

Manner of incurring expenditures in compliance with the principle of fair competition

## **Rules for the implementation of public procurement**

**Public contract** is a written contract for pecuniary interest concluded between an awarding entity and a contractor, having as their object services, supplies or works foreseen in the project, provided that the above refers both to agreements awarding contract pursuant to the Act – Public Procurement Law (PPL) and agreements that pertain to contracts awarded pursuant to the principle of competitiveness.

### **General principles**

Public contracts are awarded under the project pursuant to:

- a) The Act – PPL – for beneficiaries, who, pursuant to Art. 3 of the PPL are obliged to apply it;  
or
- b) The principle of competitiveness, applicable to:
  - i. beneficiaries, who, pursuant to Art. 3 of the PPL are not obliged to comply with its provisions, for public contracts of a net value exceeding PLN 50 thousand (i.e. exclusive of the Goods and Services Tax (VAT)),
  - iii. beneficiaries specified in item a):
    - for public contracts of a value not exceeding the amount specified in Art. 4, item 8 of the PPL and, at the same time, exceeding the net value of PLN 50 thousand (i.e. exclusive of the Goods and Services Tax (VAT)), or
    - for sector contracts of a value not exceeding the amount specified in the regulations issued pursuant to Art. 11, item 8 of the PPL and, at the same time, exceeding the net value of PLN 50 thousand (i.e. exclusive of the Goods and Services Tax (VAT)).

If the application of the provisions of the PPL is excluded pursuant to binding legal regulations other than the PPL itself, the beneficiary specified in Art. 3 of the Act – PPL shall conduct the public contract procedure pursuant to the said regulations.

Should the beneficiary violate the terms and conditions or procedures of applying for the award of public contract, the Foundation for Polish Science shall deem the expenditures incurred with such contract, in whole or in part, as ineligible, pursuant to the regulation of the competent Minister of regional development issued pursuant to Art. 24, item 13 of the Act of July 11, 2014 on the principles of implementation of the cohesion policy programmes, financed under the 2014-2020 financial perspective (Journal of Laws, item 1146 incl. further amendments).

### **Preparation of documentation related to public contract**

The beneficiary is obliged to prepare and conduct the procedure for the award of public contract under the project in a manner that ensures, in particular, fair competition and equal treatment of all contractors.

During the procedure for the award of a public contract the internal procedures of the beneficiary on awarding public contracts, e.g. in form of internal instructions or by-laws, shall be applied. These procedures take into account all stages of the procedure along with the specification of individual actions and positions responsible for their realisation.

### Detailed schedule of works

With respect to the most risky procedures<sup>\*\*\*\*\*</sup> it is recommended to develop a detailed schedule of works with the aim to enable a proper and efficient realisation of the public contract. The schedule of works should be developed on the initial stage of project realisation, before the procedure is conducted, and it should contain the dates of realisation for each stage, i.e.:

- a) the preparation of documentation related to public contract, including the description of the object of contract,
- b) initiating the procedure for the award of public contract,
- c) conducting the procedure for the award of public contract,
- d) conclusion of the agreement,
- e) realisation of the public contract,
- f) acceptance of public contract documented by acceptance protocol,
- g) verification of invoices issued by the contractor.

At a minimum, the scope of the schedule of works should contain information about the procedure of awarding public contract, the commencement and end dates of each stage and the specification of individuals responsible for the performance of each task. In order to provide audit trail, the schedule of works should be archived together with project documentation.

### De-centralised contract

In order to obtain the most competitive offers and considering the ban on dividing public contracts in order to avoid the application of statutory provisions, in the event of beneficiaries being central units realising the project with help of local/field units it is recommended to conduct the public contract procedure on central level, unless certain prerequisites exist that justify a different mode of conduct. The decision to award a decentralised contract may be taken provided that the analysis of both purchase methods demonstrates the financial benefits and higher competitiveness of the second solution. The existence of the said prerequisites should be documented in form of an estimate and comparison of costs and benefits connected with the selection of both purchase methods: central and decentralised.

