



Sworn translation from Polish

Attachment No. 1

to the Order of the President of the Board No. 14 dated December 22, 2017 on specifying the rules of PIT-RADWAR S.A. ordering in the tendering procedure:

**REGULATIONS
for organizing calls for tenders by PIT-RADWAR S.A**

1. General Provisions.

- 1.1. Provisions of the Regulations are applied to tendering for award by PIT-RADWAR S.A. (referred to hereinafter as: the Company or Contracting Party) for any supplies (production materials, non-production materials), execution of construction work, investments and purchase of services including the services for manufacturing purposes, hereinafter the orders in the event the purchase order value **exceeds an amount of PLN 200 000,00** net. The above Regulations may be applied for Tendering the estimated value whereof is lower than above amount.
- 1.2. Tendering procedure organized by PIT-RADWAR S.A. is not subject to the regulations set forth in the Act of January 29, 2004, the Public Procurement Law (Journal of Laws of 2006 No. 164 item 1163 as amended).

2. Types of tenders.

Tenders organized by the Company may be:

- open tender – with the participation of all potential suppliers and contractors,
- restricted tender – with the participation of selected suppliers and contractors or only one of them (negotiations with one Tenderer solely).

3. Procedure of Notification and Carrying out Invitations to Tender.

- 3.1. The Tender Conditions should contain the items specified in the template enclosed as Attachment No. 2 to the Order. Draft Contract constituting attachment to Conditions of the Tender should be initialed by the Company's Legal Counsel.
- 3.2. Tender forms should be produced so that all the necessary technical and financial data of respective tenders could be compared during the tendering procedure.
- 3.3. The tender notices will be published on the Company's website and /or on the Purchase Platform applied by the Company.
- 3.4. Publication of Tender Notices should include:
 - 1) Name of the Contracting Party and address of the seat,
 - 2) Determination of a type of the tender,
 - 3) Determination of a subject of the invitation to tender,
 - 4) Laying down the time limit for performing the contract,
 - 5) Specifying the mode, venue and date for submission of tenders,
 - 6) Establishing the place and time of opening the tenders,
 - 7) Indicating the way for making an access to the Tender Conditions, according to clause 3.7 below,
 - 8) Specifying the requirements concerning the submission of bid security, in particular its amount, a manner of its payment, bank account number on which it should be paid in cash,

- 9) Indicating the persons authorized to provide further information on a respective tender,
 - 10) Reservation with respect to the change to or cancellation of the Tender Conditions without any adverse effects for the Company,
 - 11) Reservation that the Tenderer's and its offer meeting the requirements laid down in the Tender Conditions as well as obtaining the highest rating by the offer in compliance with the evaluation criteria set forth in the Tender Conditions shall not oblige the Contracting Party to select that bid (neither to invite the Tenderer to the negotiations/bidding process/ electronic auction) and it shall not mean accepting of the offer or be equivalent to conclusion of the contract. For making the contract, signing of a separate written document will be required in a restricted form under pain of nullity,
 - 12) Reservation that the Company is entitled to free choice of bids, including conducting negotiations in any mode with the selected tenderers and the Company has the right to cancel the tender at any time without choosing any offer, without giving reasons, also to cancel and to repeat respective procedures in tendering process without giving reasons, including oral bidding/auction/direct negotiations, without detriment to the Company.
- 3.5. As a rule, the time limit for submission of tenders shall not be shorter than two weeks since the date of announcement of the bidding.
- 3.6. Template of the Tender Conditions is presented in Attachment No. 2 to the Order.
- 3.7. The Contracting Party should publish the Tender Conditions in e-form on the Company's website and /or on the Purchase Platform applied by the Company. Downloading of the Tender Conditions by the tenderers from the Company's website (www.pitradwar.com) is free of charge and does not require any confirmation by the tenderer in the offer to this extent.
- 3.8. By bidding, the tenderer is obliged to submit bid security (if applicable) at an amount specified in the Tender Conditions and in the invitation to tender. Bid security may be effected in one or more of the following forms: cash, bank surety, bank guarantee, insurance guarantee.
- 3.9. In the event, the tenderer submits bid security in a form of insurance guarantee, bank guarantee, bank surety, the tenderer shall present those documents in original in the Office for Purchase and Cooperation, prior to the date of submission of tenders. A certified copy of the guarantee or surety should be attached to the tender. It is admissible for the tenderer to provide the guarantee or surety in original in an envelope, together with a tender (as separate document); however, it shall not detract the tenderer from the obligation to attach a certified true copy of such a document to the bid).
- 3.10. Tendering security shall be determined by the Office for Purchase and Cooperation personnel, responsible for the preparation of the tender conditions, in the amount of up to 3% of the expected net value of the subject of the invitation to tender (rounded up to full hundreds, up or down).
- 3.11. Tendering security shall be reimbursed by The Contracting Party to:
- a) Bidders taking part in the tender which was cancelled, immediately after cancellation,
 - b) Bidders who withdrew their tender in advance of the date of opening the tenders, directly upon providing the Contracting Party with an original written declaration of withdrawal of the tender,
 - c) Bidders taking part in the negotiations aimed at concluding the contract in any form whose tender was not awarded – it should be done directly upon the Management Board's approval of outcome of the tender proceedings.
 - d) Successful bidder with whom the contract was concluded by the Company including the award being subject of the tender, immediately following the conclusion of the contract and submission of the end-use security if so stipulated by the Tender Conditions.
- 3.12. Tendering (bid) security should be reimbursed in the form it was effected.

