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**The Act on Concession for Works or Services<sup>1 2</sup>  
of 9 January 2009****Chapter 1  
General Provisions**

**Art. 1.1.** This Act specifies the rules and procedures for concluding concessions for works or services and the legal protection measures.

2. The concessionaire under the concession concluded with the concession-granting authority is obliged to perform the subject of concession for remuneration, which constitutes in case of:

- 1) the concession for works – exclusively the right to use the work or such right with the payment by concession-granting authority;
- 2) the concession for services - exclusively the right to use the service or such right with the payment by concession-granting authority.

3. The concession-granting authority's payment for the benefit of the concessionaire may not lead to the recovery of the total expenditure incurred by the concessionaire connected with the performance of the concession. The concessionaire bears in the significant part the economic risk of the performed concession.

**Art. 2.** For the purpose of this Act:

- 1) the interested entity – shall mean a natural person, a legal person or an organizational entity not being a legal person or a group of such entities, interested in participation in the procedure for conclusion of concession contract;
- 2) the concessionaire – shall mean an interested entity with whom the concession contract was concluded;
- 3) the candidate – shall mean an interested entity who submitted request to conclude a concession contract;
- 4) the tenderer – shall mean an interested entity who submitted a tender;
- 5) the works – shall mean construction works as defined in provisions of the Public Procurement Law;
- 6) supplies – shall mean supplies as defined in provisions of the Public Procurement Law;
- 7) services – shall mean services as defined in provisions of the Public Procurement Law;
- 8) the concession-granting authority – shall mean an entity specified in Art.3 or a group of such entities bound to apply this Act;
- 9) the procedure for conclusion of concession contract – shall mean the procedure commenced by means of the public concession notice which aims at selecting the interested entity with

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<sup>1</sup> This Act implements 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 (OJ L 134, 30.4.2004)

<sup>2</sup> This Act amends the following acts: the Public Roads Act of 21 March 1985, the Toll Highways and the National Road Fund Act of 27 October 1994, the Municipal Services Management Act of 20 December 1996, the Act of 29 January 2004 – Public Procurement Law and the Act of 17 December 2004 on the Liability for the Violation of the Public Finances Discipline.

whom the concession-granting authority shall conclude concessions for works or services contract.

**Art. 3.** This Act applies to the conclusion of the concession contracts by:

- 1) the public authorities including the government administration bodies;
- 2) local self-government bodies and their associations;
- 3) public budgetary entities, public budgetary establishments and auxiliary entities of the public budgetary entities;
- 4) other entities than those listed in item 1-3, established for the specific purpose of meeting needs of general interest which do not have an industrial or commercial character, have a status of a legal person and:
  - a) are financed in more than 50% by the entities specified in item 1 or 2, or
  - b) whose managerial board is supervised by the entities specified in item 1 or 2, or
  - c) in which over half of the members of the managerial or supervisory board was appointed by the entities specified in item 1 or 2;
- 5) other entities than those listed in item 1-4, which were established for the specific purpose of meeting needs of general interest, which do not have an industrial or commercial character, have a status of a legal person and:
  - a) are financed in more than 50% by entities specified in item 4, or
  - b) whose managerial board is supervised by the entities specified in item 4, or
  - c) in which more than half of members of managerial or supervisory board was appointed by the entities specified in item 4.

**Art. 4.1.** This Act shall not apply to concession contracts concluded:

- 1) classified as state secret pursuant to the provisions on the protection of confidential information or if its performance involves special security measures, or if it is required by the protection of the basic state interests;
  - 2) by concession-granting authority performing at least one of the following types of activities:
    - a) making available a public telecommunications network,
    - b) operation of the public telecommunications network,
    - c) provision of publicly available telecommunications services by means of the public telecommunications network or services of electronic mail by means of such network
- if the agreement is to be concluded exclusively for the purpose of carrying out such types of activities;
- 3) under special procedure of an international organization different from the one provided for in this Act;
  - 4) under an international agreement the Republic of Poland is party to, regarding the stationing of troops, if that agreement provides for a different procedure for concluding concession contract than those provided for in this Act;
  - 5) under an international agreement concluded between the Republic of Poland one or more states non being a Member of the European Union, regarding the implementation or execution of a project by the parties to that agreement, if that agreement provides for different procedures for concluding concession contract than those provided for in this Act;
  - 6) with an interested entity, which by law has exclusive right to perform an activity being the subject of concession;
  - 7) for services – if it is required by the public interest, which may be connected especially with the risk of discontinuance of the realization of the task being the subject of concession for

services, and whose occurrence the concession-granting authority could not predict with due diligence, subject to paragraph 2

2. By concluding the contract specified in paragraph 1 item 7, the procedure for concluding the concession contract is commenced. The contract concluded under paragraph 1 item 7 cannot be effective longer than until the day .

