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## THE CONSEQUENCES OF ACCEPTING ABNORMALLY LOW TENDERS IN PUBLIC CONTRACTS

### Introduction

Public procurement is a system regulating the state's expenditure of public funds [Pokrzywniak 2006, 6]. By introducing public procurement to the Polish legal system, the legislator assumed that public funds would be expended effectively, efficiently and rationally, and competition would be fostered among entrepreneurs to stimulate economic growth. Contracting authorities were legally obliged to observe the principles of fair competition and equal treatment of contractors and to enforce the observance of the said principles from contractors [Moras 2014, 75-76]. As provided in Art. 15 of the Public Procurement Law Act,<sup>1</sup> the contract award procedure is prepared and conducted by the contracting authority. One of the key responsibilities of the contracting authority is to estimate the value of the contract. The amount that the investor intends to expend on the performance of a contract will influence the manner of conducting the procedure, the place of publication of public contract notices, the duration of individual deadlines, and the rights associated with submitting legal protection measures [Stompel 2017]. And given the problems addressed in the article, the value of the contract is essential as it helps determine the ratio of the contractor's bid value to the maximum price that the contracting authority may allocate to the contract which, in turn, demonstrates whether the conditions set out in Art. 89, sect. 1, point 4 and Art. 90 PPL occur (abnormally low tender). After preparing the contract documentation, the aim of the contracting authority is to conduct the procedure and select the most favourable tender. Economic operators running for the

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<sup>1</sup> Act of 29 January 2004, the Public Procurement Law, Journal of Laws of 2019, item 1843 [henceforth cited as: PPL].

contract are required to assess the price of their performance and meet all the conditions provided for in the contract documentation. When signing the final agreement, the winning tenderer should be aware that they undertake to perform the contract properly. Nowadays, economic operators are pressed by the rapidly growing market competition and the deepening economic crisis, which has an adverse impact on the rational estimation of tenders. By lowering the price of the contract performance, the tenderers expose both parties to the procurement procedure to significant losses related to the contracted investment. With a view to preventing such practices, the legislator equipped the contracting authority with appropriate legal tools aimed to prevent and safeguard the interests of public procurement participants.

### **1. Explanation of abnormally low tender**

Having opened tenders submitted by economic operators, contracting authorities are obliged to verify them for compliance with all formal and legal requirements. In the event of errors, deficiencies, or objections to the adopted process of contract performance, the contracting authority requests the bidding economic operators to supplement or clarify them. One of the key factors is the price for the subject of the contract proposed by the tenderer. If the total price proposed raises doubts, pursuant to Art. 90 PPL, the contracting authority has the right to request the economic operator to provide explanations and evidence concerning the price level. This situation is known as a tender with an abnormally low price or just an abnormally low tender. The legislator fails to provide an explicit definition of this term, however, based on the available case-law and the doctrine, it should be understood as bidding an unrealistic and incredibly low price that does not seem sufficient to deliver the subject of the contract [Andała-Sępkowska 2018]. Art. 90 PPL is modelled on Art. 69 of Directive 2014/24/EU which reads, “Contracting authorities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.”<sup>2</sup> In Art. 90, sect. 1a PPL, the legislator introduces a 30% difference indicator as an auxiliary measure to facilitate the

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<sup>2</sup> 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, O.J. L 94/65.

application of this regulation, however it is not decisive in the contract award procedure. It can only be used to compare the total price of the tender with the price allocated to the performance of the contract by the contracting authority [Pieróg 2019]. A tender with an abnormally low price or cost can be rejected under Art. 89, sect. 1, point 4 PPL. However, the contracting authority cannot do so without a prior investigation procedure. Given the above analysis, the investigation procedure should be considered obligatory. On the other hand, the legislator offers a contracting authority an option to avoid the investigation procedure in certain conditions. First, it can occur when the contracting authority finds that the value of the contract determined before the launch of the procurement procedure was estimated at a significantly higher level than justified by the existing market conditions, and the submitted tenders seem to demonstrate that. Second, when the total price of the tender is lower by a certain pre-defined indicator than the value of the contract updated as a result of the circumstances that followed the launch of the procurement procedure [ibid.].

