

# Assessing Public Procurement Practice in Poland - 2017

## General Description of the Public Procurement System

### X. Management of the Public Procurement System

Please provide a brief description of how the public procurement system is managed in your country by answering the following questions:

Is there a single state body responsible for managing the public procurement system, or is this function distributed among more than one state body? What is its/their authority and responsibilities and are legal requirements met in practice in this regard? What is the level of independence of this body/ies and are legal requirements met in practice? Is there duplication of authority?

*Please provide the answer in a maximum of 5-10 sentences.*

Comment: The Public Procurement Office which is a part of central government administration. Supervision over the President of the Office is exercised by the minister competent for economy. The advisory and opinion-making body of the President of PPO is the Public Procurement Council, whose members are appointed and dismissed by the minister competent for economy.

The public procurement system in Poland is decentralized, therefore the President of PPO does not execute orders on behalf of other entities, does not approve or annul the tenders and contracts concluded. His duties include, among others:

- developing draft normative acts regarding orders,
- making decisions on individual matters provided for in the Act,
- publishing the Public Procurement Bulletin,
- control of the procurement process within the scope provided by law,
- analysis of the functioning of the procurement system and training activities, international cooperation in matters related to orders.

X. Are tenders electronic or paper based? In cases when tenders are solely electronic, are there cases of paper-based tendering? Is there insufficient enforcement of PPL?

*Please provide the answer in a maximum of 3-4 sentences.*

Comment: Paper based. However there are commercial platforms supporting electronic tenders. In October 2018 Poland will implement the regulation of EU 2014 directives, concerning electronic way of submitting offers via governmental portal.

X. Is public procurement conducted through a centralized, single website or are there multiple websites for conducting public procurement? Is its/their use mandatory or voluntary?

*Please provide the answer in a maximum of 3-4 sentences.*

Comment: As mentioned above there are several voluntary platforms. There is no official system allowing for conducting centralized procurement in general. There is only a platform devoted for electronic auctions.

X. If there is a register of suppliers, what is the number of registered suppliers in it?

*If possible, please provide a comparison with several (at least 5) previous years?*

Comment: There is no register of suppliers in Poland

X. What is the total number of competitive procedures?

*If possible, please provide a comparison with several (at least 5) previous years.*

Comment: Total number of all procedures was: 174 886 in 2014, 142 262 in 2015 129 776 in 2016 and 139 133 in 2017 of which:

<b>Procedure:</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Open tender	82.19%	83.39%	81.80%	86.10%
Limiter tender	0.74%	0.83%	0.70%	0.40%

X. What is share of public procurement in the country's GDP?

Comment: The value of public contracts awarded in 2017 amounted to PLN 163.2 billion (in 2016 - PLN 107.4 billion), which is approx. 8.23% of the Gross Domestic Product (GDP) in 2017.

X. What are the monetary thresholds for single source procurement (works, goods, services)?

EURO 30.000

*Is the monetary threshold acceptable? Why or why not?*

Comment: According to the report by the Supreme Audit Office(NIK)<sup>1</sup>, after the increase - up to 30 thousand EURO - the threshold allowing for shopping without the application of Public Procurement Law, the number and value of subliminal transactions increased and nearly half of the orders without

<sup>1</sup> Supreme Audit Office (2018) Dokonywanie zakupów do 30 tys. Euro przez wybrane jednostki sektora finansów publicznych [Purchasing up to 30K Euro by Selected Units of the Public Financial Sector] Available from: <https://www.nik.gov.pl/plik/id.16903.vp.19462.pdf> [Accessed: 14<sup>th</sup> September 2018]

a tender were carried out at the end of the year. In the years **2013-2016**, the value of public contracts awarded on the basis of the PPLs significantly decreased. While in 2013 this value amounted to over PLN 143 billion, in 2016 it was only over PLN 107 billion (down by 25%). According to NIK, the key reason for the decline in the value of the Polish public procurement market, granted in the PZP regimes, is raising the threshold to apply this law. However it has to be noted, the situation in 2017 has improved by over 30% comparing with 2016. It may be connected with the need of spending EU funds.

