



## **This document has been provided by the International Center for Not-for-Profit Law (ICNL).**

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at  
<http://www.icnl.org/knowledge/library/index.php>  
for further resources and research from countries all over the world.

### Disclaimers

**Content.** The information provided herein is for general informational and educational purposes only. It is not intended and should not be construed to constitute legal advice. The information contained herein may not be applicable in all situations and may not, after the date of its presentation, even reflect the most current authority. Nothing contained herein should be relied or acted upon without the benefit of legal advice based upon the particular facts and circumstances presented, and nothing herein should be construed otherwise.

**Translations.** Translations by ICNL of any materials into other languages are intended solely as a convenience. Translation accuracy is not guaranteed nor implied. If any questions arise related to the accuracy of a translation, please refer to the original language official version of the document. Any discrepancies or differences created in the translation are not binding and have no legal effect for compliance or enforcement purposes.

**Warranty and Limitation of Liability.** Although ICNL uses reasonable efforts to include accurate and up-to-date information herein, ICNL makes no warranties or representations of any kind as to its accuracy, currency or completeness. You agree that access to and use of this document and the content thereof is at your own risk. ICNL disclaims all warranties of any kind, express or implied. Neither ICNL nor any party involved in creating, producing or delivering this document shall be liable for any damages whatsoever arising out of access to, use of or inability to use this document, or any errors or omissions in the content thereof.

# The Act of June 10, 1994 on Public Procurement

as amended August 29, 1997

## Chapter 1.

### General Provisions

#### Art. 1.

This Act determines the principles, forms and procedures for conducting public procurements, the appropriate organs of government in matters related to public procurement, and procedures for reviewing protests and appeals filed during the course of procurement proceedings?

#### Art. 2.

Terms used in this Act have the following respective meanings:

- 1) "construction" - means any construction work within the meaning of the Act of July 7, 1994 - "Building Code" (Dz.U. nr 89, pos.414 of 1996 with further amendments);
- 2) "delivery" - means all stages of the process of procuring raw materials, products, equipment and other goods delivered to the procuring entity;
- 3) "services" - means all work that is neither the delivery of goods nor construction;
- 4) "public procurement" (hereinafter also referred to as "procurement") - means the procuring of construction, the delivery of goods and the performing of services, financed fully or partially with public funds;
- 5) "procuring entity"<sup>6</sup> - means any entity conducting public procurements under this Act;
- 6) "domestic suppliers and contractors" - means natural persons residing in Poland  
, and legal persons and entities established under Polish law without legal personality that have their site in Poland .
- 7) "public funds" - means the following sources of funds:
  - a) funds from the state budget or the budgets of self-government units that are allocated for ordinary activity and capital investment activity;

- b) funds as defined in the Budgetary Act as extra budgetary funds excluding the funds donated by natural or legal persons, which are not obliged to apply this act;
- c) funds guaranteed, secured or for which the cost of the credit is co-financed by the State Treasury, the local self-governments or a union of self governments .
- d) funds granted as foreign aid under international agreements, unless the agreement requires different procedures for using the funds.
- e) direct municipal funds,
- f) funds coming from the license fees or fees for using not registered radio and tv sets, which are defined in the act of December 29, 1992 on Radio and Television (Dz.U. nr 7, pos. 34, of 1993),
- 8) "best offer" - means the offer or tender with the lowest price that is exactly the same quality of the subject matter sought in the procurement proceeding, or an offer or tender with the best balance of price, life-cycle costs, completion or delivery time, or other criteria specified in the relevant provisions describing the procurement,
- 9) "the value of a procurement"- means the value of the procurement estimated with sufficient care by the procuring entity - not including VAT.
- 10) "domestic products and raw materials"- means the goods originating from Poland, within the terms stated in the Act of January 9, 1997 "Custom Law"(Dz.U. nr 23, pos.117 of 1997)
- 11) "dependent units"- means organizational units in which state or municipal organizational units posses:
  - a) not less than 50% of share, or
  - b) the majority of votes on the general meeting of shareholders, or
  - c) the right to appoint or dismiss not less than a half of the members of the management or supervisory body of a dependant unit.

### Art. 3

1. This Act applies to procurements for delivering goods, performing services and construction, financed in whole or in part with public funds.
2. The procuring entity may not divide the procurement into parts or lower the value of a procurement in order to avoid the application of this Act or to avoid the application of the procedures for public procurements as set forth in this Act.

3. If the public procurement will be financed with a participation of the foreign funds provided within the meaning of a international agreement, which foresees other than this act procedures of imparting the procurements, the procuring entity will apply the procedures stated in that agreement.

4. The Chairman of the Office of Public Procurement with the agreement of the Minister of Finance may , on the procuring entity request, allow not to apply this act in case of a procurement financed by the international funds granted on the other basis than international agreement, if granting this funds depends on applying other procedures than stated in this act.

#### Art. 4

1. This Act applies to public procurements issued by:

- 1) state units and support services created by the state budgetary units;
- 2) funds established by state earmarks;
- 3) self- government units and self-government seyms,
- 4) crossed;
- 5) co-operatives, foundations and associations to the extent that they dispose of public funds,
- 6) executing tasks in public domain:
  - a) state organizational unit,
  - b) municipal organizational units
  - c) dependant units;
- 7) state agencies within the scope not regulated by other law,
- 8) units of public radio and television;

2. The Council of Ministers shall, by ordinance, define the specific principles for conducting public procurements related to the protection of national security, the protection of state secrets, the state of natural disaster:

3. The Council of Ministers may, by ordinance, designate other entities that dispose of public funds which will be governed by this Act.

Art. 5.

1. If a number of units of government administration need the same subject matter of a procurement, the Council of Ministers may assign a particular administrative unit to perform the procurement proceeding and conduct one joint procurement on behalf of those units.

2. If the subject of a procurement is within a scope of interest of many of the municipal units, the management board of the municipality may indicate municipal organizational unit to conduct the procurement proceedings and to gain a common procurement in the name of the other units.

3. The powers to conduct such a common procurement referred to in para. 1 and 2, may be granted for a specific procurement or a specific period of time.

Art. 6

This Act does not apply to:

1) budget funds for scientific research which are at the disposal of The Chairman of The State Committee of Scientific Research"

2) principles and procedures for subsidies from Public funds, if these subsidies are designated under another Act.

3) contracts granted to:

a. general services administrations of procuring entities) and budgetary units for services for regular and ordinary activities of the procuring entity;

b. enterprises subject to the Ministry of Justice which operate at penitentiaries and detention centers;

4) public funds granted as a subsidy. as defined in the Budgetary Act, and destined for agricultural projects with exception of funds granted for investment projects.

Art.6a.

The Civil Code applies (concerning the provisions stated in other rules) to the activities undertaken in the subject of public procurement by the procuring entities, suppliers and contractors.

Art. 7.

The Office of Public Procurement is hereby established, hereinafter referred to as "Office" ~°

Art. 8.

