizations, budgetary units, state universities, independent public health care units, Polish Academy of Science and others.

- B. Other state organizational units without legal personality, it means those not mentioned in the Act on Public Finance, and created on the basis of separate acts, for example National Forest Management National Forests, General Inspector for Protection of Personal Data, Spokesman for Child's Rights,
- C. Subjects of public law; these are other subjects than mentioned above, if it is a legal person created especially to satisfy needs of common character which are not of industrial or trade character, if these subjects, or the ones mentioned in points A and B, separately or together, indirectly or directly by other subject: a) finance them in over 50%, or b) have more than half of shares (stocks), or c) supervise the managing organ, or d) have the right to appoint more than half of members of managing or supervising authority¹⁷.

Polish law undoubtedly enumerates among these subjects foundations, which are financed by State Treasury and if it has for example the right to appoint majority of foundation members of foundation organs, agencies for local development, which is influenced by self-government authorities, subjects which currently and continuously satisfy needs of people¹⁸, Polish television S.A. (company limited by shares), Polish Radio S.A. and radio and television companies (excluding contracts related to purchase, preparation, production or co-production of films, radio or television broadcast and purchase of broadcasting time, companies and partnerships created for realization of public tasks, etc.

- D. Public Utility Sector, it means other than specified above subjects if the procurement is awarded in order to perform one of activities which are mentioned in article 122 p.p.l., and this activity is performed on the basis of special or exclusive rights, or if the subjects mentioned in points A – C, separately or together, indirectly or directly by other subject: a) finance them in over 50%, or b) have more than half of shares (stocks), or c) supervise the managing organ, or d) have the right to appoint more than half of members of managing or supervising authority.

Inclusion of regulations concerning public utility sector in the Act was aimed to transpose the Union Law in order to provide equal and free access to public procurement awarded by the subjects which do not dispose with public funds but instead, either by administrative dependence from the state, or monopolist or dominant position on the market, are inclined to perform prohibited acts limit-

¹⁷ Jurisdiction of the Tribunal of Justice is significant for specification of subjects of public law (for example case C – 360/96, concerning Arnhem, case C – 44/96, Mannesman, etc.).

¹⁸ In Polish literature on the subject various aspects and ways of understanding of “public utility” are noted, its social, economic and organizational features. This is the reason why, in order to clarify the concept without prejudice to the Act of 1994 on public procurement, the Constitution Tribunal established commonly applied meaning of this term. According to the resolution of the Tribunal of 12th March 1997 *national and municipal organizational units performing tasks of public utility are such national and municipal units which were founded in order to perform tasks of public administration aimed at satisfying social needs of general character, the activity of which is not meant to maximize profit.*

ing the competition. The definition of special or exclusive rights is included in art. 3 of paragraph 2 p.p.l.

- E. Other subjects than those specified in points A and B 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.
- F. Other subjects than those specified in points A and B if the contract is financed with the participation of means the award of which depends on application of procedure to award procurement specified in the Act (for example from union means, the participation of means does not have to exceed 50%).
- G. Subjects which were awarded concession for construction works by the subjects mentioned in points A – C in the scope in which they award procurement in order to perform.

Awarding subject must be distinguished from persons (natural and legal) authorized to undertake certain activities on behalf of the awarding entity. These include: authorized persons, usually *employees of awarding entity*, who act within their working duties, the head of awarding entity, *tendering commission*. The head of awarding entity and tender commission have an important role in awarding procurement.

The head of awarding entity, according to art. 2 item 3 p.p.l. 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. The head is responsible for preparation and implementation of procedure for awarding procurement. The head's responsibility is based on legal regulations (for example Commercial Companies Code and agreements (for example job agreement, manager's contract).

Tendering commissions are obligatorily appointed by the head of awarding entity (the value of a contract is equal to or exceeds the amounts specified in the provisions issued under Article 11 paragraph 8). The commissions may be of permanent or temporary character. They are auxiliary organs of the head appointed to evaluate the subjective conditions of contractors and examination and evaluation of the offer. The commissions present, among others, propositions to exclude a contractor, reject the offer and choose the best tender, etc.

