



**MINISTRY OF NATIONAL DEFENCE
ADMINISTRATIVE DEPARTMENT**

Brussels, on 18 July 2022

Information about the cancellation proceedings

Refers to: public procurement procedure conducted under the basic procedure without negotiations for the delivery of a higher-class passenger car, case number 15 / ZP / 22

Ladies and Gentlemen,

acting pursuant to art. 260 sec. 2 of the Act of September 11, 2019 - Public Procurement Law (Journal Of Laws 2021, item 1129, 1598, 2054, 2269, of 2022, item 25, 872, 1079), hereinafter referred to as "the Act Pzp", The contracting authority informs that it has canceled the procedure under Art. 255 point 3 of the Public Procurement Law, because the price of the best offer exceeds the amount that the contracting authority intends to spend on financing the contract.

Justification:

On July 6, 2022, prior to the opening of tenders, the awarding entity, pursuant to Art. 222 paragraph. 4 of the Public Procurement Law, the information on the amount that it intends to spend on financing the contract has been made available on the website of the procedure. The amount was PLN 240,000.00 gross (in words: two hundred and forty thousand zlotys 00/100), ie EUR 50 677.82 (in words: fifty thousand six hundred and seventy-seven EUR 82/100).

Within the deadline for submitting bids, three bids were submitted. Among the offers that cannot be rejected, the offer no. 1 submitted by the contractor Zdunek Premium Sp. z oo (ul. Miałki Szlak 43/45, 80-717 Gdańsk) The price of the most advantageous offer is EUR 64,350.00, which means that it exceeds the amount allocated by the contracting authority to finance the contract by EUR 13,672.18.

Pursuant to Art. 255 item 3 of the Public Procurement Law, the awarding entity shall cancel the contract award procedure if the price of the best offer or the tender with the lowest price exceeds the amount that the awarding entity intends to spend on financing the contract, unless the awarding entity may increase this amount to the price of the best offer. In the procedure in question, the contracting authority may not increase the amount allocated for financing the contract to the price of the best offer.

Taking into account the jurisprudence of the National Appeal Chamber, hereinafter referred to as "KIO", the contracting authority has the right, or even the obligation to decide whether the increase in funds allocated to the contract is justified in terms of the purposefulness and efficiency of managing public funds. The decision is made by the contracting authority under certain conditions that arise in a specific contract award procedure and within the limits of the possibility of financing the task (judgment of 22 January 2019, file ref. KIO 2608/18). Therefore, the contracting authority has full autonomy as to the decision to seek additional funds for the performance of the contract. The contracting authority is not obliged to take any action to increase the amount above the amount allocated to the public procurement. Moreover, since the increase in the amount allocated to the contract is the sole responsibility of the contracting authority, the refusal to increase this amount may not constitute grounds for any claims (judgment of 10 July 2017, file ref. KIO 1273/17). The possibility for the contracting authority to increase the amount for finalizing the contract is a right, not an obligation, of the contracting authority and it is up to its decision to increase the financial resources for a given purpose.

At the same time, pursuant to Art. 44 sec. 3 point 1 of the Public Procurement Law of 27 August 2009 on public finances (Journal of Laws of 2021, item 305), public expenditure should be made in a purposeful and cost-effective manner.