

Public Procurement Office

**REPORT ON FUNCTIONING
OF THE PUBLIC PROCUREMENT SYSTEM
IN 2006**

Warsaw, 31 May 2007

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SUMMARY

1. The basis for functioning of the public procurement system was the Act of 29 January 2004 – Public Procurement Act (Dz. U. of 2006, No. 164, Item 1163, No. 170, Item 1217 and No. 227, Item 1658).
2. The value of public contracts awarded in 2006 exceeded PLN 79.6 billion.
3. 65,537 notices were published in the Public Procurement Bulletin, including 34,813 contract award notices or design contest notices. 93% of all tendering published in the PPB were awarded by open tendering.
4. 95,910 contract notices and 74,566 contract award notices were published on the Public Procurement Portal.
5. Works represented - 46% Supplies 25%, and services – 29% of the value of awarded contracts that were published in the PPB.
6. In 93.5% contracts awarded in excess of EUR 60,000, the awarding entities selected the lowest tender (in 2005- 93%, in 2004 and 2003- 84%, 80% in 2002, 70% in 2001 and 66% in 2000). In 64% of the commenced procedures, price was the only contract award criterion.
7. The average number of tenders submitted in a single procedure was 3.62 (2005 – 4.40). In case of works, that average was 3.24 (2005 – 4.14), and for supplies and services 4.01 and 3.64 respectively (2005 – respectively 4.68 and 4.39).
8. The Polish awarding entities published 10,466 notices of tendering and design contest in the Official Journal of the European Union, which corresponded to 7.7% of all tendering published at the EU level and 55% of tendering published by the new Member States.
9. The notices published in the EU Official Journal show that, in the Polish market, 97% contracts were awarded to local enterprises. 46 public contracts were awarded to Polish economic operators abroad.
10. The President of PPO issued 2,202 administrative decisions at the first instance, including 67% concerning the approval of public contracts procedure other than the basic procedure.
11. The President of PPO carried out 436 controls of public contracts procedures, including 296 ex-ante controls. In 69% procedures subject to ex-ante control, they found infringements of the provisions of the Act and in 3.5% cases the controls were concluded by recommendations to cancel procedures.
12. The number of appeals lodged with the President of PPO was 3,077. 2006 – was the first year in the history of the public procurement system in Poland where the number of appeals decreased. (In 2005 the number of appeals was 4,094, in 2004 - 2,421, in 2003 - 2,292, in 2002 - 1,936 and in 2001 - 1,687).
13. During 2006, over 4,100 articles on public contracts were published in the national, regional and specialist press.

The report on functioning of the public procurement system covers the period from 1st January till 31st December 2006. The report was prepared on the basis of information from official documents and publications as well as other documents, reports and analyses regarding public procurement at the disposal of the Public Procurement Office.

The analysis covered information and data contained in:

- Annual reports on contracts awarded for 2006, which the economic operators are obliged to submit, based on the Article 98;
- Notices published in the Public Procurement Bulletin, regarding contracts with the value exceeding EUR 60,000;
- Notices published in the Official Journal of the European Union regarding contracts with the value exceeding the European thresholds (EUR 137,000 or EUR 211,000 for supplies and services and EUR 5,278,000 for works, and in case of sectoral contracts 422,000 for supplies and services and 5,278,000 for works);
- Documentation regarding administrative decisions that were issued;
- Documentation of controls of procedures; and
- Documentation of appeals and court cases.

I. LEGAL AND INSTITUTIONAL ASPECTS OF FUNCTIONING OF THE PUBLIC PROCUREMENT SYSTEM

I.1. Public Procurement Legislation

I.1.1. The Act of 29 January 2004 Public Procurement Law

The functioning of the public procurement system in Poland is regulated by the provisions of the Act of 29 January 2004 Public Procurement Law that was amended three times in 2006 by:

- 1) The Act of 7 April 2006 on the Amendment to the Act- Public Procurement Law and on the liability for infringement of the public finance discipline (Dz. U. No. 79, item 551 and No. 106 item 719) which entered into force on 25 May 2006.

The amendment was aimed at adjusting the Act –Public Procurement Law to the provisions of the Directive 2004/18/EC and 2004/17/EC, enhancing the correctness of the conducted contract award procedures and modifying the provisions, which according to the awarding entities and economic operators, caused difficulties in interpretation. The changes referred inter alia to:

- Limitation of the obligation to apply the provisions of the Act in case where the contract is financed in more than 50% from public funds to cases where the contract value is equal to or exceeds EUR 5,278,000 and the contract object is works comprising the activities in the field of overland and maritime engineering, construction of hospitals, sport, recreation and leisure centres, school buildings, facilities used by the higher schools or buildings used by the public administration or services connected with such works;
- Resignation from the obligation of dispatching the notices to the President of PPO, after their publication in the EU Official Journal;
- Allow the possibility to dispatch the notices to the Office for Official Publications of the European Communities by electronic means using the form placed on the website referred to in the annexes to directives, that is: www.simap.europa.eu;

- Resignation from the obligation of publication of the information notice on the planned sectoral contract;
- Simplification of the contract award procedures below the threshold of EUR 60,000;
- Introduction of central purchasing body;
- Extension of the obligation to supplement the document confirming the fulfilment of the conditions for participation in the procedure to cases other than the risk of cancellation of the procedure;
- The possibility of selecting the best tender by means of electronic auction. The former contract award procedure referred to as the electronic auction was named the electronic bidding.

Furthermore, the provisions concerning the legal protecting measures have substantially been altered. The possibility of lodging the protest in other than a written form was accepted. The time period for lodging the protest against the contract notice, and in open tendering also against the specification of essential terms of contract was restricted to 7 or 14 days, depending on the contract value. The joined examination of the protest against separate actions was introduced. The economic operators, who participated in the contract award procedure, are able to join the appeal procedure lodged by other economic operators in course of this contract award procedure.

On 21 August 2006 the Announcement of the Speaker of the Sejm on the consolidated text of the Act- Public Procurement Law was published (Dz. U. No. 164, item 1163).

2) The Act of 24 August 2006 on the state personnel reserve and high state post (Dz. U. No. 170, item 1217), which entered into force on the 27 November 2006. The amendments concerned the rules of appointment and recall of the President and Vice-Presidents of PPO.

3) The Act of 6 December 2006 on the rules for conducting the development policy (Dz. U. No. 227, item 1658), which entered into force on 1 January 2007. It gave the managing institution, referred to in provisions on the rules for conducting the development policy, the right to make a request to the President of PPO to conduct the control of the contract award procedure.

I.1.2. Regulations to the Act

Taking into consideration the enacted Act of 7 April 2006 on the amendment to the Act- Public Procurement Law and the Act on the liability for infringement of the public finance discipline, 10 new regulations to the Act- Public Procurement Law were issued in 2006:

1. Regulation of The Prime Minister of 17 May 2006 on the rules regarding the procedure for examining the appeals (Journal of Law, No. 87, item 603)
2. Regulation of The Prime Minister of 19 May 2006 on the value threshold of contracts and design contests which imposes an obligation of dispatching the notices to the Office for Official Publications of the European Communities (Journal of Law, No. 87 item 604)
3. Regulation of The Prime Minister of 19 May 2006 on the types of documents which may be requested by the awarding entity from the economic operator and forms in which these documents may be submitted (Journal of Law, No. 87, item 605)
4. Regulation of The Prime Minister of 19 May 2006 on the report on the contract award procedure (Journal of Law, No. 87, item 606)
5. Regulation of The Prime Minister of 19 May 2006 on the amount of remuneration for arbitrators (Journal of Law, No. 87, item 607)

6. Regulation of The Prime Minister of 19 May 2006 on the amount of and detailed rules of collecting the appeal fee and detailed rules of accounting for costs of the appeal proceedings (Journal of Law, No. 87, item 608)
7. Regulation of The Prime Minister of 22 May 2006 on the standard forms of notices dispatched to the President of the Public Procurement Office (Journal of Law, No. 87, item 609)
8. Regulation of The Prime Minister of 22 May 2006 on the average exchange rate of Polish zloty against Euro being the basis for converting the value of public contracts (Journal of Law, No. 87, item 610)
9. Regulation of the Council of Ministers of 1 August 2006 on the entities authorized to present a motion to the European Commission stating that the business activity is conducted on the competitive market where the access is restricted (Dz. U. No. 147, item 1063)
10. Regulation of The Prime Minister of 25 August 2006 on the scope of information included in annual report on the conducted contract award procedures, its standard form and the manner of submission (Journal of Law, No. 155, item 1110)

The regulations specified in item 1-8 entered into force on the 25 May 2006 (day of entry into force of the amendment to the PPL), in item 9 – 2 September 2006, and in item 10- 15 September 2006.

I.1.3. EU Public Procurement Legislation

The essential legislative acts governing the issues of public procurement at the Community level include:

- **Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts; and**
- **Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.**

In addition to the directives mentioned above, the Community legislative framework on public procurement also consists of the following legislation that was enacted earlier:

- Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 295, 30.12.1989 p. 33);
- Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.03.1992, p. 14); and
- Commission Regulation (EC) No. 2151/2003 of 16 December 2003 amending the Regulation (EC) No. 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV).
- Commission Decision 2005/15/EC on the detailed rules for the application of the procedure provided for in Article 30 of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (published in OJ L7, 11.01.2005, p. 7);
- Commission Regulation (EC) 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of the public procurement

procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council (published in OJ L 257, 1.10.2005, p. 1);

In 2006 the following Community law acts in the field of public procurement were adopted and entered into force:

- Council Regulation (EC) No 352/2006 of 27 February 2006 repealing Regulation (EEC) No 1461/93 concerning access to public contracts for tenderer from the United States of America *OJ L 59, 1.3.2006, p. 7, entered into force with its publication;*
- Commission Regulation (EC) No 1792/2006 of 23 October 2006 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement of persons, competition policy, agriculture (veterinary and phytosanitary legislation), fisheries, transport policy, taxation, statistics, social policy and employment, environment, customs union, and external relations by reason of the accession of Bulgaria and Romania *OJ L 362, 20.12.2006, p.1, entered into force with the entry into force of Bulgaria and Romania Accession Treaty*
- Council Directive 2006/97/EC of 20 November 2006 adapting certain Directives in the field of free movement of goods, by reason of the accession of Bulgaria and Romania *OJ L 363, 20.12.2006, p. 107, entered into force with the entry into force of Bulgaria and Romania Accession Treaty*

I.1.4. Amendments to the Public Procurement Law

In 2006 the Public Procurement Office together with Ministry of Regional Development prepared a draft bill of the amendment to the Act- Public Procurement Law and some other acts. On the 4th December 2006, the draft was referred by the President of PPO to the Speaker of the Sejm (Sejm form No. 1193). On the 7th December 2006, the draft bill was referred to the Economy Committee and Self-government and Regional Policy Committee for the first reading.

I.2. Competencies of the President of the Public Procurement Office

I.2.1. Administrative Decisions

Based on the Article 154 item 2 of the Act- Public Procurement Law, The President of PPO takes decisions on individual issues stipulated in the Act. The scope of matters, which were decided by the President of PPO, was decreased by the amendment to the Act of 7 April 2006. The amendment repealed the obligation of consent of the PPO President for:

- The choice of negotiated procedure with publication, negotiation without publication and single source procurement;
- Conclusion of the contract for a time period longer than 3 years in the object of periodical or continuous services;
- Withdrawal from the obligation to request a deposit or a security on due contract performance
- Repeal the ban of conclusion of a contract prior to the final resolution of the protest in contract award procedures of the value equal to or exceeding EUR 10,000,000 for supplies and services and EUR 20,000,000 for works.

After those amendments, the PPO President is authorised to decide on:

- The entry into the list of arbitrators, deletion and suspension of the arbitrators in their rights and duties (Article 173, paragraph 2, 8 and 9);

- The entry into the list of organizations authorized to lodge legal protection measures, its refusal and deletion from the list (Article 179 paragraph 4 of the Act);
- Conclusion of a contract prior to the final resolution of the protest in contract award procedures of the value equal to or exceeding EUR 10,000,000 for supplies and services and EUR 20,000,000 for works (Article 182 paragraph 3 and 4);
- Imposition of fine (Article 202 paragraph 1 of the Act).

Between the 1st January and 31st December 2006, the President of PPO issued **2,202** administrative decisions at the first instance and **135** decisions on re-examination of the case. In comparison, in 2005, the President of PPO issued 5,720 administrative decisions at the first instance and 258 decisions following the re-examination of cases. It is caused due to the limitation of competences of the President of PPO which resulted in decrease of the decisions issued in 2006 in comparison to 2005 (by 61% at the first instance and by 48% at the second instance). Until the entry into force of the amendment to the Act, (that is from 1 January 2006 and 25 May 2006) 1,775 administrative decisions were issued at the first instance and 93 as a result of the re-examination of cases. At the same time of year in 2005, 1,954 administrative decisions were issued at the first instance and 132 as a result of the re-examination of cases.

1. Waiver of Open Tendering or Restricted Tendering Procedures

Until the entry into force of amendment, that is till the 25th May 2006, 1,488 decisions on approval of a procedure other than open tendering were issued, which accounts to 84% of all the decisions issued at that time:

- **1,209 decisions on approval of single-source procurement procedure** (81% decisions on approval of a procedure other than open tendering or restricted tendering). In 829 cases (69%), requests were granted and in 195 cases (16%) – the consent for use of that procedure was refused; and in 185 cases (15%) the procedure was cancelled.