**Art.5.** The provisions of the Act of 23 April 1964 – The Civil Code (Journal of Laws No. 16, Item 93, as amended<sup>3</sup>) shall apply to actions undertaken by the concession-granting authority and the interested entities in the procedure for concluding concession contract and concession contracts, , unless the provisions of this Act provide otherwise.

## **Chapter 2**

### **The procedure for concluding concession contract**

**Art.6.** The concession-granting authority, while preparing and conducting procedure for concluding concession contract, hereinafter referred to as “the procedure”, is obliged to ensure an equal and non-discriminatory treatment of the interested entities, act in a transparent manner and with observance of the rules of fair competition.

**Art.7.1.** The concession-granting authority is obliged to describe the subject of concession in a manner allowing the interested entities equal access to the performance of the concession and in the manner which shall not create any limitations of competition in the access to the performance of concession.

2. The description of the subject of concession is done by:

- 1) providing a reference to the technical specification;
- 2) the characteristics or requirements as to functionality, on condition that such description allows the interested entities to establish the subject of concession or
- 3) a partial reference to the technical specification mentioned in item 1 and a partial reference to the characteristics or requirements as to functionality mentioned in item 2.

3. The technical specification mentioned in paragraph 2 item 1 should include the reference to standards transposing European standards, technical approvals, common technical specifications, international standards, other technical reference systems provided for by the European standardisation bodies or – in lack thereof – to national norms, national technical approvals or national technical specifications regarding designing, calculating, execution of works, as well as the

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<sup>3</sup> The amendments to the mentioned Act were published in the Journal of Laws of 1971, No. 27, item 252, of 1976, No. 19, item 122, of 1982, No. 11, item 81, No. 19, item 147 and No. 30, item 210, of 1984, No. 45, item 242, of 1985, No. 22, item 99, of 1989, No. 3, item 11, of 1990, No. 34, item 198, No. 55, item 321 and No. 79, item 464, of 1991, No. 107, item 464 and No. 115, item 496, of 1993, No. 17, item 78, of 1994, No. 27, item 96, No. 85, item 388 and No. 105, item 509, of 1995, No. 83, item 417, of 1996, No. 114, item 542, No. 139, item 646 and No. 149, item 703, of 1997, No. 43, item 272, No. 115, item 741, No. 117, item 751 and No. 157, item 1040, of 1998, No. 106, item 668 and No. 117, item 758, of 1999, No. 52, item 532, of 2000, No. 22, item 271, No. 74, item 855 and 857, No. 88, item 983 and No. 114, item 1191, of 2001, No. 11, item 91, No. 71, item 733, No. 130, item 1450 and No. 145, item 1638, of 2002, No. 113, item 984 and No. 141, item 1176, of 2003, No. 49, item 408, No. 60, item 535, No. 64, item 592 and No. 124, item 1151, of 2004, No. 91, item 870, No. 96, item 959, No. 162, item 1692, No. 172, item 1804 and No. 281, item 2783, of 2005, No. 48, item 462, No. 157, item 1316 and No. 172, item 1438, of 2006, No. 133, item 935 and No. 164, item 1166, of 2007, No. 80, item 538, No. 82, item 557 and No. 181, item 1287 and of 2008, No. 116, item 731, No. 163, item 1012, No. 220, item 1425 and 1431 and No. 228, item 1506.

use of products and should include the approved procedure of evaluation of the compliance of the tender with the concession-granting authority's requirements, and moreover:

- 1) in case of works – it should refer to the entire technical recommendations specifying the required features of the material or a supply, in particular the level of environmental impact, adjustment to the needs of all users, functionality, safety, range, procedure regarding the ensurance of quality, manufacturing methods, as well as the rules regarding designing and cost estimation, testing conditions, control and receipt of works, methods and techniques of construction and other technical conditions which the concession-granting authority may specify pursuant to separate provisions;
- 2) in case of services – it should refer to the required features of service, in particular the quality level, the level of environmental impact, adjustment to the needs of all users.

