



Pulawy, 14th of April, 2010r

RE: The procedure for a public Contract INS/CBEN-30/2010 within the procedure of open tendering for The Supply of equipment, machines and devices within the project of "The Construction of CO₂ supercritical plant extraction research center" – The set consisting of carbon dioxide pump item PP1, carbon dioxide pump drive system item PP1M and pulsator item PZ2, including spare parts and start-up supervision.

Hereby I give answers to the questions asked by Economic Operators concerning the sample of Contract, which constitutes Annex to the Specification of Essential Terms of Contract:

Question

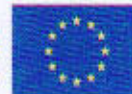
We do not know, what is stated in Article 24 § 1 of Public Procurement Law and assume, that we fulfil the requirements and are not excluded.

Please confirm.

Answer

I hereby stipulate the provisions of Article 21§ 1 of Public Procurement Law:

1. Excluded from contract award procedures shall be:
 - 1) Economic operators who caused damage by failing to perform a contract or by performing a contract improperly, if such damage was stated by a legally valid decision of the court past 3 years prior to the launch of the procedure;
 - 2) Economic operators against whom the winding up procedure has been started or whose bankruptcy has been declared, except for economic operators who, upon bankruptcy declaration, entered into composition approved by a valid court decision, unless such a composition provides for payment to the creditors by a liquidation of the assets of the bankrupt entity;
 - 3) Economic operators who are in arrears with payment of taxes, charges or social insurance or health premiums, with the exception of cases where they have been legally exempted, their outstanding payments have been deferred or divided into installments or the execution of a decision of a competent authority has been stopped in its entirety;
 - 4) Natural persons, who have been validly sentenced for an offence committed in connection with a contract award procedure, offence against the rights of people performing paid work, offence against the environment, for bribery, for an offence against economic turnover or for any other offence committed with the aim of gaining financial profits, as well as for treasury offence or an offence of participation in organized crime group or in union aimed at committing an offence or treasury offence;
 - 5) Registered partnership whose partner has been validly sentenced for an offence committed in connection with a contract award procedure, offence against the rights of people performing paid work, offence against environment, for bribery, for an offence against economic turnover or for any other offence committed with the aim of gaining financial profits, as well as for treasury offence or an offence of participation in organized crime group or in union aimed at committing an offence or treasury offence;



- 6) Professional partnership whose partner or member of management board has been validly sentenced for an offence committed in connection with a contract award procedure, offence against the rights of people performing paid work, offence against the environment, for bribery, for an offence against economic turnover or for any other offence aimed at gaining financial profits, as well as for treasury offence or an offence of participation in organized crime group or in union aimed at committing an offence or treasury offence;
- 7) Limited partnership and limited joint-stock partnership whose general partner has been validly sentenced for an offence committed in connection with a contract award procedure, offence against the rights of people performing paid work, offence against the environment, for bribery, for an offence against economic turnover or for any other offence aimed at gaining financial profits, as well as for treasury offence or an offence of participation in organized crime group or in union aimed at committing an offence or treasury offence;
- 8) Legal persons whose active member of the managing has been validly sentenced for an offence committed in connection with a contract award procedure, offence against the rights of people performing paid work, offence against the environment, for bribery, for an offence against economic turnover or for any other offence aimed at gaining financial profits, as well as for treasury offence or an offence of participation in organized crime group or in union aimed at committing an offence or treasury offence;
- 9) Collective entities, with respect to whom a court has issued a decision prohibiting them from competing for contracts under the provisions concerning the liability of collective entities for tort under liability to penalty.

Question

Please explain, what is specified in Article 25 and 26 of Public Procurement Law.

Answer

I hereby stipulate the provisions of Article 25 and 26 of Public Procurement Law:

1. Article 25

1. In contract award procedures the awarding entity may request from economic operators only declarations and documents necessary to conduct procedures. Declarations and documents proving:
 - 1) That they satisfy the conditions for participation in the procedure,
 - 2) That the tendered supplies, services and works satisfy the requirements specified by the awarding entity
- the awarding entity shall indicate in the contract notice, specification of the essential terms of contract or the invitation to tender.
2. The Prime Minister shall specify by a regulation, the types of documents which the awarding entity may require from the economic operator and the forms in which such documents may be provided, taking into consideration that instead of such document, the economic operator may provide a declaration made before a competent authority to confirm his compliance with conditions for participation in a contract award procedure, and that the economic operator may prove his lack of criminal record particularly by means of information from the National Register of Criminal Records and the confirmation that tendered supplies services and works correspond to the requirements defined by awarding entity may be the confirmation issued particularly by the entity authorized to carry out quality controls, and likewise taking into



consideration that the forms of such documents should make it possible to award contract electronic means.

