

Name of public contract:

Equipment for Development of Incremental Forming

Substantiation of the business terms and conditions pursuant to section 156, ss. 1 par. c) PCA

Business terms and conditions:

The Contracting Authority anticipates that the goods in this public contract will be funded exclusively from the Operational Programme “Research and Development for Innovations” of the European Regional Development Fund. Given the fact that the project is funded from EU funds, the Contracting Authority is obliged to lay down in the terms and conditions specific rules protecting the use of subsidy funds and to comply with them. In addition, the University of West Bohemia in Pilsen is an entity governed by the public law. As such, it is obliged to follow in all its relationships, including those governed by private law, e.g. the present public contract, the rules set out by the subsidy provider and the rules of public finance management stipulated in the national law. Based on the above mentioned facts, it is the duty of the Contracting Authority to set out such business and payment conditions which protect the public funds allocated to this project. The said contractual relationship is thus subject to a greater degree of public regulation and the standard commercial freedom of contract cannot be applied.

Based on the Rules for Selection of Contractors in the Operational Programme Research and Development for Innovations, which are binding for the Contracting Authority, all legal acts of the Contracting Authority in the project shall fulfil requirements for efficient spending, minimization of unpredictable costs (economy) and for achieving the project objectives at minimum costs (efficiency). Should the mentioned principles fail to be met in funding of this public contract or should the payment of the subsidy be precluded on other grounds, the Contracting Authority would be obliged to pay all the contractual obligations from its own resources, thus suffering a considerable loss.

Given the above mentioned duties of the Contracting Authority as the entity managing public financial resources, the Contracting Authority shall be required to apply in all contractual relations such arrangements, which provide adequate protection from mismanagement of funds. As a consequence of the above-mentioned duties imposed on the Contracting Authority by the public regulation, perfect balance cannot be expected between the parties’ obligations and the above restrictions must be accepted.

The Seller (the Bidder) undertakes to provide cost-free post-warranty consultancy by telephone, email or in written form, including remote diagnostics of essential parameters of the goods. The maximum response time shall be 48 hours, which is due to the need for rapid response in research and implementation projects which might be time-constrained. The Contracting Authority deems it necessary to be able, in cooperation with the Seller, to seek solutions to such potential problems, even after the warranty period of the Equipment expired, in terms of technical specifications in the Tender Documentation.

Communication in Czech or English is required due to the language capabilities of the Contracting Authority.

The Contracting Authority considers the contractual penalty amounting to 0.05 % of the total contractual price excluding VAT for each commenced day of delay as adequate, with regard to the volume of planned research and application projects, the completion of which might be compromised by the inability to solve equipment problems after expiration of the warranty period.

Invoice payment terms:

The Contracting Authority set the invoice payment term as 30 days from the date it was demonstrably delivered to the Contracting Authority. The Contracting Authority has a unilateral right to extend this period by up to 30 calendar days, depending on allocation of funds from the Operational Programme Research and Development for Innovations (OP RDI).

The Contracting Authority considers this 30-day period for payment of invoices as reasonable, non-discriminatory, adequate for both parties and consistent with terms commonly used in similar forms of business.

The right of the Contracting Authority to extend the period for payment by up to 30 calendar days, depending on allocation of funds from the Operational Programme Research and Development for Innovation is an expression of the Contracting Authority's duty to take all necessary measures to avoid ineligible expenses and related financial loss. The Contracting Authority is obliged to lay down in its terms and conditions specific rules protecting the use of subsidy funds and to comply with them, as described above.

With regard to the estimated value of the public contract and the expected need for development of such complex equipment by the potential suppliers, the Contracting Authority has decided to split the payment of the purchase price into three parts. The performance against the first part of the purchase price is to allow the Contracting Authority to verify the key function parameters of the equipment. The performance against the second part of the purchase price involves a functional check of the equipment at the factory. The rest of the purchase price shall be paid once all obligations the Seller arising from the Purchase Contract have been fulfilled.

For its protection, the Contracting Authority divided the purchase price into three parts, and set out the conditions for consideration and proportions of the parts so that the advance payment is significantly lower than one third of the price, and the final part of the purchase price (the final payment upon delivery, commissioning, etc) is higher than one third of the total purchase price.

Requirement for Supplier's third party indemnity insurance:

The Supplier is required by the Contracting Authority to take out third party indemnity insurance with regard to potential risks, such as those occurring during the installation, handling on the RTI's premises, etc., and the risks related to other possible complications in operation of the equipment, which could lead to damage.

Requirement for a bank guarantee:

Not required by the Contracting Authority.

Definition of the warranty period:

The Contracting Authority has defined the warranty period as 24 months from the date of due acceptance of the goods. In the domain of such specific research equipment, the mentioned duration of the warranty period can be considered adequate and normal. The Contracting Authority also requires post-warranty consultancy services in the extent necessary for the effective use of the equipment for the planned research and development activities.

Contractual penalty for Supplier's default:

The contractual penalty for the Supplier's default in performance of the contract has been set to 0.5 % of the purchase price for each commenced day of delay. In case of default in resolving defects within the warranty period, the Contracting Authority set out a contractual penalty of 0.5% of the purchase price for each day of delay commenced.

The amount of the contractual penalty has been set by the Contracting Authority with regard to the scope of performance and to the fact that this delivery is part of an extensive project where any delay in performance can have a significant negative

effect on the implementation of the entire project.

Contractual penalty for late payment of invoices by the Contracting Authority:

The amount of the contractual penalty of 0.05 % of the outstanding amount for each day of delay commenced has been determined by the Contracting Authority which is an entity managing public financial resources with an obligation to comply with strict rules for economy, efficiency and effectiveness of their use. Thus, the contractual penalty can be considered commensurate with the nature of the subject matter of this public contract and with the status of the Contracting Authority as an institution governed by the public law managing subsidy resources.

Substantiation of other business terms and conditions:

The obligation of the Bidder, with whom the contract for performance of this public contract will be concluded, to cooperate in the performance of financial control under the Act No. 320/2001 Sb., on Financial Control.

Said obligation arises from Appendix 2 to the Guides for Applicants and Recipients of the OP RDI - the Rules for Selection of Contractors <http://www.msmt.cz/file/14585> and reflects the specific nature of the entire contractual relationship in performing the public contract, as described above.

Conditions for withdrawal from contract.

In the contractual terms and conditions, the Contracting Authority formulates a number of reasons for withdrawal from the contract on the side of the Contracting Authority. The aim of these provisions is not to discriminate against the other party and/or violate the private-law principles of equality between contracting parties. As stated above repeatedly, the subject matter of this public contract will be funded with a subsidy, and the Contracting Authority is thus obliged to ensure maximum effectiveness and efficiency in managing the public funds, including the obligation to prevent damage.