

# Evaluation and Selection of Construction Contractors by Polish Public Clients

R. Kozik, A. Leśniak A., E. Plebankiewicz

**Abstract**—Contracting authorities in the public sector are obligated to apply the principles provided for in the Polish law for the evaluation and selection of contractors. In order to analyse the methods of contractors selecting applied in practice by public clients, the notices of contract award results for construction works were analysed. The analysis shows that the procedure selected more and more often is open competitive bidding, where the assessment of the competence of contractors is not very precise, as well as non-competitive bidding, i.e. single source procurement. The share of procurement procedures, where the only criterion is price, is increasing. The solution to the problems existing here might be the introduction of one of the forms of pre-selection of contractors. The article also briefly discusses verification systems for companies applying for public contracts used in EU countries.

**Keywords**—Certification, contractors selection, open tendering, public investors.

## I. INTRODUCTION

**I**N the case of the public sector, the contracting authority is obligated to observe the Public Procurement Law - The Act of 29 January 2004 (PPL) Journal of Laws of 2013, No. 907, 984, 1047, 1473, of 2014 item 423, 768, 811, 915, 1146 and 1232) [10]. If the value of the contract exceeds 30,000 euro, the contracting authority must use one of the types of procurement procedures specified in the PPL. The type of a procurement procedure is a method of awarding the public contract as a result of which a contract for execution of the paid services can be concluded with the contractor.

The Act specifies seven types of public procurement procedures to the award of public contracts for construction works and the choice depends on the conditions and restrictions which were introduced:

- open tendering,
- restricted tendering,
- negotiated procedure with publication,
- negotiated procedure without publication,
- competitive dialogue,
- single-source procurement procedure,
- electronic bidding.

Open tendering means contract award procedures in which, following a public contract notice, all interested economic operators may submit their tenders (Art. 39 of the PPL). On the contrary, a restricted tendering is a procedure in which, in

response to a public notice, contractors submit applications to participate in bidding, whilst only those invited to tender may submit their tenders (in accordance with Art. 47 of the PPL). Negotiated procedure with publication is a procedure, in which, after a public notice, the client invites contractors admitted to participate in the proceedings to submit initial tenders without prices, carries out negotiations with them, and then invites them to bid (Art. 11 paragraph 8 of the PPL). Yet another possible procedure is a negotiated procedure without publication. In this procedure, the client negotiates terms of the agreement with pre-qualified contractors and then invites them to bid. The client may award a contract by negotiated procedure without publication, if in the previous proceedings of open tendering or restricted tendering no tenders were submitted or in case described in article 61 of the PPL. A competitive dialogue is a type of contract award procedure, in which the client carries out dialog with selected contractors, and afterwards invites them to bid. The client may award a contract in a competitive dialogue procedure, if it is not possible to award the contract by open or restricted tendering because of the extremely complex nature of the contract. Single-source procurement (art. 66 of the PPL) is a type of procurement procedure, in which the contracting authority awards a contract after negotiations with only one contractor.

According to the provisions of the Act, a public works contract may be awarded only to contractors who meet certain requirements for participation in the procurement procedure. These conditions relate mainly to the technical capacity and the financial and economic situation of the contractor. Verification of their fulfilment is done individually for each public procurement procedure. The range of documents relating to the company itself and its fulfilment of the requirements, which the contracting authority may require from contractors, is specified in the Regulation of the Council of Ministers of 19 February 2013, issued on the basis of Article 25 of the PPA, concerning the types of documents which may be required by the contracting authority from the contractor and the forms in which these documents may be submitted (Journal of Laws of 2013, item 231) [12]. The competences of contractors are therefore checked on the basis of the documents submitted in the initial stage of the tendering procedure or the negotiations, with varying degrees of detail, depending on the value of the contract and the decision of the contracting authority. Moreover, in recent years we have seen the evolution of the public procurement system heading towards a situation in which the capacity of the contractor can be supported by the analogous ability of third parties, such as subcontractors or another who do not take a part in the

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contract. In this case, the study of individual contractors is replaced by the equally treated study of a "bundle" of contracting companies.

Bids submitted by contractors who have successfully passed verification are evaluated on the basis of criteria laid down by contracting authorities. An exception is the procedure (procedure) of single source procurement, where there is no selection of bids. The contracting authority negotiates the terms of the contract with the contractor of their choice, so there is no evaluation of criteria in such procedures.

The Public Procurement Law does not distinguish separate procedures of selecting the contractor in case of a works contract or a contract for design and build, and in both cases it defines the same procedure of proceedings. Selection criteria used by the clients for design and build contracts in Poland was described in [5], [6], [3]. Using environmental criteria in public procurement in Poland is very rare but increasing [2].

The aim of this article is to analyse the process of selection of contractors for construction works contracts used by public clients, as well as to indicate the possibility of better assessment of their competence.

