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# Changing a contract in the case of a public procurement in light of the Public Procurement Law of September 11, 2019

## Zmiana umowy w sprawie zamówienia publicznego w świetle ustawy z dnia 11 września 2019 r. Prawo zamówień publicznych

**Abstract.** One of the basic principles of the Public Procurement Law, regulated in Article 17(2), provides that "The contract is awarded to the contractor selected in accordance with the provisions of the Act". However, this does not mean that it cannot be changed after the signing of a public procurement contract. Frequently, the contractor, for reasons beyond his control, is not able to complete the subject of the public procurement on time. In addition, it may also be necessary to perform additional activities and even change the contractor. However, it should be remembered that in the case of making changes to the content of the public procurement contract, the content of Articles 454–455 of the Public Procurement Law should be considered. The purpose of this article is to analyse the provisions

of law, doctrine and jurisprudence regarding the admissibility of making changes to the public procurement contract. The Author will try to answer the following questions: 1) "What changes to the public procurement contract can be considered significant?" and 2) "In which cases is it permissible to make changes to the public procurement contract?" The article was prepared using non-reactive research methods, dogmatic-legal and legal-comparative.

**Keywords:** public procurement; contract; change of contract.

**Streszczenie.** Jedna z podstawowych zasad Prawa zamówień publicznych uregulowana w treści art. 17 ust. 2 p.z.p. stanowi, że: „Zamówienia udziela się wykonawcy wybranemu zgodnie z przepisami ustawy". Nie oznacza to jednak, że już po podpisaniu umowy w sprawie zamówienia publicznego nie może dochodzić do jej zmian. Niejednokrotnie wykonawca z przyczyn od siebie niezależnych nie jest w stanie wykonać przedmiotu zamówienia publicznego w terminie. Ponadto może także zajść konieczność wykonania dodatkowych czynności, a nawet zmiana wykonawcy. Pamiętać jednak należy, że w przypadku dokonywania zmian w treści umowy w sprawie zamówienia publicznego należy mieć na względzie treść art. 454–455 p.z.p. Celem niniejszego artykułu jest analiza przepisów prawa, stanowisk doktryny oraz orzecznictwa w zakresie dopuszczalności dokonywania zmian w umowie w sprawie realizacji zamówienia publicznego. Autorka podejmie próbę odpowiedzi na następujące pytania: jakie zmiany umowy w sprawie zamówienia publicznego mogą być uznane za istotne? Oraz w jakich przypadku dopuszczalne jest dokonywanie zmian w umowie o realizację zamówienia publicznego? Artykuł opracowano z wykorzystaniem niereaktywnych metody badawczych, dogmatyczno-prawnej oraz prawno-porównawczej.

**Słowa kluczowe:** zamówienia publiczne; umowa; zmiana umowy.

## 1. Introduction

Public procurement is a branch of a public finance law that covers specific solutions regarding spending of public funds. Pursuant to Article 7(32) of the Public Procurement Law (PPL)[1], procurement should be understood as

[1] Act of 11 September 2019 Public Procurement Law (consolidated text: Dz.U. [Polish Journal of Laws of] 2021, poz. [item] 1129), hereinafter: the Public Procurement Law or PPL.

a paid agreement concluded between an ordering party and a contractor, the object of which is the purchase by the ordering party from a selected contractor of works, supplies or services. The purpose of the Public Procurement Law is to protect the public interest through transparent, purposeful, rational and transparent spending of public funds. The execution of a public procurement contract shall take place pursuant to the provisions of civil law[2]. However, in the case of public procurement, the provisions of civil law are subject to limitations resulting from the specific nature of the Public Procurement Law, which, in a manner different from that regulated by civil law, regulates the content of contracts concluded for the performance of a public procurement contract. Moreover, in the case of the Public Procurement Law, one of the basic principles of civil law is subject to a limitation, that is, the principle of freedom of contract[3], which is understood as an ability of the parties to freely shape the content of the contractual relationship, including a freedom to conclude or not a contract, an ability to freely choose a contractor, an ability to freely shape the content of the contract but in compliance with the provisions of law and the principles of social co-existence, and an ability to use the form of the contract basically depending on the will of the parties. In the case of public procurement, the contracting authority cannot, at its own discretion, choose the contractor with whom the contract will be signed. It is the ordering party's duty to conclude a public procurement contract except in the cases indicated in the Public Procurement Law with the contractor whose tender was selected as the most advantageous. Moreover, for public procurement, the ordering party is not free to choose the form in which the contract will be concluded, since pursuant to Article 432 of the Public Procurement Law, a contract must be concluded in writing under a pain of nullity unless separate provisions require a special form.

