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Liability of contractors jointly applying for a public procurement contract in connection with their conclusion of a civil law partnership agreement

Odpowiedzialność wykonawców wspólnie ubiegających się o zamówienie publiczne w związku z zawarciem przez nich umowy spółki cywilnej

Abstract. A civil law partnership agreement is an obligation relationship through which the partners of a civil law partnership pursue a common economic goal. In the case of public procurement contracts, the common goal is to submit a joint tender and then jointly perform the contract. The legislator enabled contractors pursuant to Article 23 of PPL (the Public Procurement Law) to jointly apply for a public procurement contract. The subject of the article is the liability of contractors jointly applying for a public procurement contract in connection with their conclusion of a civil law partnership agreement. The first goal is to discuss the situation of partners who, seeking to perform a public procurement contract, es-

tablish a civil law partnership. The second goal is to identify contractual clauses that, to some extent at least, would restore the balance of partners' positions towards each other and towards the contracting authority.

Keywords: liability; public procurement; a contractor; a civil law partnership.

Streszczenie. Umowa spółki cywilnej to stosunek zobowiązaniowy, przez który wspólnicy spółki cywilnej dążą do osiągnięcia wspólnego celu gospodarczego. W przypadku zamówień publicznych wspólnym celem jest złożenie oferty łącznej, a następnie wspólne wykonanie umowy. Ustawodawca umożliwił wykonawcom na mocy art. 23 p.z.p. (prawa zamówień publicznych) wspólne ubieganie się o zamówienie publiczne. Przedmiotem artykułu jest odpowiedzialność wykonawców wspólnie ubiegających się o zamówienie publiczne w związku z zawarciem przez nich umowy spółki cywilnej. Pierwszym celem jest omówienie sytuacji wspólników, którzy, dążąc do realizacji zamówienia publicznego, zawiązują spółkę cywilną. Drugim celem jest identyfikacja klauzul umownych, które choć w pewnym stopniu przywróciłyby równowagę pozycji wspólników wobec siebie oraz wobec zamawiającego.

Słowa kluczowe: odpowiedzialność; zamówienia publiczne; wykonawca; spółka cywilna.

1. Introduction

The legislator pursuant to Article 23 of the Act – The Public Procurement Law[1] enabled contractors to apply jointly for the award of a public procurement contract[2]. According to Jerzy Pieróg, the justification for the introduction of this provision was the reluctance to accept joint tenders by

[1] The Act of 29 January 2004 – The Public Procurement Law (consolidated version: Dz.U. [Polish Journal of Laws] from 2019, poz. [item] 1843, with subsequent amendments), hereinafter referred to as PPL or the Public Procurement Law.

[2] From 1 January 2021, the possibility of contractors jointly applying for the performance of a public procurement contract will result from Article 58(1) of Act of 11 September 2019, the Public Procurement Law, http://orka.sejm.gov.pl/proc8.nsf/ustawy/3625_u.htm, (access on-line: 23.11.2019), hereinafter referred to as the Public Procurement Law of 11 September 2019.

contracting authorities[3]. In particular, the view expressed by the Supreme Court (SC) in its judgment of 13 December 1999[4] in which the SC stated that the provisions of the Public Procurement Act[5] exclude the possibility of submitting a joint tender by entities applying for a public procurement contract was essential. Although it was an individual judgment issued in a specific case, after publicizing it, economic entities were banned from jointly applying for the performance of a public procurement contract[6]. However, the real reason for introducing this regulation was the content of Article 19(2) of Directive 2014/24/EC of the European Parliament and of the Council, according to which contractors may combine in groups in order to submit a tender or participate in a public procurement procedure[7]. The contractors have a right to apply jointly for a public procurement contract by operation of law, and its exercise depends only on the will of the contractors themselves. It is not required that the contracting authority explicitly allows for this possibility in tender specifications or calls for tenders[8].

Entities – contractors willing to jointly apply for a public procurement contract are not required to establish separate entities for this purpose; nor do they have to create specific structures. Public procurement law does not impose any forms or methods of submitting a joint tender[9].

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3 J. Pieróg, *Commentary on Article 23 of PPL* [in:] J. Pieróg, *Prawo zamówień publicznych. Komentarz*, Warszawa 2019, p. 188.