### Estimating the value of the contract

The estimated value of the public contract should be based on the current market prices of the contracted goods. For this purpose, whenever it is possible, market analysis should be conducted among at least three potential contractors of the given public contract<sup>+++++</sup>. If there are less than three potential contractors on the market, a justification stating the objective grounds confirming this fact should be presented. The estimation of the value of public contract may also be conducted basing on similar public contracts awarded during the period specified in Art. 35, item 1 of the Act – PPL, provided that the contractors were selected in a competitive procedure. Documentation concerning the manner of estimating the value of public contract should be archived together with the documentation of the said public contract.

The value of the public contract should be estimated with all due diligence, taking into account any possible supplementary contracts and it shall be documented. It is forbidden to divide the public contract so as to lower its estimated value, however, for the purposes of establishing the value of a public contract it should be considered that all of the following conditions have to be met:

- a. services, supplies and works are identical with respect to function or kind,

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<sup>\*\*\*\*\*</sup> Risk assessment should take into account e.g. the following factors: contract value, time limits resulting from project schedule, availability of potential contractors, feasibility of the contract, level of complexity of the object of the contract, logistic issues etc.

<sup>+++++</sup> Does not apply to contracts for recurring services or supplies, specified in Art. 34 item 1 of the Act - PPL.

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- b. public contract may be awarded at the same time,
- c. the public contract may be realised by a single contractor.

If the public contract is granted in parts (due to certain economic, organisational or purpose-related reasons), the value of the public contract shall be calculated as the total value of individual parts<sup>\*\*\*\*\*</sup>.

The estimated value of public contract should be valid at the moment of publication of the contract notice, pursuant to Art. 35 of the Act - PPL. If the circumstances having influence on the calculation of the contract have changed after that calculation was made, the awarding entity shall make a change in the calculation prior to the start of the award procedure. The manner of estimating the value of public contract should be documented.

### **Description of the object of contract and dates**

The description of the object of a public contract shall be prepared with use of the terms and codes specified in the Common Procurement Vocabulary<sup>§§§§§§</sup> specified in the Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (Official Journal of the EU EC L 340 of the 16.12.2002, page 1 incl. further amendments; Official Journal of the EU, Polish special edition, chapter 6, vol. 5, page 3).

The dates referring to all stages of the public contract awarding procedure shall be determined pursuant to national legal regulations and to the *Guidelines on cost eligibility under the European Regional Development Fund, the European Social Fund and the Cohesion Fund for the years 2014-2020*, and in a manner that ensures the compliance with such dates (this refers both to the shortening and prolongation of periods). The schedules should be determined taking into account the complexity of the public contract awarding procedure, the nature and object of the contract as well as the available personnel of the awarding entity<sup>\*\*\*\*\*</sup>, its duties, skills and experience.

### **Conditions of the participation in the procedure and bid evaluation criteria**

All contractors shall have the same access to information related to the given contract and none of the contractors shall be privileged in comparison to the others, and the procedure shall be carried out in a transparent way.

The terms and conditions for the participation in the public contract awarding procedure shall be determined in a manner proportional to the object of the public contract, however they must not limit the competition by establishing requirements that exceed the needs required for the achievement of the project objectives and that lead to the discrimination of contractors.

The evaluation criteria of bids placed under the public contract awarding procedure shall contain the requirements connected with the object thereof, provided that:

- a. these criteria must not limit the competition by establishing requirements that exceed the needs required for the achievement of the project objectives and that lead to the discrimination of contractors,
- b. generally, apart from requirements related to the price, these criteria should also specify other requirements related to the object of the contract, such as the quality, functionality, technical parameters, environmental, social and innovative aspects, servicing, date of realisation and maintenance costs.

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<sup>\*\*\*\*\*</sup> For beneficiaries obliged to apply the provisions of the Act – PPL – does not apply to contracts specified in Art. 6a of the Act -PPL.

<sup>§§§§§§</sup> The Common Procurement Vocabulary is available, among, others, at the address:

[http://www.uzp.gov.pl/cmsws/page/?D:923;wspolny\\_slownik\\_zamowien.html](http://www.uzp.gov.pl/cmsws/page/?D:923;wspolny_slownik_zamowien.html)

<sup>\*\*\*\*\*</sup> The "Awarding entity" should be understood as the beneficiary (applicant) or an authorised entity that conducts the public contract awarding procedure on behalf of the beneficiary.

