

BUSINESS AND THE ENVIRONMENT

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Chapter 6

GREEN PUBLIC PROCUREMENT

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The aim of this chapter is to provide didactic support in the area of international business. Its scope covers the fundamental issues connected with the system of public procurement in Poland in the light of binding regulations in the European Union. Due to the environmentally-friendly profile of this textbook, one of its parts focuses on public procurement that involves environmental aspects, i.e., green public procurement.

The chapter offers general knowledge and discusses practical issues linked mainly with the EU and Polish public procurement procedures. It is based on economic and legal literature and the author's practical experience. The chapter is supplemented with a list of the most up-to-date literature as well as questions & assignments and examples.

6.1. Legal regulations

6.1.1. European Union law

The system of public procurement in Poland is based on EU regulations, which have a direct (by means of Regulations) or indirect (by means of Directives) effect on domestic regulations.

Two Directives are of key importance for the national system: classical and sectoral. The former concerns the coordination of procedures for the awarding of public works contracts, public supplies contracts and public service contracts (Directive 2004/18/EC; Directive 2014/24/EU). It regulates almost all legal aspects of the common procedures, including: principles, rules and clauses in the awarding of public contracts, thresholds, specific situations, excluded contracts, reserved contracts, service contracts, preparation and procurement procedures, rules on advertising and transparency.

The second key Directive, the so-called sectoral one, coordinates the procurement procedures of entities operating in the water, energy, transport and postal services sectors (Directive 2004/17/EC; Directive 2014/25/EU). The main reason to adopt principles coordinating the awarding of contracts in these sectors is the variety of ways in which national authorities can influence the behaviour of these entities, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies. Another valid reason why it is necessary to coordinate procurement procedures applied by the entities operating in these sectors is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the EU Member States concerning the supply to, or operation of networks for providing the service concerned.

Obviously, there are many supplementary regulations that are also important for the practice of a smoothly functioning public procurement system in the European Union. They include:

- a) the regulation specifying the so-called EU thresholds above which tenders must be advertised by the Publications Office of the European Union (Regulation of the European Commission (EU) No. 1336/2013; Commission Communication (EU) No. 2013/C 366/01);
- b) the regulation establishing the Common Procurement Vocabulary based on a tree structure comprising codes of up to nine digits associated with wording that describes the supplies, works or services forming the subject of the contract (Regulation of the European Commission (EC) No. 213/2008);
- c) implementing the regulation establishing standard forms for the publication of notices in the field of public procurement (Regulation of the European Commission (EU) No. 842/2011).

6.1.2. National legislation

National legislation in the field of public procurement is very extensive. This is primarily due to the fact that the procedures cover a variety of aspects, such as the conclusion of contracts, infrastructural investment, R&D projects, education, culture and sports. Hence, when dealing with public procurement, we very often have to apply regulations from other areas. A narrower scope of national legislation on public procurement includes, first of all, the Public Procurement Law,

implementing acts, jurisprudence, legal opinions and decisions of the National Appeal Chamber.

Public Procurement Law (Act of 29 January 2004 Public Procurement Law, hereinafter referred to as the PPL) stipulates the principles and procedures for awarding public contracts, legal protection measures and bodies competent for matters covered by the law (Art. 1).

The currently binding Public Procurement Law replaced the previous Act on Public Procurement enacted in 1995. One of the major premises behind the fundamental change in legislation on public procurement was the need to fully harmonise Polish and Community (EU) legislation. Compliance of the national law with the *acquis communautaire* was one of the principal conditions in the opening up of the European public procurement market to Polish entrepreneurs and public entities. Moreover, it enabled Polish beneficiaries to implement projects co-financed with the EU Structural Funds, the Cohesion Fund and other related programmes of the European Commission.

The Law on Public Procurement has got a very clearly identified **sectoral scope and is addressed to specific entities**. When it comes to sectors, public procurement covers three categories: **supplies**, **services**, and **construction works** (for more see Art. 2 PPL).

With respect to entities, we can distinguish two parties to public procurement proceedings: **contractors** and **contracting authorities**.

A contractor is understood as a natural or a legal person, or any organisation without legal personality, which applies for the awarding of a public contract, has submitted a tender or concluded a public procurement contract (Art. 2 p. 11 PPL).

The term "contracting authorities" is much more extensive and complex. It is designed to identify entities which, pursuant to Art. 2 p. 12 PPL, are bound by the PPL. The catalogue thereof is identified in Art. 3 PPL. They are mainly entities from the public finance sector (Art. 9 of the Act on Public Finance) and entities that are dependent, either in financial or organisational terms, on public finance operators. We need to stress that under the current legal arrangements, private operators also may, in specific circumstances, be obliged to apply the Law or to select suppliers in accordance with basic principles governing the awarding of public contracts, i.e., non-discrimination, fair competition and transparency principles. A good example in this case is provided by the wording of Art. 3 para. 3 PPL, which indicates that entities in the public finance sector may make the granting of co-financing of projects dependent upon the application of the above principles in the disbursement of these funds.