If any of the above circumstances occur, the contracting authority is entitled to initiate an investigation procedure aimed to remove the tenderer's doubts as to their capacity to deliver the subject of the contract. The laws do not clearly indicate how long such investigation should take or how many times the contracting authority may request the tenderer to submit explanations. The economic operator should make every effort to make sure that the justification of their position contains as much relevant information as possible as they are primarily responsible for providing evidence. And they can do so in any form: the 2009 amendment to the PPL lifted the obligation to do it in writing. If the explanations are imprecise, the authorities overseeing the procedure should demand successive clarification of all questionable issues and set appropriate deadlines to do so [Pieróg 2019]. Art. 90, sect. 2 PPL lists all elements that the economic operator should address when justifying the price or cost of the tender. To fully safeguard the parties' interests, other important explanations may also be given. The theoretical items listed in the aforesaid article are there to suggest the economic operator and the contracting authority what such explanations of a low price or cost may cover, yet, in practice, they are accepted as obligatory, and the tenderer in their explanations should address each of them if so required by the circumstances and the parties' interest [ibid.]. After the economic operator has submitted

their explanations, the contracting authority validates it. When examining the price, contracting authorities must remember that “an abnormally low price is the price for the entire proposed performance [...]. Therefore, offering a price that is unrealistic or significantly departing from market prices for a specific item of the performance should not be deemed as grounds for rejection of the tender. If this low amount is then offset by prices for other items of the performance and the total price is not abnormally low, the contracting authority should not interfere in the methodology of internal calculations (regarding the subject of the contract) made by the tenderer. This view is well-established in the case-law [...]. Only where a low unit price results in an abnormal reduction of the tender price in market terms, it can give grounds for rejection of the tender” [Dzierżanowski 2018].

The investigation procedure may close with: rejection of the tender if the economic operator has failed to submit explanations, or the information and evidence provided confirm that the tender has an abnormally low price or cost in relation to the subject of the contract (Art. 89, sect. 1, point 4 and Art. 90, sect. 3 PPL). Acceptance by the contracting authority of the explanations as complete and reliable allows further procurement procedure to take its course.

## **2. Consequences for public procurement**

The design of existing legal regulations allows contracting entities to select abnormally low tenders. This option should not, however, be abused, and contracting authorities should exercise common sense and take care of the rational expenditure of public funds. Still, in practice, by choosing abnormally low tenders, contracting institutions over-interpret the principle of respect for public funds and assume that the opportunity of saving own financial resources is a way to implement it.

The applicable legal regulations do not clearly determine the proper conduct of investigation of tenders with abnormally low prices. Contracting authorities are only authorised but not obliged to initiate it. On the other hand, the question of economic operator’s obligation to provide evidence is also dubious. “The lack of evidence should not be assumed to determine the rejection of the tender. Art. 90, sect. 3 sets out the conditions for rejecting a tender with an abnormally low price or cost. The contracting authority has the right

to request evidence, yet failure to submit it cannot result in the tender being automatically rejected because of its abnormally low price or cost. The contracting authority is obliged to review and evaluate any received explanations, for example, in terms of credibility, and only then reject the tender if it considers that they do not reflect the actual state of affairs” [Pieróg 2019].

The optional nature of the investigation procedure affects its course. In turn, economic operators acting under pressure and wishing to maintain business continuity lower prices only to make their bid most favourable. Such ill-conceived behaviours of both contracting authorities and economic operators lead to extreme outcomes that obstruct the proper course and closing of procurement procedures. The consequences are as follows: evasion of signature of the contract agreement, delay in completing the contract, withdrawal from or abandonment of the contract, forcing the contracting authority to amend the agreement in order to compensate for losses/increase profits or forcing the contracting authority to make advance payments for contract performance, performance of the contract with a poor quality and in violation of the law [Moras 2014, 76], suspension of the contract as a result of appeals filed by other tenderers [Pieróg 2019]. A further and less direct consequence is undermining the market position by other honest tenderers who have priced their bids more reliably [Moras 2014, 81].

