

Terms of Reference

THE EMPLOYER:

Szczecin and Świnoujście Seaports Authority
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REQUEST FOR PROPOSALS IN COMPETITIVE BIDDING PROCESS CONCERNING:

Providing duties of an Engineer of FIDIC terms on the contract named:” Building Berthing Infrastructure in the external port in Świnoujście”

The service will be partly financed by the EEPR Fund (European Energy Programme for Recovery) and by commercial funding. The beneficiary party is The Employer.

The competitive bidding process is carried in compliance with Article 31, point 1 of the Re-Gasification LNG Terminal in Świnoujście Law Act 24 April 2009 (Official Journal of Laws, No. 84, pos. 700), in compliance with Article 4, point 5 of the Public Procurement Law Act 29 January 2004 (Official Journal of Laws, No. 223, pos. 1655 as amended). The process is carried in compliance with regulations of the Civil Code Law Act 23 April 1964 (Official Journal of Laws, No. 16, pos. 93 as amended) and other regulations of the Polish Law, respecting European Law at the same time.

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Attachments:

1. Offer application,
2. Declaration of not meeting the grounds for exclusion,
3. Statement of Eligibility of participation in the tender
4. The Contractors' Team register,
5. Confirmation of qualifications;
6. Realized contracts register,
7. Confirmation of knowledge about the Contract particulars
8. Draft Contract Agreement.
9. Adjudication Board Regulations
10. Directive Programme

CHAPTER I Description of the order scope

1. General notice

The project: “Building Berthing Infrastructure in the external port in Świnoujście” will be partly financed by EEPF Fund – European Energy Programme for Recovery with the use of Energetic Projects and partially by commercial funding. The Employer is the beneficiary of funding.

1.1 The scope of order

The order of the contract is to provide service by the Engineer. The scope of service is the management and supervision, in cooperation with the Employer, over the construction contract for works concerning “Building Berthing Infrastructure in the external port in Świnoujście”. The services include monitoring, reports, collecting data and documents for the full control over the investment as well as its financial and works completion settlement.

The Engineer will be responsible for preparation and realization of services according to the requirements assigned to the Engineer specified in “Conditions of Contract for Building and Engineering Works Designed by the Employer.” /FIDIC – 1999/, as per authority and responsibilities defined in Terms of Reference (TOR) and Polish Law, Polish Building Law in particular. The Engineer will manage Contracts for constructions to the date of Final Statement.

1.2. The object of ordering

The Employer will charge the Engineer with management and control over the Contract realization, mentioned in 1.1, in order to enforce The Contractor to fulfil construction works, to construct buildings according to project documentation, to comply with quality requirements for materials used, conducting works and costs of realization in the term of settlement fixed with the Contractor according to the funding institution.

1.3. Description of the Contract

The major investment Programme, named “Construction of LNG re-gasification terminal in Świnoujście” consists of the following contracts:

1. The construction of infrastructure enables the outer port access, including the breakwater (covering breakwater), the fairway, the turning basin and navigation facilities concerning the mentioned infrastructure – the contract realized by the Maritime Office in Szczecin.
2. Construction of seaport’s infrastructure, including berthing infrastructure equipped with mooring dolphins, berthing dolphins and navigating facilities, also the infrastructure that enables mounting the installation for LNG transport and water supply – the contract is realized by Szczecin and Świnoujście Seaports Authority,
3. Construction of LNG re-gasification terminal, including LNG storage tanks and re-gasification installation realized by PLNG Company.
4. Construction of gas pipeline Szczecin – Świnoujście, connecting the terminal with transport system and the infrastructure required for its servicing in Western- Pomeranian Voivodship, realized by GAZ SYSTEM SA.

1.4 List of works

1. Construction of ships’ site
 - 1.1. Loading platform
 - 1.2. Berthing dolphins
 - 1.3. Mooring dolphins
 - 1.4. Walkway bridges
 - 1.5. Retention tank
 - 1.6. Outflow channel
 - 1.7. Drainage of loading platform
 - 1.8. Breakwater, walkways and platforms lightning and other electric facilities
 - 1.9. Navigation signs

1.10 Construction of road barrier on the covering breakwater

2. Technological installation trestles
3. Technological water supply
 - 3.1. Water supply platform
 - 3.2. Water supply chambers
 - 3.3. Drainage of technological water supply bridge
4. Dredging works

The Employer owns the documentation concerning the construction (electronic version) and will make it available at The Engineers request.

1.5. Location of the project.

The outer port (with the quay for LNG transshipment) will be located nearby the shore area, east from the existing Eastern Breakwater, covering the entrance to Świnoujście Seaport. There are no existing hydro-technical constructions on this area.

The existing breakwaters, Western and Eastern extend the northern spits of Wolin and Uznam isles that cut into Pomeranian Bay. The breakwaters cover the fairway from the Pomeranian Bay through Świna River strait to Szczecin Seaport.

The existing breakwater Eastern and Western are artificial hydro-technical overlaid concrete superstructure.

Navigation signs are placed at the head of both breakwaters. The width of the channel between breakwaters is app. 250 m. The depths are diverse; 15 to 17 m on the fairway, with deeper areas, 20 m deep on the Eastern part of the channel.

The investment area is administratively a territorial sea of the Republic of Poland. According to the Law Act of 21 March 1991 concerning territorial maritime areas of the Republic of Poland and Maritime Administration, (Official Laws Journal 1991, No.32, position 131 as amended) the territorial sea is the property of State Treasury in the directorate of proper Maritime Office; in this case it is the Maritime Office in Szczecin.

1.6. Dates of realization

The Engineer will begin his contract works in the Contractor's mobilization phase, 1 month before commencement of the construction works and the completion will take place after the final contract settlement in compliance with the works terms contract, according to the schedule below:

- a) preparation phase – 1 month
- b) construction works realization phase – 29 months
- c) defects liability period – 24 months
- d) Performance Certificate and final statement of the contract – 4 months or other term that fulfils the contract's terms.

It is expected that the works contract will be signed in May 2010. After mobilization of equipment, personnel, materials and securing the construction site, the Contractor will begin his works which are planned to commence the 1st of July 2010, as secured date for the completion of Works by 30.12.2012, while constructions of such elements as: such as technological installation trestles, loading platform, technological bridge and emergency leaks tank and technological platform will be available for the LNG Terminal Contractor to the fixed date 30.06.2012. In the realization phase the Constructor and the Engineer will be responsible for strict coordination of works with the parties that realize the construction of the covering breakwater in the external port.

1.7 The Employer's responsibilities

1. Providing information

The Employer's duty is to provide information and/or documents that refer to the realization of the contract to the Engineer as soon as possible. Those documents will be returned to the Employer after approval of the Final Report.

The Employer's duty is to cooperate with the Engineer on every possible level to provide information that is necessary for the Engineer to fulfil the Terms of Contract

2. Assistance in the field of local laws and regulations

The Engineer can approach the Employer for assistance in receiving copies of legal acts that refer to local customs, orders and regulations of the country in which the works are fulfilled and which may have an impact on fulfilling the Engineer's duties that are listed in the contract. The Employer may charge The Engineer with the costs for the expenses born while providing such assistance.

The Employer has an obligation to provide all necessary instructions to his employees, agents and representatives of all such instructions, in order to enable the effective delivery of contract.

3. The Employer's documents

The Employer will pass the copies of the following documents to the Engineer:

- 1) the Works Contract with Particular Conditions of Contract,
- 2) the contractor's offer with prior measurements
- 3) Design documentation with Technical Specification Execution and Take Over of Works,
- 4) Administrative decisions permitting commencement of the construction works
- 5) Other documents, which constitute the Contract; the Employer will inform about legal agreements and contracts and legal and administrative obligations, which may affect realization of the Contract.
- 6) All the documents concerning realization of construction of the covering breakwater Contract and LNG re-gasification terminal and which concern realization of the Berthing Infrastructure contract and are in possession of Szczecin and Świnoujście Seaports Authority.

2. The Engineer's responsibilities

2.1. General responsibilities

- 1) The Engineer is obliged to comply with all the regulations of the Employer's country and is obliged to guarantee that his personnel, its employees and local workers comply with those laws as well. The Engineer is obliged to insure the Employer against all the claims and risks that are the result of any law violations by the Engineer, his personnel and his employees.
- 2) The Engineer is obliged to fulfil the terms of the contract with possible best care and attention and according to good working practice.
- 3) The Engineer is obliged to observe the administrative order issued by the Employer. If the Engineer considers that the terms of such resolutions are beyond the Employer's competences or beyond the contract's terms, he is obliged to inform the Employer about it with substantiation within 30 days, otherwise it will be void. The administrative order must be carried out and is not withheld by submission of protest.
- 4) The Engineer is obliged to treat all the documents and information concerning the contract, as private and confidential and he is obliged not to publish and reveal any of its details, except in cases when it is necessary to meet the terms contract. If there are any differences in opinions about publishing or revealing information for the purpose of the contract, the Employer's decision prevail.