1. The Chairman of the Office is hereby established as the central organ of state administration on all matters of public procurement, according to the provisions of this Act 21

2. The Chairman of the Office shall be appointed and dismissed by the Prime Minister. 3. The Chairman of the Office shall be under the Prime Minister.

Art. 9.

1. The scope of activities of the Chairman of the Office includes:

1) approving, as provided in Art. 14, subparagraph 3, the selection of a procedure for conducting a public procurement other than the unlimited tendering procedure;

2) establishing and maintaining the list of arbiters to review the appeals filed in procurement proceedings, and publicizing the list of arbiters in the Bulletin of Public Procurement;

3) presenting an annual report to the Council of Ministers concerning the functioning of the public procurement system;

4) preparing drafts of Acts and regulations concerning public procurement;

5) disseminating, in coordination with appropriate Ministries, the general conditions and forms of contracts for public procurements, the rules and standard procedures for conducting procurements;

6) collecting information about procurement planning, signed contracts, and performance of public procurements;

7) preparing training programs, and conducting and encouraging training concerning public procurements.

8) cooperating with foreign entities on matters associated with public procurements,

9) issuing a Bulletin of Public Procurements.

2. The Chairman of the Office may also:

1 ) motion the Council of Ministers in matters of joint public procurements, as described in Art. 5 para.1;

2) require the procuring entities to provide information about conducting public procurement proceedings and performing public procurements as well as disclosing the documentation of public procurements,

3) notify the appropriate body in case of an infringement of this act.

Art. 10

1. The Council of the Office is the advisory body to the Chairman of the Office.

2. The members of the Council of the Office are appointed and dismissed by the Prime Minister upon the motion of the Chairman of the Office.

Art. 11 revoked

Art. 12

The organization of the Office shall be specified in a charter issued by the Prime Minister.

Chapter 3.

Principles of Conducting Public Procurements

Art.12a

Public procurement may be imparted to the supplier or contractor, elected within the rules of this act.

Art. 13

Public procurements shall be conducted according to the following procedures: 1) unlimited tendering, 2) limited tendering,

3) two-stage tendering,

4) negotiations-with-retaining-competition

5) request-for-quotations ,

6) single-source procurement.

Art.14.

1. The principle rules of conducting public procurement is unlimited tendering.
2. The procuring entity may conduct public procurement applying other procedures than unlimited tendering only in the circumstances specified in this act.
3. Applying other procedures than unlimited tendering to the procurements which value exceeds 200 000 ECU, must be confirmed by the Chairman of the Office, concerning the art.71 para 1a.

Art.14a.

1. Advertisements about public procurements foreseen in this act are published in the Bulletin of Public Procurement issued by the Chairman of the Office.
- 2, The advertisements referred to in para.1, are published not later than 10 days after delivering them to the Office.
3. If the advertisement does not fulfill the requirements stated in this act, the Chairman of the Office refuses to place such a advertisement.
4. The publishing in the Bulletin is free of charge.]
5. The Chairman of the Office may, by agreement, allow other unit of public administration to edit and to publish a regional issue of Bulletin of Public Procurement.
6. The President of the Council of Ministers, in the way of resolution:
  - 1) qualifies the specimens of the advertisements referred to in para.1. and additional informations, which has to be contained in the advertisements.
  - 2) may establish the regional issues of the Bulletin,
  - 3) may qualify specific terms and conditions of publishing the advertisements in the Bulletin of Public Procurements.

Art.14b.



The procuring entity is obliged to deliver advertisements to be published in the Official Journal of the European Communities concerning the proceedings of conducting public procurement within the scope and conditions specified by the resolution of the Council of Ministers.

Art.15.

1. In public procurements valued less than 30,000 ECU and in public procurements financed with less than 30,000 ECU in public funds, unlimited tendering procedures are not obligatory and the following requirements of this Act shall not apply: the requirements related to publication of announcements in the Bulletin of Public Procurement, written procedures, official records of proceedings, specification of essential provision of the procurement, time periods and deadlines, tender security, and protests and appeals 2'

2. In the public procurement, in which public financing will amount up to the value of 3000 ECU domestic preferences and art. 19 and art.22-24 does not apply, taking account on art.18 para.5,

3. The Council of Ministers may, by ordinance, determine before September 30 of every year, the obligatory from January 1 of the coming year threshold limits in which the law foresees applying specific rules.

Art. 16.

The procuring entity is obligated to treat all competitors for a procurement equally and to conduct the procurement proceeding in a manner that ensures fair competition 2'

Art.17.

1. The subject matter of the procurement should be described using technical characteristics and quality features observing Polish Standards or classifications issued within the act of June 29, 1995 on State's Statistics and regarding the building works - project documents and technical specifications concerning the completing and accepting of such works.

2. It is prohibited to describe the subject matter and conditions of a procurement in a way that could hinder fair competition.

3. Qualifying the subject of the procurement by indicating the trade marks, patents or originality does not constitute any difficulty of fair competition.

1) if for the technology, economic or organizational reasons it is necessary to maintain

the standards of the facilities possessed by the procuring entity, and the procuring entity allows to submit equal offers,

2) if such a obligation arises from other rules.

Art. 18.

1. Domestic as well as foreign suppliers and contractors shall be able to participate in procurement proceedings on an equal basis according to the provisions of this Act.

2. If the value of the procurement does not exceed the amount referenced in Art. 15, paragraph 1, the procuring entity may limit participation in a procurement proceeding solely to domestic suppliers or contractors, and foreign suppliers or contractors that have a branch or representative office in Poland .

3. If the subject matter of the procurement is comprised of services or construction on the territory of Poland, the procuring entity may request that the entire work covered by the procurement be performed with domestic entities, raw materials and products.

4. When applying national preferences in a procurement proceeding, the procuring entity shall inform the suppliers and contractors about the national preference when it starts the procurement procedure. The declaration regarding the national preference cannot be changed thereafter.

5. All obligations described in the international agreements signed by the Republic of Poland shall be considered in applying national preferences.

6. The Council of Ministers shall, by ordinance, specify:

1 ) the range and the procedures for applying national preferences in public procurement proceedings, including the preferences referenced in paragraphs 2 and 3;

2) the categories of deliveries, services, and construction that must be procured under national preference procedures;

3) the specific principles when the Chairman of the Office can approve the application of national preferences and when the Chairman can waive the application of national preferences.

Art.19.

1. The following entities are excluded from competing for public procurements:33

1 ) suppliers or contractors that failed in the diligent performance or failed to perform of a public procurement contract within the last three years before the commencement of the public procurement proceeding;

2) suppliers or contractors who are in a bankruptcy proceeding or who have been declared bankrupt;

3) suppliers or contractors who are in arrears with paying taxes, social insurance fees and other fees, unless they obtained according to the provisions of law an agreement allowing them not to pay such taxes, to suspend the payment or to pay installments.

4) natural persons who have been validly sentenced for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit;

5) legal persons, who currently employ an officer or officers that have been validly sentenced for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit.