In order to secure impartiality of the awarding entity, the legislator provides a closed catalogue of exclusions of persons performing activities in procedure for awarding procurement (on behalf of awarding entity). The exclusion may happen at any stage of procedure, when the awarding entity finds out about circumstances mentioned in art. 17 p.p.l. The premises for exclusion are situations when a person performing activities in procedure for procurement competes for a contract, when there are family relations between the awarding entity and the contractor (for example relatives by marriage, blood or affinity in direct line may not apply on behalf of the awarding entity or perform activities related to the procedure for public procurement, and also act as an expert, etc), there are professional connections between the awarding entity and contractor (it concerns the awarding entities who during the three years

prior to the date of the start of the contract award procedure remained in a relationship of employment or service with the contractor or were members of managing or supervisory bodies of contractors competing for a contract) or there is such legal or actual relationship between the awarding entity and contractor which may raise justified doubts as to their impartiality, or persons acting on the side of awarding entity 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.

In order to strengthen the principle of impartiality the legislator obliged persons performing actions in procedure to submit written statement, under the pain of penal liability for making false statements, about the absence or existence of the circumstances for exclusion from art. 17 par. 1 p.p.l.

A contractor – in accordance with art. 2 item 11 p.p.l. – may be “natural persons, legal persons or organizational units not having legal personality, who compete for the award of a contract, have submitted their tenders or concluded a public procurement contract”.

The new law provides, like the Act of 1994, the possibility for contractors to compete jointly for a contract. Nowadays – in regulations and literature – it is noted that consortium and civil corporations may submit tenders jointly.

Consortium is not defined by the Polish law. It is undoubtedly one of forms of economic concentration. It is unnamed agreement and the possibility to conclude it results from the freedom to conclude agreements (art. 353¹ C.C.)¹⁹. Besides consortium, the contractor may be a civil corporation which does not have legal personality (legal ability) although each entrepreneur who is its partner is subject to notification to due economic evidence. Unlike consortium, the corporation is solidarily responsible for obligations, whereas in consortium each of its members is responsible with his all fortune in external sphere.²⁰

At submitting joint tenders (concluding agreement) the regulations of public procurement law provide the obligation to appoint a plenipotentiary by contractors to represent them in the contract award procedure, or represent in the procedure and conclusion of a public procedure contract (art. 23 p.p.l.). In case of a consortium it will usually be the so-called consortium leader, and in case of civil corporation – a partner authorized to run the corporation’s business (in accordance with regulations of the Civil Code).

The Act Public Procurement Law uses the term “conditions for participation in the public procurement award procedure”. As it follows from art. 22 par. 2 p.p.l., the contractor may not specify these conditions in a way which could restrict fair competition. Eligible to compete for a contract shall be contractors who are authorized to perform specific activities or actions, if such authorizations are required by the law, have the necessary knowledge, experience and technical capacity and have also persons able to perform the contract, and are in a financial and economic situation

¹⁹ See: L. Stecki, Consortium, Toruń 1997; according to L. Stecki consortium is treated as a creation appointed by means of agreement by subjects conducting economic activity for realization of common economic purpose.

²⁰ As above p. 45.

ensuring the performance of the contract, and are not liable to exclusion from the award procedure.²¹

The Public Procurement Law also points to the duty of proving that they satisfy the conditions for participation in the procedure. According to art. 26 par. 1 p.p.l., in the award procedure of a contract where the value of a 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 contractors documents proving that they satisfy the conditions for participation in the procedure (in case of contracts below this value the awarding entity may request) by submitting adequate documents. The kinds of documents proving that they satisfy the conditions for participation in the procedure are specified by the decree of the President of Council of Ministers of 19th May 2006 on the types of documents which may be requested by the awarding entity from the economic operator and forms in which these documents may be submitted²².

According to the decree, in order to prove that the contractor is authorized to perform specified action or activity and the fact that he is not liable to exclusion, the awarding entity may request, in its original form or a copy certified to be true by the contractor, documents issued at the specified time by competent authorities. Among others, such documents as: up-to-date copy from the appropriate register of economic activity, concession, permissions, licenses, copies from the National Criminal Register confirming lack of criminal record, certificates that they are not in arrears with payment of taxes, charges or social insurance or health insurance premiums, etc. The decree also points separately to the documents proving that the contractor has necessary knowledge and experience and technical capacity and persons able to perform the contract (for example the list of necessary tools and machines, the list of persons who will realize the contract, the list of supplies or services performed during the past three years, etc) and documents proving that the contractor is in such an economic and financial situation which ensures the performance of the contract (for example the balance and calculation of profit and loss for the previous year, the list of persons and subjects that shall perform the contract or participate in its performance, banking information confirming the size of financial means possessed and credit ability of the contractors, etc.).