2.2. The Code of conduct

- 1) The Engineer is obliged to perform as loyal, impartial and reliable advisor of the Employer according to the code of conduct assigned to his profession, maintaining adequate discretion. He is especially obliged to abstain from any public declarations concerning the contract or services without prior written consent from the Employer, and to becoming involved in any activities which is against Employer's interest articulated in this contract. He will not pass any liabilities to the Employer without receiving his written consent, and should such liability be materialized he is in obligation to justify it to the third parties.
- 2) During the realization phase the Engineer and his personnel are obliged to comply with human rights and are committed not to offend any political, cultural and religious practices that are applied in the Employer's country.

- 3) If the Engineer or any of his subcontractors, personnel, agents or hired workers offer or accept any bribe, gift, gratification or provision to anybody as an encouragement or reward for fulfilling or to abstain from any activities, or for showing or aversion to any other person that concern the contract's fulfilment or any other contract with the Employer, The Employer can terminate the contract without loss of acquired rights gained by the Engineer as a part of contract fulfilment.
- 4) The due contact payments for the Engineer is the only income that is acquired as a result of contract and neither the Engineer nor his personnel shall not receive any provisions, discounts, direct payments or other payments that are the result of his obligations and responsibilities in relation with the contract, concerning those responsibilities and fulfilling those responsibilities.
- 5) The Engineer will not receive any benefits directly or indirectly, from any of the licence charges, gratifications and provisions, concerning any patent or protected article or process applied in the contract works or for the contract's purpose or investment without prior written consent of the Employer.
- 6) The engineer and his personnel are obliged to keep trade secret during the contract and after its completion. As a result neither the Engineer nor its employee or a person involved, is not allowed at any time to pass to any other person or party any confidential information that was revealed to him, moreover he must not spread any information about the recommendations received during delivery of the contract, or as a result of this fulfilment, unless they receive prior written consent from the Employer. Moreover, they are obliged not to use any information or results of tests that were carried out during the contract, which may cause damage to the Employer's interest.
- 7) The realization of the contract cannot produce any additional commercial expenses. If such expenses appear, the contract will be terminated. Additional commercial expenses are provisions not mentioned in the contract or that are not a result of a properly entered contract, that concern the contract, provisions that are not the result of any legal and real service, provisions that are passed to "Tax Heaven", provisions paid to the receiver, who is not described in the contract or provision paid to the company, which makes the impression of the fictitious company.
- 8) The Engineer is obliged to provide evidence on The Employer's request that concerns the contract's conditions. The Employer can audit any documents or to control the site if he finds it necessary, to search for the proof in case of suspicious additional commercial expense appearing in the contract.

2.3. Conflict of interests

- 1) The Engineer should take all the necessary actions to prevent a situation, in which impartiality and objectivity in realization of the contract is exposed to risk. Such conflict of interests may appear in particular as a result of economic interest, political or state relation, family or emotional relationship, other relationships or common interests. One should inform The Employer immediately on writing when any conflict of interests appear.
- 2) The Employer reserves his right to check whether the actions taken are adequate and whether it is necessary to take other actions. The Engineer should ensure that his personnel, including the management, do not face the situation in which conflict of interests becomes possible. The engineer will replace any member of his personnel in such situation immediately, and without compensation from the Employer.
- 3) The Engineer is obliged to abstain from being in any contacts that will jeopardize his and his personnel's independence. If the Engineer will not keep such impartiality, the Employer may terminate the contract immediately without a formal notice and without any liability for cost, which may appear in such circumstances.
- 4) After termination of the contract the Engineer is obliged to limit his role only to providing services. Except from the cases of receiving prior written permission from the Employer, the contractor and any other subcontractor or supplier, with whom the Engineer is associated will be excluded from the execution of contract and any other services, including applying for realization of any other part of the investment programme.
- 5) The Engineer and any other employee working under his authorization, controlling the contract or performing any other activity, will be excluded from the access to funding by European Communities available within the same investment.

2.4. The scope of activities

The Engineer will be responsible for:

- 1) Standing in the role of “Engineer” in compliance with the terms of “Terms of Contract for Building and Engineering Works Designed by the Employer.” /FIDIC – 1999/, and in Specific Conditions constituting an appendix to the Works Contract. The Engineer will also perform the Engineering Supervision of Works according to the Polish regulations and suitable permit decisions for construction works.
- 2) Other activities mentioned in this TOR,
- 3) Assistance provided to Employer in all technical, administrative and financial activities that concern realization of the Contract.
- 4) Supervision over implementation of the environmental conditions by the Contractor and cooperation with the parties that realize monitoring and environmental supervision.
- 5) Representing the Employer’s interests, advising in technical, legal and administrative areas, coordinating actions with other parties that realize contracts within LNG Terminal in Świnoujście programme, including the Engineer Contract realized by Polish LNG and the coordinator of all the contracts appointed according to the Law Act, 24 April 2009 for Programme Concerning Re-Gasification LNG Terminal in Świnoujście (Journal of Laws, No. 84, pos. 700).
- 6) Creating the organization structure for management and supervision, providing the organizational chart for the Employer’s approval, approve and provide effective functioning of the Engineer’s Office.
- 7) Placing the members of the Engineer’s team for performing specific tasks related to the supervision.
- 8) Employing team of well-qualified key specialists, who hold adequate experience record
- 9) Provision of the administrative personnel and financial supervision for the needs of contracts
- 10) Providing professional works’ progress reports, prepared according to financial institutions’ demands.

The Engineer will achieve the Employer’s consent before taking actions resulting from the terms defined in “Terms of Contract for Building and Engineering Works Designed by the Employer.” /FIDIC – 1999/.

- 1) subclause 3.2 Delegating by the Engineer
- 2) subclause 4.4 Subcontractors
- 3) subclause 8.4 Extension of time completion
- 4) subclause 8.8 Suspension of works
- 5) subclause 12.3 Evaluation
- 6) subclause 13 Variations and Adjustments
- 7) subclause 17.4 Consequences of Employer’s risk
- 8) subclause 20.1 Contractor’s Claims

In case the works’ progress is not satisfactory owing to circumstances beyond the Contractor’s control, it is his duty to take remedial action and recommend to the Employer other possible contract means to be used in order to eliminate risk and to meet the contract’s terms. The Engineer will be obliged to present quarter reports including contact risk analysis, which includes threats, risk level and prevention actions.

2.4.1 Preliminary construction phase.

In this phase the Engineer’s duties are:

- 1) Before the fixed date of works commencement, the Engineer will review the Employer’s documents mentioned in 1.7, in order to check the corresponding order, compatibility and completeness of the documents related – submitting the comments to the Employer and the Designing Consultant.
- 2) Verification and approving the works schedule, particularly providing the coordination with the Engineer for the construction of the Breakwater contract realized by The Maritime Office in Szczecin.
- 3) Review and monitoring of the Contractors mobilisation and reporting the status
- 4) Set the documents’ circulation system and quality assurance procedures,
- 5) Approving Quality Assurance Plan and Health and Safety Plan

- 6) Approving the Performance Security and all other insurances required.
- 7) Establishing specific responsibilities within the supervising inspectors' team in compliance with Polish Construction Law,
- 8) Inspections of the construction site, checking compliance of the design documentation with actual site conditions.
- 9) Preparation of the Initial Report
- 10) The Engineer shall prepare all the necessary documents to give the right of possession and access for the Constructor and shall issue an instruction to commence Works

2.4.2 Construction phase

It is expected that the Contract with the Contractor will be signed in May 2010. After organizing the building site works facilities, the Constructor will start works on 01 July 2010, on a date that will guarantee completion of works before 30.11.2012, while trestles, loading platform, technological platform and retention tank will be available for the LNG Terminal Contractor by 30.06.2012. During the whole construction phase the Engineer is obliged to coordinate construction works strictly with the Engineer and the Contractor for the Breakwater construction – the Maritime Office's in Szczecin contract and with the LNG Regasification Terminal Contractor and Engineer – the PLNG contract, especially what concerns the offshore part. The Engineer shall be committed to carry out all duties assigned in the Works contract, including construction phase, Defects Liability Period, issuing Performance Certificate and the Final Settlement.