3.13. The Contracting Party has the right to retain bid security in the following instances:

- a) The Bidder's declaration of withdrawal of the tender was filed after the Evaluation Committee has opened the submitted tenders.

The right to retain bid security is vested in the Contracting Party irrespective from other claims, including a claim to conclude contract on the pricing terms as laid down in the tender.

3.14. The Contracting Party has the right to retain bid security made by the successful tenderer if:

- a) the tenderer rejected to sign the contract on the terms as set forth in course of the tender procedure,
- b) the tenderer rejected to provide the end-use security should the Tender Conditions (or draft contract) stipulated the provision of the same,
- c) the execution of the contract on the award covered by the tender became impossible for reasons attributable to the tenderer,
- d) the tenderer did not return to the Contracting Party a copy of the contract signed by the tenderer on the terms specified in the tender procedure within 14 days of the receipt thereof for signing (the date of return of the contract is evidenced by the date of postmark of mailing the tenderer signed contract to the Contracting Party's address); failure by the tenderer to return the contract at specified time shall be understood as rejection to sign the contract by the tenderer; it means that the tenderer shall not have any favorable entitlements from the fact that the contract was signed by the persons authorized to represent the Contracting Party. The contract shall be deemed not concluded in spite of the fact the tenderer – in failure to comply with the time limit - returned the signed copy of the contract to the Contracting Party finally and the Contracting Party proceeded with the performance of the contract.

4. Treatment of Tenders.

4.1. The actions related to the preparation and conducting the procurement procedures in the tenders covered by these Regulations are undertaken by the Evaluation Committee in the panel as set forth in the Order of the President of the Company's Board on specifying the public procurement rules on the basis of a call for tender. The Committee shall exercise its functions according to the following rules:

- 1) The Committee's decisions are adopted by majority of votes in open voting,
- 2) the motions submitted by a person presiding the Committee at the meeting (the Chairman or the Vice-Chairman of the Committee) are subject to voting,
- 3) each member of the Committee has one vote,
- 4) members of the Committee may vote "for" or "against" adoption of a resolution referred to in sub-clause 2) or may abstain.
- 5) In case of equal number of votes "for" or "against", casting vote is exercised by the person presiding the Committee at the meeting (the Chairman or the Vice-Chairman of the Committee).

4.2. The participation in the Evaluation Committee work is treated equal to other duties of respective members of the Committee.

4.3. A member of the Committee may exercise his/her tasks only in person.

4.4. The tender procedures involve: opening of bids, detailed examination of bids with respect to their formal, commercial nature and as to the substance, and the acceptance of a tender.

