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## Awarding Public Procurement Contracts Below the Value of EUR 30,000 in the Organisational Units of the State Fire Service in Poland

**Bartłomiej Tatka**

District Headquarters of the State Fire Service in Cracow,  
19 Westerplatte Str., 31-033 Cracow, Poland

E-mail address: [bartektatka@o2.pl](mailto:bartektatka@o2.pl)

### ABSTRACT

This article is an attempt to summarise the current contract award requirements that are not covered by regulations of the Act of 29 January 2004 on Public Procurement Law (Journal of Laws of 2018, item 1986, 2215) (PPL) pursuant to art. 4(8), and to focus mainly on the problems and possibilities of solving them in the Organizational Units of the State Fire Service in Poland. The purpose of this article is to provide guidance on public procurement below the thresholds planned for by the European Union.

**Keywords:** State Fire Service, public procurement, financial law, Public Procurement Law

### 1. INTRODUCTION

The State Fire Service in Poland was established pursuant to the Act of 24 August 1991 on the State Fire Service (Journal of Laws of 2018, item 1313 as amended). According to the Act, the SFS is a uniformed service intended for fighting fires, natural disasters and other threats. The Act defines 9 main tasks for the service:

- identification of fires and threats,

- organisation and conduct of activities during fires, threats or natural disasters,
- specialised rescue operations in case of local threats or natural disasters,
- education system for the needs of the State Fire Service and other entities,
- inspection of compliance with fire regulations,
- educational and research activities related to fire safety,
- cooperation with the Head of the National Criminal Information Centre,
- cooperation with foreign rescue services,
- other tasks resulting from the regulations.

The Act of 24 August 1991 on Fire Safety (Journal of Laws of 2018, 620 as amended) introduced the concept of the National Rescue and Fire-fighting System. However, it only started functioning in 1995 [3]. The aim of the national rescue and fire-fighting system is to protect life, health, property and the environment. The main types of activities are:

- technical rescue
- chemical rescue
- ecological rescue
- medical rescue
- cooperation with the State Medical Rescue Service [3].

The national rescue and fire-fighting system is coordinated by the commune head (or mayor), poviastarost and voivode. Since the system functions as the organisation body, the State Fire Service performs the following tasks:

- development of rescue plans for poviats and voivodeships, which mainly include a set of rescue procedures carried out during the process of informing, administration and carrying out rescue operations and identification of rescue resources,
- analysis of rescue operations and operational documentation in order to improve the functioning of the National Rescue and Fire-fighting System,
- coordination of decision-making processes and information flow between entities implementing rescue operations and performance of services for civil protection purposes,
- management positions of territorially competent heads of the State Fire Service play the role of rehabilitation centres, with duties including analysis of current operational readiness of rescue system services, notification and administration of rights and resources, as well as coordination of rescue operations,
- the poviastarost and voivode chief of the State Fire Service draws conclusions from the analysis of threats and operational protection. The analyses are aimed at improving the rescue system in the poviastarost and are addressed to the poviastarost, voivode and Head Chief of the State Fire Service [3] respectively.

The State Fire Service also plays an important role in crisis management. Although it is not a crisis management institution within the meaning of the law, on the basis of instructions from public administration bodies, it does perform certain tasks. Additionally, SFS officers may sit in crisis management boards [2].

## **2. STATE FIRE SERVICE – PUBLIC FINANCE PROCUREMENTS**

The organisational units of the State Fire Service are the National Headquarters of the State Fire Service, voivodeship headquarters of the State Fire Service, powiat/municipal headquarters of the State Fire Service, fire service schools, research institutes and the Central Museum of Fire Service. The operating costs of the State Fire Service are covered from the state budget or from a special purpose grant from the state budget. According to the Act of 27 August 2009 on Public Finance, organisational units of the State Fire Service belong to the public finance sector. Therefore, they are required to apply the rules specified in the Act on Public Finance. In public finance sector units, when awarding public contracts, the provisions of the Public Procurement Law act of 29 January 2004 (PPL) should be applied.



