

Security of Public Financial Resources and the Public Procurement Procedure — Analysis of Transparency and Characteristics of Procedures Based on Research

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Abstract. *The subject of the study is an analysis of the procedures related to the selection of the most advantageous offer in the process defined in the public procurement law. Pointing out the essence of the problem in the area of public financial resources management, attention was paid first of all to legal solutions, their number of changes since the first act was passed in 1994, and to the essence of public financial resources management in the surrounding reality. Based on an analysis of Internet resources randomly selected from more than 50 local governments, mainly districts of large Polish cities, the transparency of public procurement procedures was assessed. Thus, with regard to a particular district, the methods of case study and expert analysis were used in scientific evaluation of the public procurement phenomenon. Then, on the basis of the literature and analysis of the surrounding reality, changes were indicated, the introduction of which will improve public procurement. The results of the research in particular boroughs were used to diagnose the research problem related to transparency in public procurement proceedings and to achieve the objective, which was to develop a state diagnosis and proposals of changes ensuring an increase in the level of utilisation of public financial resources. It was assumed in the study that proper management of public financial resources in the area of expenses, especially those covered by public procurement law, eliminates excessive debt and thus creates security in the area of local financial resources. At the end of the study, recommendations were presented to eliminate the identified shortcomings in the legal solutions and functioning public procurement procedures.*

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*In a country well governed, poverty is something to be ashamed of.
In a country badly governed, wealth is something to be ashamed of.*

Confucius

Introduction

The separation of the sector managing resources of the common good in organised societies entailed an obligation for citizens to pay public tribute to the common budget and the need to develop rules to influence the use of these resources. The basis for proper organisation of the whole system of managing public financial resources in liberal democracies is to build procedures based on transparency on the income and expenditure side. Such a procedure not only reveals decisions and all documentation, but also seeks to present them in such a way as to make

them readable, and thus to enable citizens to keep constant social control over the use of these resources. In order to ensure and implement the principles of social responsibility of an organisation such as a borough council (tier of self-government), it is first and foremost necessary to arm this organisation with knowledge about its resources. It should also be emphasised that the financial security of the whole public sector and its individual components can be ensured by full access of the citizens to understandable procedures and legible documents. This also translates into strengthening the citizens' conviction about the need to contribute their resources to the public sector, rather than seeking to avoid paying public tribute, e.g. by expanding the system of unregistered money circulation. Convincing the citizens about the features of the functioning of the public sector and the honesty and high qualifications of the administrators of these financial resources translates into the financial security of the state and citizens.

The study addresses the problem related to the procedures of public financial resources management in the area of implementation of tasks specified in the income and expenditure plan adopted at the borough, local government level. Proper expenditure of the financial resources at a local government's disposal, enriches the resources of common good and also creates a safe level of disposal of these resources. The properly developed technology of spending money and the public procurement procedure specified in legal regulations¹, for undertakings related to the disposal of a specific financial resource, aims at rationalisation and stabilisation in the area of local finance. It also ensures the security of local financial resources threatened by the need to seek additional resources as an own contribution to investment undertakings financed from European Union funds². The use of public procurement procedures and, above all, their transparent presentation, guarantees the security of local financial resources, as it translates into social control and social responsibility. In this paper, research using Internet resources in the form of Public Information Bulletins (BIPs) for recent years has been carried out, mainly of local governments of cities and boroughs in Poland. The aim of the study is to indicate, in the system of the law in force, the areas of positive and negative functioning. Improper functioning of public procurement may translate into a crisis of local financial resources, including the observed excessive debt in banks, which violates the financial security of local government and its members.

Importance of public procurement in creating financial security of public sector organisations

An efficiently managed state is characterised by the high awareness and conviction of the citizens about the need to pay public tribute to the central and municipal or borough budgets. This conviction is also a result of positive assessment of the

¹ Ustawa z dnia 29 stycznia 2004 — Prawo zamówień publicznych, wcześniej ustawa z dnia 10 czerwca 1994 roku o zamówieniach publicznych.