4.5. Opening of the bids (the first stage) proceeds in the absence of the tenderers. The bids are opened by three-person teams for opening the bids composed of the officials of the Office for Purchase and Cooperation of the Contracting Party as members of the Standing Evaluation Committee. In each team there should be two persons from the Evaluation Committee appointed for a respective tender procedure. The Office for

Purchase and Cooperation proceeds with opening of the bids immediately upon expiry of the date for submission of tenders. The team appointed for opening the bids:

- 1) confirms correctness of a call for tender and a number of the bids submitted,
- 2) opens the envelopes with bids and carries out initial analysis of the bids as for their compliance with formal requirements resulting from the Tender Conditions. Should any bid fail to meet the said requirements, the team may resolve on the rejection of the bid or calling a tenderer to remedy deficiencies. Upon opening the bids, the protocol as per Attachment No. 4 to the above referenced Order is produced,
- 3) the team forwards technical bids for detailed analysis by the working team appointed by a person presiding the Committee (the Chairman or the Vice-Chairman of the Committee); economic (commercial) bids are transferred to the Secretary who performs economic analysis on its own, as per Attachment No. 6 to the above Order. Detailed scope of analysis of the bids made by the working team is specified in Attachment No. 5 to the present Order.

The bids filed upon deadline for submission will be returned to the tenderers without being opened,

- 4.6. The Evaluation Committee works in a three-person panel at least (the Chairman or Vice-Chairman, Secretary and minimum one member). Within the competency of the Evaluation Committee lies making up decisions on the bid rejection. The Committee may reject the bids, in particular:

- 1) Those not meeting the requirements laid down in the Tender Conditions,
- 2) filed as the act of unfair competition in the meaning of the regulations on counteraction to unfair competition,
- 3) proposing abnormally low price as compared to the subject of contract;
- 4) filed by the tenderer from outside the European Union territory,
- 5) not signed by the tenderer, according to the rules of representation,
- 6) not containing the required documents or the tenderer's declarations, the missing documents and declarations not being completed by the tenderer in spite of the Contracting Party's demand to do so in the indicated timeframe,
- 7) illegible or disputable bids as regards their substance if the said doubts are not cleared despite the tenderer being required to do so in the Contracting Party's demand, within the indicated time,
- 8) filed upon the closing date for submission of tenders.

- 4.6.a. The Evaluation Committee is competent to exclude tenderers. Exclusion from the tender refers in particular to:

- 1) the bidders who within 36 months prior to the closing date for submission of tenders brought to the attributable to them in at least three instances undue performance of the contract or the agreements binding them with the Company (especially delayed performance of the contracts),
- 2) the bidders in relation to which within 36 months prior to the closing date for submission of tenders, the Company withdrew from the contract or terminated the contract to an immediate effect, for reasons attributable to those bidders,
- 3) the bidders who within 36 months prior to the closing date for submission of tenders made harm to the Company as a result of non-performance or undue performance of the contract or the agreements binding them with the Company for the reasons attributable to those bidders,
- 4) the bidders towards whom the liquidation proceedings were initiated or who were declared bankrupt except for the bidders who after declaring their bankruptcy have entered into an arrangement with creditors approved by valid judgement of the court in case the said arrangement does not provide for the creditors' satisfaction by means of liquidation of the bankrupt's assets,

- 5) the bidders who are in arrears with taxes, levies, social or health insurance premiums except that by law they have been exempted from outstanding payments or such payments have been postponed, divided into instalments or the enforcement of the entire decision of the competent authority was suspended,
- 6) the bidders who have no entitlement to pursue their specified business activity or dealings should the law require having such concession, the specified activity or action being the subject of tender procedures,
- 7) the bidders who provided untrue information affecting the result of the conducted tender,
- 8) the bidders who did not pay bid security at specified date (if applicable).

4.6.b. The bidders referred to in clause 4.6.a, sub-clauses 1-3 should be understood as the tenderers who have been a party to the Company on their own or jointly with other persons, entities as a part of consortium or civil partnership.

4.6.c. The bid of an excluded tenderer shall be deemed rejected.

4.7. In the event, no bid was filed in the tender procedure, the Committee resolves on cancellation of the tender. If all the submitted bids were rejected, the Committee declares that it is necessary to cancel the tender and it files a motion with the Management Board to make decision regarding such cancellation.

4.8. The second stage of the tender procedures includes detailed analysis of bids with respect to their formal, commercial nature and as to the substance. It refers to the bids which have not been rejected by the Evaluation Committee directly upon opening of the bids. At this stage, the Committee works in the panel defined in § 7 section 1 of the Order.

