EZP.26.133.2.2021.JK Warsaw, 20 September 2021

Public procurement procedure **for the Supply of software licenses for two-dimensional and three-dimensional restoration of deep geological structure models,** *Case No.***:** EZP.26.112.2021.

**CLARIFICATION AND AMENDMENT TO THE TERMS OF REFERENCE (ToR)**

**The Contracting Authority informs that within the time limit specified in accordance with Art. 284 sec. 2 of the Act of 11 September 2019 – Public Procurement Law (Dz.U./ Journal of Laws/ of 2021, item 1129, as amended) – hereinafter: the PPL Act, the Contractor requested the Contracting Authority to clarify the contents of the ToR.**

In view of the above, pursuant to Art. 284 sec. 6 and Art. 286 sec. 1 of the PPL Act, the Contracting Authority hereby clarifies and amends the contents of the Terms of Reference.

In the event that the answers given below are in contradiction with the provisions of the ToR, or specify or supplement the provisions of the ToR, it shall be assumed that they constitute an amendment to the ToR made by the Contracting Authority pursuant to Art. 286 sec. 1 of the PPL Act and will form the basis for evaluating the compliance of the bid with the ToR, bearing in mind that:

1. if the provisions of an answer are contrary to the provisions of the ToR, the content of the given answer shall be binding to this extent,

2. if the provisions of the answers clarify or supplement the provisions of the ToR, the content of the answers given together with the existing content of the ToR shall be binding in this respect.

**Question 1:**

Term of Refernce: 5, Appendix no. 1

(*data*) software is hardware based and shipment of physical bitlock/dongle which will hold (*data*) licencesis required. (*data*) will send installation package containing the dongle by courier as soon as the agreement is concluded or in advance if agreed with the Contracting Authority. We use one of the regular courier companies (*data*) and their standard shipping times to Europe are 1 week, however due to the circumstances i.e. package in transit, which are beyond (*data*) control the couriers’ times are estimated and cannot be guaranteed.

**Answer:**

The Contracting Authority informs that it changes the content of the ToR:

1. point 5. ToR - DEADLINE FOR CONTRACT PERFORMANCE shall read as follows:

"The subject matter of the contract shall be completed by **31 March 2023, including the delivery of software within 14 days of the conclusion of the contract"**.

1. point 4) 1. of Appendix No. 1 to the ToR - DESCRIPTION OF THE SUBJECT MATTER OF THE CONTRACT shall read as follows:

" 4) DELIVERY

1. The software shall be delivered within 14 days of the conclusion of the Contract."

1. § 3 point 1. (1) of Appendix No. 2 to the ToR – Draft contractual provisions shall read as follows:

**„§ 3. Completion date**

1. The Contractor shall perform the Subject Matter of the Agreement within the following dates:
2. delivery of software - it shall be completed within 14 days of the conclusion of the Contract; 7 months of technical and start-up support for the delivered software shall be counted from the day of the documented acceptance of the software;”

**Question 2:**

Term of Refernce: 14.6.

1. (*data*) understands the language of this proceedings is English only.

2. (*data*) can provide all the required documents in English only but (*data*) Licence Agreement which is provided bilingual in Polish/English.

**Answer:**

1. The Contracting Authority informs that the tender procedure is conducted in Polish and English, in accordance with the information contained in point 3.14 of the contract notice published in the Public Procurement Bulletin.
2. The Contracting Authority informs that it maintains the following provisions:

point 14.6 of the ToR "Bids and any appendices thereto must be legible, cohesive and made in Polish or English(bids in English must be submitted along with a translation into Polish – the Contracting Authority shall rely on the text translated into Polish); they must be submitted in electronic form (the Contracting Authority recommends the following data formats: .doc, .docx, .pdf) and signed with a qualified electronic signature or a trusted signature or a personal signature."

and point 14.11 of the ToR "Along with any documents and statements prepared in a foreign language, the Contractors shall submit Polish translations thereof. When evaluating bids, the Contracting Authority shall rely on their Polish translations."

**Question 3:**

Term of Refernce: 17.7.

Prices are NET and in *(date).* Prices are exclusive of VAT, Sales Tax, Withholding, local, and/or any other type of tax which may apply. The Contracting Authority is to advise whether any tax is to be added and specify the percentage. Shall Sales Tax, Withholding Tax or Tax Treaties change between *(date)* country of tax residence and Contracting Authority’s country of tax residence, *(date)* reserves the right to adjust its prices within this proposal ccordingly.

**Answer:**

The Contracting Authority informs that points 17.7, 17.8 and 17.9 of the ToR contain information concerning the submission of a tender, the selection of which would impose an obligation on the Contracting Authority to pay tax.

**Question 4:**

Term of Refernce: 17.6 “The Contracting Authority shall provide for settlements in either Polish zlotys (PLN) or euros (EUR).” Payment must be made using the same currency as in the proposal/agreement and invoice.

**Answer:**

The Contracting Authority informs that settlements shall be made in the currency indicated by the Contractor in the bid, whereas according to the provisions of point 17.5 of the ToR, prices shall be determined in Polish zloty (PLN) or in euro (EUR), and according to the provisions of point 17.6 of the ToR, the Contracting Authority - stipulates that settlements shall be made in Polish zloty (PLN) or in euro (EUR).

**The above clarifications and amendments should be taken into account when submitting bids.**

**Other provisions of the ToR shall remain unchanged.**

As a result of the amendment to the content of the ToR, the Contracting Authority amended the content of the announcement. The announcement of the change of the announcement was published in the Public Procurement Bulletin on 20 September 2021.

Other comments of the Contractor do not concern the content of the ToR and Appendices thereto or are inconsistent with the provisions of the ToR. Accordingly, the Contracting Authority does not address their content.

Furthermore, the Contracting Authority informs that the proceedings are not conducted in the form of negotiations and that documentation is not evaluated at this stage of the proceedings.

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for Public procurements

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