According to NIK, most of the audited entities had internal regulations to select contractors up to EUR 30,000. However, in 30 % of the examined units, there were violations of these procedures. The most important of them consisted in using the wrong mode of selecting the contractor, not submitting offer inquiries to the required number of bidders, lack of publication of contract notices, failure to document or unreliable documentation of activities related to the contractor with determining the value of orders.

#### **Public Procurement Scope and Spending Breakdown**

**X.** What share (% in terms of procurement value) of government spending is conducted through competitive public procurement procedures? \_\_\_

*Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment: No data other than % of total public procurement but not the overall spending

**X.** What share (% in terms of procurement value) of total public procurement spending is conducted through single source procurement? \_\_\_9.67%\_\_

*Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by the list of legal exemptions considered acceptable or unnecessary by the TPPR Methodology (Pre-tendering phase, Indicator 9).*

Comment: In 2017 it was 9,67% of all procedures (w 2014 - 13,42%, 2015 - 11,75%, 2016 – 13,42%)

There is a visible change in 2017 when the level of single source procurements went below 10%. It has connection with the growth of number of competitive procedures. This is especially interesting as on 1<sup>st</sup> of January 2017 r. the amendment of PPL enabling using single source procurement in “in-house” purchases. In 2017 there were 213 in-house tenders with majority of purchased services (70%) and

construction works (29%)

X. What is the share (% in terms of procurement value) of below threshold single source procurement in total public procurement spending? \_\_\_no data\_\_\_

*Please provide an analysis of this data point in 2-3 sentences (if possible, provide data from previous 5 years).*

Comment: We only know the general data concerning the value of below threshold spending (which may be competitive). In 2017 it was PLN 37,1 bln, 2016 r. – 34,2 bln; 2015 r. 31,2 bln zł, and in 2014 – 28,3 bln, so as we can see it is growing every year

X. If your country has any unreasonable exemptions to the Public Procurement Legislation (e.g. contingency funds, utilities, certain procuring entities or sectors of the economy), provide your estimate of the volume spent in this way and the share (% in terms of value) these exemptions would constitute in total procurement spending? Volume : \_PLN 238 mln\_ share: \_\_\_

*Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment: The in-house procedure which, as stated above is the new exemption from competitive tenders allows public administration entities to purchase services or goods from the entities which are under their control. The vast majority of purchases were in connection with garbage collecting, roads and green areas maintenance. This has a direct impact on a local market (vast majority of examples of using this procedure is on local governmental level) narrowing the reasonability of providing similar services by local entrepreneurs.

X. What is the volume of secret government procurement? What is the share (value in %) of secret government procurement in total public procurement expenditures? Volume: \_378 732.000\_\_\_ share: \_\_\_

*Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment: The amount covered 170 public procurements in 2017

## Competitiveness

X. What is the average number of bidders? \_\_\_2.38\_\_\_

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by goods, works and services.*

Comment: The data contained in the contract award notices published in the Public Procurement Bulletin shows that the average number of tenders submitted in proceedings below the EU thresholds in 2017 was 2.38. This is less than in previous years: in 2016, the average number of bids submitted was 2.87; in 2015 - 2.90, and in 2014 - 2.895.

Depending on the mode used, this percentage was different. On average, the most tenders were submitted in proceedings carried out in the electronic bidding mode - over 8 offers.

The analysis of the content of announcements published by Polish awarding entities in the EU Official Journal (above EU thresholds) shows that in 2017 on average, in one proceeding, the contracting party received 2.23 offers (in 2016 - 2.51, in 2015 - 2, 65, in 2014 - 2.49).

