

**CONTRACTS PROCEDURE
at PCC Intermodal S.A.**

Refers to projects co-financed from EU funds under
the Operational Programme Infrastructure and Environment for 2014-2020

Article 1 **General provisions**

1. Subject to Article 1(3) and (4), this procedure regulates the tender proceedings conducted following the call for tenders by PCC Intermodal S.A. (hereinafter: "PCC", "the Company" or "the Contracting Entity") as part of disbursement of funds from the Operational Programme Infrastructure and Environment.
2. The tender procedure is conducted in accordance with the "Guidelines on the eligibility of expenditure under the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020" of 19 July 2017. The tender procedure is subject to Polish law.
3. In the case of contracts with a net value of PLN 20,000 to PLN 50,000, inclusive, i.e. excluding value added tax (VAT), a market research procedure is applied.
 - a) The market research procedure shall be carried out with due diligence, observing the principle of equality, openness, competitiveness and transparency. The market research is aimed to confirm that a given service, delivery or construction work has been performed at a price no higher than the market price. To document that the contract has been executed at a price no higher than the market price, it is necessary to provide at least a printout of the call for tenders placed on the Contracting Entity's website along with received tenders or confirmation of sending a call for tenders to at least three potential contractors, provided there are at least three potential contractors for a given contract, along with the tenders received. The above requirement is considered fulfilled when at least two valid tenders are submitted in response to the call for tenders. If, as a result of the public call for tenders or the call addressed to potential contractors, no tenders have been received, it is necessary to provide, for example, printouts of websites (at least two) with a description of the commodity/service and price or printouts of e-mails (at least two) with information about the price for a specific commodity/service or other document.
 - b) Documents confirming the market research may take the form of: a letter from the supplier or a printout of an electronic letter or a printout of the website or a printout of the summary (report) from the purchasing platform of the PCC group, excluding the note from the telephone conversation.
 - c) For contracts with a net value of PLN 20,000 to PLN 50,000, conclusion of a written contract with the contractor is not required. It is deemed sufficient to document the expenditure with an invoice, bill or other accounting document of equivalent probative value.
4. It is possible not to apply this procedure when awarding contracts in the cases specified in section 6.5 point 8 of the "Guidelines on the eligibility of expenditure under the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020".
5. In the case of contracts exceeding the net value of PLN 50,000, i.e. excluding value added tax (VAT), the competitiveness principle shall apply.
6. Contracts may not be awarded to entities related to the Contracting Entity personally or by capital. Detailed regulations are described in para. 2 and 3 of section 6.5.2 of the "Guidelines on the eligibility of expenditure under the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020".
7. The subject of the contract should be described in an unequivocal and exhaustive manner by means of precise and comprehensive wording, taking into consideration all requirements and circumstances which could influence tender preparation.
8. Conditions for participation in the contract award procedure and a description of the manner for evaluation of fulfilment of these conditions shall be determined by the

Contracting Entity proportionately to the subject of the contract, ensuring fair competition and equal treatment of contractors. The Contracting Entity shall not formulate conditions that exceed the requirements sufficient for the proper performance of the contract. Criteria for the evaluation of tenders under the contract award procedure shall be formulated by the Contracting Entity in a manner that ensures fair competition and equal treatment of contractors.

9. The deadline for submitting the tender shall be at least 7 days for deliveries and services, and at least 14 days for construction works. For contracts with an estimate value equal to or in excess of the EU thresholds (which as of the date of this procedure are: EUR 5,225,000 for construction contracts and EUR 209,000 for delivery and service contracts), the deadline is at least 30 days. The period starts on the day following the day the call for tenders is made public and ends on the last day. If the deadline ends on a Saturday or a public holiday, the due date is the day following the day or days off from work.
10. Internal bodies authorized to organise and conduct a tender procedure at PCC are the Investment and Analyses Section and the Tender Committee.
11. Before initiating works related to the organisation of the tender procedure, the employees of the Investment and Analyses Section, the members of the Tender Committee and the Management Board of the Company shall submit statements on the absence of circumstances referred to in Art. 17(1) of the Public Procurement Law.
12. The Tender Committee is appointed by the Company's Management Board to assess the submitted tenders and select the tenderer.
13. Employees of the Investment and Analyses Section and the members of the Tender Committee are obliged to maintain professional and commercial secrecy.
14. The Tender Committee shall be chaired by a member of the Management Board indicated in the resolution of the Management Board appointing the Tender Committee.
15. The Tender Committee shall be composed of: an employee of the Investment and Analyses Section and an employee of the organisational unit for which the tender is organised – the Project Manager or the Terminal Manager, as well as an employee of the Office of the Management Board. The composition of the Committee may be expanded to include additional members as needed.
16. The Tender Committee shall make final decisions, taking into account the pricing conditions and fulfilment of other conditions specified in the specification in accordance with the provisions of Article 3.