- 1) The detailed analysis of the bids is carried out by the working team referred to in clause 4.5 sub-clause 3 in the three-person panel at least. The working team is composed of a person responsible for the preparation of a respective tender irrespective of the fact the person is a member of the Standing Evaluation Committee. The working team is to produce a written opinion on the analysis of the bids containing: assessment of the bids and the bidders' compliance with the formal and substance requirements set forth in the Tender Conditions (time limit of performance, quality guarantee, technical aspects etc.). The information concerning the prior cooperation with the bidders and their credibility.
- 2) Based on the above opinion of the working team, in the event the team applies for rejection of the bid, the Evaluation Committee makes assessment of the bids in terms of aspects covered by the afore named opinion and decides whether to reject the bids if there are grounds therefor as laid down in clause 4.6 of these Regulations. As for the bidders admitted to the third stage of the tender procedure, should it be resolved it will be conducted in the form of negotiations as set forth in sub-clause 3), the Secretary will send the invitations via fax or electronic means (e-mail or the Purchase Platform) indicating the timeframe when the negotiations will be held in a mode stipulated in the present Regulations.
- 3) The third stage of the tender procedure - acceptance of a tender – may be conducted by negotiation in one or more modes as mentioned below:
 - a) direct negotiations, carried out by the Evaluation Committee separately with all the eligible participants in in this stage of the tender procedure,
 - b) oral bidding, carried out by the Evaluation Committee concurrently with all the eligible participants in this stage of the tender procedure,
 - c) electronic auction.
- 4) All the modes of acceptance listed in sub-clause 3 are equivalent and may be applied jointly (one by one, in an arbitrary sequence) or separately. Oral and electronic auction referenced in sub-clause 3, shall not mean an auction in the meaning of Civil Code

provisions and are not ended in granting acceptance. The bids filed in course of negotiations, in any mode mentioned in sub-clause 3, shall remain binding - if another participant in the auction submitted more favorable bid (the bidder is bound by the last offer submitted in course of negotiations regardless of bidding the offer by other tenderer) - until the date of entering into the contract with the successful bidder, not longer than **100** days of the closing date for tenders (unless the Tender Conditions stipulate the longer tender validity period). The Contracting Party reserves its right to the final acceptance of the offer. The bidders are not entitled to appeal from the Contracting Party's decision concerning the acceptance. Upon negotiations conducted in any mode mentioned in sub-clause 3, for the parties to conclude the contract it is necessary to sign separate copy of the contract executed in the written form restricted under pain of nullity, as per clause 5.2. If in course of the negotiations, the bidder files several offers, the previous offer ceases binding in relation to the more favorable one. The Contracting Party is entitled not to disclose a number and names of the bidders taking part in the third stage of tendering as well as the value or point estimate of the price of the submitted bids. The Contracting Party reserves its right not to reply to the presented offers and failure to reply in the tender validity period shall mean that the bid has not been accepted for realization. The Contracting Party decides on the option to replace the offers filed by the bidders in advance of the closing date for submission.

4.9. Direct negotiations are aimed to reach agreement for all the terms of execution of the order subject to tendering. Direct negotiations are conducted by the Evaluation Committee in the panel determined in § 7 section 1 of the Order.

- 1) In direct negotiations, the bidder is represented by duly authorized representative. In the absence of the bidder's empowered representative in the negotiations at specified time, the Evaluation Committee accepts the offered price and the remaining terms laid down in the bid as final. In justified instances, the bidder may take part in the negotiations by filing final bid in the written form, in a sealed envelope, or electronically as e-mail, prior to the period prescribed for the negotiations.
- 2) Since filing the bid till the conclusion of the contract, increasing of the price given in the offer is not allowed; it means that in the contents of final offers, revising the price upward in relation to the prices fixed in the contents of the submitted offer is also inadmissible.
- 3) All the Contractor's comments as for the template of the contract or the essential provisions of the contract are also subject to the negotiations, especially if they were made by the Contractor in writing at submission of the bid as the attachment to the offer, at latest. Other remarks, in particular those reported later on or made in other form including the notes made by the Contractor during the negotiations, may be omitted.

4.10. Oral bidding is carried out as per the following rules unless the Contracting Party, including the Committee resolve otherwise:

- 1) Bidding is conducted by the Chairman of the Evaluation Committee,
- 2) bidding proceeds on the basis of inverted bidding process (increments downwards in relation to the opening bidding price),
- 3) bidding commences with presenting starting price of the subject of the contract fixed by the Evaluation Committee in secret part of tendering in the lowest amount of valid bids,

- 4) the amount of increment is defined save that it may not be less than 1% of starting price of the subject of the contract; in exceptional circumstances, the Evaluation Committee may fix other amount of increment,
- 5) the tenderer who offered the lowest price is winning the bidding process,
- 6) the tenderer is represented in the bidding process by his empowered representative. Should the authorized representative fail to attend the bidding process, the Committee accepts the offered price and the remaining terms laid down in the bid as final.
- 7) Upon the bidding, the tenderers complete the forms prepared by the Evaluation Committee to support the offered by them prices.

