

## **Why has the contract to build Poland's first nuclear power plant not yet been concluded?**

### **INTRODUCTION**

According to the Polish Nuclear Power Programme 2020, which is still in force (M.P. 2020, item 946), a contract with a technology supplier and EPC (Engineering Procurement Construction) general contractor was to be signed in 2022. The timetable annexed to the NPPJ does not make any assumption about phasing and concluding several contracts. However, the contract concluded in October 2023 between Polskie Elektryczne Jądrowe and the Westinghouse and Bechtel consortium is not yet an EPC-type contract for the construction of a nuclear power plant but an ESC (Engineering Services Contract) - type contract covering only the design of the first Polish nuclear power plant in Pomerania. In this context, information provided in recent days by the Government Plenipotentiary for Strategic Energy Infrastructure, Maciej Bando, about talks with the Ministry of Finance regarding a draft law on financing the first nuclear power plant assuming, among other things, a capital injection of up to PLN 60 billion into Polskie Elektryczne Jądrowe. Why has the contract to build the nuclear power plant not yet been concluded, and what is its relation to the planned financing bill?

### **EPC CONTRACT**

To better perceive this relationship, it is worth first highlighting the specifics of an EPC contract for a nuclear investment. The EPC contract (or turnkey contract) is one of the contractual models that can be used. Under this arrangement, a single entity - the general contractor - is responsible for the entire scope of work required to complete the design and construction of the nuclear power plant. Other models are also used in practice, where the individual works are divided into different contracts, which may be concluded with different contractors. However, in the case of 'first in country', i.e. the first power plant with a specific technology in the country of investment, the EPC contract tends to be the global standard. It should be noted, however, that since the contract for the power plant design has already been concluded by the parties involved, this scope of work will be excluded from the next contract, which will most likely already cover strictly the execution of the investment. Up to this point, the nuclear investment contract does not appear to be particularly different from other large infrastructure projects. The general contracting formula is widely used in both the energy and other sectors of the economy.

### **SPECIFIC REGULATORY ENVIRONMENT**

The specific regulatory environment for nuclear investments concerning issues such as nuclear safety, physical protection, nuclear safeguards, issues related to the non-proliferation of nuclear weapons and the export of nuclear technology and, finally, environmental protection and civil liability for nuclear damage is key. These issues are usually rooted in international law and are transposed into national laws. In addition, a grid of public law requirements of the investor's state regarding, for example, national administrative procedures (both before nuclear supervision and any other necessary) must be imposed on each contract - all these public law requirements must be included in the contract. In addition, the contract must consider the specific requirements of the site and the specific needs of the investor, which determine the scope of work to be carried out. All of these special considerations make any contract involving the realisation of a nuclear power plant "tailor-made", and contractual standards commonly used in infrastructure investments (such as FIDIC or NEC3), can only be a good starting point for the construction of the target document.

### **RISK ALLOCATION**

A key stage in drafting a nuclear contract is to carry out a risk analysis and mapping of existing risks, which should result in a modelled project risk register. The distribution of responsibility for the risks between the contracting parties is negotiable, as is the pricing formula (fixed price or various types of variable price formula). Here, we come to the point of contact with the law on financing the first Polish nuclear power plant. As Maciej Bando pointed out, the act is part of the work on the whole structure of

investment financing. The PEJ company's capitalisation will be allocated to the so-called own contribution - the remaining part will be covered by debt financing, probably from several lending institutions. The content of the EPC agreement is important precisely for lending institutions, particularly with regard to the allocation of responsibility for risks between the parties to the contract. The terms of this financing depend on this. On the other hand, the lack of certainty about the method and level of financing does not allow an investor to make a definite commitment under an EPC contract. It is, in a sense, a system of interconnected vessels.

The detailed arrangements for the contract, whether between PEJ and the Westinghouse/Bechtel consortium or the agreement with the lending institutions, will not be in the public domain, but the information provided by the Government Plenipotentiary for Strategic Energy Infrastructure about work on the draft law suggests that negotiations are moving forward.

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