

## **PROCEDURE OF CONCLUDING CONTRACTS IN PCC Intermodal S.A.**

Applies to projects co-financed from the EU funds under  
the Infrastructure and Environment Operational Program

## § 1 General provisions

1. Subject to item 3, this procedure regulates the mode of tender procedure conducted as a consequence of announcement of the tender procedure by PCC Intermodal S.A. (hereinafter referred to as: "PCC", "the Company" or the Contracting Authority).
2. The tender procedure is carried out in accordance with regulations of the Civil Code, Article. 70<sup>1</sup> -70<sup>5</sup>. Principles, including conditions of the tender procedure are determined by the present procedure. The tender procedure is governed by the law of Poland.
3. In the case of orders with the value below 14 000 EUR (or equivalent of this amount in other currencies), the auction or tender mode specified in Article 70<sup>1</sup> - 70<sup>5</sup> of the Civil Code does not apply. In the case of orders with value exceeding the equivalent of 2 000 PLN and not exceeding the equivalent of 14 000 EUR contracts will be concluded in writing. The procedure of market research will be conducted with all due diligence, with observance of the principle of evenness, openness, competitiveness, transparency.

The purpose of conducting market research is to ensure effectiveness in incurring expenses co-financed from the funds of the EU under the Infrastructure and Environment Operational Program. The procedure of market research will be each time justified and documented in writing. The procedure of market research includes the following elements: addressing to at least 2 potential contractors the request for quotation; subject to passage 5 - the need for collecting at least two valid bids (optionally printouts of the web site presenting the bid are acceptable).

4. Documents confirming market research can assume the form of: letter from the supplier or a printout of an electronic letter, or a printout of a website or a printout of summary from the purchasing platform of PCC, excluding a memo from the phone conversation conducted.
5. The research procedure is valid also in the case of receipt of only one valid bid when the request for quotation has been posted on an open-access website.
6. In the event when the Contracting Authority has applied the mode indicated in Article 70<sup>1</sup> -70<sup>5</sup> of the Civil Code and then has cancelled the procedure due to the lack of bids or rejection of all bids due to a discrepancy with the description of the subject of the order, the Contracting Authority waives application of the mode indicated pursuant to Article. 70<sup>1</sup> -70<sup>5</sup> of the Civil Code and agrees to conduct the procedure in accordance with the requirement of market research, observing, at the same time, the principle of effectiveness as well as on condition of the lack of significant changes in primary conditions of the order.

7. Internal bodies authorized to organise and to conduct the tender procedure in PCC are the Department for Investments and Analyses and the Tender Commission.
8. Employees of the Department for Investments and Analyses, members of the Tender Commission and the Company Management Board prior to the beginning of the works related to organization of the tender procedure submit declarations on the lack circumstances referred to in Article 17, passage 1 of the Public Procurement Law.
9. The Tender Commission, for the evaluation of the sent bids and deciding on selection of the Bidder, appoints the Company Management Board.
10. Employees of the Department for Investments and Analyses and Members of the Tender Commission are obliged to keep business and trade secret.
11. The Chairman of the Tender Commission is a member designated in the resolution of the Management Board appointing the Tender Commission.
12. The members of the Tender Commission are: The Employee of the Department for Investments and Analyses and the Employee of the organizational unit for the benefit of which the tender is organized - the Project Manager or the Terminal Manager, as well as the Employee of the Management Board Office. The Commission may be, as necessary, extended by additional Members.
13. The Tender Commission will make a final decision, taking account of price terms as well as fulfilment of other conditions defined in the specification, according to the provisions of § 3.

## **§ 2**

### **Principles of conducting the tender procedure**

During the conducted tender procedure, the following Principles are applied:

1. openness - in particular understood as posting an announcement of the tender procedure in the press, on the Internet, including in the Official Journal of the European Union (TED) and a publicly available place in the registered office of PCC,
2. non-discriminating description of the subject of the order - in particular understood as a ban on including in the description provisions that may prefer specific contractors and, in the case of the need for indication of specific trademarks, patents or origin, obligatory approval of equivalent solutions,
3. equal access for business entities from all Member States - in particular understood as a ban on putting forth requirements causing discrimination in respect of contractors from other Member States. For instance requirements will not be set forth, imposing:

- a) possession by the Contractor experience in performing the order in Poland,
  - b) possession by the Contractor experience in execution of orders co-financed under the EU funds or national funds.
4. mutual recognition of diplomas, certificates and other documents confirming possession of qualifications, in accordance with the Polish law,
  5. relevant terms - in particular understood as determination for submission of bids of the deadlines allowing the contractors to become familiar with the description of the subject of the order, prepare and submit the bid,
  6. transparent and objective approach - in particular understood as obligation to exclude, on the part of the beneficiary, from preparing and conducting tender procedure, persons, in relation to whom the premises occur as indicated in Article 17, passage 1 of the Public Procurement Law Act.

### **§ 3**

#### **Subject of the tender procedure**

1. The subject of the tender procedure results from implementation of the adopted strategy of development of the company or other internal investment or repair needs. Investment or repair needs are reported by managers of departments or terminals to the Department for Investments and Analyses.
2. Before the announcement of the tender procedure, specification of the subject of the tender procedure will be prepared.
3. Specification of the subject of the tender procedure is prepared by the Department for Investments and Analyses in cooperation with the Management Board Office and accordingly substantively prepared organizational units of the Company Management Board.
4. Specification of the subject of the tender procedure should characterize the subject of the tender procedure in a complete and exhaustive manner, i.e. in such a manner that during the tender procedure it is possible to compare all necessary data.
5. After preparing the specification of the subject of the tender procedure, the Department for Investments and Analyses submits the specification to the Management Board for acceptance.
6. After approval by the Management Board, the tender procedure is announced.
7. Specification of the subject of the tender procedure will contain in particular:
  - name, registered office and address of the company,
  - date, time, method and place of delivery of bids,

- description of the subject of the tender procedure along with sufficient technical specification,
- amount of the bid bond and the manner of its payment,
- the possibility of publication in the announcement of the tender procedure changes or cancellation of its conditions pursuant to Article 70<sup>1</sup> § 3 of the Civil Code
- fixing a date for implementation of the object of the tender procedure,
- terms of payment,
- criteria of selection of bids, and in the case of several bids, also their value,
- reservation that the Contracting Authority is authorized to cancel the tender procedure or leave the tender procedure without decision without announcing the reasons,
- information on documents required by the Contracting Authority (e.g. extract from the National Court Register, certificates from Social Security (ZUS) or the Tax Revenue Office),
- indication of a contact person/persons as to the procedure or address data to which written inquiries concerning the specification should be sent.

#### **§ 4**

##### **Announcement of the tender procedure**

1. The Department for Investments and Analyses presents to the Company Management Board for approval the draft announcement about the tender procedure.
2. The announcement of the tender procedure is open and will be posted on the website of PCC, the Official Journal of the European Union (TED), in the registered office of the Company - at a publicly available place, in the Polish national journal and on the purchasing platform of the PCC group.
3. Announcement of the tender procedure will contain above all:
  - description of basic information on the order which is to be granted and a manner of granting it, along with the invitation to contact the Contracting Authority;
  - information on the place of publication of the full content of the announcement of the tender procedure (auction) (e.g. link to the website of the beneficiary/entity);
  - terms requested from contractors;
  - documents confirming their fulfilment;
  - bid evaluation criteria;
  - short description of the subject of the order;
4. In the case when the tender procedure is preceded by preliminary selection of participants, detailed information referred to in § 3 item 7 will be made available to the entities selected in the first stage of the procedure.

