



Łukasiewicz  
PORT  
Polski Ośrodek  
Rozwoju  
Technologii



Ref. no. 0227/2024/W

Wroclaw, dated: 7.02.2024

## To the Contractors

### **Regarding: public procurement procedure for “Provision of patent attorney services for Łukasiewicz – PORT within the Virtual Research Institute” Case no.: PO.271.114.2023**

Sieć Badawcza Łukasiewicz – PORT Polski Ośrodek Rozwoju Technologii (Łukasiewicz Research Network – PORT Polish Centre for Technology Development) pursuant to Article 260 of the Act of 11 September 2019 on Public Procurement (Journal of Laws of 2023, item 1605, as amended; hereinafter: PPL) hereby informs that the tender procedure has been cancelled on the basis of Art. 255 (3) of the Public Procurement Act, i.e. that the lowest bid exceeds the financial amount that the Contracting Authority intends to dedicate for financing the contract.

#### Justification:

The Contracting Authority informs that 5 bids have been received in the procedure.

The tender with the lowest price among the non-restricted tenders, i.e. tender no. 1, submitted by Maiwald GmbH, Elisenstr.3 80335 Munich, Germany, for the amount of PLN 3,882,150.15 (a bid of EUR 905,500.00 converted at the average euro exchange rate of the National Bank of Poland on 28.12.2023, i.e. PLN 4.2873, in accordance with point 23 of the Tender Regulation), while the contracting authority intended to allocate for the financing of the contract the amount of PLN 2,262,845.76.

Simultaneously, the contracting authority informs that:

- 1) Offer no. 2 submitted by: Finnegan Europe LLP, 1 London BridgeSE1 9BG UK, London United Kingdom, was rejected on the basis of 226(1) para. 3) of the PPL Act, i.e. it does not comply with the provisions of the Act.

#### Justification:

The Economic Operator has submitted an offer including the following documents Tender Form according to Annex 1 to the ToR and Evaluation



DOFINANSOWANO ZE ŚRODKÓW  
FUNDUSZU POLSKIEJ NAUKI



WIB Department | [www.wib.port.org.pl](http://www.wib.port.org.pl), [wib@port.lukasiewicz.gov.pl](mailto:wib@port.lukasiewicz.gov.pl)

Sieć Badawcza Łukasiewicz – PORT Polski Ośrodek Rozwoju Technologii (Łukasiewicz Research Network – PORT Polish Centre for Technology Development)

54-066 Wrocław, ul. Stabłowicka 147, Tel: +48 71 734 77 77, Fax: +48 71 720 16 00

E-mail: [biuro@port.lukasiewicz.gov.pl](mailto:biuro@port.lukasiewicz.gov.pl) | NIP: 894 314 05 23, REGON: 386585168 | District Court for Wrocław – Fabryczna in Wrocław, VI Commercial Division of the National Court Register under KRS No.: 0000850580

Form according to Annex 10 to the ToR. The document of the tender form has been provided with a qualified electronic signature, while the evaluation form and the other annexes have not been signed.

The Contracting Authority has indicated in the in clause 11.9.2) of the ToR that the contents of the tender shall consist of at least: **"Completed and signed quotation form – Appendix 10 to the ToR."**

According to the case law of the National Appeal Chamber (NAC), the assortment price form (in this case, the pricing form) is part of the tender in the strict sense, and therefore the absence of a proper signature allows the conclusion that the tender was not submitted in the electronic form provided for in Art.63 of the Public Procurement Act, nor in the electronic form accompanied by a trusted or personal signature (judgment of the National Appeal Chamber of 26 July 2015, KIO 2458/15). This form is subject to reservation by the PPL law under pain of nullity.

Therefore, by not signing the Valuation Form, the Bidder has submitted a bid in a manner inconsistent with Art. 63 section 2 of the PPL, and therefore the Offer is subject to rejection on the basis of Art. 226 par. 1 item 3 of the PPL.

It should also be pointed out that the Economic Operator has changed the estimated quantity of individual items (i.e. the quantity in column V for line "A") in the evaluation form in Annex 10 to the ToR: 1, 4, 5, 6, 9) which does not comply with the terms of the contract in this procedure.

It should also be noted that the Economic Operator has not submitted with its tender a list of additional persons in accordance with Annex No. 11 to the ToR.

- 2) Bid number 3 of the bidder: Vossius and Partner Patentanwaelte Rechtsanwaelte mbB, Siebertstrasse 3, Munich Germany 81675 was rejected pursuant to 226(1) section 5) of the PPL Act, i.e. it does not comply with the contractual terms.

Justification:

Together with the tender, the economic operator shall submit, inter alia, a completed tender form, signed with a qualified electronic signature in accordance with Annex 1 of the ToR, and a completed evaluation form, signed with a qualified electronic signature in accordance with Annex 10

of the ToR. In the tender form, the Economic Operator indicated the net price for performing the subject of the contract: EUR 1,033,000 to EUR 1,902,000, and in gross amounts: The range of prices specified by the Economic Operator for each item in the estimate in the Pricing Form is from 1,229,270 to 2,263,380 EURO. In column E, the Economic Operator indicated the net unit values as unit prices within these price ranges and calculated the values in columns F and I as the respective "Net value" and "Gross value" within the price ranges.