4. The description of the subject of concession cannot include any trademarks, patents, type indication, origin or manufacturing marking, which could lead to the privileged treatment or elimination of the interested entity from procedure. Such description is allowed in justified cases when the concession-granting authority cannot describe the subject of concession according to paragraph 3, and such description is accompanied by words "or equivalent."

**Art. 8.1.** Where the description of the subject of concession was done by means of technical specification, referred to in Art.7 paragraph 2 item 1, and the works or services being the subject of the tender are not in compliance with that specification, the concession-granting authority cannot consider such a tender as not satisfying the requirements, if the tenderer justifies in the tender that the solutions proposed by him are equivalent to the requirements specified in the technical specification.

2. Where the description of the subject of concession was done by means of the characteristics or requirements as to functionality, referred to in Art.7 paragraph 2 item2, the concession-granting authority cannot consider such a tender as not satisfying the requirements, if the tenderer justifies in the tender that the works or services offered by him are in compliance with the standards incorporating European norms, European technical approvals, common technical specifications, international standards or other technical reference systems provided for by the European standardisation bodies or if they satisfy the characteristics or requirements of functionality specified by the concession-granting authority .

**Art. 9.1.** The basis for computing an estimated value of the concession for the construction works is the amount established by the concession-granting authority with due diligence, excluding the goods and services tax, which takes into account the estimated cost of construction works and the estimated total value of deliveries necessary for their performance given by the concession-granting authority at the concessionaire's disposal, irrespective of the planned method of payment of the concessionaire's remuneration.

2. The basis for computing an estimated value of the concession for services is the amount established by the concession-granting authority with due diligence, without VAT, which takes into account the estimated cost of services provided, irrespective of the planned method of payment of the concessionaire's remuneration.

**Art.10.1.** The concession-granting authority commences the procedure by publishing the notice of concession.

2. The concession-granting authority publishes the notice of concession for services in the Public Procurement Bulletin, published on the Internet portal of the Public Procurement Office.

3. The concession-granting authority sends the notice of the concession for works to the Office for Official Publications of the European Communities, by electronic means, according to form and procedures indicated on the Internet website, referred to in paragraph 3 of the Annex VIII to the 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 (OJ L 134, 30.4.2004) and pursuant to the form specified in the Commission Regulation (EC) No 1564/2005 of 7 September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council (Text with EEA relevance) (Official Journal L 257 of 1 October 2005, p.1).

4. Immediately after the notice of concession for services is placed or the notice of concession for works is dispatched, the concession-granting authority publishes also an appropriate notice of the concession in a publicly accessible location in its seat and its Internet website if such exists.

5. The Prime Minister shall specify, by means of regulation, a standard form of the notice of concession for services, placed in the Public Procurement Bulletin, considering the scope of information required by law, which the notice of concession should include.

**Art. 11.** The notice of the concession shall include in particular:

- 1) name (business name) and the address of the concession-granting authority ;
- 2) subject of the concession;
- 3) the indication of the place and date for submitting request to conclude a concession contract;
- 4) the description of the needs and requirements of the concession-granting authority or information on the mode of obtaining that description;
- 5) the time-limit of the performance of concession if it results from the nature of the object of contract;
- 6) the conditions for participation and the description of the method used for evaluation of fulfillment of those conditions information on the documents submitted by the tenderer whose tender shall be considered the most advantageous or the tenderer who submits the most advantageous tender in comparison with remaining tenders, referred to in Art.21 paragraph 3, in order to confirm the fulfillment of conditions for participation in the procedure;
- 7) information on the deposit, if it is required;
- 8) the criteria for evaluation of tenders which the concession-granting authority shall apply in selecting the most advantageous tender and, as far as possible, their importance ;
- 9) the conditions for considering the tender as not satisfying the concession-granting authority's requirements resulting in inadmissibility of the tender for evaluation and comparison;
- 10) the circumstances justifying the cancellation of the procedure.