**§ 5**  
**Submission of bids**

1. The date and the manner of submitting bids will be stated in the specification.
2. The bids will be submitted at the place indicated in the specification.
3. Method of submission of the bid will be specified in the specification. The bids delivered after the indicated date will be rejected. A decisive factor is the date of receipt of the bid at the location indicated in the specification and, in the case of indication of the purchasing platform as a place of submission of the bid - date of publication of the bid on the purchasing platform of PCC.
4. The Contracting Authority reserves the right to organize the process of submission of bids and select of the most beneficial bid via electronic purchasing platform of PCC group, in the form of an electronic auction.
5. In the case of determination in the announcement and the specification that the Contracting Authority uses the auction (electronic) mode, the Contracting Authority will indicate documents which the Bidder should submit to take part in the auction by means of the purchasing platform of PCC group and will make available the regulations of the electronic auction. The Contracting Authority will define, above all, appropriate deadlines for submission of documents authorizing to submit bids in an electronic form, the date of conducting the auction and the deadline for submission of complete and binding bids in hard copy after the end of the auction.
6. The bids should be signed by a person or persons authorized to represent the Bidder. In the case of submission of bids in an electronic form they must be posted on the purchasing platform of PCC group by the person authorized to do so (the bidder is obliged to attach to the electronic bid the scan of authorization).
7. The bid should be prepared and submitted according to the guidelines presented in the specification and in the regulations of the electronic auction (in the case of using the purchasing platform of the PCC group and the electronic auction). Bids inconsistent with the requirements presented by the Contracting Authority will be rejected.
8. Unless the specification provides otherwise, the bids submitted in Polish are binding.

**§ 6**

**Rights and responsibilities of the Bidder and the Contracting Authority**

1. The Bidder is entitled to contact in the cases substantively related to the tender procedure with the person/persons stated in the announcement or the specification of the tender procedure or the submit written inquiries to the address indicated in the announcement.

2. In order to ensure better effectiveness and speed, any inquiries and answers to inquiries will be delivered in the form of electronic correspondence to the addresses indicated in the announcement and provided by the Bidder.
3. The Contracting Authority will respond to the questions asked by the Bidder as provided in the announcement or the specification.
4. The Bidder is obliged to timely submission of the bid bond in the amount stated in the announcement of the tender procedure, under pain of rejecting its bid in the tender procedure.
5. Information about a possible need for payment of the bid bond and its amount will be determined in the announcement. Other details concerning the bid bond, for example, such as the date, the method of its payment, the bank account number will be stipulated in the specification.
6. According to Article. 70<sup>4</sup> §2 of the Civil Code if a participant of the tender procedure despite selection of its bid, refrains from concluding the Contract whose validity depends on fulfilment of particular requirements provided in the Act, the organizer of the tender procedure may keep the collected amount (the bid bond) or claim satisfaction from the object of security. In other cases, the paid bid bond should be immediately returned, and the established security will expire. If the organizer of the tender procedure refrains from concluding the Contract, its participant whose bid has been selected, may request payment of a double bid bond or repair of the damage.
  - 6.1. The Contracting Authority may stipulate in the specification of the subject of the tender procedure, the obligation to submit the bid bond for performance bond of obligations of the Bidder other than concluding the contract, in particular obligations specified in the content of the bid in the event of its acceptance. In the event when the Bidder fails to perform the obligations, secured with the bid bond, the Contracting Authority may keep the collected amount (the bid bond).
7. The Contracting Authority will refund the bid bond to the Bidders whose bids have not been selected, on the day indicated in the specification, however, not later than within 14 days from the day of decision or cancellation of the tender procedure. The Contracting Authority may fix, on the terms specified in the specification of the subject of the tender procedure, a later date of returning the bid bond to the Bidders whose bids can still be accepted in the period of their validity, in connection with withdrawal from the contract or from its conclusion with the Bidder, whose bid has been accepted or was taken into consideration in the first place.
8. The bid bond paid by the Bidder whose bid has been finally recognized as the best, will be returned within 14 days after signing the contract, unless, in accordance with the content of this contract, the bid bond must be refunded at a later date or is credited to cover another benefit or kept under passage 6 (1).

9. The persons acting on behalf the Bidders, not being at the same time persons authorized to their representation should present upon each request an appropriate written power of attorney granted by the authorized persons.