²¹ For example contractors who during the past three years prior to the beginning of the procedure caused damage by failing to perform a contract or by performing it improperly, and the damage was not voluntarily remedied till the day when the procedure began, unless non-performance or improper performance was the result of circumstances beyond the contractor's responsibility, contractors against whom bankruptcy proceedings have been commenced or whose bankruptcy has been declared, contractors 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 installments or the execution of a decision of a competent authority has been stopped in its entirety, natural persons who have been validly sentenced for an offence committed in connection with a contract award procedure, for bribery, for an offence against economic trade or for any other offence committed with the aim of gaining financial profits or legal persons whose active members of the managing body have been validly sentenced for an offence committed in connection with a contract award procedure, for bribery or any other offence committed with the aim of gaining financial profits, etc.

²² Journal of Law, No. 87, item 605.

In case when a foreign subject competes for a contract, which means the contractor whose seat or place of residence is outside the territory of Poland, instead of the copy from the appropriate register of economic activity, up-to-date information from the National Criminal Register that the court has not prohibited to compete for the contract to the contractors who are treated as so-called joint subjects and are subject to the regulation concerning responsibility of joint subjects for deeds prohibited under the pain of penalty²³ and certification confirming that they pay taxes, premiums, charges, the foreign contractor presents the documents issued in the country in which he has a seat or place of residence.

These documents duly confirm that the bankruptcy proceedings have not been commenced and the bankruptcy has not been declared of the foreign contractor, he has not been sentenced to the prohibition of competing for the contract and that this subject is not in arrears with payment of taxes, charges or social or health insurance premiums, or that it has been legally exempted, its outstanding payments have been deferred or divided into installments or the execution of a decision of a competent authority has been stopped in its entirety. In case if in the country of origin of the foreign contractor or where he has a seat or place of residence, such documents are not issued or the information from the National Criminal Register or equivalent certification by the court or administrative organ of the country of origin of the person, confirming that he has not been validly sentenced for an offence committed in connection with a contract award procedure, for bribery, for an offence against economic trade or for any other offence committed with the aim of gaining financial profits²⁴ (in case the document confirming the fact that the above mentioned crimes have not been committed can not be issued) it is replaced by the document confirming statement made in the presence of a notary, adequate court, administrative, professional self-government or economic authority in the country of the person's origin, or the country where the contractor's seat or place of residence is (§2 par. 2 of the decree).

3. PROCEDURES FOR AWARDING PUBLIC CONTRACTS

The procedures for awarding public contracts specified by the Act reflect solutions accepted in Union Directives concerning concluding contracts for construction works, supplies and services. The legislator decided that **unlimited and restricted tenders** are basic procedures, at the same time the catalogue of other procedures than tender has been changed. Awarding entity may award contracts by negotiated procedure with publication, competitive dialogue, negotiated procedure without pub-

²³ Joint subjects, which may be prohibited from competing for public procurement by the court, were specified in the Act of 28th October 2002 on responsibility of joint subjects for deeds prohibited under the pain of penalty (Journal of Laws no 197, item 1661). The act specifies principles of responsibility of joint subjects for prohibited deeds under the pain of penalty as offence or financial offence. Regional court sentences these subjects to a fine amounting to 10% of income specified by regulations on income tax from legal persons, obtained during the tax year preceding the sentence.

²⁴ Responsible for this kind of crimes are natural persons, partners of registered partnerships of trade law (partnership firm, limited partnership, limited joint-stock partnership) running partnership's business, members of managing subject's organs (contractors) having status of legal persons.

lication, single-source procurement procedure, request-for-quotations procedure or by electronic bidding procedure only under the circumstances specified in this Act.

Polish legislator separately settled special procedures (part III of the Act p.p.l.), concerning competing for especially in the scope of spatial planning, urban design, architecture-construction and processing data, regulations concerning concessions for construction works, sectorial contracts regulations, framework agreements, dynamic purchasing system, award and execution of concessions.

Important matters for contract award procedure are regulations concerning preparation of tenders based on specification of important conditions of the contract, time limits to submit tenders, deposit (art. 45 and 46 of p.p.l.), circumstances which are premises for rejection of a tender (art. 89 p.p.l.)²⁵, canceling a contract award procedure (art. 93 p.p.l.)²⁶ and others.

4. PUBLIC PROCUREMENT CONTRACTS

Contracts on public procurements are of civil-legal character which is confirmed by the application of the Civil Code, unless the provisions of this Act provide otherwise. A procurement contract shall, under the pain of nullity, require a written form, unless separate provisions provide for a special form, e.g. a notary act. The contracts are open. It is the principle that the contracts are concluded for a determinate duration, however Polish legislator makes it also possible to conclude contracts for indeterminate duration²⁷ and to conclude contracts for period exceeding 4 years. The awarding entity concludes the contract in the period not shorter than 7 days from the day of dispatching information on the choice of the tender, but not later than the termination of the date of the tender bound. This is the time when contractors may law enforcement measures of legal protection and the President of Public Procurement Office may conduct the ex-ante check²⁸.