Bid evaluation criteria may refer to the characteristics of the contractor only for services of a non-priority nature, specified in the regulations issued pursuant to Art. 2a and 2b of the Act - PPL<sup>\*\*\*\*\*</sup>.

### Special conditions for the realisation of public contracts awarded pursuant to the Act – PPL

#### Selection of the manner of awarding the public contract

Procedures for the award of public contract are subject to the basic modes of awarding public contract, i.e. open or restricted tendering<sup>\*\*\*\*\*</sup>. If the public contract is awarded in a manner other than basic, it is required to provide a written documentation stating that the statutory conditions for the application of such manner have been fulfilled. Failure to prove the fulfilment of the conditions justifying the application of a given mode may result in deeming the expenditures under the given public contract as ineligible. In order to provide an appropriate audit trail the documents justifying the selected mode shall be archived together with the documentation concerning the relevant public contract.

#### Shortening periods

The time limits for individual stages of the procedure may be shortened (accelerated procedure) for public contracts of a value equivalent to or exceeding the amounts specified in the regulations issued pursuant to Art. 11, item 8 of the Act – PPL, only in circumstances envisaged by EU and national laws, including the case of urgent need to award a public contract. Such urgent need must not result from causes on the part of the awarding entity that such party might have foreseen acting with all due diligence<sup>§§§§§§§§</sup>. In the event of occurrence of such urgent necessity to award public contract, the fact should be documented. The documentation should be attached to the protocol of the procedure for award of public contract.

#### Information about the intention to award public contract

Prior to the formal initiation of a negotiated procedure without publication pursuant to Art. 62, item 1 point 3 of the Act – PPL, single-source procurement pursuant to Art. 67, item 1, point 1, letters a or b<sup>\*\*\*\*\*</sup> and item 1 point 1a and request for quotation, in order to guarantee an appropriate level of publication of the information to all potential contractors the information about the intention to award public contract, hereinafter referred to as the "information about public contract" should be published. The information about public contract shall be published on the website of the awarding entity, if the party has such website, and in its seat, provided that the range of publication should be relevant to the importance of such public contract for potential contractors, including contractors from other Member States. The information about public contract shall contain in particular the description of the object of contract, the evaluation criteria of initial bids, conditions for the participation in the procedure and the description of the manner of evaluation of the fulfilment thereof as well as the time limit for placing the preliminary bids, which should not be shorter than 7 calendar days from the date of publication of the announcement.

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<sup>\*\*\*\*\*</sup> Non-priority services are specified in the Regulation of the Prime Minister of January 28 2010 on *the list of priority and non-priority services* (Journal of Laws of 2010, No. 12, item 68) and the Regulation of the Prime Minister of December 3 2012 on *the list of priority and non-priority services in the field of defence and security* (Journal of Laws of 2012 item 1361).

<sup>\*\*\*\*\*</sup> For sector contracts the additional acceptable mode are negotiations with publication (pursuant to Art. 134 item 1 of the Act - PPL).

<sup>§§§§§§§§</sup> For example, the need for timely realisation of specific tasks in the project resulting from the fact that the awarding entity failed to provide sufficient time for conducting the tender procedure or that it did not initiate such procedure in advance does not constitute "urgent necessity". Neither is "urgent necessity" justified by delays in previous public contract awarding procedures. Thus, it is only possible to confirm the existence of "urgent necessity" if the awarding entity is able to demonstrate that acting with all due diligence, it was unable to foresee the occurrence of certain circumstances.

<sup>\*\*\*\*\*</sup> Does not apply to public contracts specified in Art. 67 item 3 point 1 of the Act - PPL.

The negotiated procedure without publication pursuant to Art. 62, item 1 item 3 of the Act – PPL and the request for quotation procedure shall apply to selected preliminary bids, and, in the event if preliminary bids are non-existent or have been refused, with respect to selected contractors on the market. Should the awarding entity intend to apply the single-source procedure pursuant to Art. 67, item 1 point 1 letter a or b or item 1 point 1a of the Act – PPL, in the event if more than one offer is submitted that is not subject to rejection, there are no grounds for the application of such procedure.