4 The Judgment of the Supreme Court of 13 December 1999, III CKN 478/98, LEX No 39177.

5 The Act of 10 June 1994 on Public Procurement (consolidated version: Dz.U. from 2002, No 72, poz. 664).

6 J. Pieróg, *Commentary on Article 23 of PPL*..., p. 188.

7 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement and repealing Directive 2004/18/EC.

8 M. Stachowiak, *Commentary on Article 23 of PPL* [in:] M. Stachowiak, J. Jerzykowski, W.Dzierżanowski, *Prawo zamówień publicznych. Komentarz*, VII ed., LEX No 587227448.

9 Directive 20147/24/EC of the European Parliament and of the Council in Article 19(3) provides that contracting authorities may require a selected group to take a specific legal form if it is awarded the contract, and to the extent that such change will be necessary for the satisfactory performance of the contract. The preamble to the Directive (15) suggests that it may be necessary, for example in the case of joint and several liability. Member States' legal regulations may impose an obligation on contracting authorities to request a specific legal form, but only to the extent necessary for the proper performance of a public procurement contract.

In addition, it enables joint application for a public procurement contract to an unlimited number of contractors[10]. In such a situation, contractors usually merge into a consortium or establish a civil law partnership[11].

The doctrine mainly has dealt with relationships between a consortium and a contracting authority, while the relationships between a civil law partnership and a contracting authority, as well as internal relationships between partners have usually been omitted. The purpose of this study is to discuss the issue of the liability of contractors jointly applying for public procurement contracts in connection with their conclusion of a civil law partnership agreement.

2. The concept and nature of a civil law partnership

The civil law partnership has been regulated in Article 860–875 of the Civil Code[12]. It is an obligation relationship, according to which the partners undertake to achieve a common economic goal by acting in a specified manner, in particular by making contributions. As Artur Nowacki indicates, a civil law partnership has an economic goal if it aims to achieve a financial gain. The financial gain may or may not be reduced to earnings, that is to increase the assets of the partners. In case of public procurement contracts, the common economic goal will be the submission of a joint tender, and then – after winning the contract – joint performance of the contract concluded with the contracting authority. It should be noted that the limitation of the economic goal to a gainful one is not supported by Article 867 § 1 fourth sentence of the Civil Code. The inability to exclude a partner from participation in profits does not mean that the part-

[10] See the National Chamber of Appeal (KIO) Judgment of 22 May 2019, KIO 819/19, LEX No 2691010.

[11] Article 58(3) of the Public Procurement Law of 11 September 2019 does not impose on contractors jointly applying for the award of a public procurement contract the obligation to have a specific legal form in order to submit a tender or request to participate in the procedure.

[12] Act of 23 April 1964 – The Civil Code (consolidated version: Dz.U. from 2019, poz. 1145 with subsequent amendments, hereinafter referred to as CC or the Civil Code).

nership itself must be profit-oriented[13]. Achieving the economic goal implies the need for cooperation between the partners. A civil law partnership without any contributions or with contributions made only by some of the partners is not allowed[14].

Obtaining the status of a partner in a civil law partnership takes place through the conclusion of a civil law partnership agreement or an amendment thereto expressing itself in the admission of a new partner, or on the basis of a partnership agreement permitting a change of a party thereto and by the heirs of the deceased partner joining the partnership (Article 872 of the Civil Code). All civil law entities, i.e. both natural and legal persons, can be participants in a civil law partnership, and thus partners in it. However, in the opinion of some representatives of the doctrine, partners in a civil law partnership cannot be "defective" legal persons referred to in Article 33^1 of the Civil Code, even if under legal provisions they had legal capacity[15]. Their view is in the minority, and thus it should be recognized that organizational units that are not legal persons, to which the law grants legal capacity, may be partners in a civil law partnership[16]. The existence of a civil law partnership is based on the principle of invariability of its composition[17]. The number of partners in a civil law partnership is unlimited and is not subject to any restrictions, but the partnership's operating rules, in particular the conduct of affairs or representation, are adapted to the cooperation of a small group of entities[18]. Nevertheless, it should be emphasized that a civil law partnership may be

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13 A. Nowacki, *Commentary on Article 868 of* CC [in:] K. Osajda (ed.), *Kodeks cywilny. Zobowiązania. Część szczegółowa. Ustawa o terminach zapłaty. Volume IIIb*, Warszawa 2013, p.1104.

