



## Improving SMEs' Access to Cross-Border Public Procurement

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# Public procurement in Poland

## Overview

Market of public procurement in Poland is developing dynamically, which can be noted in the value of awarded contract, estimated to circa 38 billions EUR per year. In a scope of a structure of contracts, construction works has the highest share of value (about 50%). Supplies and services fluctuates around the same level (25%).

Entities obliged to follow the Polish public procurement rules are different types of the public finance sector units. Such awarding entities are obliged to award contracts due to the rules of fair competition and equal treatment of economic operators, impartiality and objectivity of persons preparing and conduction procedures.

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### EU regulation—useful link

Directive 2014/24/EU on public procurement in the ordinary sectors: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>

From the perspective of representatives of private sector, interested in public procurement market in Poland, **particular amendments may be important:**

- ⇒ Key principles, including transparency and adequacy prevailing in EU case law were affirmed,
- ⇒ Tender assessment criteria in a scope of the concept of cost, including life-cycle cost, the significance of non-price tender assessment criteria was underlined,
- ⇒ Due to exclusion criteria contractor is able to use a self-cleaning procedure.
- ⇒ The European single procurement document (ESPD) should be submitted for contracts above the EU thresholds.

## The EU legal framework

As an EU Member State, Poland is under the EU law regime. Thus Polish public procurement rules comply with the EU Treaties and Directives, including the implementation of the provisions of the three directives reforming the procurement sector were published on 18th April 2014:

- Directive 2014/23/EU on the award of concession contracts;
- Directive 2014/24/EU on public procurement in the ordinary sectors;
- Directive 2014/25/EU on procurement in “special sectors” (e.g. water, energy, transport).

The first two directives, compared to previous 2004/18/ec and 2004/17/ec simplify the procedures and tend to harmonize regulations of special sectors with those of traditional sectors.

The financial thresholds above which the contracting authority is obliged to apply the national legal framework is EUR 30.000,00. Furthermore, the Polish law introduces specific legal regime that shall apply to the contracts above the EU thresholds:

- ⇒ EUR 135.000,00 (net of VAT) for public supply and service contracts awarded by public finance sector bodies,
- ⇒ EUR 209.000,00 (net of VAT) for public supply and service contracts awarded by other public bodies,
- ⇒ EUR 418.000,00 (net of VAT) for utilities supply and service contracts and in the fields of defence and security,
- ⇒ EUR 5.225.000,00 (net of VAT) for construction works contracts.

### *The EU directives were implemented into the Polish law.*

### Polish regulation—useful link

The newly consolidated text of the Public Procurement Law (available in English): <https://www.uzp.gov.pl/en>

## The national legal framework

The Public Procurement Act of 29 January 2004 (Jurnal of Laws from 2017 item 1579, hereinafter: PPL), an act of law crucial in this regard, has contributed to creating a public procurement market in Poland which is continuously growing. Furthermore there are several areas of Polish law that are relevant to public procurement, such as: Civil Law, Civil Procedure Law, Competition Law, Criminal and Labour Law applicable to public procurement contracts.

Due to the legal framework, the principal procedures for awarding contracts are open tendering and restricted tendering. Open tendering means contract award procedures in which, following a public contract notice, all interested economic operators may submit their tenders. Restricted tendering means contract award procedures in which, following a public contract notice, economic operators submit requests to participate in a contract award procedure, and tenders may be submitted by economic operators invited to submit their tenders. Awarding entity may award contracts by the mean of other procedures (e.g. negotiated procedure with publication, competitive dialogue, negotiated procedure without publication, single-source procurement procedure, request-for-quotations procedure or by electronic bidding procedure) only under the circumstances specified.

## Good to know

### Specificities at the European level

#### Lots

To facilitate SME participation and to foster competition, **public buyers are encouraged to divide contracts into lots**. Bidders can bid on one or several lots. Except in exceptional cases, contracts should be divided into lots when their object allows the identification of separate performances.

### The European Single Procurement Document (ESPD)

The **European Single Procurement Document (ESPD)** is a **self-declaration** of the businesses' financial status, abilities and suitability for a public procurement procedure. It is available in all EU languages and used as a preliminary evidence of fulfilment of the conditions required in public procurement procedures across the EU. Thanks to the ESPD, the tenderers no longer have to provide full documentary evidence and different forms previously used in the EU procurement,

which means a **significant simplification of access to cross-border tendering opportunities**.

### The Electronic Market

The e-procurement platform, ensuring full electronic communication in a scope of public procurement process, is supposed to be implemented in 2018.

### A successful bid

In order to make a successful bid, enterprises need to:

- ◆ Analyse the market.
- ◆ Analyse the attribution criteria (usually cost and quality criteria). Each call for tender is related to a specific need. In order to win the tender, the bidder needs to make a specific proposition related to the requirements.

A bid is composed of:

- ◆ One technical proposal. The company explains why and how its products/services can satisfy the need.
- ◆ One financial and administrative proposal. The documents needed are usually listed in call for tenders.

In case of an unsuccessful bid, companies are allowed to ask to the contracting authority the reasons for the refusal.

## Databases

- ⇒ Public Procurement Bulletin (available in Polish): <https://bzp.uzp.gov.pl/>
- ⇒ Supplement to the Official Journal of the EU, TED (Tenders Electronic Daily): <http://ted.europa.eu/>
- ⇒ Information system for European Public Procurement (SIMAP): <https://simap.ted.europa.eu/>
- ⇒ Contains information about criteria and evidences for all EU countries (eCertis): <https://ec.europa.eu/growth/tools-databases/ecertis/>
- ⇒ Internal Market, Industry, Entrepreneurship and SMEs - Internal Market, Industry, Entrepreneurship and SMEs, European Commission: <https://ec.europa.eu/growth/single-market/public-procurement>

## Social Networks

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YouTube:

[https://www.youtube.com/  
user/parpgovpl](https://www.youtube.com/user/parpgovpl)

Website:

<http://www.sesamproject.eu/>

## SESAM

Initiated in 2017, the project SESAM intends to improve SME's access to Cross-Border Public procurement. This project provides knowledge and support for a successful participation in public procurement within European Union, in particular in Germany, Italy, France and Poland.

The following tools are available for SMEs:

- ◆ Seminars;
- ◆ Webinars;
- ◆ Training sessions;
- ◆ Factsheets and guidelines;
- ◆ B2B (business to business) and B2P (business to procurer) events;
- ◆ Lists of potential partners/public buyers;
- ◆ Advisory service.

## Contact

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