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Applying the Defense and Security Mode in Relation to the Process of Acquiring Materials and Services for Military Units

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Abstract
The use of the defense and security mode in the process of procuring materials and services for military units is a key element in ensuring the effectiveness and security of military operations. Special regulations regarding public procurement in the field of defense and security enable the acceleration and adaptation of procurement processes to the unique needs of the Armed Forces, which is essential in the context of urgent and specific operational requirements.

In the defense and security mode, the procurement process for goods and services by military units includes several key aspects. Primarily, it allows the use of negotiation procedures without announcements, which is critical in situations requiring the protection of state secrets or when standard procurement procedures would be too time-consuming in response to urgent military needs.

Additionally, the defense and security mode allows the selection of suppliers who not only offer competitive prices but, most importantly, can guarantee fast delivery, meet specialized technical requirements, and possess the necessary security certifications. The use of this mode also requires special attention to the protection of confidential information, which includes the use of non-disclosure agreements and control over the flow of sensitive data.

This process is also appropriately monitored and subject to rigorous controls to ensure that all stages of procurement are carried out in accordance with the highest security standards and principles of responsible management of public funds. As a result, the defense and security mode is an essential tool which enables military

units to effectively and safely equip themselves with materials and services critical to their missions.
The aim of this work is to present the basic issues, legal acts, institutions, and procedures through which technical material means and services are procured from the civilian market for military units. The author pays particular attention to the awarding of public contracts in the defense and security mode, regulated in Chapter VI of the Public Procurement Law. This work was written based on an analysis of legal regulations and procurement procedures as well as on passive observation of the activities of Military Economic Units.

Keywords: logistics, public procurement, defense, security

INTRODUCTIONS

Military units, like any other institution, require various services and materials for their smooth and uninterrupted operation, which in the military are referred to as technical material means. In the vast majority of cases, the needs arising in the military cannot be met within their own capabilities—whether it is the production of vehicle parts or the provision of specialized repair or construction services. After all, the continuous acquisition and improvement of military resources is carried out with the aim of:

1. maintaining and increasing defense capabilities - modern, well-maintained and technologically advanced equipment increases the military's effectiveness in defending the country against potential threats;
2. adaptation to new threats and technologies - the security environment is dynamic, with new threats emerging from geopolitical, technological and tactical changes. In order to effectively counter these threats, the military must constantly modernize its equipment, implementing new technologies which can meet current challenges more effectively;
3. replacing old equipment - military equipment is subject to natural wear and tear and becomes obsolete over time. Regularly replacing old weapon systems, vehicles, communication equipment and other critical components is necessary to ensure that all units are equipped with functional and reliable equipment;
4. strengthening interoperability - international cooperation and coalition operations require that equipment and systems of different countries be compatible. Acquiring new goods which meet international standards allows for better cooperation with allies and increases the effectiveness of joint operations;

5. Support for the defense industry - investing in new military equipment often also serves to support the domestic defense industry. Through procurement in the local market, governments can stimulate technological and economic development by supporting innovation and employment in the defense sector.

To achieve these objectives, special military units have been created – the Military Economic Units – whose main task is to procure necessary technical material means or construction and repair services from the civilian market and provide them to the military units under their territorial jurisdiction. The Military Economic Units are also responsible for:

1. Logistics support - all military units must have access to essential resources such as equipment, fuel, ammunition, food, clothing, and other consumables. They also manage the storage and distribution of these resources, which includes logistics planning, transportation, and warehouse maintenance.
2. Infrastructure maintenance - economic units control the budget of military units, carrying out tasks related to accounting, payments, expenditure control and procurement. They manage the funds allocated for operational and economic activities, which requires precise financial planning and reporting.
3. Administrative, housing and social support - this includes managing personnel, legal services, documentation and other office-related administrative tasks. Economic Units often also handle organizing social and housing support for soldiers and their families. This may include managing recreation centers, organizing cultural and recreational activities as well as providing health and social care assistance.
4. Crisis management and response to failures - military economic units are responsible for coordinating actions aimed at prompt restoration of the normal functioning of units. This includes crisis management, infrastructure repairs, and the restoration of essential resource supplies.