² Cf. Nogalski B, Kozłowski A.J, Czaplicka-Kozłowska I.Z, Financial Security of the public sector versus the indebtedness of local self-government. *Internal Security*, 2018, Vol. 10, Issue 1.

administrators of these resources directing them to the implementation of socially desired and accepted tasks. Therefore, it can be assumed that the amount of revenues of the public sector depends on the attitudes of citizens shaped by those in power at each level. If these resources are improperly disposed of, they may change and form a negative assessment, which may lead to a procedure of unregistered money circulation and a search for opportunities not to pay public tribute or even corruption, nepotism or protection³. In this area, the answer to the question of what is the reason for a decrease or increase in income and also the characteristics of using public financial resources should be sought. Therefore, the public procurement system can be analysed and evaluated within the causes and effects that translate into the attitudes of citizens, and also those of the administrators of these financial resources. Within the causes, we have, above all, an incorrectly or properly structured law, so an incorrectly or properly structured system affecting the procedures and behaviour of the administrators of public funds and also the behaviour of citizens and suppliers of all kinds of products to the public sector. An improperly structured system of public procurement, hence, on the one hand, the illegibility of many decisions, the complexity of procedures, and the frequent volatility of the law, and on the other hand, the lack of consistency in adopting transparent procedures, leads to pathologies in the management of public financial resources. A properly constructed system of public procurement results from the state's activity in spending public funds and translates into the assessment of decision-making bodies at every level in the structure of state management. The needs of the public sector are growing rapidly, and recent years, in connection with the implementation of projects co-financed by the European Union⁴, have brought about an intensification of public sector organisations' undertakings aimed primarily at the development of communication infrastructure, municipal infrastructure including, among others, sewage systems, and local roads, as well as investments in the area of education and culture. The huge size of the public procurement market is evidenced by the fact that in 2017, the value of contracts awarded in Poland under Article 22(2) of the Public Procurement Law was more than PLN 163 billion⁵.

Spending public money has always generated interest among all those who contribute to the public purse. In order to prevent the spending of public funds in a hasty, ill-considered or even dishonest way, procedures have always been sought to prevent these phenomena. Therefore, a system has been created to regulate the way public sector organisations award contracts, with the aim of ensuring the most beneficial use of public financial resources. This system is supposed to guarantee the contractors of tasks for the public sector a selection procedure based on substantive criteria and not on unchecked or even unclear preferences

³ Cf. Kozłowski A.J., Czaplicka-Kozłowska I.Z., Świrski A, The Phenomenon of Corruption in Public Sector Organizations. Local Government Case Studies from the Warmia and Mazury Regions of Poland. *Hyperion International Journal of Econophysics & New Economy*, 2016, Vol. 9, Issue 1, pp. 117–141.

⁴ Cf. Kozłowski A.J., Czaplicka-Kozłowska I.Z., Anna R., Wykorzystanie funduszy Unii Europejskiej a zadłużenie samorządów gminnych, [in:] *Studia Mazowieckie*, 2017, XI/XXVI, No. 1, pp. 29–42.

⁵ Sprawozdanie Prezesa Urzędu Zamówień Publicznych o funkcjonowaniu systemu zamówień publicznych w 2017 Warsaw, czerwiec 2018 r. *Electronic source*: <https://www.uzp.gov.pl/>, accessed: 22.01.2019.

developed by representatives of public administration. However, not only public administration bodies are obliged to apply the provisions on public procurement, but also other entities more or less dependent on the state, as well as private entities, if they somehow participate in spending public funds, or enjoy special rights granted by the state⁶. It should be stressed that the distinguishing feature of public procurement compared to other civil contracts is that they are performed in the public interest and financed by public funds⁷.

When analysing the use of public financial resources in territorial self-governments, and especially boroughs, it is necessary to pay attention not only to the procedures aimed at the rational use of these resources, but also at the impact of these procedures on the general education of citizens about money and public financial resources. It should be stressed that financial management in a borough is a complex process consisting of making various and interrelated decisions and actions by their constituent and executive bodies to maximise the economic and social effects in accordance with the adopted current and strategic goals. Therefore, it is not only financial administration, but also conducting financial policy and budget management of a management oriented unit. Such management is characterised by self-governments with professional staff, using a wide range of instruments in the form of development strategies, long-term programmes and investment plans, budget forecasts, financial assembly of investments, credit-worthiness and financial liquidity of the self-government unit. The essence of such professionalism is making decisions depending on the changing external and internal conditions of the local government unit's functioning⁸. When managing local financial resources in the area covered by public procurement, it is necessary, above all, to comply with the legal standards set out in the Act on Public Procurement. The basic form of spending money from the commune budget is a tender for the performance of a given service or purchase of the indicated product. Conducting such a procedure should be based on the principle of transparency, which should strengthen the principle of openness (disclosure of the entire procedure in the BIP), legalism (proceedings in accordance with the law) and then the principle of writing and using the Polish language, the principle of impartiality and objectivity, equal treatment, and finally the principle of limited and unlimited tender. Adhering to these principles reduces the risk of corrupt practices and also reduces the risk of allegations of misspending public money⁹. This is why, above all, the principle of transparency, which requires that a clear public procurement procedure be conducted, is a condition for ensuring the correct course of proceedings aimed at selecting the most advantageous offer. Non-compliance by the contracting authority, and hence the disposer of public financial resources, with the standards expressed in the regulations defining the rules for spending public funds may have

