

41% fall in profit came despite record sales revenue. In H1 2018, the Budimex Group reported sales revenue of PLN 3,302m (€0.8bn; +21.3% year on year), but the net profit tumbled by over 34% to PLN 128m (€30m), which raised concerns among investors and drove down Budimex share price on the WSE. The decline in consolidated net profit was mainly due to lower profitability of the construction sector in the wake of increased prices of building materials and subcontracting services and the fact that contracting authorities do not apply any mechanism to adjust prices, and, also, a significant hike in logistics costs

in infrastructural contracts, reads a statement released by the company. As at the end of June 2018, the value of the Budimex Group's order book stood at as much as PLN 10.8bn (€2.5bn).

GDDKiA selected bids submitted by the Chinese-based construction company Stecol Corporation as the most competitive ones in the tenders for the construction of the northern Krakow bypass along national road S52 (the consortium also includes Polish company Polbud Pomorze) and a two-lane section of national road No. 47, i.e. the so-called Zakopianka road, from Rdzawka to Nowy

Targ. Since construction companies from China have not attained a good reputation in Poland (recent problems caused by the failure of contracts signed with Covec), Andrzej Adamczyk, Minister of Infrastructure, has said that the Infrastructure Ministry and the contracting authority closely monitor the implementation of road contracts, adding that the winning company has "a huge financial and economic potential, which gives reason to hope that the projects will be completed in time and to the expected technology standards". Hopefully, the Minister is not wrong.

Liability for payment of subcontractor's fees in construction work contract

Pursuant to Art. 647¹.1 of the Civil Code, the investor and the contractor (general contractor) are jointly and severally liable for the payment of fees to the subcontractor for construction work performed. Joint and several liability has been implemented into the legal system by way of the law amending the Civil Code of 14 February 2003. The grounds of the draft legislation stipulated that the objective behind the change was to prevent general contractors' negative practice of not paying or of making overdue payments of fees to subcontractors performing construction work. The investor's liability is independent from anybody's fault.

In principle, joint and several liability applies to construction work whose detailed scope has been notified to the investor in writing, under pain of nullity, by the contractor or subcontractor prior to commencing the construction work. An exception occurs when the investor files an opposition in writing, under pain of nullity, with the subcontractor and contractor against a subcontractor performing the work within 30 days from receiving the notification. A notification of the detailed scope of the construction work is not required if the investor and the contractor have defined a detailed scope of construction work to be performed by a specified subcontractor in the agreement. The agreement must be made in writing, oth-

erwise being null and void. The regulation is aimed to protect the investor against liability for the payment of fees to the subcontractor for construction work which have not been detailed in the subcontractor notification. The investor's liability is waived with respect to any other claims the subcontractor may have against the contractor except for claims for the payment of fees for construction work performed and specified in the notification. Accordingly, the investor will not be liable for the payment of fees to the subcontractor for additional construction work not detailed in the notification.

Grounds for the investor's joint and several liability for the payment of fees to the subcontractor are as follows: a notification of

the detailed scope of the construction work to the investor (or defining the scope in the agreement between the investor and the contractor), lack of the investor's opposition and performance of the construction work by the subcontractor.

The investor shall be liable for the payment of the subcontractor's fees in the amount specified in the agreement between the subcontractor and the contractor provided that the amount does not exceed the amount of fees payable to the contractor in respect of the construction work the detailed scope of which is specified in the notification of the detailed scope of the construction work or in the agreement between the investor and the contractor. If this condition is not met, the investor's liability regarding the payment of the fees will be limited to the amount of fees payable to the contractor in respect of construction works.

The regulation is mandatory, which means that it may not be modified by the parties by way of agreement. It will also apply to the joint and several liability of the investor, contractor and subcontractor which concluded the agreement with a further subcontractor in respect of the further subcontractor's fees. It is an accepted position in the courts' judicial decisions that the regulation should be applied to both subcontractors providing services pursuant to a construction work agreement and those who provide their services based on the contract for specific work.

*Joanna Szywniewska
Lawyer
Miller, Canfield, W. Babicki, A. Chelchowski
i Wspólnicy Sp.k.*