The first consequence is evasion of signature of the contract agreement. The economic operator who, after analysing their situation, becomes aware that the performance of the contract, although originally accepted as feasible, may prove detrimental to their enterprise will most likely try to evade the signing of the contract agreement. The loss of the bid security by such an operator will be less harmful in economic terms than the loss that they would suffer if they failed to perform or delay the contract. If the conclusion of the agreement is impossible for reasons attributable to the economic operator, the contracting authority keeps the bid security with interest as a financial collateral for its and public interests. Consequently, if there are more economic operators taking part in the procurement procedure who are ready to carry out the investment, then the situation that unfolds is favourable for the tender organiser. In contrast, the situation becomes unfavourable when there is no other bidding party or the others are no longer interested in entering into the contract agreement and performing the contract. The contracting au-

thority has no other choice but to cancel the procedure. This leads to a number of adverse consequences. First, the procedure can get protracted or must even be re-started. Second, the costs of the procedure is growing. To hold another contract award procedure for a large investment may take many months. If over this time building materials and the costs of business grow, the price asked by another tenderer may prove much higher than originally expected by the contracting authority. The difference in expenditure to be incurred by the contracting authority will then be much higher than the total bid security kept. In addition, the current legal provisions and case-law do not support the contracting authority's position as they indicate that the bid security is the only form of compensation available to the contracting authority for harm suffered. In accordance with the judgement of the Constitutional Tribunal of 17 November 2008,<sup>3</sup> the bid security performs compensatory functions: it is a substitute for damages in the event of failure to conclude the final contract agreement. The contracting authority's entitlement to keep the bid security is a substitute remedy and excludes any further financial liability of the tenderer. The contracting authority that keeps the bid security may not demand that the harm suffered be remedied if it occurred and its value goes beyond the amount of kept bid security. Claiming damages exceeding the value of the bid security is inadmissible. Therefore, the bid security also protects the tenderer's interests since their evasion of the conclusion of the agreement will only entail the loss of the said security. The judgement of the Supreme Court of 24 March 2011<sup>4</sup> also highlights the compensatory function of the bid security as the only possibility to satisfy the contracting authority's claims against tenderers. The above opinion is corroborated in the decision of the National Appeal Chamber of 14 June 2011<sup>5</sup> which indicates that the purpose of the bid security is that of damages to the contracting authority for tenderer's failure to enter into the contract agreement. Therefore, in each case of failed agreement between the contracting authority and the economic operator, the former suffers a financial harm or loss. The overall idea of the institution of the bid security is that the contracting authority does not have to establish the amount of financial harm, nor supply evidence in

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<sup>3</sup> SK 62/06.

<sup>4</sup> I CSK 448/10.

<sup>5</sup> KIO 1142/11.

favour of any of the parties, due to the fact that the amount of such harm is a flat-rate amount equal to the bid security paid; any opposite interpretation is not legally permissible. Given the foregoing, a public entity whose losses are higher than the bid security will be forced to offset them from public funds, which may otherwise be earmarked for some other important public purposes.

Since the situation described above may actually take place, the contracting authority should do its utmost to ensure that any abnormally low tender is very well explained and verified. Negative effects of action taken by the contracting authority and tenderers often affect other entities interested in the performance of the contract, not only in terms of financial losses but also the quality of public life.

In exceptional cases, the contracting authority could pursue its claims going beyond the amount of the bid bond based on the provisions of the Civil Code,<sup>6</sup> in particular concerning tort and delict. However, this approach courts controversy because the contracting authority must prove the economic operator's unlawful act, which is not simple in practice [Zboralski 2019].

Consequently, it would be advisable for the legislator to make certain amendments to the regulations governing the liability of tenderers who evade the signature of the agreement. Germany is as an example to follow in this respect. Public procurement law adopted in our western neighbour does not provide for any obligation to pay a bid security. On the one hand, this approach reduces the cost of participation in German contract award procedures and, on the other, is motivating to economic operators. A tenderer submitting a tender is bound by it until the best bid is selected. If their tender proves the most advantageous, it is automatically called the winning bid and the tenderer may not refuse to conclude the contract agreement with the contracting authority. If, however, they evade the performance of the agreement, they are fully liable for non-performance under the contractual terms. Due to the lack of the bid security, the tenderer's liability is not limited by it, which entitles the contracting authority to seek reimbursement of costs corresponding to harm suffered [Specht-Schampera 2018, 51].

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<sup>6</sup> Act of 23 April 1964, the Civil Code, Journal of Laws of 2019, item 1145 as amended [henceforth cited as: CC].

Another common practice among economic operators is extending or interrupting work related to the performance of the contract. One of the reasons for that is incorrect estimation of profit from the awarded public contract. The need to keep the enterprise in a sound financial condition forces economic operators to seek works, services or supplies that, in the first place, prove to be a secure source of income. As a consequence, delayed deadlines, withdrawal from or abandonment of the contract become commonplace.