⁶ Cf. Miemiec W, Zagadnienia finansowo prawne zamówień publicznych w działalności jednostek samorządu terytorialnego. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wrocław, 2013.

⁷ Wieloński M, Realizacja interesu publicznego w prawie zamówień publicznych. Warsaw, 2012, p. 155 ff.

⁸ Kozłowski A.J, Czaplicka-Kozłowska I.Z, Transparentność zarządzania finansami lokalnymi, QNT Systemy Informacyjne. Cracow, 2014, pp. 40–41.

⁹ Sroka J.M, Odpowiedzialność społeczna sektora publicznego w procesie zamówień publicznych, Uniwersytet Ekonomiczny we Wrocławiu. Wrocław, 2013, p. 215.

negative effects in the area of local development. It may also translate into a violation of public finance discipline and, as a consequence, into proceedings that will involve criminal liability¹⁰.

The systemic transformation initiated in 1989 also covered the area of public sector financial management, including public expenditure. In the procedure aimed at introducing the principles of rational management characterising modern social and economic systems to the management of public financial resources, it is possible to distinguish first of all the public finance reform preceding the public procurement reform. The first step was the enactment of the Budget Law Act of January 5, 1991, which defined the general principles and mode of collecting the financial resources covered by the state budget and borough budgets and allocating those resources to financing tasks resulting from the functions of the state and borough¹¹. It was only 3 years later that the Public Procurement Act was adopted¹², which was amended by the Public Procurement Law of 29 January 2004¹³. In the area of public resources management and the changes that took place after 1989 in the area of disposing of public finances, it is necessary to indicate the adoption of the Act of 26 November 1998 on public finances¹⁴, reforming the management of public financial resources and, above all, the Act of 6 September 2001 on access to public information¹⁵. The idea of the Act on access to public information was to make public the procedures related to the collection and spending of public financial resources, which was to be a guarantee to prevent cases of improper management of these resources.

Since the adoption of the current public procurement law in 2004, it has undergone so many changes that it was decided to publish the consolidated text of the law¹⁶. Such a large number of changes indicate the imperfection of the existing solutions and it should be believed that further changes shaping the principles of public procurement will take place in the near future. It may be assumed that the detailed provisions of the Act in the face of the changing world and the principles shaping relations between people and organisations will lead to further changes in public procurement law. The definition of the principles of awarding public contracts in Chapter 2 of the Act, due to the lack of transparency, and therefore openness and legibility in proceedings, makes the provisions of this Act very flawed.

¹⁰ Rekomendacje postępowania antykorupcyjnych przy udzielaniu zamówień publicznych. Centralne Biuro Antykorupcyjne. Warsaw, 2014.

¹¹ Ustawa z dnia 5 stycznia 1991 roku Prawo budżetowe, Dz.U. 1991, No. 4, item 18, amended the Budget Law passed on 3 December 1984.

¹² Ustawa z dnia 10 czerwca 1994 roku o zamówieniach publicznych, Dz.U. 1994, No. 76, item 344.

¹³ Ustawa z dnia 29 stycznia 2004 roku Prawo zamówień publicznych, Dz.U. 2004, No. 19, item 177 — tekst jednolity, Dz.U. 2018, item 1986, 2215.

¹⁴ Ustawa z dnia 26 listopada 1998 roku o finansach publicznych, Dz.U. 1998, No. 155, item 1014 amended by the Public Finance Act of 27 August 2009, Dz.U. 2009, No. 157, item 1240.

¹⁵ Ustawa z dnia 6 września 2001 roku o dostępie do informacji publicznej, Dz.U. 2009, No. 112, item 1198.

¹⁶ Warsaw, 16th October 2018, item 1986: Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 3 października 2018 w sprawie ogłoszenia jednolitego tekstu ustawy — Prawo zamówień publicznych.

