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Public Procurement Data Collection (ECPRD Request No. 4735)¹

System zbierania danych o zamówieniach publicznych
(wniosek ECPRD 4725)

The author discusses the Polish system of public procurement. She describes the institutions collecting data concerning public procurement, means of sharing this data with the citizens and legislation regulating this issue. The author considers whether the entry into force of an entirely new Act on Public Procurement, which came into force on 1st January 2021, will affect the manner of reporting on the functioning of the procurement system based primarily on the annual report about the conducted contract award procedures prepared by the contracting authority. Particular attention is paid to the collection of data on taking into account social aspects in public procurement.

Keywords: ECPRD, public procurement

Autorka omawia system zamówień publicznych w Polsce. Opisuje instytucje zbierające dane dotyczące zamówień publicznych, środki udostępniania tych danych obywatelom oraz ustawy regulujące te kwestie. Autorka rozważa, czy wejście w życie nowej ustawy o zamówieniach publicznych z 1 stycznia 2021 r. będzie miało wpływ na sposób raportowania funkcjonowania systemu zamówień publicznych na podstawie przede wszystkim rocznego raportu z przeprowadzonych przez instytucję zamawiającą postępowań o udzielenie zamówienia. Szczególną uwagę poświęcono zbieraniu danych w kontekście uwzględniania aspektów społecznych w zamówieniach publicznych.

Słowa kluczowe: ECPRD, zamówienia publiczne

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In response to ECPRD Request No. 4735 regarding „Public Procurement Data Collection” the Bureau of Research provides the following information:

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How does your country currently report on public procurement and what data is collected? Is it uniform across sectors and are there any separate national and regional systems in place?

Poland produces an annual report on the functioning of the public procurement system. It is undertaken at the national level. The latest report covers the year 2019 and is available (in Polish) at: https://www.uzp.gov.pl/__data/assets/pdf_file/0020/43418/Sprawozdanie-2019-r.pdf.

In Part I, the report covers the legal aspects of the functioning of the public procurement system.

Part II discusses the public procurement market in the year under review. First, the characteristics of the public procurement market are presented:

- market size by value of awarded contracts,
- market structure by type of contracting authority (public finance sector entities, state organizational units without legal personality, public law entities, associations of these entities or entities and enterprises operating in the water, energy, transport and postal services sectors),
- market structure by type of contract (construction works, supplies, services),
- sectoral contracts awarded by enterprises operating in the sectors of water management, energy, transport and postal services,
- procurement in the fields of defence and security,
- concessions for construction works and services,
- in-house orders.

Then the functioning of the market is presented:

- the structure of public procurement procedures (open tendering, restricted tendering, negotiated procedure with publication, competitive dialogue, negotiated procedure without publication, single-source procurement, request-for-quotation, innovation partnership, electronic bidding);
- duration of the contract award procedure;
- criteria for evaluation of tenders;
- competitiveness of procedures;
- obtained prices;
- participation in public procurement of contractors from the SME sector;
- participation of Polish entrepreneurs in the European market;
- foreign entities on the Polish public procurement market;
- use of legal remedies (appeal statistics);
- the state of sustainable public procurement (social public procurement, green or innovative public procurement).

Next, other data on the public procurement market are discussed:

- notices of intention to conclude a contract;
- contract award procedure in which advance payment is provided for;
- contract award procedure in which the contracting authority stipulated that only sheltered workshops and other economic operators whose activities in-

cludes social and professional integration of persons belonging to socially marginalised groups may compete for a contract; amendments to the provisions of a concluded contract when compared to the content of the tender based on which the economic operator has been selected;

- contract award procedure in which, before commencing a contract, a technical dialogue was conducted;
- contract award procedure conducted electronically in accordance with the requirements of the EU directive.

The third part of the report presents the institutional aspects of functioning of the public procurement system in Poland. This part discusses the competencies of the President of the Public Procurement Office (administrative decisions, lawsuits for annulment of public procurement contracts, issuing opinions, control of public procurement, publishing the Public Procurement Bulletin) and the National Appeal Chamber (examination of appeals, applications to revoke the ban on conclusion of contract).