Goods and services are procured through a procedure followed by the awarding of a public contract to a civil company selected by the contractor, which has expressed its willingness to carry out the delivery or service. The most important law governing public procurement procedures is the Public Procurement Law of 11 September 2019. This law regulates the rules for awarding public procurement contracts by public sector entities, including government administration, local governments as well as various institutions and public utility companies. It defines how public authorities should acquire goods, services and construction works, aiming to

ensure transparency, effective use of public funds and equal and fair treatment of all bidders. The law addresses issues such as:

1. The principles of awarding contracts – the law promotes principles such as transparency, competitiveness, fairness, and equal treatment of suppliers. Its purpose is to prevent corruption and ensure that public funds are spent responsibly and effectively.
2. Procurement procedures - the law defines various procedures for awarding contracts, such as open tenders, restricted tenders, negotiations without announcements, competitive dialogues, and qualification systems. The selection of the appropriate procedure depends on the value and specificity of the contract.
3. Financial thresholds - the law introduces financial thresholds determining which procedures should be followed depending on the value of the contract. Contracts exceeding certain thresholds are subject to more stringent procedures to ensure greater transparency and control.
4. Legal protection measures – the Public Procurement Law provides appeal mechanisms for bidders who believe their rights were violated during the procurement process. This allows bidders to file complaints and appeal to independent bodies, such as the National Appeal Chamber.
5. International aspects – the law harmonizes Polish public procurement regulations with European Union provisions, which is important in the context of the EU internal market and the flow of orders between member states.
6. Scope of application – the law covers public procurement awarded by various public sector entities, including central and local government administration, as well as state and local government-owned enterprises. However, it does not apply to certain specific sectors, such as defense and security, which may be governed by separate regulations.

The Public Procurement Law is, therefore, a tool designed not only to ensure the efficient and transparent expenditure of public funds but also to protect public interests and promote fair competition. It is regularly updated to adapt it to changing market conditions, the needs of public administration and the legal requirements of the European Union. The Public Procurement Law plays a key role in regulating the purchasing processes carried out by public institutions, ensuring that public funds are spent responsibly, efficiently and transparently. The main tasks and objectives of this law are:

1. Ensuring transparency in the procurement process – the law aims to ensure openness and transparency in the public procurement process. All information

regarding tenders, including requirements, evaluation criteria, and results, must be publicly available, thereby helping to prevent corruption and favoritism.
2. Promoting fair competition – through the principles of equal treatment and non-discrimination, the law seeks to create a level playing field for all suppliers, both domestic and foreign. This aims to increase fair competition, which can lead to better quality services and lower prices for public institutions.
3. Optimizing the use of public funds – the Public Procurement Law requires public institutions to choose offers that provide the best value, considering not only price but also quality, functionality, cost-effectiveness and other criteria. This promotes more responsible and strategic spending of taxpayers money.
4. Legal protection for bidders – the law provides appeal procedures that allow participants in the tender process to file complaints and appeals if they believe their rights have been violated. This ensures fair treatment of all bidders and enables the resolution of disputes in an orderly manner.
5. Compliance with international regulations – the law harmonizes Polish regulations with European Union provisions concerning public procurement, which is important for economic integration and international cooperation. This allows Polish companies for easier access to markets in other EU countries and supports the presence of foreign companies in the Polish public procurement market.
6. Strengthening ethical principles and responsibility – by requiring that all procurement processes be carried out in accordance with clearly defined legal and ethical standards, the law helps build a culture of accountability and trust in the public sector.

In conclusion, the Public Procurement Law plays an important role in managing public finances and ensuring that public contracts are awarded in a way whichserves the public interest, promotes healthy competition and ensures fair treatment of all market participants.

1. STAGES OF THE PROCUREMENT PROCESS

The public procurement procedure in Poland is based on the provisions of the Civil Code, but it is primarily regulated in detail by the Law - Public Procurement Law. The process is designed to ensure transparency, equal treatment of all bidders and maximum efficiency in public spending. The key stages of this procedure are:
1. Procurement Planning - At the outset, the contracting authority must precisely define its needs and prepare a detailed description of the object of the

procurement. It is also necessary to specify the conditions for participation in the procedure and the criteria for evaluating offers, which must be clearly defined and publicly announced. In military units, this is most often done based on a previously prepared Public Procurement Plan, presented by JW