In 2014, the total number of contractors reached 36,796 (in 2013 - 37,557), out of which more than 16,000 contracting authorities revealed that they had

awarded contracts following procedures laid down in the Public Procurement Law. The remaining contracting authorities awarded contracts under the scheme of statutory exemptions. Territorial local government units were the most numerous group among the contracting authorities (Fig. 6.1).

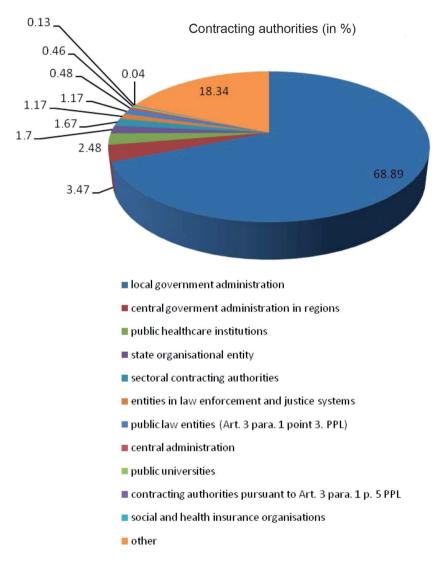


Figure 6.1. Contracting authorities in 2014

Source: Author's calculations based on the *Report on the Functioning of Public Procurement* in 2014 (2015)

The identification of what sectors and entities are covered by the Law allows us to define public contracts. Thus, in accordance with the provisions of Art. 2 p. 13 PPL, public contracts are commercial contracts concluded between a contracting authority and a contractor for the provision of services, supplies or construction works.

However, the definition remains incomplete if we do not identify the source of funding. Public contracts are contracts financed or co-financed with public resources. Their exhaustive list can be found in Art. 5 of the Act on Public Finance (Act of 27 August 2009 on Public Finance, Dz.U. 2009, No. 157, item 1240 with further amendments).

In the public procurement literature, but also in popular readings, we can come across the notion of the **system of public procurement**. It also appears in Law, although it is not explicitly defined. Nevertheless, we may risk defining it. Thus, a public procurement system is understood as an institutional and legal environment with procedures and principles that determine the proceedings leading to the awarding of public contracts. The system is supervised by the President of the Public Procurement Office in cooperation with the Public Procurement Council.

The public procurement system is based on the following four basic principles:

- 1) the principle of fair competition and equal treatment of contractors, which ensures that at all preparatory stages and within the award procedure contractors are treated in an impartial and objective way;
- 2) the principle of tendering, meaning that tendering (restricted and open) are the two basic ways of awarding public contracts, and contracts may be awarded under any other arrangements only in exceptional cases laid down in the PPL;
- 3) the principle of transparency, which guarantees openness of procedures for the awarding of a public contract, in particular the publication of information which should be made available to all interested parties, transparency throughout the proceedings, transparency of documents in the proceedings, and due diligence when it comes to the duty to inform on the part of the contracting authority;
- 4) **the principle of written documents**, which means the procedure is conducted in writing, irrespectively of the value of the contract; in particular, the exchange of information in the course of the procedure should be in writing as well as the tender and the contract, with the exclusion of the applicability of an electronic signature.

6.2. Types of contracts

The first category of public contracts covers **supplies**. Pursuant to Art. 2 p. 2 PPL, supplies should be understood as the purchase of products, rights or other goods based on the purchase, supply, rental or lease contract. Supplies are covered by many detailed provisions of the Law. An example is a dynamic purchasing system, which consists in the electronic awarding of contracts within a limited period of time for generally available supplies acquired under a purchase contract (Art. 2a PPL).

The second category includes services. Services cover all considerations that are neither public works nor supplies. For the purpose of public procurement, services are divided into two categories: priority and non-priority. Their list can be found in the regulation based on the classical and sectoral directives (Regulation of the President of the Council of Ministers of 28 January 2010 on the list of priority and non-priority services, Dz.U. 2010, No. 12, item 68). It included, e.g., accommodation, catering, legal advisory, educational, training, leisure, cultural, and sports services. The break-down is important for the awarding of public contracts. Non-priority service contracts do not need to observe deadlines for the submission of applications to be admitted in the procedure or deadlines for filing the tenders, they are not covered by the duty to make a deposit or present documents to confirm compliance with conditions identified for the procedure, a ban on adopting assessment criteria dependent on the contractor, or reasons for the adoption of negotiating procedures with publication, competitive dialogue and electronic bidding. Hence, in the case of non-priority services, we may speak of simplified procedures.

The last category includes **public works**. In accordance with the provisions of Art. 2 p. 8 PPL, they are understood as the delivery or design and delivery of construction works specified in regulations issued based on Art. 2c, or the construction of a building, using any means, in accordance with the requirements of the contracting authority. In the regulation of the President of the Council of Ministers based on Art. 2c PPL, we can find the list of construction works, including the preparation of the building site, erection of complete buildings, making roofs and roof structures, construction works connected with building highways, roads, airports and sports facilities, finishing work, and many others (Regulation of the President of the Council of Ministers of 3 December 2012 specifying the list of construction works, Dz.U. 2012, item 1372).