**X.** What is the share (% in terms of procurement value) of competitive procedures with single bidders in total competitive spending? \_\_42,64% and 48,73% above EU threshold\_\_

*If possible, please provide information on the share (number) of competitive contracts won by single bidders in the total number of competitive procedures.*

Comment: The reason for this may be a large number of public procurement related to the implementation of a number of projects (eg IT, infrastructure, etc.), including those financed from EU funds. In such circumstances, in which entrepreneurs have the opportunity to choose to participate in various types of public undertakings, some caution may appear on their side in estimating their performance opportunities and submitting offers in individual, selected proceedings so as not to expose themselves to the need to carry out parallel activities several contracts at the same time. A small number of tenders submitted in proceedings may also be the effect of choosing by entrepreneurs, out of many initiated proceedings, only those which, taking into account their potential with greater certainty, in which they can win. Another likely factor may be the greater interest of small businesses in performing specific activities as subcontractors or third parties.

**X.** What is the share (% in terms of procurement value) of competitive procedures with five or more bidders in total competitive spending? \_\_\_ 10,48%\_below the EU threshold and 8,19% above.

*If possible, please provide information on the share (number) of competitive contracts with three or more bidders in the total number of competitive procedures.*

Comment: 14,40% below the EU threshold and 13,82% above

**X.** What share (% in terms of procurement value) of public procurement contracts is won by commercial state-owned enterprises (above 50% ownership)? \_\_\_\_No data

*Provide an analysis of this data point. If applicable, provide a comparison with several previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. Is there any reason to believe that state owned companies are getting preferential treatment?*

Comment:

**X.** What share (% in terms of procurement volume) of public procurement contracts is won by foreign enterprises? 3%

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment: Based on data from notices published in the Official Journal of the European Union, it can be concluded that the percentage of public contracts awarded to foreign entities has been at a similar level for several years. In 2017, about 3% of orders (669 cases) went to foreign contractors (in 2015 - 903, 5%).

Referring to the value of the percentage of contracts awarded to foreign contractors, it looks a bit different: in 2017 it amounted to 7% (PLN 8.4 billion); in 2016 it amounted to 8% (PLN 5.8 billion); in 2015 - 18% (PLN 15.2 billion) and in 2014 - 14% (PLN 13.5 billion).

**X.** What is the share (%) of procuring entities which only used single source procurement in the total number of procuring entities? 9,67%

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment: This is only the share of single source procurement in the total number of tenders. There are no data on specific institutions only using single source procedure.

2014 - 13,42%, 2015 - 11,75%, 2016 - 13,42%. It may be connected with the fact of the need to spend EU funds in 2017. This is visible in the general growth of tenders but also – as the EU supports competitive procedures – less single source procedure were implemented.

## **Efficiency**

**X.** What is the share (%) of failed tenders in the total number of tenders?

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by tenders with no bidders, cancelled tenders or unsuccessful tenders where no relevant competitor was found.*

Comment: There are no reliable data accessible. Waiting from the response from the PPO

X. What share (%) of planned public procurement expenditure was saved as a result of competitive procedures? \_\_

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment: No data accessible – waiting for the response from PPO

X. What is the share (% in terms of procurement value) of tenders where price is the only criterion compared to competitive procedures where other criteria are also used? \_\_22% above EU thresholds and 10 below.

*If possible, provide a comparison with several (at least 5) previous years, as well as a brief analysis of this data point.*

In 2016 - 14% of initiated proceedings with values above the EU thresholds 9% of proceedings with values below the EU thresholds, the price was the only criterion for selecting the offer. Therefore, the ordering party more often than before the entry into force of the provisions of the Act of 22 June 2016 amending the Public Procurement Law Act and some other acts apply in practice different price criteria for evaluation of offers, at the same time assigning them a correspondingly high weight .

