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Public Procurement Rules and the Prevention of Corruption

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Abstract: The article points out the difficulties of defining the phenomenon of corruption, the main risks of public procurement related to the occurrence of corrupt behaviour, and the role of the proper application of public procurement rules as tools for the prevention of corruption. This is because these principles are a guide for the contracting authority on how to take certain actions during the procedure, and which ones to avoid in order to ensure that the public procurement procedure is carried out in a lawful manner and that public funds are spent in an efficient and reasonable manner. Where discretionary slack exists, this is an indicator of the proper use of the discretion left to the contracting authority. The risk of corruption in public procurement is mainly due to the fact that significant public funds are spent in the course of public procurement, and the risk of bribery or collusion in tendering exists, regardless of the stage of the procedure.

Keywords: public procurement, corruption, principle of fair competition, principle of transparency, principle of openness, principle of writtenness

1. Introduction

In 2022 in Poland, 143,891 public contracts were awarded, amounting to a record 274.8 billion zloty, that is almost 9% of GDP (Nowak, 2023, hereinafter: Report). The President of the Public Procurement Office carried out 345 procedure inspections, of which 153 were mandatory prior inspections and 192 were ad hoc inspections (Report, 2022). In the case of only 48% of prior mandatory inspections no violations were found, which is a considerable drop compared to 2021, for which the figure was 71% (Report, 2022). The data underlines the ongoing importance of preventing corruption in public procurement. The research method employed in this paper was the formal-dogmatic method, and the aims of the article were to examine the phenomenon of corruption, to identify the principal dangers related to corruption in public procurement, and to explore the role of public procurement principles in preventing corruption.

2. Definition of Corruption

Any attempt to define the concept of 'corruption' should begin with an explanation of the etymology of the term. The word 'corruption' comes from the Latin 'corruptio', which means 'spoiling', 'tearing' or 'destroying' (Słownik PWN, 2023).

Corruption is defined by ratified international agreements, which according to article 91 paragraph 1 of the Constitution of the Republic of Poland of the 2nd April 1997 (Konstytucja…, 1997), after publication in the Journal of Laws, become part of the national legal order and are applied directly, unless their application is dependent on the issuance of an act. This means that one should understand 'corruption' not only on the basis of statutory provisions, but also based on the provisions of convention, which determine international standards in this field.

In Article 2 of the Convention on combatting corruption among officials of the European Community and officials of Member States of the European Union (Konwencja sporządzona…, 1997), the EU legislator defined passive corruption as any action by an official aimed at demanding or receiving as well as accepting any form of benefit for themselves or third persons either directly or indirectly through another person, in exchange for specific action or inaction violating official duties resulting from the position held or in the course of its performance. Meanwhile, active corruption is deliberate action taken by any person, consisting of promising or delivering, directly or indirectly, benefits of any type to an official or third party so that such person, in violation of their official duties, carries out or refrains from carrying out actions resulting from their function or as part of the performance of their function.

In the Civil Law Convention on Corruption (Cywilnoprawna Konwencja o Korupcji, 2004), 'corruption' is defined as the demanding, proposing, giving or receiving, directly or indirectly, of bribes or any other undue benefit or the promise thereof, which distorts the correct performance of any duty or expected behaviour of the person receiving the bribe, undue benefit or the promise thereof.

Article 9 of the United Nations Convention against corruption, adopted by the General Assembly of the United Nations on the 31st October 2003, (Konwencja Narodów Zjednoczonych…, 2003), states that all of the parties to the convention shall implement the necessary measures in their national public procurement systems with respect for the principles of transparency, competitiveness and objective criteria for decision-making (Konwencja Narodów Zjednoczonych…, 2003). In addition, such solutions should also fulfil the requirements of: public dissemination of information, prior determination of conditions for participation, setting objective criteria for decision-making in order to facilitate later verification of the correct application of principles or procedures, establishment of an effective system of internal inspection, lustration procedures etc.