Engineer's duties in realization phase include:

- 1) Constant presence on the construction site during the Contract realization,
- 2) Works supervision by authorized representatives – supervising inspectors, in compliance with Polish Construction Law and the Terms of the Construction Permit,
- 3) Current coordination of contract activities with the representatives of the Maritime Office and PLNG contract parties.
- 4) Representing the Employer in Contract matters with third parties,
- 5) Unlimited access to the construction site and all the places where materials and tools are collected, produced, assembled or prepared for installation.
- 6) Informing the Employer in advance about all the risks that appear during the realization phase, which may have an impact on the delays in realization of Works or increasing costs,
- 7) Controlling of the Contractors Health and Safety policy and maintenance of the site order,
- 8) Approving Works Programme presented by the Contractor and monitoring of works' progress
- 9) Preparation of the Monthly and interim reports. The reports must comply with financial institutions' demands.
- 10) Managing weekly working meetings with the Contractor.
- 11) Organizing technical meetings, preparing minutes and submitting the protocols to the Employer, the contractors and other participants within 5 days
- 12) Approval of the Contractor's working drawings, approval of geodesy tracing and other geodesy works. Issuing instructions concerning the above and approval of the submitted variation proposals,
- 13) Recommendation of the necessary changes in the technical documentation in compliance with Terms of Contract,
- 14) Daily site inspections for works quality and used materials to secure compliance with the technical specification and good engineering practice,
- 15) Verification of all the certificates, insurance polices and securities for validity and conformity with the Contract,
- 16) Approval of the Contractor's monthly reports and statements,
- 17) Issuing Interim payment Certificates and certification of the partial completion of Works,
- 18) Carrying out final inspection and issuing Performance Certificates, takeover certificates and other documents specified in the Conditions of Contract – FIDIC and required by the Polish Construction Law. These ought to include complete documentation required by the Building Control Office to grant site operation permit,
- 19) Providing full information about claims and other problems, which may affect the Time for Completion. Preventing any raise of claims, preparation of all the necessary documentation for processing claims on every stage of their process,

- 20) Undertaking remedial action to eliminate delays in Works execution, applying contractual instruments and providing technical assistance for the Contractor,
- 21) Recommendation of the release of the performance security and release of retention money,
- 22) Providing any necessary information for the Works Contractor,
- 23) Granting permission for night, weekends and public holiday works,
- 24) Instigating removal from the building site of any person behaving disorderly, incompetently and recklessly,
- 25) Monitoring Works progress by checking actual status and compliance with the Works Programme,
- 26) Approval of materials, prefabricated components and devices to be built in or used in execution of Works,
- 27) Approval of technology proposed by the Contractor,
- 28) Control of storage of materials and devices,
- 29) Supervision over materials and works tests,
- 30) Instruction of the Contractor to carry out additional tests, should there be any doubts about quality of the primary tests,
- 31) Order of the check tests in the laboratory selected by the Employer
- 32) Opinion and approval of the Quality Assurance and Health and Safety Plans,
- 33) Approval of the drawings produced by the Design Consultant or the Contractor for the Variation Works,
- 34) Verifying as-built documentation produced by the Contractor,
- 35) Carrying out measurement of Works. Establishing appropriate sea berth scanning scheme and carrying out scanning according to the approved method for measurements for dredging works,
- 36) Approval of the Works value in the Interim Payment Certificates,
- 37) Take over of works and submission of a defects and outstanding works list. Snagging Works, which will be covered and submission of a defect list,
- 38) Certification of completed remedial works. Submission of a list of completed remedial works,
- 39) Preparation of partial and final Takeover, verification of as-built documentation due for takeover and participation in takeover procedures,
- 40) Certification of Time for Completion,
- 41) Supplying the Employer with any required reports, files, certificates produced by the Contractor after completion of Works,
- 42) Preventing rise of unfounded Contractor's claims
- 43) Notification of the Employer about any Contractor's claims, and discrepancies between the Employers documentation and actual progress status on site,
- 44) Approval of the final statement and certification of the final payment
- 45) Settlement of the Contract accounts after termination, as per Works Contract,
- 46) Deciding the way of securing excavations exposed on the building site and approval of an archaeological management scheme and other specialist services
- 47) Issuing any essential documents required by the Employer or a Financial Institution,
- 48) Settlements of claims and complaints raised by third parties in connection with realization of the Contract,
- 49) Approval of the Contractor's Laboratory, if it was not specified in the Tender Offer, checking, lab equipment, personnel qualifications; verification of a new laboratory,
- 50) Maintaining photographic records of site and works,
- 51) Preparation of the progress reports to be published on the Employer's website,
- 52) Preparation for the Employer's needs of the reports specified in point 2.2.1 according to the requirements of the EC EEPR and the reports required by the financing institutions,

2.4.3 Stage after Completion of Works

After completion of Works the Engineer shall issue, upon the Employer's consent, a Takeover Certificate.

The Engineer's duties are as follows:

- 1) Completion of outstanding work tasks,
- 2) Inspection and supervision over remedial and outstanding works,
- 3) Guarantee surveys not less than twice a year, carried out with the Employer and the Contractor,
- 4) Approval of remedial works,
- 5) Issuing Statement at Completion and Completion Payment Certificate,
- 6) Conducting the procedure at the End of the Defect Liability Period and issuing a suitable certificate,
- 7) Management of remedial works should there remain any defect after Defect Liability Period,
- 8) Support of the Employer in processing claims disputes,

- 9) Preparation for the Employer required information for Asset Register, Asset Log Books,
- 10) Certification of release of retention money and other securities,
- 11) Issuing Performance Certificate,
- 12) Approval of the Final Statement
- 13) Verification of the Employer's Liability Discharge

The Engineer will provide necessary assistance to the Employer in the field of Contract management.

3. Reports and Works Programmes

Requirements concerning Reports

The reports shall be created in Polish and English in form, quantities and in time established by the Employer in due course.

3.1 Inception report: An Inception Report shall be issued by the Consultant within one month of the signature of the contract and presented to SSSA. The report shall include: (i) the overall situation of the program for works, (ii) an updated implementation plan and staff assignment chart for the first twelve months including details of outputs and indicators to the Consultant work; (iii) proposed modalities for organization, management, and administration including financial administration, flow of funds and auditing of the Consultant activities and (iv) practical arrangements in connection with office facilities, accommodation, transport etc. The report shall be revised when warrant, following the Employer's comments, within two weeks after the comments are received.

3.2 Technical implementation summary "TIS"

In order to meet the requirements of the financing Institution EC EEPR The Engineer, within 6 months of the date of notification of the EC EEPR decision to the Employer, shall prepare a report, which will contain as a minimum the following issues:

(a) General Information:

- Reporting period,
- Action information: Action reference, Action title, Action start/end date, administrative information (name, address, telephone, fax and e-mail of the beneficiaries of the grant and Polish Government monitoring institution).
- Action objectives: status at the beginning of the Action, main objectives of the Action.
- Contact persons: name, address, telephone, fax and e-mail of the author(s) of the "TIS", the technical contact person(s) and financial contact person(s).

(b) Technical summary

- Action progress: work and activities performed during the reporting period
- Action development: work to be undertaken in the next coming years
- Action risk assessment: description of potential problems, delays, deviations from the original targets and short description of the potential solutions
- Action publicity: short description of the measures that will be (or have already) been taken to acknowledge the financial support provided by the Community.

(c) Financial summary

- Financial status: costs broken down by activities for the reporting period.
- Financial forecast: estimated date when the expenditures will reach 70% of the maximum eligible costs.
- Action control management: description of the management and control system used in accordance with Article 11 of Regulation (EC) concerning EEPR, which shall be provided by the Polish Government monitoring institution.

3.3. Monthly report: monthly progress reports shall be prepared by the Consultant and submitted to SSSA. The first report shall cover the period up to the end of the first calendar month following the commencement of the works. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work which is known to be outstanding. Each report shall include: (i) charts and detailed descriptions of progress, including each stage of the construction, list of manufacture, delivery to site, construction, erection and testing; (ii) photographs showing the status of manufacture and of progress on the site; (iii) financial and works schedules for the contract; (iv) results of inspections and tests; (v) list of main notices; (vi) a paragraph on safety statistics; (vii) statistics on actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Work Contracts, and the measures being (or to be) adopted to overcome delays.

The ultimate for of the report will be provided by the Employer after commencement of the Contract/

3.4 EEPR Yearly Report: every 12 months after delivery of the first EEPR Monthly Report the Engineer shall be submitting Yearly Reports, which will contain the same elements as those described in the Inception Report.

3.5 Final Report: At the end of the assignment the Consultant shall prepare a report outlining activities carried out, resources used and achieved objectives during the assignment. The report will also contain assessment of the reached objectives for the construction process, an assessment of the sustainability of project objectives, detailed plans for demobilization, and recommendations for follow-up by SSSA. The report shall be submitted as a draft 1 month before the end the assignment and as a final report within one month thereof including any comments received from SSSA. The Report shall contain as a minimum the following issues:

(a) General Information:

- Reporting period,
- Action information: Action reference, Action title, Action start/end date, administrative information (name, address, telephone, fax and e-mail of the beneficiaries of the grant and Polish Government monitoring institution).
- Action objectives: status of achieved objectives, achieved detailed objectives of the Action, status of works before beginning of the Action.
- Description of Action: detailed description of action, showing the elementary tasks, programme and achieved results.
- Contact persons: name, address, telephone, fax and e-mail of the author(s) of the Report, the technical contact person(s) and financial contact person(s).