When it comes to value, public works represented the major part of the Polish public procurement market. In 2014, the value of contracted works accounted for 40% of the total expenditure. Supply contracts in 2014 represented 31% of all outlays, while service contracts accounted for 29% of the total value of awarded contracts. The structure has remained quite stable over recent years (Fig. 6.2).

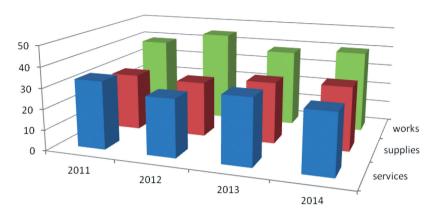


Figure 6.2. Public procurement market in the period 2011–2014 in value terms (in %) **Source:** Author's calculations based on the *Report on the Functioning of Public Procurement in 2014 (2015)*

In qualitative terms, the structure of the public procurement market presents a slightly different picture. The number of procedures for awarding works contracts in 2014 accounted for 26% of all procedures. Supplies contracts in 2014 represented 39% of all awarded contracts while service contracts accounted for 35% (Fig. 6.3).

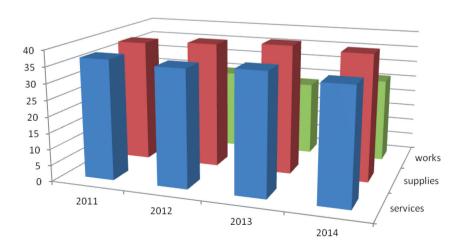


Figure 6.3. Public procurement market in the period 2011–2014 in quantitative terms (in %) **Source:** Author's calculations based on the *Report on the Functioning of Public Procurement in 2014 (2015)*

6.3. Awarding procedures

In accordance with the Public Procurement Law, a contracting authority may select one of eight procedures for awarding public contracts. They differ with regard to how proceedings are arranged and with reasons behind their application. According to the principle of tendering, only two tendering procedures (open and restricted) can be applied always and under any circumstances. The remaining procedures are available to contracting authorities only in specific situations identified in the Law.

Table 6.1. Public contract awarding procedures

No.	Procedure	Description
1.	Open tender	An open tender is a procedure whereby any interested contractor may submit a tender in response to a public notice giving information about the tender.
2.	Restricted tender	A restricted tender is a contract awarding procedure in which – in response to a public notice – any economic operator may request to participate and whereby only those economic operators invited by the contracting authority may submit a tender.
3.	Negotiations with publication	Negotiated procedure with publication is a contract awarding procedure in which, after a public notice has been published, the contracting authority invites contractors admitted to the procedure to submit initial tenders, without quoting the price, and negotiates with them and then invites them to submit tenders.
4.	Competitive dialogue	Competitive dialogue is a procedure whereby, after a public notice has been posted, the contracting authority conducts a dialogue with the candidates admitted to that procedure, and selected candidates are invited to tender.
5.	Negotiations without publication	Negotiated procedure without publication means the contracting authority negotiates the terms of a public contract with selected contractors and the authorities invite them to submit tenders.
6.	Single-source procurement	Single-source procurement is a procedure whereby the contracting authority awards a contract after negotiations with a single contractor.

7.	Request for quotations	Request for quotations is a procedure within which the contracting authority requests quotations from selected contractors who are invited to submit tenders.	
8.	Electronic bidding (auction)	An electronic auction is a procedure within which contractors submit subsequent tenders undercutting each other on a form on a website which enables them to input necessary data online; tenders are classified automatically.	

Source: Author's study based on the Public Procurement Law.

Out of the eight procedures, open tendering clearly dominates. For several years already, the procedure has been applied in more than 80% cases in Poland. This is surely a positive sign as the procedure is the most competitive way of selecting a contractor. The second most often applied procedure is the single-source procurement, reserved for exceptional situations, which excludes fully open procedures. However, there is a set of premises that must be met to justify the adoption of single-source procurement (Art. 66 and 67 PPL).

Table 6.2. Public procurement procedures in qualitative and quantitative terms in the period 2011-2014 (in %)

Duesedune	2011	2012	2013	2014		
Procedure	Share of contracts					
Open tendering	82.07	84.43	81	82.19		
Single-source procurement	13.9	12.26	14.73	13.42		
Request for quotations	2.91	2.34	3.16	3.14		
Restricted tendering	0.64	0.56	0.56	0.74		
Negotiations without publication	0.17	0.15	0.16	0.21		
Electronic bidding	0.13	0.17	0.26	0.21		
Negotiations with publication	0.14	0.07	0.1	0.08		
Competitive dialogue	0.04	0.02	0.03	0.01		

Tab. 6.2. cont.