All data presented in the report on the functioning of the public procurement system are based primarily on the annual report about the conducted contract award procedures prepared by the contracting authority. In addition, the data available in the Official Journal of the European Union and the Public Procurement Bulletin are also used.

The minister responsible for the economy defines, by means of a regulation, the scope of information contained in the record, its template and manner of submission, having regard to the requirements pertaining to the content of the record submitted to the European Commission and the need for ensuring up-to-date information for the purposes of monitoring public contracts, and the justification for the use of electronic means of communication. The current scope of the report is specified in the Regulation of the Minister of Development and Finance of 15 December 2016 on the information contained in the record, its template and manner of submission. The annex to the regulation, setting out the format of the annual report, includes ten tables specifying the scope of the information provided, broken down as follows:

I. Contracting authority;

II. Classic contracts with a value exceeding the PLN equivalent of the amount referred to in Art. 4 point 8 of the Act of 29 January 2004 – Public Procurement Law² (PPL)³, and less than the amounts specified in the regulations issued under Art. 11 para. 8 of the PPL⁴;

² The Act of 29 January 2004 – Public Procurement Law (Journal of Laws of 2017, item 1579).

³ Contracts and contests where their value does not exceed the equivalent in PLN of EUR 30 000.

⁴ The Minister responsible for the economy shall determine, by means of a regulation, the value thresholds of contracts and design contests which require the dispatch of

III. Sectoral contracts with a value exceeding the PLN equivalent of the amount referred to in Art. 4 point 8 of the PPL, and less than the amounts specified in the regulations issued under Art. 11 para. 8 of the PPL;

IV. Contracts in the field of defence and security with a value exceeding the PLN equivalent of the amount referred to in Art. 4 point 8 of the PPL, and less than the amounts specified in the regulations issued under Art. 11 para. 8 of the PPL;

V. Orders with a value equal to or exceeding the amounts specified in the provisions issued under Art. 11 para. 8 of the PPL;

VI. Contract award procedure to which the provisions of the PPL apply, in which there exists the relationship specified in Art. 17 sec. 1⁵ of the PPL or in Art. 24 para. 5 point 3⁶ of the PPL, or in which contractors concluded an agreement aimed at distorting competition;

a notice to the Publications Office of the European Union, taking into consideration the applicable provisions of the Community law.

⁵ Persons performing actions in connection with the conduct of award procedures shall be subject to exclusion, if:

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

⁶ The contracting authority may exclude, from a contract award procedure, an economic operator if the economic operator or a member in management board or supervisory body, partner in a general partnership or limited liability partnership, or general partner in a limited partnership or a limited joint-stock partnership, or a proxy, authorised to represent the economic operator, remain in relationships defined in Article 17 para. 1 (2) to (4) with:

- a) the contracting authority,
 - b) persons authorised to represent the contracting authority,
 - c) members of the tender committee,
 - d) persons who have submitted the written statement in the aftermath of a conflict of interest
- unless it is possible to secure impartiality on behalf of the contracting authority in another manner than by excluding the economic operator from the procedure.

VII. Contracts for social services and other specific services with a value less than, equal to or exceeding the amounts specified in Art. 138g para. 1⁷ of the PPL;

VIII. Contracts to which the provisions of the PPL apply, taking into account social aspects;

IX. Contracts to which the provisions of the PPL apply, taking into account environmental or innovative aspects;

X. Contracts awarded with the exception of the procedures specified in the provisions of the PPL.

It should be noted that Poland has recently adopted an entirely new Act on Public Procurement⁸ (NPPL), which came into force on 1 January 2021. However, the provisions concerning the derogation from the ministry responsible for the economy regarding the issuing of the regulation laying down the details of the annual report about the conducted contract award procedures remained unchanged. Art. 82 para. 4 of NPPL states that the minister responsible for the economy defines, by means of a regulation, the scope of information contained in the report, its template and manner of submission, method and mode of its correction, having regard to the requirements pertaining to the content of a record submitted to the European Commission and the need for ensuring up-to-date information for the purposes of monitoring public contracts, and the justification for the use of electronic means of communication. The competent minister has not yet issued such a regulation. Until a new regulation implementing the aforementioned derogation is issued, the Regulation of the Minister of Development and Finance of 15 December 2016 on the information contained in the record, its template and manner of submission applies.