X. What is the share (%) of non-executed contracts in the total number of contracts? \_\_

*If relevant, provide a comparison with several (at least 5) previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. If possible, indicate the share (%) of non-executed contracts awarded through competitive procedures, as well as single source procurement.*

Comment: No data available. Waiting for information from PPO

### **Accountability**

X. Describe the dispute settlement mechanism in public procurement, its composition, authority, level of independence, and decision-making procedures. What are the major strengths and problems in law and practice:

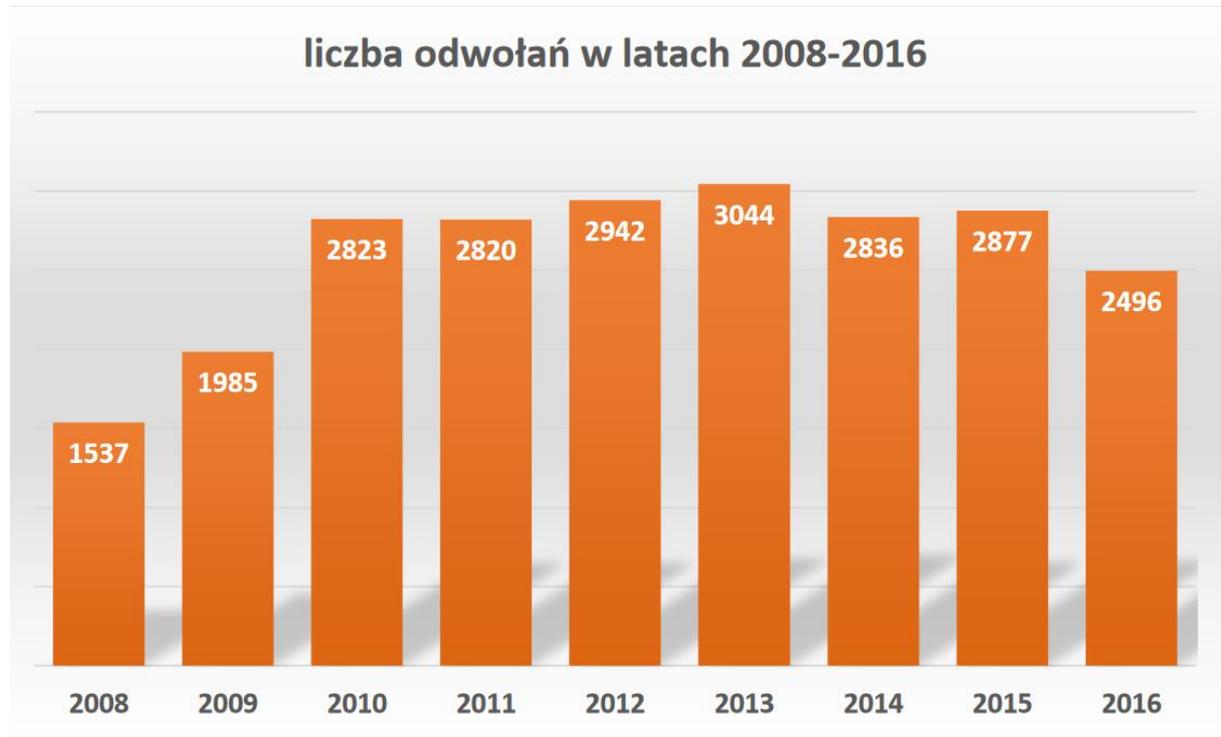
Comment: According to art. 172 of the Public Procurement Law, the basic role of the National

Chamber of Appeal (KIO) is recognition of appeals filed in the public procurement procedure. Pursuant to the provisions of the Public Procurement Law, the other competences of the National Appeal Chamber include the recognition of applications for revoking the prohibition to conclude a contract until the Chamber decides or terminates the appeal proceedings (Article 183 paragraph 2 of the Public Procurement Law) and expressing opinions in the form of a resolution regarding reservations to the results of inspections submitted by the contracting authority to the President of PPO during the audit, both ad hoc and prior (Article 167 (3) and Article 171a of the PPL Act). At the end of December 2017, 50 members acted actively in the National Chamber of Appeal. The organs of the Chamber are: President, vice-chairman and the general assembly that is made up of the members of the Chamber. The President and the Vice-President of the Chamber are appointed by the minister competent for economy at the request of the President of PPO for a three-year term.