During the course of a public procurement contract, problems may arise in relation to its performance, such as those concerning the availabil-

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[2] See Article 8(1) PPL.

[3] Article 353[1] of Act of 23 April 1964 Civil Code (consolidated text: Dz.U. of 2022, poz. 1360), hereinafter: CC or Civil Code; National Appeals Chamber (KIO) judgment of 13 March 2013, KIO 448/13, LEX No 1298030.

ity of materials necessary for the performance of the subject matter of the contract. In such a case, it may be necessary to amend the content of the contract and at least extend the deadline for its performance. However, in case of amendments to public procurement contracts, one must be very cautious and remember the provisions of Section VII, Chapter 3 of this law, as not every amendment can be introduced into the contract.

The purpose of this article is to analyse the provisions of law, doctrinal positions and jurisprudence on the admissibility of amendments to a public procurement contract. The Author attempts to answer the following questions: "Which amendments to a public procurement contract can be considered material?" and "In which cases is it permissible to make amendments to a public procurement contract?". This article was developed using dogmatic-legal and legal-comparative research methods.

In addition to the current literature and jurisprudence, the jurisprudence and doctrinal positions developed under the previously binding Act of 29 January 2004 were used in the current study Public Procurement Law[4], which is still valid.

## 2. The public procurement contract and the principle of freedom of contract

Pursuant to Article 8(1) PPL, public procurement contracts are civil in nature[5]. However, the provisions relating to public procurement contracts (Articles 431–455 PPL) constitute a limitation of the principle of freedom of contract contained in Article $353^1$ CC, according to which "Parties concluding a contract may arrange the legal relationship at their own discretion, as long as its content or purpose do not contradict the properties (nature) of the relationship, the law, or the principles of social co-

[4] Act of 29 January 2004 Public Procurement Law (consolidated text: Dz.U. of 2019, poz. 1843), hereinafter: the 2004 Act or PPL of 2004.

[5] See J.E. Nowicki, *Commentary on Article 14 PPL* of 2004 [in:] M. Kołecki, J.E. Nowicki, *Prawo zamówień publicznych. Komentarz, Wyd. IV*, WKP 2019, LEX No 587365105; M. Stachowiak, *Commentary on Article 8 PPL* [in:] W. Dzierżanowski, Ł. Jaźwiński, J. Jerzykowski, M. Kittel, *Prawo zamówień publicznych. Komentarz*, WKP 2021, LEX nr 587859587.

existence". Restrictions on the principle of freedom to conclude or not a public procurement contract are contained, for example, in the following articles: Article 434(1) of PPL, Article 435 of PPL, Article 439(1) of PPL or Article 443(1) of PPL. According to J.E. Nowicki, a public procurement contract may be deemed a *sui generis* adhesion contract[6]. The contracting authority, as an entity acting in the public interest, is obliged to determine the provisions essential for the parties that will then be introduced into the public procurement contract[7]. It should be emphasised, however, that the contracting authority may not abuse its right to shape the content of the contract. When formulating the content of the agreement, the ordering party must bear in mind the limitations resulting from Article $353^1$ of the Civil Code, as well as from another principle of civil law, that is, the prohibition of an abuse of a subjective right (Article 5 of the Civil Code), according to which one cannot make use of one's right in a manner that would be contrary to the social and economic purposes of this right or principles of social co-existence[8]. If the contractor considers that the material provisions to be introduced into the contract to be concluded violate its interests, it may not apply for the execution of the public contract[9]. This is because an amendment to the contract requires a consensual declaration of a will from both parties — the ordering party and the contractor. The provisions of Article 8(1) of the Public Procurement Law and Articles 454–455 of the Public Procurement Law do not exclude the possibility of interpreting the contract on the basis of Article 65 of the Civil Code[10]. It should be noted that the exercise of the principle of a free-

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6 J. E. Nowicki, *Commentary to art. 139 PPL of 2004*, [in:] M. Kołecki, J. E. Nowicki, *Prawo zamówień publicznych. Komentarz. wyd. III*, LEX nr 587365271.

7 See KIO judgment of 25 May 2012, KIO 974/15, LEX No 1165364 "The contracting authority is an entity acting in the public interest, which is burdened with the risk of not achieving the objective of a given procedure and this risk exceeds the normal business risk that occurs when a contract is concluded by two entrepreneurs".

