

Euro-Centrum Science and Technology Park, Limited Liability Company further to the procurement procedure number Z-17/V/2011/PNT for:

**„Provision of Advisory and Training Services
within the framework of
the Training Centre for Modern Heating Technology -
the Segment of Heat Pumps, Solar Collectors and Systems
and Ventilation Systems”**

with relation to the Project entitled "Foundation of Euro-Centrum Science and Technology Park - Development and Application of New Technologies in the Field of Energy Conservation and Renewables";

implemented within the framework of Priority Axis 5: Diffusion of Innovation;

Measure 5.3: Support for Innovation Centres of the Innovative Economy Operational Programme;

Co-financed with the European Union funds and the State Budget;

with regard to the Financial Support Agreement dated 8th October 2010, number POIG.05.03.00-00-010/10-00 [POIG - Innovative Economy Operational Programme].

we kindly inform you that on 1st June 2011 we received queries and comments to the above referred public procurement procedure related documentation, which we address below:

- 1) Which documents requested need to be submitted in Polish? Please specify if are any documents e.g. commercial register report which can be submitted in English or German.

Item 3.6 of the specification of essential terms of the contract stipulates that “taking into consideration the fact that the language of this procedure is the Polish language, if the Contractor’s registered seat or domicile is outside the territory of the Republic of Poland, the Contractor may commission the assistance of Ms Monika Zielińska - Choina, a translator, conducting business operations under the firm name: SPEKTRA in Płuszwice Kol. 54 A; 21-008 Tomaszowice; contact phone number + 48 505 040 717; e-mail address: monika.spektra.zielinska@gmail.com. This notice is not to be interpreted as an

obligation to use the above specified translation services, but is intended to be merely informational.”

Item 12.13 of the specification of essential terms of the contract stipulates that this procedure shall be conducted in Polish.

The above provisions set out that the language of this procedure is the Polish language.

However, for the sake of providing explanations, the Contracting Authority informs that the following documents must be submitted in Polish:

- 1) A power-of-attorney of the person executing the tender,
- 2) A draft contract constituting the Annex no 1 to the specification of essential terms of the contract, initialled on each page and signed on the last page,
- 3) Declarations on the lack of grounds for exclusion in accordance with the template constituting the Annex no 3 to the specification of essential terms of the contract,
- 4) The Contractor's information in accordance with the template constituting the Annex no 5 attached to the specification of essential terms of the contract,
- 5) The Contractor's information in accordance with the template constituting the Annex no 6 attached to the specification of essential terms of the contract,
- 6) The declaration on fulfilment of conditions of participation in the procedure in accordance with the template constituting the Annex no 4 attached to the specification of essential terms of the contract,
- 7) The declaration on the lack of capital and personal affiliation in accordance with the template constituting the Annex no 7 attached to the specification of essential terms of the contract,
- 8) The disbursement schedule.

Therefore, the following documents may be submitted in English:

- 1) The documents specified in item 6.2, 6.3 and 6.4 of the specification of essential terms of the contract;
- 2) The documents constituting a documentary proof for the fulfilment of the conditions of participation in the contract award procedure as stipulated in item 7.2 and 7.3 of the specification of essential terms of the contract, except for the Contractor's information in accordance with the template

constituting the Annex no 5 and 6 attached to the specification of essential terms of the contract.

- 2) Which tendering procedure will be applied? One or two-stage?

This contract award procedure is a two-stage tendering procedure:

- a) firstly, the submission of initial tenders;
- b) secondly, negotiations with the Contractors who have submitted non-rejectable tenders.

Following the negotiations the Contractor shall either declare that the initial tender is the final tender and as such the tender shall no longer be subject to alterations or shall submit a new tender (the final tender) containing the new tender price for the performance of the object of the procurement procedure.

- 3) What will be the language in the negotiations phase?

The negotiations shall be conducted in English.

- 4) How many bidders will be invited for negotiations?

Subject to the Procurement Procedure Regulations, the Contracting Authority has issued invitations to tender to 5 prospective contractors and announced the procurement procedure in the press, on its Internet website, at its registered seat, as well as in the Public Procurement Bulletin and the Official Journal of the European Union.

All contractors who have submitted non-rejectable tenders shall be invited to negotiations.

- 5) As far as your contract template is concerned, it's not clear, if the contractor is allowed to add any changes. In this regard from our point of view the tender documents contain inconsistent statements (see Annex: Specification of essential terms of the contract, 14.3 states: "the contractor may not withdraw or change the content of the tender after the expiry of the time limit for the submission of tenders"; Furthermore Annex 2 "Tender submission form"; 6.1 states: "we have

familiarized (...) with the draft contract and accept them without reserve or restriction. On the other hand the Annex "Specification of essential terms of the contract", XVII states: (...) provision of the contract are negotiable.