In the UNICITRAL model bill of law, published in 2014 by the United Nations (Ustawa modelowa UNICITRAL, 2014), article 21 provides for the exclusion of contractors from public procurement proceedings on the basis of incentives on the part of the supplier or contractor, unfair competitive advantage or conflict of interests (UNICITRAL model agreement, 2014, article 21). Meanwhile, article 28 refers to the basic principles to be used in the selection of the method for awarding contracts, and states that the entity shall award contracts in open tender mode or in another way so as to adapt it to the specifics of a given contract with the aim of maximising competition in this respect (Ustawa modelowa UNICITRAL., 2014, article 28).

The European Union legal acts do not comprehensively regulate the problem of corruption in public procurement. They leave the regulation of public procurement to member states, only designating institutions for such issues as regulating conflict of interest or exclusion from proceedings (Kania, 2022). Directive 2014/24/EU of the 26th February 2014 of the European Parliament and Commission on public procurement (Dyrektywa Parlamentu Europejskiego i Rady 2014/24/EU, 2014, hereinafter: Directive), in point 1 of the preamble, postulates that public procurement procedures in member states should be so formulated as to comply, amongst others, with the principle of transparency and the protection of competition. Additionally, point 101 states that the contracting authority should have the

possibility to exclude contractors that turned out to be unreliable, among others, due to the violation of the rules of competition. Finally, in point 126 of the preamble, it is stated that "transparency, as well as the possibility to track the decision-making process in proceedings on the awarding of contracts, are necessary to ensure the correctness of such proceedings, including effective combatting of corruption and fraud" (Dyrektywa Parlamentu Europejskiego i Rady 2014/24/EU, 2014). Article 24 of the Directive provides for the regulation of the so-called conflict of interests. Member states should ensure that the contracting authorities take sufficient measures to effectively prevent conflict of interests, as well as identify and eliminate such conflict, so as not to allow for any possible distortion of competition, and to ensure equal treatment for all contractors (Dyrektywa Parlamentu Europejskiego i Rady 2014/24/EU, 2014).

In Poland, legal regulations on corruption can be found above all in the Act of 9 June 2006 on the Central Anti-Corruption Bureau (Ustawa o Centralnym Biurze Antykorupcyjnym, 2022). The Polish legislator introduced a legal definition of corruption[1] in article 1 point 3a of the bill of the 9th June 2006 on the CBA. Currently, one distinguishes active corruption, namely actions involving the promising, proposing or giving directly or indirectly of any undue benefits to persons in public office or to any other persons in exchange for action or inaction. Meanwhile, passive corruption consists of actions involving the accepting or demanding directly or indirectly of any undue benefits in exchange for action or inaction, as well as accepting the proposal or promise of such benefits during the performance of a public function (Ustawa o Centralnym Biurze Antykorupcyjnym, 2022, article 1 point 3a).

In the literature, the concept of corruption is not treated uniformly. Common ground in the definition of corruption in the literature is the dependence of action or inaction in a given situation on corrupt behaviour (Kosiński et al., 2012) constituting abuse (Goczek, 2007)[2]. As features closely linked to corruption, K. Tarchalski (2000) listed its prevalence, secrecy in the exchange of benefits, interactiveness, and lack of respect for generally accepted moral standards.

3. Principal Threats of Corruption in Public Procurement

Many areas of public activity can be affected by corruption, in particular areas where the positive or negative conclusion of an issue depends on the decisions of single individuals (see: Kozłowska, 2021). Kozłowska (2021) underlined that the sectors most affected by corruption are those which make use of financial means from the state budget and from the local government budget, namely "funds of significant value". Resolution 207 of the Council of Ministers of 19 December 2017 (Uchwała nr 207 Rady Ministrów, 2017) introduced the Government Programme for Combatting Corruption for 2018--2020, in which public procurement was listed as one of the areas under threat of corruption due to the fact that it encompasses all public sector entities involved in the purchase of goods and services and the making of investments. The programme also gave examples of behaviours that are conducive to corruption e.g. circumventing the provisions of Public Procurement Law, overuse of non-tender modes, manipulation of tenders, and unequal access to information about procurement (Uchwała nr 207 Rady Ministrów, 2017). Information from the results of the Supreme Audit Office (NIK) inspections into the implementation of the programme showed that its assumptions were not fully implemented, the result of which was the lack of new solutions for strengthening the mechanisms limiting corruption (Najwyższa Izba Kontroli, 2022).