In 2018 the Public Procurement Office drew up a report showing that, statistically, the most common reason for imposing penalties on contractors is the lack of partial or full completion of the subject of the contract within the deadline prescribed in the agreement.<sup>7</sup> If failure to perform the contract on time is due to for reasons attributable to the economic operator, it is regarded as the so-called culpable delay or default [Karkoszka 2019].

In the event that the economic operator deliberately delays the performance of the contract within a time limit agreed by the parties, the financial interests of the contracting authority are safeguarded under the law. In accordance with Art. 147 PPL, the contracting authority may request the economic operator to provide security on due performance of the contract that may later be used to cover claims for improper performance. According to the judgement of the Court of Appeal in Katowice of 21 February 2009,<sup>8</sup> “improper performance occurs when the debtor’s activity was aimed to deliver the performance but achieved results do not produce the effects expected of the debtor under the agreement.” The economic operator’s liability for damages is regulated by the CC, as expressly stated in Art. 139, sect. 1 PPL. In principle, “security on due performance of the contract is pecuniary. Providing a security in a form other than pecuniary is not tantamount to the change in the nature of the security” [Pieróg 2019]. The main measure safeguarding the contracting party’s interests is a performance guarantee, however, Art. 480 CC also gives the contracting authority the option of seeking *in natura* performance by the economic operator (performance in kind). In the event of a de-

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<sup>7</sup> See *Raport dotyczący stosowania kar umownych w zamówieniach publicznych, przeprowadzony w 2018 roku przez Urząd Zamówień Publicznych* [A 2018 Report of the Public Procurement Office on Contractual Penalties in Public Procurement], Warszawa 2018, p. 11.

<sup>8</sup> V ACa 88/09.

lay, the contracting authority may bring an action for substitute performance [Szostak 2018, 255].

All in all, in accordance with the concluded agreement and applicable regulations, in the event of tenderer's culpable delay, the contracting authority has the right to: impose a contractual penalty, withdraw from the agreement (under Art. 491 CC), demand performance *in natura* and claim damages, and, if the performance has lost its significance entirely or in a greater part, it may not accept the performance and claim damages. In the event of their culpable delay, the economic operator may not demand a judicial adjustment of mutual cash benefits [ibid., 234].

After conclusion of the contract agreement with the economic operator, whose abnormally low tender has been accepted, it may become evident that they do not possess funds necessary to cover the costs of performance of the contract, and its completion will not generate estimated income. This situation may force the economic operator to withdraw from completing the contract or to abandon it. As in the case of culpable delay, before entering into the agreement, in order to safeguard its financial interests, the contracting authority has the right to request security on due performance of the contract; it may also demand the economic operator to pay a contractual penalty and other additional charges provided for in the PPL and the CC, e.g. interest. Unfortunately, in this situation, the contracting authority will also need to face a number of challenges. First, the contracting authority is obliged to close the cooperation with the current economic operator. The contracting authority must review the correctness of completed works and settle with the economic operator by reducing the agreed remuneration by any penalties imposed under the agreement. Then, the contracting authority must secure funds for further works, initiate a new procurement procedure, and find a new economic operator who will be ready to continue the investment after the previous one has gone. Unfortunately, in practice, the activities listed above need deadlines to be postponed, may entail higher costs of the contract and extra bureaucratic procedures, often to the disadvantage of the economic operator [Królikowska-Olczak 2015, 6].

The economic operator who culpably delays contract performance, withdraws from the contract or abandons it will not avoid liability. In addition to the damages and contractual penalties mentioned above, they may also be

banned from participating in other public procurement procedures. Culpable delay or abandonment of the contract is unacceptable if, as a result of which, the economic operator expects to be released from the obligation, thereby violating the basic principle of real performance of the contract agreement formulated as one of the functions of public procurement. Such economic operator's conduct will mean their exclusion from participation in other public procurement procedures in the future [Szostak 2018, 149-50]. The legal basis is provided in Art. 24, sect. 5, point 2 PPL in conjunction with Art. 24, sect. 7, point 3 PPL which reads that "Excluded from contract award procedures shall be economic operators" that "as a result of intentional act or gross negligence failed to perform or improperly performed the contract" or "for reasons attributable to the economic operator, the economic operator failed to perform or significantly improperly performed an earlier public procurement contract [...] for a period of three years from the date of the event justifying exclusion." High penalties and awarded damages can seriously disadvantage the economic operator financially. And if at the same time they committed unlawful acts and violated the law, they will be also held liable under penal law.