2. Commencement of a proceeding for crimes referenced in paragraph 1, subparagraphs 4 and 5, may be a basis for exclusion from participation in public procurement proceedings  
35

#### Art. 20

A person can not represent the procuring entity, perform other activities connected to a procurement proceeding, or be an expert to a procurement proceeding if:

1) such person is in a marital relationship, is directly related to, is in direct or indirect kinship to the second degree, or is related by adoption, guardianship or tutelage with the offeror, with its legal counsel, or with its officers;

2) such person, during the last three years, worked for the offeror as an employee or a contractor or has been an officer of a legal person competing for the procurement;

3) such person is in such a legal or factual relationship with a supplier or contractor competing for the procurement as to give cause to justify doubts regarding his or her objectivity .

#### Art. 21

1. Unless otherwise specified in this Act, all statements and notifications made by the procuring entities and suppliers or contractors are effective only in written form.

2. If, in the course of the procurement proceeding, the parties communicate in other than written form, the content of this communication shall be promptly confirmed in writing.

Art. 22

1. To protect the intellectual property rights and trade secrets of suppliers and contractors, the procuring entity may require from suppliers and contractors only documents essential to perform the procurement proceeding 38

2. To participate in a public procurement proceeding every supplier or contractor has to declare that:

1) it has the legal capacity to enter into legal transactions according to legal requirements;

2) it has satisfied the legal requirements essential to perform the defined work or activities, if these legal requirements are established by an Act ;

3) it possesses the knowledge, experience, financial resources, technical competence, personnel and all necessary capacity to perform the procurement;

4) it is in a financial situation to ensure performance of the procurement;

5) it is not excluded from the procurement proceeding under the provisions of Art. 19.

3. In a public procurement proceeding with a value less than the value referenced in Art.

15, paragraph 1, the procuring entity may require the suppliers or contractors to confirm that they satisfy the conditions referenced in paragraph 2 39

4. In a public procurement proceeding with a value more than the value referenced in Art. 15; paragraph 1, the procuring entity shall require the suppliers or contractors to confirm that they satisfy the conditions referenced in paragraph 2

5. In a public procurement proceeding with a value more than the value referenced in Art. 15; paragraph 1, the procuring entity shall require the declaration that they are not in dependence or dominant relation, as prescribed in the Act of March 22, 1991 - The Act on Public Trading in Securities and Trust Funds (Dz. U.~No. 58, Item 239, 1994), with other participants of the proceeding or with the procuring entity or with people of the procuring entity taking part in the proceeding.

6. The suppliers and contractors are obliged to submit a declaration referred to in para.5, within the period specified by the procuring entity. A summon should contain the list of the participants of the proceeding and other persons taking part in the procurement on the part of the procuring entity.

7. The procuring entity excludes from the proceedings the participants of the proceeding, which did not submit a declaration in a specified period of time.

8. The requirements concerning the documents and declarations referred to in para.2-5 above are qualified equally for all of the suppliers or contractors.

9. The Council of Ministers, will qualify by resolution, the type of documents which a procuring entity may require from the supplier or the contractor to confirm the conditions referred to in para.2.

#### Art. 23

1. Before announcing organization of a tendering or before inviting participation in a public procurement proceeding, the procuring entity may conduct prequalification

of suppliers and contractors according to the conditions set forth in Art. 22, paragraph 2 4'

2. Not later than one month before publicizing the announcement of the tendering or before sending invitations to participate in a tendering, the information about prequalification shall be published in the Bulletin of Public Procurement or shall be sent to the suppliers or contractors if participation in the procurement proceeding is by invitation.

3. The information about prequalification shall include:

1) name and address of procuring entity;

2) quantity, amount and category of deliveries to be procured, and the category, range and location in construction procurements;

3) desired or required time period and deadline for performing the procurement;

4) definitions of conditions required from suppliers and contractors,

5) instructions for obtaining the documents for prequalification referenced in paragraph 4, below;

6) place and deadline for submitting motions for prequalification.

4. The procuring entity shall dispatch immediately, but not later than 14 days before the deadline for submitting motions for prequalification, to all interested suppliers or contractors, the documents for prequalification that include the data defined in paragraph 3, above, plus:

1) instructions for preparing motions for prequalification;

- 2) description of criteria and evaluation methods to satisfy the conditions required of suppliers and contractors;
- 3) information about documents which must be submitted by suppliers and contractors to confirm that they satisfied the required conditions;
- 4) names, positions and means for communicating with the employees of the procuring entity that are authorized to communicate directly with suppliers and contractors.
5. The procuring entity shall qualify suppliers and contractors for further participation in a proceeding only on the basis of the conditions defined in the prequalification documents.
6. Under a prequalification proceeding, only the suppliers and contractors that were prequalified are admitted to further participation in the public procurement.
7. The procuring entity shall notify immediately every supplier or contractor about the results of the prequalification. The list of suppliers or contractors admitted to further proceedings shall be public.

#### Art.24

1. Criteria to evaluate satisfying the conditions required of suppliers and contractors can not be changed in the course of a particular proceeding. This rule also applies to cases when the procuring entity conducts prequalification procedures.
2. Suppliers or contractors are obligated to prove that they satisfied the required conditions within the time period and deadlines determined by the procuring entity.
3. In proceedings without prequalification, an offeror shall not be excluded from the proceeding if the offeror commits to present the requisite documents.
4. The procuring entity must exclude a supplier or contractor from the procurement proceeding if the procuring entity determines that any information material to the procurement process that was submitted by the supplier or contractor is false. The Act on Public Procurement with Explanatory Notes

#### Art. 25

1. During a public procurement proceeding, the procuring entity shall prepare an official record of the procurement proceedings that shall contain the following:
  - 1) a description of the subject matter of the procurement;

2) the name of the person or the name of the firm, and the addresses of the suppliers and contractors competing for the procurement contract; 3) the information about satisfying the conditions required of suppliers and contractors competing for the procurement contract;

4) the price and other essential terms of each offer, tender or proposal ;

5) a summary of the evaluation and comparison of all submitted offers, tenders or proposals;

6) if all offers, tenders or proposals are rejected, the justification for rejecting the offers, tenders or proposals; 7) if the parties failed to sign a contract after concluding the proceeding, other than a unlimited tendering proceeding, a statement indicating the reasons the agreement failed;

8) if tendering was limited to certain suppliers and contractors, the reasons for this limiting;

9) the reasons the procuring entity used a procurement procedure other than unlimited tendering;

10) the reasons for conducting prequalification of suppliers and contractors;

11 ) the justification for using national preferences;

12) the information about protests and appeals filed and how they were resolved;

13) the information concerning a suspension of the proceedings;

14) the information on hiring experts;

15) the identification of the selected offer and the justification for selection.

2. With the exception of Art. 27, subparagraph 1, the official record is public, but the parts of the official record defined in paragraph 1, subparagraphs 3 to 7 and subparagraph 14 may be disclosed only to suppliers or contractors who competed for the procurement contract and only after selecting the offer or after finishing the proceeding if an offer is not selected.