Likewise in the preceding years, the majority of request for approval of the single-source procurement procedure was based on Article 67 (1) (a) of the Act, i.e., cases where supplies, services or works may be provided by only one economic operator. In such cases, 655 decisions were issued, whereas 483 (74%) requests were granted.

The requests of awarding entities most frequently concerned purchases, by health service units, reagents for devices working in the so-called “closed systems”, purchases of a variety of quality specialist equipment; purchases of specialist drugs, medical devices, parts to those devices; purchases of services of extension and modification of IT systems, support and monitoring of IT systems; purchase of services, advertising and promotion; services of maintaining and modernisation of lighting; purchase of copyright law, credit and loans concerning specific product. In those cases, the requests of awarding entities were granted, usually after seeking opinions of competent bodies of public administration.

A significant number of requests 251 (ca. 21%) was based on Article 67 (1) (3) of the Act, therefore, on circumstances when the use of single-source procurement is justified by random incidents causing the need of prompt fulfilment of a public contract, when it is impossible to conduct a public contract award procedure in compliance with the time limits provided for the procedures guaranteeing the retaining of competition. In 153 cases (61%) the request was granted, and in 67 cases (27%) the consent for use of that procedure was refused.

Then, awarding entities referenced Article 67 (1) (4) of the Act that allows for the use of single-source procurement when, during successive award procedure of which at least one was conducted under open or restricted tendering no request to participate in the procedure

has been submitted, no tenders has been submitted or all the tenders have been rejected pursuant to the Article 89 paragraph 1 item 2 due to their incompatibility with the description of the object of contract, and the original terms of the contract are not substantially altered. In such cases, 50 decisions were issued.

- **151 decisions on approval of the negotiated procedure without publication** (10% decisions on approval of a procedure other than open tendering or restricted tendering). In 112 cases (74%) requests were granted and in 26 cases (17%) – the approval for use of that procedure was refused; whereas in 13 cases (9%) the procedure was cancelled.

The majority of decisions approving the use of the negotiated procedure without publication concerned the circumstances when, considering the urgency of contract award, the time limits fixed for other types of procedures could not have been observed (Article 62 (1) (4))- 88 cases, or when the open tendering or restricted tendering carried out earlier in the case failed to result in a contract due to the lack of eligible tenders (Article 62 (1) (1))- 36 cases.

A considerable number of requests for approval of the use of that procedure, based on the circumstance of urgent need to fulfil a contract, were caused by the late receipt of funds for contract fulfilment and the necessity of cancelling a procedure because of the lack of sufficient funds for its fulfilment. The cases mentioned above concerned in particular forest management, financial services i.e. taking out a loan, preparation of various projects, purchase of drugs and medical equipment or purchase of specialist equipment.

- **4 decisions on approval of the negotiated procedure with publication**
- In 2 cases the requests were granted, and in 2 cases the procedure was cancelled.

There were two reasons for such a small number of cases of that type. Firstly, the negotiated procedure with publication refers to complicated contracts and is a time-consuming procedure; therefore, it is rarely used by awarding entities. Secondly, the consent of the President of PPO to use the procedure was required, when the contract value exceeded the equivalent of EUR 10,000,000 for works and EUR 5,000,000 for supplies or services.

Execution of a Contract for Term Exceeding Three Years

Under Article 142 of the Act, a public procurement contract is made for a fixed period of time. The execution of contract for periodical and continuous services for the term exceeding three years required consent of the President of PPO to be issued in a form of administrative decision granted before starting the contract award procedure. Between 1st January and 25th May 2006, 137 decisions of that type were issued in 137 cases (8% of all decisions issued at that time period), whereas in 92 cases requests were granted and in 8 cases refused. Procedures were discontinued in 37 cases.

While issuing decisions on the foregoing, The President of PPO examined the circumstances set forth in the Act: namely whether the fulfilment of contract in the period requested by the awarding entity would bring about savings on the costs of contract fulfilment when compared to the period of three years; the scope of envisaged outlays and the period of time necessary for their repayment or reimbursement, as well as the payment ability of the awarding entity.

Entry, Refusal of Entry and Striking Off the List of Organisations Associating Economic Operators Eligible for Appeal Measures

Between 1st January and 31 December 2006, 7 decisions of the President of PPO concerned the entry on the list of organisations associating economic operators eligible for lodging appeals in public contract award procedures. The requests were granted in 6 cases and refused in 1 case.

Execution of a Contract prior to the Final Resolution of Protest

57 administrative decisions were issued in that respect (2,6% of all the decisions issued in 2006), where 9 requests were granted, 12 were refused and in 36 cases procedures were discontinued. For comparison, in 2005, 222 decisions on conclusion of a contract prior to the final resolution of a protest were issued (3,9% of the decisions issued in 2005), in 107 cases requests were granted, in 51 cases refused and procedures were discontinued in 64 cases due to the final resolution of a protest during the administrative proceeding.

In comparison to the year 2005, the number of requests to conclude a contract prior to the final resolution of a protest significantly decreased, which was caused by the changes of legal provisions introduced in the amendment.

Waiver of the Requirement to Demand Provision of a Performance Bond

Between 1st January and 24th May 2006, the President of PPO issued 35 administrative decisions concerning the withdrawal from the obligation to request a deposit or a security on due contract performance. The requests were granted in 31 cases and the procedure was discontinued in 4 cases. While issuing decisions in such cases, the President of PPO took into consideration the exceptional circumstances in a specific case where requirement concerning security on due performance of the contract could preclude the conclusion of a contract or cause the significant increase of tender prices.

Court Rulings

In 2006, 42 court cases were pending with the President of PPO as a party. 15 cases concerned the administrative decisions issued by the President of PPO, 2 cases referred to the decisions issued by the President of PPO in 2006, 10 cases concerned the decisions and rulings issued in 2005. The remaining 15 cases which were commenced in 2005 and 2006 concerned: complaints for failure to act, complaint for annulment against the decision of the regional appeal court, proceedings before common courts, action for ascertainment of nullity of contracts, complaints against judgments of the arbitration panel.

It should be emphasized that for 2202 decisions issued by the President of PPO in 2006, only 15 decisions (0,7%) were challenged before court, specifically:

- 5 decisions on consent to conclude a contract before the final resolution of a protest;
- 3 decisions concerning the statement for annulment of the decision, relatively the re-open of the procedure;
- 1 decision concerning the imposition of administrative penalty due to award of contract without the application of the provisions of PPL;
- 1 decision on the refusal to participate in the administrative procedure;
- 5 decisions concerning the grant of consent by the President of PPO to conduct the public contracts procedure by single-source procurement.

In 2006, 7 complaints for annulment were lodged, including 6 complaints against the ruling of the regional administrative court to the Supreme Administrative Court, and 1 complaint against the ruling of the appeal court to the Supreme Court. The President of PPO lodged 5 complaints for annulment against the rulings of the regional administrative court, two of them were rejected, one complaint was dismissed and in one case the decision has not been issued yet. Last year, the President of PPO lodged a complaint against the decision of the arbitration panel three times. In all three cases, the complaint was dismissed.

I.2.2. Contracts Award Control

Under the Public Procurement Law, the President of PPO monitors the compliance with the public procurement system, without limitation, it controls the contracts award process. The competences were partially changed due to the entry into force of the Amendment to the Public Procurement Law of 25 May 2006. With reference to the contract award procedures commenced before 25th May 2006, the President of PPO possessed the following institutions of public contracts control:

- Observer- present during the work of the tender committee in contract award procedures where the value exceeded the PLN equivalent of EUR 10,000,000 for works and EUR 5,000,000 for supplies and services.
- Ex-ante control – obligatory control of the contract award procedures where the value exceeded the PLN equivalent of EUR 10,000,000 for works and EUR 5,000,000 for supplies and services and optional control;
- Ex-post control.

Due to the amendment to the PPL, with reference to the contract award procedures commenced after 25th May 2006, the President of PPO possessed the following institutions of public contracts control:

- Ex-ante control – obligatory control of the contract award procedures where the value exceeded the PLN equivalent of EUR 20,000,000 for works and EUR 10,000,000 for supplies and services and optional control;
- Ex-post control.

The amendment to the PPL eliminated the competence of the President of PPO to issue, by means of administrative decision, the consent to award a contract in negotiated procedure without publication (Article 62 paragraph 2) and single-source procurement (Article 67 paragraph 2). Instead of the consent of the President of PPO to use these types of contract award procedure by the awarding entities, the obligation to inform the President of PPO about the commencement of procedure with use of the negotiated procedure without publication and single- source procurement was introduced. It should be stressed that this amendment caused the substantial change of sanction for the failure to fulfil this obligation. The previous legal provisions provided for invalidity of the concluded contract in case of conclusion of a contract without the required agreement to use the defined type of contract award procedure (Article 146 paragraph 1 item 2). However the binding provisions describe the lack of fulfilment of the obligation to inform the President of PPO about the commencement of procedure as the violation of the public finance discipline (Article 17, paragraph 1 item 2 letter c).

Moreover, the amendment to the PPL introduced the new regulations concerning the ex-ante control. The head of the awarding entity is authorised to raise justified reservations to the post control recommendations indicating the obligation to remove the breaches of the post control recommendations or the obligation to annul the procedure. In case of not considering the recommendation of annulment of the procedure, the President of PPO

dispatches the reservations to the Public Procurement Council, the opinion of which in terms of the necessity to annul the contract award procedure being the subject of control is binding.

Within the period of the report, the President of PPO carried out 436 controls, in 129 cases no breaches were found (ca. 30%), in 307 cases (ca. 70%) the violation of the PPL was found.

Observer

In 2006, the President of PPO appointed 216 observers. In over 70% of the procedures being the subject of control of the observer, no violation of duties by the members of the tender committee was found. In other cases, the observers found irregularities concerning:

- preparation of the report on the proceeding,
- content of the rules on the work of the tender committee,
- conditions for participation in the procedure,
- documents confirming the compliance of the conditions for participation in the procedure.

Reservations described by the observers in their reports on the proceedings of the tender committee served as important evidence relied on during ex-ante control.

Ex-ante Control

The President of PPO conducted 296 ex-ante controls, including 294 obligatory and 2 optional ones. Among the obligatory ex-ante controls, 199 of them (ca. 68%) concerned the procedures commenced prior to the 25th May 2006, 95 (ca. 32%)- procedures commenced after the 25th May 2006.

The total estimated value of procedures subject to control exceeded PLN 34 billion, where almost PLN 20 billion (57%) concerned the public contracts awarded by the classical awarding entity, whereas over PLN 14 billion (43%) – by the sectoral awarding entities. While analysing the number of the procedures being the subject of control- 63% of the procedures concerned the classical awarding entity, whereas ca 37%- by sectoral awarding entities.

The contract award procedures that underwent ex-ante control in ca. 39% concerned the contracts for supplies, in ca. 30%- contracts for services, whereas in ca. 31% contracts for works. The majority (ca. 62%) of the procedures being the subject of obligatory ex-ante control were conducted by the open tendering, ca. 14.5%- by restricted tendering, ca. 5% by negotiated procedure with publication, ca. 3,5%- by negotiated procedure without publication and ca. 15% - in single-source procurement.

During 68 controls (ca. 23%) no violation was found, in 204 controls (ca. 69%) formal infringement were found, which did not influenced the outcome of the procedure, in 13 controls (ca.4.5%) it was recommended to conduct or repeat certain actions, whereas in 11 controls (ca. 3.5%) it was recommended to annul the procedure. In one case, the awarding entity made a reservation to the post control recommendations indicating the necessity of annulment of the procedure. As the reservations were not admitted by the President of PPO, the case was handled by the Public Procurement Council. However, before the decision was taken by the Public Procurement Council, the awarding entity withdrew the reservations and inform about the annulment of the procedure in accordance with the previous recommendations of the President of PPO.

The outcomes of ex-ante controls indicate the better observance of the Act- Public procurement law and better knowledge of the provisions of this Act by the awarding entities. The number of controls, where the President of PPO recommended the annulment of the procedure, substantially decreased. In 2004, 22% of controls ended with the recommendation to annul the procedure, in 2005- 8%, whereas in 2006 – 3,5%. It should also be noted, that the number of controls where no infringement (incl. the formal infringement) were found accounted for ca. 23 % of all the ex-ante controls finished in 2006. The result is 8% better in comparison with the previous year but still not satisfactory.

It should be outlined that the results of ex-ante control are analysed very thoroughly. Every 6 months, the Public Procurement Office prepares information on the controls which were carried out and their results and disseminates it by placing it on the website and making it available to the media.

Ex-post Control

In 2006, 64 ex-post controls were carried out (whereas in 2005, 26 ex-post controls). Ca. 35% of the procedures being the object of control had approximate value less than the PLN equivalent of EUR 60,000. The total value of all the procedures being the object of ex-post control amounted to over 110 billion PLN.

Ca. 35% of ex-post controls concerned contract for works, 37%- for supplies and ca. 28%- for services. The ex-post controls applied to procedures carried out by the classical awarding entities (62 controls), including mostly public finance entities (self-government authorities and independent public health care units).

The majority (ca. 66%) of procedures being the object of ex-post control were awarded by open tendering, ca. 5%- by restricted tendering, ca. 5 %- by negotiated procedure without publication, ca. 11%- by single-source procurement and 2%- by request for quotation. the subject of ex-post control were 7 other procedures (ca. 11%) which were conducted without the application of Public Procurement Law, in spite of the fact that the contract was awarded by the entity obliged to use the PPL.