8 KIO judgment of 27 March 2014, KIO 487/14, LEX No 1455085.

9 KIO judgment of 16 June 2009, KIO/UZP694/09, LEX No 508277.

10 Judgment of the SA in Warsaw of 18 April 2013, I ACa 1226/12, LEX No 1322760; KIO judgment of 5 February 2018, KIO 112/18, LEX No 2476186 and J.E. Nowicki, *Między Kodeksem cywilnym a Prawem zamówień publicznych, cz. 1*, „Monitor Zamówień Publicznych" 2010, No 3, pp. 41a–43.

dom of a contract will not always manifest itself in the equality of the parties in a public procurement case. The principle has a subjective aspect, which can be distilled to the freedom to choose the counterparty with which the contract will be concluded. As a general rule, a party can freely choose the counterparty with which it wishes to conclude a contract. However, this freedom does not exist in the Public Procurement Law. The contracting authority cannot, at its own discretion, choose the contractor with whom the contract will be concluded. It is the ordering party's duty to sign a public procurement contract with the contractor whose tender was selected as the most advantageous, unless that contractor evades the conclusion of the contract or fails to provide the required performance bond. In such a case, the contracting authority may select the most advantageous tender from among the remaining tenders without re-examining and evaluating them unless there are grounds for cancelling the procedure[11].

Article 8(1) of the Public Procurement Law prescribes the direct application of the provisions of the Civil Code, while the exclusion of the application of such provisions depends on the existence of a separate regulation in the Public Procurement Law, "unless the provisions of the Act provide otherwise". The National Appeal Chamber (KIO) in its judgement of 31 January 2013[12] pointed out that public procurement contracts remain to be agreements concluded between equal entities – the ordering party and the contractor – and as such, they are an example of the ordinary civil law relations regulated by the Civil Code, subject to any specific requirements (material or procedural), provided for in the provisions of the Public Procurement Law, as to their content and a manner of an establishment. A similar position was taken by the Regional Court in Warsaw in its judgement of 20 January 2004[13], in which it stated that, "Therefore, there is no doubt that the Public Procurement Act, being for the most part a functional (procedural) act, not only does not exclude the application of the provisions of the Civil Code, but even orders them to be applied".

11 See Article 255(7) of PPL.
12 KIO judgment of 31 January 2013, KIO 109/13, LEX No 1285263.
13 Judgment of the Warsaw District Court of 20 January 2004, V CA 2344/03, not published.

The privileged position of the ordering party in its relationship with the contractor results from the fact that the ordering party acts in the public interest. The contracting authority, limited in its ability to select a contractor, instead has the ability to shape the content of the contract, which in turn results in the contractor having a limited influence on its content. Although the contractor may, prior to the deadline for the submission of a tender, make suggestions as to the shape and wording of the terms of reference and the provisions of the contract, the contracting authority, in line with its own interests, may or may not take them into account[14]. However, the contractor may compensate for the risks he or she is burdened with by properly pricing his bid[15]. In addition, the contractor may, pursuant to Article 513(1) of the Public Procurement Law, lodge an appeal, the subject of which may be the provisions of the public procurement contract that are inconsistent with the regulations. However, it is worth emphasising that an appeal concerning contractual provisions may not concern the contractor's subjective feelings that they are improperly constructed. The contracting authority may require a specific manner of a contract performance from the contractor, particularly in the case of construction work. As accepted by the KIO in its judgment of 9 May 2022[16], the contracting authority is fully entitled to plan independently both the scope of works and the order in which they are to be performed, and the Chamber has no grounds to assess this plan in terms of economy or compliance with the provisions of the Public Finance Act[17].

## 3. Amendment to the public contract

The legislator in Section VII, Chapter 3 of the Public Procurement Law has included provisions referring to amendments to a public procurement

[14] See KIO judgment of 27 March 2017, KIO 387/17, LEX No 2261038; W. Merkwa, *Limits of freedom of contract in public procurement*, „Zamówienia Publiczne Doradca" 2013, No 9, pp. 43–48.

[15] See judgment of the SO in Wrocław of 14 April 2008, X Ga 67/08, LEX No 1713249.

[16] KIO judgment of 9 May 2022, KIO 922/22, LEX No 3345609.

[17] Act of 27 August 2009 on public finance (consolidated text: Dz.U. 2022, poz. 1634).

agreement, dividing them into material, which requires a new procedure, and non-material, which does not require a new procedure (*argumentum a contrario*). The possibility of making non-substantive amendments is not, as A. Gawrońska-Baran rightly notes[18], subject to the rigours analogous to those concerning material amendments to the contract, and the decision to introduce them to public procurement contracts is left to the contracting parties within the limits of the principle of freedom of contract.