## **§ 7**

### **Selection of applications and selection of the bid**

1. If the announcement of the tender procedure provides the initial selection of its participants, the tender procedure will comprise of two stages:
  - The first stage is collecting applications of bidders and conducting their analysis in terms of compliance with criteria with emphasis on the values assigned to the criteria. The criteria and their values are stated in the announcement of the tender procedure. The result of works at the first stage is the specification of applications according to fulfilment of the stated criteria and determination of an appropriate number of entities best meeting the above mentioned criteria, that will be invited to the second stage. The subsequent stage will be available to not less than 5 Bidders who have met the formal criteria and have obtained the best score according to the stated criteria for the first stage.
  - If, however, less than five Bidders applied for the first stage of the tender procedure and/or met the criteria, the second stage is open to all Bidders who have applied and meet the criteria.
  - In the second stage the entities selected at the first stage will be provided with specification of the subject of the tender procedure, with a request for sending bids in the specified time. After submission of the bids they will be assessed according to the criteria adopted in the specification.
  - The first stage of the tender procedure is conducted by the Tender Commission on the basis of collected applications and the Commission submits to the Management Board a list of entities qualified into the second stage. If none from among the submitted applications meet the criteria contained in the announcement, the tender procedure can be cancelled at this stage.
2. At the first stage, applications will be rejected that:
  - do not correspond to the conditions of the tender procedure,
  - have been submitted after the deadline for sending the applications,
  - do not contain the required appendices,
  - are illegible or raise doubts in substantive terms.

3. In the second stage, works are conducted by the Tender Commission. The Committee performs overt opening of the bids and readout of the prices. The opening may be attended by a representative of each Bidder. The Commission announces whether the submitted bids fit into the budget which PCC allocated for a given task. In case of fulfilment of this condition the commission performs secret verification of the correctness of the submitted bids and in the designated time, announces the results of the tender procedure. In the case when the lowest from among the submitted bids exceeds the budget assumed for a given task, the bidders are called to submit revised written bids, determining for them a deadline no longer than 5 days. Verified bids are also subject to overt opening.
4. The Tender Commission having read the bids selects the most beneficial bid or determines that none of the bids meet the criteria contained in the specification (paragraph 2 will apply accordingly). In the case when none of the submitted bids meet the criteria included in the announcement or the specification, the tender procedure can be cancelled.
5. The Tender Commission draws up a report on the tender activities. The report will be signed by all members of the Commission. The report should contain a comparison of the offered prices and a comparison of possible other conditions having effect on the decision on selecting the Bidder. In the event of conducting the tender procedure via electronic purchasing platform of PCC group, in the form of an electronic auction, the report will also contain a description of the conducted auction.
6. In the event of conducting by the Contracting Authority the 2nd stage of the procedure via electronic purchasing platform of PCC group, in the form of an electronic auction, the Bidders will be also obliged to submit complete and binding bids in hard copy (in accordance with §5 passage 5). Verification of tenders placed via the purchasing platform of the PCC group and in writing will also be subject to the provisions of passage 3-5, and the details of the proceedings will be described in the announcement, the specification and the regulations of the electronic auction.
7. If the announcement of the tender procedure does not stipulate preliminary selection of participants described in passage 1, the procedure will comprise only of "the 2nd stage". The provisions of passages 3 – 6 will apply accordingly.

## **§ 8**

### **End of the procedure**

1. The end of the tender procedure will take place after selecting the tender procedure winner, or after cancellation of the procedure. PCC will inform all participants about the date of the

end of the procedure in writing within 14 days from the day of decision or cancellation of the tender procedure. If, however, in accordance with the specification of the subject of the tender procedure, it has been reserved that some of the bids will not cease to be binding in spite of the fact that a different bid has been selected, the end of the tender procedure may take place later than after selecting the tender procedure winner. In this case the Contracting Authority will notify on the date of the end of the procedure the bidders whose bids will no longer be taken into account, informing on the end of the procedure involving their participation within 14 days from opening the bids or verification of the bids, and will notify other bidders within 7 days from expiry of validity of the last bid.

2. After the end of the procedure the Contracting Authority will return the paid bid bond to each Bidder subject to the provisions of § 6 passages 7 and 8.
3. The contract with the winner of the tender procedure comes into force, subject to passage 4 upon receiving one copy of the contract signed by both parties.
4. In the case when on the basis of the Company's Articles of Associations conclusion of the contract requires an approval of the supervising authority, the contract comes into force only after adoption by this authority of resolution on expressing consent to its conclusion.
5. PCC as the entity announcing the tender has the right to:
  - select bids in accordance with the adopted criteria,
  - make, at every stage of the procedure, decision on cancellation of the tender procedure without giving a reason,
  - invalidate the results.
6. The tender documentation will be stored by the Contracting Authority for the period of 10 years from granting the public aid for the project for which the Contracting Authority plans to apply for financial support from the EU, i.e. at least until 31 December 2021.