Only in 2 cases (ca. 3%) no infringement of the Act was found in the course of the ex-post control. The infringements were found in other controls, what was communicated to the controlled awarding entity as well as to the complainant. In case of 15 ex-post controls (ca. 24%) of the procedures commenced by the public sector units, the President of PPO notified the competent agent for public finance discipline of the breach of public finance discipline. From the information submitted by the agent for public finance discipline it appears that in one case- the initiation of the proceeding was refused due to the proceeding previously launched before enforcement committee, whereas in 8 cases (53%) the agents made a request to the relevant enforcement committee to impose a penalty for the breach of public finance discipline. The course of other cases remains unknown to the President of PPO.

Procedures Co-financed by the European Union Funds

Out of 360 controls carried out by the President of PPO in 2006 (ex-ante and ex-post controls), 131 (37%) concerned the contract award procedures which were co-financed by the European Union funds. 107 procedures underwent the ex-ante control, whereas 24 procedures were the object of ex-post control. The overall estimate value of those procedures exceeded PLN 14 billion.

The public contracts co-financed by the European Union funds were mostly awarded by open tendering (76% of ex-ante control and 62% of ex-post control). The contracts were

rarely awarded by the awarding entity in course of the restricted tendering (15% of ex-ante control and 8% of ex-post control), by single source procurement – (9% - ex-ante control and 17% ex-post control) or by negotiated procedure without publication (13% - ex-post control).

In case of the ex-ante controls the value of procedures co-financed by the European Union funds amounted to ca. 42% of the total value of all the procedures being the object of control. In ex-post controls that value amounted to 70% of the value of controlled procedures. Among the procedures co-financed by the European Union funds, the ex-ante control predominated in contracts for works (ca. 60%), to a smaller extent (app. ca. 21% and ca. 19%) in contracts for supplies and services. It should be emphasized that from all the contracts for works being the object of ex-ante control, 70% of them were co-financed by the EU funds.

The contract award procedures being the object of control concerned mostly contract for:

- Construction, reconstruction of the sewage system and sewage treatment plant (co-financed by the Cohesion Fund),
- Construction, conversion of the roads and bridges (co-financed mostly by the Sectoral Operational Programme- Transport, but also by the Cohesion Fund or the Integrated Regional Operational Programme),
- Trainings of teachers (co-financed by the European Social Fund).

The majority of the contracts for construction, reconstruction of roads co-financed by the EU funds were awarded by the individual units General Directorate for National Roads and Motorways and self-government administration. The contract award procedure for construction, reconstruction of the sewage system were almost exclusively commenced by district authorities, whereas the procedures for trainings of teachers concerned in majority of cases (over 80%) the foreign language courses and were conducted by the Ministry of National Education.

In 94% of the procedures being the object of ex-ante control, no flagrant infringement, which prevented from concluding the void public contract, was found. However, in case of 11 procedures where the annulment was recommended in 2006, 6 procedures were co-financed by EU funds. The infringements found in 5 procedures obliged the President of PPO to inform the agents for public finance discipline.

Legality control of the type of the contract award procedure commenced based on the analysis of the notices dispatched to the President of PPO.

The amendment to the Act- Public Procurement Law eliminated the competence of the President of PPO to issue, by means of the administrative decision, the consent to award the contract by the type of procedure other than basic procedures. Instead of the obligatory consent to use those types of procedures by the awarding entity, the obligation to inform the President of PPO about the commencement of the contract award procedure by means of negotiated procedure or single source procurement was introduced. In case of contracts, where the estimated value is equal to or exceeds the amounts of EUR 137,000, EUR 211,000 and EUR 422,000 the awarding entity is also obliged to inform the President of PPO about the rejection of the tenders, which contained an abnormally low price due to state aid, and the economic operator did not prove, within the time limit fixed by the awarding entity, that this aid was in conformity with law as defined by the provisions on procedures concerning the state aid.

The largest group of the awarding entities, who commenced the procedure by single source procurement or negotiated procedure without publication and dispatched the notifications, were:

- Central public finance sector units, other than the ministries and central offices (inter alia Polish Army, Police, the border guard, courts, National Health Fund (NFZ), state agencies, higher schools, institutes, National Bank of Poland, General Directorate for National Roads and Motorways- 316 procedures
- Sectoral awarding entities (inter alia power plants, railway, mines) - 149 procedures,
- Ministeries – 30 procedures.

From the self-government sector, the highest number of the procedures was commenced by the district authority, then voivodships- 61 and poviats- 12. The procedures were for:

Supplies – 35%,

Services – 52%,

Works – 13%.

Among the procedures for services, the banking and invest services, maintenance and repair services, computer services and services related to them should be mentioned in the first place. Within the supplies, the contracts were awarded mostly for: the medical equipment, medicines, software, licenses for data bases or IT equipment, mechanical vehicles and electric and thermal energy.

The notification about the commencement of the negotiated procedure without publication (ca. 16.2% of all the notifications) concerned: in 44%- services, 34%- supplies and 22%- works.

The comparison of the number of notifications submitted to the President of PPO with the figures concerning the administrative decisions issued by the President of PPO within the analogical time period the previous year (from 25th May to 31st December 2005) concerning those types of procedure, that is 2322 decisions on agreement of awarding the contract by single-source procurement and 458 decisions on agreement of awarding the contract by negotiated procedure without publication shows a significant disproportion, especially between the number of decisions on agreement of awarding the contract by single-source procurement issued in 2005 and number of notification on the contracts awarded by this type of procedure submitted to the President of PPO in 2006. Even considering the increased threshold connected with the obligation to submit the notification (respectively EUR 137,000, EUR 211,000 or EUR 422,000) in comparison with the threshold of EUR 60,000, which in view of the previous provisions required the consent of the President of PPO to award a contract by single- source procurement, there is a significant disproportion which refers to the difference of 1764 procedures. The difference refers, to a lower degree, to the decisions of the President of PPO on matters of issuing the agreement to use the negotiated procedure without publication in 2005 and number of notifications on that type of procedure in 2006, as it refers to 339 procedures. The above mentioned data may prove that many awarding entity resigned from deciding independently on awarding a contract under non-competitive procedures, as well as not complying with the obligation of notification to the President of PPO of the conducted procedures, especially single-source procurement. The reason for this may be the lack of due diligence while conducting the contract award procedure or the attempt to cover use of the type of contract award procedure which is against the law.

Based on the analysis of the submitted notifications, the President of PPO carried out 76 controls in legality of the choice of the type of the contract award procedure (so-called ad-hoc controls), from among- 62 controls on choice of the single-source procurement (ca. 82%) and 14 controls on choice of the negotiated procedure without publication (ca. 18%).

In course of the carried out controls, the admissibility of the award of contract under a type of procedure in question in view of the premises specified in the Act – Public Procurement Law. The approximate value of all the procedures being the subject of such control accounts to PLN 370 million.

36 procedures for services (ca. 47%), 30 procedures for supplies (ca. 40%) and 10 procedures for works (ca. 13%) were controlled. Most of the procedures being the subject of control were commenced by the awarding entity that awarded a sectoral contract (ca. 24%), self-government bodies (ca. 12%), independent public health centres (ca. 10%), legal persons, referred to in Art. 3 Paragraph 1 item 3 of the Act (ca. 9%) as well as public higher schools (ca. 8%).

As a result of the controls carried out within the legality of choice of the type of procedure:

- In 72% of the procedures, no infringements were found;
- In 22% of the procedures, infringements were found, incl. 14 cases (ca. 18%) it was recommended to annul the procedure (in ex-ante controls) or the infringements were stated which resulted in invalidity of contract (in ex-post procedures);
- In 6% of the procedures, no obligation to apply the Act by the awarding entity was stated.

In 3 ex-ante controls, The awarding entity voiced reservations about the post control recommendations indicating the necessity of annulment of the procedure. In view of the presented by the awarding entity new facts and additional explanations, these reservations were considered by the President of PPO. In 5 cases it was notified to the competent agent for public finance discipline of the breach of public finance discipline. From the information dispatched by the agents for public finance discipline, it appears that in 2 cases they referred the motion to the indicative committee to impose a financial penalty. The results of other cases remain unknown. In one case, the President of PPO commenced administrative procedure for the imposition of financial penalty.

In order to facilitate the awarding entity to take a right decision in selection of the type of contract award procedure, “the guidelines to interpretation of the premises to conduct contract award procedure under negotiated procedure with publication, competitive dialogue, negotiated procedure without publication or single-source procurement” were placed on the website of the Office. The guidelines were prepared by the Public Procurement Office based on the judicature of the European Court of Justice and Polish courts and were passed by the European Committee of the Council of Ministers.

I.2.3. Publication of the notices

The President of PPO publishes in Public Procurement Bulletin the notices provided for in the Act- Public Procurement Law. Until 25th May 2006, all the notices provided for in the Act, which where the value exceeded the PLN equivalent of EUR 60.000. The amendment to the Act – Public Procurement Law abolished the obligation of publication of notices in PPB, where the value was equal to or exceeded the amounts specified in regulation of the Prime Minister on the value threshold of contracts and design contests which imposes an obligation of dispatching the notices to the Office for Official Publications of the European Communities. The notices above the EU threshold were dispatched by the awarding entity exclusively to the Office for Official Publications of the European Communities, which published those notices in Official Journal of the European Union.

Public Procurement Bulletin was published in two versions: a paper one available against payment in the points of sale of official journals or by subscription, and an electronic one available free of charge on the web site of the Public Procurement Office. The electronic version of the Bulletin was posted on the PPO web site (www.uzp.gov.pl) on the day of publication of its paper version. The popularity of the electronic version of the Bulletin is evidenced by the number of entries. In 2006, the average number of entries was 40,000 per month.

The circulation of the paper version of the Bulletin consistently decreased. In 2006 it was only 650 copies (in 2005 - 1,260 copies). Such a small circulation in 2006 and a high interest in electronic version of the Bulletin caused that by the end of 2006, the decision of preparation only of electronic version of the Bulletin was taken.

During 2006, 347 issues of the Bulletin were published, and **65,537 notices** were published therein, including:

- 34,738 contract notices,
- 75 design contest notices,
- 27,335 contract award notice containing the information on price and the entity that was awarded with a contract,
- 44 notices on the results of the design contest,
- 667 prior information notice enabling the economic operators the preparation for participation in the award procedure,
- 2,678 corrigenda to notices published earlier.

Over 74% of notices published in 2006 were sent to the Bulletin in electronic form, by means of the forms placed on the PPO website. The share of notices sent on-line has been growing successively (2002: ca. 35%, 2003: ca. 50%, 2004: ca. 60% and 2005: over 63 %). In 2006, the number of entities (awarding entities) registered with the PPO and authorised to send notices over the Internet was over 8,000.

The amendment to the PPL introduced the obligation of placing the contract notices on the PPO portal where the value exceeds the equivalent of EUR 6,000, but does not exceed the amount of EUR 60,000. The obligation was put upon the awarding entities who directly placed the contract notices on the PPO portal by filling up the interactive form.

95,910 contract notices and 74,566 contract award notices were placed on the PPO portal. The average number of notices placed daily on the portal last year was 1,200.

The Polish awarding entities published 10,466 contract notices and 11,520 contract award notices and notices on the results of the design contest in Official Journal of the European Union.

I.3. Public Procurement Council

Public Procurement Council is an advisory and consultative body of the PPO President.

In June 2006, one of the members of the Council resigned, as the Prime Minister accepted the resignation, the present composition of the Board consists of 13 members.

The amendment to the Act- Public Procurement Law extended the competences of the Public Procurement Council to granting an opinion on the reservations to post control recommendations of the President of PPO. Considering these changes, the Council members adopted a resolution, which changed the code of conduct of the Public

Procurement Council, which regulated the manner of the Council in cases of expressing the reservations in question by the head of the awarding entity.

The Council met five times and deliberated mainly on:

- The bill of the Act of 10 March 2006 on the amendment to the Act- Public Procurement Law and the Act on the liability for violation of the public finance discipline;
- Bill of the Amendment to the Public Procurement Law on legal protecting measures;
- Draft of the regulation of the Prime Minister on the on the manner of conducting the qualifying procedure for members of the National Appeal Chamber, the manner of appointing the qualifying committee, as well as detailed scope of the qualifying procedure;
- Draft of the on the multiple base amount for estimating basic remuneration for the Chairman, the Vice-chairman and other members the National Appeal Chamber;
- Report on functioning of the public procurement system in 2005;
- Information on results of the obligatory ex-ante controls ended between 1 January and 30 June 2006.

During the meetings in 2006, Public Procurement Council adopted 3 resolutions: on the opinion on report on functioning of the public procurement system in 2005, amending the resolution on the adoption of the Rules of Procedure of the Public Procurement Council, where

The competences of the Public Procurement Council were supplemented, on the opinion of the bill on the amendment to the Act- Public Procurement Law and some other Acts.

I.4. Arbitrators

The President of PPO maintains the list of arbitrators examining the appeals from dismissal or rejections of protests lodged in contract award procedures. The current list of arbitrators was prepared due to the examination conducted in 2004. In the reporting year, the list contained 359 members, where 358 arbitrators ruled.

In 2006, the PPO organised like in previous years, cyclic seminars for arbitrators from the list maintained by the President of PPO. They were conducted in 2 cycles: the first one consisted of 3 two-day meetings, prepared for the chairmen of the arbitration panels, was conducted in March and April; the second cycle consisting of 4 two-day meetings was conducted in May. The total number of participants was 340.

