

**Polska**



# Securing business: Public procurement law

2017-05-12 14:40:56



Polish public procurement legislation dates back to 1994 when the first Act on Public Procurement was adopted.

**The Act was amended several times over the following years, mainly with view to, clarify its rules and definitions, broaden its scope of application, and to make the procurement process more transparent.** The adjustment of Polish procurement provisions to EU requirements was a major reason behind the preparation of new legislation. The new Public Procurement Law was adopted on January 29th 2004, to replace the Act of 1994. In April 2006 and April 2007 the Public Procurement Law was significantly amended in order to implement the provisions of EU directives. Public procurement law regulates the purchase of contracts for goods, works or services by public sector authorities. It is concerned with orders for construction work, supplies, or the rendering of services which are financed from state or municipal budgets. The Public Procurement law is designed to open up the EU's public procurement market to competition, to prevent 'buy national' policies - and to promote the free movement of goods and services. Public procurement aspects are regulated in the Act on Public Procurement Law of January 29th 2004. The abovementioned act stipulates the entities which are obliged to apply and fulfill all of its requirements.

In accordance with the annual report of the Public Procurement Office for the year 2015, the market value of Public Procurement amounts to 38 billion PLN. In comparison to 2014, expenses on public. The act does not apply to orders which do not exceed EUR 30,000.00 in value. In April 2014 this limit was raised from EUR 14,000.00 to EUR 30,000.00.



**Polish law provides several procedures for granting a public procurement order.** Two of these are applied in most cases, namely unlimited tender bidding, and limited tender bidding. Unlimited tender bidding, apart from limited tender bidding, provides the basis for all procedures. In accordance with procedure rules, all interested contractors may put forward an offer in response to a public advertisement. In the limited tender binding procedure contractors send an application for admittance to the bidding. Offers may be sent only by contractors which have been invited to submit offers. Furthermore, Polish law imposes the following procedures: Open tendering, restricted tendering, negotiation with publication, competitive dialogue, negotiations without publication, direct - award contract, request for prices, electronic bidding. However, those procedures may be applied in exceptional situations.

**The contractor or supplier who attends the procedure is obliged to pay a tender deposit of no more than 3% of the value of the procurement.** The deposit may be paid in cash. A bank guarantee, insurance guarantee, and a bill of exchange confirmed by a bank, as well as other financial guarantees are exempted from this rule. The ordering party includes all of the essential elements which are necessary for a precise description of the ordered products or are necessary for delivery in the order specification.

**The best offer is chosen on the basis of criteria previewed in the specification.** The best price, which is the most common indicator, is not the only criterion used by Polish authorities. Very often, quality, functionality, and application of best available technology and its impact on environment may also have bearing on an offer's evaluation. While the public procurement law is an administrative law, depending on the type of contracts closed through a tender application, the Civil Code and Civil Procedure Code are also applied.

**Information about proceedings is published in the Public Procurement Bulletin,** on the website of the Public Procurement Office and in the official Journal of the European Union.

**The contractor and participants of a public procurement procedure,** as well as others who have a legal interest in the procedure, may appeal any action and omission which is incompliant with the procurement law. The appeal should be filed to the National Appeal Chamber within 5, 10, or 15-days, depending on the value of the order or contract.



**If the value of the contract is lower than a certain amount,** specified in the relevant provisions of the Public Procurement Law, the appeal may be admissible against only some of the actions taken during the procurement procedure. In other situations, there are no similar restrictions and an appeal may be filed against any illegal action.

**If an appeal is filed, the awarding entity may not conclude a contract until the Chamber has passed its judgment or decision on the appeal.** The Chamber will examine the appeal within 15-days from the date of its submission to the Chairman of the Chamber. The Chamber will then issue a judgment dismissing or admitting an appeal.

**Parties and participants of an appeal procedure may file a complaint against the Chamber's ruling.** The complaint should be lodged with the district court designated to the seat or place of residence of the awarding entity. The court shall examine the complaint not later than within one month of the day on which the complaint was received by the court. The contract cannot be closed as long as appeal proceedings are in process.

**An agreement between the ordering party and the contractor with the best offer must be executed in written form under pain of invalidity.** If Polish law requires a specific form (e.g. a notary deed), such an agreement should be enclosed with the form. The agreement should be concluded in a manner that the declaration of bankruptcy stems. If a debtor is its scope does not exceed the scope of the offer.

**The final major amendment of the Public Procurement to date was introduced on June 22nd 2016** (and came into force on 28th July 2016).

\*\*\*

Source: Polish Investment and Trade Agency, *Poland your business Partner. Invest in Poland, 2016.*



**INNOWACYJNA GOSPODARKA**  
NARODOWA STRATEGIA SPÓJNOŚCI



**MINISTERSTWO  
ROZWOJU**

**UNIA EUROPEJSKA**  
EUROPEJSKI FUNDUSZ  
ROZWOJU REGIONALNEGO



Projekt jest współfinansowany przez Unię Europejską ze środków Europejskiego Funduszu Rozwoju Regionalnego