4.11. Electronic auction (bidding) is carried out as per the following rules unless the Contracting Party, including the Committee resolve otherwise:

- 1) The bidders admitted to bid in the auction (bidding) by means of the form placed on the website and allowing to enter necessary data in direct connecting to the website file subsequent more favorable offers (increments) subject to automated classification.
- 2) Electronic auctions (bidding) are conducted based on the detailed electronic auction (bidding) regulations of the tender platform's operator supporting PIT-RADWAR S.A. to this aim.
- 3) The auction (bidding) regulations will be published on the Company's website.
- 4) The change of tender platform's operator will automatically result in the replacement of the electronic auction (bidding) regulations, without it being necessary to issue separate decision by the Company's bodies.
- 5) The report on the electronic auction (bidding) will be produced electronically by the operator of the tender platform.

4.12. After the offer/ offers have been selected by the Committee as a result of direct negotiations and/ or upon completing the bidding process and /or electronic auction (bidding), the Committee will draw a motion on the conducted bidding to be submitted to the Company's Management Board. The motion should indicate precise commercial terms of all the bids filed in relevant tendering which the bids were not subject to rejection. **Final decision on the approval of a result of the tender will be issued by the Company's Management Board based on all the circumstances presented by the Committee.**

5. Contract Award Procedure.

5.1. Period of tender procedure from the date of opening the bids till the date of sending two copies of the contract signed by the Company for the successful tenderer's signature shall not be longer than tender validity period, less 21 days.

5.2. Conclusion of the contracts between the Company and the tenderer whose offer was selected in the tender proceeds by signing it by two parties [the date of delivery to the tenderer of 2 copies of the contract signed by the Contracting Party only means the date of conclusion of the contract unless the tenderer signing the contract indicated other date for subscribing], subject to clause 3.14 letter d) of these Regulations.

5.3. Tendering is deemed closed on the receipt by the Company of two bilaterally signed contract from the tenderer or upon reimbursement of bid securities (if applicable) to all the bidders participating in the tender procedure or upon adoption a decision of tender cancellation.

5.3a. In the event of the successful tenderer's refusal to sign the contract, the Contracting Party may select other bid from among the remainder (e.g. the second bid in the order).

5.4. The Contracting Party may cancel the tender, wholly or partly, in particular, if:

- 1) no offer was filed or all the submitted offers were rejected,
- 2) the price of most favorable offer exceeds the amount the Contracting Party may allocate for financing the award,

- 3) a change in circumstances occurred causing that conducting of the tender procedure or the performance of the order is not in the Contracting Party's interest,
 - 4) the award procedure is encumbered with a defect which makes it impossible to conclude a valid contract,
 - 5) the successful tenderer refused to sign the contract on the terms defined during the tender.
- 5.5. The decision on cancellation of the tender shall be made by the Management Board upon the Committee's request, except for no bid filing. In such case, the decision on tender annulment will be issued by the Committee. In duly justified cases, the Committee proposes to the Management Board to make a decision on the cancellation and the repetition of the actions in the award procedure, including oral bidding/auction/ direct negotiations.
- 5.6. The Secretary shall notify the bidders taking part in the tender immediately by fax or electronic means (e-mail) of the method of allotment or of cancellation of the tender, including annulment and repetition of respective actions in the tender procedure, including oral bidding/auction/ direct negotiations.
- 5.7. Tendering procedure is confidential.

PRESIDENT OF THE BOARD

Rafał Kowalczyk

stamp and signature

Director, Office of Management and Corporate Supervision

Paweł Chara

stamp and signature

Krzysztof Bogusz

signature

[each page of the document is initialed – Translator's comment]

*I, the undersigned, ANNA CICHOCKA, M.A., in my capacity as Sworn Translator of English at the Provincial Court, entered into the register of the Minister of Justice in Warsaw under No. TP/89/2005, the Republic of Poland, certify the above to be a true, correct and accurate copy of the document drawn up in Polish.
Number of characters w/ spaces: 26.467*

Warsaw, 18 April 2018

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