The seminars focused mostly on elaboration of the Amendment to the Public Procurement Law which was under preparation and changes connected with it in a Protest- appeal-complaint procedure, as well as analysis of the jurisdiction of arbitration panels and decisions of district courts. The meetings have an impact on the uniform jurisdiction and provision of the provision of factual level of the rulings issued by arbitration panels.

I.5. Activity of the Public Procurement Office

I.5.1. Organisation of the PPO

The PPO budget for 2006 (section 49 heading 750 chapter 75001 of the state budget) was PLN 12,525,000 according to plan. As a result of the Finance Minister's decision, it was increased by PLN 326,977 up to PLN 12,851,977. The budget spending was PLN 11,288,562.16, what constituted 92,1% of the plan after changes. The budgetary incomes were executed in amount of PLN 1,085,955.44.

The employment level at the Public Procurement Office was 118 staff. At the same time the year 2006 was characteristic for large staffing fluctuation- 24 employees resigned from their posts.

I.5.2. Educational & Training Programmes delivered by the PPO

In year 2006, the realisation of the Phare 2002 project "Increase of the knowledge of public procurement procedures" was ended. The main task of this project was to increase among the participants of public procurement system of the knowledge of provisions concerning the procurement, an in the end- increase of effectiveness of the governance of public funds. The project consisted of 2 components: training- which ended in 2005 and included 187 two-day- trainings for over 5400 participants- and publication. Within the publication component, the following publications were issued:

1. Public procurement in European Union under Classical directive
2. Public procurement in European Union under Sectoral directive
3. Guide on public procurement procedures in selected EU countries
4. Legal protecting measures in public procurement procedures
5. Public Procurement Office: position, powers, rules of operation
6. An introduction to public procurement system
7. Guide on public procurement procedures

The publications prepared within the project were disseminated among the participants of the public procurement system, and their electronic forms are available on the PPO website.

In 2006, the realisation of the Phare 2003 project "Improvement of practises and control mechanisms concerning public procurement" came to an end. The purpose of the project was unification and popularisation of good practises concerning the award of public contract, improvement of control mechanisms, as well as training of the awarding entities and economic operators and bodies dealing with control of contract award procedures. The project contained 2 components: investment (accomplished in 2005) and services (training and publication)- accomplished in 2006. The Training part of the project contained 3 modules:

Training cycle for awarding entities,
Training cycle for economic operators
Training cycle for control bodies.

Over 2400 people participated in 80 two-day trainings. The trainings were organised in 4 regional centres: Warsaw, Poznan, Gdansk, Krakau. As far as the publication part is concerned, the following publications were prepared and issued:

1. Practical guide for users of the model procurement documentation and patterns of public procurement contracts,
2. Analysis of the decisions of district courts and analysis of the arbitration panels' rulings based on the provisions of Public Procurement Law
3. Analysis of the jurisdiction of the European Court of Justice concerning public procurement between 1999 and 2005
4. Guide on the amendments to the provisions concerning the notices which result from the regulation of the European Commission on standard forms of the notices

5. Guide for economic operators competing for public contract on Polish market and in selected EU countries

The above mentioned publications were disseminated among the training participants of the Project and among other participants of the public procurement system.

In December 2006, the second edition of the Commentary on the public procurement law considering the changes introduced by the Act of 7 April 2006 on the amendment to the Act-Public Procurement Law and the Act on the liability for violation of the public finance discipline. An edition of 6,500 copies was distributed among the government administration bodies, self-government units, control bodies, uniformed services, organisation of entrepreneurs, health service units, public higher schools, libraries and other institutions participating in public procurement market. Due to its limited edition, the publication was also made available for all the concerned participants of public procurement system by placing its electronic form on the PPO website.

With the entry into force of the Amendment to the PPL, the Office began the implementation of educational and information ventures aimed at wide range of participants of public procurement system (inter alia government administration, self-government units, organisation of entrepreneurs and employers, trade association, control bodies, foundation). Trainings and seminars were organised cyclically during the whole year. Approximately 2,600 people participated in these trainings. The trainings for the Police and Internal Security Agency, which aimed at promoting the right patterns of behaviour and preventing unfair behaviour, were also continued. During the trainings, the application of the Act – Public Procurement Law was presented by emphasizing especially the undesired occurrences and irregularities, which then may connect with conduct of contract award procedure.

In fourth quarter of 2006, the PPO organised series of trainings (in form of seminars and workshops) on the application of public procurement provisions by expending sources from the EU funds. Seminars were addressed to the managing institutions, implementing institutions and mediating institutions from sectoral operating programmes and for representatives of the implementing institutions of Phare programme. There were around 200 participants.

In total, there were over 50 trainings and conferences for over 3,000 participants in 2006.

I.5.3. International Cooperation

In 2006, the PPO representatives participated in the most important international initiatives which lead to the development of the co-operation and exchange of experiences in public procurement, such as Public Procurement Network (PPN) and EU Public Procurement Learning Lab. These initiatives complement the activities of the Advisory Committee for Public Contracts. PPN is the initiative supported by the European Commission, in which EU Member States, countries of European Economic Area and candidate states participate. By creating the net of contact points in each state, PPN established the informal problem-solving system in cases concerning the procurement procedures, where the economic operators compete for a contract abroad. Moreover, the purpose of PPN is the exchange of experiences; inter alia information on national public procurement systems. The conferences which summarize the activities of PPN (with participation of PPN countries, European Commission and representatives of other international organisations) are held annually in the country, which at that time, presides over the initiate PPN.

In March 2006, Poland took up the presidency in PPN.

In 2006, also the bilateral co-operation developed. The realisation of activities within the Twinning project Phare 2005 BG/2005/IB/FI/04 commenced. It should enhance the public procurement system in Bulgaria. The project is carried out by the Italian Ministry of Economy

and Finances with co-operation of Polish Public Procurement Office. Twinning consists of 5 components. The assistance provided to Bulgaria by the Italian and Polish experts contains inter alia assessment of the adoption of Bulgarian solutions in public procurement to the EU requirements, organization of trainings and seminars, preparation of analyses and publications, as well as enhancement of the application of electronic tools in contract award procedures. The activities within the twinning project are scheduled to end in 2007.

Due to works on the draft of the directive of European Parliament and Council amending the directives 89/665/EEC and 92/13/EEC in order to enhance the effectiveness of the appeal procedures in public procurement, the representatives of PPO acted in the name of the Polish government in the Advisory Committee for Public Contracts under Council of European Union. In 2006, there were 8 meetings of the Committee. Furthermore, the representatives of PPO participated also in meetings of the Advisory Committee for Public Contracts under European Commission. The consultations carried out with the European Commission, concerning the amendment to the Act- Public Procurement Law were also of major importance. These issues were among other the subject of the meetings held at the beginning of July 2006 with the presence of EC representatives.

In co-operation with other institutions, the Public Procurement Office prepared, in four cases, the answers to charges of the European Commission under Article 226 of the EC Treaty due to presumption of violation of the Community law on public procurement.

I.5.4 Electronisation of the Public Procurement System

In 2006, a series of activities were conducted aiming at the simplification and of the award of contracts due to the possibilities of new IT techniques. They were the result of the amendment to the Public Procurement Law.

The communication between the awarding entity and economic operator was inter alia modified- the electronic form was to be equal with written form or fax, regardless of the contract value in contract award procedure in question (such a possibility used to refer to contracts procedures where the value did not exceed EUR 60,000). In contract award procedures under open tendering, the obligation to place the specification of essential terms of contract on the website was introduced. However, under other types of procedure it is optional. The awarding entities who place specification in such a manner they may shorten the time limit for submission of tender by 5 days. This solution facilitated the information flow between the awarding entity and potential economic operators and eliminated the costs bared by the awarding entities in relation to the duplication and dispatch of the specification. The dispatch of the notices to the Office for Official Publications of the European Communities by electronic means, in accordance with form and procedures indicated on the SIMAP website, has also been regulated. The compliance with the rules specified in SIMAP enables the shortening of the time limits by 7 days.

The former "electronic auction" was transformed into electronic bidding. This type of procedure may apply not only to supplies, but also to generally available services. The threshold below which the awarding entity may use this type of procedure has been increased from EUR 60,000 to the amounts specified in directives. This may provide a wider application of the electronic bidding. However, it has not aroused more interest in application of this type of procedure. According to annual reports, there were only 65 procedures conducted under electronic bidding. Between EUR 6,000 and EUR 60,000, there were only 51 electronic biddings for supplies, and 2 – for services. In a threshold above EUR 60,000 to EU threshold, 12 electronic biddings were noted, all of them for supplies. In 2006, the relation

of the bidding to all types of contract award procedure accounted for 0,03% (for comparison, in 2005 it used to be 0,04%). From the above data, it can be observed, that this type of procedure is not very popular which may be caused by the small popularization of electronic signature.

The amendment to the PPL introduced the electronic auction as a manner of selection of the most advantageous tender under 3 types of contract award procedure: open tendering, restricted tendering and negotiated procedure with publication. The intention of conducting the electronic auction must be previously contained in contract notice. In 2006, such intention was enclosed only in 15 contract notices. The introduction of dynamic purchasing system, which is a fully electronic process of award of contracts for object generally available supplies purchased under contracts for purchase or generally available services, practically did not arouse any interest. No practical use of dynamic purchasing system and only small application of electronic bidding and electronic auction is probably caused by their recent implementation. The awarding entities are not accustomed with these solutions, and do not see the potential advantages in their application. Small popularization of electronic signature, which is required to use the procedures mentioned above, is yet another barrier.

Launching of PPO portal (www.portal.uzp.gov.pl) was essential for the functioning of the public procurement system. This portal operates parallel to the PPO website (www.uzp.gov.pl), contains however information and tools which are to boost the public procurement system.

The application of PPL imposed an obligation of placing the contract notices and contract award notices on the PPO portal. It refers to procedures of the value above EUR 6,000 and below EUR 60,000. At the end of 2006, there were app. 17,000 registered users authorized to place the contract notices below the threshold, nearly 96,000 contract notices and around 75,000 contract award notices were placed on the PPO portal. All these notices were placed directly by economic operators using electronic means. The PPO portal contains also tools which enable browsing through the notices, what makes it essential part of the electronic public procurement system.

There is also a discussion forum which provides the exchange of knowledge of public procurement and a reference mechanism for the economic operators registered at the PPO portal.

Apart from submitting the notices to the PPO portal by electronic means, the Public Procurement Office, like in previous years, also provided a possibility of submitting the notices to be published in the Public Procurement Bulletin by electronic means (using the on-line forms). In 2006, the number of registered awarding entities authorised to submit a contract notice in such a form was 8,000. As a result, nearly 75% of the notices were submitted to the Bulletin in electronic form, by means of forms placed on the PPO website. The percentage of notices sent on-line has been increasing gradually (in 2002- ca. 35%, in 2003 – ca. 50%, in 2004 – ca. 60%, in 2005 – ca. 63%). At the same time, the number of entries onto the PPB website has been increasing (last year it amounted to 40,000 entries a week, which in comparison with 2005 makes 15% increase).

Due to the more and more popularity of the electronic form of the Public Procurement Bulletin, the paper edition thereof has been gradually decreasing year to year. In 2006, it used to be only 650 copies, whereas in 2005 – 1,260 copies. Such a small edition and the increasing interest in electronic form triggered the decision of resigning from editing the Bulletin in paper form (from the beginning of 2007- there is only the electronic form of the Bulletin).

In 2006, a project concerning the software for a so-called e-Sender post box dealing with automatic sending of the notices to the Official Journal of the European Union(OJ/S). Public access to the specification of eSender, planned for the future, would enable the commercial IT companies to extend their systems supporting the award of contracts to a function of notice sending to the OJ/S.

II. PUBLIC PROCUREMENT MARKET

II.1. Profile of the Public Procurement Market

II.1.1. Market Size

On the basis of annual reports on contracts awarded it may be estimated that the value of public procurement market was ca. 79, 6 PLN billion in 2006. It means ca. 17% growth on 2005. The estimated value of the public procurement market represented ca. 7.6 % of the gross national product (GNP) for 2006. By way of comparison, the value of public contract estimated in 2005 amounted to PLN 68 billion and in 2004 amounted to ca. PLN 48 billion. These increases of value are illustrated in [Appendix 1](#). With regard to public procurement proceedings above the threshold of 60, 000 EUR estimates based on the content of annual reports allow to estimate the value of contracts at 67,2 billion PLN.

The data derived from annual reports on contracts awarded in 2006 allow also approximating the estimated value of the market portion concerning contracts covered by the scope of the Act but excluded from the duty to publish notices in the PPB, that is contracts with the value ranging from EUR 6,000 to EUR 60,000. The value of that portion of the public procurement market, as reported by awarding entities in their annual contracts, amounted to ca. PLN 12.4 billion in 2006, while its value was 12.2 billion PLN in 2005 and PLN 9 billion in 2004.

II.1.2. Awarding Entities and Economic Operators

The participants of the public procurement market are, on the one hand, awarding entities, i.e., entities under obligation to use the public contract award procedures while purchasing works, supplies or services, and, on the other hand, economic operators, i.e., entities competing for award of award of public contracts. As a result of the amendments to the Public Procurement Law the list of entities obligated to apply it is broader. Under the Public Procurement Law, entities obligated to use the public contract award procedures include central and local government authorities, public law entities or associations composed of one or more of such bodies, or so-called public law entities.