2. Announcement of the Procurement - The contracting authority publishes the procurement announcement in the Public Procurement Office (PPO) and, for larger value contracts, in the Official Journal of the European Union. The announcement should include all essential information regarding the procurement, such as a description of the subject, conditions for participation, deadlines and criteria for offer selection.
3. Submission of Offers - Bidders prepare and submit their offers according to the requirements specified in the announcement. Offers must be submitted on time and meet all formal requirements to be considered.
4. Evaluation of Offers - The contracting authority evaluates the submitted offers based on the evaluation criteria, which may include price, quality, experience, execution time and other aspects related to the subject of the procurement. The evaluation process must be objective and transparent.
5. Selection of the Offer - After the evaluation, the contracting authority selects the most advantageous offer. All participants in the procedure are informed of the results, and information about the selected offer is published in the Public Procurement Office.
6. Contract Conclusion - A contract is concluded with the selected bidder, which specifies the detailed terms of the procurement's execution, including the rights and obligations of both parties, deadlines, payment conditions, and issues related to potential penalties and dispute resolution.
7. Execution of the Order - The contractor proceeds with the execution of the order in accordance with the terms outlined in the contract. The contracting authority monitors progress and quality to ensure that everything proceeds according to plan.
8. Acceptance and Settlement of the Procurement - After the procurement is completed, the contracting authority accepts the work and checks whether it has been carried out in accordance with the contract. The procurement is then settled, and the contractor receives payment for their services.

The entire process is designed to ensure fairness, competition, and the best value for public funds, as well as to allow for control over the proper conduct of public procurement procedures.

2. PROCUREMENT IN THE FIELDS OF DEFENSE AND SECURITY

The procedure for granting public procurement contracts in the fields of defense and security is a special procedure regulated by the provisions of Section VI of the Public Procurement Law. It is here that we find detailed regulations regarding the subject matter and scope of these contracts, the principles of awarding contracts, including those related to ensuring the security of classified information and the security of supplies as well as the procedures and course of the procurement process, which are adapted to the specific nature of the contracts in question.

The subject matter scope of contracts to which the provisions of Section VI of the Act apply is defined by the statutory definition contained in Article 7(36) of the Public Procurement Law. According to this article, "a procurement in the fields of defense and security is understood as a contract awarded by a public contracting authority or sectoral contracting authority, the subject of which concerns:

1. Supplies of military equipment, including all its parts, components, subassemblies, or software.
2. Supplies of critical equipment, including all its parts, components, subassemblies, or software.
3. Construction works, supplies, and services related to securing facilities that are under the control of entities implementing procurement in defense and security or related to the equipment mentioned in points 1 and 2, and all its parts, components, subassemblies, or software linked to the lifecycle of that product or service.
4. Construction works and services intended solely for military purposes, including critical construction works or critical services'.

From the provisions of Article 7(36) of the Act, in conjunction with the provisions regarding the subject matter scope and exclusions from the application of the Act, it follows that the application of the provisions of Section VI concerning procurement in the fields of defense and security depends on the simultaneous fulfillment of the following conditions:

1. The procurement is awarded by contracting authorities referred to in Article 4 of the Act, i.e., contracting authorities subject to the obligation to apply the Act;
2. The subject matter of the procurement concerns the contracts mentioned in Article 7(36) of the Act;
3. The value of the procurement for supplies, services, and construction works is equal to or exceeds the EU thresholds – Article 2(1)(3);

4. There are no grounds for excluding the application of the Act to procurement in the fields of defense and security.

If the subject of the procurement is related to the contracts specified in Article 7(36) of the Public Procurement Law, the contracting authority, including public finance sector units such as military budget units, is required to apply the principles, requirements and procedures for awarding contracts as outlined in Section VI of the Act, unless there are grounds for their exclusion, as specified in Articles 12-15. Consequently, there is an emphasis on proper procurement planning, ensuring that during the preparation phase of the proceedings, the value of the contract is accurately determined, and depending on the subject of the contract, strict classification of defense and security procurement is applied. This ensures the use of appropriate principles and procedures for awarding contracts as stipulated in Section VI of the Act. According to the provisions of the law and in light of the rulings of the National Appeals Chamber (NAC, Pl.: KIO), it is inadmissible to conduct the procurement proceedings under general rules when the subject of the contract falls within the fields of defense and security. Such a breach of the law constitutes grounds for annulling the proceedings under Article 255(6) of the Act, as the proceedings are burdened with an irremovable defect that prevents the conclusion of a valid contract for the public procurement (Ruling of NAC 172/15).

It is important to note the significant differences between the provisions of Section VI of the Public Procurement Law and those for classical procurement. The regulations for defense and security procurement, taking into account the specificity of these contracts, include provisions which allow the contracting authority to define the actual requirements related to the execution of the contract in the description of the subject matter, including ensuring the actual protection of classified information (Articles 406-407), ensuring the security of supplies (Article 408), ensuring the timeliness and reliability of deliveries – especially in crisis situations (Article 408(3)), limiting the scope of contractors or subcontractors, applying a separate catalogue of exclusion grounds (Article 405(2-8), (1b) and (2)), and rejecting an offer or annulling the proceedings based on grounds other than those specified in Section II of the Act (Article 418). These solutions allow for the elimination of contractors from the proceedings who cannot guarantee the fulfillment of requirements or the contractor's ability to properly execute the contract. Section VI of the Act also provides subject-related restrictions, stipulating that – unless the contracting authority decides otherwise – only contractors based in a Member State of the European Union, the European Economic Area or a country with which the European Union or the Republic of Poland has entered

into an international agreement regarding these contracts, may apply for a defense and security procurement (Article 404).