14 P. Nazaruk, *Commentary on Article 860 of CC* [in:] J. Ciszewski, P. Nazaruk (eds), *Kodeks Cywilny. Komentarz*, LEX No 587805238.

15 Cf. P. Nazaruk, *Commentary on Article 860* …; J. Gudowski, *Commentary on Article 860 of* CC [in:] G. Bieniek (ed.), *Kodeks cywilny. Komentarz. Volume II*, Warszawa 2011, p. 882.

16 Cf. A. Kidyba, *Commentary on Article 860 of CC* [in:] A. Kidyba, *Kodeks cywilny. Komentarz. Zobowiązania. Część szczegółowa. Volume III*, Warszawa 2014, p. 724; J. Jezioro, Commentary on Article 860 of CC [in:] E. Gniewek, P. Machnikowski (eds), *Kodeks cywilny. Komentarz*, Warszawa 2013, p. 1427.

17 S. Grzybowski, *System prawa cywilnego, Volume III, part 2*, Warszawa 1976, p. 805.

18 A. Herbet, *Spółka cywilna: konstrukcja prawna*, Warszawa 2008, p. 260.

formed by at least two legal entities. A partner in a civil law partnership cannot be a structure without legal capacity, in particular another civil law partnership.

A civil law partnership is not a civil law entity, it does not have legal personality, but it is equipped with legal capacity[19]. This means that a civil law partnership cannot incur obligations (it has no capacity to perform acts in law), sue, and be sued (it has no capacity to be a party in legal proceedings or to perform actions therein)[20]. Persons representing a civil law partnership are its partners, who as entrepreneurs are subject to entry in the Register of Entrepreneurs or the Register of Economic Activity. A civil law partnership is not a legal entity independent of its partners, but it is a multilateral obligation relationship between partners[21]. In terms of public procurement contracts, this means that independent economic entities, acting in the form of a civil law partnership, submit a joint (combined) tender and as a single entity apply for a public procurement contract.

3. Joint and several liability of contractors jointly applying for a public procurement contract in connection with their conclusion of a civil law partnership agreement towards a contracting authority

Public procurement law does not use the concept of "a civil law partnership" or "a civil law partnership agreement". However, to ensure non-discriminatory participation of contractors in the public procurement procedure, the legislator has enabled them to jointly apply for a public procurement contract pursuant to Article 23 of PPL. The purpose of jointly

[19] See the Judgment of the Administrative Court in Poznań of 30 December 2008, I ACa 917/08, LEX No 518048.

[20] See the Supreme Court Judgment of 11 October 2013, I CSK 14/13, LEX No 1523343; the Judgment of the Supreme Administrative Court of 10 October 2008, II GSK 366/08, LEX No 505260.

[21] The Judgment of the Supreme Court of 28 October 2003, I CK 201/02, LEX No 1151608.

applying for the award of a public procurement contract by a civil law partnership is to submit one joint tender and then perform the contract. Partners of a civil law partnership applying for a public procurement contract are obliged, to the same degree as others, including independent contractors, to meet the conditions for participation in the procedure (Article 23(3) of PPL). This means that none of the partners of a civil law partnership may be subject to an exclusion from participation in the procedure[22]. Article 23(2) of PPL requires contractors jointly applying for the award of a public procurement contract to appoint a representative to represent them in the procedure or in the procedure and conclusion of the public procurement contract. It should be noted, however, that in the case of a civil law partnership, unlike, e.g., a consortium, there is no such obligation, as the partners represent the partnership as its statutory representatives[23].

Turning to issues related to the liability of contractors jointly applying for the award of a public procurement contract under the conclusion of a civil law partnership agreement, attention should be drawn to two levels: external and internal. The first appears as a field of legal relationships between partners of a civil law partnership and third parties, in this case the contracting authority. The second applies to relationships within a partnership.

Article 141 of PPL provides for the joint and several liability of contractors jointly applying for the award of a public procurement contract

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[22] To meet the conditions for participation in the public procurement procedure set out in Article 22(1)(1) of PPL, it is sufficient for only one partner in a civil law partnership to have qualifications, the partner who will perform the part of the contract requiring qualifications. In turn, the conditions specified in Article 22(1)(2–4) of PPL relating to knowledge and experience, technical, personal, economic, and financial potential may be met jointly. Lack of grounds for exclusion for the reasons referred to in Article 24(1) of PPL must apply to each of the partners.