X. What is the number of complaints submitted to the dispute resolution board (or equivalent body)? 2749

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment: The number of cases in 2008-2016 is below. The average number is constant between 2500-3000 yearly. The lower amount in years 2008 and 2009 was connected with the fact that KIO was founded in 2007 and these were the first years of operation (lack of knowledge of its existence, lack of trust, etc.).



X. What is the share (%) of disputed tenders in the total number of tenders? 1.9 %

*If possible, please provide an analysis of this data point in 2-3 sentences.*

Comment: The number seems to confirm that in general bidders are content with the PP procedures. Which is also supported by the number of appeals directed to courts on KIO resolutions. The Chamber resolutions were annulled by courts in 2017 in 8 cases (8%), and in 27 cases the resolution was changed (28%)

X. What share (%) of disputes was won by the initiator in the Dispute Resolution Board (or equivalent body)? 18%

*If possible, please provide an analysis of this data point in 2-3 sentences.*

Comment: Of all appeals reviewed, 49% were substantively recognized by the KIO (31% dismissed and 18% won by initiator). The remaining settlements were as follows: 21% - cancellation due to withdrawal of the appeal, 17% - cancellation due to appeal charges by the ordering party, 8% - refund due to lack of entry or non-completion of formalities, 5% - rejection of the appeal.

X. What share of decisions of the Dispute Resolution Board have been taken to courts? 5.7%

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

In 2017, 159 complaints against decisions of the National Chamber of Appeal were filed, which is 5.7% in relation to the number of appeals recognized by adjudication panels. In previous years, it was respectively: 2016 -130 (5.2%), 2015 -179 (6.7%), 2014 -133 (5.1%), 2013 - 144 (5.2%) , 2012 -152 (5.9%), and in 2011 - 148 (6%). The trend is constant without any visible anomalies.

X. What share (%) of the total competitive procurement spending was received by companies that have donated (including private donations by their owners) to the current government? No data

*If possible, please provide an analysis of this data point in 2-3 sentences.*

Comment:

X. What share (%) of the total single source procurement spending was received by companies that have donated (including private donations by their owners) to the current government? No data

*If possible, please provide an analysis of this data point in 2-3 sentences. Have there been any high profile cases of politically affiliated companies receiving single source contracts?*

Comment:

## Transparency

X. Can public procurement related data be downloaded in bulk? If yes, can data be downloaded in any of the following formats - CSV, JSON, or XML?

Only information present at Public Information Bulletin. XML

X. Are there any significant data quality issues? (Are any control mechanisms in place to ensure data quality is maintained?)

The API (web service) does not provide the information on the amount, the winning bidder has proposed. The data in the Public Procurement Bulletin does not also allow – in cases where number of bidders (consortium) won the same contract - to learn the amount given to specific entity.

X. Please fill the Data Transparency Table below by indicating either “Yes”, “No” or “N/A” in each empty slot:

<b>Data Transparency Table - Access to Public Procurement Related Documents</b>							
<b>Type of document</b>	<b>Is this information required to be public by law?</b>	<b>Is this information publicly available?</b>	<b>Is the database complete?</b>	<b>Electronic</b>	<b>Machine-readable *</b>	<b>Free of charge</b>	<b>Exact format</b>
PPL documents	Yes	Yes	Yes	No	No	Yes	HTML
Annual public procurement plans	Yes	Yes	No	No	No	Yes	N/A
Notices of intended procurement	Yes	Yes	Yes	Yes	Yes	Yes	XML
Amendments to tender documentation	Yes	Yes	Yes	Yes	Yes	Yes	XML

