



Puławy, 19th of March 2010

NULLIFICATION OF THE PROCEDURE FOR A PUBLIC CONTRACT

The Awarding Entity – Instytut Nawozów Sztucznych, on the basis of Article 93 paragraph 1 item 7 in relation to paragraph 2, in relation to Article 146 paragraph 1 item 6, in relation to Article 29 paragraph 1 of Public Procurement Law and in relation to Article 387§ 1 of the Civil Code of the Republic of Poland and in relation to Article 139 of the Act of the 29th of January 2004 Public Procurement Law (consolidated text Journal of Laws of the Republic of Poland of 2007, No 223, item 1655 with further amendments)

hereby nullifies

the procedure INS-NO/39/2009 for a public Contract *Supply of equipment, machines and devices within the project of "the Construction of CO₂ supercritical plant extraction research center" co financed by European Regional Development Fund within Operational Programme Development of Eastern Poland 2007 – 2013* conducted in the procedure of restricted tendering for the following part:

- Part 40 – Printer.

Justification

The Awarding Entity decided to nullify the procedure for this part of the Contract under Article 93 paragraph 1 item 7, in relation to paragraph 2, in relation to Article 146 paragraph 1 item 6, in relation to Article 29 paragraph 1 of Public Procurement Law and in relation to Article 387§ 1 of the Civil Code of the Republic of Poland and in relation to Article 139 of Public Procurement Law. This Procedure for a Public Contract is burdened with defect which precludes entering into Public Contract due to faulty description of the object of the Contract, which had an impact on the results of the Procedure.

In item "3 of the description of the object of the Contract , in 3.1 - Characteristics of ink printer-distinguishing mark 8 – quick-dry ink used in food industry (certificate of PZH- National Institute of Hygiene) was specified".





The description of the object of the Contract is faulty due to its lack of accuracy and exactness, which misled the Economic Operator since the Awarding Entity should have specified that he meant ink which would have direct contact with food, i.e. *this ink will be used for overprints on the cans*, which after puncturing will be placed into vat, where cans will have direct contact with food. Hence, the requirement specified by the Awarding Entity for ink – for food industry is insufficient to obtain required product. Since the National Institute of Hygiene (PZH) issues certificate only for ink used for overprints on eggshell and cheese crust, the Economic Operator when reading the Notice of Public Contract assumed that this ink fulfills all the requirements of the Awarding Entity. In case of this part of procurement such a defect of the procedure was irremovable from the moment of announcing the Notice of Public Contract as due to the fact that National Institute of Hygiene does not issue certificate for ink required by the Awarding Entity and therefore, the Economic Operator is unable to perform his services.

Under Article 29 paragraph 1 of Public Procurement Law the object of the Contract shall be specified in an unambiguous and exhaustive manner, using understandable and precise specification, taking into consideration all the circumstances and requirements that may have an impact on offer construing. The Awarding Entity is responsible for using standard technical specification, which is used in particular field and which is understandable for all representatives of particular branch of industry.

Under Article 93 paragraph 1 item 7 the Awarding entity is obliged to nullify the procedure if the procedure is burdened with defect which precludes entering into Public Contract.

In accordance with Article 139 of Public Procurement Law, the provisions of the Civil Code are applicable for entering into contract, thus pursuant to Article 387 § 1 of the Civil Code the contract for unfulfillable services is invalid.

If the Awarding Entity specified the object of the Contract in an ambiguous and inexhaustive manner, using not fully understandable and inaccurate specification and failed to take into consideration all the requirements and circumstances, which may have an impact on offer construing as required by law, then the Awarding Entity violated the provisions of law which had an impact on the result of the procedure.

Therefore, the Awarding Entity taking into consideration this circumstance is obliged to nullify the procedure under the above mentioned legal basis.



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NARODOWA STRATEGIA SPÓJNOŚCI

UNIA EUROPEJSKA
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Fundusze Europejskie - dla rozwoju Polski Wschodniej

Hence it was decided as at the beginning of the Nullification.

This decision may be appealed against as provided for in the Act of the 29th of January 2004 Public Procurement Law (consolidated text Journal of Laws of the Republic of Poland of 2007 No 223 item 1655 with further amendments.) – chapter VI " Legal protection means".

Recipients :

1. All the participants of the procedure

z up. **DYREKTOR**

J. Kobus
mgr Jolanta Kobus
Przewodnicząca Komisji Przetargowej

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The signature of the manager on behalf of the Awarding Entity



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