Article 2

The rules for conducting the tender procedure

During the tender procedure the following rules shall be applied:

1. **openness** – in particular understood as placing the call for tenders on the Internet (the Company's website), in the Official Journal of the European Union (TED) – for contracts equal to or higher than the so-called "EU thresholds" as well as in the public Competitiveness Database at:
<https://bazakonkurencyjnoscifunduszeuropejskie.gov.pl/>,
2. **non-discriminatory description of the subject of the contract** – in particular understood as a prohibition to include in the description any provisions that may favour specific contractors and in the case of indication of specific trademarks, patents or origin – obligatory admission of equivalent solutions,
3. **equality of access for economic entities from all Member States** – in particular understood as a prohibition of making requirements that discriminate contractors from other Member States. For example, it is prohibited to impose requirements of:
 - a) the contractor's experience in performing the contract in Poland,
 - b) the contractor's experience in carrying out contracts co-financed under EU funds or national funds,

4. **mutual recognition** of diplomas, certificates and other documents confirming formal qualifications in accordance with Polish law,
5. **appropriate deadlines** – in particular understood as setting the deadlines for the submission of tenders, not shorter than the deadlines mentioned in Article 1(9) and enabling the contractors to get acquainted with the description of the subject of the contract, to prepare and submit the tender,
6. **a transparent and objective approach** – in particular understood as an obligation to exclude persons covered by Article 17(1) of the Public Procurement Law from the preparation and running of the tender procedure on the part of the beneficiary.

Article 3 **Subject of the tender procedure**

1. The subject of the tender procedure results from the implementation of the adopted Company development strategy or other internal investment or renovation needs. Investment or renovation needs are reported by heads of departments, sections or terminals to the Investment and Analyses Section.
2. Prior to the call for tenders, the specification of the subject of the tender procedure shall be developed.
3. The specification of the subject of the tender procedure shall be prepared by the Investment and Analyses Section in cooperation with the Office of the Management Board and competent organisational units of the Company.
4. The specification of the subject of the tender procedure should characterise the subject of the procedure in a complete and exhaustive manner, i.e. to enable the comparison of all necessary data during the tender procedure.
5. After developing the specification of the subject of the tender, the Investment and Analyses Section shall submit the specification to the Management Board for approval.
6. After the approval by the Management Board, the call for tenders is issued.

Article 4 **Call for tenders**

1. Investment and Analyses Section presents the draft call for tenders to the Management Board of the Company for approval.
2. The tender procedure under the project is initiated when the call is issued. The call for tenders is public and shall be posted on the Company's website, in the Official Journal of the European Union (TED) – for contracts with the value equal or higher than the so-called "EU thresholds", in the database: <https://bazakonkurencyjnosci.funduszeuropejskie.gov.pl/> and on the purchasing platform of the PCC group, if the tendering procedure is organised via the purchasing platform.
3. The call for tenders shall contain, first of all, the following information:
 - Company name, registered office and address of the Company,
 - Description of the subject of the contract
 - Conditions for participation in the procedure and a description of the manner for evaluation of fulfilment of these conditions,
A reservation that the Company is entitled to cancel the tender procedure or leave the tender procedure without settlement, without giving reasons,
 - Indication of contact person(-s) regarding the procedure or addresses to whom/which written inquiries regarding the specification should be sent,
 - Description of the basic contract terms,
 - Information about the possible need to deposit the tender bond and information necessary for its payment, the rules of keeping the bond and its return,

- Criteria for tenders evaluation,
 - Information about point or percentage weights assigned to the criteria,
 - Description of the method of awarding points for fulfilling a given tender evaluation criterion,
 - The deadline for submitting tenders,
 - The date of the contract performance,
 - Information on the prohibition of personal or capital ties,
 - Determination of the terms of significant contract changes,
 - Information about the possibility of submitting partial tenders,
 - Description of the manner of presenting variant tenders,
 - Information about planned similar contracts,
4. The specification of the subject of the tender procedure shall include in particular:
 - a) Company name, registered office and address,
 - b) A detailed description of the subject of the tender procedure together with relevant technical documentation,
 - c) The draft contract governing the terms of the execution of the subject of the tender procedure prepared on the basis of the information contained in the call for tenders and specification of the subject of the tender procedure.
 5. The content of the call for tenders may be changed before the deadline for submission of tenders provided for in the call. In this case, the call should be changed, including information about the change and the determination of possible new deadlines for the submission of tenders. This information should include at least the date of publication of the call being changed, as well as a description of the changes made.