**Figure 1.** Comparison of fire engines – 1985 truck on the left, 2018 truck on the right.



**Figure 2.** Comparison of firefighting uniforms – old type on the left, modern type on the right.

The provisions of this Act shall not apply to contracts with values up to EUR 30,000 (net value). Many expenses of the organisational units of the State Fire Service are significant amounts. Over the years, due to the enormous technological progress in the IT segment, many changes in hardware and software have been introduced in the State Fire Service [8]. Apart from the facilities, the most important investments since 1991 have been the evolution of rescue and fire-fighting equipment, including special-purpose vehicles. Figure 1 shows a comparison of two fire engines.

However, many of the contracts are of low value. In the case of organisational units – poviats headquarters, the amounts for individual contracts in a given financial year do not exceed the EUR 30,000 threshold. Such an example can be the uniforms, bought periodically. Uniform elements wear out, so there is a need for continuous replacement. Furthermore, over the years the technological progress and striving for the greatest possible safety for firefighters has resulted in the introduction of ever more modern solutions in the scope of uniforms. A comparison of firefighting uniforms is presented in Figure 2.

### **3. BASIC INFORMATION REGARDING PUBLIC PROCUREMENT**

Public contracts are "contracts for pecuniary interest concluded between a contracting authority and a contractor and having as their subject matter services, supplies or works". Public contracts up to the amount of EUR 30,000, otherwise known as "minor" contracts, in the event that they are not co-financed by European Union funds, do not require the application of the provisions of the Public Procurement Law of 29 January 2004, and the contracting authorities regulate the rules of awarding them on their own. The result is that they often cause considerable problems and are complicated due to the lack of solid guidelines.

There is always a degree of fear that the applied interpretation is wrong. The National Headquarters of the State Fire Service, voivodship headquarters, State Fire Service schools employ public procurement specialists, so the problems in these units may be much smaller. However, the vast majority of the SFS organisational units do not have Public Procurement Departments, and public procurement is often a challenge despite the "exemption" from the application of the PPL. Unfortunately, there is a lack of expertise and practice which may result in errors in the documentation [11].

This is not just about supply contracts. Construction work contracts may also not exceed the amount of EUR 30,000 and cause many problems at all stages of the procedure [12].

According to the European Union Directive, the award of public contracts by or on behalf of the Member States' institutions must comply with the principles of the Treaty on the Functioning of the European Union (TFEU) and, in particular, with the principles of free movement of goods, freedom of establishment and freedom to provide services and with the principles deriving therefrom, such as the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

However, for public contracts above a certain amount, provision should be made to coordinate national procurement procedures in order to ensure that these principles are applied in practice and that public contracts are open to competition"- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance OJ L 94, 28.3.2014.

#### **4. BASIC PRINCIPLES OF PROCUREMENT AND PROBLEMS OF INTERPRETATION**

Although the provisions of the PPL Act do not have to be applied in the case of awarding public contracts up to the value of EUR 30,000, the principles set out in the Act should be regarded as binding. It is worth remembering that organizational units of the SFS, as mentioned above, belong to the public finance sector. In view of the above, they are also subject to the rules contained in the Public Finance Act (Journal of Laws 2017, item 2077, as amendments). According to Article 44(3) of this Act, "Public expenditure shall be made: 1) in a purposeful and cost-effective manner, while observing the principles of: a) obtaining the best results from the specific outlays, b) optimal selection of methods and means to achieve the assumed objectives". Therefore, the legislator expects to achieve the best possible results with the given financial outlays, while at the same time obliging the public finance entity to make savings. This means that if a similar material and functional effect can be achieved, costs should be minimised. In this case, the contracting authority bears the risk of subjective evaluation in relation to the contract. In practice, this can lead to conflicts of interest.