It is indisputable that such principles as maintaining fair competition and equal treatment (Article 7 paragraph 1), openness of the procedure (Article 8 paragraph 1) and conducting the procedure in writing (Article 9 paragraph 1) and in Polish (Article 9 paragraph 2) form the basis for the procedure aimed at selecting the most advantageous tender, provided that these provisions are strengthened by the transparency of procedures. At present, the greatest disadvantage of the Act in force is the recognition of the most advantageous offer as, first of all, the one which presents the most advantageous balance of price or cost (Article 2.2.5) and, as research indicates, most often it is the price or cost which determines the selection of the most advantageous offer.

Public procurement in Poland is a very important element of economic and social reality, as in 2017, according to the Public Procurement Office, it accounted for about 8.23% of the gross domestic product. At the same time, the value of public contracts awarded at that time amounted to PLN 163.2 billion and the total number of contracts amounted to almost 140,000, 86% of which were contracts under open tenders. Compared to the previous year, this was an increase of over 4%. The category of construction works, on the other hand, accounted for 44% of the value of contracts awarded under this procedure¹⁷.

Table 1. Public procurement by modes in 2014–2017

Procurement mode	Years / percentage of orders			
	2014	2015	2016	2017
Open tender	82.19	83.39	81.80	86.10
Restricted tender	0.74	0.83	0.70	0.40
Negotiations with announcement	0.08	0.07	0.05	0.05
Competitive dialogue	0.01	0.01	0.01	0.02
Negotiations without announcement	0.21	0.13	0.10	0.14
Free-handed order	13.42	11.75	13.42	9.67
Price inquiry	3.14	3.55	3.59	3.29
Innovation Partnership	-	-	0.00	0.01
Electronic bidding	0.21	0.27	0.33	0.32

Source: Sprawozdanie Prezesa Urzędu Zamówień Publicznych o funkcjonowaniu systemu zamówień publicznych w 2017 r. Urząd zamówień Publicznych, Warsaw 2018, p. 34.

The close link between public procurement and the public interest, which is rooted in the existence of public finances and public funds, should be stressed as a direct systemic and legal premise for public procurement law to apply. The use of public financial resources takes place according to various principles and rules defined in the law which differ from the private sector. The introduction of public procurement institutions, specific for spending public money, is a result

¹⁷ Sprawozdanie Prezesa Urzędu Zamówień Publicznych o funkcjonowaniu systemu zamówień publicznych w 2017, Urząd zamówień Publicznych. Warsaw, 2018.

of these differences. On the other hand, the purpose of expenditures made under the public procurement procedure is or should be in the public interest, because the funds are drawn from public sources of income. It is also necessary to stress the importance of public procurement institutions in the area of financial security, ensuring the proper use of public financial resources and preventing financial crimes occurring in the area of relations between the buyer and the seller. It is in the area of spending public financial resources, including the planning and construction procedure, that the cause of pathology in public procurement and rational use of these resources can be seen.

Analysis of public procurement procedures in local governments

The subject of the study is the analysis of procedures for selecting the most advantageous offer on the basis of information published in Public Information Bulletins on the websites of borough offices. The analysis was mainly based on information published in the Public Information Bulletins on the websites of selected boroughs. The analysis referred not only to documents related to the procedure, but also analysed resolutions and executive acts of local self-government bodies relating to the management of local financial resources, including in particular annual budget plans and reports. The basic subject of the study was the analysis of the public procurement procedure, with particular attention paid to transparent access to all documentation related to the selected investment project or to public procurement in general. According to the Act on Access to Public Information, everyone has the right to information, and public authorities and entities which perform public tasks are obliged to place public information in an official ICT publication, called the Public Information Bulletin¹⁸. In search of an answer to the question of whether the most advantageous offer was selected, an attempt was made to analyse the procurement procedure, including first of all the protocols showing the decisions taken and also the agreements defining the rules for the execution of the public contract. As part of the analysis of the selection of the most advantageous offer, the financial values presented in the public contract were analysed, as well as the type and location of the public contractors. The characteristics of the selection of public procurement procedures presented in the Public Procurement Law were also analysed. The analysis shows that in selecting the contractor, the open tender procedure was used first and foremost.