**Art.12.1.** If the value of the subject of concession is lower than the amount specified in the provisions issued under Art. 11 paragraph 8 of the Act of 29 January 2004 – The Public Procurement Law (Journal of Laws of 2007, No. 223, item 1655 and of 2008, No. 171, item 1058, No. 220, item 1420 and No. 227, item 1505), which requires the dispatch of the contract for works notices to the Office for Official Publications of the European Communities, the time-limit for submission of requests to conclude concession for works contract shall not be less than 21 days from the day on

which the notice of concession for services was placed in the Public Procurement Bulletin or the notice of concession for works was dispatched to the Office for Official Publications of the European Communities, respectively. This time-limit may be shortened to 14 days in the event of extreme urgency for conclusion of concession contract.

2. If the value of the subject of concession is equal to or exceeds the equivalent of the amount, referred to in paragraph 1, the time-limit for submission of requests for conclusion of the concession agreement shall not be shorter than 45 days from the day on which the notice of concession for services was placed in the Public Procurement Bulletin or the notice of concession for works was dispatched to the Office for Official Publications of the European Communities, respectively.

**Art. 13.1.** The interested entity submits a request to conclude a concession contract, hereinafter referred to as “the request”, containing the declaration of the participation in the procedure and the declaration of fulfillment of conditions for participation described in the concession notice regarding:

- 1) economic and financial potential;
- 2) technical or professional qualifications including:
  - a. having the necessary knowledge and experience,
  - b. having the technical potential at its disposal,
  - c. having the personnel capable of performing the contract at its disposal;
- 3) authorization to perform specific activities or actions if such authorizations are required by the law;

a clear criminal record of the interested entity or the partner, the general partner, member of the board of directors of the interested entity, for the crime committed in connection with procedure for conclusion of concession contract or contract award procedure, offence against rights of persons performing paid work, bribery, offence against the economic turnover or any other offence committed with the aim of gaining financial profits, as well as for the fiscal offence or an offence of participation in the organized group or association aimed at committing an offence or fiscal offences

2. The request specified in paragraph 1 should also contain other declarations connected with the performance of the subject of concession in case when such a requirement was provided for in the concession.

3. In case of the failure to submit the declarations specified in paragraph 1 and 2, by interested entity or their submission in the incomplete scope, the concession-granting authority informs it of the non-acceptance of the request.

**Art.14.1.** The concession-granting authority shall invite to participate in the negotiations the candidates who submitted their requests pursuant to Art.13.

2. The conducted negotiations may concern all aspects of concession, including the technical, financial and legal ones.

3. The concession-granting authority shall inform all candidates of the completion of the negotiations. The record from the conducted negotiations is public.

4. As a result of the conducted negotiations the concession-granting authority may, prior to the invitation to submit tenders, modify the requirements specified in the concession notice.

**Art.15.1.** The concession-granting authority shall invite candidates with whom it conducted negotiations to submit their tenders, , by sending them the description of concession conditions.

2. The description of concession conditions includes in particular:

- 1) name (business name) and address of the concession-granting authority ;
- 2) description of the subject of concession;
- 3) place and date for submitting the tenders;
- 4) the time limit for maintaining the tender;
- 5) the time-limit of the performance of the subject of concession, as far as it results from the nature of the concession;
- 6) fees for the exploitation of the subject of concession by concessionaire or third parties or the method of its estimation , as far as it results from the nature of the concession ;
- 7) conditions for participation and the description of the method used for evaluation of fulfillment of those conditions;
- 8) information on the documents submitted by the interested entity, whose tender shall be considered the most advantageous, in order to confirm the fulfillment of conditions for participation;
- 9) information on the deposit, if provided for in the concession notice ;
- 10) criteria for evaluation of tenders and their weightings;
- 11) the conditions of considering the tender as not satisfying the concession-granting authority's requirements resulting in inadmissibility of the tender for evaluation and comparison;
- 12) the circumstances justifying the cancellation of the procedure;
- 13) the explanation of the right to lodge a complaint against the actions undertaken by the concession-granting authority in the course of the procedure.

3. The concession-granting authority sets the time-limit for submitting tenders, taking into consideration the time necessary for the preparation and submission of the tender.

**Art.16.1.** The concession-granting authority may demand from the tenderer to provide explanation, clarification or elaboration of the submitted tender.