The description of the subject of some contracts awarded by the organisational units of the State Fire Service is based on detailed guidelines, e.g. in the form of an Ordinance of the Head Chief of the SFS. In such a case, many entities meet the conditions for participation in the procedure and are able to offer a product consistent with the description of the subject matter of the contract. The factors determining the subsequent stages of the procedure are usually the prices submitted by the bidders. It is often the case that there are large discrepancies in this respect. A contracting authority with experience from previous contracts of the same type knows that the bid with the lowest price offers a poor quality product. Nevertheless, it decides to award the contract on the basis of the lowest price criterion only. The product meets the requirements contained in the Order of the Head Chief of the State Fire Service and at the same time is inexpensive, so theoretically the effect will be achieved with minimised costs. Otherwise, in the case of an external audit, the contracting authority can be challenged with a different interpretation by the auditor and an allegation of inadequate spending of public finance. In order to be able to reject an unfavourable offer, it is necessary to have a solid basis in previous experience. Let us take advantage of an example. The contracting authority buys a specific product systematically, has experience and comparison of its features. A cheaper product is of inferior quality and only lasts for 3 years. A more expensive, much better quality product lasts for 6 years. An analysis should therefore be carried out (in writing). If it proves that the contracting authority will spend more money on a cheaper product within 6 years than on a higher-priced product, then it will be reasonable to seek to procure the more expensive product. The process should also be based on another principle – equality.

The principle of equality (equal treatment) results directly from the PPL Act. It should apply to the award of publicly funded contracts regardless of the value of the contract. On a grammatical interpretation of this provision, the contracting authority should allow each contractor to complete the task without privileges for any of them. This is also confirmed by Article 43 of the Act on Public Finance, as follows: "The right to perform tasks financed from public funds is vested in all entities, unless separate acts provide otherwise". However, here too, the interpretation is not entirely unambiguous. In order to address this problem, it is worth considering the meaning of the word equality. There is often a misconception that the correct definition of equality in public procurement is "the same for everyone".

According to the above, following the path of least resistance, the contracting authority orders the cheapest goods knowing that despite meeting the requirements, the product is of poor quality. In this situation, public finances should be put aside for a moment and a situation from everyday life should be recalled. An average person, buying privately goods from a given group, often does a price recognition. They select a competitive product. Will this person decide to buy the same item again if it turns out that its quality is poor and cooperation with the company, e.g. in the case of a complaint regarding a defective product, is difficult? Usually, in the future, they will try to avoid the company and the product, and will buy a similar item from someone else, despite the higher price. Common sense suggests that this should be the case. It often is the case that, in private finance, people follow similar rules as in the case of public procurement. They are interrelated and, in many cases, similar [17]. However, public finance is an area where this principle can be reversed.

The contracting authority acts according to the slogan "the same for everyone" in order to avoid possible consequences after an inspection. In practice, the principle of equal treatment should be applied in such a way that we demonstrate absolute equality between entities having the same features and characteristics, and therefore existing at the same level. So, can an organisational unit of the SFS reject the contractor's bid, citing bad experience during previous cooperation and poor quality of the product? Yes, but there are several conditions to be met. Firstly, the public procurement procedure should be correctly conducted, selecting the appropriate procedure mode, indicating that price will not be the sole criterion for selecting the most advantageous bid. Secondly, it is worth taking care of to create a solid document of regulations for awarding "minor" contracts, as it will determine the legitimacy of the procedure and, depending on its value, may allow unreliable contractors to be excluded. Thirdly, in the case of high-value goods, which are of key importance to the contracting authority, the agreement with the contractor should be refined as much as possible. It is worth noting that in the case of a certain number of complaints, the contracting authority may consider that the contract was not performed with due diligence. This may lead to the rejection of the contractor in subsequent procedures. The key, therefore, is a properly refined agreement.

Another rule was indicated in art. 7(2) of the PPL: "Activities related to the preparation and conduct of the contract award procedure are performed by persons ensuring impartiality and objectivity". In practice, it is therefore necessary to consider all bids in an objective manner and not allow an intentional award of the contract to a company based on personal connections. This rule applies not only to the evaluation of submitted bids, but also to the entire procedure. For example, an example of breaking this rule would be pointless preparation of a request for quotation or terms of reference in such a way that a bid could be submitted only by one company. Another example of a breach of the rule will be a deliberate invitation to tender a pre-conceived company and counter-bidders indicated by that company based on the knowledge that they will offer less favourable conditions. In the case of organisational units of the State Fire Service, it is worth taking care that the persons conducting the procedure for awarding a high-value contract sign an impartiality statement beforehand. In order to be able to require declarations of impartiality, this should be taken into account in the internal regulations for the award of "minor" contracts.