Procedures	2011	2012	2013	2014		
Procedures	Share of total value of contracts					
Open tendering	67.55	67.56	80.42	75.75		
Single-source procurement	8.07	9.62	8.02	9.13		
Restricted tendering	10.75	7.38	5.54	8.11		
Negotiations with publication	1.24	12.60	2.27	6.24		
Request for quotations	0.38	0.33	0.31	0.28		
Negotiations without publication	9.98	2.34	0.28	0.24		
Competitive dialogue	1.99	0.12	3.08	0.17		
Electronic bidding	0.04	0.05	0.07	0.08		

Source: Author's calculations based on the *Report on the Functioning of Public Procurement in* 2014(2015).

Open tendering also dominates, although to a smaller extent, in terms of the value of contracts. Other procedures enjoy a bigger share, i.e., single-source procurement, restricted tendering, and negotiations with publication.

6.4. Exemptions

Public Procurement Law provides for a wide catalogue of situations to which the law does not apply. These exemptions concern concrete **institutions**, as well as **general situations** that apply to all entities.

When it comes to institutions, the law does not apply to some contracts awarded by the National Bank of Poland connected with, inter alia, the delivery of tasks concerning the monetary policy, trading in securities, national and foreign debt servicing, issuance of notes and coins and the management thereof, accumulation of foreign currency reserves and the management thereof, accumulation of gold and other precious metals and keeping bank accounts, and making pecuniary settlements among banks (Art. 4 p. 2 PPL).

Similarly, in the case of Bank Gospodarstwa Krajowego (Bank of National Economy) the law does not apply, inter alia, to contracts connected with responsibilities linked with the servicing of funds established, entrusted or transferred to Bank Gospodarstwa Krajowego based on separate laws or the implementation of central government programmes, operations on the intra-bank market connected with the management of State Treasury debt and the liquidity of the state budget, or responsibilities in the area of banking performed by Bank Gospodarstwa Krajowego (Art. 4 p. 2a PPL).

There are many more general exemptions which apply to all participants of the public procurement system. The Law does not apply to, e.g.:

- job contracts (art. 4 p. 4 PPL),
- contracts whose value does not exceed the amount equivalent in PLN to EUR 30,000 (Art. 4 p. PPL),
- contracts for research and development works and research services which are not fully paid by the contracting authority or the benefits of which shall not be consumed solely by the contracting authority for its own needs (Art. 4 p. 3 letter 3 PPL),
- contracts for the purchase, preparation, production or co-production of content intended to be broadcast on the radio, TV or streamed on the Internet (Art. 4 p. 3 letter g PPL).

6.5. Sectoral contracts

Separate regulations on public procurement are connected with sectoral contracts. They are based on the Directive of the European Parliament and of the Council No. 2014/25/EU on procurement by entities operating in water, energy, transport and postal services sectors.

There are at least several reasons why these sectors have been regulated in a separate way. First and foremost, in the opinion of the EU institutions, it is due to the impact of national institutions upon the behaviour of entities operating in the water, energy, transport, and postal services sectors, including participation in their capital and representation in the entities' administrative, managerial or supervisory bodies. Another valid reason why it is necessary to coordinate procurement procedures applied by the entities operating in these sectors is the closed nature of the markets in which they operate, due to the existence of special or exclusive

rights granted by the EU Member States concerning the supply to, or operation of the networks for providing the service concerned. Hence, these regulations have been designed to ensure a real opening up of the market and fair competition in the application of public procurement regulations in these four sectors.

Sectoral public procurement rules apply when a contract is awarded in one of the following types of activities (examples):

- the extraction of gas and oil and its natural derivatives and exploring for or extracting brown coal, coal and other solid fuels,
- the management of airports, sea or inland harbours and making them available to air, sea or inland carriers,
- the provision of services to networks that offer public services connected with the generation, transfer or distribution of electricity, gas and heat, or with the supply of electricity, gas and heat to such networks or the management of such networks,
- the provision of services to networks that offer public services connected with the production or distribution of drinking water or to supply such networks with drinking water or managing such networks,
- the provision of services to networks that offer public services in railway, tramway, trolley bus, cable or automated transport,
- the provision of services to networks that offer public transport services in bus transport,
- postal services.

The awarding of sectoral public contracts is covered with the so-called EU thresholds specified in separate provisions, if the value of the contract is equal to or exceeds amounts laid down in the provisions issued based on Art. 11 para. 8.

In 2014, 2,581 sectoral contracts were awarded in Poland. Sectoral contracting authorities represented only 1.67% (613 reports) of the total population of contracting parties. However, it does not reflect the real importance of the market of sectoral contracts. Their value in 2014 exceeded PLN 36bn, meaning, they accounted for ca. ¼ of the total public procurement market in terms of value. And 2014 was not an exceptional year with regard to that (Table 6.3)

The highest amount was disbursed in electricity and energy sector, over PLN 14.291bn. The highest contract of PLN 4.399bn was awarded by TAURON

Sectoral procurement	2011	2012	2013	2014
Number	2,490	2,054	2,826	2,581
Value (in bn of PLN)	43.7	41.9	34.1	36.7
Construction works*	10	48	28	35
Supplies*	36	20	35	30
Services*	54	32	37	35

Table 6.3. Sectoral public procurement in Poland in 2011–2014

Source: Author's calculations based on the *Report on the Functioning of Public Procurement* in 2014 (2015).