### **Announcement about the intention to conclude an agreement**

In situations when the application of a non-competitive procedure without publication pursuant to the PPL was preceded by a procedure of the award of public contract conducted in the basic mode or if an urgent necessity occurred not due to reasons on the part of the awarding entity that could not have been predicted, as well as in the case of supplementary contracts, an announcement on the intention to conclude an agreement shall be published, as specified in Art. 62, item 2a and Art. 66, item 2 of the Act - PPL.

### **Special conditions for the realisation of public contracts awarded in compliance with the principle of competitiveness**

#### **Exclusion of the principle of competitiveness**

The principle of competitiveness shall not apply to:

- a) Public contracts concerning the services and supplies specified in Art. 4 of the Act – PPL, with the exclusion of supplies and services specified in Art. 4 item 8 of the Act – PPL, however to the supplies and services specified in Art. 4 item 3 letter i and with respect to public contract whose object is the acquisition of other titles to real property, in particular lease or rent, provided that there are no personal or equity associations,
- b) Expenditures settled with use of the simplified method.

As far as beneficiaries specified in the *General principles*, letter b (ii) are concerned, it is possible not to apply the principle of competitiveness for the awarding of public contracts to which the provisions of the Act – PPL on the negotiation procedure without publication and single-source procedure apply, provided that the requirements contained in the Special conditions for the realisation of public contracts awarded in compliance with the Act –PPL are met.

As far as beneficiaries specified in the *General principles*, letter b (ii) are concerned, the principle of competitiveness is deemed as complied with if the procedure for the award of public contract is conducted pursuant to the terms and conditions and in the manner specified in the Act – PPL, provided that the requirements contained in the Special conditions for the realisation of public contracts awarded in compliance with the Act –PPL are met.

As far as beneficiaries specified in the *General principles*, letter b (ii) are concerned, the value of the public contract is calculated with respect to the given project, considering the conditions and procedures specified in the section Preparation of documentation of public contract.

#### **Conditions of the compliance with the principle of competitiveness**

In order to comply with the principle of competitiveness it is required to:

- c) Publish the request for quotation in compliance with the terms and conditions described below, provided that the request for quotation should contain, at least:
  - i. a description of the object of public contract, which should not refer to a specific product or source or trademarks, patents, types or specific origin, unless such reference is justified by the object of the public order and the scope of equivalence has been determined (due to the necessity to protect trade secrets it is permissible to limit the scope of the description of the object of public contract, however it is required to send the excluded

- part of the description of the public contract object to a potential contractor who obliged itself to maintain the confidentiality of the received information),
- ii. conditions for the participation in the procedure and the manner of evaluation of the fulfilment thereof, although formulating such conditions is not mandatory,
  - iii. bid evaluation criteria,
  - iv. information about the weighted score or percentage assigned to individual bid evaluation criteria,
  - v. manner of awarding score to the fulfilment of specific bid evaluation criteria,
  - vi. time limit for the placement of bids, provided that such limit must not be shorter than 7 calendar days from the day of publication of the request for quotation for supplies and services and 14 calendar days from the date of publication of the request for quotation for construction works. The period of 7 or 14 calendar days shall commence on the day after the date of publication of the request for quotation and it shall expire on the subsequent day,
  - vii. information about the scope of exclusion (with respect to affiliated entities),
  - viii. specification of the terms and conditions for introducing changes to the agreement concluded as a result of the conducted procedure, provided that the possibility to introduce such changes has been foreseen.
- d) Select the most beneficial among the placed bids that meet the conditions for the participation in the public contract awarding procedure<sup>+++++</sup> in compliance with the evaluation criteria specified in the request for quotation; the selection of the bid shall be documented by a protocol of the public contract awarding procedure.

#### **Publication of the request for quotation**

Publication of the request for quotation shall be deemed as initiating of the public contract awarding procedure under the project.

Publication of the request for quotation consists in:

- a) The publication:
  - i. on the website specified in the communication of the competent Minister for regional development, published on the website of the competent Minister for regional development<sup>+++++</sup> and, until such website is launched<sup>§§§§§§§§</sup> - by sending the request for quotation to at least three potential contractors, provided that there are three such contractors for the given public contract on the market and by publishing the said request for quotation at least on the website of the beneficiary; or
  - ii. on a website other than that specified in letter a (i), designed for the publication of requests for quotation, although this refers only to the beneficiaries described in the section General Principles, letter b (ii);

and

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<sup>+++++</sup> If the awarding entity accepts the submission of partial bids, the procedure may lead to the selection of several contractors.