The principles of proportionality and transparency are also worth mentioning. In accordance with the principle of proportionality, the contracting authority must carry out the procedure in such a way as to ensure, on the one hand, that the contract is performed at the appropriate level and, on the other hand, that contractors are able to participate in the procedure.

In other words, it is not possible to carry out the procedure in such a way as to reject from the outset any contractors who are in a position to perform the contract correctly. The conditions of the procedure must be fit for its purpose. The principle of transparency serves to introduce appropriate rules whereby contractors can monitor the contracting authority's actions at every stage of the procedure. It therefore goes hand in hand with the principle of openness. Admittedly, in the case of minor contracts, there is no obligation to apply the principle of openness, i.e. making the information about the proceedings public. However, it should be remembered that contractors can always request public information from the contracting authority. Therefore, applying the principle of openness from the beginning of the procedure will help avoid problems with answering queries from the contractors.

## **5. INTERNAL REGULATIONS FOR AWARDING CONTRACTS BELOW EUR 30,000**

As mentioned in the introduction, the contracting authority itself makes the internal regulations for awarding “minor” contracts the law does not explicitly provide for the necessity to have such regulations. However, it is worth creating and modifying them, as they allow for the establishment of rules and, in practice, facilitate the awarding of contracts. In the organisational units of the State Fire Service, they are usually created on the basis of a Decision or Ordinance issued by a competent Chief. It should be remembered that good regulations should be created after an in-depth analysis of the contracts typical for the given organisational unit. If the current regulations are problematic and unclear, it may be worth modifying them. However, one should not be over-zealous in creating and modifying the rules and regulations. Since the legislator has not imposed provisions in this area, one should not arbitrarily impose rules that are too rigid. The regulations should be (as far as possible) simple and transparent so that the person preparing the procurement procedure can conduct it easily and appropriately.

Below are the elements that are worth paying attention to when creating the regulations.

- Determination of the amount up to which single-source procurement can be made. Usually these are low amounts oscillating within the limits of several thousand PLN.
- Indication of the legal basis and creation of a glossary of terms.
- Use of the price "spreads", which will determine the award procedure. It is worth mentioning that awarding a contract worth PLN 10,000 should be less labour-intensive and complicated than awarding a contract for PLN 100,000.
- Determine the procedures for awarding the contract in such a way as to facilitate the selection of bidders as far as possible. The use of the “rigid” form (written and published) above a certain value.
- Taking care of the impartiality statement.
- Indication of the rules of estimating the contract value. This is one of the most important points, because estimation of value determines whether the contract will exceed the threshold of EUR 30,000. Usually the average prices of the products are known and there is no problem in drawing up an estimate. However, in case of uncertainty, when planning to award a contract for an expensive product, the value of which is unclear, the estimations should be made in accordance with the PPL.
- Preparation of document templates to be filled in in the procurement procedure.
- Creation of a model request for quotation and bid form.

- Specification of contractor selection criteria apart from the price.
- Including information on keeping a register of contracts up to EUR 30,000, if not regulated by a separate document.
- Definition of the manner and principles of concluding an agreement with the contractor.

## **6. PUBLIC PROCUREMENT – WHAT IS PROHIBITED?**

Pursuant to Art. 5b(2) of the PPL, a contracting authority may not "divide a contract into separate contracts, in order to avoid a joint estimation of their value". In the interests of simplicity, two or more separate contracts of the same type cannot be awarded in order to avoid competitive tendering or the application of the relevant provisions of the internal regulations. So, what are contracts of the same type? On the Public Procurement Office's website, in the tab "Opinions regarding the PPL Act" there is an article: "Estimation of value and award of contracts, including contracts covered by a project co-financed by the European Union". In the opinion of the Public Procurement Office, three grounds were identified, which have to be fulfilled in order for a contract to be considered as the same type.