2. The explanation, clarification or elaboration or additional information cannot lead to modification of submitted tender or modification of conditions contained in the description of concession conditions , referred to in Art.15 paragraph 2, which might lead to violation of fair competition or might have discriminatory character.

**Art.17.1.** The concession-granting authority shall choose the most advantageous tender from the tenders fulfilling the requirements specified in the description of concession conditions of the based on tender evaluation criteria specified in that specification.

2. The concession-granting authority may conduct the procedure also in case when only one tender was submitted .

3. The criteria based on which the concession-granting authority shall select the tender can be in particular: duration of concession, the amount of co-financing of the subject of concession from the tenderer's funds, exploitation costs of the subject of concession, the amount of payment for the service provided for the benefit of third parties exploiting the subject of concession, the quality of performance, technical value, aesthetic and functional characteristics, environmental aspects, profitability, time-limit of performance of the concession subject .

4. The tender evaluation criteria in the procedure for the conclusion of concession for works contract may also refer to the characteristics of the interested entity.

5. The concession-granting authority shall inform the tenderers about the selection of the most advantageous tender providing justification. The information on selection of the most advantageous tender shall also contain reasons of inadmissibility of tenders for evaluation and comparison.

**Art.18.1.** Subject to paragraph 2, the tenderer whose tender was considered the most advantageous, is obliged, within the time-limit set by the concession-granting authority, to submit the documents indicated in the description of concession conditions, confirming the fulfillment of conditions for participation in procedure .

2. If for any justified reason the tenderer whose tender was considered the most advantageous, cannot present the documents required by the concession-granting authority, it may prove its economic and financial situation by means of any other document which the concession-granting authority shall consider as appropriate.

3. The tenderer may rely on the capacity of other entities for the fulfillment of the conditions specified in Art.15 paragraph 2 item7, regardless of the legal character of its relationships with those entities. In such a case, it must prove to the concession-granting authority that he shall fulfill the conditions, referred to in Art.13 paragraph 1 item 1-3, necessary for concession performance. The tenderer shall present then appropriate obligations of those entities in the scope of performance of concession.

**Art.19.1.** The concession-granting authority shall cancel the procedure if the circumstances provided for in the notice of the concession occur.

2. The reservation in the concession notice of the possibility to cancel the procedure without stating the reasons is null and void.

**Art.20.1.** The concession-granting authority shall prepare a record of the procedure which contain in particular:

- 1) the date of commencement of the procedure and the place where the concession notice of the was published;
- 2) subject of concession
- 3) candidates, the concession-granting authority conducted negotiations with, and reasons for not inviting other candidates for negotiations;
- 4) summary of evaluation and comparison of tenders;
- 5) information on the most advantageous tender and information on evaluation of other tenders submitted, starting from the tender evaluated the highest;
- 6) the circumstances justifying the inadmissibility of tender for evaluation and comparison;
- 7) the circumstances justifying the cancellation of the procedure.

2. The report specified in paragraph 1 is public.

### **Chapter 3** **The concession contract**

**Art. 21.1.** Subject to paragraph 2, the concession-granting authority shall conclude the contract with the tenderer whose tender was the most advantageous not sooner than within 10 days from the day on which the the information on selection of the most advantageous tender was dispatched to the

tenderers by fax or e-mail, and in case of dispatch of information by other means – not sooner than within 15 days from the day of dispatch.

2. Keeping the time-limit specified in paragraph 1 is not required if only one tender was submitted in the procedure or if the value of the subject of concession is less than the amount specified in provisions issued under Art.11 paragraph 8 of the Act of 29 January 2004 – the Public Procurement Law which requires the obligation to submit the notices of contracts for works to the Office for Official Publications of the European Communities.

3. If the tenderer whose tender was considered the most advantageous refuses to conclude a contract, in particular by non-filing of required documents confirming the fulfillment of conditions for participation in procedure, the concession-granting authority may conclude the contract with the tenderer who submitted the most advantageous tender from among remaining tenders, which fulfill the requirements specified in the description of concession conditions.

4. In case specified in paragraph 3, the concession-granting authority shall keep the amount of money paid as deposit by the tenderer who refuses to conclude a contract, or this amount is satisfied from the object of security, if the payment of deposit was required.