(b) Technical summary

- Summary of Works status: detailed description of tasks and their results, ways of solving the problems, showing the effectiveness of applied strategy, list of available technical reports.
- Risk Assessment: Variation from the planned action, detailed description of technical and financial problems, description in delays of works and undertaken remedial action
- Action publicity: short description of the measures that will be (or have already) been taken to acknowledge the financial support provided by the Community.

(c) Financial summary

- List of all qualified expenditures, divided into elementary tasks, associated by relevant.
- Approval of all the costs in compliance with art. 11 of the EC Resolution for EEPR.
- Confirmation that all the cost have been committed according to the rules of order, and in case of derivation submission of suitable explanation and substantiating documentation.

3.6 Programmes

The Engineer should submit to his offer a day-to-day Schedule (working day minimum 8 hours) of engagement of his key personnel, showing all the members of the Team specified in the TOR for the entire period of the Contract. The Schedule should take into the account the Directive Programme introduced in the Appendix 8 to the TOR. The Engineer will be committed to maintain the presence of his personnel as per the submitted Schedule. Any changes to the Schedule must be approved by the Employer. The Engineer shall administer the system of time sheets for his personnel and they will be attached to the monthly reports. The Employer will be entitled to check the presence of the Engineer's personnel during the entire contract. The number of hours of engagement of the Engineer personnel will constitute one of the criterion introduced for the tender evaluation.

4. Requirements

4.1. Personnel

The Contract supervision shall be the duty of the personnel mentioned in the Engineer's offer in Appendix 4 – list of employees incorporated in the order, called hereafter The Engineer's Team.

The person responsible for managing the Engineer's Team is the Engineer, who delegates his duties and authorizations to his Key Experts upon the Employer's consent and after informing the Contractor.

In order to receive consent The Engineer will present his organization chart to the Employer not later than 1 month after signing the contract and the organization chart will include detailed scope of duties and authorizations that are to be passed to members of the Team.

The Engineer shall allow for the need of employing further personnel, whose remuneration must be included in the offer.

The Engineer and his Team is obliged to be available to any reasonable request of the Employer or the Contractor.

4.1.1. Key technical personnel

The requirements and qualifications of the key technical personnel are listed in the requirements for the engineers in Chapter V.

Additionally the Engineer should employ additional supportive personnel, needed for correct functioning of the team including technicians, assistants, office personnel, translators, etc.

The Engineer is allowed to suggest additional inspectors other than mentioned above. The Engineer will employ necessary specialists needed for the realization process and not listed in the specification above.

4.1.2. Other requirements

The Engineer is fully responsible for his Team's selection. The Employer owns his right to verify the personnel's qualifications.

The Team is answering directly to the Engineer.

The Contract language is Polish but because foreign contractors are considered, the Engineer is obliged to be fluent in English or to employ translators.

4.2. The office accommodation and furnishing

4.2.1. The Engineer's office

During the realization of Contract, The Engineer will have available offices in the Employer's building at Artyleryjska Street 1 in Świnoujście, free of charge. The Engineer is obliged to furnish the offices and the conference room. Additionally, during the land reclamation on Ostrów Grabowski in Szczecin, The Engineer will provide suitable, furnished office space for his representative that will supervise the local works. All the costs of organizing this office and its functioning will be covered by the Engineer and shall be included in key technical personnel members' remunerations. After the contract terminates, the Engineer shall return the offices to the Employer in at least the same condition as they were introduced to him at the beginning of the contract. The person responsible for hand-over inventory is the Engineer.

Main Engineer's offices should be equipped in appropriate number of computer outstations with Microsoft software: Windows, Office, Project, AutoCAD and Adobe Professional or compatible, Internet network, phone landline, fax, photocopier and digital camera for Progress documentation.

4.3. The Engineer's equipment

To supervise the realization phase adequately the Engineer will allow for a 7- meter hull motorboat, to carry out inspection and supervision of works by the Engineer's and the Employer's personnel, free of charge during the

whole realization of the contract until the settlement certificate is issued. The motorboat enables to conduct onshore inspections. The boat shall meet all the criteria required to obtain an open sea certification by the Maritime Office.

4.4. Control of Contract's progress

The Engineer's prime responsibility is to control the compliance of construction works with construction works' requirements set in the contract and legal regulations.

The Engineer will control the quality of the materials and works according to the Polish Construction Law and nominated in the Contract authority authorizations. He will also confirm the quantity and value of completed works.

5. Remunerations

The Engineer's remuneration will be paid quarterly.

The temporary invoice will be issued by the Engineer after each quarter of services and it will be calculated as an arithmetical value, directly proportional to financial progress of the Works Contract, which will be confirmed by approved by the Employer an Interim Payment Certificates presented for realization of the contract. The algorithm for calculation of the remuneration is shown below:

$$A \times B = C$$

A – Construction works realization index in selected settlement period (the value must be confirmed by approved payment certificates)

$$A = \frac{\text{The value of realized works in selected settlement period}}{\text{Total value of realized works}}$$

B – The contract's value for the realization period (the engineer will divide the contract price into two parts: realization phase value and the value after completion of works)

After taking over the construction works the payments will be realized every 6 months after presenting the half yearly report constituting the same structure as the annual report. The invoices will be submitted after approval of the report.

CHAPTER II The Offer form

1. The offer consists of: price offer and all the documents required (including statements, TOR appendices etc.) according to chapter V of TOR.
2. The Engineers will prepare offers according to the TOR requirements.
3. The price offer must be submitted in the offer application, in compliance with the example provided in appendix 1 to TOR.
4. The offer must be prepared in Polish language.
5. The price offer and all the required documents must be signed by persons the Engineer's Power of Attorney. Power of Attorney to sign the offer (including price offer and all the required documents) must be submitted with the offer in letter of authority confirmed by the notary, unless it is confirmed earlier by other documents.
6. In case the Engineer submits a copy of any document, it must be certified as true copy by the Engineer (the Engineer signs every written copy with "certified as true copy" annotation), with consideration to point 5 of this chapter and point 2 of chapter IV.
7. All the documents and statements in foreign language should be submitted with Polish translation, confirmed by the Engineer.
8. It is recommended to number all pages. Moreover, it is recommended to sign all the changes in text by the person authorized by the Engineer.
9. The Engineer submits only one offer. No alternatives included in the offer are acceptable.
10. The Employer does not accept offers that include alternatives.
11. The Engineer covers the costs of preparing and submitting the offer.
12. The Engineer places the offer in closed outer and inner envelope and pays special attention to the following details:

- 1) the outer envelope should be addressed to the Employer and should be marked as follows: The proposal for Fulfilling duties of an Engineer of FIDIC terms on the contract named: **”Construction of the Berthing Infrastructure in the external port in Świnoujście” and “Do not open until 19.03.2010, 12:30”**
 - 2) The offer should be placed in inner envelope addressed to the Engineer, in order to send back the offer in case it has been delivered after the deadline for submission of offers.
13. If the Engineer’s offer is not marked as described in point 12, the Employer will not take responsibility for its delayed delivery.
14. Whenever the TOR mentions:
- **The Engineer** – it means the person who submits the offer in this tender
 - **Engineers** – it means partners who submit joint offer in this tender
 - **The Employer** – it means Szczecin and Świnoujście Seaports Authority
 - **The Contractor** – it means the party awarded the Works Contract.

CHAPTER III Change, withdrawal and return of the offer

The Engineer can change and withdraw his offer until the deadline for submission of offers.

- 1) in case of offer withdrawal, the Engineer submits written statement, that he withdraws his offer, in closed envelope addressed in chapter II point 11, sub-point 1) with “withdrawal” annotation.
- 2) In case of changing the offer, the Engineer submits written statement that he changes his offer, describing the character and scope of the changes introduced and if the statement creates the necessity of exchanging or submitting new documents – The Engineer should submit those documents.

The statement mentioned above and the documents should be submitted in closed inner and outer envelope, marked as in chapter II, point 11, sub-point 1) and 2) where the inner envelope should be marked with the “changes” annotation.

The Engineer cannot introduce changes or withdraw the offer after deadline for submission of tender offers. The offers delivered after the deadline will be returned without opening.