[23] See Article 865 of the Civil Code and *Opinie prawne w zakresie zamówień publicznych*, https://www.uzp.gov.pl/__data/assets/pdf_file/0026/30698/Opinie-prawne-w-zakresie-zamowien-publicznych-2013.pdf (access on-line: 25.11.2019), p. 55: "Although in the case law of the National Chamber of Appeal, the participation of a civil law partnership in a public procurement procedure is treated as joint application for a public procurement contract, pursuant to the Act on PPL there is no need to regulate the rules of representation of a civil law partnership separately, as these already result from the provisions of the Civil Code".

for the performance of a contract and providing a performance bond[24]. Therefore, we are dealing with the situation that no additional actions of any of the parties to the public procurement contract are required for joint and several liability to arise, as the liability results directly from the provisions of the Public Procurement Law (*ex lege*). This means that this liability is mandatory (*ius cogens*) and it cannot be excluded in relation to the contracting authority by means of dispositive actions[25], in particular the provisions of Tender Specifications[26]. In connection with joint and several liability and the order to apply the provisions on the independent contractor to contractors jointly applying for a public procurement contract, there is no possibility of differentiating liability in relation to any of the contractors jointly applying for the performance of a public procurement contract[27]. The joint and several liability referred to in Article 141 of PPL, applies only to the passive solidarity of contractors jointly applying for a public procurement contract[28], and it does not give rise to active solidarity, for example the possibility of jointly and severally demanding payment of remuneration from the contracting authority[29]. To create this type of solidarity, i.e. active solidarity, an explicit provision of Act would be required, while Article 141 of PPL refers only to joint and several liability for performance of the contract and providing a performance bond.

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24 Article 141 of PPL regulates the issue of liability similarly to Article 864 of the Civil Code. The partners of a civil law partnership are jointly and severally liable for the company's obligations, and, therefore, for any obligations arising during its duration in connection with activities undertaken to achieve the economic goal specified in the partnership's agreement.

25 See the judgment of the Administrative Court in Katowice of 15 December 2017, V ACa 472/16, LEX No 2447606.

26 R. Świstak, *Konsorcjum w świetle prawa zamówień publicznych – polemika*, „Przegląd Prawa Handlowego" 2007, No 3, pp. 40–42.

27 For more see the Judgment of the National Chamber of Appeal of 3 June 2016, KIO 808/16, LEX No 2054654.

28 See the judgment of the Administrative Court in Warsaw of 29 April 2013, VI ACa 1183/12, LEX No 1339412; the Judgment of the Administrative Court in Warsaw of 24 April 2019, VI ACa 1590/17, LEX No 2713621.

29 E.J. Nowicki, *Między Kodeksem cywilnym a Prawem zamówień publicznych, part 4*, „Monitor Zamówień Publicznych" 2010, No 6, pp. 42–47; K. Bełdowska, *Spółka cywilna – odpowiedzialność przed zamawiającym, part 2*, „Monitor Zamówień Publicznych" 2016, No 1, pp. 21–22.

In addition, the contracting authority's debt consists of the provision of a cash consideration (payment of remuneration). Since the cash consideration is always a divisible one, the norm expressed in Article 379 § 1 of the Civil Code, according to which, if there are several creditors and the consideration is divisible, the debt is divided into as many independent parts as there are creditors, will apply to the contracting authority's liability towards contractors jointly applying for the award of the contract[30].

In one of its opinions, the Public Procurement Office explained that entities jointly applying for a public procurement contract are jointly and severally liable to a contracting authority by the mere fact of jointly applying for the performance of a public procurement contract and concluding the contract. At the same time, these entities remain jointly and severally liable until the contracting authority is fully satisfied in the scope of their obligations under the contract (Article 366 of the Civil Code in conjunction with Article 14(1) and (141) of PPL).

The legal form of cooperation adopted by the contractors does not affect the question of possible liability for the proper performance of the contract and providing a performance bond. From the point of view of the contracting authority, the provisions whether of a civil law partnership or a consortium agreement are irrelevant[31]. Any arrangements between the contractors included in the content of the civil law partnership agreement can only be relevant in terms of mutual settlements between the partners. They cannot, however, be effectively raised in relations with the contracting authority[32].