<sup>+++++</sup> The said website will enable beneficiaries to publish announcements. Applicants who start the realisation of the project at its own risk before signing the co-financing agreement, should publish the request for quotations by means of sending it to at least three potential contractors, provided that there are three potential contractors of the given public contract available on the market and publish the said request at least on the website of the beneficiary, if it owns such website.

<sup>§§§§§§§§</sup> The Managing Authority of the Operational Programme guarantees that the beneficiaries will be notified about the said communication in written form or via the IT system, which is understood as the central IT system (SL2014) or local IT system (LIS) not later than 10 days before the launch of such website.

- b) As far as public contracts of a value not exceeding the amount specified in the regulations issued pursuant to Art. 11, item 8 of the Act – PPL<sup>\*\*\*\*\*</sup> - in the additional publication in the Official Journal of the EU within the scope and period specified in the Act – PPL for public contracts of such value.

### **Capital or personal ties**

In order to avoid conflict of interest, public contracts, with the exception of sector contract, awarded by the beneficiary who is not an entity obliged to comply with the Act – PPL pursuant to Art. 3 of the said Act must not be awarded to entities tied to such beneficiary by capital or personally. Capital or personal ties are understood as mutual ties between the beneficiary or persons authorised to incur obligations on behalf of such beneficiary or persons who perform actions connected with the preparation and conducting the contractor selection procedure on behalf of the beneficiary and the contractor, consisting, in particular, in:

- a) participation in a company as a partner in partnerships or private partnerships,
- b) holding at least 10% of the company's stock or shares,
- c) holding the position of member of supervisory or management bodies, proxy, authorised representative,
- d) being a spouse, spouses, direct relatives or relatives by affinity, collateral relatives or relatives by affinity up to the second degree or relatives by adoption, custody or guardianship.

If the Foundation for Polish Science discovers that a public contract has been awarded to an entity related in a manner other than those specified in letters a – d, it shall be obliged to demonstrate the existence of actual infringement of the principle of competitiveness by the existing ties.

### **Protocol of the public contract awarding procedure**

For documentation purposes, the agreement concluded with the contractor and the protocol of the public contract awarding procedure requires written form.

The protocol of the public contract awarding procedure shall contain at least:

- a) information about the manner of publication of the request for quotation,
- b) list of quotations submitted in response to the request specifying the dates of receipt of the quotations by the awarding entity,
- c) information confirming that the contractor meet the condition forbidding the awarding of contract to affiliated entities,
- d) information confirming that the contractors meet the conditions for the participation in the procedure, if such conditions were established,
- e) information about the score or percentage weight assigned to specific evaluation criteria and the manner of assigning scores to specific contractors for the fulfilment of the given criterion,
- f) specification of the selected bid along with justification,
- g) date of preparation of the protocol and signature of the awarding entity,
- h) the following appendices:
  - i. confirmation that the publication of the request for quotation was published on the website,
  - ii. submitted quotations,
  - iii. statement(s) confirming the lack of ties between the beneficiary and the contractors who submitted the quotations signed by the beneficiary or persons authorised to incur obligations on behalf of such beneficiary or persons who perform actions connected with the preparation and conducting the contractor selection procedure on behalf of the beneficiary

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\*\*\*\*\* Regulation of the Prime Minister of December 23 2013 *on the value of contracts and design contests imposing an obligation to submit the notices to the EU Publications Office* (Journal of Laws of 2013 item 1735).

and the contractor as well as the realisation or modification of the agreement concluded with the contractor.

### **Information about the result of the procedure**

Information about the result of the procedure shall be published on a publicly available website, however, if the request for quotations has been published on the website specified in the communication of the competent Minister for regional development, published on the website of the competent Minister for regional development, the information about the result of the procedure shall be published at least on such website, and until such website is launched – the information should be sent to each of the contractors who submitted quotations and published on the website of the beneficiary, provided that such website exists. The information about the result of the procedure should contain, at least, the name of the selected contractor. The beneficiary is obliged to make available the protocol of the public contract awarding procedure on request of a contractor who has submitted a quotation, although this does not apply to the submitted quotations.