Wytwarzanie S.A. in Katowice for the construction of an energy block. Enterprises operating in the production, transport, and distribution of gas and heat spent ca. PLN 5.747bn, in railway transport, ca. PLN 5.158bn. They were followed by: exploration and extracting sector of coal and other solid fuels – PLN 4.752bn; urban railway, tramway, trolley bus or bus transport system – PLN 2.389bn; exploration and extraction of gas and oil – PLN 1.649bn, and the water sector – PLN 1.373bn.

6.6. Public procurement market

The value of contracts awarded in the public procurement market based on the Law is estimated on the basis of annual reports of the contracting authorities. In 2014, it reached PLN 133.2bn and was PLN 10bn lower than in the previous year (Fig. 6.4).

The highest value so far was reported in 2010, PLN 167bn, partly due to the contracting timetable and disbursing EU funds under the National Cohesion Strategy 2007–2013. In the case of procedures starting from the lowest statutory threshold (EUR 14,000/30,000, respectively) up to the so-called EU thresholds, amounts reported by the contracting authorities totalled PLN 40.0bn (in 2013 – PLN 41.0bn; in 2012 – PLN 38.3bn; in 2011 – PLN 40.6bn). For award procedures above the EU thresholds, estimates based on annual reports show the contracted amount of ca. PLN 93.2bn (in 2013 – PLN 102.2bn; in 2012 – PLN 94.4bn; in 2011 – PLN 103.5bn).

^{*} value share (in %)

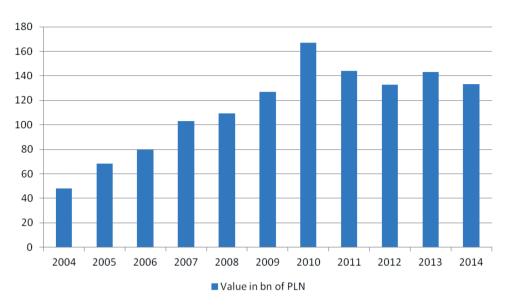


Figure 6.4. Public procurement market in the period 2004–2014 (in bn of PLN) **Source:** Author's calculations based on the reports on the functioning of public procurement in the years 2004–2014, Public Procurement Office, Warsaw

Value as a portion of GDP (in%)

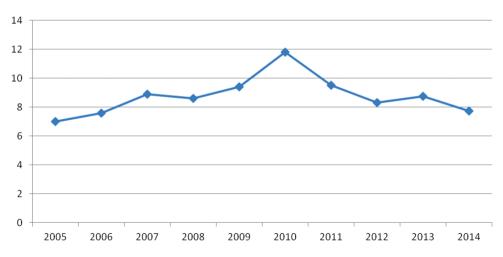


Figure 6.5. Value of public procurement market as a portion of GDP in the years 2005–2014 (in %)

Source: Author's calculations based on reports on the functioning of the public procurement system for the years 2005–2014, Public Procurement Office, Warsaw

Compared to GDP, differences in individual years were not so big, ranging within the last 10 years from 7% in 2005 to almost 12% GDP in the record-breaking year 2010 (Fig. 6.5).

It is worth adding that, in accordance with the amendment adopted in 2013 on contracts awarded with the exclusion of statutory procedures, the scope of data transferred nowadays by the contracting authorities in annual reports allows the expenditure outside of the scope of regulatory provisions to be estimated.

Hence, in 2014, based on an exemption from the PPL identified in Art. 4 and in Art. 136–138, the awarded contracts were worth ca. PLN 97.2bn (in 2013 – PLN 74.7bn). Out of this amount, PLN 28.3bn (in 2013 – PLN 23.8bn) was spent on contracts not exceeding the equivalent of the statutory threshold (EUR 14, 000/30, 000 respectively) in PLN. These sums also help us make a realistic assessment of the value of the public procurement market for contracts awarded outside of the scope of the PPL.

6.7. The internationalisation of the Polish public procurement market

The internationalisation of the Polish procurement market is influenced by the participation of Polish enterprises in the European market and by the involvement of foreign operators in the public procurement market in Poland.

In the first case, the limitation to the European market, and de facto to the EU market, results from the availability of data under the so-called common procurement system. It includes a Supplement to the Official Journal of the EU (including TED – Tenders Electronic Daily), which enables the value of contracts awarded by entities from one country to entities in other EU Member States to be estimated. That obviously covers contracts whose estimated value exceeds thresholds laid down in Art. 11 para. 8 PPL, i.e., contracts above the EU thresholds.