It was important from the point of view of the conducted research to determine the research methodology, including the rules that were applicable to the persons selected and prepared to conduct the analysis. Due to the fact that these were officers of uniformed services, contact with employees of offices and organisations representing the parties to the public contract was prohibited. Those conducting the research were prepared to carry out the analysis; in particular, they were

¹⁸ Art. 8 ustawy z dnia 6 września 2001 roku o dostępie do informacji publicznej, Dz.U. 2018, item 1330, 1669.

introduced to the knowledge of public procurement, public finance and openness in public management. The basic source on the basis of which the analysis of public procurement was conducted was the Public Information Bulletins, including the documents describing individual stages of the public procurement procedure and the documents specifying the financial management and staffing levels, especially the qualifications of the persons employed on the part of the ordering party. The aim of the study was to indicate the characteristics of the public procurement procedure and, in particular, transparency, which translated into easy access to documents that were legible and comprehensible to recipients (borough inhabitants). The analysis rejected all suggestions relating to obvious examples of infringements of the law and procedures that might indicate a pathology in the management of public financial resources. Therefore, the research problem referred to the transparency of management and not to pathology defined as corruption, nepotism, or protection in the area of public procurement.

The result of the analysis (Table 2) of public finance management in public procurement procedures is the identification of many weaknesses in the presentation of documents on the Public Information Bulletin website. First of all, the following was found:

- illegibility of many documents, complexity and incomprehensible financial and accounting language presented in financial documents, in the whole public procurement procedure from the moment of entry in the income and expenditure plan to the report on budget implementation;
- lack of many documents characterising and describing the different stages of public procurement, including decisions by management and bodies with public financial resources;
- the dominance of the financial criterion (price) in the award of the contract and less attention paid to the quality, timeliness and guarantees of the product, service or investment delivered (in one municipality, the offer to transport children was won by a company with old cars that had the minimum technical conditions for transport safety, quality and timeliness);
- errors in some documents and their lack of correction on the PIB website;
- tender of only one bidder, so there was no competition (in one case, it was found that the municipal company, and therefore the contracting authority of the public contract, had won);
- PIB often failed to find the documents defining the various stages of public procurement;
- illegible plans of revenues and expenditures of boroughs, local-governments and organisations performing tasks in the area of the public sector, resulting in the lack of clear information on planned projects whose implementation requires the use of one of the public procurement procedures;
- existence of apparent transparency, placing documents in a way that makes them difficult to read, the lack of document titles in the PIB and limiting oneself to numbering in the nomenclature, which makes it necessary to browse through countless documents, which, with the slow speed of the PIB website, creates difficulties in accessing information;
- selection of a contractor based on a formally defined price makes local companies in a commune providing a service, product or investment often

- lose out to monopolists in the area of specific tasks — in fact, such an offer is more expensive for the commune when one takes into account the local budget revenues from taxes and fees of the local company;
- amount specified in the announcement is often underestimated, which leads to renegotiation of contracts in the course of the task — usually, in such a case, there is no clear justification for choosing such an offer and the legitimacy of changes in the contract and the price of the task;
 - short deadline for selecting a contractor, which in the case of investment tasks carried out over a longer period of time (e.g. road, infrastructure or borough real estate projects) raises suspicion of price collusion as well as a lack of information about undertakings preceding the investment project (previously prepared plans, projects, cost estimates, etc.);
 - public procurement proceedings often show an insufficient state of knowledge of those who decide and make decisions, especially when it relates to the latest technologies on which the final product will be based;
 - most often, there is a lack of justification for the execution of the task and a reduction of the decision to the lowest price;
 - observations of the construction works performed, especially on local roads, indicate inadequate decisions within the scope of the guarantee of the works performed (It often starts again soon after the road is completed, repaired or modernised).

Table 2. Subject of the public procurement in selected boroughs

Lp.	Borough	Subject of the order (procurement)
1	Bełchatów	repair of an over 40-year-old car for over PLN 230,000 for the City Guard
2	Białystok	street lighting
3	Bytom	school playground
4	Chęciny	building of a fire station
5	Chrzanów	rebuilding of a pavement
6	Czarnków	rebuilding of a road
7	Dobra	rebuilding of a street
8	Duszniki	transfer of children to school
9	Gdańsk	investment based on citizens' budget — bicycle racks at school
10	Gliwice	equipment purchase for a Rescue Centre
11	Gniezno	cemetery parking
12	Grabów	rebuilding of a borough road
13	Grudziądz	construction of public transport infrastructure
14	Janów	winter road maintenance
15	Kaczory	modernisation of a kindergarten
16	Kostrzyn Wielkopolski	sports hall
17	Kościan	sewerage system