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1 Its form changed in 2009 after the decision of the Constitutional Tribunal ref. K 54/07 of the 23rd June 2009, in which the legislator implemented the suggestion of the Constitutional Tribunal regarding use of the method of the separate regulation of various forms of the phenomenon of corruption. The legislator distinguished between active and passive corruption, and made a division between corruption in the public sector and in the private sector (Hoc and Szustakiewicz, 2012).

2 Ł. Goczek (2007) noted that there are various definitions for corruption, and that these make use of the general concept of 'abuse' to refer to specific legal terms that are narrower in meaning, such as 'bribery', 'mismanagement' and 'paid protection'.

Every year, Transparency International (an independent, international organisation investigating corruption practices, hereinafter: TI) publishes a Corruption Perceptions Index (CPI), which is the leading global indicator of corruption in the public sector (Corruption Perceptions Index, n.d.); 180 countries around the world are assessed on the basis of the opinions of 13 experts and surveys conducted among entrepreneurs using a scale of 0 ('highly corrupt') to 100 ('the lowest perceived level of corruption') (Corruption Perceptions Index, n.d.). In 2022, Poland scored 55 points, putting it in 45th place among the 180 countries studied.

In 2021, TI published the report "Citizens' views and experiences of corruption" (Martinez and Kaukutshka, 2021), in which only 48% of the respondents from European Union countries stated that they have trust in their national government, the majority of which were from Austria, Denmark, Germany, Ireland and the Netherlands. The lowest level of trust for national governments was expressed by respondents from Poland, Bulgaria, Cyprus and Romania. In the report, TI addressed the problem of Poland and Hungary, underlining that politics in these states deviates from the principles of democracy and the rule of law (Martinez and Kaukutshka, 2021). According to TI, both countries used the COVID-19 pandemic to take measures that weakened public institutions. Poland introduced regulations that make access to public information difficult, thus reducing the transparency of public procurement and making it harder for the authorities to address abuse (Martinez and Kaukutshka, 2021).

On 2 March 2020, in reaction to the spreading COVID-19 pandemic, the Polish legislator enacted a bill with specific solutions related to preventing, counteracting and combatting COVID-19 and other infectious diseases, and the resulting crisis situations (Dziennik Ustaw 2023). It provided for the possibility to exclude the application of PPL provisions (Ustawa Prawo zamówień publicznych, 2023) with respect to procurement for which the subject were supplies or services necessary for combatting the pandemic, in situations in which there was a high probability of a rapid and uncontrolled spread of the disease, or if this was required for the purposes of protection of public health. The issue of derogation from the application of PPL provisions prompted a discussion on the risk of the threat of corruption, in particular in procurement at the governmental level (Kania, 2022).

The bill dated 11 September 2019, i.e. Public procurement law, is characterised by a greater freedom for contracting entities than in previous such bills. This is visible above all in the deformaliing of proceedings to below EU thresholds, and the suspension of the priority of tender modes (Kania, 2022). The aim of implementing such solutions was to make contracts more attractive to entities from the private sector. Unfortunately, such solutions may encourage corrupt behaviour (Kania, 2022).

The process of awarding public procurement contracts comprises the following stages: planning, preparation of proceedings, and performance of the contract; each of these stages is under threat of corrupt behaviour (Wnuk et al., 2018). The literature indicates the occurrence of certain symptoms, so-called 'red flags' (Kania, 2022), which may not turn out to be proof of corrupt behaviour, but which signal the existence of certain irregularities at various stages of the awarding of contracts (Wnuk et al., 2018). At the preparation stage of proceedings, this can be an excessively precise definition of the subject of the procurement, which may lead to a given contractor being favoured (Wnuk et al., 2018). At the proceedings stage of awarding a contract, irregularities in the specifications or the quoting of prices at exactly the amount the contracting authority wants to allocate to financing the contract, may be evidence of a connection between the contractor and the contracting authority's employees (Śliwak, 2022). At the stage of contract performance, indications are particularly visible of bid collusion, that is an act of unfair competition involving the conclusion of an agreement aimed at disrupting competition between contractors in public procurement proceedings, the occurrence of which is grounds for the mandatory exclusion of the contractor from public procurement proceedings (Śliwak, 2022) according to article 108 paragraph 1 point 5 of the PPL.