Pursuant to item 12.1 of the ToR, the Economic Operator had to indicate unit prices in the price schedule and according to point 2.6 of the ToR, the contracting authority specified that this tender did not allow for the submission of variant bids. As a result, the exact price offered by the supplier for the performance of the subject matter of the contract is uncertain (unit prices and the total price are given in ranges), therefore this tender has not been prepared in accordance with the terms of the contract and is not comparable with other tenders submitted in this procedure.

It should also be noted that the Economic Operator has declared in item 4.6) of the Bid Form that it is aware of the contents of the Model Contract but does not accept them and has attached its own revised Model Contract. The Offer is therefore also not in compliance with the provisions of the Contract in this respect.

- 3) Bid number 4 of the bidder: WTS Patent Attorneys Witek, Snieszko & Partners Ul. Tamka 34/25 00-355 Warsaw, SKM-IP PartGmbB Oberanger 4580331 Munich, Germany, was rejected on the basis of 226(1)(a). 3) of the PPL Act, i.e. it does not comply with the terms of the Act.

Justification:

The Economic Operator has submitted a tender which includes the following documents, for instance: Offer form in accordance with Appendix No. 1 to the ToR and valuation form in accordance with Appendix No. 10 to the ToR. Mr Jan Krauss has applied an advanced electronic signature to the Bid Form document and the Quotation Form.

Pursuant to Article 63(2) of the Public Procurement Act, a tender shall, under penalty of nullity, be submitted in the following forms: in electronic form (signed with a qualified electronic signature certified by a qualified certificate within the meaning of Article 3(12) of the eIDAS

Regulation) or in electronic form with a trusted signature (within the meaning of the Regulation of the Minister of Digitalisation of 29 June 2020 on the trusted profile and the trusted signature) or with a personal signature (within the meaning of Article 2(1)(2) and (9) of the Act of 6 August 2020 on personal identification cards). Tenders signed with an advanced electronic signature cannot be considered as one of these forms, and the tender is therefore subject to rejection under Article 226(1)(3) for failure to comply with the legal requirements.

- 4) Bid number 5 of the bidder: BG Kancelaria Prawno Patentowa Wojciech Gierszewski, Płowce 11, 80-153 Gdańsk, Schulz Junghans Patentanwälte PartGmbB, Grossbeerenstr. 71 10963 Berlin, Germany, was rejected on the basis of 226(1) section 10) of the PPL Act, i.e. it contains errors in price calculation

Justification:

The tenderer indicated the net price for the performance of the subject of the contract in the tender form submitted together with the tender and signed with a qualified electronic signature in accordance with Annex 1 to the ToR: EUR 112 800, gross: 172,800 euro, and in point 4.9) declared that: *the selection of the offer will not result in the contracting authority incurring a tax liability in accordance with the provisions on value added tax.* The Economic Operator has attached to the tender a partially completed quotation form signed with a qualified electronic signature in accordance with Annex 10 to the General Conditions. The supplier has only completed columns A-F and the document indicates that the net price for the requested item is 172,800 euro.

In accordance with paragraph 12.6 of the ToR: *In the event that the Economic Operator is not obliged to comply with the Value Added Tax Act in accordance with the applicable regulations, the provisions of clause 12.11 below shall apply and the Economic Operator shall be obliged to comply with them. In such a situation, in the quotation form, the Economic Operator should leave the VAT rate field empty or indicate not applicable, taking into account additional statements in the offer form as per point 12.11 below.* In accordance with paragraph 12.7 of the ToR: *the offer price indicated in the Bid Form and the prices indicated in the Quotation Form, shall include the applicable VAT, in accordance with the current tax regulations at the*

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*time of submitting the bids, provided that the applicable regulations concern the Economic Operator.*

Due to the fact that the above-mentioned documents contain contradictory information, the contracting authority is not in a position to correct a possible error in the tender in accordance with Article 223(2) of the PPL Act. The Economic Operator has indicated in the Offer that it is a VAT payer and has indicated two different net and gross amounts, while in the Quotation Form it has indicated only the net price (which is different from the one indicated in the Offer Form, but the same as the gross amount in the Quotation Form). However, the Economic Operator did not complete the evaluation form with regard to the VAT rate and the gross prices, even though he had indicated on the tender form that he was obliged to apply the VAT Act. In this situation, when determining the price, the Economic Operator is obliged to apply the VAT rate: of 23%, which they resigned from.

As stated in a commentary on PPL edited by Hubert Nowak and Mateusz Winarz and published by UZP in 2021: *The Economic Operator's incorrect determination of the VAT rate is an error in the calculation of the price. This is because the rate of VAT is an element of the price. (...) Irregularities in the calculation of the price by the supplier, consisting in the non-application or incorrect application of legal provisions (other than the PPL) which affect the evaluation of the tender, shall be considered as an error in the calculation of the price.* The Contracting Authority believes that such situation occurred and therefore the offer shall be rejected due to an error in the calculation of the price.

*We hereby inform you that legal remedies are available against the decisions of the Contracting Authority within the time limits and in accordance with the principles laid down in Section IX of the Public Procurement Act.*

*Prepared by: J Oczkowicz*