The available data show that Polish contractors are making attempts to win contracts in the open EU public procurement market. So far, their success rate is far from impressive. As we can deduce from notices published in the Official Journal of the European Union (OJ EU), in procedures for contracts above the EU threshold, in 2014 Polish contractors won only 82 public contracts. In the same year, the OJ EU published ca. 170,000 notices of tenders and competitions, and almost 50,000 in the so called New Member States. In previous years, the success rate was not high either. (Fig. 6.6).

Contracts

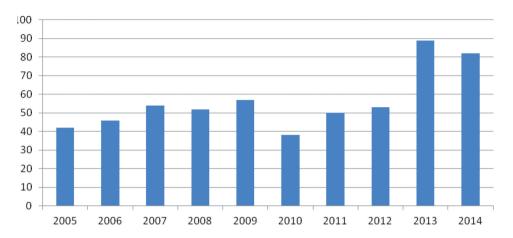


Figure 6.6. Public procurement contracts awarded to Polish contractors in the European market in the years 2005–2014

Source: Author's calculations based on reports on the functioning of the public procurement system for the years 2005–2014, Public Procurement Office, Warsaw

Tenders submitted by Polish contractors were selected by contracting authorities in procedures organised in neighbouring countries and in the new EU Member States. The list includes mainly contracting authorities from the Czech Republic (20 contracts), Germany (17 contracts) and Hungary (9 contracts). When it comes to types of contracts, supplies clearly dominated (46) followed by services (31). Only five contracts were awarded for construction works. The total value of awarded contracts amounted to EUR ca. 309 million and was lower than in the previous years (in 2013 – EUR 430m; in 2012 – EUR 486m).

If we want to assess the activities of foreign operators in the Polish public procurement market, we can see that, for some years, the percentage of these contracts has remained stable. In 2014, ca. 3% of contracts (701 cases) were awarded to foreign contractors. However, if we take into account their value, the share of foreign contractors is much higher, which demonstrates the important role foreign contractors are playing in the Polish market of public procurement. In 2014 it reached 14% (PLN 13.5bn), and 13% (PLN 13.6bn) in the previous year.

The highest number of contracts in 2014 was awarded to entrepreneurs from the United Kingdom (170 contracts; 24%) and Germany (118 contracts; 17%). They were followed by the Czech Republic, France, and Spain (7% each) as well as Belgium and Switzerland (6% each). Contractors from Italy were awarded

	2010	2011	2012	2013	2014
No. of contracts (share in the total amount)	570 (3%)	622 (3%)	608 (3%)	704 (3%)	701 (3%)
Value of contracts, bn of PLN (share in the total value)	12.3 (12%)	13.7 (12%)	7.5 (8%)	13.6 (13%)	13.5 (14%)

Table 6.4. Foreign contractors in the public procurement market in Poland in the years 2010–2014

Source: Author's calculations based on reports on the functioning of the public procurement system for the years 2005–2014, Public Procurement Office, Warsaw.

5%, and from Austria and the Netherlands 3% of contracts. 2% of contracts were awarded to contractors from Ireland and the United States.

When it comes to the value of contracts awarded to foreign contractors, the structure looked completely different. The highest contracted value was reported for enterprises from Spain and Germany (31% of the total value of contracts per country, i.e. ca. PLN 4.2bn each). Contractors from Italy received 16% of the total value of contracts, 10% were awarded to the UK and 4% to contractors from the Czech Republic.

6.8. Public procurement for a better environment

Green public procurement (GPP), besides social clauses, currently represents one of the leading directions in the system of public procurement in Europe and in Poland.

In accordance with the definition of the Public Procurement Office, its primary objective is to encourage the contracting authorities to purchase goods, services and public works representing a lower burden upon the environment throughout the entire life cycle compared to goods, services and public works intended for the same purpose that would be contracted otherwise.

In other words, green public procurement covers measures which help public operators and other contracting authorities to include environmental criteria and requirements in their purchasing practices, i.e., in awarding public contracts. This way, they opt for solutions that limit the negative impact of the subject matter of the contract throughout its entire life-cycle and contribute to the development and dissemination of environmentally friendly technologies and processes.

When executing a public contract in accordance with the rules described above, the contracting authority should take account of at least one environmentally

friendly aspect at all stages of the tendering process, in particular when: identifying needs, specifying the subject of the procurement, identifying technical specification, selecting the award criteria or the way the contract should be executed.

Green procurement procedures are expected to consider environmental issues to the widest extent possible in awarding contracts. In this context, the GPP should be interpreted in a wider sense than just potential benefits connected with the purchase price. They should ensure savings to public authorities throughout the entire life-cycle (Green public procurement, 2009).

In 2008, the European Commission drafted a comprehensive study on actions connected with turning the GPP idea into reality (Commission Communication, 2008).

It stressed that every year public authorities in Europe spend the equivalent of ca. 16% of the EU's GDP on purchases of, e.g., office equipment, construction materials, vehicles, services such as the maintenance of buildings, transport, housekeeping and catering, as well as public works. Hence, public procurement may shape production and consumption and significant demand of public institutions for environmentally friendly goods will create or expand markets of environmentally friendly products and services. This may and should encourage entrepreneurs to develop environmentally friendly offers.