CHAPTER IV – Joint Offers – Joint Venture

1. The Engineers can submit one offer as a Joint Venture.
2. The Engineers who submit joint offer select their representative in this bidding process and further signing the contract.
 - 1) They submit written Power of Attorney, original or copy certified by the notary, mentioned in point 1.
 - 2) The Joint Venture selects a representative and submits the Power of Attorney, original or copy certified as true copy by the Engineers – Joint Venture partners.
3. The Representative maintains communication with The Employer during the tender; he contacts the Employer with any inquiries and the Employer provides him information, sends correspondence, etc.
4. The entire Engineer’s address data to send correspondence to, should be included in the price offer.
5. The Joint Venture offer should meet the following requirements:
 - 1) the offer should be prepared in compliance with the TOR requirements,
 - 2) the way of submitting statements and documents in a Joint Venture offer:
 - a) the statements and documents that concern the Joint Venture Partner company, such as: appendix 2 to SWIZ, copy of the proper register or certificate of entry in business activity register, tax office statement and social insurance statement or agricultural insurance statement, national criminal record statement – concerns each member of the Joint Venture.
 - b) Joint Statements and documents such as: price offer, schedule, etc.
 - c) Copies of documents concerning each Partner of the Joint Venture must be certified as a true copy by authorized persons or people who represent the Joint Venture not only the Joint Venture representative.
 - d) Tender Security other than cash must be set for all the Joint Venture Partners.
6. Before signing the contract (in case of winning the tender) The Joint Venture Partners shall be obliged to present the Joint Venture contract agreement. The contract should include at least:
 - 1) Commitment to realize a joint and several contract
 - 2) The scope of duty assigned to every partner
 - 3) The Contract validity not shorter than the subject contract

7. In the period mentioned in point 6 sub-point 3, the contract can not be terminated without the consent of the Employer. The Joint Venture Partners are equally responsible for the contract fulfilment, which is described in The Civil Law Code, art. 366. They are equally responsible for submitting the Performance Security.

CHAPTER V Conditions of participation in the procedure and the required documents confirming the fulfilment of eligibility conditions to participate in the tender. Other documents required with the tender offer.

1. Engineers who are not excluded from the bidding process under the circumstances specified in Chapter XIV point 2 of the TOR can submit offers. In order to present that there are no reasons for exclusion from the bidding process, the Engineer is obliged to submit the following documents:
 - 1) Statement on non existence of basis for exclusion, as per an example constituting appendix 2 to SIWZ, In case of a Joint Venture offer, each engineer submitting a Joint Venture offer should submit a/m statement on his own behalf.
 - 2) Up-to-date legalised copy of the proper register (if specific regulations require the entry into the register) issued not earlier than 6 months before the deadline for the process in order to prove that there are no reasons for exclusion on the basis of the Chapter XIV point 2 SIWZ, and in case of individual persons the statement as described in the chapter XIV point 2 SIWZ.
In case of a Joint Venture offer this document is to be submitted by each Joint Venture Partner.
 - 3) Up-to-date tax office certification, confirming that the Engineer is not behind with obligatory fees and taxes or certification that he has obtained a foreseen by the law exemption, postponement or instalments arrangement or complete suspension of an execution of a decision of a respective authority – not earlier than 3 months prior to the process’ deadline.
In case of a Consortium offer the a/m certification is to be submitted by each of the engineers submitting a Consortium offer.
In case of submitting offer by the civil company, the Engineer must submit separate statements for each of its partners and a separate one for the company.
 - 4) Up-to-date certification by a respective Social Insurance Institution or Agricultural Social Insurance Fund confirming that the Engineer is not behind with his contributions or certification that he has obtained a foreseen by the law exemption, postponement or instalments arrangement or complete suspension of an execution of a decision of a respective authority – issued not earlier than 3 months prior to the process’ deadline.
In case of a Joint Venture offer the a/m certification is to be submitted by each of the engineers submitting a Consortium offer.
In case of submitting offer by the civil company, the Engineer must submit separate statements for each of its partners and a separate one for the company.
 - 5) Up-to-date information from the National Criminal Register pertaining to chapter XIV point 2 the TOR sub point 4-8 of the TOR issued not earlier then 6 months prior to the process’ deadline.
In case of a Joint Venture offer the a/m certification is to be submitted by each of the engineers submitting a Consortium offer.
2. An Engineer applying for the order must fulfil the conditions concerning:
 - 1) possession of authorisations to perform the specific activity or functions if possession of such authorisations is required by the law,
 - 2) possession of knowledge and experience, proved by presentation that he properly performed – during the last five years prior to the process’ deadline or, if the period of his business activity is shorter, during the period of his business activity – minimum one service consisting in performance of a function of an Engineer under the FIDIC for a contract worth a minimum of net value 150 million PLN and one service consisting in performance of a function of an Engineer for a contract consisting in realisation of hydro technical structures in sea condition – Appendix no. 6.

The above mentioned conditions can be met jointly. In case of contracts realised in currencies other than the PLN, the National Bank of Poland's average exchange rate as being in force on the date of publication of the invitation to tenders is to be applied.

- 3) being in disposition of adequate technical potential and personnel able to realise the order by demonstration that he is or will be in disposition of the key personnel in the number of at least eight persons possessing the following authorisations and qualifications – Appendix no. 4:
- a) **Team leader**
Qualifications and skills:
The team leader should have a university degree technical education.
Basic professional experience:
The team leader should have an experience in management of project co-financed by international institutions (ex. EU funds).
Specific professional experience:
The team leader should prove his at least five-years' experience, acquired over the past ten years, in management of infrastructural project with net value of 10.000.000,00 PLN each, including one contract realised on the basis of FIDIC Contractual Conditions. The team leader should also prove that during the last 10 years he conducted supervision or management of at least one construction of hydro technical structures in sea condition.
 - b) **Supervising Surveyor – construction & structure speciality, specialization in hydro technical structures**
Qualifications and skills:
The supervising Surveyor should have a university degree technical education.
Specific professional experience:
The supervising engineer) should prove his at least seven-years' experience in supervision of realisation of port structures – classification PKOB 2151, acquired during the past ten years and confirmed by construction licences to supervise construction works as required by the building law dated 07th July 1994 as further amended, or equivalent qualifications accredited in the countries of the EU, in conformity with Polish law regulations binding in this respect. The experience should cover supervision of at least one project of port structure with net value of least 50.000.000,00 PLN. The Supervising Surveyor should also possess authorisations to design and documented experience in the scope of design of hydro technical structures.
 - c) **Supervising Surveyor – construction & structure speciality, specialization in hydro technical structures**
Qualifications and skills:
The supervising **Surveyor** should have a university degree technical education.
Specific professional experience:
The supervising Surveyor should prove his at least seven-years' experience in supervision of realisation of port structures – classification PKOB 2151, confirmed by construction licences to supervise construction works as required by the building law dated 07th July 1994 as further amended, or equivalent qualifications accredited in the countries of the EU, in conformity with Polish law regulations binding in this respect. The experience should cover supervision of at least one project of port structure with net value of at least 50.000.000,00 PLN.
 - d) **Supervising Surveyor – Public Health**
The supervising Surveyor should have a university degree technical education.
Specific professional experience:
The supervising Surveyor should prove his at least five-years' experience in supervision of realisation of works confirmed by construction licences to supervise construction works as required by the building law dated 07th July 1994 as further amended, or equivalent qualifications accredited in countries of the EU, in conformity with Polish law regulations binding in this respect.
 - e) **Supervising Electrical Engineer – electrical**
The supervising engineer should have a university degree technical education.
Specific professional experience:

The supervising engineer should prove his at least five-years' experience in supervision of realisation of works confirmed by construction licences to supervise construction works as required by the building law dated 07th July 1994 as further amended, or equivalent qualifications accredited in the countries of the EU, in conformity with Polish law regulations binding in this respect.

f) **Supervising Controls Engineer – Automation and Controls (controls of navigation and berthing system)**

The supervising controls engineer should have a university degree technical education.

Specific professional experience:

The supervising engineer should prove his at least five-years' experience in supervision and realisation of works in the scope of automation also including steering navigation and mooring system confirmed by professional licenses and certificate issued by institutions supervising safety of navigation.

g) **Underwater works specialist** – documented minimum five-year's practice in works and underwater inspections. Possession of equipment for CCTV underwater inspections.

h) **Engineer's Accounting Assistant**

Required qualifications: minimum secondary technical or economy education.

Required professional experience: minimum five years of work in the construction industry, including professional experience in compiling measurements and valuation of construction works.

The assistant must have 3 years of experience in settlements of accounts of the contracts run on FIDIC.

The Employer does not allow bonding of the functions of the above mentioned personnel.

4) economic and financial situation by proving that:

- a) they have an access to financial resources in the amount of at least 1.000.000 PLN
- b) over the last three financial years they have achieved an average yearly turnover in the amount of at least 4.000.000 PLN
- c) they have a civil liability cover, in the scope of the performed activities, for the amount at least 10.000.000 PLN.