The essence of bid collusion is the violation of the rules of a public tender, which should be based on market mechanisms in order to select the best offer for specific goods or contracts (Wróbel and Iwański, 2022). The subject of protection are the property interests of the owner of the property covered by the

tender, as well as the tender itself not linked to the activity of state institutions (Wróbel and Iwański, 2022). Such collusion can adopt various forms or mechanisms, but its objective is the success of one of the participants as a result of the disruption of competition through collusion with other entrepreneurs, and the selection of the offer that is most beneficial to the contractor and not to the contracting authority (Wnuk et al., 2018). Examples of bid collusion include "appearing as a subcontractor in the offer submitted by one entrepreneur, while also submitting a separate, independent offer in order to be able to submit two offers for one procurement" (Wnuk et al., 2018) and "the prices offered by the collusion participants were varied, and if they were consecutively the lowest, the winner resigned from concluding the agreement so as to enable the selection of the more expensive proposal of an entrepreneur acting in collusion with them" (Wnuk et al., 2018).

4. Public Procurement Principles as a Tool for Preventing Corruption

The consistency of public procurement law and the proper implementation of the aims set by the PPL are dependent on this law, including principles that are not only interpretative regulations, but are also guidelines on how the 'decision-making freedom' granted to the contracting authority should be used in the case of any discretionary slack (Pulka, 2016). The principles of law are "legal norms of particular importance in the legal system, also described as fundamental norms" (Pulka, 2016). They are characterised by their axiological nature, as they present certain values that are valued in a given legal system. They determine the direction of legislative action, the direction of interpretation of legal provisions, the manner in which the law is applied, and they indicate ways that use can be made of the rights granted to particular entities (Pulka, 2016).

The principles of the PPL are defined by the Law on Public Procurement in articles 16-20, and by assumption apply to all modes of awarding public contracts (Wiśniewski, 2023). The list of principles is non-hierarchical, which means that no one principle is superior with regard to the others (Dzierżanowski, 2021c, pp. 482-483). Some are the logical consequence of constitutional values, or come from the Treaty on the Functioning of the European Union and case law of the CJEU (Królikowska-Olczak, 2022). The 'constitutional' PPL principles include the principles of writtenness, openness and transparency (Królikowska-Olczak, 2022), while the principles that are based on EU law include the principle of equal treatment and the principle of fair competition (Królikowska-Olczak, 2022). For the purposes of this article, the principles of fair competition, transparency, openness and writtenness are discussed below.

4.1. Principle of Fair Competition

According to the principle of fair competition, the contracting authority prepares and conducts proceedings for the awarding of contracts in such a manner as to ensure fair competition and equal, transparent and proportional treatment of contractors (PPL, article 16 point 1). This principle is addressed to the contracting authority, which should enable fair competition in preparing and conducting procurement among contractors, and the contractor – as a competitor they should avoid acts of unfair competition (Dzierżanowski, 2021b, pp. 478-479).

Dzierżanowski (2021b) emphasised that on the basis of the PPL, it is not so much competition in general that is protected, but fair competition as a 'domain' (Dzierżanowski, 2021b, pp. 478-479) of the European Union. According to the author, the principle of fair competition satisfies the aim of the PPL in ensuring just access for contractors to the market, without the use of preferential conditions and alongside stigmatisation of unethical behaviour.

The concept of the act of unfair competition should be understood in the context indicated in the Bill of 16 April 1993 on combatting unfair competition (2022) as acts contrary to the law and good practice if they threaten or violate the interests of another entrepreneur or client. According to article 15a, bribing a person performing an official public function is an act of unfair competition.

The contracting authority should also take into account articles 6 and 9 of the Bill of 16 February 2007 on Competition and consumer protection (, 2023), which constitute a prohibition on agreements aimed at eliminating, restricting or violating competition on a particular market, as well as a prohibition on abusing a dominating position (Wiśniewski, 2023a), and thus a prohibition on concluding bid collusion agreements.