On the basis of reports concerning contracts awarded in 2006, we may assume that the number of awarding entities awarding contracts on the basis of procedures laid down in the Public procurement Law was ca. 12,932¹ (in 2005 – 12,200 and in 2004 – 11,248).

Please note that the duty to submit annual reports does not apply to awarding entities covered by the *res personae* scope of the Public Procurement Law that did not award contracts for the value exceeding the bottom threshold defined in the Law, i.e., EUR 6,000, during the reporting year. Thus, the number of potential awarding entities that are obligated to apply the provisions of the Public Procurement Law is certainly greater.

¹ As at 1 June 2006.

The annual reports concerning contracts awarded in 2006 show that the biggest group of awarding entities were the public finance sector units – 97 % (12,527) and merely slightly more than 3 % (405) report submitted by sector awarding entities thus awarding entities operating in water, energy, transport and telecommunication sectors. The biggest group of “classical” awarding entities was self government administration (42 %). Other groups are independent public health institutions (7 %) and local government administration (6 %). Approximately 4 % of total number of awarding entities were bodies governed by public law, and almost 3 % state control institutions or law enforcement (courts or tribunals). Almost 2 % of awarding entities were central administration bodies, slightly more than 1 % public universities and app. 0,2 institutions of social and health insurance. 35 % of awarding entities classified themselves as “other bodies”.

An economic operator may be any natural person, legal person or organisational units not having legal personality. The number of potential tenderers is thus open; however, the practice shows that the prevailing majority of contracts can only be fulfilled by entities carrying business activity. A precise determination of the number of operators that are active participants of the public procurement market is impossible to the lack of full data in that respect. According to contract award notices published in the PPB (i.e., those concerning procedures with the value exceeding EUR 60,000), approximately 21,000 operators were awarded public contracts in 2006.

II.1.3. Market Structure

Annual reports on contracts awarded show that in terms of the value of funds spent in 2006 above the threshold of 60,000 EUR works prevailed. Their value represented 46 % of the total value of contracts awarded. For comparison, in 2005 the biggest value was represented by supplies (42 %) and 35% funds were spent on works. In spite of such big increase of value of works the number of awarding procedures concerning works was only 37% of all procurements. Likewise in previous years, the majority of entities awarding works was self government – 64% of the total number of contracts announced by this group of awarding entities (in 2005 – 63 %).

Supplies contracts in 2006 represented 25% of the total value of contracts awarded and 35% of the total number of contracts awarded. Likewise in previous years, the majority of supplies was awarded by health service - 81% of all tenders published by this group of awarding entities (in 2005 also 80%) and bodies governed by public law – 63% of tendering in that group.

Service contracts represented 29% of the total value of contracts awarded and 28% of contracts awarded. For comparison, the value of funds spent on services in 2005 was 23%. The prevailing customer of services were: institutions of social and health insurance – 49 % of contracts published by this group of awarding entities and then the central government administration – 41% of all tenders (29% in 2005).

The structure of number contracts valued more than 60,000 EUR awarded, broken down by type of contract, is shown in [Appendix 2](#), and [Appendix 3](#) shows the value of works, services and supplies contracted by selected groups of awarding entities.

II.1.4. Sectoral Contracts

Sectoral contracts, that are contracts awarded by enterprises active in the sectors of water management, power engineering, transportation and telecommunication, play important role in the public procurement market. Sectoral market is a unique part of the

public procurement market. A relatively small group of sectoral entities has a significant share in a total market value, and the average value of sectoral contracts is distinctly higher than the average value of all the procurement contracts. It results, above all, from the structure of the provisions concerning the obligation to apply the rules of the Act- Public Procurement Law. In 2006, such obligation referred to procurement contracts where the value exceeded the equivalent in PLN of EUR 422,000 for supplies and services and EUR 5,278,000 for works.

According to annual reports on the awarded contracts, in 2006 – 1,057 sectoral contracts were awarded (in 2005 – 1,304). The value of the awarded sectoral contracts accounted to 12.8 billion PLN in 2006 (in 2005- 14.8 billion PLN).

With reference to the object of the contract, most of sectoral contracts were contracts for supplies – 61%, and then services – 36%. However, very few, as only 3% of the total number, were contracts for works. This results from the different rules concerning the publication of notice for supplies and services on one hand, and publication of notices for works on the other. It also depends on type of activities conducted by the sectoral awarding entities, which in most cases concerns contracts for supplies.

The decisive number of sectoral contracts in 2006 was, like in case of other contracts, awarded under open tendering – 68%, the single-source procurement -14%, restricted tendering- 8%, negotiated procedure with publication- 7% and negotiated procedure without publication- 3% of all the contract procedures.

II.2. Functioning of the Market

II.2.1. Commencement of Procedure

Last year, 95,910 contract notices were published on the PPO portal. The contract award procedures concerned mainly supplies (39% of the total number of procurement contracts), followed by works (36%) and services (25%).

Last year in the Public Procurement Bulletin 34,738 tenders were announced and 75 design contests. They primarily concerned open tendering – in 93.1% cases. Restricted tendering was used in 6.2 % of cases, negotiated procedure with publication – in 0.6 % of cases and competitive dialogue – 0.1 %. Tenders were organised mainly for works (51% of all tendering), and then supplies (38%) and services (19%). In the Official Journal of the European Union (TED) Polish awarding entities published 10,417 tendering notices and 49 design contests. The majority of those tenders were conducted in open tendering – 90.7 %. Other types of tendering used were: restricted tendering (6.9 %), negotiated procedure with publication (2.2%) and competitive dialogue (0.2%). The biggest number of tenders announced in OJ concerned supplies - 58 % of procedures, followed by services – 38 % and works – 4 %. In the reporting period there were more than 141,000 tendering notices and design contests notices published altogether in the portal of PPO, in the Bulletin and in OJ.

II.2.2. Contract Award Procedures

According to the data included in the annual reports concerning contracts awarded, contracts with the value below EUR 60,000 were awarded predominantly in open tendering. It was applied in over 62 % of cases (in 2005 in 61% of cases). On the same level remained also the share of contracts awarded in single source procurement - 25% procedures (in 2005 also 25 %) and in request for quotation – 11 % (in 2005 also 12%). These three procedures

comprised practically the whole public procurement market up the threshold of 60,000 EUR - other contract award procedures were used in 2% of procedures. In the case of tendering above the threshold of 60,000 EUR the data include in annual reports confirm the primacy of basic procedures: open tendering and restricted tendering – 80.96 % (in 2005 83.9 %), other procedures – 19, 04 (in 2005 – 10.7 %). The use of each procedure by awarding entities in 2006 was as follows:

- Open tendering – 76.81 %;
- Single-source procurement – 16.06 %;
- Restricted tendering - 4.15 %;
- Negotiated procedure without publication – 1.41 %;
- Request for quotation - 1.05 %;
- Negotiated procedure with publication – 0.47 %;
- Electronic bidding - 0.03 %;
- Competitive dialogue - 0.02 %.

It should be underlined, however, that it is difficult to compare the data from 2006 with the data from previous years. The amendment of provisions in 2006 caused firstly – change in the thresholds, below which it is possible to use request for quotations and electronic bidding, secondly new procurement procedure appeared – competitive dialogue.

The analysis of data included in notices published in the Public Procurement Bulletin during 2006 allows identifying the average time needed to conduct a contract award procedure by open tendering, restricted tendering and negotiated procedure with publication, that is procedures with the duty of publication of contract notices and contract award notices. The average duration of a procedure, counted from the date of publication of notices starting procedures until the contract award date as indicated in the contract award notice, was 82 days (in 2005 – 79 days). When divided by respective procedures, this ratio was as follows:

- Open tendering – 82 days (in 2005 – 80 days);
- Restricted tendering – 73 days (in 2005 – 59 days);
- Negotiated procedure with publication – 116 days (in 2005 – 111 days).

The practice proves that the contract award procedure by restricted tendering is the least time-consuming which may be also among the reasons behind the growing popularity of this procedure as used by awarding entities. The average shorter time of conducting that procedure is also due to the option of awarding entities' reducing the time limits for submission of requests to participate in contract award procedure in situation provided for in the law, i.e., when there is an urgent need to award a contract. Accelerated procedures represented ca. 17.3 % of all procedures in 2006 in which restricted tendering was used (in 2005 – 21.5 %).

II.2.3. Tender Evaluation Criteria

As the data extracted from contract award notices published in the Bulletin, during 2005, an awarding entity used, on the average, 2,24 criteria for evaluation of tenders in one procedure. In 2005, that ratio was 2.40. On the average, awarding entities used more criteria in procedures for services – 2.55 (2005 – 2.38), and then for supplies – 2.21 (2005 – 2.38), and less for works – 2.10 (2005 – 2.23).

At the same time, a relatively big number of awarding entities decided to apply only one criterion – price - as much as 64 % (in 2005 – 53 %) of procedures that were published were to be resolved with the use of that criterion only.

II.2.4. Competitiveness of Procedures

One of the indicators of the competitiveness of the proceedings and of the interest in public procurement market on the part of suppliers is the number of tenders submitted in any given procedure. Analysis of the data included in the notices on the award of contracts published in the Bulletin of Public Procurement shows that in 2006 there was on the average less tenders submitted in public procurement procedures than in the preceding year.

On the average, 3.62 tenders were submitted in one contract award procedure. It is significantly less than in the preceding year when that average was 4.40 tenders (20 % decrease).

The biggest group of procedures was that in which suppliers submitted only one eligible tender – 34 %. The next-ranking group were procedures in which economic operators submitted 5 or more tenders – 23 %. The percentage of procedures in which two tenders were submitted was 20%, 3 tenders were submitted in 14 % and 4 tenders in 9 % of procedures.

Certain impact on the decrease in the average number of tenders submitted could have increasing number of procedures in which two or more economic operators submit joint tenders. Irrespective of this fact it remains the alarming phenomenon. At the same time, it is noteworthy that data concerning the average number of tenders in procedures in 2006 cannot be simply compared or related to the analogous data from 2005. Changes in regulations in 2005 allowed the contracting authorities to award the contracts also in situation where in the procedure there was only one eligible tender submitted while the amendment of 2006 limited the obligation to publish notices in the Bulletin only to procurement valued at least 60,000 up to the EU thresholds.

II.2.5. Pricing

Notices on the contract awards published in the Bulletin show that the percentage of proceedings in which awarding entities selected the lowest tender was almost 93.5 % in 2006 (in 2005 this percentage was almost identical – 93 %).

In 3.6 % of cases, a difference between the price of successful tender and the lowest tender was less than 10%. In 1.1 % of cases that difference ranged from 10% to 20%, and was bigger than 20 % in 1.8% of cases.

Data contained in the notices on contract awards show that in the majority of cases the difference between the highest and lowest tender price ranged from 0% to 30%. The percentage of such procedures was as follows, respectively:

- In case of works – 66% (in 2005 - 71%);
- In case of supplies – 76% (in 2005 - 78%);
- In case of services – 58% (in 2005 - 67%).

Prices of tenders for supplies were the most homogenous while in case of services when prices depend on bigger number of factors, differences between the minimum and maximum price were the biggest. The differences between the minimum and maximum prices are shown in Appendix 4.

II.2.5. Use of Law Enforcement Measures

With regard to the functioning of law enforcement measures the year 2006 was not homogenous due to the changes in the law which took place on May 25th, 2006. The majority of appeals reviewed in 2006 (83.26 %) was reviewed on the basis on the law and implementing regulations as they were in force until 25th of May 2006.

The average time span between the date of submission of appeal to the President of PPO and the date of arbitration panel meeting was 11 days. It is 2 day improvement in comparison to the previous years. It should be underlined that fixing of time period shorter than 10 days in many cases is not possible due to the organizational matters. Hasty referral of the appeal to the panel of arbiter would render impossible to the President of PPO to make a decision on the join referral of two or more similar cases to one panel thus thwarting the principle of concentration of appeal procedure introduced to the Law in May 2006.

The number of appeals in the recent years was as follows:

- 2000 1,565 appeals
- 2001 1,687 appeals
- 2002 1,936 appeals
- 2003 2,292 appeals
- 2004 2,421 appeals
- 2005 4,094 appeals
- 2006 3,077 appeals

As indicated by the figures, in 2006 there was a significant decrease in the number of appeals that were lodged. Comparing to 2005 there were 1,017 appeals less which is 24.84 % decrease.

The rate of appeals with regard to the number of procurements announced above 60, 000 euro threshold was in 2006 7.68 %. This rate is lower in 2005 when it was 11.34 %.

The decrease in the number of submitted appeals was influenced by the amendment of the provisions of the Law which introduced a range of provisions concerning inter alia concentration of procedure concerning protest and appeals. This thesis is confirmed by the fact that in the first half of 2006 (before the entry into force on new provisions) the number of appeals remainder at high level (on the average 330 of appeals per month. In total from January until June 2006 there were 1985 appeals submitted, thus 64.51 % of the total number of appeals submitted in 2006. the second half of 2006 brought significant decrease of appeals to the level of 182 appeals per month. From July to December 2006 there were 1092 appeals thus 35.49 % of all appeals in 2006.

Most frequently appeals were lodged in procedures where works were the object of contract (35.65 % of appeals). Appeals submitted in procedures for supplies and services represented, respectively, 32.04 % and 32.30% of the total number of appeals.