18	Krotoszyce	road reconstruction
19	Krotoszyn	thermomodernisation of a daycare centre
20	Kunice	road surface repair
21	Kutno	sewerage system
22	Lubicz	transfer of children to school
23	Luboń	waste collection and disposal
24	Łódź	materials promoting the voivodeship
25	Nowy Sącz	thermomodernisation of a school — project development
26	Oborniki Śląskie	purchase of a fire engine
27	Ostrołęka	rebuilding of a street
28	Pabianice	air conditioning of a wedding hall
29	Pieńsk	playground
30	Piotrowice	street lighting
31	Przodkowo	reconstruction of a borough road
32	Przysucha	district road renovation
33	Pszczew	road reconstruction
34	Pszów	property value assessment
35	Rokicina	reconstruction of a water supply system
36	Rozprza	road renovation
37	Siemianowice Śląskie	playground
38	Sosnowiec	Installation of light signals near a school
39	Stara Biała	building of a new borough road
40	Starogard Gdański	street reconstruction
41	Stęszew	borough road
42	Swarzędz	purchase of a fire engine
43	Śrem	school sports field
44	Świdnik	parking lot
45	Świecie nad Osą	road reconstruction
46	Turek	pavement reconstruction
47	Warlubie	district road reconstruction
48	Warszawa	PG Wodnej Wody Polskie — purchase of computer software
49	Wilamowice	purchase of a lightweight rescue and firefighting vehicle
50	Witkowo	road reconstruction
51	Władysławów	waste
52	Wojciechów	street lighting
53	Wolsztyn	reconstruction of training and recreation facilities
54	Zamość	building of a new road
55	Żyraków	historic manor house renovation

Source: own research results

Pursuant to the Act on Combatting Unfair Competition of 16 April¹⁹, an entity ordering the performance of a specific task, including local government, is obliged to reject an offer if its submission constitutes a manifestation of unfair competition within the meaning of the provisions on combatting unfair competition or if the offer submitted contains an abnormally low price in relation to the subject of the order. The local government must also reject an offer if the action of the competitor is in conflict with the law and good practices constituting a threat or infringement of the interest of another entrepreneur or customer. The area of public expenditure, due to the lack of transparency in planning and reporting on the implementation of financial plans, is exposed to many temptations aimed at creating procedures that deplete public resources and enrich persons and entities in an unauthorised manner. In the case of public procurement, prohibited vertical agreements may occur, the purpose (direct or indirect) of which may be to set prices (price collusion) and other products of purchase or sale (services)²⁰. The purpose of such a price collusion may also be to restrict or control the production of services or sales, as well as technical progress or investment²¹. Price collusion may also occur within local governments, especially borough authorities²². It should be stressed that restrictive agreements have a negative impact on the market, its participants and consumers by regulating prices (growth, stabilisation, timing, rebates and level of differentiation depending on the market), service quotas and market shares, market sharing and customer allocation²³. Undertakings entering public procurement contracts are more likely to agree on joint and profitable decisions than to take economic action alone, which is exposed to high risk²⁴. Irregularities in the implementation of public expenditure carried out using the procedures set out in the Public Procurement Law may be evidenced by the poor quality of the task performed, the short time between the announcement of the tender and its award, a small number of companies joining the tender and also low qualifications of persons conducting or supervising the tender procedure.

Conclusions — Recommendations

Analysing the research problem undertaken in the study, relating to the proper management of public financial resources on the expenditure side and procedures implemented primarily on the basis of the public procurement law and the law defining openness and access to public information, the lack of compliance by local

¹⁹ Ustawa z 16 kwietnia 1993 roku o zwalczaniu nieuczciwej konkurencji. Dz.U. 2018, item 1330, 1669.

²⁰ Klenowska K, Porozumienia ograniczające konkurencję, [in:] Powalowski A (Ed.), *Leksykon prawa konkurencji. 100 podstawowych pojęć*. Warsaw, 2010, p. 214.

²¹ Jurkowska-Gomułowska A, Zakaz porozumień ograniczających konkurencję, [in:] Skoczny T (Ed.), *Ustawa o ochronie konkurencji i konkurentów*. Warsaw, 2014, p. 269.

²² Wojtczak D, *Porozumienia wertykalne*. Warsaw, 2013, p. 10.

²³ Nowobilski A, Podmiotko S, Zakaz porozumień ograniczających konkurencję w kontekście wolności gospodarczej. *Przegląd Prawniczy Europejskiego Stowarzyszenia Studentów Prawa ELSA Poland*, 2015, t. III, p. 80.