According to Article 454(1) PPL, "a material amendment to a concluded contract requires a new procedure to be conducted". This means that an amendment to a public procurement contract during its term is, in principle, inadmissible if it has not been preceded by conducting a new tender procedure. This is because the terms of the contract are the result of a tender or other bid-elimination procedure. Their subsequent amendment may lead to a distortion of that outcome and a breach of the principles of fair competition, equal treatment and transparency[19].

The Public Procurement Law 2004, in force until 31 December 2020, in Article 144(1e), indicated two situations in which an amendment to a contract could be considered material. First, it changed the general nature of the contract or framework agreement compared to the original form of the contract or framework agreement. Second, where the amendment to the provisions contained in the contract or framework contract, while not changing the general nature of the contract or the framework contract, fulfilled at least one of the following conditions:

a) The amendment introduces conditions that, had they been imposed in the procurement procedure, other economic operators would or could have taken part in that procedure or tenders with different contents would have been accepted.
b) The modification upsets the economic balance of the contract or framework contract in favour of the contractor in a way not originally

[18] A. Gawrońska-Baran, *Commentary to art. 454 PPL* [in:] A. Gawrońska-Baran, E. Wiktorowska, A. Wiktorowski, P. Wójcik, *Prawo zamówień publicznych. Komentarz*, Warszawa 2021, p. 1042.

[19] See CJEU judgment of 5 October 2000, C-337/98, *Commission of the European Communities v. Republic of France*, LEX No 84193.

envisaged in the contract or its framework.

c) The amendment extends or reduces the scope of benefits and obligations under the contract or framework agreement.
d) An amendment consists of replacing the contractor to whom the contract was awarded by the contracting authority with a new contractor in the cases indicated in Article 144(1)(4) of the Public Procurement Act 2004.

In the current wording of Article 454 PPL, which replaced Article 144(1e) PPL of 2004, there is no longer a change in which materiality would refer to the general nature of the contract or the framework agreement. Pursuant to the wording of Article 454 PPL, a material change occurs only if it causes the nature of the contract to change materially in relation to the original contract, particularly if the change does the following:

a) introduces conditions that, had they been applied in the procurement procedure, would or could have been taken into account by other economic operators or would have resulted in tenders with a different content being accepted;
b) tends to upset the economic balance of the parties in favour of the contractor in a manner not envisaged in the original contract;
c) significantly extends or reduces the scope of benefits and obligations under the contract;
d) consists of replacing the contractor to whom the contracting authority entrusted the execution of the contract with another contractor in cases other than those indicated in Article 455(1)(2) PPL.

In Article 454 of the Public Procurement Law, the legislator combined two points from Article 144(1e)(1) and (2) of the Public Procurement Law of 2004, at the same time excluding as a non-substantial amendment such an amendment that does not change the general nature of the agreement in relation to its original content. It is also impossible not to notice that, despite the entry into force of the new act, the legislator did not change the prerequisites considered material changes to the agreement. The wording of Article 144(1e) of the PPL of 2004 constituted a *numerus clausus*, that is, a closed catalogue. Currently, Article 454(2) of the Public Procurement Law contains an open catalogue, with the difference that a change in the

nature of the contract may occur in a significant manner in relation to the original contract and not in a non-substantial manner as before. The open nature of this catalogue means that cases other than those listed in Article 454(2) of the Public Procurement Law may also be deemed material when the general criteria of the definition of "material change to the contract" are met[20].

The content of Article 454(2) PPL implements into the Polish legal order Article 72(4) of Directive 2014/24/EU[21] and Article 89(4) of Directive 2014/25/EU[22], which confirm the understanding of the materiality of a contract amendment presented over the years in the case law of the Court of Justice. For example, the CJEU, in its judgement of 19 June 2008[23], indicated that "an amendment to a public contract during its term may be regarded as substantial if it introduces conditions which, if they had been included in the original procurement procedure, would have allowed for the admission of bidders other than those who took part in the procedure or would have allowed for the admission of a different tender from that which was originally admitted. (...) Similarly, an amendment to a contract may be considered substantial if it modifies the economic balance of the contract in favour of the service provider in a way not envisaged in the terms of the original contract". The CJEU took a similar view in its judgement of 29 April 2004[24], in which it stated that "a modification of the contract is of such a type that, had it been known to the economic

[20] H. Nowak, M. Winiarz, *Prawo zamówień publicznych. Komentarz*, Warszawa 2021, p. 1202.