Assessment of the conditions of participation In the procedure will be performed on the basis of documents submitted by Engineer, on the basis FULLFILLS/FULLFILLS NOT .

3. In order to demonstrate eligibility to participate in the tender, as mentioned in point 12, each engineer is obliged to submit the following statements and documents:

- 1) **Statement** on eligibility to participate in the tender, as per the example constituting annex no. 3 to SIWZ. In case of a joint offer, the statement is submitted by an attorney on behalf of Engineers submitting a joint offer.
- 2) In the scope necessary to demonstrate the fulfillment of the knowledge & experience conditions, **a list of services** (similar works) - including their prices, objects, performance dates and customers (as per the example constituting the annex no. 6 to SIWZ) - which in their aspects and prices correspond with the services constituting the object of this order and which were performed in the period of five years prior to the day of the commencement of the procedure and if the period of business activity is shorter then in that exact period, accompanied by documents confirming that the services were duly performed. In case of a Joint Venture offer, engineers submitting a joint offer submit a joint list.
- 3) **List of personnel**, as per the example constituting the annex no. 4 to the SIWZ, who will take part in realization of the order, irrespective whether they are directly employed by an engineer, together with information on their professional qualification, experience and education necessary to realize the order as well as the scope of their work and information on the basis of their employment. In case of a joint offer, engineers submitting a joint offer submit a joint list of persons that are or will be in their disposition.
- 4) **Statement**, as per the example constituting annex no. 5 to the TOR that persons who will take part in realization of the order (listed in the a/m list) are in possession of required authorizations if the law imposes obligation to possess such authorizations.
- 5) **Information from a bank** or a savings-bank where an engineer holds an account, confirming the amount of possessed financial resources or his borrowing capacity, issued not earlier than three months prior to the

process' deadline.

In case of a Joint Venture offer, the a/m document is to be submitted by a Joint Venture Partner responsible for fulfillment of this condition.

- 6) **Financial Report** or its parts and, if according to book-keeping regulations in force it is subject to inspection by Chartered Auditor, also with the auditor's opinion on the inspected Report or its part, and in case of engineers not required to draw up a financial report other documents describing his turnover, liabilities and receivables – for a period of time not shorter than the last three financial years, and if the period of his business activity is shorter then during that period.

In case of a joint offer, the a/m document is to be submitted by a Joint Venture Partner responsible for fulfillment of this condition.

- 7) **Paid insurance policy** and in case of absence any other document confirming that an engineer has civil liability cover, in the scope of the performed activities and connected with the object of the order.

In case of a joint offer, the a/m document is to be submitted by a Joint Venture Partner responsible for fulfillment of this condition.

4. An Engineer may rely on knowledge and experience, technical potential, personnel able to realize the order or financial abilities of other entities, irrespective of legal character of their mutual relations. In such a case an Engineer is obligated to prove before the Employer that he will be in disposition of recourses necessary to realize the Order, in particular for this purpose by presenting written commitments of those entities to put at his disposal necessary resources for the period of their use during realization of the order.
5. If an Engineer, while proving fulfillment of the condition as referred to in point 2 sub-point 4 of this chapter, relies on financial abilities of other entities (with respect of the principles established in point 4 of this chapter) it is required that he submits information, referred to in point 3 sub-point 6 of this chapter, relating to those entities.
6. In case of the entities referred to in point 4, copies of documents being submitted by an Engineer need to be in the form of true copies certified by those entities.
7. If for justified reasons an Engineer cannot submit required by the Employer documents on financial and economic situation he may submit another document which sufficiently confirms fulfillment of the condition as described by the Employer.
8. In addition, Engineers need to attach the following documents to the offer:
- 1) Original of the guarantee, if it is supplied in a non cash form, or a certified copy of a document confirming its payment in a cash form.
In case of a joint offer, the guarantee supplied in a non monetary form must be issued in such a way that it commits all Engineers submitting an offer;
 - 2) price offer in accordance with the Chapter II point 3 of the TOR;
In case of a joint offer, one needs to submit one document
 - 3) respective powers of attorney;
only in cases stipulated in the Chapter II point 5 sentence 2 of the TOR or in case of submission of a joint offer (Chapter IV point 2 of the TOR)
 - 4) statement, as per the example constituting annex no. 1 to the TOR, pointing out the part of the order which an Engineer will subcontract (if a Engineer foresees participation of subcontractors);
In case of a joint offer, one needs to submit one document
 - 5) statement (annex no. 7 to the TOR) that:
 - a) an engineer has familiarized himself with the conditions of the order, the TOR, terms of the agreement and annexes to the SIWZ and that he accepts them with no objections whatsoever.
 - b) an engineer is acquainted with the legal conditions of the Order,
 - c) submitted offer covers the whole of the order in accordance with the scope described in the TOR.
In case of a joint offer, one needs to submit one document on behalf of all Joint Venture Partners signed by persons authorized to represent engineers submitting a joint offer.
 - 6) work-day schedule for employment of personnel.
In case of a joint offer, one needs to submit one document

9. An engineer who does not provide a guarantee in a cash form within the required deadline or does not attach to the offer the document referred to in the point 8 sub-point 1 will be excluded from the procedure.
10. The Employer will request the engineers who do not submit statements, documents referred to in points 1) through 11), or powers of attorney on time, or who submit statements, or documents stipulated in points 1) through 7) with mistakes, or who submit false powers of attorney to provide necessary supplements, unless, irrespective of their supplements, an Engineer's offer is bound to be rejected or it is necessary to revoke the Procedure. The submitted on the Employer's request statements or other documents should confirm engineer's fulfilment of conditions of participation in the procedure and that offered services fulfil the requirements defined in the TOR, not later than on the day when offers are to be submitted.
11. Non fulfilment of the conditions referred to in point 2 of this Chapter of the TOR or not attaching to an offer documents confirming their fulfilment with consideration of point 1 will result in an exclusion of an Engineer from the procedure and a rejection of his offer.

CHAPTER VI Overseas Engineers

1. If the Engineer has an overseas headquarter or lives abroad, instead documents indicated in CHAPTER V point 1 sub-points 2), 3), 5) and 6), the Engineer submits a document or documents issued in the country of origin, which will confirm the following:
 - 1) no liquidation has been opened and no bankruptcy has been declared for the subject company,
 - 1) there is no Court Verdict against Engineers, forbidding the Engineer to participate in a public order,
 - 2) Engineer is not overdue with tax payment, National Health insurance and Retirement contributions, or the Engineer has been legally granted a suspension of payment, deferral of payment, or agreement for instalment repayment or abolition of tax and other payment liabilities.
2. Instead the document, which is recalled in Chapter V point 1 sub-point 4), the overseas Engineer submits statement from the relevant Court or Administrative Authority from the country of origin, for the subject person/company.
3. Documents, which are recalled in point 1. 1), 1. 2) and point 2, should be issued not earlier than 6 months before deadline for submission the tender offers.
4. Document, which is recalled in point 1. 3) should be issued not earlier than 3 months before deadline of submission the tender offers.
5. If in the country of origin of the person or where the Engineer has its headquarter or place of residence, the documents mentioned in point 1) and 2) are not being issued, such documents should be replaced by affidavit sworn at the notary Office, court, council or other relevant professional institution, all meeting the legal requirements set in the country of origin.
6. In case of doubts concerning the content of the submitted by the Engineer document, the Employer may turn to the relevant institutions in the country of origin for further information concerning this document.

CHAPTER VII Subcontractors

1. The Engineer may subcontract his Contract upon entering suitable agreements with subcontracting party.
2. If the Engineer anticipated participation of subcontractor in realization of Contract, the part of the Contract to be subcontracted shall be indicated in the offer form (Appendix no. 1 to TOR).
3. The Engineer is liable for the service carried out by the subcontractors.

CHAPTER VIII Dates of realization of Contract

1. The Engineer will commence his Contract one month before planned commencement of Works Contract, and the Contract will be completed after approval of the final statement for the Works Contract, and submission of the Final Report as per Programme described in Chapter I point 1.6.
2. The total number of months is 58, counting from the date of commencement of contract.