The contracting authority's obligations also include preparing a procurement subject description (hereinafter: PSD) that is clear and exhaustive, using precise and understandable terms, and taking into consideration requirements and circumstances that may influence the preparation of offers (Wiśniewski, 2023a). A further obligation on the part of the contracting authority is to eliminate from the proceedings any contractors who violate the rules of fair competition (Wiśniewski, 2023a), on the basis of article 226 paragraph 1 point 7 of the PPL, and the provisions of the Bill on Combatting unfair competition.

The principle of fair competition is of greater importance in reducing the risk of bid collusion and bribery of people fulfilling public functions. Guaranteeing equal opportunities for all contractors, combined with the principles of transparency, writtenness and openness used in public procurement proceedings, are a powerful tool in preventing corruption at every stage of public procurement proceedings.

4.2. Principle of Transparency

The principle of transparency is expressed in article 16 of the PPL. In its ruling ref. KIO/UZP 2483/10, the National Appeals Chamber (NAC) stated that "the principle of transparency means that public procurement proceedings comprise clear rules and contain means of verification of their correct application, while the contracting authority takes predictable decisions based on previously agreed criteria which ensure that the principle of fair competition and the equal treatment of contractors is observed" (Wyrok KIO z 25.11.2010 r.). The contracting authority will therefore have complied with the principle of transparency if it has correctly prepared a PSD in a way that is understandable, precise, exhaustive and unequivocal, and which takes into account requirements and circumstances that may influence the preparation of offers (Wiśniewski, 2023a).

In the context of the principle of transparency, of significant importance are the rulings of the Court of Justice of the European Union. In its ruling for case C-42/13, the CJEU stated that "the objective of the obligation of transparency is to guarantee that there is no risk of favouritism or arbitrary treatment on the part of the contracting institution. It requires that all conditions and principles of public procurement proceedings are defined clearly, precisely and unequivocally in procurement announcements or in specification of the conditions of procurement, such that, firstly, it allows all bidders that are sensibly informed and demonstrate basic diligence to understand the precise scope of such conditions, and to interpret them in the same way, and secondly, it allows contracting institutions to conduct proper verification of whether the bids submitted by bidders meet the criteria set out for a given contract (cf. the ruling of the Commission/CAS Succhi di Frutta, C-496/99 P, EU:C:2004:236, points 108–111)" (Wyrok Trybunału Sprawiedliwości Unii Europejskiej, 2014 r.). In another ruling in case C-336/12, the CJEU stated that "the principle of equal treatment and the obligation of transparency constitute an obstacle to negotiations between the contracting institution and bidders during public procurement proceedings, as a result of which a bid cannot be modified once it has been submitted, neither on the initiative of the contracting institution, nor the bidder. For this reason, the contracting institution cannot demand clarification from a bidder whose bid is considered to be unclear or non--compliant with the specifications of key conditions of the contract (...) article 2 of Directive 2004/18 does not prevent corrections or additions to the details of a bid, especially if it obviously requires slight explanation or correction of evident material errors" (Wyrok Trybunału Sprawiedliwości Unii Europejskiej, 2013).

4.3. Principle of Openness

The next principle that should be mentioned is the principle of openness, which requires that public procurement proceedings be open (Ustawa Prawo zamówień publicznych, 2023, article 18 paragraph 1). Due to the fact that public procurement relates to public matters, it is desirable that there is social oversight of the contract awarding process (Dzierżanowski, 2021a, pp. 466-468). Such openness refers not only to the contracting authority and contractors, but to all parties, irrespective of whether they demonstrate a legal interest (Dzierżanowski, 2021a, pp. 466-468). Information about procurement is public information (Wiśniewski, 2023b), therefore anyone can participate in the bid opening session and obtain access to proceedings documentation (Wiśniewski, 2023b). Such a solution guarantees the transparency of public procurement proceedings, and is a tool for verifying the legal compliance of actions taken.