3. The President of the Council of Ministers may, by special order, establish:

1 ) the model of the official record of the public procurement proceeding,

2) additional requirements of the official record for the public procurement proceedings.

4. The procuring entity which imparts a procurement for the building works, delivers to the Minister of Internal Affairs and Administration price informations and a copy of a best offer.

5. The Minister of Internal Affairs and Administration qualifies, by resolution specific rules and a scope of delivering informations referred to in para. 4.

#### Art. 26

1. In the public procurement proceedings referenced in Art. 15, paragraph 1, the procuring entity is obligated to document the basic activities related to the proceeding, including the information defined in Art. 25, paragraph 1, subparagraphs 1, 2, 4, 5, 9 and 15 4S

2. After the proceeding is completed, the documents of the basic activities referenced in paragraph 1, above, shall be open to suppliers and contractors who competed in the procurement.

#### Art.26a.

The procuring entity is obliged to keep all of the submitted offers safe within a period of 3 years from imparting the procurement.

#### Art. 27

The procuring entity shall not disclose:

1) information, if its disclosure would be contrary to important state interest or the important commercial interest of the parties, or to the principles of fair competition<sup>46</sup> ,

2) information connected with the process of examining, evaluating, or comparing submitted offers, tenders or proposals, except information in the official record.

#### Art.27a.

The procuring entity is obliged to refuse an offer if:

1) the offer is contrary to the law or to the important specification of conditions of a procurement.

2) offeror did not submit required declarations or did not fulfill the requirements foreseen by law or did not fulfill the specifications of important conditions of a procurement or other conditions stated in the invitation to submit offers, or in particular has not paid the tender security,



- 3) its submitting will be regarded as an act of unfair competition,
- 4) is not valid on the grounds of other rules of law.

Art.27b.

1. The proceeding to conduct a public procurement is invalidated if:

- 1) in the proceeding conducted in other procedure than single-source tendering, less than two tenders not refusible were submitted.
- 2) the price of a best offer is higher than amount designated by the procuring entity for the procurement.
- 3) there is an important change of circumstances, which means that conducting a proceeding is no longer in a public interest, and was not earlier foreseeable.
- 4) the procuring entity did not fulfill the obligation to place an advertisement in the Bulletin Of Public Procurement or defined the object of the procurement contrary to the principles stated in the law or the proceeding has a fault which unable to enter into a valid contract.

2. The procuring entity notifies the suppliers and contractors concerned about invalidating the proceeding. The information should contain a factual and legal justification.

Art.27c.

If the oferror, who's offer has been chosen, introduced unreal informations, shirks to enter into a contract or does not pay the tender security, the procuring entity chooses from among other offers an offer which gained a highest number of points, unless only two offers were submitted or the period referred to in art.40 para. 1 lapsed.

Chapter 4.

Unlimited Tendering and Limited Tendering

Art. 28

1. Tendering is organized by the procuring entity to select the best offer for performing public procurements.

2. In unlimited tendering, tenders may be submitted by all suppliers and contractors who want to participate, with the exception of Art. 23.

3. In limited tendering, tenders may be submitted only by those suppliers and contractors invited by the procuring entity.

Art. 29

1. A procuring entity shall invite participation in an unlimited tendering by posting the announcement in a public place at its site and by publishing, through the Chairman of the Office, an announcement in the Bulletin of Public Procurement 48

doesn't satisfy the requirements of this Act.

2. crossed

3. The procuring entity may announce the unlimited tendering in a news publication. However, this announcement shall not be dispatched to the media before publication in the Bulletin of Public Procurement .

Art.30.

The announcement of an unlimited tendering shall contain at minimum:

- 1) the name and the address of the procuring entity,
- 2) the quantity, amount and category of deliveries to be procured, or services to be supplied, or the category, range and location of construction,
- 3) the desired or required time period and deadline for performing the public procurement,
- 4) the information about conditions required of suppliers or contractors,
- 5) a statement of the applicability of national preferences,
- 6) the instructions for obtaining the documents specifying the essential provisions of the procurement and the price, if any, for these documents,
- 7) the place, the time period and the deadline for the submission of tenders,
- 8) the place and the deadline for opening tenders.

Art. 31

revoked

Art. 32

The procuring entity may organize a limited tendering when:

- 1) the specialized character of the procurement limits the number of suppliers or contractors who can perform the particular procurement,
- 2) the costs of an unlimited tendering are substantially out of proportion as compared to the value of the procurement.

Art. 33

1. In the circumstances described in Art. 32, subparagraph 1, the procuring entity shall issue an invitation to submit interest in the tendering to all known suppliers and contractors.
2. In the circumstances in Art.32, subpara. 2, the procuring entity shall issue an invitation to submit interest in the tendering to a sufficient number, but not less than four, of suppliers or contractors to ensure the selection of the best offer, to ensure competition and to ensure efficiency of the public procurement proceeding.
3. An invitation to submit interest in participating in a tendering should contain at least information determined in Art.30, subpara. 1 through 5.
4. The time period allowed by the procuring entity for submitting interest in participating in a tendering cannot be shorter than 3 weeks from the date of sending the invitation.
5. If the value of the procurement is higher than the amount referenced in Art.15, para.2, the invitation to submit interest in the tendering shall be announced in the Bulletin of Public Procurement not later than two weeks before the deadline established in para.4.
6. After termination of the time period referred to in para. 4, the procuring entity shall invite the suppliers and contractors who submitted interest in participating in a tendering proceeding, to submit their tenders but not less than :
  - a)two – in the case referred to in art.32 point 1,
  - b) four – in case referred to in art.32 point 2.

Art. 34

1. The procuring entity shall send the formal documents specifying the essential provisions of the procurement to the suppliers or contractors not later than within one week after the request for sending the formal documents was submitted.
2. In a limited tendering proceeding, the formal documents containing the specifications shall accompany the invitation to participate in the tendering.
3. If prequalification proceedings were conducted, documents containing the specifications shall be sent to every selected supplier or contractor.
4. The price that the procuring entity may charge for the documents specifying the essential provisions of the procurement shall cover only the cost of printing and sending the documents.
5. In justified cases and on a motion of the procuring entity, the Chairman of the Office may agree to establish shorter deadlines than those indicated in paragraph 2.