²⁴ Jurczyk Z, *Kartele w polityce konkurencji Unii Europejskiej*. Warsaw, 2012, pp. 162–163.

governments and public sector organisations with the basic principle of access to public information should be stressed above all, which is readability (comprehensibility by citizens) and easy accessibility on the Public Information Bulletin website. Therefore, the basic reasons for the defects in the Polish public procurement system are primarily:

- Lack of transparency in the management of public finances, especially the establishment of clear revenue and expenditure plans at the lowest level in the state management structure;
- lack of unfettered access to public information, especially decisions and procedures in the area of using public financial resources;
- low qualifications of managers in the area of the public sector, especially in the area of financial management, which results from an improperly defined and functioning incentive system;
- low level of knowledge about money, finances and especially public finances of citizens, which results from improperly implemented, starting from primary school, curricula, which translates into the inability to read financial plans and procedures, and thus the possibility of exercising social control over the performance of tasks by public sector organisations.

Such a system of public procurement and management of public financial resources makes it possible for weak companies to win, offering technologically obsolete services and investments with a short guarantee period, as exemplified by continuous and frequent repairs of newly built roads. Therefore, in order to improve the principles of managing public financial resources, it is necessary to implement transparent procedures based on clear documents specifying the various stages of the public procurement procedure. Changes in public procurement law should aim at:

- Moving away from the decisive role of the formal price dimension in the selection of a contractor in favour of final effectiveness (not everything that has a lower price is cheaper, e.g. execution of a more expensive public contract by a local company accrues benefits in the form of income to the local budget from particular taxes, and a higher investment price should translate into a long period of failure-free operation);
- pay attention to the as-built guarantee period, especially for road and municipal infrastructure — at present, modernisation or renovation is often carried out after 5–10 years;
- creating a central register (website) of public procurement and placing all announcements there, and their placement time should not be shorter than 2 weeks (creating a central office or strengthening the current Public Procurement Office to conduct ongoing supervision over public procurement procedures and especially their readability);
- make sure that every citizens' enquiry ends with a clear answer and that any lack of an answer or delay ends with a disciplinary or financial penalty and even dismissal from office;
- implement legible budgets by activity based primarily on objectives and measures of public expenditure, which will increase the efficiency of the use of financial resources in public procurement;
- extending the time for submitting offers (number of days between the date of announcement of the tender and the last day of submission of offers)

and the time for taking a decision (number of days from the last submission of an offer to the date of announcement of the outcome of the procedure — e.g. up to 2 weeks), the number of certificates required from tenderers, the description of the contract (number of characters in the description), the qualifying criteria used (number of characters in the description), increasing the role and number of non-price criteria used for evaluating offers and striving for at least 2–3 tenderers to participate in each contract.

In order to ensure the proper use of local financial resources, including increasing the level of security of the local budget, it is necessary to take measures to eliminate the phenomena which generate the risk of fraud in public procurement. Therefore, the most important measure is to implement transparency in the decision-making procedure for selecting the most advantageous offer. Transparency of the procedures will lead to the assessment of citizens and also supervisory bodies of the properties of managing public financial resources.

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Streszczenie. Przedmiotem opracowania jest analiza procedur związanych z wyłonieniem najkorzystniejszej oferty w procesie określonym prawem zamówień publicznych. Wskazując istotę problemu w obrębie zarządzania publicznymi zasobami finansowymi, zwrócono przede wszystkim uwagę na rozstrzygnięcia prawne, ich wielość zmian od uchwalenia pierwszej ustawy w 1994 roku oraz na istotę zarządzania publicznymi zasobami finansowymi w otaczającej nas rzeczywistości. W oparciu o analizę zasobów internetowych wybranych losowo ponad 50 samorządów terytorialnych, głównie gminnych, dokonano oceny transparentności postępowań o udzielenie zamówień publicznych. Tym samym, w odniesieniu do poszczególnych gmin, wykorzystano metodę studium przypadku i analizy eksperckiej w naukowej ocenie zjawiska zamówień publicznych. Następnie na podstawie literatury oraz analizy otaczającej rzeczywistości wskazano zmiany, których wprowadzenie usprawni zamówienia publiczne. Wyniki badań w poszczególnych gminach posłużyły do zdiagnozowania problemu badawczego odnoszącego się do transparentności w postępowaniu o zamówienia publiczne i osiągnięcia celu, jakim było wypracowanie diagnozy stanu i propozycji zmian zapewniających podniesienie poziomu wykorzystania publicznych zasobów finansowych. Przyjęto w opracowaniu, że właściwe zarządzanie publicznymi zasobami finansowymi w obszarze wydatków, szczególnie objętych prawem zamówień publicznych, eliminuje nadmierne zadłużenie i tym samym tworzy bezpieczeństwo w obszarze lokalnych zasobów finansowych. W końcu opracowania zaprezentowano rekomendacje zmierzające do wyeliminowania stwierdzonych nieprawidłowości w rozwiązaniach prawnych oraz funkcjonujących procedurach zamówień publicznych.