As regards the above, the Contracting Authority sustains its position that upon its submission, the tender shall not be subject to change or withdrawal. This provision constitutes a guarantee for the Contracting Authority that in the event a Contractor's tender turns out to be the best tender, the Contracting Authority shall be entitled to demand the performance of the contract under the terms and conditions with which the Contracting Authority has already been familiarised, and the Contractor shall not be entitled to make any changes therein unless agreed so with the Contracting Authority. Any possible alterations to the tender - mainly those concerning the tender price - may, however, occur at the stage of negotiations.

It is also vital that the Contractor declares that he has become familiarized with the specification of essential terms of the contract as well as the draft contract and that he accepts them. Changes to the contract shall require the Contracting Authority's approval. Therefore, it is at the stage FOLLOWING the tender submission i.e., during the negotiations that the contract, as annexed to the specification of essential terms of the contract, may be altered exclusively upon mutual agreement.

The Contracting Authority also explains that AT THE TENDER SUBMISSION STAGE i.e., prior to the expiry of the time limit for the submission of tenders, contractors may submit queries appertaining to the draft contract along with suggestions of relevant changes to the provisions of the contract. If the aforesaid changes are deemed justified, the Contracting Authority shall make appropriate alterations to the draft contract.

The Contracting Authority also admits that Contractors attach suggestions of changes to the draft contract available to Contractors to the initial tender. Such suggestions shall be subsequently subject to negotiations between the parties and shall not be deemed binding for the Contracting Authority.

- 6) If so, it is not clear how these changes should be formally incorporated into the offew (e.g. modification of Annex 1).

The Contracting Authority explains that the Contractor may table remarks to the draft contract at the following stages:

- 1) prior to the expiry of the time limit for the submission of tenders - in the form of queries and suggestions of respective provisions - the decision on whether or not the above should be taken into consideration shall depend upon the Contracting Authority;
- 2) upon the expiry of the time limit for the submission of tenders - at the negotiation stage - any changes to the draft contract shall require the Contracting Authority's approval.

- 7) It is further not clear how a modified offer Gould go in Line with Annex 1. Would a modified offer substitute Annex 1 which is marked as "draft"? This point should be made clear to avoid legal uncertainties.

The position of the Contracting Authority regarding changes to the contract providing the legal basis for the contract award procedure has been specified above.

Furthermore, the Contracting Authority explicitly states that the changes as tabled by the Contractors are not binding upon the Contracting Authority.

- 8) From our point of view there are several issues not sufficiently covered in Annex 1 as for e.g.:
- a) An indexation clause is missing

The Contracting Authority does not provide for the introduction of the indexation clause. All and any thus related risk should be calculated by the Contractor and incorporated into the tender.

- b) The scope of work is not specified in detail e.g. how many audits are to be executed, what shall they cover? For what period do you expect support in form of "ongoing consultations" etc.?



The Contracting Authority has set out in item 3.1.2.3 that the Contractor shall be obliged to perform the annual audit of the Training Centre. Whereas, in conformity with item 4.1.4 of the specification of essential terms of the contract, this component of the object of the contract shall be performed by the Contractor until 30th November 2013. Therefore, the Contractor shall be obliged to conduct two audits: in 2012 and 2013.

The audits should cover the degree of achievement of performance objectives set for the Training Centre by the Contractor.

The Contracting Authority has specified in item 4.1.4 of the specification of essential terms of the contract that it requires the performance of the object of the contract stipulated in item 3.1.2. of the specification of essential terms of the contract i.e., at the operational stage of the Training Centre: following the launch of operations of the Centre *until 30th November 2013*. Whereas, in item 3.1.2.2. of the specification of essential terms of the contract, the Contracting Authority has specified the Contractor's obligation to perform the ongoing consultations. This means, therefore, that the Contractor is obliged to perform the object of the contract as referred to in the Contractor's query until 30th November 2013.

- c) The contractual penalties in art. 8 do not apply for both parties in the same way.

The Contracting Authority resolves to equalise the entitlement of the Contracting Authority and the Contractor as far as the contractual penalties are concerned i.e., reduce the contractual penalties governed by Article 8 item 1 dash 1 and 2 from 10% down to 7%, and raise the contractual penalties governed by Article 8 item 2 dash 1 and 2 from 5% up to 7%.

- 9) In the view of the above questions, uncertainties and time needed for translation work we kindly ask you to extend the time limit for the submission of the tender as stipulated under XV 15.5 of your Specification of essential terms of the contract.

The Contracting Authority extends the time limit for the submission of tenders until 14th June 2011, 12.00 noon.