CHAPTER IX Tender Security

1. Tender Security shall be 120 000.00 PLN, one hundred and twenty thousand PLN, and it will be submitted before the deadline for submission of tender offers. The time of clearance of the security funds on the Employer's account prevails.
2. Tender Security may be submitted in the following form:
 - a) Cash – Money transfer to the account Bank PEKAO S.A. III O/Szczecin nr 28 1240 3826 1111 0000 4403 0937,
 - b) Bank or saving institutions bonds, which made security bonds in cash,
 - c) bank guarantees,
 - d) insurance guarantee.
3. The Engineer, whose offer has been selected will loose the security bond with interest in the event of:
 - a) Refusal of signing the Contract Agreement under conditions stated in the offer,
 - b) Non submission of the Performance Security,
 - c) When signing the Contract has become impossible due to reasons being on the Engineer's side.
4. When the Engineer provides the tender Security in the form of bank or insurance guarantee, the text of the guarantee must clearly state that:
 - a) The Liability Guarantor (bank, insurance company) is to pay unequivocally and unconditionally the entire tender security on the first Employer's (beneficiary of the Guarantee) call, who will state the conditions of demanded payment introduced in points 3 a), 3 b), 3 c), without substantiation of such circumstances,
 - b) The validity of the tender security can not be shorter, than the time of validity of offer,
 - c) Place and date of returning the Security.
5. Tender Security can be brought in single or mixed forms.
6. The Engineer, who will not secure his tender offer, will be disqualified and his offer rejected.
7. In the offer (Appendix no. 1 to TOR) the Engineer will enter the account no. where the tender security is to be returned.
8. The Security brought in cash will be held on the bank account.
9. The instruction to return the cash security for the Engineers, whose offers have not been selected the Employer will pass to the Bank immediately after signing the contract and submission of the Performance Security by the chosen Engineer, and not later than a day after expiry of validity of offer.
10. The instruction to return the cash security for the Engineer, whose offer have been selected, the Employer will pass to the Bank immediately after signing the contract and submission of the Performance Security.
11. When applied by the Engineer, whose offer has been selected, the brought Tender Security may be incorporated in the cash Performance Security.
12. An immediate return of Tender Security described in point 8 and 9 refers also to the Security brought in forms different to the cash, while the return of the security in such case will be direct by means registered delivery.
13. Except from conditions described in the point 4 of the TOR, the Employer will return the Tender Security upon written application from the Engineer:
 - a) who have had withdrew the offer before offers submission deadline,
 - b) who has been excluded from tender,
 - c) whose offer has been rejected.
14. The cash Tender Security will be returned with interest acquired by the account, it has been held on, reduced by the cost of maintaining the account and the cost of money transfer to the Engineer's account.
15. The Employer will return the Tender Security immediately when:
 - a) validity of offer will expire
 - b) the Contract Agreement has been entered and Performance Security submitted,
 - c) The Employer has cancelled the tender.

CHAPTER X Protocol of communication between the Engineer and the Employer

1. Statements, applications, notices and information are communicated in writing. Tender is conducted in Polish, hence the letters, documents, statements, etc. between the Contractor and the Employer will be submitted in Polish.
2. Statements, applications, notices and information transmitted by fax or email are considered to be submitted on time if they have been delivered to the Employer in due time and have been confirmed in writing by post.
3. The address for correspondence is given on the first page of this TOR. The Employer requires that all the correspondence concerning the tender, which include questions and protests, or information about appeal, be addressed on the aforementioned address.
4. The representatives responsible for the communication with the Engineers are:
 - Krzysztof Sadowski Head of Contracts Office – Employer’s Headquarters, room 232 tel. (91) 4308198, fax (91) 4624507, email K.Sadowski@port.szczecin.pl
 - Hanna Kulińska – Head of Planning and Settlements of Contract - Employer’s Headquarters, room 119 tel. (91) 4308352, email H.Kulinska@port.szczecin.pl
 - General address for the Tender inquiries - ikbid@port.szczecin.pl

CHAPTER XI Explanations of the TOR content and modifications

1. The Engineer can turn to the Employer for explanation of the TOR content. The Employer will provide the answers as soon as possible, but not later than 6 days prior deadline for submission of the tender offers. The application for explanation will be submitted before the end of the day, on the half time of the period for the submission of offers. If the application for explanation is submitted after such time, or it refers to the questions already answered and placed on the Employer’s website the Employer may give the answers to the inquiry or just ignore them.
2. At the same time, the Employer will pass to all the Engineers, who obtained the TOR from the Employer, the answers to all the enquiries, without informing them about origin of the inquiry. The Employer will also publish the above on the Employer’s website www.port.szczecin.pl under the menu – Building the LNG Berthing Infrastructure.
3. In the particularly justifiable cases the Employer may, at any time before the due date of the submission of tender offers, introduce amendment to the TOR. Such change will be passed to all the Engineers, who obtained the TOR from the Employer. The Employer will also publish the above on the Employer’s website www.port.szczecin.pl under the menu – Building the LNG Berthing Infrastructure
4. The Employer will extend the time for submission of offers, taking into account the time needed to implement the changes in the offers, which result from amendments to the TOR, but which do not lead to changes of the tender announcement. The extension will be communicated to all the Engineers who obtained the TOR from the Employer. Extension of deadline for submission of tender offers do not extend the time for tender inquiry, defined in point 1.

CHAPTER XII Evaluation of Offer Price

1. The Engineer shall enter in the Bid Form - Appendix no. 1 to TOR, a Net value of the Offer Price, VAT and price divided into the cost for the Works realization period and the cost for service after Completion of Works.
2. The Price must contain all the cost associated with the order, such as wages, cost for office equipment, renting the offices if required, travelling and resettlements allowances, etc. The price will not be altered during the contract. The price must be given in Polish currency PLN, regardless to the elementary costs born by the Engineer.
3. Accounts settlements between the Employer and the Engineer will be carried out in Polish currency PLN.

4. In the event, when the Employer receives the offer, which will lead to the obligation to pay taxes, as per regulations for the taxation of goods and services within the European market, the Employer in Evaluation of such offer will add the value of the goods and services taxes, which will be due for payment by the Employer.

CHAPTER XIII Submission and Opening of Offers

1. **Tender Offer should be submitted at the Employer's Headquarter - Zarząd Morskich Portów Szczecin i Świnoujście S.A., 70-603 Szczecin ul. Bytomska 7, room 109 by 12.00 19.03.2010 r.**
2. The time of submission is a time of delivery to the Employer on the above address.
3. Any tender offer submitted after the deadline will be returned to the Engineer unopened.
4. Offers will be registered by the Employer. Each offer will receive an annotation containing the exact time of delivery, i.e. calendar date, hour and minute of delivery. The offers will be locked secured until the time they are opened.
5. **Public opening of the tender offers will take place at the Employer's at Headquarters Zarząd Morskich Portów Szczecin i Świnoujście S.A., 70-603 Szczecin ul. Bytomska 7, room 109 at 12.30 on 19.03.2010.**
6. The tender is supervised by the Employer's Tender Commission constituted upon Company's Board Resolution.
7. The Employer will open the packages with the tender offers and announce names and address of each Engineer, an offer price, Date for Completion, payment conditions.
8. The Employer will produce a protocol from the public opening of tender offers, which will contain the information stated in point 7. The Employer will pass the protocol to all the Engineers indicated in the offers as appropriate.

Charter XIV Choosing the best tender Offer

1. The Employer will evaluate tender offers, in order to ascertain if the Engineers should not be excluded. In case of an Engineer's exclusion, the Employer will reject the tender offer from such Engineer. Next, the Employer will evaluate all the tender offers from the Engineers, who have not been excluded.
2. The following will be excluded from the tender:
 - 1) The Engineers, who caused damage by not executing the order or by executing it in not appropriate way, provided that such damage has been proved by the court verdict, which has been constituted not earlier than 3 years before beginning of tender.
 - 2) The Engineer, who are in liquidation, or whose bankruptcy has been declared, but the Engineers, who after such declaration entered a legally binding court agreement, and the agreement does not include creditors' pay off by liquidation of the debtor's assets.
 - 3) The Engineers, who are beyond tax payment, National Health and Retirement Contributions, but the Engineers, who received legal suspension, deferral or instalment re-payment agreement or full abolition.
 - 4) Physical person, who has been sentenced for the crime committed in a tender, a crime against trading people's rights, crime against environment, corruption, crime against public trading party, crime against Treasury, participation in organized group aiming to commit a crime or crime against Treasury, or other crimes committed to gain material profits.
 - 5) Public Company, which Partners have been sentenced for the crime committed in a tender, a crime against trading people's rights, crime against Environment, Corruption, crime against public trading party, crime against Treasury, participation in organized group aiming to commit a crime against Treasury, or other crimes committed to gain material profits.
 - 6) Joint Venture, whose Partners have been sentenced for the crime committed in a tender, a crime against trading people's rights, crime against environment, corruption, crime against public trading party, crime against Treasury, participation in organized group aiming to commit a crime against Treasury, or other crimes committed to gain material profits.
 - 7) Commandite companies and public commandite companies, whose complementary members have been sentenced for the crime committed in a tender, a crime against trading people's rights, crime against environment, corruption, crime against public trading party, crime against Treasury, participation in organized group aiming to commit a crime against Treasury, or other crimes committed to gain material profits.