What body collects this data and where is it sourced from?

Both the provisions of the PPL and the NPPL provide that the contracting authority shall prepare an annual report about the conducted contract award procedures. The contracting authority shall dispatch the report to the President of The Public Procurement Office by 1 March of each year following the year to which the report refers. The minister responsible for the economy shall define, by means of a regulation, the scope of information contained in the report, its template and manner of submission.

The last available annual reports were provided by over 30,000 contracting authorities.

⁷ The contract value is equal to or exceeds a PLN equivalent of the following amounts:
1) EUR 750,000 – in the case of contracts other than utilities contracts or defence and security contracts;
2) EUR 1,000,000 – in the case of utilities contracts.

⁸ The Act of 29 January 2004 – Public Procurement Law (Journal of Laws of 2017, item 1579).

Where a social clause is included in a tender, is data collected about these?

What type of information is included as part of the data collection process?

The obligation to use social clauses in contract award procedure by selected government administration units as well as the obligation imposed on the President of the Public Procurement Office to conduct monitoring in this regard, were introduced under the Recommendations of the Council of Ministers of 2015. In turn, the 2017 Recommendations extended the obligation to include social considerations in public procurement for all aspects provided for in the PPL, and this applies to all government administration units.

The 2017 Recommendations of the Council of Ministers relate to instruments of a social clauses specified in the PPL, in force at the time the document was adopted by the Council of Ministers. The entry into force of the NPPL does not change the status of the Recommendations of the Council of Ministers, which remain in force. The provisions on taking into account social aspects in public procurement indicated therein should be referred to the following regulations:

a) reserved contracts;

The contracting authority may stipulate in the contract a notice that only sheltered workshops and other economic operators may compete for a contract, whose activities, or activities of their separated organisational units which will perform the contract, include social and professional integration of persons belonging to socially marginalised groups, in particular:

- disabled persons within the meaning of the Act of 27 August 1997 on the vocational rehabilitation, social resettlement, and employment of disabled persons;
- unemployed persons within the meaning of the Act of 20 April 2004 on the promotion of employment and labour market institutions;
- jobseekers who are not employed or do not perform any other gainful work within the meaning of the Act of 20 April 2004 on employment promotion and labour market institutions,
- self-reliant persons, referred to in the Act of 9 June 2011 on supporting the family and foster care system,
- persons deprived of liberty or released from prisons, referred to in the Act of 6 June 1997 – Criminal Executive Code, experiencing difficulties with integration into society;
- persons with mental disorders within the meaning of the Act of 19 August 1994 on protection of mental health;
- homeless persons within the meaning of the Act of 12 March 2004 on social assistance;
- persons granted by the Republic of Poland a refugee status or subsidiary protection referred to in the Act of 13 June 2003 on the protection of foreigners in the Republic of Poland;
- persons up to 30 years of age and persons who have reached 50 years of age, with a jobseeker status and unemployed;

- persons belonging to disadvantaged minorities, in particular national and ethnic minorities within the meaning of the Act of 6 January 2005 on national and ethnic minorities and regional language.
 - only if a minimum percentage level of employment of the persons belonging to one or more of the above categories is not lower than 30%, of persons employed by sheltered workshops or economic operators or their units
- b) obligation to employ on the basis of an employment relationship;

In the description of the subject-matter of contract for services or works, the contracting authority shall define the requirements relating to the employment by an economic operator under an employment contract of persons carrying out activities indicated by the contracting authority in the scope of implementation of the contract, if the said activities are to be carried out in the manner defined in the Act of 26 June 1974 – Labour Code.