In the prevailing majority of cases, namely in 2,245 (87.32 % of appeals submitted in 2006) appeals were lodged in the course of procedures conducted by open tendering. Appeals lodged in restricted tendering made only 9.57 % of all appeals submitted in the analysed period (246 appeals). Appeals submitted in other procedures were rare – for example in the competitive dialogue there were only 10 appeals (0.39 % appeals submitted in 2006). Rate of appeals with regard to the number of proceedings announced above 60,000 euro is merely 6 % in open tendering, 9.5 5 in restricted tendering and 20 % in negotiated procedure with publication of notices. The subject matter analysis of appeals lodged to the President of PPO indicates that the most frequent allegations made there

concerned: infringement of the principle of fair competition, irregularities at the stage of tenders evaluation and the selection of the best tender and ungrounded cancellation of the procedure.

Decrease in the number of appeals did not cause any change in the structure of the results of their examination. The statistical distribution of the results of appeals is as follows:

	Total Number
Appeals lodged	3077
but not referred to the arbitration panel because no registration fee was paid	195
referred to the arbitration panel	2882
Proceedings discontinued upon withdrawal of appeals	206
Admitted	1338
Dismissed	1061
Rejected	277

It is noteworthy that in the period 2002-2005 there was a faster growth of admitted appeals than appeals dismissed while in 2006 there was a change in this tendency. It means that in the growing number of cases where arbiters adjudicated in favour of appellants. e total number of 4,094 appeals, the necessary fee was not paid in 406 cases (9.9%) and, consequently, appeals were returned on the basis of orders of the President of PPO, without their examination by the arbitration panel. The share of appeal cases with unpaid registration fee has been at a similar level for several years.

Appeals Examined on Merits	Year				
	2002	2003	2004	2005	2006
Dismissed	564	657	664	1226	1061
Admitted	586	663	775	1714	1338

The average cost of appeal procedure in 2006 was PLN 3,314.10. The highest adjudicated costs were PLN 5,630.01, the lowest 962.41 PLN (cancellation of the procedure).

The amendment of the Law introduced to the system of law enforcement two extremely useful provisions which allow to limit lengthiness of the procedure: the possibility of joining of economic operators to the procedure which takes place and the possibility of referring by the Chairman of PPO of two or more similar appeals to be reviewed by the same panel of arbiters. Data for 2006 show that in 480 appeals which were referred to the arbitration panel, economic operators submitted 190 joinings, while 56 appeals were referred to the joint review.

Complaints against Judgments of the Arbitration Panel

The decrease in the number of appeals examined by arbitration panels was followed by the decreased in the number of complaints against judgments of arbiters. As of 2002, the number of complaints was as follows:

- 2002 - 196
- 2003 - 197
- 2004 - 309
- 2005 - 563
- **2006 - 465**

As above mentioned data show there were 98 less complaints (17.4 % decrease). It is important, but more significant is the rate between the number of complaints and the number of appeals reviewed by arbiters. This percentage was 14% in 2002, 12.2% in 2003, 16.6% in 2004, 15.3% in 2005 and 16.1 % in 2006. Likewise in previous years the biggest most complaints were submitted to Regional court 26.4 %, while 50 % of all complaints were submitted to 5 regional courts (Warsaw, Katowice, Poznan, Wrocław and Gdańsk). It took on the average 61 days to review the complaints by the regional court. It is noteworthy that formal review of complaints lasted on average 42 days while review on merit on the average: 72 days in the case of dismissal and 58 days in the case of admittance.

II.2.7. Participation of Polish Entrepreneurs in the European Market

Poland's accession to the European Union enabled a greater access to the markets of the Member States by Polish entrepreneurs. In 2006, Polish companies won 46 contracts in the EU markets (in 2005 - 42). Polish economic operators most frequently won procedures organised by awarding entities from the Czech Republic (14 contracts), Belgium (8) and Germany (7). Those contracts were for supplies of buses, fire engines, cisterns, ships and also small medical equipment, and for services related to implementation of IT programmes and consulting services. The list of economic operators who were awarded contracts in foreign markets is set out in [Appendix 6](#).

The data about contracts won in 2006 by Polish economic operators in the EU States prove that they compete more and more effectively for contracts in the open European public procurement market. Here, we should bear in mind the limitation imposed by the Accession Treaty with respect to access to the EU labour market as it also affects, during the transitory period, the ability of Polish entrepreneurs to compete for contracts in the public procurement market. It prevents Polish entrepreneurs from using own staff to implement contracts, if any, and adversely affects the competitiveness of Polish companies.

II.2.8. Foreign Entities in the Polish Public Procurement Market

As of 1 May 2004, the Polish public procurement market became a part of the single European market. As of the accession, some of notices concerning public contracts of the highest value must be published in the Official Journal of the European Union. In 2006, Polish awarding entities published 10,466 public contract notices and design contest notices in the Official Journal of the European Union (in 2005 12,380) which represented 7.7 % of all tendering and design competition published at the EU level (Appendix 7). At the same time, that figure represented 55% of all tendering published by the new Member States. For comparison, the Public Procurement Bulletin published 36,104 tendering over the same period. Therefore, the full opening of the Polish procurement market concerned 34% of procedures of the highest value.

In the prevailing majority of cases (more than 97%), contracts on the Polish market were awarded to domestic operators. 339 contracts were awarded to foreign economic operators. The majority were won by operators from Germany the United Kingdom – (more than 23 % of contracts), followed by Austria, France and Italy (7 %) and Czech Republic, Netherlands and Switzerland (4 %).

Likewise in the preceding year, contracts awarded to foreign economic operators mostly concerned special objects of the contract, e.g., purchase of licence rights to motion pictures or purchase of specialist medical equipment. A large share of contracts also concerned small and disposable medical equipment. Foreign economic operators were also

contracted to provide property insurance and to grant loan facilities and in case of public works – construction of roads and motorways).

Therefore, any concerns that after the opening of the market the majority of big contracts would be taken over by EU companies that would eliminate Polish enterprises, were proven false. Contracts awarded to foreign entities are largely for specific or specialist objects of the contract that are not always available in the local market. And in the case of small or disposal medical equipment, foreign entities implement only lots or packages of bigger contracts.

III. PUBLIC PROCUREMENT IN PRESS PUBLICATIONS

In the reporting period there were 4142 press publications on public procurement, published in the Poland-wide, regional and specialist press. The biggest number of publications was in Poland-wide journals: Rzeczpospolita – 608, Puls Biznesu – 252, Gazeta Prawna – 249. Jointly they represented 26.7 % of all publications. Analysis of press publications confirms, constant for a few years, high level of interest of journalist in the topic of public procurement.

Authors assessed legal provisions currently in force, informed about public debates hold in journals concerning the course of legislative proceedings, described important regulations on public procurement. Significant share in total number of publications had articles concerning irregularities in public procurement. Wrongdoings of the awarding entities were criticized but the examples of good practices were also indicated. Judgments of the arbiters available on the website of the PPO were extensively used in press materials. Journalists and experts referred to the judgments of arbiters and courts when they explained difficult issues.

Likewise in previous years media activity played significant educational and informational role during works concerning amendment of the Law. Press materials contained in most cases information on changes in legal provisions (Rzeczpospolita, Gazeta Prawna, Gazeta Wyborcza, Puls Biznesu, Zamówienia Publiczne Doradca, Gazeta Samorządu i Administracji, Wspólnota, Parkiet, Dziennik Polski, Gazeta Pomorska, Kurier Szczeciński, Zycie Warszawy). Justification of changes was presented as well as their impact on the practice of awarding of public contracts and the acceleration of absorption of EU funds. Representatives of the Public Procurement Office were quoted with regard to major changes in the existing legal framework and new solutions in the existing legal framework. Publications addressed at self government underlined the fact that new law would simplify procedures and would bring about faster and more efficient funds contracting. They informed about issuing implementing regulations to the amended law and explained practical importance of new solutions.

The next group of published materials presented the topic of concrete procurement contracts and irregularities in the procedure of their award. This type of information was published mainly in local press (eg. in Dziennik Bałtycki, Super Nowosci, Dziennik Lodzki, Gazeta Krakowska, Gazeta Pozananska, Gazeta Pomorska, Kureir Szczecinski, Dziennik Wschodni, Slowo Polskie, Gazeta Wroclawska, Zycie Warszawy). Journalists described planned and realized investments important for local communities and principles of procedures of selection of suppliers. They informed about renovation and construction works of roads as well as about plans concerning development of transportation network. Irregularities in procedures and problems connected to them in realization of public procurement were disclose; examples of bad practice abuse of law were pointed out. Press signals concerning irregularities in conducting public procurement proceedings were attentively analysis by PPO and on numerous occasion resulted in initiation of control proceedings.

Journalists many times referred to analyses of PPO concerning results of obligatory ex ante controls (Rzeczpospolita, Gazeta Wyborcza, Gazeta Prawna, Puls Biznesu). The need for ongoing monitoring of public procurement proceedings as well as taking into account in prepared procedures instructions of PPO included in post control report and thorough preparation of procurement was also underlined. Information about important and interesting events concerning public procurement such as for example, the conference organized by PPO "Public procurement system after the amendment" was published repeatedly. Publications of PPO were presented with underlying of their importance of their informational and educational character and their importance for participants of public procurement market, including SME's. The basis for many press materials concerning realization of tasks of the President of PPO, changes in the law, changes in the number of notices published in the bulletin, number of control proceedings, appeals submitted to the President was the Report on the functioning of public procurement system in 2005 and statistical data published therein.

In order to create positive approach to the system of public procurement, presentation of good practice, explication of doubts and issued perceives as difficult PPO organized jointly with mass media press debates (Rzeczpospolita and Gazeta Prawna) as well as experts telephone help desks (Rzeczpospolita, Gazeta Prawna, Zamowienia Publiczne Doradca) extensively reported in the press.

IV. CONCLUSIONS AND RECOMMENDATIONS

The year 2006 was another year of the development of public procurement system and market. The market value increased, the decentralisation of the system was broadened, unnecessary bureaucratic burdens were eliminated and further adjustment to the EU legal regulations proceeded. The most important tasks in the area of public contracts in the nearest future should include:

1. Amendment of Public Procurement Law and various activities concerning its implementation

The entry into force of the amendment of the Public Procurement Law which introduced new legal solutions will have significant impact on the functioning of public procurement system in Poland. Achievement of the basis goals of the amendment, namely further decentralization of the system, practical use of new instruments, simplification and streamlining of the procedures and as a result the acceleration of the absorption of EU funds will depend on the proper and fast implementation of new provisions. Of crucial importance will be knowledge of participants of the public procurement market on the changes introduced as well as shaping of proper practices with regard to the application of the provisions. Public Procurement Office as well as other entities dealing with training and advisory activities should undertake appropriate actions ensuring performance of the above mentioned demand both in the field of organization and educational and consulting actions. It is indispensable to intensify actions aiming at ensuring access to reliable knowledge on the modifies provisions to wide group of participants of the public procurement market, seminars and dissemination of publications on this topic.

2. Establishment of National Appeals Chamber

Establishment of the National Appeal Chamber is the continuation of the process of reforms of the settlement of disputes in public procurement proceeding initiated with the amendment of the Law in 2006. New system of settlement of appeals should ensure uniformity and high level of jurisprudence. Of crucial importance in this regard will be qualification process for members of NAC as result of which NAC should be composed of outstanding experts in the field of public procurement.

NAC is scheduled start to work in the fourth quarter of 2007. At the same time arbiter from the list of the President of PPO should finish their activities. PPO should ensure efficient course of qualification process for members of NAC both from organizational and technical point of view as well as to provide all conditions to carry out these activities efficiently, in above mentioned date.

3. Informatization of public procurement

Development of public procurement system in coming years will depend to much extent of the utilization of modern IT techniques. Activities concerning digitalization of public procurement system should include in particular:

- development of public procurement portal and, in particular ,
- making specification of the e – sender box as well as demonstrational IT available to users of the system,
- making available a module for conducting electronic auctions and bidding,
- making good use of possibilities offered by EPUAP (electronic platform of public administration services) for the purpose of public procurement through creation of open system for automatic verification of the fulfilment of the conditions for participation in procedure by economic operators. Such s system will limit (and eventually eliminate) the need to time consuming and troublesome collecting and attaching to the tenders of numerous certificates,
- dissemination of the perception concerning advantages stemming from the uses of electronic techniques supporting the process of award of public contracts.

4. Activities concerning control of public procurement

Provisions of Public Procurement Law which strengthen the principle of decentralisation of public procurement system extended the autonomy of awarding entities in spending public money. Such solution, on the one hand should ensure efficient fulfilment of needs of awarding entities and on the other hand, in accordance with the principles of affective and economical use of public funds, generate a need to broaden the supervision of the regularity of their spending. It is of particular importance taking into account the fact the more and more money originate from EU funds.

In view of the foregoing, it will be necessary to strengthen control activities of the Chairman of PPO, and control ex ante in particle with regard to procurement financed from EU funds as well as concerning regularity of selection of single source procurement method and negotiations without publication. It is necessary to monitor more extensively procurement below EU thresholds.

Realization of those tasks will require broadening and intensification of cooperation with state control institutions as well as increasing the number of staff of PPO.