5. The concession contract shall be concluded in writing under the pain of nullity.

**Art.22.1.** The concession contract shall contain:

- 1) the subject of concession;
- 2) time-limit for performance of the subject of concession;
- 3) the duration of concession contract;
- 4) the mode of the concessionaire's remuneration;
- 5) description of the concession-granting authority's payment for the benefit of the concessionaire;
- 6) the indication and the division of risk between the concession-granting authority and concessionaire connected with the performance of the subject of concession;
- 7) quality norms, requirements and standards used in the performance of the subject of concession;
- 8) the concession-granting authority's rights within the scope of control of the exploitation of concession by the concessionaire;
- 9) the conditions for extending or shortening the duration of the concession contract;
- 10) the conditions and manner for termination of the concession contract;
- 11) conditions and the scope of the parties' liability due to non-performance or improper performance of the concession contract;
- 12) the terms and the scope of security on performance of the subject of concession;
- 13) the list of documents that the parties to the concession contract are obliged to obtain or deliver in order to perform the contract with the provision of time-limit in which it should occur;
- 14) the manner and terms of settling disputes connected with performance of concession contract.

2.1 If it stems from the subject of concession, the concession contract may contain the provisions regarding, in particular:

- 1) the conditions and method of provision to the concessionaire of the assets necessary for performance of concession;

- 2) fees or the method of establishing their amount, charged by the concessionaire from the third parties for the exploitation of the subject of concession;
- 3) conditions of allowing subcontracting.

**Art.23.1.** It shall be forbidden to make any changes of the contractual provisions in relation to the contents of the tender, based on which the agreement was concluded, unless the necessity to make such changes stems from the circumstances which could not have been foreseeable on the day of executing the agreement.

2. The modification of the concession contract done in breach of paragraph 1 is null and void.

**Art.24.1.** The duration of concession contract should take into account the recovery of the concessionaire's expenditure incurred with reference to performance of the concession and shall not be longer than:

- 1) in case of concession for works – 30 years;
- 2) in case of concession for services – 15 years.

2. Where the expected time limit of the recovery of the concessionaire's expenditure incurred with reference to performance of the concession is longer than the period specified in paragraph 1, the contract may be concluded for a longer term.

3. In case of concluding the contract for a longer term than the one specified in paragraph 1 in breach of rules specified in paragraph 2, it is considered that the agreement is concluded for the period of 30 or 15 years, respectively.

**Art.25.1.** The concession-granting authority may conclude an additional contract with the concessionaire for the performance of works not covered by the concession, if, due to the circumstances, which could not have been foreseen on the day of conclusion of a concession contract, they became necessary for the performance of works specified in concession contract in case when works:

- 1) for technical or economic reasons may not be separated from the subject of concession in the manner desirable by the concession-granting authority or
- 2) can be separated from the performance of the subject covered by the concession but they are absolutely necessary for its completion.

2. The total value of the additional contract for works may not exceed 50% of the concession's value.

3. The contract concluded with in breach of paragraph 1 or paragraph 2 is null and void.

**Art.26.** To award of public contracts by concessionaire in order to perform the subject of concession, Art. 131 of the Act of 29 January 2004 – The Public Procurement Law shall apply.

#### **Chapter 4 A Complaint**

**Art.27.1.** The interested entity whose legal interest in being awarded the concession contract was or may be prejudiced as a result of actions undertaken by the concession-granting authority in breach of provisions of this Act, has the right to lodge a complaint to the administrative court.

2. Provisions of the Act of 30 August 2002 – The Law of the Administrative Courts Procedure (Journal of Laws No. 153, item 1270, as amended<sup>4</sup>) shall apply in procedures pending as a result of a lodged complaint unless the provisions of this Chapter state otherwise.

**Art. 28.1.** The complaint is lodged with the regional administrative court competent for the seat of concession granting authority within 10 days from the day on which the appellant have become or with due diligence may have become aware of action undertaken by the concession-granting authority in the case.

2. There is a fixed entry fee for the petitions initiating the procedure before the administrative court in the amount established in the provisions issued under Art. 233 of the Act of 30 August 2002 – The Law of the Administrative Courts Procedure.

3. The complaint is lodged through the concession-granting authority whose action is the subject of complaint.

4. The concession-granting authority, referred to in paragraph 3 forwards the complaint to the court together with case files and reply to complaint within 10 days from the day on which the complaint was lodged.