Tender candidate applications	Yes	Yes	No	No	No	Yes	Hardcopy/pdf
Bids	Yes	Yes	No. see above:	Yes	Yes	Yes	XML
Tender commission decisions	Yes	Yes	Yes	Partially	Partially	Yes	Hardcopy/pdf
Information on subcontractors	Yes	Yes	No	No	No	Yes	Hardcopy/pdf
Procurement contracts	Yes	Yes	No	No	No	Yes	Hardcopy/pdf
Contract amendments	Yes	Yes	No	No	No	Yes	Hardcopy/XML
Contract performance information	Yes	Yes	No	No	No	Yes	Hardcopy/XML
Payment receipts	Yes	Yes	No	No	No	Yes	Hardcopy/XML
Inspection and quality control reports	Yes	Yes	No	No	No	Yes	Hardcopy/XML
Complaints	Yes	Yes	No	No	No	Yes	Hardcopy/XML
Dispute resolutions	Yes	Yes	Yes	Yes	Yes	Yes	HTML/doc
Internal and external audit reports	Yes	Yes	No	No	No	Yes	Hardcopy/XML

\* For the purposes of this questionnaire, machine-readable means: for quantitative data formats, such as: JSON, CSV, XML, and for text documents - document that are NOT uploaded in the form of a scanned photo or PDF file.

*In the comment box below, please elaborate on any irregularities or important details related to the above table.*

Comment: There is a problem with the access to data referring to the outcomes of the tender, but also offers themselves. Information is accessible but its vast majority is accessible through Freedom of Information requests and it is still in the paper form.

**X.** In addition to what is listed in the Data Transparency Table above, are there any gaps in the public procurement database/s? (e.g. gaps in the completeness of data from specific procurers or specific time periods?)

Despite the fact that dispute resolutions are generally accessible on the KIO website it is extremely hard to search through them as they are entitled by their number with no information on parties or specific topic.

### **Major Strengths and Weaknesses**

**X.** What are the 3 major gaps between the country's public procurement legislation requirements and their implementation in practice? (e.g. ignored provisions, legal loopholes, etc.) What are your recommendations for how to align the practice with the legislation? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Gap: Inefficient system of control of the correctness of granting and execution of public procurement.

Recommendation: Because of the poor digital system restricted only to information covered by Public Procurement Bulletin there is no possibility to access to all procurement documents and the performance of the contract. Poland needs to build a sophisticated, interoperable and open platform which will cover the whole process. See more in challenges.

2.

Gap: Too few offers submitted in proceedings

Recommendation: Despite the fact that the law requires competitive procedures and procuring entities are using them there is an average of 2.5 bids. The threshold (EURO 30K) should be decreased as it is too high for SMEs who do not have capacity to conduct bigger contracts. That will allow them to exercise PP procedures and be better prepared for bigger bids.

3.

Gap: Lack of connection of expenses with the implementation of state policies and strategic goals

Recommendation: Despite the obligation to elaborate procurement plans there is no overall policy on conducting public procurement accurate for the needs of specific procuring entity or administration as such. We should put in place mechanisms that will implement a strategic approach to awarding contracts, which is part of the assumption of making public procurement a tool of state policy. In addition, the scope of initial market consultations (technical dialogue) should be extended to issues related to planning and preparation of the procedure.

X. What are the 3 major weaknesses / challenges of the country's public procurement system as a whole? And what are your recommendations for overcoming them? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Challenge: Too passive role of the Public Procurement Office

Recommendation: The role of the President of the Public Procurement Office, should be strengthened by allowing him to provide substantive support of contracting entities in the organization of proceedings, creation of a database on orders, development of good practices, standard documents, organization of training for awarding entities and controllers.

2.

Challenge: Lack of legal requirements for publishing data on contract and its performance

Recommendation: The law should be changed to obligate procuring entities to proactively publish data on contract, its performance, audits and controls.

3.

Challenge: Lack of effective mechanisms of checking connection between public performance and politics.

Recommendation: Building interoperability between business registry (KRS) and public procurement databases. Change the law to oblige relevant public officials to submit declaration of assets in digital form as well as oblige political parties and electoral committees to provide financial information

digitally in open formats.

**X.** What are the 3 major strengths / successes of the country's public procurement system as a whole?  
Please provide a brief description of each in a maximum of 4-5 sentences.

1.

2.

3.