2. Article 26

1. Where the value of the contract is equal to or exceed the amounts specified in the provisions under Article 11 paragraph 8, the awarding entity shall request from the economic operators documents proving that they satisfy the conditions for participation in the procedure.
2. Where the value of the contract does not exceed the amounts specified in the provisions under Article 11 paragraph 8, the awarding entity may request from the economic operators documents proving that they satisfy the conditions for participation in the procedure.
 - 2a. The economic operator at the awarding entity's request and within the scope specified by the same, is required to prove, accordingly, not later than on the date set for submission of requests to participate in the procedure or the date of submission of tenders, the fulfillment of the conditions referred to in Article 22 paragraph 1 and lack of grounds to exclude the economic operator due to non-fulfillment of conditions referred to in Article 24 paragraph 1.
 - 2b. The economic operator may rely on knowledge and experience, technical potential, personnel capable of performing the contract or financial abilities of other entities, regardless of the legal nature of its relations with such entities. In such case the economic operator is required to prove to the awarding entity that it will have at his disposal the resources necessary to performing the contract, in particular by presenting to this end a written commitment of those entities whereby they undertake to put the necessary resources at the economic operator's disposal for the time of their use in performance of the contract.
 - 2c. If, for a justified reason, the economic operator is unable to present documents regarding financial and economic standing as required by the awarding entity, the economic operator may present another document which sufficiently confirms the fulfillment of the conditions described by the awarding entity.
3. The awarding entity shall call on economic operators who did not submit declarations or documents referred to in Article 25 paragraph 1, or the economic operators who did not submit plenipotentiaries, or the economic operators who submitted declarations or documents referred to in Article 25 paragraph 1, that contains errors or those who submitted defective plenipotentiaries to supplement documents in a defined time limit unless despite the supplement, the tender of the economic operator is rejected or the cancellation of the procedure is necessary. The declarations or documents, submitted on request of the awarding entity, shall confirm the fulfillment by supplies, services or works of conditions specified by the awarding entity, not later than on the day when the time limit for submission of the request to participate in the contract award procedure expires.
4. The awarding entity shall fix a time limit for explanations referring to documents and declarations, referred to in Article 25 paragraph 1.

Question

Please explain, what is specified in Article 22 of Public Procurement Law

Answer

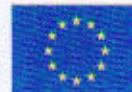
I hereby stipulate the provisions of Article 22 of Public Procurement Law:

1. Eligible to compete for a contract shall be economic operators who meet the conditions related to:



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- 1) authorizations to perform specific activities or actions, if such authorizations are required by law;
 - 2) knowledge and experience;
 - 3) appropriate technical potential and personnel capable of performing a contract;
 - 4) economic and financial standing.
2. The awarding entity may stipulate in the contract notice that only those economic operators may compete for a contract whose employed staff is in over 50% composed of disabled persons within the meaning of the regulations on occupational and social rehabilitation as well as on employment of the disabled or relevant provisions of the European Union Member States or the European Economic Area Member States.
3. The description of the manner of the fulfillment of conditions, referred to in paragraph 1 shall be included in the contract notice – or in case of procedures where the publication of a contract notice is not required – in the invitation to negotiate.
4. The description of manner of the fulfillment of conditions, referred to in paragraph 1 should be related to the object of contract and should be proportional to the object of the contract.

Question

It is common practise of engineering companies world wide, that in case of any project they send the relevant sub suppliers a Secrecy Agreement Form in advance. All other documents / inquiry specification etc. will be submitted after receipt of signed Secrecy Agreement.

It is out of question, that we will keep such Agreements very strictly. Attached our reference list we are allowed to public.

More information we are not allowed to show. Please inform, whether this is acceptable or not.

This is in line with your requirement as per Article 9.2 /page 33

Answer

We do understand common practice of entities participating in economic turnover. However, in case of public tender the Awarding Entity is obliged to be the subject to Public Procurement Law not the practice commonly used, under the liability for violation of the discipline of public finance. As far as secrecy clause is concerned- the Economic Operator is obliged to specify the confidential part of the offer, which constitutes business secret of the entrepreneurship under Article 8 paragraph 3 of Public Procurement Law. However, by the time limit for submission of the offers the offer shall contain entire documentation required by the Awarding Entity, which fulfils the conditions of the Specification of Essential Terms of Contract as it is supposed to be evaluated by the Economic Operator. Therefore, the Awarding Entity shall be provided with all documents necessary for evaluation. However, the Economic Operator might specify which part of the offer is confidential and shall not be disclosed. In such case this part of the offer shall not be disclosed to other Economic Operators who are entitled to have insight into the offers submitted.