### **Conclusion of the agreement**

After the completion of the procedure regulated by the present document, agreement shall be concluded with the contractor<sup>\*\*\*\*\*</sup> selected in compliance with the principle of competitiveness. If the contractor withdraws from signing the agreement with the awarding entity, it is possible to conclude an agreement with another contractor who received the second-highest score in the public contract awarding procedure.

If, in spite of proper publication of the request for quotations:

- a) only one, non-refusable quotation is submitted – the principle of competitiveness shall be deemed as fulfilled,
- b) no quotations are submitted – it is permissible to conclude the agreement with a contractor selected without following the procedure specified herein, however the agreement may be concluded only upon the consent of the National Centre for Research and Development and if the affiliated entity meets the conditions for the participation in the procedure.

### **Supplementary and additional contracts**

It is possible to award to the contractor supplementary public contracts, of a value not exceeding 50% of the value of the public contract specified in the agreement concluded with the contractor, provided that such public contracts are compliant with the object of the original public contract and if the possibility to award such public contract has been foreseen in the request for quotation and in the agreement with the contractor. In such event the application of the principle of competitiveness is not required.

It is possible to award to the current contractor of services or construction works additional public contracts not included in the original public contract and of a value not exceeding 50% of the value of the currently realised public contract, required for the proper realisation thereof, if the realisation of such contracts becomes necessary due to circumstances that could not have been foreseen, if:

- c) due to technical or economic reasons the separation of the additional contract from the original contract would result in incurring unreasonably high costs; or
- d) the realisation of the original contract depends on the realisation of the additional contract.

In such event the application of the principle of competitiveness is not required.

### **Realisation of the contract**

It is not possible to introduce significant changes in the concluded agreement with respect to the content of the bid that constitutes the basis for the selection of contractor, unless the possibility to

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\*\*\*\*\* If the awarding entity accepts the submission of partial bids, the procedure may lead to the conclusion of agreements with several contractors.



introduce such changes has been foreseen in the request for quotations and the conditions for the introduction of such change have been determined.

The manner of realisation of public contract shall be monitored and the acceptance shall be confirmed by a protocol. For this purpose, it is recommended to apply internal procedures specifying the manner of realisation and acceptance of the public contract, including the scope of responsibility and the tasks and time limits on part of the beneficiary as well as template documents (in particular the template of the acceptance protocol of the public contract object, which enables, among others, to verify whether all elements of the public contract have been realised in compliance with the agreement).

Improper realisation of a public contract, e.g. due to delays on part of the contractor, incorrect realisation of public contract, incomplete realisation of such contract (including e.g. failure to comply with the terms of guarantee) shall result in penalties that are specified in the agreement concluded with the contractor. Withdrawal from the imposition of such penalties requires written documentation stating the grounds.

If the contractor fails to fulfil the conditions of the public contract agreement and contractual penalties are not imposed, then the competent institution being party to the agreement may deem part of the expenditures connected with such public contract as ineligible.

### **Additional provisions – market analysis**

As far as expenditures of the net value from PLN 20 thousand to PLN 50 thousand, i.e. exclusive of the goods and services tax (VAT) and for public contracts to which the selection procedures described hereinabove do not apply, the beneficiary is obliged to conduct and document market research, at least by means of publishing the request for quotations along with the information about the result of the procedure by publication of the following elements on the website:

- ✓ specified in the communication of the competent Minister for issues related to regional development;
- ✓ until such website is launched, it is sufficient to publish the request for quotations on the website of the beneficiary, if such website exists, and to send the request for quotations to at least three potential contractors provided that three such contractors exist on the market;

or

- ✓ on the website of the Intermediary Authority of the SG OP (National Centre for Research and Development) or the Implementing Authority of the SG OP or on another website specified by the Managing Authority, Intermediary Authority or Implementing Authority of the SG OP.

**Pursuant to the principles listed hereinabove, the National Centre for Research and Development hereby specifies the website of the beneficiary as the correct place of publication of the request for quotations.**

The announcement of the public contract should contain at least the description of the object of the contract, bid evaluation criteria and the time limit for submitting bids. The selection shall be documented at least by a bid selection protocol, which shall contain, at least: the specification of the number of submitted bids along with the names of the bidders and scores assigned to individual bids as well as the specification of the best bid with justification.