The Commission identified ten "priority" sectors for the GPP. They were selected based on what they could offer in terms of improving the environment, public spending, the potential impact on the supplies, setting an example to other consumers, political sensitivity, the existence of appropriate and easily applicable criteria, the availability of products in the market and their economic performance.

Sectoral priorities include:

- 1) construction,
- 2) restaurants and catering services,
- 3) transport and transport services,
- 4) energy,
- 5) office equipment and computers,
- 6) clothes, uniforms and other textile products,
- 7) paper and printing services,
- 8) furniture,

- 9) cleaning agents and services,
- 10) equipment used in the healthcare system.

According to the assessment of the European Commission, the dissemination of environmentally friendly public procurement should be accompanied by coherent criteria applied by the EU Member States in order to avoid distortions on the single market and to decrease competitiveness within the EU. A single set of criteria could significantly reduce the administrative burden for the contractors and public administrators who pursue green public procurement. Common GPP criteria would be especially favourable to enterprises operating in several EU Members States, and in particular to small and medium-sized enterprises which have limited possibilities to cope with differentiated procedures of awarding public contracts (Commission Communication, 2008).

6.9. EU environmental criteria

The European Commission undertakes measures to develop common criteria for green public procurement to be applied in the EU Member States. The criteria have been developed for product groups which were considered the most appropriate for the implementation of the GPP both in terms of the value of the contracts and the environmental impact. At present, the EU environmental criteria cover 20 product groups, e.g.: copying and graphic paper, computer hardware, furniture, food and catering services, gardening products and services, interior lighting, bathroom fixtures, etc.

For each product group there is a product sheet for green public procurement. It identifies, among others, its use, key environmental impact factors, contract awarding criteria and their verification, conditions for the execution of the contract and additional conditions concerning, e.g., the packaging. The criteria are usually broken down into two categories:

- a) core includes criteria appropriate for any contracting institution in all Member States that cover key environmental impact factors. They have been developed in a way that implies minimum additional effort at minor cost increases;
- b) comprehensive criteria intended for institutions that wish to purchase the best products available on the market. They may involve some additional effort connected with the verification or negligible cost increases compared to other products representing the same functionalities.

6.10. Product sheet for computer hardware (example)²⁹

1. Definition and scope of application

Office computer hardware includes two sets of products: computers and screens.

To define the criteria (guidelines) for green public procurement, this product group is divided into six categories:

- a) personal computer (desktop computer, integrated desktop computer, "thin client"),
- b) screen (if supplied together with the computer),
- c) keyboard (where supplied together with the computer),
- d) external power supply (where supplied together with the computer),
- e) notebooks (including tablets),
- f) discrete graphics processing unit (where supplied together with the computer).
- 2. Core criteria for desktop computers, laptops and screens focus mainly on technical specifications connected with energy consumption since this aspect is identified as having the biggest environmental impact. Core criteria also include some simple, understandable (and easy to verify) criteria concerning the lifespan of the product. These criteria have been selected based on the environmentally friendly EU labelling, the Blue Angel and Nordic Swan labels.
- 3. **Comprehensive criteria** cover subsequent aspects included in the specifications and considered at the stage of awarding a contract:
- a) energy management functions,
- b) noise emission,
- c) mercury content in LCD screens used in antireflection coatings,
- d) hardware dismantling,

²⁹ Drafted based on the document EU criteria for green public procurement for computer hardware, www.uzp.gov.pl (access: September 2015).

- e) content of recycled materials and the possibility of their re-use,
- f) use of flame retardants in plastic elements, described with certain risk-phrases (carcinogenic, mutagenic or toxic for reproduction).

4. Core environmental impact factors:

- a) energy consumption and related CO₂ emissions,
- b) contamination of air, soil and water, smog, bioaccumulation or threat to the food chain, and dangerous impact on water organisms caused by dangerous components (e.g., mercury content in LCD screens and flame retardants),
- negative impact on the health of workers caused by noise, stress in people sensitive to such sounds,
- d) energy consumption, the use of limited resources and harmful emissions connected with the manufacturing of computer hardware (raw materials, computer manufacturing),
- e) generating waste, including packaging and their final disposal.

5. Approach in line with the GPP principles:

- a) purchase energy saving models,
- b) purchase products with reduced content of harmful components and promoting take back options,
- c) purchase products with reduced noise emission,
- d) design with recycling, longer utility periods in mind and promoting takeback options,
- e) ensure recycling of used packaging,
- f) more frequent use of recycled packaging,
- g) safe disposal (recycling, re-use) of final products.

6. Selected core criteria

a) All products must comply with the latest ENERGY STAR energy efficiency standard.

- b) Desktop computers must be designed so that the memory is easily accessible and can be replaced or modernised, the hard disc (or elements that fulfil its function) and CD or DVD drive should be replaceable.
- c) Notebooks and laptops should be designed so that the memory is easily accessible and can be replaced or modernised.
- d) The antireflection system in LCD screens does not contain more than on average 3.5 mg mercury per lamp.
- e) Packaging: if cardboard boxes are used, they must be manufactured from at least 50% recycled materials.
- f) Energy saving functions should be presented together with the hardware (for all products).
- g) The tenderer must ensure the availability of spare parts for a period of at least 3 years after production has ceased.