For the existence of an obligation, and thus the liability of partners of a civil law partnership, it is irrelevant that a partner ceases to conduct economic activity and is removed from the Central Register and Infor-

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30 The Judgment of the Administrative Court in Warsaw of 18 February 2009, VI ACa 1152/08, LEX No 1344288.

31 See e.g. W. Jarzyński, *Oferta wspólna – teoria i praktyka*, „Monitor Zamówień Publicznych" 2011, No 10, pp. 44–46.

32 Cf. J. Pieróg, *Commentary on Article 141 of PPL* [in:] J. Pieróg, *Prawo zamówień publicznych. Komentarz*, Warszawa 2019, p. 679; E.J. Nowicki, *Commentary on Article 141 of PPL* [in:] E. J. Nowicki, M. Kołecki, *Prawo zamówień publicznych. Komentarz*, IV ed., LEX No 587365115.

mation on Economic Activity or the National Court Register. As a contractor, he still remains liable under the public procurement contract to perform its provisions. The contracting authority is entitled to claim from all partners or each of them separately the correct performance of the contract and the provision of a performance bond. Each of the contractors applying for the award of a public procurement contract, including the partners of a civil law partnership who have concluded a contract for the performance of the public procurement, are debtors of the contracting authority until its performance.

In conclusion, the regulation of Article 141 of PPL regarding the joint and several liability of contractors jointly applying for a public procurement contract shapes liability only in the scope of proper performance of the contract and the provision of a performance bond. According to Jerzy Baehr, the content of Article 141 of PPL is advantageous for the contracting authority and disadvantageous for the contractors, because each contractor bears the risk of non-performance of the contract[33]. The joint and several liability of contractors as regulated in Article 141 of PPL does not apply to earlier stages of the procedure. Therefore, joint and several liability of partners of a civil law partnership towards the contracting authority for acts and omissions undertaken in the context of a public procurement procedure or the stages preceding it cannot be inferred[34].

4. Liability of a partner towards other parties to a civil law partnership agreement

After the conclusion of a civil law partnership agreement, the partners are liable for non-performance or improper performance of the obligation undertaken in the content of the agreement in line with the general princi-

[33] J. Baehr, *Commentary on Artice141 of PPL* [in:] T. Czajkowski (ed.), *Prawo zamówień publicznych. Komentarz*, III ed. Warszawa 2007, p. 414.

[34] I. Skubiszek-Kalinowska, *Commentary on Article 144 of PPL* [in:] I. Skubiszek-Kalinowska, E. Wiktorowska, *Prawo zamówień publicznych. Komentarz aktualizowany*, LEX No 587755227; A. Packo, *Glosa do wyroku SO w Warszawie z dnia 10 września 2015 r., XXIII Ga 1041/15*, „Zamawiający" 2015, No 14, pp. 66–69.

ples (Article 471 et sqq. of the Civil Code). Failure to comply with external legal relations with the contracting authority at the same time violates the legal relationship with partners and constitutes an action to their disadvantage. An agreement excluding the internal liability of a partner for damage caused intentionally to other partners is invalid (Article 473 § 3 of the Civil Code)[35]. Owing to the fact that the civil law partnership agreement is not a mutual agreement[36], the provisions of Article 487–497 of the Civil Code do not apply. It is permissible to introduce contractual penalties into the sphere of a civil law partnership, because the obligation to participate in a specific undertaking, in this case in the performance of a public procurement contract, is not an obligation to provide a cash consideration, nor is it limited to such a consideration (Article 483 of the Civil Code). A partner in a civil law partnership is liable with all his property up to the full amount of the damage. The *ex contracto* liability of a partner in a civil law partnership may be, for example, the result of evading cooperation in the performance of a public procurement contract.

The issue of recourse claims should be considered on the internal level for the purposes of this study. It applies to a situation in which performance will be carried out by one of the partners. In this case, the liability towards the contracting authority expires. The contractor-partner who has fulfilled the contractual obligations may claim the return of the consideration from the other partners jointly applying for the public procurement contract. Therefore, the content of a civil law partnership agreement is significant. The provisions of the Civil Code do not regulate the ele-

[35] See the Judgment of the Administrative Court in Warsaw of 25 May 2012, VI ACa 30/12, LEX No 1267467.