5. The concession-granting authority whose action was appealed against, may within its own competence accept the complaint in its entirety until the day of the commencement of the court hearing.

**Art.29.1.** Subject to paragraph 2, lodging of complaint against the action concerning the selection of the most advantageous tender withholds the right to conclude the contract with the tenderer whose tender was considered the most advantageous until the decision in the case is issued by the regional administrative court.

2. On the concession-granting authority's motion, the regional administrative court in a closed session, may, by means of decision, grant his consent to conclusion of concession contract. The granting of consent is admissible if the negative results for the public interest caused by withholding the conclusion of contract might exceed the benefits resulting from the protection of all interests, with reference to which a possibility of sustaining a loss due to actions taken by the concession-granting authority in the procedure for conclusion of concession contract occurs.3. Against the decision, referred to paragraph 2, the complaint shall not be admissible.

**Art.30.1.** The court may not rule as to the charges and motions which were not included in the complaint.

2. The court by admitting the complaint repeals the actions undertaken by the concession-granting authority if it finds the breach of provisions of this Act, which influenced the outcome of the procedure for conclusion of concession contract.

3. In case of concluding concession contract under Art. 29 paragraph 2, the court by admitting the complaint, may refrain from repealing the actions undertaken by concession-granting authority in

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<sup>4</sup> The amendments to the cited Act were published in the Journal of Laws of 2004, No. 162, item 1692, of 2005, No. 94, item 788, No. 169, item 1417, No. 250, item 2118 and No. 264, item 2205, of 2006, No. 38, item 268, No. 208, item 1536 and No. 217, item 1590, of 2007, No. 120, item 818, No. 121, item 831 and No. 221, item 1650 and of 2008, No. 190, item 1171 and No. 216, item 1367.

course of procedure for conclusion of concession contract, in justified cases, when the repeal of actions might cause disproportionate negative results for public interest.

4. In case of refraining from the repeal of concession-granting authority's actions due to reasons referred to in paragraph 3, the appellant who incurred damage due to breach of the provisions of this Act, which influenced the outcome of procedure for conclusion of concession contract, has the right to seek compensation under rules specified in the Act of 23 April 1964 – the Civil Code.

5. In case of concluding the concession contract after the decision is issued by the regional administrative court, provisions of paragraph 3 and 4 shall apply accordingly.

**Art.31.** The court shall examine the complaint forthwith, however not later than within 30 days from the day of receipt of the case files along with reply to complaint.

## **Chapter 5**

### **Amendments to the binding provisions**

**Art.32.** In the Act of 21 March 1985 on the Public Roads (Journal of Laws of 2007, No. 19, item 115, as amended<sup>5</sup>), item 5 with the following wording shall be added in Art. 13a:

“5) under rules provided for in the Act of 9 January 2009 on Concession for Works or Services (Journal of Laws No. 19, item 101).”

**Art.33.** In the Act of 27 October 1994 on the Toll Highways and the National Road Fund (Journal of Laws of 2004, No. 256, item 2571, as amended<sup>6</sup>), Art.1a with the following wording shall be added after Art. 1:

“Art.1a. Highways and express roads specified in the provisions issued under Art.1 paragraph 2 and 4, may be built and exploited or exclusively exploited in accordance with the rules provided for in the Act of 9 January 2009 Concession for Works or Services (Journal of Laws No. 19, item 101).”

**Art.34.** In the Act of 20 December 1996 on the Municipal Services Management (Journal of Laws of 1997, No. 9, item 43, as amended<sup>7</sup>) in Art. 3 paragraph 1 shall have the following wording:

“1. The local self-government bodies may entrust the performance of municipal services tasks to natural persons, legal persons or organizational units without legal status, by means of contract under general rules – taking into consideration the provisions of the public finance or the provisions of the public-private partnership, respectively, the provisions of concession for works or services, provisions of the public procurement and provisions of the public benefit activities and volunteering.”

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<sup>5</sup> The amendments of the consolidated text of the mentioned Act were published in the Journal of Laws of 2007, No. 23, item 136 and No. 192, item 1381, of 2008, No. 54, item 326, No. 218, item 1391 and No. 227, item 1505 and of 2009, No.19, item 100.