7. Selected comprehensive criteria

- a) The tenderer must ensure the availability of spare parts for a period of at least 5 years after production has ceased.
- b) Substances used in plastic parts that pose a threat to health.

8. Verification

Products marked with type I environmental labels which comply with the above criteria will be considered as meeting the requirements. Other appropriate evidence can also be approved, e.g., manufacturer's technical documentation or reports from studies conducted by an approved body (e.g., a body authorised to write reports from studies in accordance with the ISO 17025 standard), which demonstrates that the criteria have been met.

9. Contract award criteria

- Additional points are scored for easy dismantling and recycling of plastic elements.
- b) Additional points will be scored if the external, plastic casings of a computer, screen and keyboard are made of at least 10% post-consumer recycled materials by mass.
- 10. Financial aspects

When awarding a contract, it is recommended to apply the "total cost of ownership methodology". It means that the contracting institution, when assessing tenders from the point of view of the best value for money, considers not only the purchase price of the product but also the cost of its life cycle throughout the estimated period of its use. These costs include the purchase price, the cost of maintenance and other services, the cost of energy and other consumable materials (such as paper and ink) needed to use the equipment and all costs of disposing of a used up product. This is how the contracting institution may take account of environmental aspects when assessing both product quality (using environmental technical specifications or contract awarding criteria) and price (considering the cost of the life cycle).

6.11. Share of green public procurement in the market

The idea of green public procurement is not commonly applied in practice in Poland. Abundant and up-to-date data on the subject can be found in the monitoring report *Sustainable public procurement in Poland* prepared by the Fundacja CentrumCSR.PL under the project "Reinforced monitoring of sustainable public procurement in Poland". The report refers to, among others, the application of socially responsible public procurement and non-price assessment criteria of tenders. A large part of the report is devoted to green public procurement.

Over the monitoring period, i.e., from the beginning of July till the end of December 2014, 584 notices were published on websites of various (contracting) institutions. They concerned, inter alia, contracts for office computer hardware, furniture, graphic and copying paper, vehicles and transport, gardening products and services, cleaning agents, textiles, and catering. Environmental aspects were applied in 22.8% of the analysed procurements. They featured most often in procurements connected with office computer hardware and vehicles. Hence, a clear majority of the monitored procedures made no reference to environmental clauses.

We also need to stress that the result was undoubtedly influenced by the way the sample was selected for the survey. Procurement contracts were not selected at random but purposefully. The sample included only the procurement to which appropriate GPP clauses apply. Moreover, as stressed by the authors of the survey, some contracts were contracts for vehicles where such clauses are forced out by the law. And finally, some contracts were "green" only in parts. Environmental criteria were specified only for some out of several dozen computer sets. Thus, we

may conclude that surely the share of green public procurement in the Polish public procurement market is smaller than the 22.8% estimated in the survey.

Public procurement plays a very important role in the economy. If applied correctly, it ensures fair contacts between public and private sectors, consistent with market rules. Besides regulating contracting arrangements, rules that apply to procurement procedures for supplies, services and public works may fulfil additional functions. The green public procurement idea is one such example. It helps to achieve a certain added value when spending public resources (on various, not necessarily environmental, objectives). There are also additional benefits to the environment that stimulate innovative technological solutions. The practical implementation of these intentions calls for a change in the approach to public procurement and, first of all, shifting away from the primacy of "the lowest price" in public procurement proceedings.

Questions and assignments

- 1. What is public procurement?
- Define the subject-matter and sectoral scope of the Public Procurement Law.
- 3. According to the law, who is obliged to apply it?
- 4. Discuss the profile of the public procurement market in Poland.
- 5. Assess the internationalisation of the Polish public procurement market.
- 6. What is green public procurement?
- 7. How should green public procurement be applied in practice?

Literature

Act of 27 August 2009 on Public Finance, Dz.U. 2009, No. 157, item 1240 with further amendments.

Act of 29 January 2004 Public Procurement Law, Dz.U. 2004, No. 19, item 177 with further amendments.

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Considering environmental protection requirements in business operations may, in the long run, determine if a lasting comparative advantage can be achieved. That is why our textbook, rich in case studies, identifies not only the threats a business may pose to the environment but stresses the ways of reducing its negative impact. It discusses, among other things, the concept of corporate social responsibility, environmental management systems, methods and the importance of eco-labelling goods and the so called green public procurement in the private and public sectors. The book is addressed primarily to students of courses in economics and management. We hope it will also make interesting reading for entrepreneurs, representatives of business environment organisations and the staff of public administration at different levels.





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The aim of the project is to improve the knowledge and awareness of Polish and foreign students, the faculty and alumni of the University of Łódź in the fields of sustainable development, ecology, international business and finance.

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