- c) requirements related to the implementation of the contract, including employing people from disadvantaged groups to fulfil orders;

In the description of the subject-matter of contract, the contracting authority may specify requirements connected with the implementation of the contract which may include economic, environmental, social, innovation- or employment-related aspects, and in particular relating to:

- the application of specific environmental management measures,
- the employment of:
 - unemployed persons within the meaning of the Act of 20 April 2004 on the promotion of employment and labour market institutions,
 - jobseekers who are not employed or do not perform any other gainful work within the meaning of the Act of 20 April 2004 on employment promotion and labour market institutions,
 - self-reliant persons, referred to in the Act of 9 June 2011 on supporting the family and foster care system,
 - adolescents referred to in the provisions of the labour law, for the purposes of professional training,
 - disabled persons within the meaning of the Act of 27 August 1997 on the vocational rehabilitation, social resettlement, and employment of disabled persons,
 - other persons than listed above, referred to in the Act of 13 June 2003 on social employment, or in the relevant regulations of Member States of the European Union or the European Economic Area,
 - people up to 30 years of age and after reaching 50 years of age, having the status of a jobseeker, without employment.

- d) accessibility requirements for people with disabilities and design for all users;

In the case of contracts to be used by natural persons, including employees of the contracting authority, the description of the subject-matter of contract shall be drawn up with account taken of the requirements in the scope of accessibility for disabled persons or for-all design.

e) indication of labels related to social aspects;

In the case of contracts with special characteristics, the contracting authority may define, in the description of the subject-matter of contract, in the contract award criteria or in the contract implementation conditions, a specific marking, if the following conditions are jointly met:

- marking requirements concern only the criteria connected with the subject-matter of contract and appropriate to define the characteristics of the works, supplies, or services constituting the subject-matter of the contract;
- marking requirements are based on objectively verifiable and non-discriminatory criteria;
- conditions for awarding markings are adopted by means of an open and transparent procedure in which all interested entities may participate, including public administration entities, consumers, social partners, producers, distributors, and non-governmental organisations;
- marking is available for all interested parties;
- marking requirements are defined by a third entity on which an economic operator applying for a marking may not exercise a determining influence.

f) examination of the offer in terms of abnormally low price;

If the price or cost or their material parts are abnormally low in relation to the subject-matter of contract and raise doubts of the contracting authority as to the possibility of performing the subject-matter of contract in accordance with the requirements specified by the contracting authority or stemming from separate regulations, the contracting authority shall request explanations, including evidence, relating to the calculation of the price or cost. These explanations may relate in particular to:

- compliance with the provisions on labour costs, the value of which may not be lower than the minimum remuneration for work or the minimum hourly rate, determined on the basis of the provisions of the Act of 10 October 2002 on the minimum remuneration for work or separate provisions relevant to the matters related to the contract,
- compliance with the provisions of labour and social security law in force in the place where the contract is performed.

g) formulation of social criteria for evaluating offers.

The contracting authority shall select the best tender on the basis of contract award criteria laid down in the specification of essential terms of the contract. Tender evaluation criteria shall be price or price and other criteria linked to the subject-matter of the contract, in particular:

- quality, including technical parameters, aesthetic and functional characteristics such as accessibility for people with disabilities,
- social aspects, including social and occupational integration of persons referred to in point (a), accessibility to disabled persons, and responding to user needs.

The recommendations of the Council of Ministers also impose a reporting obligation on all heads of government administration units. The reporting obligation is performed as part of the annual report on awarded contracts, referred to in Art. 82 of NPPL. As mentioned before, the Regulation of the Minister of Development and Finance of 15 December 2016 on the information contained in the record, its template and manner of submission is in force until a new regulation is issued. In Table VIII in the annex to the regulation „Orders to which the provisions of the Act apply, taking into account social aspects”, the contracting authority is obliged to provide information on classic contracts, sector contracts or contracts in the field of defence and security, to which the provisions of the Act apply, taking into account social aspects. The information should cover completed proceedings. The required information to be provided in Table VIII includes in particular:

- the number of the contract notice / contract award notices in the Public Procurement Bulletin or in the Official Journal of the European Union if there was an obligation to publish a contract notice;
- type of contract;
- the subject of the contract, indicating the codes specified in the Common Procurement Vocabulary;
- the procedure for awarding the contract or concluding a framework agreement.