Access to contract documentation is provided through the requirement to prepare basic documentation reflecting the course of the proceedings – the proceedings protocol (Dzierżanowski, 2021a, pp. 466-468). This should be conducted on an ongoing basis, and upon application is made available together with attachments to any interested party (Dzierżanowski, 2021a, pp. 466-468). Such protocol attachments include "bids, applications for permission to participate in proceedings, correspondence between the contracting authority and contractors, tender committee meeting protocols, and all other documents pertaining to the proceedings, including the contract" (Dzierżanowski, 2021a).

Wiśniewski (2023b) considers practical application of the principle of openness to consist of: openness of the content of procurement announcements, openness of information from the opening of bids, and the obligation for the contracting authority to provide unlimited access on its website to the specific conditions of the contract for both unlimited and basic mode tenders (see article 133 paragraph 1, article 280 paragraph 1, and article 225 paragraph 5 of the PPL, Wiśniewski, 2023b).

There are certain exceptions to the principle of openness that cannot be interpreted broadly (Dzierżanowski, 2021a, pp. 466-468). Article 18 paragraph 2 of the PPL states that the contracting authority may restrict access to information related to public procurement proceedings only in cases provided for in the bill. Further analysis of article 18 states that information which constitutes trade secrets in the understanding of provisions on combatting unfair competition is not revealed if the contractor, when submitting such information, stated that it cannot be made available and indicated that such information constitutes a trade secret. The contractor cannot conceal information regarding the name, first names and surnames, the seat and locations where activity is conducted, or the place of residence of contractors whose bids have been opened, and information on the prices and costs presented in bids. If justified by the protection of privacy or public interest, the contracting authority may not reveal personal data in the case of contracts awarded on the basis of article 214 paragraph 1 point 1 letter b of the PPL, and information on remuneration in the case of contracts awarded on the basis of article 214 paragraph 1 point 2 (Dzierżanowski, 2021a).

4.4. Principle of Writtenness

The principle of writtenness is expressed in article 20 paragraph 1 of the PPL. The writtenness of public procurement proceedings should be understood according to article 7 point 16 of the PPL as a means of expressing information through the use of words, numbers or other written symbols that can be read and reproduced, as well as shared through the use of electronic means of communication. This constitutes the most widely used form of communication covering the written, electronic and the documentation form (Wiśniewski, 2023c). According to article 78 of the Bill of 23 April 1964 of the Civil Code (hereinafter: CC; 2023), to preserve written form it is sufficient to apply a handwritten signature to a document containing content of a submitted declaration of will. Article 781 of the CC states that to preserve electronic form, it is sufficient to submit a declaration of will in electronic form and add a qualified electronic signature. Meanwhile, to preserve document form it is sufficient to

submit a declaration of will in the form of a document in such a way as to make it possible to determine the person submitting such declaration.

The PPL sets out the obligation to preserve written or electronic form in the cases of, amongst others, subcontractor agreements, delegation by the supervisor of the contracting authority of actions reserved for them to employees of the contracting authority, declarations in written form of conflict of interests or the lack thereof, and reservations as to the proposed subcontractor agreement submitted by the contracting authority (Wiśniewski, 2023c).

The basic document illustrating the course of proceedings in the awarding of public contracts is the proceedings protocol, continuously maintained in written form in an ordered manner. The requirement to preserve the written form of such documents allows not only the course of the proceedings themselves and the submitted declarations to be followed, but also allows for verification of the train of thought of the contracting authority conducting the proceedings (Saternus, 2021). Any inaccuracies that are not reflected in decisions in writing should raise vigilance among interested parties and inspection bodies due to the danger that corrupt behaviour may have occurred.

As a rule, the writtenness of public procurement proceedings is required *ad probationem*[3]. Exceptionally, the PPL provides for such *ad solemnitatem*[4], amongst others in cases defined in article 65 paragraph 3 of the PPL, and in article 464 paragraph 3 of the PPL (waiver of the requirement to use electronic means of communication, applications for permission to participate in proceedings or a competition, applications referred to in article 371 paragraph 3 of the PPL, bids or part thereof, reservations as to a proposed subcontractor agreement submitted by the contracting authority) (Wiśniewski, 2023c). Article 432 of the PPL requires a written form to be preserved *ad solemnitatem* for contracts. Such a requirement is particularly valuable in the context of preventing corruption, as it provides certainty as to the arrangements between the contracting authority and the contractor, and limits the risk of unofficial arrangements aimed at circumventing the law. Additionally, in line with the principles of transparency and openness, as an attachment to the proceedings protocol, the contract is made available on application to any interested party, which makes it possible to verify the correctness of the implementation of contract provisions by the contracting authority and the contractor.