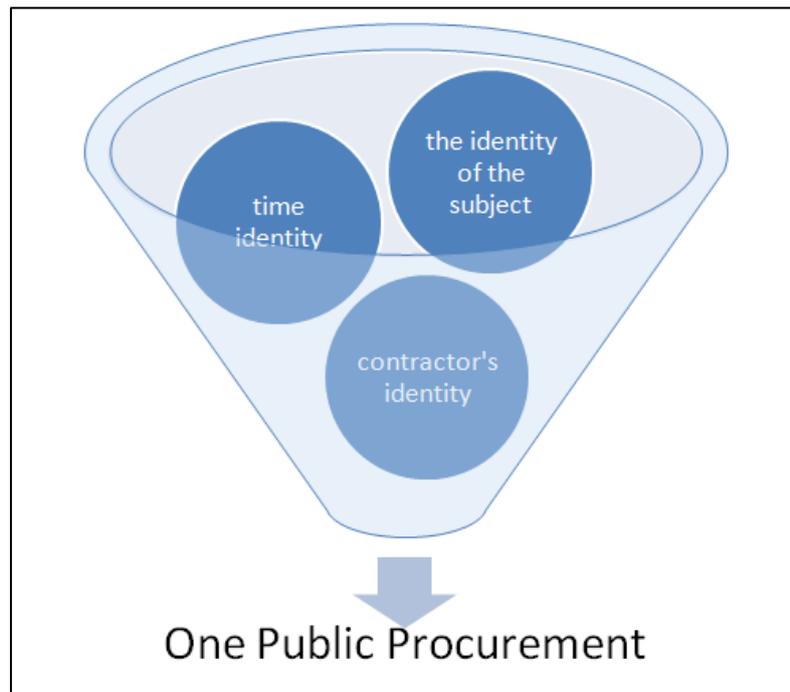
First of all, attention should be paid to material and functional identity. For example, barrack footwear and barrack clothing are a separate assortment, but together they form a functional whole. Here, we should make a comment about CPV codes. It is misleading to say that the register of minor contracts can only be kept on the basis of CPV codes. In the example given above we will mark barracks footwear with code 18832000-0 and barrack clothing with code 35811100-3. Therefore, two or more CPV codes do not necessarily mean that we are dealing with separate contracts.

The second element in the opinion of the Public Procurement Office is temporary identity, i.e. the possibility of awarding the contract at the same time. It is worth to use another example. The Municipal Headquarters of the State Fire Service buys tyres for rescue and fire engines. The net value of the contract is PLN 120,000; therefore, the provisions of the PPL do not apply. After a few months as a result of a failure, it is necessary to buy more tyres for PLN 20,000. The total value of both contracts will therefore exceed the PLN equivalent of EUR 30,000. However, the principle of temporal identity has not been met.

The contracting authority could not have foreseen a failure, so in this case there is no single contract. The last element to be taken into account is the possibility of the contract being performed by one contractor. Coming back to the first example, a contract for barrack footwear and barrack clothing can be competitively performed by one contractor, so this results in a single contract. It would be irrational, however, to combine contracts that can be performed by one entity (one company dealing with "everything"), but there is no guarantee of price competitiveness. Therefore, each case should be considered on its own merits. These rules are presented graphically in Figure 3.

According to these rules, it shall not be permitted to award two or more contracts of the same type during the year, by estimating the value and specifying the procedure for each of them separately. In this case, too, the principle of temporal identity is misinterpreted. The explanation of splitting the contract due to lack of funds in the budget at a given moment may be incorrect. If an analysis of recent years' contracts shows that there was money in the budget every year at the end of the year and the same type of contracts were made as in another part of the year, the contracting authority could and should have foreseen this situation in subsequent

years. In this case, the principle of temporal identity must be considered on an annual basis. However, the contracting authority is not obliged to award one "large" contract for the entire assortment covered by a given purchasing group. It only has to establish with due diligence the estimated value of the entire contract and divide it into tasks, each of them at a convenient time. However, for each task, a procedure consistent with the estimated value of the entire contract should be used. So how to award contracts in order to avoid accusations of splitting? With the help of a public procurement plan up to EUR 30,000.



**Figure 3.** Criteria for considering a contract as one.

## **7. PROCUREMENT PLAN UP TO EUR 30,000 IN THE ORGANISATIONAL UNITS OF THE STATE FIRE SERVICE**

According to the opinion of the Public Procurement Office, contracting authorities do not have to prepare plans for contracts with value within the limit of EUR 30,000. However, it is not prohibited to create and publish such plans. Is it therefore possible to create such a plan in the State Fire Service? Yes, at least to some extent. One should be aware that the State Fire Service, due to the nature of its operation, is exposed to many unexpected expenses which cannot be planned. However, there are many groups of goods that can be predicted and planned for purchase during the year, even is just on the basis of contracts from previous years. Among them we can distinguish:

- uniform kits,
- logistic and quartermaster's equipment,
- office supplies and equipment,
- housekeeping products,

- supplementing the equipment as per the standard.

