

Material Provisions of the Contract

- 1) The subject matter of the contract is the supply and installation of an indication system. A detailed description of the subject matter of the contract is contained in Articles 2 and 9 of the Terms of Reference. The description and the contractor's tender document shall form an integral part of the contract.
- 2) The contract shall be deemed to have been entered into at the time of signing it.
- 3) The Contractor must complete the performance of the contract not later than within 3 (three) weeks of the date of signing the contract.
- 4) Not later than within 2 (two) weeks of the date of signing the contract, the Contractor must provide the technical documentation necessary for the maintenance and operation of the system.

The time limits specified in (3) and (4) above shall be extended in the event of the occurrence of delay caused by

- circumstances for which the Awarding Entity is responsible, e.g. failure to prepare / delivery the supply site;
- force majeure circumstances beyond the control of the parties to the contract.
Force majeure circumstances are defined as circumstances which, despite the exercise of due care, cannot be foreseen and/or prevented or avoided, e.g. a natural disaster, industrial action or other such circumstances.

In the event of delay, the parties to the contract shall agree upon a new time limit for performance in writing, provided that the maximum extension of the time limit for performance may not exceed the duration of the interruption or stoppage concerned.

- 5) As consideration for the appropriate performance of the contract, the Awarding Entity shall pay the selected Contractor the price specified in the Contractor's tender. The contract price specified in the tender as consideration for the performance of the contract should include any and all costs incurred by the Contractor and shall not be increased.
- 6) The Contractor shall deliver and start up the equipment at the site specified by the Awarding Entity and provide, within 2 (two) weeks from the date of signing the contract, a complete set of operating manuals in Polish and English, plus an installation manual and other manuals for the equipment, as well as declarations of conformity and warranty documents in Polish language.
- 7) The contract price shall be paid as follows:
 - a) an advance payment of 50% of the net (VAT-exclusive) contract price as stated in the tender, against a pro-forma invoice issued after signing the contract;
 - b) the balance of the contract price, i.e. 50% of the net (VAT-exclusive) contract price as stated in the tender, within 30 (thirty) days of signing the acceptance record, provided that the required documents have been delivered.

Detailed information on the amounts to be invoiced shall be given in the contract.

- 8) If any defect is discovered in the offered item(s) during the acceptance procedure, the Awarding Entity shall have the following rights:
 - a) if the defect can be corrected at the Awarding Entity's premises, the Awarding Entity may refuse to accept the affected items until the defect is corrected, by not more than 30 days from the previously scheduled acceptance date;

- b) if the defect cannot be corrected at the Awarding Entity or if more time is needed to correct it, the Awarding Entity may refuse to accept the supplied items. The parties to the contract shall, within 14 days, agree in writing whether to repair or replace the affected item(s) with new and defect-free ones, and agree on a acceptance date.
- 9) The Awarding Entity and the Contractor shall, in the contract, appoint their respective representatives to be authorised to deal with technical arrangements and to sign the final acceptance report.
- 10) The performance bond shall be returned in accordance with Article 151 of the Act.
- 11) The Contractor shall participate in all such consultations as may be necessary to ensure appropriate performance of the contract.
- 12) The Contractor shall provide free-of-charge, basic training in the operation of the equipment (covering the operation of the system, taking measurements and performing basic maintenance tasks). Such training may be provided at the Contractor's premises or at BOSMAL's premises.
- 13) The Contractor shall warrant the correct functioning of the supplied equipment for the warranty period given in the tender, from the final acceptance date. It is deemed to include the costs of the periodic inspections that the Contractor considers necessary to maintain the validity of the warranty.
- 14) The Contractor shall ensure that the service team's response time from the time a defect is reported by the Awarding Entity to the time the Contractor contacts the Awarding Entity to agree upon details of correcting the defect is not longer than 24 hours (business days). Repair work to correct the defect must begin not later than within 5 business days of the time of reporting the defect during the warranty period. An experienced engineer must be available to arrive, together with the necessary spare parts, to perform the necessary repair / servicing work at BOSMAL's premises. The repair work must be completed within 10 business days of reporting the failure or problem.
- 15) If the Contractor wishes to use a new subcontractor and/or cease to use any of the subcontractors named, in accordance with Article 22a of the Public Procurement Act, as evidence of meeting the conditions for participation in the contract award procedure which are set in Article 22(1b)(3), the Contractor must prove to the Awarding Entity that the new subcontractor meets such conditions at the least to the same extent as the subcontractor named in the contract award procedure.
- 16) All the Contractors tendering for the contract as a group will be jointly and severally liable for the performance of the contract, pursuant to Article 141 of the Act.
- 17) The Contractor shall ensure the availability of spare parts to buy and post-warranty servicing for at least 5 years from the date of signing the acceptance record.
- 18) The Awarding Entity may withdraw from the contract under the general rules contained in Article 145 of the Act.
- 19) In addition, the Awarding Entity may withdraw from the contract within 30 days without any claims made by the Contractor, if
 - a) the Contractor fails to commence the performance of its obligations under the contract by the agreed date or discontinues their performance;
 - b) the Contractor performs the contract inappropriately, against the provisions of the contract, and fails to take action to remedy its performance despite having been requested in writing by the Awarding Entity to do so;
 - c) a bankruptcy or liquidation procedure has been initiated in relation to the Contractor.
- 20) The Contractor shall pay liquidated damages of 10% of the Contractor's remuneration specified in the contract, if the Awarding Entity withdraws from the contract for reasons for which the Contractor is responsible.
- 21) If the Contractor fails to perform the contract by the deadline for its performance, the Contractor shall pay liquidated damages of 0.2% of the value of the contract for each week of the delay. The amount of the liquidated damages may not exceed 5% of the price specified in the contract.

- 22) The Awarding Entity shall pay liquidated damages of 5% of the remuneration specified in the contract if the Contractor withdraws from the contract for reasons for which the Awarding Entity is responsible.
- 23) The Contractor may withdraw from the contract within 30 days if the Awarding Entity fails to perform its obligations to pay the invoices issued by the Contractor for at least four (4) weeks.
- 24) The statement of withdrawal from the contract shall only be valid if it is made in writing.
- 25) The liquidated damages provided for in the contract shall not exclude either party's right to pursue claims for compensation under the general rules of the Civil Code.
- 26) In the event of delay in payment, the Contractor may charge interest at the rate of 0.2% of the late payment for each week of such delay.
- 27) The parties agree that they may negotiate their mutual liabilities arising from the liquidated damages provided for.
- 28) Neither party shall be liable for its failure to perform or inappropriate performance of the contract or for any damage if such failure, inappropriate performance or damage is caused by the occurrence of an event of *force majeure*. Detailed provisions regarding force majeure events and their consequences shall be included in the contract.
- 29) Detailed provisions regarding *force majeure* events and their consequences shall be included in the contract.
- 30) Any changes to the contract shall only be valid in they are made in writing in the form of a written amendment signed by authorised representatives of both parties, subject to Article 144 of the Public Procurement Act.
- 31) Any disputes arising from the performance of the contract shall be resolved by a common court of law with jurisdiction over the Awarding Entity's registered office
- 32) All matters not provided for in the contract shall be governed by the applicable provisions of the Civil Code and the Public Procurement Act, including the implementing provisions issued thereunder, and the provisions of the Act on Copyright and Related Rights.