Saternus (2021) indicated that exceptions to the principle of writtenness are: a dynamic purchasing system, electronic bidding, auctions, submitting a declaration on extending the validity of a bid, which does not have to be submitted in written form under pain of nullity.

4.5. Inspection by the President of the Public Procurement Office

According to article 469 point 1 of the PPL, the President of the Public Procurement Office (hereinafter: PPO President) oversees the procurement system, and in particular oversees compliance with the principles of awarding contracts and carries out inspections of the contract awarding process to the extent provided for by the bill, as well as disseminating the principle of professional ethics among people carrying out tasks in the procurement system.

The current regulations authorise the PPO President to conduct ad hoc inspections and prior mandatory inspections (Kontrole Prowadzone przez UZP, 2023) that are not intended to examine the justification and efficiency of the contracting authority, but only to verify whether the conducted proceedings are in compliance with the law (cf. Inspections conducted by the PPO).

The term ‘oversight’ used by the legislator in the context of the duties of the PPO President means that such person does not possess preventative or correcting authorisations as to the course of proceedings (Jerzykowski, 2021). Thus their role is limited to imposing administrative penalties, bringing action to

[3] For the purposes of evidence.
[4] Under pain of nullity.

declare a concluded contract invalid, submitting appeals to the public procurement court with regard to rulings of the National Appeals Chamber, or submitting cassation appeals to the Supreme Court with regard to rulings of the public procurement court (Jerzykowski, 2021).

5. Conclusion

Without doubt, public procurement is an area of public life that is under threat of corrupt behaviour, irrespective of the stage of proceedings. This is because they involve the expenditure of considerable amounts of public funds, which may become attractive to dishonest contracting authorities and contractors expecting to obtain personal or material benefits from the proceedings. The correct conduct of public procurement proceedings requires them to be based on certain frameworks set out by public procurement principles. Failure to implement PPL principles may lead to abuses in the course of such proceedings. The aim of PPL principles is to enable multilateral inspection in the course of proceedings – by the contracting authority, contractors, all parties interested in the course of the procurement process, and inspection bodies. If it is determined that irregularities have occurred, this provides the possibility to react, i.e. to undertake inspections and report abuse, or for the PPO President to submit a complaint deeming the contract invalid. Taking the above into consideration, it is advisable that at every stage of the proceedings, the contracting authority should ask themselves the question of whether they are proceeding according to the regulations and to all of the current PPL principles. Only the development of a coherent and secure public procurement system, within which all the principles are respected, can provide hope for a reduction in the amount of corrupt behaviour.

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Zasady zamówień publicznych a zapobieganie korupcji

Streszczenie: W artykule wskazuje się na trudności związane ze zdefiniowaniem zjawiska korupcji, główne zagrożenia zamówień publicznych związane z występowaniem zachowań korupcyjnych oraz na rolę właściwego stosowania zasad zamówień publicznych jako narzędzi zapobiegania korupcji. Zasady te bowiem są wskazówką dla zamawiającego, jak podejmować pewne działania w trakcie postępowania, a jakich unikać, aby postępowanie o udzielenie zamówienia publicznego przebiegło w sposób zgodny z prawem, a środki publiczne zostały wydane w sposób efektywny i rozsądny. W przypadku występowania luzów decyzyjnych są wskaźnikiem właściwego wykorzystania pozostawionej zamawiającemu swobody podjęcia decyzji. Zagrożenie korupcją w zamówieniach publicznych wynika głównie z faktu wydatkowania w ich trakcie znacznych środków publicznych, a ryzyko wystąpienia przekupstwa czy zmowy przetargowej istnieje niezależnie od etapu prowadzonego postępowania.

Słowa kluczowe: zamówienia publiczne, korupcja, zasada uczciwej konkurencji, zasada przejrzystości, zasada jawności, zasada pisemności