[36] See the Judgment of the Administrative Court in Warsaw of 3 October 2012, VI ACa 195/12, LEX No 1238429; the Supreme Court Judgment of 17 December 2008, I CSK 258/08, LEX No 484870 – a feature of mutual agreements within the meaning of Article 487 § 2 of the Civil Code is that the consideration of one of the parties is in the economic sense equivalent to the consideration of the other, each party obliges itself because it will receive the other party's consideration. A mutual agreement is a causal agreement, and the reason why one of the parties obliges itself is to ensure the other party's obligation to carry out the performance (*causa obligandi*).

ments of a civil law partnership agreement[37]. Therefore, its content is based on the principle of freedom of agreements (Article 353^1 of the Civil Code), which means that the parties may shape its content in principle in any manner. The provisions of the agreement may not, however, oppose the property (nature) of the legal relationship, act, or principles of social coexistence. In the absence of relevant contractual provisions, a partner does not have instruments to enforce a proper action from other partners. Setting the rules of liability in the content of a civil law partnership agreement, it can be stipulated that the incurring by one of the partners of costs related to the principle of joint and several liability expressed in Article 141 of PPL allows the seeking of compensation from a partner who was obliged to fulfil (perform) this part of a contractual obligation. On the other hand, a situation where liability for failure to perform the contract cannot be assigned to a specific partner should be stipulated differently. A provision to incur the consequences by all the partners in proportion to their contributions may be introduced. At this point, Article 376 § 1 of the Civil Code, should be mentioned, according to which, if one of the joint and several debtors fulfilled the contractual obligations, the content of the legal relationship between the co-debtors decides whether and in what parts he may claim for reimbursement from the co-debtors. Unless otherwise specified in the content of this relationship, the debtor who has fulfilled the contractual obligations may claim for reimbursement in equal parts. Hence, in the absence of the abovementioned provision in the civil law partnership agreement, a partner who has fulfilled the contractual obligations in relation to the contracting authority will be able to file a recourse claim in equal parts against the other partners, and not only against the partner who was the perpetrator of the event.

In conclusion, it should be noted that in addition to the many benefits of jointly applying for a public procurement contract, there are many risks

[37] Unlike the Act of 15 September 2000 – The Commercial Companies Code (consolidated version: Dz.U. from 2019, poz. 505, hereinafter: CCC), which in the provisions regulating the functioning of individual companies, lists the elements that should be included in a civil law partnership agreement (see, e.g., Article 25, Article 91, Article 157 § 1 of CCC).

to be seen that do not occur when acting alone. Each partner bears the risk of non-performance or improper performance of a public procurement contract, usually resulting in the imposition of a contractual penalty or loss of a performance bond. The contracting authority is not obliged to require performance by a contractor who has been obliged to perform this part of the contract under a civil law partnership agreement. This is not changed by the fact that the contracting authority may become familiar with the content of the agreement regulating the cooperation of contractors jointly applying for the contract (Article 23(4) of PPL)[38].

5. Conclusion

The introduction of joint and several liability of contractors jointly applying for the award of a public procurement contract serves to safeguard the interests of the contracting authority and prevents situations in which the contracting authority could not effectively assert its rights in the event of termination of the agreement between the contractors.

The liability of the partners of a civil law partnership towards the contracting authority is a liability arising from the operation of law. Therefore, it is independent of the provisions of the civil law partnership agreement, in particular regarding the rights and obligations of individual partners or the distribution of activities aimed at performing the contract concluded between them and the contracting authority. As already indicated in the above, also the loss of an entrepreneurial status by any of the partners of a civil law partnership does not exclude their liability towards the contracting authority in connection with the conclusion of the public procurement contract. Until the performance of the contract is carried out, the partners of a civil law partnership are the debtors of the contracting authority and the contracting authority may claim the performance of the contract from the partners jointly or from each of them individually.

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38 M. Kalina-Nowaczyk, *Solidarna odpowiedzialność wykonawców za niewykonanie lub nienależyte wykonanie zamówienia publicznego* [in:] A. Śmieja (ed.), *Odpowiedzialność cywilnoprawna w obrocie gospodarczym*, „Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu" 2011, No 203, p. 108.

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