According to the Announcement of the President of the Public Procurement Office dated 3 December 2023, regarding the current EU thresholds, their equivalent in Polish zloty, amounts expressed in euros, and the average exchange rate of the Polish zloty to the euro used for converting the value of public procurement or competitions (M.P. item 1344), the current EU thresholds for the application of the law for all types of procurement in the fields of defense and security are as follows: for supplies or services – EUR 443,000.00 and EUR 5,538,000.00 for construction works.

It is important to note that despite the passage of time and the growing knowledge of contracting authorities regarding procurement in the fields of defense and security, the issue of properly classifying procurement remains a challenge, and, consequently, so does applying the correct principles and procedures for awarding contracts.

Firstly, sensitive equipment, similar to sencitive construction works, refers to situations where the equipment, construction work, or service meets two conditions:
1. It serves a security purpose;
2. It involves the use of classified information or information that must be protected for security reasons, requires its use or contains it;

In the case of supplies, according to Article 7(36)(a) of the Act, the provisions of Chapter VI apply to contracts where the subject matter of the contract involves the supply of military equipment, including all its parts, components, subassemblies, or software. According to the definition in Article 7(22) of the Public Procurement Law, military equipment refers to equipment specially designed or adapted for military purposes and intended as weapons, ammunition, or military materials. The definition of "military equipment" clearly indicates that it only covers equipment and gear that has been specifically designed or adapted for military purposes. Therefore, equipment that is used for military purposes but is not specifically designed or adapted for such use does not qualify as military equipment.

The premises determining the recognition of supplies as related to a SpW are also the requirements for carrying out an assessment of compliance of the products in question, which are the subject of the supplies, with the technical specifications, including the purpose, the intended use of these supplies, which cannot be constructively used for purposes other than the SpW to which they are related.

Examples of delivery of sensitive equipment:

1. Supply of equipment (devices) of technical security (protection) systems of objects of organizational units and cells of the Ministry of National Defense;
2. Delivery of parts, equipment of water and sewage networks, power, heating, ICT networks.

When it comes to services in the defense and security fields, a prerequisite here is a close connection to military equipment. These include, for example, repairs overhauls, technical inspections, servicing, modernization and modification of SpW. Services related to SpW are also verification checks, equipment testing, performance of expertise and analysis. Not infrequently, when awarding such a contract, a trickle of classified information comes into play, making the selection of the Contractor a matter of additional responsibility. Therefore, it is crucial to properly qualify the equipment in order to apply the appropriate procurement procedures.

3. CONCLUSION

The defense and security procurement regime is an essential mechanism in the process of acquiring materials and services for military units, ensuring that these activities are carried out in a way which protects the country's key interests and ensures the effective and secure functioning of the Armed Forces. It is a tool enabling flexible responses to the specific and often rapidly changing needs of the military, while maintaining the highest standards of security and confidentiality.

The use of the defense and security procurement regime allows for the bypassing of certain standard public procurement procedures in situations where adhering to those procedures could jeopardize the effectiveness and timeliness of critical supplies, which are vital from the defense perspective. This allows military units to gain rapid access to modern technologies, armament, specialized equipment and other resources essential for maintaining combat and operational readiness.

Moreover, the defense and security procurement regime facilitates more focused and purposeful investments in the defense industry, which is crucial for developing the domestic industrial and technological base. It also contributes to strengthening the country's defense independence and can stimulate economic growth by supporting local businesses and innovations. It is worth emphasizing that the effective use of this mode requires not only an adequate understanding of its principles and procedures,

but also continuous monitoring and evaluation of its effectiveness. This requires cooperation among various government agencies, armed forces and industrial partners as well as adaptation to the changing international security environment and technology.

In conclusion, in the face of increasing global threats and challenges, the defense and security procurement regime becomes even more significant. However, it must be applied thoughtfully and in accordance with the principles of transparency and accountability to ensure that resources are used in the most efficient way while safeguarding national interests. Therefore, developing knowledge, competencies and the necessary infrastructure for its effective implementation is key to ensuring that military units are fully prepared to operate under any conditions whenever needed.

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