5. Educational – information activities

Likewise in previous years one of the priorities of PPO should be activities of PPO concerning education and dissemination of information. Besides the actions connected to the dissemination of knowledge on the changes in the legal system of public procurement after the adoption of the amendment of the Law they should include in particular:

- beneficiaries of EU funds; the results of the monitoring of procurement co financed with EU funds so far indicate numerous irregularities and inadvertences committed by awarding entities preparing and conducting procurement; the result

of those errors could be refusal of reimbursement of funds spend or the need to return in case of inappropriate spending;

- entities in SME sector; participation of entrepreneurs from this sector in public procurement market remains unsatisfactory, therefore in the course of educational activities practical aspects of participation in public procurement will be taken into account in particular, eg. dissemination of standard documents, informative materials concerning most often errors, legal opinions etc.
- entities involved in realization of tasks concerning preparation of EURO 2012; multitude of tasks and relatively short term for their realization require perfect preparation, in particular of investment undertakings and proper conducting of procurement proceedings in the view of foregoing it is indispensable to ensure the system of professional support of awarding entities which will realize investments covered by program of EURO 2012. It should cover as wide as possible spectrum of undertakings, both training and advisory.

6. Realization of National Action Plan on green procurement

In the framework of National Action Plan on green procurement for period 2007 – 2009 PPO, together with other bodies involved should undertake appropriate actions to achieve the objectives of the Plan, namely:

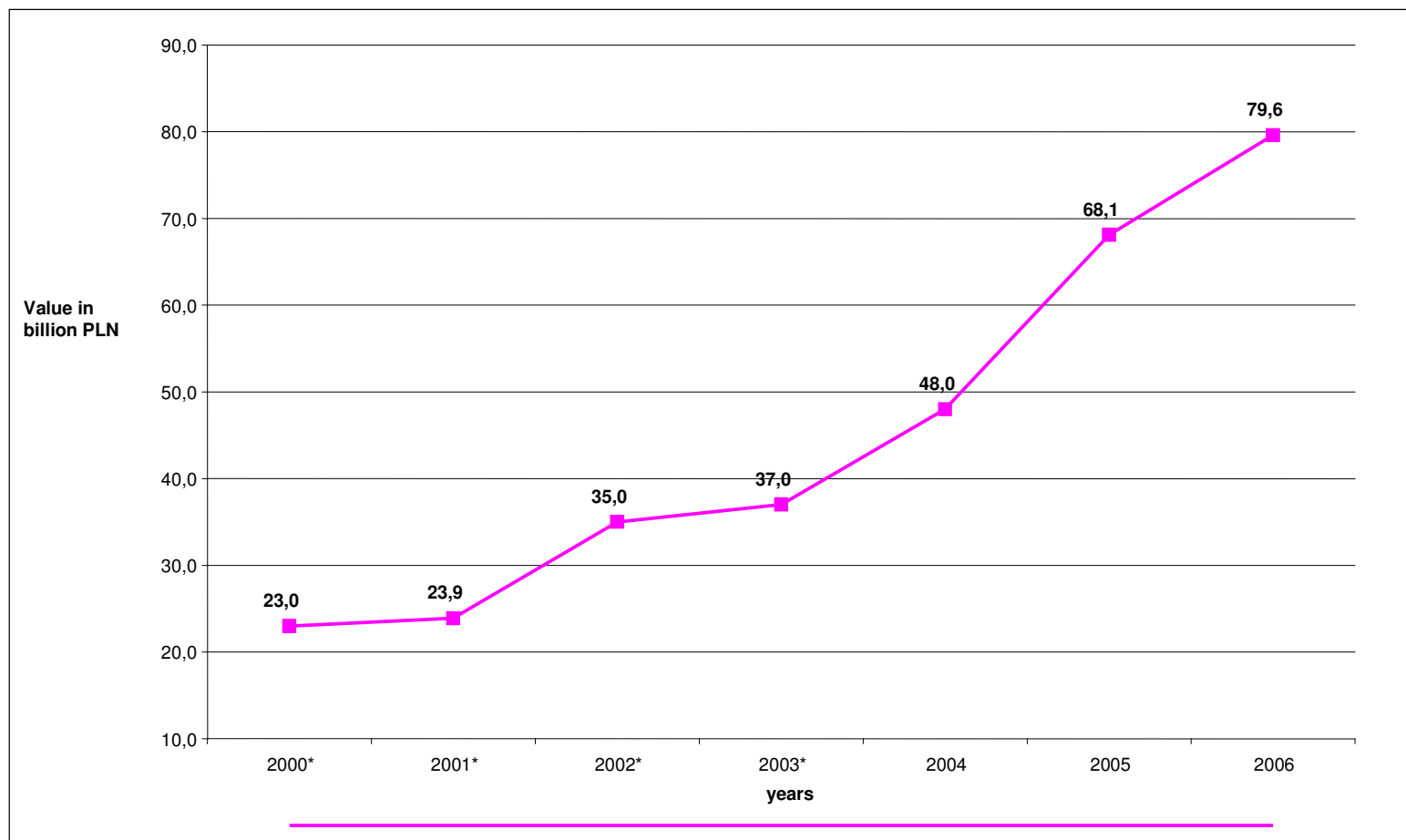
- increasing level of use environmental aspects in public procurement,
- development of the market of environmentally friendly products and broadening of market of environment protection industry and sector of services linked to the environment programme;
- promotion of sustainable patterns of production and consumption.

It will be necessary to intensify actions connected to the organization of training and conferences addressed at awarding entities and economic operators covering inter alia use of environmental contract award criteria, dissemination of publications and materials on green procurement, maintaining and up dating of a website concerning green procurement, elaboration of manual for national awarding authorities containing instructions how to include environmental aspects in contract award procedures, in particular use of environmental criteria in the light of existing provisions.

APPENDIXES

Attachment 1

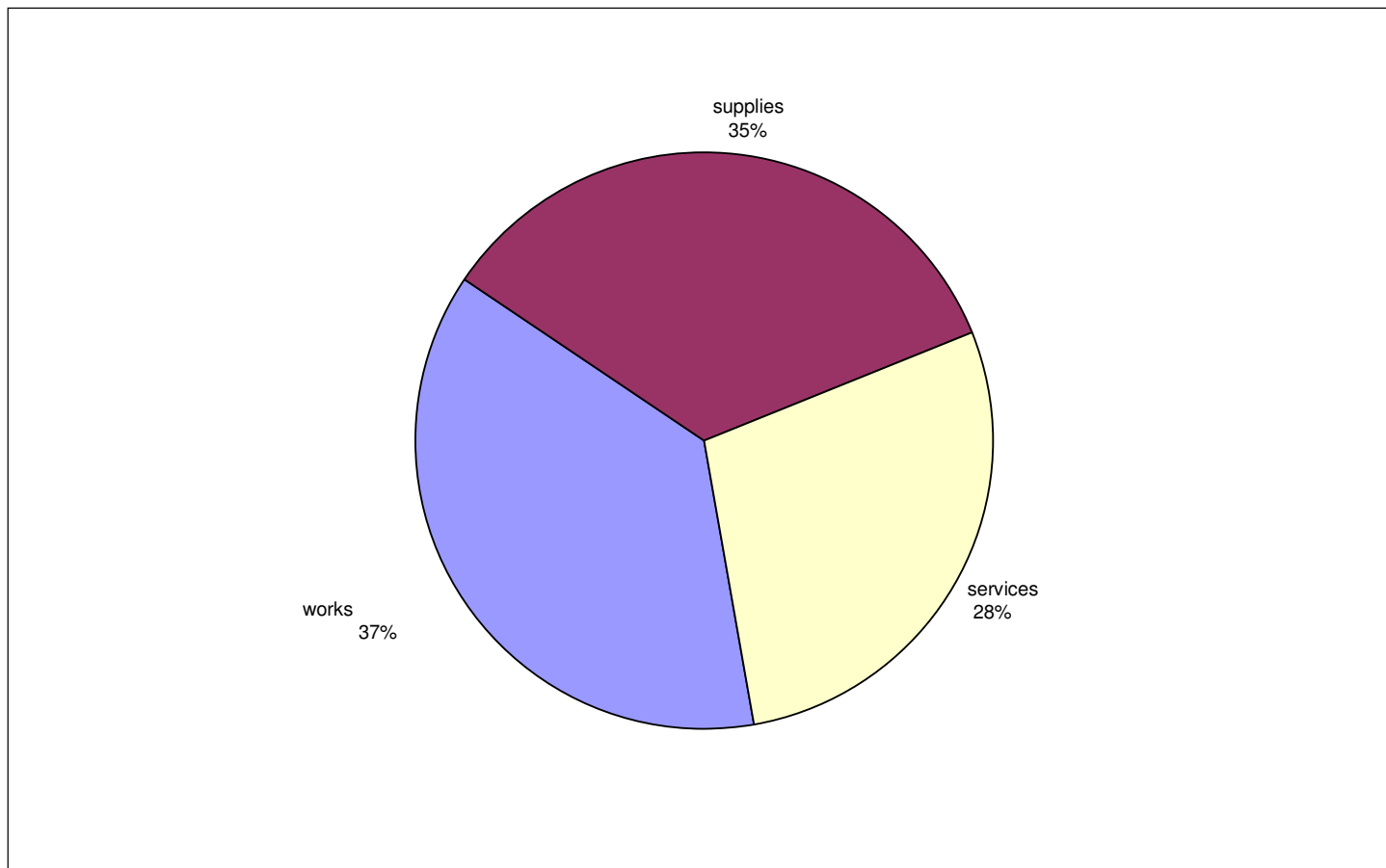
Value of Polish public procurement market 2000 – 2006



* value estimated on the basis of notices published in the Bulletin

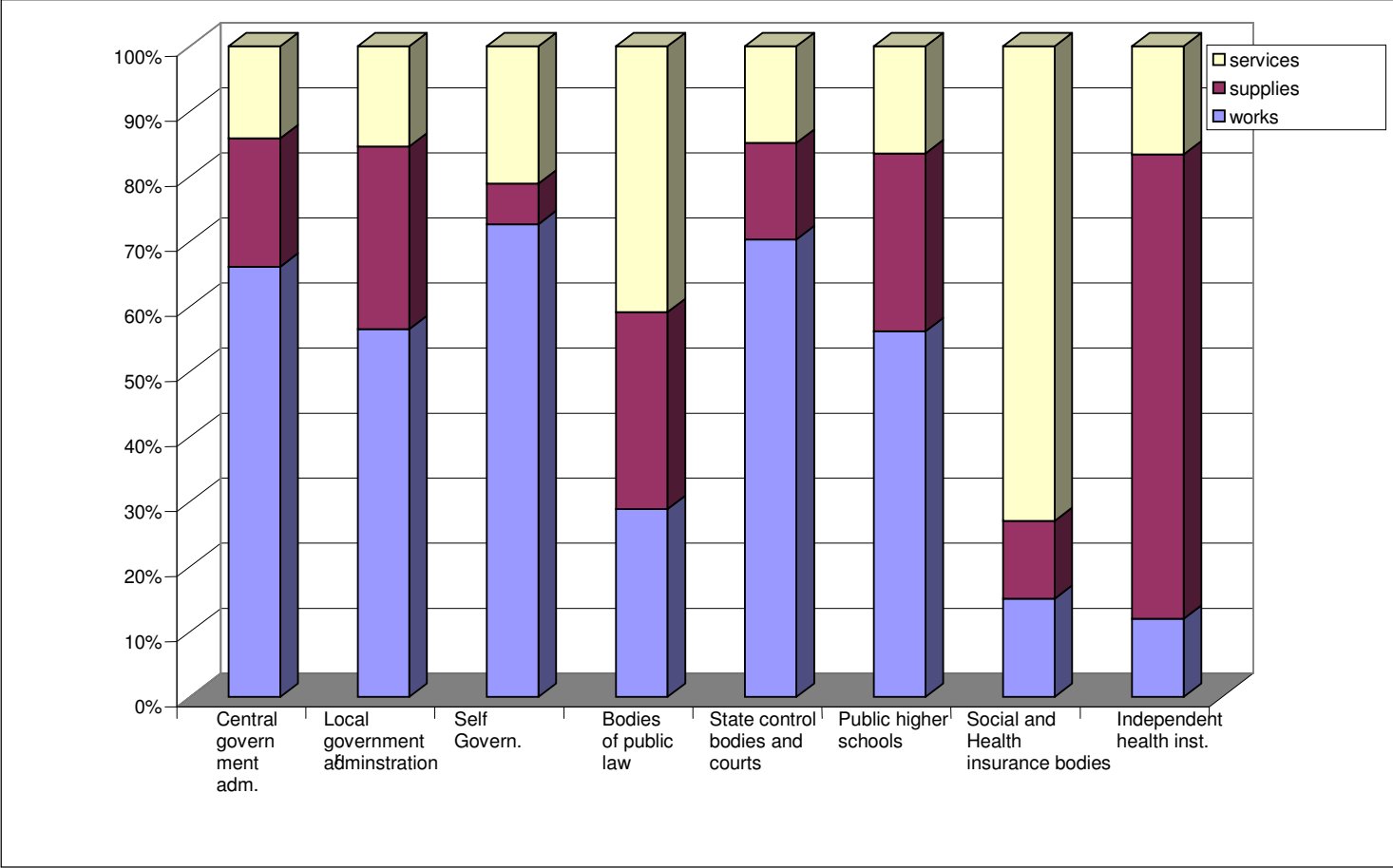
Attachment 2

Structure of the number of contracts awarded above the threshold of 60,000 EUR broken into subjects of contracts (concerning notices published both in the Bulletin and in OJ)