The more experienced the team and the better the cooperation within the organisational unit of the SFS, the more detailed the plan can be. A real problem for the State Fire Service is the limited budget at the beginning of the year. At the end of the year, in case of savings, as a result of “releasing” of funds from various paragraphs (when the funds collected in the paragraph are not spent) or receiving a subsidy, suddenly there is a large amount of financial resources for material expenses that cannot be previously included in the plan. However, at the beginning of the year, despite the theoretical lack of funds, there is nothing to prevent anticipating procurements in the last quarter and preparing a reserve list of the requirements of all organisational sections, taking into account their estimated values. In this case, based on the establishing of the requirements of the individual organisational sections in a given unit, it is possible to combine contracts of the same type. Knowing the real requirements, the average value and the repeatability of contracts of the same type in recent years, irrespective of the budgeted funds, an appropriate estimate can be made, and the procedure can be correctly established for the specific purchasing group from the beginning of the year. If the estimated value is at the threshold of EUR 30,000, it is worthwhile to provide for the award of a public contract on the basis of an open tender.

Contracts not included in the plan and requirements (which could not be foreseen) should be monitored on an ongoing basis and considered in time perspective allowing to obtain information from other organisational sections within a given unit regarding possible identical requirements. For this purpose, it is worth keeping a register of requirements. Not all contracts which were not included in the plan are the result of a failure. In addition, not all failures require an immediate award of the contract. It should be remembered that a contract cannot be divided if, at the same time, the contracting authority is aware of the need to award two identical contracts, one of which results from the plan and the other – not. It does not matter how many sources finance the task [7].

For example, the Voivodeship Headquarters of the State Fire Service has planned to purchase 100 pressure hoses from its own budget. In the same period of time, 20 hoses were destroyed during a rescue and fire-fighting action. As a result of receiving additional funds from the special-purpose reserve of the State budget, it was decided to order the additional 20 hoses. If the contracting authority is aware of the need to award a contract for 120 pressure hoses at the stage of initiating the procedure, the contract should be treated as a single contract, the authority should calculate the estimated value for the entire contract and on this basis determine the procedure in accordance with the binding regulations. However, if the 100 hoses have already been purchased, and in consequence of an unforeseen event, further hoses have to be purchased, the need for a separate contract must be documented in writing.

## **8. CONCLUSIONS**

It can be concluded that, despite the lack of rigid rules for contracts exempted from the application of the PPL, their award may cause many problems. The reason for this is the need to interpret individual cases, the multitude of regulations to be applied and, in the case of the State Fire Service, the specific nature of the service and the awarded contracts. The conclusions

presented below, resulting from this publication, may in a way provide guidance for individuals responsible for “minor” orders in the organisational units of the State Fire Service.

1. Despite the exemption of minor orders from the application of the provisions of the PPL, one should remember to apply the principles resulting from the Act on Public Finance and the principles contained in the PPL.
2. It is always necessary to correctly determine the estimated value of the contract.
3. Contracts may not be divided and merged in order to avoid the application of the provisions of the PPL and other provisions, including the internal procurement regulations.
4. Each instance should be considered on a case-by-case basis using criteria of material and functional identity, temporal identity and the ability of a single contractor to perform the contract.
5. It is worth creating a Procurement Plan for contracts up to EUR 30,000 and a list of requirements of individual organisational sections within the unit, in order to combine identical contracts.
6. The internal regulations for the award of “minor” contracts should be carefully drawn up and refined.
7. It is important to remember the possibility of modifying the regulations in case of inadequate functionality.
8. It is a good idea to provide training to an employee or a group of employees responsible for public procurement.
9. It is necessary to keep a public procurement register of up to EUR 30,000, as it allows to monitor expenditure in each identity group on an ongoing basis.
10. Procurement in the last quarter of the year should be kept under close scrutiny, with significant resources available from public finances at the time.

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