Article 5 **Submission of tenders**

1. The final date, manner and place for the submission of tenders shall be given in the call for tenders and the specification.
2. Tenders delivered after the indicated date shall be rejected. The date of tender receipt at the place indicated in the call for tenders and in the specification, and if the purchasing platform is indicated as the tender delivery place – the date of placing the tender on the purchasing platform of the PCC group, shall be deemed the delivery date.
3. The Contracting Entity reserves the right to organise the process of tenders submission and of selecting the most advantageous tender via the electronic purchase platform of the PCC group in the form of an electronic auction.
4. If the call and the specification provide for an (electronic) auction mode, the Contracting Entity shall indicate the documents that the tenderer should submit to participate in the auction using the purchasing platform of the PCC group and shall make the electronic auction regulations available. The Contracting Entity shall first of all determine the appropriate time limits for submitting documents authorising to submit tenders in electronic form, the date of the auction and the deadline for submitting complete and binding tenders in paper form after the auction.
5. Tenders should be signed by the person(-s) authorised to represent the tenderer. Tenders submitted in electronic form must be placed on the purchasing platform of the PCC group by a person authorised to do so (the tenderer is obliged to attach a scan of power of attorney to the electronic tender).
6. The tender should be prepared and submitted in accordance with the guidelines set out in the call for tenders, 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). Tenders not meeting the requirements presented by the Contracting Entity shall be rejected.

7. Only tenders submitted in the Polish language shall be binding unless the call for tenders provides otherwise.

Article 6

Rights and obligations of the tenderer and of the Contracting Entity

1. In substantive matters related to the tender procedure, the tenderer has the right to contact the person(-s) indicated in the call for tenders or in the specification or to submit written inquiries to the address indicated in the call.
2. In order to ensure more efficient and fast communication, all inquiries and responses to inquiries shall be transmitted in the form of electronic correspondence to the addresses indicated in the call for tenders and given by the tenderer.
3. The Contracting Entity shall answer the questions asked by the tenderer in the manner specified in the call for tenders or in the specification.
4. The tenderer is obliged to deposit the tender bond in a timely manner in the amount specified in the call for tenders, under pain of not admitting his/her tender.
5. If the tenderer, despite choosing his/her tender, avoids concluding the contract, the Contracting Entity may retain the collected amount (bond) or seek satisfaction from the subject of the security. In other cases, the paid deposit should be returned immediately, and the established security expires. If the Contracting Entity avoids concluding the contract, the participant whose tender has been selected may demand payment of a double bond or remedy of the damage.
- 5.1 The Contracting Entity may include in the call for tenders an obligation to deposit the bond to secure the fulfilment of the tenderer's liabilities other than the conclusion of the contract, and in particular the liabilities set out in the tender in the event of its acceptance. In the event of the tenderer failing to perform the obligations secured with the tender bond, the Contracting Entity may retain the collected amount (tender bond).
6. The Contracting Entity shall return the tender bond to the tenderers whose tenders have not been selected within the time specified in the call for tenders, but no later than within 14 days from the date when the contract has been awarded or the tender procedure has been cancelled. The Contracting Entity may, on the terms specified in the call for tenders, set a later date for the return of tender bonds to tenderers whose tenders may still be accepted during their validity period, in connection with the withdrawal from the contract or from its conclusion with the tenderer whose tender has been accepted or taken into account as the first one.
7. The tender bond deposited by the tenderer, whose tender has been finally considered the best, shall be returned within 14 days after signing the contract, unless – according to the contract – the tender bond should be returned at a later date or credited to another performance or retained in accordance with para. 5 and 5(1).
8. Persons acting on behalf of the tenderers who are not the persons authorised to represent them should, upon request, present a relevant written power of attorney given by the authorised persons.