#### Art.35.

The specifications of the essential provisions of the procurement should contain:

- the instructions for preparing tenders;
- the criteria and the evaluating methods to satisfy conditions required of suppliers and contractors;
- the information about the documents required from suppliers and contractors to demonstrate the required qualifications;
- the description of the subject matter of the procurement (including if necessary, plans, drawings and designs), as well as a list of all additional services to be provided under a contract;
- the desired or required deadline for performing a contract;
- the description of all the criteria, other than price, which the procuring entity will use in selecting the successful tender, including the weight of this criteria;
- all provisions essential for the procuring entity that will be embodied in the written contract;
- if tenders for only a portion of the procurement are permitted, a description of the respective portions for which tenders may be submitted;
- a description of how to calculate the price of a tender;
- in international tendering, the informations concerning the currencies which the procuring entity and the supplier or contractor shall use to settle accounts;
- all requirements, especially the quotation of the amount, for the tender security and for the security for the full performance of the contract;
- a description of the place, the time period and the deadline for the tenders;

description of the procedures for providing clarifications of the specifications of the essential provisions of the procurement and a statement as to whether the procuring entity intends to convene meeting of suppliers or contractors;  
the deadline for which a supplier or contractor shall be bound by the submitted tender;  
a definite description of the place and the time for opening tenders;  
the procedure for opening and examining tender;  
the names and the positions of the employees of the procuring entity who are authorized to communicate directly with the suppliers and contractors and the procedures for conducting communication;  
all future duties that the supplier or contractor commits to in the public procurement contracts;  
instructions about the protest and appeal rights of suppliers and contractors in the course of procurement proceedings;  
the information concerning all formalities that should be satisfied before signing the contract once the tender has been accepted;  
the general conditions of the contract and model contract if the procuring entity requires an offeror to sign a contract that applies any of these provisions.

2. For construction procurements, the procuring entity must possess documentation describing subject matter of the tendering and the investors cost estimate.

2a. The investors estimate contain a base to assess the value of a tender for building works.

3. The Minister of Internal Affairs and Administration shall, by ordinance, define:

the methods and basis for preparing the investor's cost estimate,  
the norms of material outlays from estimate, the individual prices of building works, the prices of the factors of production for the purposes of investor's costs estimating.

4. The Council of Ministers may, by special order, determine the model of the documents for specifying the essential provisions of the procurement and additional information which shall be included in these documents for particular categories of procurements.

Art. 36

1. A supplier or contractor may request a clarification of the specification of the essential provisions of the procurement from the procuring entity. The procuring entity shall immediately, by special order, clarify such request, unless such request was submitted to the procuring entity later than six days before the date of opening the tenders.

2. At the same time, the procuring entity shall, without identifying the source of the request, communicate the clarification to all suppliers or contractors to which the procuring entity has provided the essential provisions of the procurement.

3. In especially justified circumstances, the procuring entity may modify the contents of the documents specifying the essential provisions of the procurement by issuing an

addendum at any time prior to the deadline for submission of tenders. The addendum shall be communicated promptly to all suppliers or contractors and shall be binding on those suppliers or contractors.

4. If the procuring entity convenes a meeting of suppliers or contractors to clarify any doubts concerning the specification of the essential provisions of the procurement, it shall prepare an official record of the clarification requests submitted at the meeting and its responses to those requests, without identifying the sources of the requests. The official record shall be communicated promptly to all suppliers or contractors to which the procuring entity has provided the specifications.

#### Art. 37

1. All the tenders shall be prepared in the Polish language, in a written form, otherwise will remain not valid.

2. In especially justified circumstances, the Chairman of the Office may agree to the preparation of the tender in a language commonly used in international trade.

3. Every offeror is allowed to submit only one tender.

#### Art. 38

1. A tender submitted after the deadline has passed shall be returned without opening.

2. The deadline set by the procuring entity for submission of tenders shall not be shorter than:

1 ) in an unlimited tendering – 6 weeks after announcing the tendering;

2) in a limited tendering - 4 weeks after the date of sending the invitation for tenders,

3. The procuring entity may set the deadline for submission of tenders shorter than stated in point 2, but not shorter than 3 weeks, if:

setting the date referred to in point 2 would make impossible to conduct and complete a procurement in a current budgetary year,

setting the date referred to in point 2 would cause a serious detriment, previously conducted tendering in this case did not succeed in a contract.

The subject of a procurement are deliveries, services or building works which are publicly available in a usual standards of quality.

4. In a tendering for public procurement, of the value exceeding 50 000 ECU, the shortage of the deadline is possible in circumstances defined in point 3, with the consent of the Chairman of the Office.

Art.39.

1. The procuring entity shall extend the deadline in order to allow the suppliers and contractors to consider the clarifications or modifications of the specification of essential provisions of the procurement in their prepared tenders .
2. If a supplier or contractor is not able to submit a tender in the assigned time due to circumstances beyond its control, a procuring entity may extend the deadline for submitting tenders upon motion of the supplier or contractor.
3. The extension of the deadline for submission of tenders is permitted only before the original deadline has passed.
4. The procuring entity shall give prompt notice of any extension of the deadline to each supplier or contractor to which the procuring entity provided the specification of the essential provisions of the procurement.

Art. 40

1. The entity submitting a tender shall remain bound by the tender during the time specified in the specification of the essential provisions of the procurement, no longer, however, than 45 days. This period of time shall commence at the deadline for the submission of tenders .
2. Prior to expiration of the period that the submitted tenders are binding, the procuring entity may request suppliers or contractors to extend the period for an additional specified period of time.
3. Refusing to accept the request of the procuring entity shall not forfeit the tender security (.
4. Suppliers or contractors that agree to an extension of the period that their submitted tenders are binding shall be required to extend the period of effectiveness of tender security it provided, or if this is not possible, to provide a new tender security to cover the extended period that the tender is binding.
5. A modification or withdraw of a tender by a supplier or contractor prior to the deadline for submission of tenders shall be effective.

Art. 41

1. A supplier or contractor submitting tenders is obligated to provide a tender security within the range of 1 - 5% of the value of the subject matter of procurement in accordance with the value determined for the procurement and the principles specified in the specification of the essential provisions of the procurement.

2. The tender security may be provided in cash, treasury bonds, bank warranties, insurance warranties, pledges on the securities issued or guaranteed by the State's Treasury and with permission of the procuring entity, in stocks accepted for public dealings, or in bills of exchange.

2a) The tender security provided in cash, the procuring entity has to deposit on a bank account.

3. In cases where the cost of organizing the tendering are not significant, the Chairman of the Office, upon the motion of the procuring entity, may agree to renounce the duty to submit a tender security by suppliers or contractors entering the tendering.

#### Art. 42

1. The procuring entity shall return the tender security if:

1) the lapse of the deadline set forth in Art. 40, paragraph 1;

2) the contract has been reached and the required security for the full performance of the contract has been submitted;

3) the procuring entity has voided the contract.

2. The procuring entity is obliged to return the tender security within three days upon contractor's or supplier's written request, who:

1) withdraw the tender before the deadline for submitting tenders,

2) whose tender was recognized invalid, and the supplier or contractor has not lodge a protest.

3. If the tender security was provided in cash, the procuring entity restitutes it with interest arising from the contract of bank account, on which the security was deposited. The amount is reduced of the amount of costs of having an account and a costs of money transfer to the offeror's account.

4. The offeror whose offer was selected shall forfeit its tender security to the procuring entity only if:

1) the offeror refuses to sign the agreement under the conditions defined in its tender,

2) the offeror refuses to provide the required security for full performance of the contract.