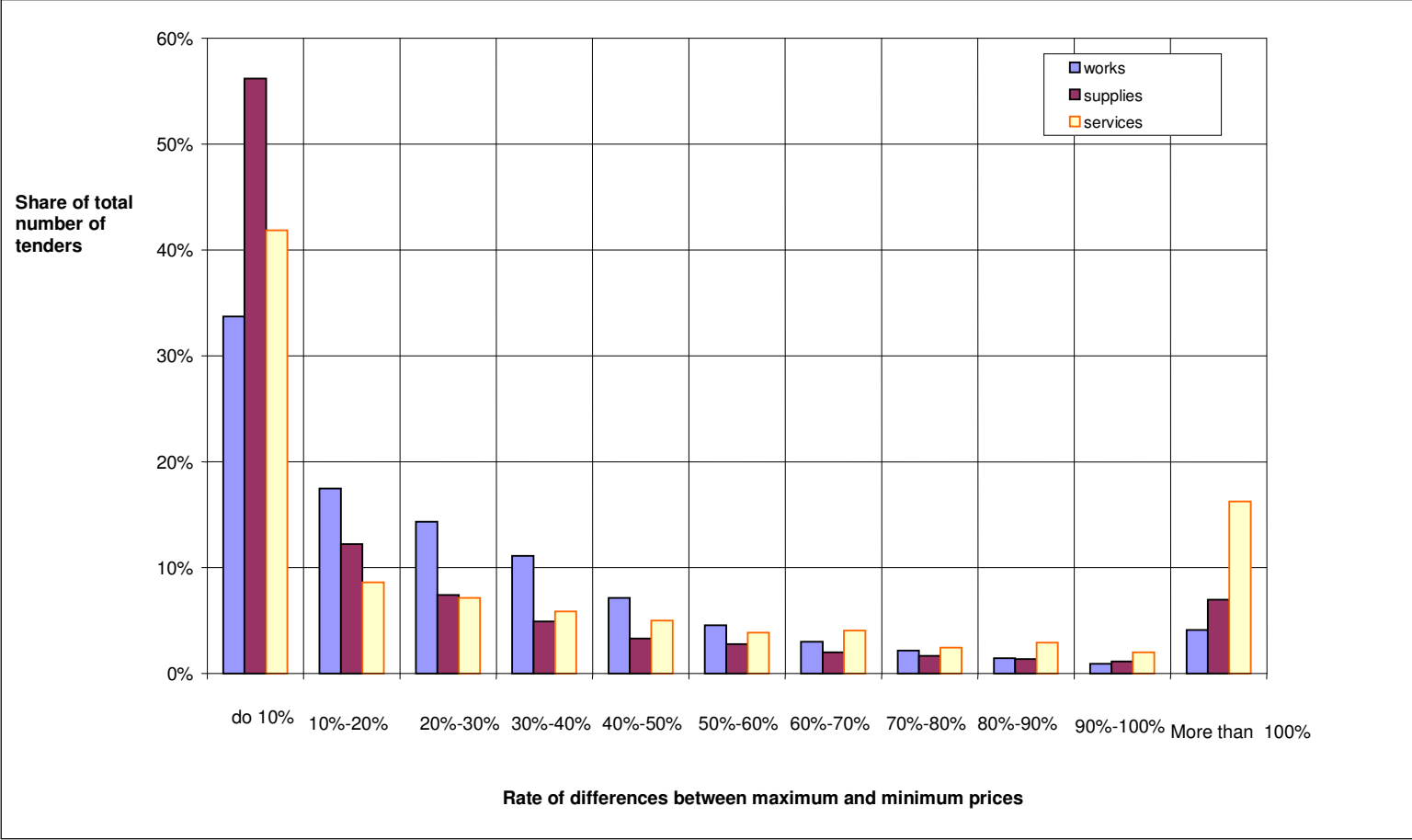


Attachment 3

Value of Works, supplies and services awarded by certain groups of awarding entities

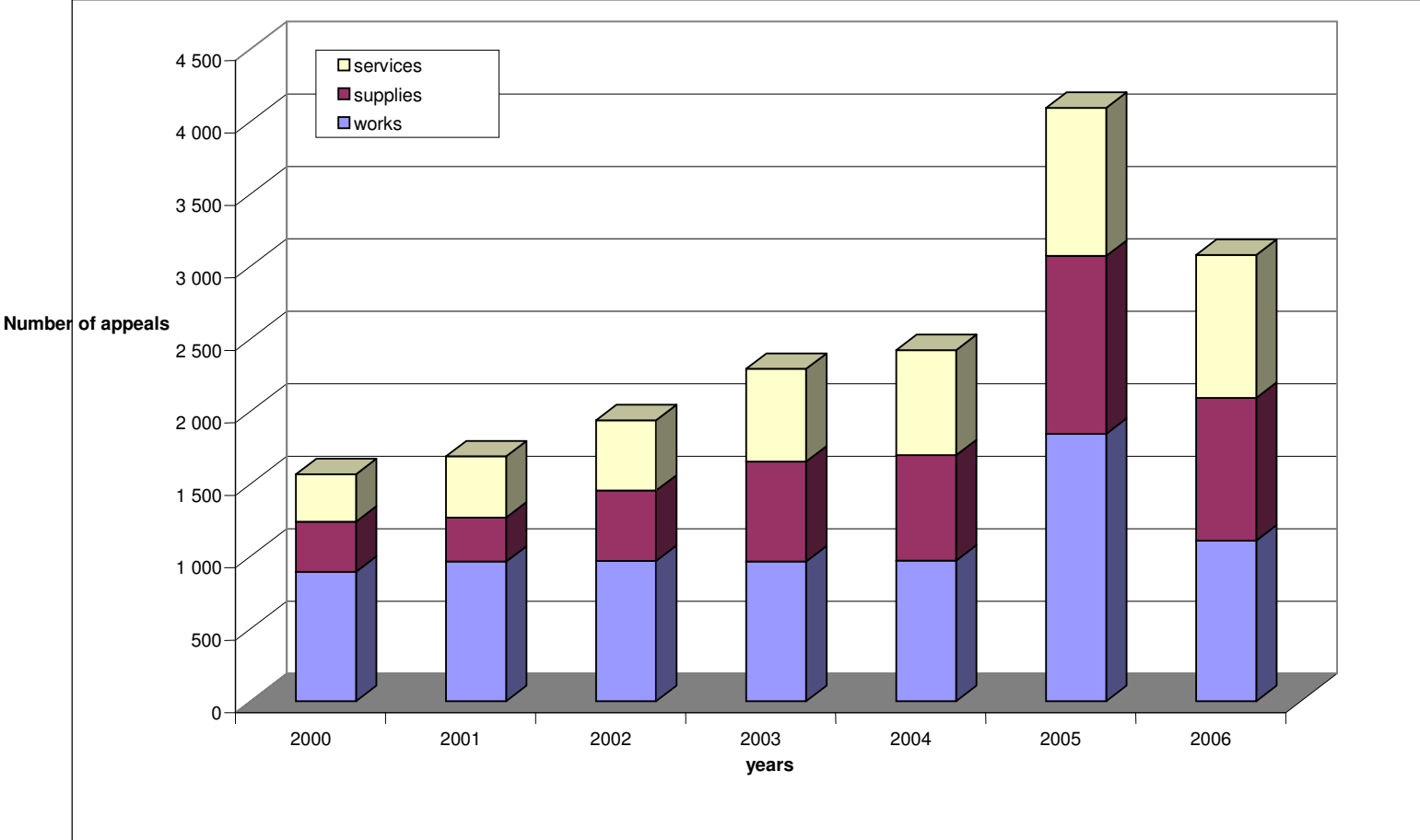


Attachment 4
Differences between maximum and minimum prices



Attachment 5

Number of appeals submitted to the President of PPO 2000 – 2006



Attachment 6

List of Polish economic operators who won contracts on international markets * (contracts subject to publication in the OJEU)

No.	Economic operator	Title of procurement	Country
1.	Toruńskie Zakłady Materiałów Opatrunkowych w Toruniu (zad.5, 6,7,12,34,41,42,59,62,63,64,75,92,93,96,98,99, 118)	Supply of plasters	Hungary
2.	Darek Co, Augustów (zad. 1, 2)	Supply of ships and boats	Lithuania
3.	Uniwersytet Warszawski, Centrum Europejskich Studiów Regionalnych i Lokalnych	Various services	Luxemburg
4.	Fabryka Zmechanizowanych Obudów Ścianowych „FAZOS” S.A., Tarnowskie Góry	Modernization of factories	Czech Republic
5.	Fabryka Maszyn „FAMUR” S.A., Katowice	Modernization of factories	Czech Republic
6.	Copyline, Gorzów Wielkopolski (członek konsorcjum)	Supply of office equipment and equipment for presentations	Belgium
7.	Solaris Bus &Coach, Bolechowo	Supply of buses for public transportation	Czech Republic
8.	Areva T&D Sp. z o.o., Świebodzice (zad. 4)	Supply of transformers	Latvia
9.	Solaris Bus & Coach S.A	Low floor buses	Slovakia
10.	Zakłady Porcelany Elektrotechnicznej Zapel S.A., Boguchwała (zam. nr 1)	Supply of ceramic insulators	Germany
11.	Argillon Polska Sp. z.o.o., Jedlina Zdrój (zam. nr 4)	Supply of ceramic insulators	Germany
12.	Comarch SA (PL), Kraków w konsorcjum z Spinnaker New Technologies (S&M) oraz Pexim Solutions (MK)	Implementation of IT system for legal data base and further development and implementation of courts information in Former Republic of Yugoslavia (Skopje)	Belgium
13.	EMC System, Gdynia	Purchase of equipment „Tempest” (UCA 189/04)	Belgium
14.	”Pall Poland Sp. z o.o.”, Warszawa	Machines, equipment, tools and similar products	Latvia
15.	Fabryka Zmechanizowanych Obudów Ścianowych "FAZOS S.A.", Tarnowskie Góry	Portable hydraulics mining pillars	Czech Republic
16.	Fazbud, Bełchatów (zad. nr 9, 13, 24)	Public works	France
17.	Geofizyka Kraków sp. z o.o.	Assessment services of geophysical conditions	Czech Republic
18.	Sempertrans Bełchatów S.A., Rogowiec	Supply of rubber belt conveyors	Estonia
19.	Ferrum S.A., Katowice	Supply of pipes	Latvia
20.	Solaris Bus & Coach S.A, Owińska	Supply of electric buses	Czech Republic
21.	Toruńskie Zakłady Materiałów Opatrunkowych S.A. (zad. nr 15)	Supply of plasters, diapers and seams	Hungary
22.	Solaris Bus & Coach, Bolechowo	Supply of trolley buses	Czech Republic
23.	Trawena S.A., Trawniki	Supply of army uniforms	Sweden
24.	Zakład Produkcji Urządzeń Elektrycznych, Włoszczowa	Supply of medium voltage equipment	Hungary
25.	Amator Metrix S.A. Tczew (zad. nr 3)	Supply of gas network equipment	Germany
26.	Polskie Autobusy Sp. z o.o.	Supply of buses	Hungary
27.	Solaris Bus & Coach S.A, Owińska (część)	Supply of low floor buses	Czech Republic
28.	Zbigniew Szcześniak, Jaworze	Supply of cisterns for transport of water	Czech

No.	Economic operator	Title of procurement	Country
			Republic
29.	Firma Handlowo-Usługowa "Polorto", Sp. z o.o., Częstochowa	Supply of orthodontics equipment	Lithuania
30.	Comarch S. A. w konsorcjum z Computer & Copier System and Pexim Solutions, Kraków	Elaboration and implementation of staff management for State Police in Albania	Belgium
31.	Zbigniew Szczesniak, Jaworze	Supply of fire brigades cars	Czech Republic
32.	Zbigniew Szczesniak, Jaworze	Cisterns for transport of water	Czech Republic
33.	Altwater SULO Polska Sp. z o.o., Warszawa	Waste removal services, hygienic services and services concerning environment	Germany
34.	Geofizyka Kraków Sp. z o.o.,	Seismic services	Czech Republic
35.	BEWI Producent Stolarki, Zlinice	Assembly of metal constructions (public works)	Germany
36.	Stangl Polska, Wałbrzych	Public works	Germany
37.	WM International Paweł Soliński, Kraków	Supplies for vehicles for maintenance of roads in winter	Lithuania
38.	CASE – Centrum Analiz Społeczno-Ekonomicznych, Warszawa	Report services concerning vocational education and training	Greece
39.	FUGO S.A., Konin	Supply of Machines, equipment, tools and similar products	Germany
40.	Siltec sp. z o.o., Warszawa	Supply of IT equipment	Belgium
41.	CASE – Centrum Analiz Społeczno-Ekonomicznych, Warszawa	Updating of former assessment of applicability of free trade agreement between EU and Russia	Belgium
42.	Solaris Bus & Coach, Bolechowo	Supply of low floor buses	Czech Republic
43.	Solaris Bus & Coach Sp. z o.o., Środa Wielkopolska	Supply of low floor buses	Sweden
44.	Alfred Biec, Warszawa	Special financial services	Belgium
45.	PARTNER 1: WYG International Sp z o.o. (Polska), Warszawa, PARTNER 2: Centralny Instytut Ochrony Pracy – Państwowy Instytut Badawczy (Polska), Warszawa	Technical assistance for nation wide assessment concerning needs of labour market, information campaign concerning state aid and organization of seminars concerning safety and hygienic at works	Belgium
46.	Fabryka Zmechanizowanych Obudów Ścianowych „FAZOS” Spółka Akcyjna, Tarnowskie Góry	Modernization of factories	Czech Republic

* Prepared on the basis of contract award notices published on the website of TED. Due to the incompleteness of data in part of notices this list may not be complete.

Attachment 7

Number of notices published in the Official Journal of the EU