[21] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, repealing Directive 2004/18/EC (Official Journal of the EU 2014, No 94, item 65).

[22] Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors, repealing Directive 2004/17/EC (Official Journal of the EU 2014, No 94, item 243).

[23] CJEU judgment of 19 June 2008, C-454/06 presstext Nachrichtenagentur *v.* Republik Österreich (Bund), APA-OTS Originaltext-Service GmbH and APA Austria Presse Agentur registrierte Genossenschaft mit beschränkter Haftung, LEX No 410027.

[24] CJEU judgment of 29 April 2004, C-496/99 Commission of the European Communities v. CASSucchi di Frutta SpA, https://curia.europa.eu/juris/liste.jsf?language=pl&jur=C,T,F&num=C-496/99%20P&td=ALL (access on-line: 6.11.2022).

operators in the tendering procedure prior to the award of the contract in question, they would have been able to submit substantially different tenders, the modification must be regarded as equivalent to the award of a new contract. It is for the contracting authority wishing to make such a modification to demonstrate in each individual case that this is not the case".

The Court of Justice, when determining the nature of an amendment to a public contract, refers to the significance of the contract in question from the point of view of the social and economic nature of the obligation. It is, therefore, necessary to assess materiality by referencing to the realities of the case, in particular, the extent to which the amendment affects the position of the contractor in relation to that of the contracting authority or the position of the contractor in relation to contractors who would have participated in the procedure if those provisions had been included in the original contract.

Cases in which the contracting authority may amend the content of the public procurement contract without the need to conduct a new procedure are regulated in Article 455 PPL. The catalogue of these prerequisites is of a closed nature, in contrast, as indicated above, to the catalogue in Article 454(2) PPL.

The contracting authority may amend the content of the public contract or the framework contract if the following conditions are met:

1. The modifications, whatever their value, were provided for in the contract notice or contract documents in the form of clear, precise, and unequivocal contractual provisions, which may include provisions on price modifications, provided that the following cumulative conditions are fulfilled:
   a) determine the nature and extent of the changes;
   b) specify the conditions for making the changes;
   c) do not provide for other changes that would modify the general nature of the contract.
2. The new contractor is to replace the existing contractor:
   a) where such a possibility is provided for in the contractual provisions, in accordance with Article 455(1)(1) PPL;

b) as a result of a succession, assuming the rights and obligations of the economic operator, as a result of a takeover, merger, division, transformation, bankruptcy, restructuring, inheritance or the acquisition of the existing economic operator or its enterprise, provided that the new economic operator meets the conditions for participation in the procedure, that there are no grounds for the exclusion against it, that it does not involve other significant changes to the agreement and that it is not intended to avoid the application of the provisions of the Public Procurement Act;
c) as a result of the contracting authority's assumption of the contractor's obligations towards subcontractors in the case referred to in Article 465(1) PPL[25];

3. if it concerns the execution by the incumbent contractor of additional supplies, services or works or, in the case of contracts in the fields of defence and security, of services or works that were not included in the basic contract, provided that they have become necessary and that all the following conditions have been fulfilled:
   a) A change of the contractor cannot be made for economic or technical reasons, in particular regarding the variability or interoperability of equipment, services or installations ordered under the basic contract.
   b) A change of the contractor would cause significant inconvenience or increase the costs for the contracting authority.
   c) The increase in price caused by each successive amendment does not exceed 50% of the value of the original contract, and in the case of contracts in the fields of defence and security, the total value of the amendments does not exceed 50% of the value of the original contract, except in duly justified cases.

[25] As regards contracts the subject of which is construction work, the ordering party shall make a direct payment of a due remuneration to the subcontractor or further subcontractor who has concluded a subcontract which has been approved by the ordering party, the subject of which is construction work, or who has concluded a subcontract which has been submitted to the ordering party, the subject of which is supplies or services, in the event of evasion of the obligation to pay by the contractor, subcontractor or further subcontractor respectively.

4. If the need to amend the contract is due to circumstances that the purchaser, acting with a due diligence, could not have foreseen, provided that the amendment does not modify the overall nature of the contract and that the price increase caused by each subsequent amendment does not exceed 50% of the value of the original contract.
5. The total value of the contract is less than the EU thresholds and less than 10% of the value of the original contract in the case of service or supply contracts or 15% in the case of works contracts, and the changes do not alter the overall nature of the contract.