In addition to the situations listed above, contracting authorities may face other inappropriate behaviours of economic operators:

1) Forcing the contracting authority to make amendments to the contract agreement by awarding "extra" contracts to offset losses/increase profits. It should be noted that, under the binding legal regulations, agreements may only be modified "to the necessary extent." "Necessary extent" is when in the existing circumstances no further performance of the contract is possible without undertaking specific additional activities [Kałużna 2017]. Forcing the contracting authority to adjust the remuneration terms of the agreement is unacceptable, especially if it is only attributable to economic reasons, i.e. wrong estimation of the contract value from the economic operator's point of view, which they could have realised or foreseen before signing the contract agreement.

2) Forcing the contracting authority to make advance payments for contract performance. In accordance with Art. 151a PPL, the contracting authority may grant an advance payment for performance of the contract but only if such possibility is envisaged in the contract notice or in the Terms of Re-

ference. In view of the above, the economic operator is not in a position to demand an advance payment if this option was not expressly provided in the contract notice. The admissibility of making advance payments raises further questions that the contracting authority should consider before concluding the contract agreement with the economic operator. On the one hand, payment for the contract by advances to the economic operator has an impact on the determination of the tender price. If this were the case, the tenderer would not have to use their own resources or seek external funding, which usually entails extra costs.<sup>9</sup> On the other hand, attention should be paid to the value of the contract and the financial standing of the economic operator. It would also be advisable for the contracting authority to establish an advance payment security. This is afforded by the law, and, by doing so, the investor does not run a risk of losing public funds in the event of withdrawal by the economic operator.

3) Performance of the contract in an undesirable quality or in violation of the law [Moras 2014, 76]. At the stage of performance of the contract, some economic operators attempt to act contrary to the Terms of Reference and using building materials of poorer quality with a view to making a greater profits or reducing losses. In order to cut costs, they may resort to illegal employment of part of the workforce. The consequence may be attempts to bribe or induce persons supervising the contract to conceal the knowledge of such illegal practices and accept of the performance of the contract in violation of the Terms of Reference [ibid., 81]. By doing so, the economic operator is subject to penal liability and exclusion from future public procurement procedures.

When awarding a contract to a specific economic operator, the contracting authority should find out whether EU funds will be involved during the investment. The consequence of selecting an illegible economic operator may be the loss of all or part of allocated EU funds. When using EU funds for an investment project, the contracting authority is obliged to keep all agreed deadlines and make sure that the course of contract award and performance is in accordance with the terms of co-financing by the EU. The most common reason for the loss of funding is missed contract deadlines. In addi-

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<sup>9</sup> Decision of the National Appeal Chamber of 5 December 2012, KIO 2765/11.

tion, if the economic operator causes deficiencies or irregularities in the subject of the contract, financial adjustments may be imposed on them. The purpose of financial adjustments is to reduce the amount of agreed remuneration adequately if the withdrawal of all EU funding or all eligible expenditure incurred under the contract is disproportionate to the nature and gravity of irregularities.<sup>10</sup>

Economic operators who wish to submit the winning tender in the procurement procedure at all costs should be aware that their actions may be regarded as an act of unfair competition, and that they will be held liable. Sales below cost (sale at a loss), aimed to eliminate another tenderer, is considered an act of unfair competition. Such activity may be driven by the desire to eliminate a competitor from the market and create preferential market conditions in order to dictate prices to customers and other market participants. This means that sales below cost are sufficient to regard a specific action as an act of unfair competition, however, it must be proven that it was aimed at eliminating other tenderers [Królikowska-Olczak 2015, 10]. This approach is intended to save other honest entrepreneurs from losing business opportunities.

On the other hand, the legislator gave other bidders with less attractive proposals an opportunity to halt the performance of the contract by filing an appeal. Unfortunately, exposing the unreliability of the proposed price is practically unrealistic because the relevant provisions provide that if the economic operator has made the stipulation that certain information must not be disclosed if it constitutes a trade secret [Dolecki 2019]. At this point, it is worth recalling the judgement of the National Appeal Chamber of 20 June 2011,<sup>11</sup> “[...] explanations regarding the abnormally low tender, although they contain information about the price, cannot be regarded as circumstances listed in the hypothesis of the standard referred to in Art. 86, sect. 4 of the Public Procurement Law [...]. Therefore, the Chamber subscribes to the position that all information regarding the price and contained in the tender is subject to disclosure, especially given that, as the case-law indicates, the

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<sup>10</sup> Regulation of the Minister of Development of 29 January 2016 on the conditions for reducing the value of financial adjustments and expenditure incurred incorrectly and related to the award of contracts, Journal of Laws, item 200.