Under **Article 8 paragraph 1 and 3 of Public Procurement Law** contract award procedures shall be public. Information, which is regarded as business secret, within the meaning of the provisions combating of unfair competition, shall not be disclosed, if not later than within time limit for the submission of the offers an economic operator made a reservation as to their non-disclosure. The Economic Operator may not stipulate that the information referred to in Article 86 paragraph 4 should be disclosed that is (the information which shall be read after offer opening (price, time limit for completion of the contract, guarantee period and terms of payment).

Under Article 96 paragraph 3 of Public Procurement Law the Awarding Entity is obliged to keep the offers open to public from the day of opening of offers, with the exclusion of the part of the offer which upon the request of the Economic Operator shall not be disclosed. All the above rules aim at obeying the principle of equal treatment of the Economic Operators during the procedure, example of which is that within the time limit all Economic Operators are obliged to prove that they fulfill conditions for participation in the procedure.



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In accordance with Article 44 of Public Procurement Law, the Economic Operator shall attach a declaration that he satisfies the conditions for participation in the award procedure if the Awarding Entity requires so. Therefore, the Economic Operator is obliged to present all the necessary documents in order to be selected to sign the Contract. Consequently, lack of references or financial report shall result in exclusion of the Economic Operator provided that upon the call to submit those documents the Economic operator fails to do so.

Question

It is not mentioned, when the deposits will be returned.

We kindly ask for:

The Deposit will be returned within 14 days after submission of the Contract good performance security acc. XVIII or, in case Economic Operator is not awarded the Purchase Order within 14 days after this decision.

Answer

Deposit shall be returned to Economic Operator under Article 46 paragraph of Public Procurement Law that is immediately upon the selection of best offer or cancellation of the procedure, except for the Economic Operator whose offer has been selected as the best one. In case of Economic Operator whose offer has been selected under this Law, the deposit shall be returned immediately upon conclusion of the procurement contract and provision of a security contract performance. Therefore, the proposed version of the Economic Operator is incompliant with the Public Procurement Law and shall be unaccepted.

Question

Check of the object is specified to be done within 7 days after receipt.

So we kindly ask for acceptance

All damages, losses or faults, if any, which are covered by transport insurance will be claimed within this 7 days.

All losses, if any, in regard of completeness or number of pieces to be supplied will be claimed within this 7 days.

Any claims after this period will not be within responsibility of Supplier

Answer

The acceptance of the proposal of the Economic Operator shall imply that the liability period is 7 day from the day receipt of delivery of the object of the Contract, according to Economic Operator's proposed sentence " ... any claims after this period shall not be within the responsibility of the Supplier". Therefore, it implies that it refers not only to claims covered by transport or insurance. The Economic Operator shall be responsible during the whole period of good performance guarantee .

The above rule shall be applied in reference to regarding delivery as complete and accepted .

Question

Design and performance of the object according Regulations and Codes binding in European Community and Germany. Additional requirements of other members of European Community are not known.

Requirements of Notified Body (if any) as stated in the technical specification.

We kindly ask for acceptance

Answer

Both Germany and Poland are the member states of European Union and shall be governed by the same legal regulations, as one of the conditions to access EU was to incorporate the legal provisions of EU and to adjust the provisions of the member state to the binding provisions of the EU. Therefore, the position of



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the Economic Operator claiming that he knows only German and EU regulations is totally incomprehensible.

Question

Contract Good Performance Security to be returned not later than 15 days after termination of Warranty period as per XIX.1. term after 7)

We kindly ask for acceptance

Answer

This proposal is incompliant with the Specification of Essential Term of Contract and the provision of Article 151 of Public Procurement Law, pursuant to which the Economic Operator shall return security (not :may return) within 30 days. Therefore, this item shall remain the same and shall not be the subject to any amendment by a Party's will.

Question

Something is missing in this sentence.

But it is accepted, as long there is no disadvantage for Economic Operator regarding the amount and the time of payments.

Answer

Nothing is missing in this sentence, this is the part of regulation specifying the manner and condition for any changes and amendments to the Contract ant it reads :

The following changes are permitted:

(12.5.4)The change of VAT value and VAT rate and the change of gross remuneration specified in the Article 2 according to legal provisions introducing this change.

Therefore the implication of any disadvantage to any of the Parties is incomprehensible and unjustified. The above mentioned provisions specify the manner of introduction of changes in case of any changes in Tax Law during contract performance which would cause the necessity of changes of VAT rate .

z up. **DYREKTOR**

mgr Jolanta Kobus
Przewodnicząca Komisji Przetargowej

.....
(signature of the Manager on behalf of the
Awarding Entity)



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