On one hand, the legislator prohibits making changes to the public procurement contract, on the other hand, it allows for such a possibility. However, determining whether the proposed amendment may be deemed a material amendment, that is, one that changes the nature of the agreement and requires a new procedure to be conducted. Significant provisions of the contract in relation to its content should be understood primarily as those that concern the elements subject to an evaluation on the basis of the criteria for an evaluation of offers, for example, the deadline for the completion of the contract, price[26] and those within the *essentialia negotii* of the contract, that is, material elements, such as the subject of the contract[27]. However, in the opinion of the Main Adjudicating Committee (GKO) expressed in its ruling of 22 February 2016[28] the civilist division of the elements of the content of legal actions into essentials (*essentialia* and *accidentalia negotii*) and nonessentials (*naturalia negotii*) does not correspond to the materiality of the provisions of the contract within the meaning of Article 144(1) of the Public Procurement Law of 2004. In general, it should be considered that material changes to all provisions of the contract, both material and subjective, are relatively prohibited under Article 144(1) of the Public Procurement Law of 2004. The determinant of the materiality of an amendment is, on the one hand, its possible impact

[26] See KIO resolution of 19 January 2016, KIO/KD1/16, LEX No 2023712; KIO judgment of 5 March 2013, KIO 376/13, LEX No 1295042.

[27] A. Fermus-Bobowiec, *Public procurement contract as a special civil law contract*, „Legal Adviser" 2012, No 12, pp. 6–10.

[28] GKO ruling of 22 February 2016, BDF1.4800.161.2015, LEX No 2094408.

on the circle of contractors who would compete for a given contract, and on the other hand, the outcome of the procedure and the contractor's remuneration. Non-substantial, so-called neutral changes are allowed by the legislator. They concern, in particular, a change of the contractor's registered office, its correspondence address or a change of contact persons.

If the contracting authority makes changes to the contract in breach of the provisions of Articles 454–455 of the Public Procurement Law, these will be subject to nullification. The invalidated provisions shall be replaced by the provisions in their original wording[29].

To sum up, so far, the issue of the admissibility of an amendment to a public procurement agreement was regulated in Article 144 of the Public Procurement Law of 2004, but it was, as P. Granecki and I. Granecka[30] rightly indicated, defined in an unclear manner. The current split of the amendments into two separate ones in Articles 454 and 455 of the PPL makes this issue clearer. Nevertheless, it should be noted that the contents of Articles 454 and 455 in relation to the previously applicable Article 144 PPL of 2004 do not differ significantly from each other. They still transpose Article 72 of Directive 2014/24/EU into the Polish legal order.

## 4. Conclusions

The legislator allows for making changes to the content of a public procurement contract only as an exception. Non-substantial changes to the contract and those that were previously provided for by the contracting authority in the content of the contract notice or the contract documents are permissible[31].

The assessment of the significance of the amendment to the contract should be made in relation to the realities of the given case, i.e. the extent to which the change in the terms of the contract will affect the position of the contractor in relation to the contracting authority, the circumstances

29 Article 458 PPL.

30 P. Granecki, I. Granecka, *Prawo zamówień publicznych. Komentarz*, Warszawa 2021, pp. 1162–1163.

31 GKO ruling of 18 February 2013, BDF1/4900/132/134/12/3396, LEX No 1540076.

constituting the reason for the amendment to the contract, comparison of the situation of the contractor after the amendment to the contract in relation to the situation of other contractors participating in the procedure, the impact of a potential contract change on the increased interest in the contract by other contractors. *A contrario,* insignificant changes should be understood in such a way that knowledge of their introduction to the contract at the stage of the public procurement procedure would not affect the circle of entities interested in participating in the procedure, nor would it affect the outcome of the procedure. An amendment to the contract may be of an insignificant nature when it is caused by external reasons, impossible to foresee at the stage of the public procurement procedure and beyond the control of a party. In particular, it refers to cases where the reasons for amending the contract would apply in such a way to any other economic operator participating in the procedure when it would be in the place of the contractor performing the contract.

Whenever the ordering party makes changes to the contract, it must remember that there is a thin line between amending the contract and changing the subject of the contract, which results in the need to conduct a new procedure. Infringement of this line may result in liability either under the Public Procurement Law or in the case of contracting authorities referred to in Articles 4(1)(1), (2) and (3) of the Public Procurement Law under the Act on Infringement of Public Finance Discipline[32].

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