

Questions and Answers

The Design, Development and Implementation of Container Positioning System at BCT” – EU/11/ZI/ZZ/2011 (3rd approach)

Questions dated 29/10/2014

1. The Bidder raises a question with regard to § 3 clause 7 of the Draft Agreement, that is, the Bidder proposes that a deadline is set for the approval of a subcontractor by the Contracting Party.

Proposed provision to be added:

The Contracting Party shall give approval to or rightfully oppose the hiring of a subcontractor by the Contractor within 7 days from the submission of a proposal to hire a particular subcontractor. Failure by the Contracting Party to respond in a timely manner means that the proposed subcontractor has been accepted.

Answer:

This provision is superfluous, because the Subcontractor is named in the bid.

With the acceptance of the offer, the Contracting Party accepts the subcontractor whose actions the Contractor is to be held liable for.

2. The Bidder raises a question with regard to § 3 clause 8 of the Draft Agreement, that is, the Bidder asks if the Contracting Party considers the Contractor's business liability insurance with an insured sum exceeding the value of the subject matter of the Agreement to meet the criteria set by the Contracting Party in the invoked provision of the Agreement.

Answer:

The level of liability in the Contractor's business liability insurance policy is defined in the ToR section 6.1.9

3. The Bidder requests a more precise formulation of the provision set out in § 4 clause 12 of the Draft Agreement to state that with regard to the supply of standard software, the Contracting Party shall be granted licenses on the same terms and conditions as the licenses granted by the producer of the respective software. The Bidder wishes to underline that copyrights in finished products cannot be transferred. It will only be possible to transfer to the Contracting Party copyrights for certain components of the software developed to meet their particular needs.

Proposed provision to be added:

'For the avoidance of doubt, the Parties agree that with regard to the supply of standard software, the Contracting Party shall be granted a license on the same terms and conditions as the license granted by the producer of the software. Furthermore, the Parties unanimously agree to exclude statutory warranties in relation to standard licensed software, and to apply the terms and conditions of the respective software producer's quality guarantee in this regard.'

The Bidder requests the explicit exclusion of statutory warranty in relation to software products. The amendment's legitimacy is explained by referring to the provisions of the Civil Code provisions imposing the statutory warranty directly on the Contractor who is unable to meet their obligations there under in respect of software products developed by third parties, because they are not entitled to interfere with the software architecture. Moreover, the licensee may not raise any statutory warranty claims for defective items sold, firstly because in the event of granting a license there is no such thing as a sale within the meaning of Article 535 of the Civil Code, secondly because software is not an item, thirdly because in the event of granting a license absolutely no rights are sold (assigned), as they remain with the licensor. Conclusion is such that software quality defects do not give grounds for statutory warranty claims for defective items (or rights) sold, because the granting of a license is not a sale within the meaning of the Civil Code provisions; it constitutes a separate and specific agreement. Consequently, a computer programme cannot be deemed to be subject to traditional sale, if the intention is to grant someone the right to use the programme within the defined area of use. Besides, the Bidder may not grant a standard software license with right to modify to the Contracting Party. In this regard, only a producer license can apply, while at the same time the Contractor is required to declare that the entire System will meet the level of functionality required by the Contracting Party.



Answer:

The cost of licensing, support and producer warranty for standard software must be given in the bid according to the Appendix 5 to ToR.

The Contracting Party allows for the use of standard software under the producer license in the case of which the bidder must submit the licensing, support and software producer warranty terms and conditions together with the bid.

The warranty/licensing liability will be defined in detail at the bid evaluation stage.

4. The Bidder raises a question with regard to § 6 clause 7 of the Draft Agreement attached to the ToR, that is, the Bidder finds the period of 14 working days allowed to report any reservations with regard to the implemented CPS system as being too long. The Bidder requests that the period of 14 working days be replaced with a period of 14 calendar days allowed to submit any comments or reservations regarding the system by the Contracting Party.
5. The Bidder, as per analogy to the earlier clause 3 containing a request for a more precise formulation of the provision set out in § 4 clause 12 of the Draft Agreement, also requests that the provision of § 7 clause 2 of the Draft Agreement clearly state that with regard to standard (ready-to-use) software the licensing terms and conditions of the producer of the respective software shall apply.
6. The Bidder raises a question with regard to § 7 clause 6 of the Draft Agreement, that is, the Bidder requests that the provision set out therein be complemented by a proviso that the time limit for removal of defects as reported by the Contracting Party shall under no circumstances be shorter than 7 calendar days.

Answer:

The foregoing clauses 4, 5, 6 will be agreed with the selected contractor at the Agreement signing stage.

7. The Bidder raises a question with regard to the acceptance of works procedure as defined in the Draft Agreement; the Bidder requests that § 11 of the Draft Agreement include a proviso that the final acceptance protocol can be signed by the Contractor unilaterally and effective for the Contracting Party in the event that the Contracting Party does not participate in the acceptance procedure and they do not make any reservations.