The Act precisely specifies premises for nullity of contracts. With exceptions resulting from separate regulations, the contracts is null and void if 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, when the awarding entity selected the tender in blatant infringement of the law, etc.

²⁵ Rejection of a tender takes place in a case when a tender is not in accordance with the Act, specification of important contract conditions, is an act of unfair competition, etc. The catalogue of premises is closed and points to 8 reasons for rejecting a tender.

²⁶ The reasons for canceling the procedure are, among others, when there a defect which prevents the conclusion of a valid public procurement contract, the price of the best tender exceeds the amount which the awarding entity can allocate to finance the contract, etc. The legislator enumerates circumstances for canceling the procedure in 7 points.

²⁷ The object of such a contract shall be water supplies via the water and sewage network or disposal of sewage to such a network, electrical energy from the power network, gas from the gas grid, heat from the heat distribution network.

²⁸ This is the control which may be carried out prior to the conclusion of the contract, when the contract value exceeds the expressed in PLN equivalent of EUR 20 000 000 (for construction works) or 10 000 000 EUR (for supplies and services).

Issues concerning security on due performance of the contract are also specified in details.

5. CONTRACT AWARD CHECKING

Public procurement law widened the catalogue of check instruments of awarding public procurement, which shall promote counteracting corruption. It can be observed not only by widening the checking power of the President of the Public Procurement Office (e.g. carrying out ex-ante and ex-post check), but also approves the choice of procedure for the contract awarded in procedure based on special principles and has the power to apply to the court for invalidation of the contract if one of the circumstances specified in art. 146 Act p.p.l. occurs.

6. LAW ENFORCEMENT MEASURES

Contractors 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 infringement by the awarding entity of the provisions of this Act shall be entitled to law enforcement measures such as **protests, appeals and complains**. Organizations of contractors entered on the list of organizations maintained by the President of the Public Procurement Office (art. 179 par. 2 – 5 p.p.l.)²⁹ are also entitled to law enforcement measures.

The Polish law regulations precisely specify the protest procedure, they establish principles for lodging a protest by the contractor against acts performed by the awarding entity or in the event of failure to act. The appeal procedure is also specified in details (the appeal is examined by the panel of three arbitrators appointed by the President of the (Public Procurement Office³⁰) and procedure in the common court, where a complaint against the arbitrators' resolution may be lodged (examining appeals and final resolutions of the appeal procedure). Other important solutions are, among others, evaluation if the lodging of the protest is effective, it means the protest shall be deemed as lodged when delivered to the awarding entity in a manner allowing it to become familiarized with its content (art. 180 par. 2 p.p.l.)³¹, specification of the time to resolve the protest by awarding entity not later than within 10 days from its lodging, prolongation of the time to lodge appeals to 5 days of the date of delivery of the resolution of the protest or the expiry time to its resolution, possibility to lodge a complaint to the regional court competent for the seat or place of residence of the awarding entity.

²⁹ These organizations may law enforcement measures prior to termination of the date for submitting tenders.

³⁰ Since 12 October 2007 r. parts will appeal to The National Appeal Chamber

³¹ These solutions meets regulations of the Civil Code – art. 61 C.C.

7. CONCLUSION

Since 1996 a debate on changes in the union system of public procurement has been going on in the European Union. In February 1999 the European Parliament passed the resolution concerning up-to-dating regulations, indicating the need to introduce changes, among others in the field of introducing pro-social requirements, pro-ecological, new procedures for awarding contracts (e.g. so-called “competitive dialogue”), rising thresholds for awarding contracts, fight against corruption and using electronic means in procedures for public procurement. On 10th May 2000 the European Commission passed two projects of new directives and finally on 29th January 2004 the European Parliament approved the final texts of the Directives. In the Official Journal of the European Union L 134 of 30th April 2004 “classical” directive was published no 2004/18/EC (directive concerning co-ordination of procedures for awarding public contracts for supplies, services and construction works) and “sectorial” directive no 2004/17/EC (concerning co-ordination of procedures for awarding public contracts by subjects acting in sectors of water management, energy, transport and mailing services).

Reassuring, it must be stated that Polish Public Procurement system is coherent with Community’s regulations, and thus by its membership in the European Union Poland is an equal member of the Government Procurement Agreement – GPA), which enables Poland to occur both on the Community’s and world’s public procurement market.