3) reaching a agreement is impossible because of the offeror's fault.



4)The offeror has provided in a tender false informations.

#### Art. 43

1. The tenders shall be opened at the place and the time specified in the announcement of the tendering.
2. The offerors may be present at the opening of the tenders .
3. The name and address of each offeror whose tender is opened, as well as the price of each tender shall be announced immediately to those persons present at the opening of the tenders and recorded immediately in the official record of the tendering proceeding.
4. The information referred to in paragraph 3 shall be communicated upon request to the offerors who have not been present at the opening of tenders .

#### Art. 44

1. During the course of evaluating the submitted tenders, the procuring entity may require a supplier or a contractor to clarify its tender.
2. No changes in the content of the tender, especially a change in price, and no negotiations between the procuring entity and the offeror concerning the submitted tender shall be permitted.
3. The procuring entity shall correct obvious errors on the face of a tender and immediately inform the offeror about the correction.

Art. 45 revoked

Art. 46 revoked

Art. 47

The offerors shall have no claims against the procuring entity for its rejection of tenders.

Art. 48

Only the principles and criteria set forth in the invitation for tendering or in the specification of the essential provisions of the procurement shall apply in the selection of a tender.

Council of Ministers may qualify, by resolution, specific principles of establishing criteria's of assessing and electing the tenders in the proceedings of public procurement.

#### Art. 49

Having considered the national preferences, if such preferences apply, the best offer shall be selected.

#### Art. 50

1. The procuring entity shall give prompt notice of the result of the tendering to the offerors, identifying the name and the seat of the successful offeror and the price of its tender.
2. An announcement with the information referenced in paragraph 1 shall be posted promptly in a public place at the site of the procuring entity and shall be sent to the participants of the proceeding.
3. If the announcement of tendering was published in the Bulletin of Public Procurement, the announcement referenced in paragraph 2 shall be announced in the Bulletin.
4. The Chairman of the Office, by special order, shall define:
  - a) the form for the announcement of the selection of an offer,
  - b) additional information that must be contained in this announcement.

#### Art. 51

1. If the procuring entity selects a tender pursuant to the provisions of this Act, it is obligated to sign a contract within a time period not less than seven days from the day of the announcement referenced in Art. 50, paragraph 2, but not later than by the time the tender becomes binding, unless there are circumstances set forth in art.27b para. 1 point 5.
2. Notice of acceptance of a tender defining the deadline for executing the contract shall be delivered promptly to the selected offeror.

#### Art. 52 revoked

#### Chapter 5.

## Two-Stage Tendering

### Art. 53

In a two-stage tendering, the suppliers or contractors submit initial offers in the first stage without specifying the price. The procuring entity may request suppliers or contractors to define the parameters of the subject matter of the procurement. The second stage is a limited tendering for selected ferrous and may be preceded by negotiations between the procuring entity and ferrous.

### Art. 54

Two-stage tendering shall be used when one of the following circumstances occurs:

- 1) it is not possible to determine in advance the specific technical characteristics and quality features of the deliveries, services or construction being procured;
- 2) negotiations with suppliers or contractors are necessary because of the special nature of the deliveries, services or construction;
- 3) the subject matter of the procurement is research, experiment, preparation of a scientific opinion or performance of other specialized services,
- 4) the subject of the procurement is designing and completing building works.

### Art.55.

The provisions following provisions shall apply to two-stage tendering:art.35 para. 1, art.36, art.37, art.38 excluding para 2 point 2, art. 39-42, art.44 para 1, and art.47 – 51.

### Art. 56

1. The announcement about the organization of a two-stage tendering shall contain at a minimum:

- 1) the name and the address of the procuring entity;
- 2) a description of the subject matter of the procurement, including technical and other parameters, and in the case of construction procurements, the location and the type of construction;

3) the description of the criteria that the procuring entity will apply in selecting the offer and the importance of this criteria;

4) the time period, deadline and place to submit the initial offers.

2. In the specification of the essential provisions of procurement, the procuring entity may request suppliers or contractors to define the method and the time of performance, the technical parameters, the quality and other characteristic features of deliveries, services or construction.

#### Art. 57

1. The deadline for submitting initial offers cannot be shorter than six weeks after publication of the announcement about a two-stage tendering.

2. In justified cases and on motion of the procuring entity, the Chairman of the Office may agree to a shorter deadline than the one indicated in paragraph 1.

#### Art. 58

The procuring entity may negotiate with each supplier or contractor the content of a submitted offer, keeping confidential the content of conducted negotiations.

#### Art. 59

After submission of initial offers, the procuring entity may modify the technical and quality requirements set forth in the specification of the essential provisions of the procurement, as well as modify the criteria for evaluating the offers.

#### Art. 60

In the invitation to submit final offers, the procuring entity shall inform suppliers or contractors about any modifications made in the specification of the essential provisions of the procurement.

#### Art. 61

For the second stage of the tendering, the procuring entity selects suppliers or contractors whose tenders satisfy the requirements of the initial specification, inviting them to submit their final offers with price. The place, time period and deadline for submission of final offers shall be specified in the invitation.

#### Art. 62

Suppliers and contractors shall provide tender security when entering the second stage of the tendering.

## Chapter 6.

### Other Public Procurement Procedures

#### Art. 63

Negotiations-with-retaining-competition is a public procurement procedure in which the procuring entity negotiates the provisions of a procurement contract with a sufficient number of suppliers or contractors to ensure competition, but not less than two.

#### Art. 64

1. Negotiations-with-retaining-competition may be used when one of the following circumstances occurs:

1) crossed;

2) there is an urgent need for the procurement and the urgency was not the fault of the procuring entity and could not have been foreseen;

3) the required number of valid tenders is not submitted in a proceeding or all tenders are rejected and there is reason to assume that subsequent tendering will not lead to signing a contract.

#### Art. 65

1. In negotiations-with-retaining-competition, the procuring entity sends invitations for negotiations to not less than two ferrous. If the value of the procurement exceeds the amount of 200 000 ECU, the procuring entity places an advertisement about the invitation in the Bulletin of Public Procurements.

2. The negotiations-with-retaining-competition can be precluded by sending to the suppliers or contractors an invitation to submit preliminary tenders.

#### Art. 66

1. All requirements, clarifications and information, as well as documents associated with the negotiations, shall be provided to suppliers or contractors equally.

2. The conducted negotiations shall be confidential. Neither party may disclose, without the consent of the other party, technical or trade information that is related in the negotiations.

3. After all negotiations are completed, the procuring entity requests all participants to submit their final offer, including price, and selects the best offer.

4. The provisions of art.30, art. 37, art. 47-51 and art.59 apply to negotiations-with-retaining-competition.

#### Art. 67

Request-for-quotations is a public procurement procedure in which the procuring entity addresses a request for quotations for readily available goods or services to such a number, but not less than four, of suppliers or contractors to ensure selection of the best offer and to ensure competition and an efficient proceeding.