## II. EVALUATION AND SELECTION OF CONTRACTORS - RESULTS OF RESEARCH

In order to investigate the methods of obtaining contractors used by public investors in Poland, authors have analysed the notices of the contracts awarded for works carried out in recent years. The use of procurement procedures applied for the award of public contracts for construction works in the last three years in Poland is presented in Fig. 1.

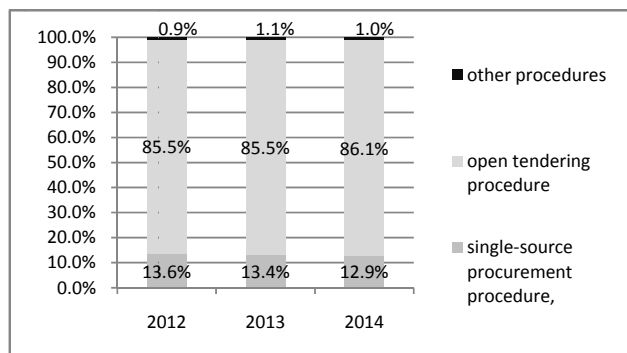


Fig. 1 Procedures used on the public procurement market for construction works. Source: own study based on [11]

Fig. 1 shows that the most common type of public procurement is used open tendering. This type of procurement is allowed by the Act in every case, similarly to restricted tendering. However, the latter is selected by the contracting authorities much less frequently. Use of the tender procedure has several advantages:

- no requirement to state reasons and no need of any evidence (art. 39 of the PPL),
- it is the most competitive type of procurement - bids may be submitted by all interested contractors,
- the procedure is not complicated. The contracting

authority announces a tender, in response all the interested parties submit bids, and the most advantageous bid is selected,

- procedural time is the shortest when compared to other types of procurement (in 2012, the average duration of this procedure was 31 days, while in the use of restricted bidding the duration is 60 days, and in the case of competitive dialogue as long as 76 days (Report of the President of the Procurement Office 2013).

In this procedure, notices of initiation of the procedure are not published, terms of reference are not used and the contractor does not submit a bid. Selecting single source procurement, the contracting authority has a duty to provide factual and legal reasons for selecting this procedure and explain that the award is consistent with the regulations. Single source procurement is used primarily for additional orders.

Compared to similar studies carried out in previous years [4], there has been a significant increase in the use of this procedure - in 2006 it was only 1.5%, and in 2014 - almost 13%, and this trend has been maintained in recent years. However, given that this is not a competitive procedure; the fact of its increasing participation in public procurement is worrying. The share of other procedures is negligible.

Fig. 2 presents the competitiveness in contract award procedures for construction works in 2013. A single bid was submitted in 22% of procedures, while 5 and more bids - in 36% of procedures. Average number of bids in the procedure for construction works in 2013 was 4.36 (in 2012 - 4.70; 2011 - 3.88; 2010 - 3.76). This indicates a very high competitiveness of procedures.

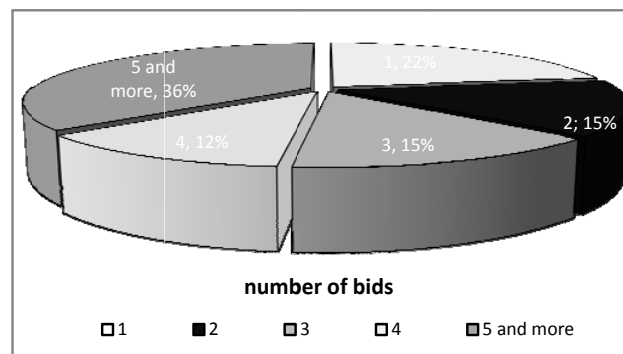


Fig. 2 Number of bids submitted in contract award procedures for construction works in 2013

In any all the notices of contracts for works published in the open tender procedure, contracting authorities provided a list of documents required to prove that the contractors are licensed to perform the activity or activities the scope of which covers the implementation of the contract, have the necessary knowledge, experience and technical potential, have human resources capable of performing the contract and are in an economic and financial situation ensuring the performance of the contract. Lack of any required documents resulted in the exclusion of the contractor. In many cases, however, the

contracting authority confined the requirements to the minimum, which was reflected in the provisions: "Contracting Authority does not specify specific requirements in this respect" or "Contracting Authority does not specify any requirements in this respect, the fulfilment of which Contractor is obligated to demonstrate in a specific way."

In most procedures, the only selection criterion was the lowest price. In procedures with values below the EU thresholds price, the price as only evaluation criterion was used, as in 2012, in 92% of procedures (in 2011 and 2010 - in 91% of procedures). A slightly lower percentage of procedures in which the price is used as the sole criterion for assessing bids exists for contracts with a value above the EU thresholds. As is clear from the notices published in the Official Journal of the European Union, in 2013 the price was used as the only criterion in 85% of procedures, an increase of 9 percentage points compared to 2012 (in 2012 - 76%). Fig. 3 shows the structure of procedures using price as the sole criterion.