- 8) Legal entity, whose board members have been sentenced for the crime committed in a tender, a crime against trading people's rights, crime against environment, corruption, crime against public trading party, crime against Treasury, participation in organized group aiming to commit a crime against Treasury, or other crimes committed to gain material profits.
 - 9) Joint parties, who have been bound by the court from taking part in public tender, as per regulations for the liabilities of the joint parties for the illegal activities.
 - 10) Engineers, who took part directly in preparation of the subject tender, or who used in preparation of the tender offer the people, who worked on preparation of the tender, unless participation of such Engineers in the tender will not affect competitiveness of the tender.
 - 11) The Engineers and all constituting parties, who are in "conflict of interest". The Engineer is considered as entering a "conflict of interest" when they took part in preparation of tender subject design or technical specification. No parties constituting the group, to which the consultant preparing the contract documentation belongs, can participate in tender, unless the evidence of lack of any ownership connection or joint control are submitted.
 - 12) Engineers, who submitted false information affecting results of the tender.
 - 13) Engineers, who have not submitted the statement about meeting conditions of the eligibility to take part in the tender or their statement contains mistakes, highlighted in Chapter V.
 - 14) Engineers, who have not paid tender security, also for the period of extended tender, or have not agreed to extend the tender.
 - 15) Engineers, when it becomes apparent that their participation in the tender or later realization of the contract constitutes a risk to the state security of Poland.
The Employer will notify at the same time the Engineers, who have been excluded from the tender, giving the clear actual and legal reasons.
3. The Employer will reject the tender offer, if:
 - 1) it is illegal,
 - 2) the content of the offer does not comply with the Terms of Reference - TOR (The Employer is unable to correct the offer),
 - 3) the offer is against honest competition, as per regulation to eliminate unfair competition,
 - 4) the offer price is exceptionally low,
 - 5) the offer has been submitted by the Engineer, who has been excluded from tender,
 - 6) it contains significant mistakes in calculation of the offer price,
 - 7) the Engineer within 3 days from the time of notice has not agreed to correct an obvious omission in calculation of the offer price,
 - 8) it is invalid due to other legal regulations.
 4. The offers, which have not been rejected, will be evaluated as per criteria determined in TOR.
 5. The Employer will choose the offer using the criteria determined in TOR.
 6. The selection of the offer will be done as per following criteria:

No.	Description of Criteria	Evaluation points	Weighting Percentage Value
1.	Price	Lowest Price: 100 points Other offers calculated as follows: Lowest Price ----- x 100 Offer Price	80 %
2.	Day works of Engaged Personnel	Highest number of day Works: 100 pts Other offers are calculated as follows: Number of day works for the offer ----- x 100	20 %

No.	Description of Criteria	Evaluation points	Weighting Percentage Value
		Highest number of day works	

7. The points received by the Engineers for each criterion will be calculated in the percentage format and then addend together.
8. The Employer will round the results to 2 decimal points. If the results of two or more offers are the same, the Employer will not round the results, unless the distinction will be still impossible.
9. If the offers will be the same the lowest price will prevail.
10. The offer will be valid for 90 days.
11. The validity start day will be the deadline for submission of tender offers.
12. During the evaluation of offers the Employer may ask the Engineer to submit an explanation concerning the submitted offer.
13. The Employer will correct the obvious editorial mistakes in the offer, obvious calculation mistakes, accepting results of correction, and other mistakes, which make the offers incoherent with TOR, but not affecting in significant way content of an offer – immediately informing about such correction the Engineer, whose offer has been corrected.
14. The proposal of the best offer will be submitted to the Board of Directors of Szczecin and Świnoujście Seaport Authority.
15. Immediately, after selection of the best offer the Employer will inform all the Engineers who submitted the offer about:
 - 1) Selection of the best offer, giving the name (company), address and justification of such choice,
 - 2) Engineers, whose offers have been rejected, giving the actual and legal justification;
 - 3) Engineers, who have been excluded from the tender, giving the actual and legal justification.
16. The Employer will cancel the tender if:
 - 1) no valid offer has been submitted;
 - 2) the important changes in circumstances occurred, which indicate that the tender or realization of the Contract is not in the best public interest, and what could not be foreseen earlier;
 - 3) the tender has a legal loop hole, which does not allow the parties to enter the Public Order Agreement.
17. If the tender is cancelled the Employer will notify all the Engineers, who:
 - 1) Bided in the tender – in case of cancellation of the tender before the deadline for submission of offers,
 - 2) Submitted the offers – in case of cancellation of the tender after the deadline for submission of offers, giving the actual and legal reasons.

CHAPTER XV Entering Contract Agreement and Conditions of realization of Contract

1. **Information about formalities, which need to be completed to enter the Contract Agreement.**
 - 1) The Engineer, whose tender offer has been selected, shall immediately, after being notified, contact the Employer to arrange the date for signing the Contract.
 - 2) The Engineer shall submit the Performance Security by the date of signing the Contract.
 - 3) The Engineer will enter the Agreement as per draft attached to the Terms of Reference Appendix no. 8.
 - 4) In case of limited companies the documents required by the art. 230 of the Trading Companies Code (according to the company capital - a Partners Resolution, Company Agreement, Resolution of the General Assembly).
2. **Date and place of entering the Contract Agreement.**

The Agreement will be entered in the Employer's Headquarters – ul. Bytomska 7, Szczecin, before expiry of validation of the offer, not sooner than 10 days from the day of notification about award, or after completion of the procedure, which is described in Chapter XVI – Statement about Legal Protection.

3. The Engineer, prior to signing the Contract Agreement, will submit the Professional Indemnity Insurance, which will cover the compensation for the lack of adequate knowledge, incompetence of the personnel, mistakes while performing duties, lack of accuracy and diligence, which caused financial damage to the Employer, or bad quality or delays. The liability should not be less than 15.000.000,00 PLN.

a) The policy must cover the entire period of the Contract.

4. Performance Security.

- 1) The Contract awarded Engineer shall submit the Performance Security at the value of 10 % of the Contract Price. It will be used in the event of failure to complete the Contract or inappropriate completion of Contract.
- 2) The Performance Security can be submitted by one of the methods, as per Engineer choice:
 - cash,
 - bank bonds or saving institution bonds, which made security bonds in cash,
 - bank guarantees,
 - insurance guarantees.
- 3) The Employer does not accept the Performance Security brought in bill bonds from the bank or saving institutions, by lien of the local authorities bonds issued by the Treasury or local authorities, or by constitution of register lien based on regulations of lien or register lien.
- 4) The Security cash shall be paid to the account at Bank PEKAO S.A. III O/Szczecin no. 28 1240 3826 1111 0000 4403 0937 Zarządu Morskich Portów Szczecin i Świnoujście SA.
- 5) If the Performance Security is brought in cash, it will be held at the interest bearing account.
- 6) The cash Performance Security will be returned with interest, reduced by the account maintenance cost and the bank cost for the money transfer.
- 7) During the contract the Engineer can change the form of the Performance security to any combination of the options indicated above - point 3), provided that the security continuity is maintained and the value of security is not reduced.
- 8) The Employer will return the Performance Security within 30 days from the day of completion of the Contract and acceptance of Performance.
- 9) In case of non cash performance security it will cover 10% of the Contract Price and it will be for the period from signing the contract to the 30 days after planned completion of the contract.
- 10) The bank and insurance guarantees must contain the particulars: „the guarantee is independent, non-conditional, non-disputable, paid on each call.”

CHAPTER XVI Statement about Legal Protection

1. Any disputes connected to the Tender will be mediated by the Adjudication Board, according to the rules introduced in the Adjudication Board Statute, which constitutes Appendix 7 to the Terms of Reference. Due to the need for ruling out an undesired prolongation of unresolved disputes the Engineer and the Employer are requested to file immediately their claims to the Adjudication Board, which is introduced in point 1. The Engineer suit must be filed as per rules set in the Adjudication Board Statute within 7 days after the Contractor becomes aware or should have become aware of the circumstances giving rise to the claim. The suit filed after this time will be rejected.
2. The Engineer is entitled to file the suit to the Adjudication Board against the Employers action, which results in:
 - 1) description of subject of tender, criteria or conditions for eligibility to take part in tender,
 - 2) exclusion from the tender,
 - 3) rejection of tender offer,
 - 4) selection of the best offer.
3. The Engineer can file the suit only after submission of statement that the Engineer accepts the Statute of the Adjudication Board, and the acceptance that the Adjudication Board as a governing body for every dispute connected to the tender.

4. The Agreement for the Contract will not be entered until Adjudication Bard issues the Verdict. Filing the suit after the deadline or without observing the rules set in point 2, can not stop the Employer from entering the Contract Agreement.
5. The point 1 of this Charter is a reference to the art. 1161 of the Law of 17 November 1964 Civil Law Code (Journal of Laws of 1964, no. 43, item. 296, as amended.)