<sup>11</sup> KIO 1243/11.

method of price calculation was given in the Terms of Reference. However, this is not the case here, as this information is not covered by the tender. There is no doubt that this information is not submitted with the tender (it is not included in the tender) and, moreover, the obligation to submit it in the given procedure may never materialize [...]. In the opinion of the Chamber, the method of calculating the price, in particular personnel costs for one working day, can be regarded as information that is valuable for competitors, especially in a situation like this where the main price-making factor is the cost of labour [...]" [Andała-Sępkowska 2018].

### **Conclusion**

A fragment of the judgement of the District Court in Białystok of 29 April 2014<sup>12</sup> may serve as a comprehensive conclusion to the discussion above. When justifying its decision, the court points out that sufficient financial resources for the performance of the contract and performance of assumed obligations is a circumstance that the party should take into account at the time of conclusion of the contract agreement as the so-called contract risk. Next, the court finds that if a party to an agreement were able to withdraw from the agreement on grounds of insufficient funds for its performance, it would open up a possibility of unilateral termination of agreements in the case of any unsuccessful project, regardless of the losses and consequences suffered by the other party. Freedom to terminate an agreement even concluded on the basis of the provisions of Public Procurement Law would wreak havoc with the elementary principles of contracting and would violate the basic legal principle, "agreements must be kept."

The literature on the subject is right to point out that there are major gaps in regulations related to compensation and damages. They are relatively dispersed, which is a major challenge as it makes it difficult to control the management of public funds. So, the existing regulations should sufficiently discourage economic operators who are not convinced whether the proposed amount will be sufficient to complete the contract. The contracting authority should exercise maximum diligence in the selection of tenderers and, above all, attach particular attention to ensuring that the investigation procedure is

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<sup>12</sup> I C 32/14.

carried out decently. It is also important to stress the need to improve the quality of public procurement, inter alia, by giving more weight to non-price selection criteria. Amendment to the Public Procurement Law Act to enter into force in 2020 makes the price criterion relevant at no more than 60%, thus promising positive outcomes in terms of quality of services, supplies, and works [Mazurek 2019].

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## The Consequences of Accepting Abnormally Low Tenders in Public Contracts

### Summary

The article aims to highlight consequences to be faced by the parties to a public contract award procedure for accepting a tender whose price, cost or their constituent items are abnormally low in relation to the subject of the contract and raise doubts of the contracting authority. The consequences are taken not only by the contracting authority and the winning bidder but also by other entrepreneurs participating in the procedure and by the population of the country. The article argues for new solutions in public procurement and stresses the need to modify the existing regulations to prevent such practices. First of all, the relevant legal provisions should be reviewed (or new ones laid down) that will deter non-reliable contractors from entering contract award procedures.

**Key words:** contract award criteria, abnormally low price, public contract award, economic operator, contracting authority, public procurement

### Konsekwencje przyjęcia oferty z rażąco niską ceną w zamówieniach publicznych

#### Streszczenie

Celem artykułu jest wskazanie stronom postępowania o zamówienie publiczne konsekwencji, jakie niesie za sobą przyjęcie oferty wykonawcy, którego zaofiarowana cena lub koszt, lub ich istotne części składowe, wydają się rażąco niskie w stosunku do przedmiotu zamówienia i budzą wątpliwości zamawiającego. Skutki takiego działania dotyczą nie tylko zamawiającego i zwycięskiego oferenta, ale także pozostałych przedsiębiorców uczestniczących w postępowaniu oraz ludność danego kraju. W artykule zostaje zwrócona uwaga na konieczność wprowadzenia nowych rozwiązań oraz potrzebę modyfikacji dotychczas obowiązujących regulacji zapobiegających takim praktykom. Przede wszystkim uporządkowanie i stworzenie przepisów prawnych, które będą dostatecznie odstraszać nierzetelnych wykonawców przed przystąpieniem do zamówień publicznych.

**Słowa kluczowe:** kryteria udzielania zamówień, rażąco niska cena, udzielenie zamówienia publicznego, wykonawca, zamawiający, zamówienia publiczne

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