<sup>6</sup> The amendments of the consolidated text of the mentioned Act were published in the Journal of Laws of 2004, No. 273, item 2703, of 2005, No. 155, item 1297 and No. 172, item 1440, of 2006, No. 12, item 61, of 2007, No. 23, item 136 and No. 99, item 666, of 2008, No. 218, item 1391 and of 2009, No.3, item 11.

<sup>7</sup> The amendments of the consolidated text of the mentioned Act were published in the Journal of Laws of 1997, No. 106, item 679 and No. 121, item 770, of 1998, No. 106, item 668, of 2002, No. 113, item 984, of 2003, No. 96, item 874 and No. 199, item 1937, of 2008, No. 223, item 1458 and of 2009, No. 19, item 100.

**Art.35.** In the Act of 29 January 2004 – the Public Procurement Law (Journal of Laws of 2007, No. 223, item 1655 and of 2008, No. 171, item 1058, No. 220, item 1420 and No. 227, item 1505) the following amendments are introduced:

- 1) in Art.2.item 4 is deleted;
- 2) in Art.3 in paragraph 1 item 7 shall have the following wording:  
“7) entites with whom the concession for works contract was concluded based on the Act of 9 January 2009 on Concession for Works or Services (Journal of Laws No. 19., item 101) within the scope in which they award the public contract in order to perform concessionit”;
- 3) in Art. 4 item12 is added in the following wording:  
“12) the concession for works or the concession for services as defined in the Act of 9 January 2009 on Concession for Works or Services.”;
- 4) in Part III the title of Chapter 4 shall read: “Award of contracts by the concessionaire of works”;
- 5) Art. 128 – 130 are deleted;
- 6) In Art. 131 paragraph 1 shall read:  
“1. The entity with whom the concession contract for works was concluded based on the Act of 9 January 2009 on Concession for Works or Services, hereinafter referred to as “the concessionaire”, who is the awarding entity as defined in Art. 3 paragraph 1 item 1-3a and 5, is obliged to apply the provisions of the Act to contracts awarded resulting from the performance of concession.”;
- 7) In Art. 142 paragraph 4, the item 4 is deleted.

**Art.36.** In the Act of 17 December 2004 on the Liability for the Breach of Public Finance Discipline (Journal of Laws of 2005, No. 14, item 114 and No. 249, item 2104 and of 2006, No. 79, item 551) after Art. 17, the Art. 17a is added with the following wording:

“Art. 17a. 1. The breach of the public finance discipline consists in the conclusion of the concession agreement:

- 1) with concessionaire who was not selected according to the provisions of concession for works or services;
  - 2) with breach of provisions of concession for works or services referring to the obligation of dispatching orplacing the notice in the procedure for conclusion of concession contract;
  - 3) whose subject or conditions were specified in the manner violating the rules of fair competition;
  - 4) with other breach of the provisions of the concession for works or services than the ones listed in item 1-3, , if that breach influenced the outcome of the procedure for conclusion of concession contract.
2. The breach of the public finance discipline consists in the conclusion of concession contract:
- 1) without written form;
  - 2) with the omission of the time-limit in which it can be concluded, except for the cases provided for in provisions of concession for construction works or services;
  - 3) for the longer term than provided for in provisions of concession for works or services, except for the cases provided for in provisions of concession for works or services;
  - 4) before the regional administrative court issued the decision in the matter of complaint against the selection of the most advantageous tender, except for the case provided for in provisions of concession for construction works or services.
3. The breach of public finance discipline consists in the cancellation of procedure for conclusion of concession contract in breach of provisions of concession for works or services.

4. The breach of public finance discipline consists in modification of the concession contract in breach of provisions of concession for works or services.

5. The breach of public finance discipline consists in allowing by the head of the unit of the public finance sector to commit the breach of the public finances discipline, specified in paragraph 1 item 1 and in paragraph 2 and 3, due to a negligence or a failure to fulfill the financial control obligations.”.

## **Chapter 6** **Interim and final provisions**

**Art.37.1.** To concession grant procedures commenced prior to the entry into force of this Act, under the Act of 29 January 2004 – the Public Procurement Law, the current provisions shall apply.

2. To the performance of the concessions granted under the Act of 29 January 2004 – the Public Procurement Law, the current provisions shall apply.

**Art.38.** This Act shall enter into force after 14 days from its publication.

President of the Republic of Poland: *L. Kaczyński*