



Puławy, November the 3rd 2010

Answers to the questions asked by Economic Operators for opening tendering for the supply of Equipment, machines and devices within the project of “High pressure techniques laboratory equipment and devices with modern infrastructure – high pressure pilot plant components” – INS/LWC-63/2010.

Under Article 38, paragraph 1 and 2 4 of the Act of 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) the Awarding Entity hereby gives answers to the question asked by Economic Operators.

Question:

Under chapter XI item 4 of the Specification an insurance guarantee for deposit is accepted. Is that a deposit guarantee fund meant? Please specify insurance guarantee .

Answer:

In accordance with Article 45 of Public Procurement Law paragraph 6 the guarantee shall not mean deposit guarantee fund but guarantee issued by the insurance fund (insurance company) as the insurance company shall be the financial institution which guarantees the payment of deposit in case of the below mentioned circumstances specified in Public Procurement Law.

Insurance guarantee shall mean the guarantee issued by the insurance company which undertakes under the order and instructions of the insuring entity (the economic operator) to pay specified sum of money to the benefit of the insured body (the awarding entity) in case of particular circumstances (circumstances which shall allow for retention of the deposit). The Economic Operator is permitted to choose the most advantageous form of deposits among those specified in the Public Procurement Law. The most commonly used deposits (apart from cash deposits) are bank guarantees (issued by a bank) and insurance guarantees (issued by insurance companies).

The Act – Public Procurement Law does not specify the definition of deposit. Therefore, the definition specified in Article 70⁴ § 1 of Civil Code shall be applicable, pursuant to which deposit shall mean pecuniary sum or other proper security for payment of this sum submitted under penalty of lack of permission to participate in the tender or in auction. These provisions provide for financial limitations which shall guarantee that only interested parties would take part in the tender and provide for indemnity reserved in case the selected entity abstains from entering into contract.

The guarantee must provide for the unconditional payment at the first request of deposit by the guarantor (bank, insurance company) to the benefit of the awarding entity should the following circumstances specified in Article 46 of Public Procurement Law occur:

- 1) If the economic operator in response to the call referred to in Article 26 paragraph 3 did not submit declarations or documents proving that he satisfies the conditions for





- participation in the procedure or plenipotentiaries, unless the economic operator proves that it was due to reasons not on its part;
- 2) If the economic operator refused to sign the public procurement contract on the terms specified in the tender;
 - 3) If the economic operator failed to produce the required security on due performance of the contract;
 - 4) The public procurement contract could not be signed due to a fault on the part of the economic operator.

Question:

Would a guarantee issued by the owner of the corporate group be accepted?

Answer:

Due to the above mentioned reasons the guarantee cannot be issued by the corporate group the affiliate of which is the Economic Operator since the guarantee issued in this case shall not be meant as the guarantee issued by the third entity e.g. financial institution which is authorized to issue such guarantees for third parties with whom the institution is not affiliated in any organizational and structural manner.

Question:

Since there are no validity period (temporal limitation/ expiring date) or return stipulations given. Please also specify cases of winning the tendering: extension time of submitted deposit or the value of a new deposit; case of losing the tendering: return stipulation.

Answer:

The validity period of the deposit shall be 60 days calculated from the time limit for submission of the offers. Deposit shall be the offer security for the entire binding period of the offer. The evidence for submittal of the deposit might be filed in cash register of the awarding entity or it might be enclosed to the offer, there no restrictions concerning this scope provided by law. Deposit shall be submitted for the entire binding period of the offer – if the guarantee or other security is submitted for the shorter period than the offer binding period specified by the awarding entity the economic operator shall be excluded from the procedure under Article 24 paragraph 2 item 2 of Public Procurement Law.

Referring to the extension of the deposit validity period.

Prior the selection of the most advantageous offer or after the most advantageous offer has been selected the awarding entity is entitled to extend the offer binding period and simultaneously the deposit validity period. The economic operator may refuse to agree for the extension of the binding period and what is strictly connected for the deposit validity period. In such case the deposit validity period shall expire with the last day of primary binding period. The economic operator is authorized to extend the deposit validity period by means of submittal of a new deposit for the same value or through the extension of the temporal limitations of the document





which has already been submitted. The vital thing is that this period shall not be disrupted, in other words the continuity of deposit validity shall be preserved.

Referring to the terms of deposit retention and return.

In case of winning the tender deposit of the winning economic operator shall be retained until the economic operator has signed the contract. Deposits of other economic operators whose offers are not the subject to exclusion are returned immediately upon the selection of the best offer or after the nullification of the procedure prior the offer binding period, with the exception of those economic operators whose deposits shall be the subject to retention if the economic operator in response to the call referred to in Article 26 paragraph 3 did not submit declarations or documents proving that he satisfy the conditions for participation in the procedure or plenipotentiaries, unless the economic operator proves that it was due to reasons not on its part;

DYREKTOR

[Signature]
Dr inż. Cezary Możeński

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(Awarding Entity)