Zusammenfassung. Gegenstand der vorliegenden Studie ist die Analyse von Verfahren zur Auswahl des besten Angebots in dem im Vergaberecht festgelegten Prozess. Um das Problem im Bereich der Verwaltung der öffentlichen Finanzmittel zu verdeutlichen wurde vor allem auf die rechtlichen Lösungen, d.h. auf die Anzahl der Änderungen seit der Verabschiedung des ersten Gesetzes im Jahre 1994 und auf das Wesen der Verwaltung der öffentlichen Finanzmittel in der umgebenden Realität hingewiesen. Die Transparenz des öffentlichen Beschaffungswesens wurde auf der Grundlage einer Analyse von Internetressourcen bewertet, die nach dem Zufallsprinzip von mehr als 50 territorialen Selbstverwaltungen, hauptsächlich von Gemeinden, ausgewählt wurden. In Bezug auf einzelne Gemeinden wurde daher bei der wissenschaftlichen Bewertung des Phänomens des öffentlichen Beschaffungswesens die Methode der Fallstudie und der Expertenanalyse verwendet. Auf der grundlegenden Literatur sowie der Analyse der umgebenden Realität wurden dann Änderungen angezeigt, deren Einführung das öffentliche Beschaffungswesen verbessern würde. Die Ergebnisse der Forschung in einzelnen Gemeinden wurden verwendet, um das Forschungsproblem im Zusammenhang mit der Transparenz in öffentlichen Beschaffungsverfahren zu diagnostizieren und das Ziel zu erreichen, eine Diagnose des Staates zu entwickeln und Änderungen vorzuschlagen, die eine Erhöhung des Einsatzes öffentlicher Finanzmittel gewährleisten. In der Studie wurde davon ausgegangen, dass eine ordnungsgemäße Verwaltung der öffentlichen Finanzmittel im Bereich der Ausgaben, insbesondere derjenigen, die unter das Gesetz über das öffentliche Beschaffungswesen fallen, eine übermäßige Verschuldung beseitigt und somit Sicherheit im Bereich der lokalen Finanzmittel schafft. Am Ende der Studie wurden Empfehlungen vorgelegt, um die festgestellten Unregelmäßigkeiten bei rechtlichen Lösungen und die funktionierenden Verfahren für das öffentliche Beschaffungswesen zu beseitigen.

Резюме. Целью настоящей статьи является анализ процедур, связанных с выбором наиболее выгодного предложения в рамках процедуры, предусмотренной законом о государственных закупках. С целью показать сущность проблемы в сфере управления государственными финансовыми ресурсами, в первую очередь, рассматривались законодательные решения, количество внесенных изменений с момента принятия первого закона в 1994 году, а также сущность управления государственными финансовыми ресурсами с учетом окружающей действительности. На основе анализа интернет-ресурсов свыше 50 территориальных органов самоуправления, в основном муниципальных, отобранных в случайном порядке, проведена оценка транспарентности процедур государственных закупок. В связи с этим, при научной оценке существования феномена госзакупок отдельных муниципалитетов был использован метод изучения конкретного случая и экспертного анализа. Затем, на основе литературы и анализа существующей действительности определяются изменения, внедрение которых повысит эффективность госзакупок. Результаты исследования, проведенного в муниципалитетах, были использованы для определения проблемы, связанной с прозрачностью процедур государственных закупок, а также для достижения цели, которая состояла в существующих процедурах, а также возможных изменений, направленных на повышение уровня использования государственных финансовых ресурсов. В статье предполагается, что надлежащее управление государственными финансовыми ресурсами в области расходов, особенно теми, которые предусмотрены законом о государственных закупках, исключает чрезмерную задолженность и тем самым создает безопасность в области местных финансовых ресурсов. В конце статьи изложены рекомендации по устранению выявленных ошибок в законодательстве и процедурах государственных закупок.