#### Art.68.

1. Request-for-quotations may be used when a procurement is for deliveries of readily

Available goods or for services with established quality standards.

2. Request-for-quotations, which value exceeds the amount set forth in art..15 para.1, should contain:

specification of the subject of the procurement, in particular with all the additional services which has to be completed within the scope of the contract.  
informations about the documents which has to be delivered by suppliers or contractors for the purposes of confirming required conditions,  
specification of the date of completing the contract,  
description of the parts of the procurement if the partial tenders are allowed,  
description of the place and time of submitting of tenders,  
the amount of the security for the full performance of the contract

3.If the value of the procurement exceeds the amount of 200 000 ECU, the procuring entity pronounces the information about the request-for-quotations in the Bulletin of Public Procurement.

#### Art.69.

1. Each of the suppliers or contractors may propose only one price and can not change it. No negotiation of price shall be conducted.

2. The procuring entity signs a public procurement contract with the supplier or contractor that submitted the lowest price.
3. If it is not possible to choose the best tender because all of the tenders have the same price, the procuring entity asks the tenderers to submit additional tenders.
4. If the value of the procurement exceeds 20 000 ECU, the procuring entity notifies the other tenderers about the elected offeror, indicating his name, place of business and a price.
5. If the information about the request-for-quotations has been published in the Bulletin for Public Procurement, the notification referred to in para.4 must be published in that Bulletin.

#### Art. 70

Single-source procurement is a public procurement procedure in which the procuring entity signs a procurement contract after negotiating with only one supplier or contractor.

#### Art. 71

1. The procuring entity may issue an order for a procurement by a single-source procedure only when one of the following circumstances occurs:

- 1) it undertakes some additional orders, not exceeding 20% of the value of the previous procurement, and it is necessary to retain the same norms, parameters and standards;
  - 2) it signs a contract for research, experiment, or preparation of a scientific opinion; 3) the specific type of deliveries, services or construction are available only from a particular supplier or contractor;
  - 4) it conducts a public procurement for creative project works or for creative activity in the area of arts and culture;
  - 5) only one supplier or contractor can be used because a legally permitted national preference is applied;
  - 6) particular economic or social circumstances that could not have been foreseen by the procuring entity necessitates the immediate performance of the procurement;
  - 7) the value of the procurement does not exceed the equivalent of 1000 ECU or the share of public funds in the financing of the procurement does not exceed the equivalent of 3000 ECU.
- 1a. If the value of the procurement exceeds 20 000 ECU, conducting request-for-quotations requires the consent of the Chairman of the Office.

2. The Council of Ministers shall, by ordinance, define the scope of project works and the procedures for conducting competition for works, as described in paragraph 1, subpara. 4.

3. The public procurement for designing services and for creating in the field of art. and culture which value exceeds 100 00 ECU is conducted by single-source procurement preceded by the competition concerning para.2.

## Chapter 7.

### Public Procurement Contracts

#### Art. 72

1. The provisions of the Civil Code and Civil Procedure Code shall be applied to public procurement contracts when this Act does not state otherwise.

2. The contract concerning public procurement is void, if during the proceeding for public procurement the provisions stated in this act or ordinances implementing this act were infringed and if such infringement influenced the result of the proceeding for public procurement. In particular the contract is void, if the procuring entity:

1) has not fulfill the obligation to publish an advertisement in a Bulletin for Public Procurement,

2) conducted the procurement without required administrative decision,

3) has elected a tender with a serious infringement of Law,

4) entered into a contract without a required consent, before the lodged protest has been examined.

3. The contract for procurement is void in the part exceeding the subject of the procurement specified in the specification of important conditions of the procurement or in invitation.

4. In cases set forth in para. 2 and 3 the Chairman of the Office may ask the court to adjudge the part or a full contract void.



Art. 73

Public procurement contracts can not be signed for not specified period of time.

Entering into a contract for a period longer than 3 years requires a consent of the Chairman of the Office.

Art. 74

Public procurement contracts, of the value exceeding 3000 ECU shall be in written form under pain of invalidity, but not when special provisions of law require another special form.

Art. 75

1. The procuring entity may request from a supplier or contractor a security for full performance of the contract.

2. The security for full performance of the contract may be provided in cash, State's securities, treasury bonds, bank warranties, insurance warranties, pledges on securities issued or guaranteed by State's Treasury and with permission of the procuring entity, in stocks accepted for dealings, in deposit certificates payable to the bearer, in bills of exchange and guarantees made by physical persons or legal persons. The security cannot be higher than double the value of fines reserved upon the contract or higher than 10% of the value of the procurement.

2a. If the security for full performance of the contract was provided in cash, the procuring entity gives it back with the interest arising from the contract of bank account, reduced by the bank fees and the fee for the money transfer to the contractor's or supplier's account.

3. The Council of Ministers shall, by ordinance, establish the threshold value of the procurement, which requires the security for full performance of the contract, the amount of the security and the conditions of its restitution.

Art. 76

1. It shall be prohibited to change any element of a signed contract and to introduce new elements into a signed contract, when the modification would change the content of the offer that was the basis for selecting the offeror and would increase the cost for the

procuring entity, unless the necessity of introducing a change based on this circumstance could not have been foreseen at the moment of signing the contract.

2. A change done in violation of paragraph 1 is invalid.

3. The Chairman of the Office may motion to a court to state the invalidity of a modification, referenced in paragraph 1.

Art.77

If an essential change of circumstances arises that was impossible to foresee at the time of signing the contract and makes the performance of the contract contrary to the public interest, the procuring entity may terminate the contract within one month from the date of learning about the circumstances. When a contract is terminated in these circumstances, the supplier or contractor is entitled to require only payment for the partial performance of the contract.

Art.78. revoked

Chapter 8.

Protests and Appeals

Art.79

1. Suppliers and contractors whose legal interest have been infringed by a violation by the procuring entity of the principles of public procurement described in this act are entitled to review of its complaints according to the procedures described in this Chapter.

2. The following shall not be subject to review proceedings:

the selection of a procedure for a public procurement proceeding,  
the application of a national preference,  
the rejection of all tenders.

Art.80.

Against the activities undertaken during the course of a public procurement proceeding, the supplier or contractor may submit a written protest with reasons to the procuring entity:"

Art. 81.

1. In the event that a protest is filed, the procuring entity is prohibited from signing the public procurement contract until the protest is finally resolved.
2. In the circumstances referenced in Art. 64, paragraph 1, subparagraph 2, the Chairman of the Office may permit the signing of the contract before final resolution of protest.
3. Lodging a protest breaks the motion of the period of being bound by the tender.

Art. 82

1. A protest may be filed within seven days from the day when the supplier or contractor has learned or could have learned of the circumstances giving ground for its filing.
2. Filing of a protest is admissible only before the signing of the public procurement contract.
3. The procuring entity shall reject a protest filed after that date.