The contracting authority also indicates the value of the concluded contracts by indicating the total value of contracts, excluding value added tax, concluded in the year to which the report relates, also in the event that the contracts have not been fully performed and the contracting authority has not spent the entire amounts allotted for concluded contracts. In the case of contracts concluded for an indefinite period, the value of the contract should be the value determined taking into account the period of 48 months of contract performance. In the event of a framework agreement being concluded, the value of the framework agreement must be provided. The contracting authority should indicate whether the possibility of applying for the contract has been reserved for supported employment establishments, sheltered workshops and other economic operators whose activities, or activities of their separated organisational units which will perform the contract, includes social and professional integration of persons belonging to socially marginalised groups, in particular:

- disabled persons within the meaning of the Act of 27 August 1997 on the vocational rehabilitation, social resettlement, and employment of disabled persons;
- unemployed persons within the meaning of the Act of 20 April 2004 on the promotion of employment and labour market institutions;
- persons deprived of liberty or released from prisons, referred to in the Act of 6 June 1997 – Criminal Executive Code, experiencing difficulties with integration into society;

- persons with mental disorders within the meaning of the Act of 19 August 1994 on protection of mental health;
- homeless persons within the meaning of the Act of 12 March 2004 on social assistance;
- persons granted by the Republic of Poland a refugee status or subsidiary protection referred to in the Act of 13 June 2003 on the protection of foreigners in the Republic of Poland;
- persons up to 30 years of age and persons who have reached 50 years of age, with a jobseeker status and unemployed;
- persons belonging to disadvantaged minorities, in particular national and ethnic minorities within the meaning of the Act of 6 January 2005 on national and ethnic minorities and regional language.

The contracting authority determines whether it has defined social aspects in the description of the subject of the contract or in the tender evaluation criteria.

Information on the number of offers submitted should be provided taking into account partial and variant offers. In the part concerning the entity to which the contract has been awarded, the contracting authority specifies whether the economic operator is, respectively: a social cooperative, a sheltered employment establishment, a professional activation establishment, or another entity. In the last column of Table VIII, information should be provided whether the procedure, which took into account social aspects, has been cancelled.

Does your country link its procurement data to other administrative database such as corporate registries, lobbying registers etc.?

The ministry responsible for digital affairs operates the portal dane.gov.pl (Portal). The Portal is available 24 hours a day, except for maintenance breaks resulting from any possible failures or the need to make changes and improvements. The use of the Portal is free of charge. The use of the Portal does not require registration. Some of the services on the Portal are available only to a registered user after logging in to the Portal.

The Portal is a one-stop shop for data from over 100 public institutions. The website is a source of reliable, constantly updated data, made available free of charge for re-use. The website is created for: citizens interested in the activities of the state, companies that build innovative products and services based on data, NGOs using data in their daily work, scientists carrying out research and officials preparing reports and analyses. One of the entities whose information resources have been made available in the Portal is Public Procurement Office (PPO). The PPO provides Information Bulletin, which presents data on the functioning of the public procurement market. This data is updated monthly. The Bulletin includes, inter alia, the following:

- number of contract notices,
- procedures initiated according to the type of contract,
- procedures initiated according to the type of procedure,

- criteria for evaluating offers,
- procedures in which advance payment is provided for,
- procedures in which the awarding entity stipulated that only sheltered workshops and contractors whose activities include social and professional integration of people who are members of socially marginalized groups may apply for the award of the contract,
- contracts awarded by type of contract,
- contracts awarded according to the procedure,
- average number of submitted and rejected offers,
- percentage of the number of contracts awarded by category of contracting authority,
- type of contracts awarded by category of contracting authority,
- percentage structure of procurement procedures by category of contracting authorities,
- number of contracts awarded to Polish contractors on the markets of other EU Member States, taking into account the value of these contracts
- number of contracts awarded by Polish awarding entities to foreign contractors, taking into account the value of these contracts.

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Other

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