New provisions of the Public Procurement Law ("PPL") concerning the electronization of public procurement procedures came into force on 18 October 2018. They constitute a further stage of the progressive transposition of the provisions of the EU directives coordinating the rules of public procurement (directives 2014/24/EU and 2014/25/EU) into the Polish legal system.

These regulations will apply to proceedings concerning contracts with a value equal to or exceeding the EU thresholds, commenced as of 18 October 2018 inclusive.

**Qualified electronic form of tender documentation**

The amendment introduces a general requirement of the electronic form of communication between the contracting authority and the contractor in the procedure.

In light of the new provisions, applications for admission to participation in tenders, and statements on the fulfillment of the conditions for participation in the procedure in the form of the European Single Procurement Document shall be submitted, on pain of nullity, in electronic form and signed with a secure electronic signature verified by means of a valid qualified certificate or equivalent means meeting the requirements for such a signature. Only in cases provided for by law, the contracting authority may waive the requirement of qualified electronic form when submitting bids, and the justification for such a decision should be recorded in the minutes of the procedure.

The consequence of the application of the new provisions of the PPL is the obligation to submit an electronic form, not only tender forms, but also documents constituting a part of the tender, including relevant powers of attorney. The mandatory secure qualified signature will also be applicable to documents of third parties providing contractors with their resources for the purposes of confirming their compliance with the conditions for participation in the procedure.

**Consequences for tenderers applying for a public contract**

For contractors applying for a public contract with the value above the EU thresholds, it will be necessary to use a secure electronic signature - submission of a bid, as well as an application for admission to participate in a tender in the traditional written form will be allowed only by way of exception.

Therefore, we recommend that all entities (both contractors and third parties providing their resources) intending to participate in public procurement procedures initiated after 18 October 2018 to obtain secure electronic signatures.

**Communication between the contracting authority and contractors**

According to the PPL amendment coming into force, the contracting authority and contractors will communicate exclusively by means of electronic communication. The entire exchange of information between the contracting authority and contractors will take place with the use of technical solutions enabling individual remote communication,
which in particular includes email and Internet portals. At present, the e-Procurement platform (Polish: “e-Zamówienia” platform), which is to enable the comprehensive handling of public procurement proceedings via the Internet has not been launched yet - it is to be ready only in the second half of 2019. Contracting authorities may, however, use their own commercial portals, as well as a miniPortal based on the ePUAP platform and made available by the Public Procurement Office, which enables, among others, the encryption and decryption of bids.

**Defense and security procurement**

Public tenders in the defense and security sector will also be subject to electronization, though to a lesser extent. The submission of written bids will still be the rule in this sector, though the choice of channels of communication between the contracting authority and contractors has been left to the contracting authority's discretion. The obligation to submit applications for admission to participate in a tender in electronic form also depends on the contracting authority's decision.

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