Art. 83

1. The procuring entity shall promptly inform the suppliers and contractors participating in the particular proceeding about the filing of a protest.
2. The suppliers and contractors participating in the public procurement proceeding who join the protest proceeding within three days from the time of receiving the notice referenced in paragraph 1 also shall be deemed participants of the protest proceeding.
3. A supplier or contractor who did not join the protest proceeding can not thereafter file a protest citing the same circumstances.

Art. 84

1. The procuring entity shall review the protest within seven days from the date of filing.
2. In the decision justifying resolution of the protest, the procuring entity shall list the reasons for the decision and shall provide instructions about how to file an appeal and the time period for filing.
3. In cases where the protest is upheld, the procuring entity shall redo the protested activity.

4. Failing to review the protest within the assigned time period shall be deemed a dismissal of the protest.

5. About repeating the activity the procuring entity is obliged to inform all of the suppliers and contractors.

#### Art. 85

1. After filing the protest, the procuring entity shall suspend the procurement proceeding until the time the protest is reviewed but no longer than seven days, unless:

1 ) the protest is obviously unjustified;

2) the procuring entity or other supplier or contractor might sustain disproportionately greater damage in relation to that which threatens the person filing the protest;

3) the suspension of the proceeding is against an important public interest.

2. A decision suspending the procurement proceeding can not be appealed.

#### Art. 86

1. Upon resolution or rejection of the protest or in case of failure to resolve the protest in due time, the interested supplier or contractor may file an appeal.

2. An appeal may be filed with the Chairman of the Office, with simultaneous notice to the procuring entity, within three days from the day of delivering the decision resolving the protest or within seven days from the deadline for reviewing the protest.

3. Lodging an appeal in Polish Post Office is equal to lodging it on the hands of the Chairman of the Office.

#### Art. 86a.

An appeal is charged with a fee. The amount of the fee can not exceed the costs of the proceeding.

The Council of Ministers qualifies, by ordinance, the conditions and a amount of the fee.

#### Art. 87

The Acts of the conciliatory courts established in the Civil Procedure Code shall be applied to appeal proceedings if this Act does not state otherwise.

Art. 88

1. The appeals shall be reviewed by a panel of three arbiters selected from the list of arbiters maintained by the Chairman of the Office. One of the arbiters shall be selected by the supplier or contractor who has filed the appeal; one shall be selected by the procuring entity; and, one shall be selected by the Chairman of the Office.
2. An arbiter while examining an appeal performs its function with extraordinary care and impartially; he is neither a representative of any of the party of the arbitration nor the Chairman of the Office.
3. Arbiter is protected under the Law, foreseen for the public officers.
4. In the circumstances not allowing an arbiter to fulfill his obligations, the Chairman of the Office asks the party of the arbitration to indicate, in a specific period of time, the other arbiter, but if it is designated arbiter, the Chairman of the Office designates other arbiter.

Art. 89

1. Simultaneously with filing the appeal, the supplier or contractor shall select an arbiter.
2. After the appeal has been filed, the Chairman of the Office shall promptly request the procuring entity to select its arbiter within three days of the date of receiving his request.
3. If the participants of the appeal proceeding fail to select an arbiter within the prescribed time, the arbiter shall be selected by the Chairman.
4. Among the selected arbiters, the Chairman shall appoint the chairman of the panel of arbiters.
5. A decision to exclude an arbiter from an appeal proceeding shall be resolved by the Chairman of the Office 82

Art.89a.

Appellant can withdraw the appeal.

In case of withdraw, an appellant is obliged to receive half of the appeal fee.

Art. 90

1. The panel of arbiters shall review the appeal within 14 days from the day the appeal was delivered.
2. When reviewing appeals, the panel of arbiters shall uphold or reject the appeal and shall assess the cost of the appeal proceeding.

3. When upholding the appeal, the panel of arbiters can order the procuring entity to do or redo an action, or declare an action invalid except the action of signing the public procurement contract;

#### Art. 91

The participants of the proceeding shall cover the costs of the proceeding according to the outcome of the proceeding.

#### Art.91a.

The participants of the arbitration have a right to lodge an action to a public court on the basis stated in Code of Civil Procedure. An action can be lodged within two weeks for the date of the delivery of the arbiter's judgment.

#### Art. 92

1. The Chairman of the Office shall, by special order, determine:

- 1) the procedure of appeal proceedings,
- 2) the conditions for admission to and dismissal from the list of arbiters,
- 3) the fee for arbiters .

2.The Chairman of the Office shall admit to the list of arbiters persons selected among candidates submitted by:

- 1)Chairman of the Office;
- 2)Ministers, managers of central offices and voivods;
- 3)State-wide territorial self-government organizations and regional court chambers;
- 4)Professional associations, economical self-governments and other economical self-governmental organizations.

### Chapter 9

Temporary and Final provisions,

and Changes in Existing Provisions

#### Art. 93

In the Act of October 7, 1992, on regional account chambers (Dz. U. No. 85, item 428) the following changes are made:

Art. 1 paragraph 1 shall read: "1. Regional account chambers, hereinafter referred to as "chambers" are hereby called for the purpose of controlling the finances and public procurements (in a range determined by special order of the Chairman of the Office of Public Procurement) of the self-governments, unions of self-governments, other communal legal persons and local self-governmental legislatures",  
in Art. 13: a) in subparagraph 4 after the words: "... for the f t half of a year" the following words shall be added: "and about conducted public procurements", b) in subparagraph 5 after the words: "... assigned m the self-governments", the following words shall be added: "and information about performing public procurements",  
Art. 21 paragraph 2 shall read: "2. Regarding the negative opinions issued in matters described in Art. 13 subparagraphs 4 and 5, the chamber shall inform the proper voivod as well as the Minister of Finance and the Chairman of the Office of Public Procurement:'.

#### Art. 94

In the Act of January 5, 1991 - Budgetary Act (Dz. U. 1993, No. 72, Item 344) the following changes are made:

in Art. 42:

a) paragraph 1, subparagraph 5 is deleted,

b) paragraph 3 is deleted,

Art. 57, paragraph 1, subparagraph 14 shall read: "14) to contravene the rules, forms and procedures for conducting public procurements determined by the Act of June 10, 1994 on Public Procurement (Dz. U. No. 76. Item 344 and No. 130, Item 645):'

#### Art. 95

The previous provisions shall apply to public procurement proceedings that commence before the day of entry into force of this Act.

#### Art. 96

From January 1 to December 31, 1995 , the ruling body of the territorial self government entities may state that the public procurements funded from their own funds are conducted according to the provisions of this Act. This statement can not be revoked.

#### Art. 97

1. This Act becomes effective on January 1, 1995, except that:

the provisions of Art. 7-12, and Art. 92 become effective upon the date of promulgation, the provision of Art. 4, paragraph 1, subparagraph 3 in the part referring to public procurements funded by their own funds and the provisions of Art. 31 become effective on January 1, 1996.

President of the Republic of Poland: L. Wa³sa

---

All materials on the Commercial Law Center Foundation site are the sole property of said foundation unless otherwise noted.