Proposed provision to be added:

The Contracting Party is obligated to accept the works constituting the Subject Matter of the Agreement within 7 days of receipt of notification from the Contractor about their readiness for the acceptance. In the event that the Contracting Party does not accept the works in a timely manner as defined in the foregoing sentence, the Contractor shall again call on the Contracting Party to accept the works by giving the Contracting Party another 3 days to accept the works constituting the Subject Matter of the Agreement. Unjustified refusal by Contracting Party to accept the works constituting the Subject Matter of the Agreement or to participate in the final acceptance of works procedure after failing to meet the above given deadlines, shall give grounds for the Contractor to unilaterally sign the protocol confirming the final acceptance of the works constituting the Subject Matter of the Agreement being effective for the Contracting Party, and to invoice the Contracting Party for the works performed.

Introduction of this provision applicable to the Contracting Party is justified, because the works constituting the Subject Matter of the Agreement are deemed executed upon their final acceptance without any defects being reported or reservations being made, therefore the Contractor shall not suffer the consequences of the Contracting Party being in delay in accepting the works.

Answer:

Provisions set out in § 11 as well as in §4 clause 10 describe the acceptance procedure;



The acceptance date of specific stages of works and the date of final acceptance shall be also the 7 (seven) days from the day on which the Contracting Party was informed of Contractor's readiness for the acceptance or new acceptance if no notes according to performed works were received from the Contracting Party. In such case the Contracting Party shall sign respective protocol of acceptance without reservations.

8. The bidder also asks the Contracting Party to respond to the following question:

In relation to the requirement to define the scope of works subcontracted and to give the name of the subcontractor, the Bidder asks the Contracting Party, which company documents of the subcontractor may be required by the Contracting Party at the bidding stage. Will it be sufficient to give the name of the subcontractor's company and to attach the excerpt from a business register for the relevant subcontractor?

Answer:

Subcontractor details shall be submitted in accordance with the requirements set out in the Appendix 1 to ToR – Bid form, item 9

9. Terms of reference document Chapter 8.2

At the discretion of the Contracting Party, the tender bond may be provided:

- 1) In cash, by a bank transfer;
- 2) As bank guarantees.

Please clarify if it is allowed to provide tender bond as insurance guarantee?

Answer:

Contracting Party allows to provide the tender bond in form of insurance guarantee .

10. Terms of reference document Chapter 16.3

The Performance Bond can be provided by the Contractor in one or more forms:

- 1) In cash, by a bank transfer;
- 2) As bank guarantee issued by a bank having its registered office or branch office in Poland or fronted in Poland.

Please clarify if it is allowed to provide Performance Bond as insurance guarantee, issued by insurance company, registered in other EU country?

Answer:

Contracting Party allows to provide the Performance Bond in form of insurance guarantee, issued by insurance company, registered in other EU country.

11. Terms of reference document Chapter 17

The Warranty Bond can be provided by the Contractor in one or more forms:

- 3) In cash, by a bank transfer;
- 4) As bank guarantee issued by a bank having its registered office or branch office in Poland or fronted in Poland.

Please clarify if it is allowed to provide Warranty Bond as insurance guarantee, issued by insurance company, registered in other EU country?

Answer:

Contracting Party allows to provide the Warranty Bond in form of insurance guarantee, issued by insurance company, registered in other EU country.



12. Please confirm that the Contractor may use the existing cables located in the lighting posts?

Answer:

Yes, the Contractor (as the technical conditions allows) can use the existing cables with the provision , any changes and costs for the project are to the Contractor.

13. Please explain how many BCT employees should be trained and in what scope?

Answer:

The training is designed to teach BCT employees to service and work with the CPS system, both systemically and technically. Participants of the training will be employees of IT, Operations and Technical - max. 20 people .

14. In accordance with the technical specification, RMG-2 does not have PLC. Please explain whether RMG-2 should be retrofitted with PLC in order to enable the implementation of the CPS?

Answer:

Yes, in accordance with the specification, RMG-2 is part of the CPS, and all CHE should be fitted with all necessary devices to enable the work of the CPS system.

15. Does BCT allow installation of AccesPoints power cables outside the light posts in the UV pipes or will it be necessary to put cables inside the light posts.

Answer:

We prefer the installation inside the light post column. Ultimately, however, BCT permits the installation of wiring in the UV tubes outside.

Questions dated 03/11/2014

16. Please explain the binding minimum warranty period . Bidder indicates that, in paragraph 3.3. Terms of Reference (TOR) The Purchaser writes about 12 months as the minimum warranty period , while in paragraph 17 of the TOR is an indication that the time of the warranty is 36 months. Reply to the question at issue is important, because a direct impact on the bid price offered.

Answer:

The required minimum warranty period is 12 months as stipulated in point. 3.3.of ToR

The duration of the warranty bond referred to in point. 17 TOR depends on the conditions of the guarantees given by the Contractor (minimum 12 months).