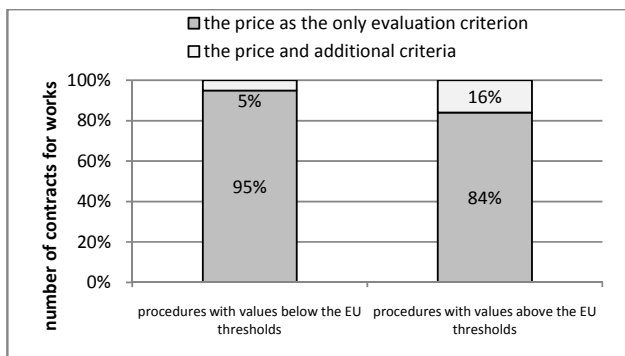


Fig. 3 Number of procedures for construction works using price as the sole criterion for evaluating bids in 2013

The only additional criterion applied by contracting authorities in the analysed procedures was the proposed duration of the warranty. However, in these cases, the weight of this criterion was small - only 5%. This resulted, despite the additional criterion, that the bid with the lowest price was selected.

The presented conditions for the selection of the works contractors by Polish public investors often result in the selection of unverified and incompetent contractors, which in turn gives rise to adverse effects. One possibility to improve the situation in this regard is to implement and use one of the methods of pre-selection of contractors, approved by the EU Directives.

### III. CONTRACTOR SELECTION PROCEDURES USED IN EU COUNTRIES

Article 52 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts provides that Member States may introduce official lists of approved contractors or their certification by public or private certification bodies [1]. In many EU countries, official lists or

registration systems are set up using this provision. Registration (which can be seen as a formalized system of pre-qualification) is aimed to identify in advance those contractors who are able to carry out certain types of contracts. Information required from contractors is verified at the stage of registration, and then periodically checked and updated. When a specific contract is to be awarded, there is no need to re-check the competence of the contractor, except when it is necessary to make sure that the information is still valid. There is no need to provide all the documents each time in order to prove the competence of the contractor, as is the case in Polish legal conditions and the evaluation of the contractor is much more accurate.

In practice, there are three basic contractor verification systems: a licensing system, a certification system and a system of contractor information.

In the licensing system, only contractors qualified for the official list can apply for a public contract. Qualification for the list is carried out by the appropriate state authority, or an entity remaining under the control of the state. Licenses are granted when all the required criteria for evaluation of eligibility for participation in the procedure will be met. Such systems exist, for example, in Belgium, Spain, Italy and Portugal.

Certification systems are based on checking whether the company meets the minimum standard eligibility conditions. If the contractor meets the minimum requirements, a "quality mark" or certificate is granted for a certain time. Certification can be carried out either by the state or specially designated private institutions. Such systems exist, for example, in France, Great Britain, Slovakia and Germany.

The last of the models for verifying the competences of the bidders is a system of contractor information. Contractor information systems do not define standard minimum conditions for participation in the procedure, only collect from contractors' evidence of fulfilment of these conditions, study the documents for completeness, timeliness and partially for credibility, and then store them in electronic form. A database documents acquired in this manner is available on-line. These types of data are collected, for example, in Austria and the UK [13].

Mixed systems are used in some countries, combining the features of different systems, described above.

The proof of the fact that EU countries attach great importance to the proper assessment of the competence of contractors is the release of the document "Qualification of construction companies" [7] in 2002, drawn up jointly by the Technical Committee TC 330 of the European Committee for Standardization (CEN) and the Technical Committee TC 218 of the European Committee for Electrotechnical Standardization (CENELEC). This document regulates the issues related with the requirements for qualification authorities, with the procedure to apply for qualification and its course, eligibility criteria, eligibility rules for construction companies.

## IV. SUMMARY

Polish law regulating public procurements does not provide for any pre-selection methods and certification of building contractors [8], [9]. Assessment of the competence of contractors is carried out in the initial stage of the procurement or negotiations. The procedure used most commonly is the open tendering, where this assessment is quite superficial. Also disturbing is the fact of the increasing use of single source procurement, where there is no evaluation of the contractors, or the evaluation of bids. The study also shows an increase in the proportion of procedures in which the only criterion is price. In the procedures analysed, only one additional criterion was used - warranty, which appears in only 6% of procedures, with a weight of only 5%. As is often noticed, the existing situation can lead to the selection of incompetent contractors and subsequent problems with the proper completion of the project.

The solution would be to introduce an official list of contractors, or one of the forms of certification of contractors. This possibility is permitted by EU directives, and many countries are already using it. Using one of these possibilities increases both the chance to choose a competent contractor and facilitates the tendering procedure itself, by reducing the number of documents that the contractor must provide, which may be substituted, for example, by a single certificate.

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