Article 7

Selection of the tender

1. The tenders shall be evaluated in terms of meeting the criteria, including weights assigned to the criteria. The criteria and their weights are given in the call for tenders. Tender procedure shall be conducted by the Tender Committee established by the Company.
2. The following tenders shall be rejected:
 - a) failing to meet the conditions of the tender procedure,
 - b) submitted after the set deadline,
 - c) not containing the required attachments,

- d) illegible or raising doubts in terms of content.
3. After the deadline for submitting tenders, the Committee shall open tenders and read the prices in an open procedure. A representative of each tenderer may participate in the opening. The Committee shall announce whether the submitted tenders are within the budget that the PCC has allocated for the given task. If this condition is met, the Committee shall verify the submitted tenders in a confidential procedure and shall announce the results of the tender procedure within the prescribed period. In the event that the lowest of the submitted tenders exceeds the budget set for a given task, tenderers shall be requested to submit verified written tenders, within no longer than 5 days. Verified tenders shall be also opened in an open procedure. If the tender procedure was conducted via the electronic purchasing platform of the PCC group in the form of an electronic auction, and the lowest of the submitted tenders exceeds the budget, then the request to submit verified tenders may also take place in the form of a separate electronic auction, depending on the decision of the Tender Committee.
 4. After getting acquainted with the tenders, the Tender Committee shall select the most favourable tender or shall determine that none of the submitted tenders meets the criteria contained in the call for tenders and in the specification. In the event that none of the submitted tenders meets the criteria contained in the call for tenders and in the specification, the tender process may be annulled.
 5. The Tender Committee shall draw up a report of the tender activities. The report shall be signed by all members of the Committee. The report should contain at least: information on the method of publishing the call for tenders, list of tenders that have been received along with their date of receipt, information about the lack of contractor's ties with the Contracting Entity, information on meeting the conditions for participation in the proceedings, information on point or percentage weights assigned to individual evaluation criteria and method of granting scores to individual contractors for fulfilling a given criterion, indication of the selected tender with justification for the selection, date of the report. The Contracting Entity shall also attach the following to the report: the confirmation of publication of the call for tenders, submitted tenders and statements about the lack of ties with the contractors who have submitted tenders. In the case of a tender procedure conducted via the electronic purchasing platform of the PCC group, in the form of an electronic auction, the report shall also include a report in the form of a printout from the purchasing platform regarding the auction.
 6. If the Contracting Entity conducts the procedure via the electronic purchasing platform of the PCC group in the form of an electronic auction, tenderers shall also be required to submit complete and binding tenders in a paper version. The verification of tenders submitted via the purchasing platform of the PCC group and then supplemented with paper versions shall be subject to verification on the terms set out in the call for tenders, in the specification and in the regulations of the electronic auction.

Article 8

Closure of the procedure

1. Information about the outcome of the proceedings shall be made public in the same way as the call for tenders. Information on the result of the proceedings should contain at least the name of the selected contractor. The contractor who has submitted the tender must be provided on request with a report of the contract award procedure, excluding parts of the tenders constituting company secrets, in accordance with the provisions on combating unfair competition (Act of 16 April 1993 on Combating Unfair Competition).
2. The tender procedure shall be closed after selecting the winner or after the procedure is annulled. PCC shall notify all participants in writing about the closing date of the procedure within 14 days from the date of settlement or annulment of the tender

procedure. If, however, according to the call for tenders, it is stipulated that some of the tenders will not cease to be binding although a different tender has been selected, the tender procedure may be closed later than after the winner has been selected. In this case, the Contracting Entity shall notify those tenderers whose tenders will no longer be taken into account about the closing date of the procedure with their participation within 14 days from the opening or verification of tenders, and the remaining tenderers shall be notified within 7 days from expiry of the last tender.

3. The contract with the winner of the tender procedure shall come into force, subject to para. 4, when he/she is provided with one copy of the contract signed by both parties. In the event that the selected contractor withdraws from signing the contract with the Contracting Entity, it is possible to sign the contract with the next contractor, who has obtained the next highest number of points in the proceedings.
4. If, on the basis of the Articles of Association of the Company, the approval of the supervisory body is required for contract conclusion, the contract shall come into effect only after that body grants, by means of a resolution, its consent to contract conclusion.
5. It is not possible to make significant changes to the provisions of the concluded contract in relation to the content of the tender on the basis of which the contractor has been selected, except as described in section 6.5.2. point 22 of the "Guidelines on the eligibility of expenditure under the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020".
6. PCC, as an entity issuing the call for tenders, has the right to:
 - a) select the tender in accordance with the adopted criteria,
 - b) take a decision at any stage of the proceedings to cancel the tender procedure without giving a reason,
 - c) cancel the results.
7. Issues of storing tender documentation will be regulated by the contract for co-financing of the project co-financed from the Operational Programme Infrastructure and Environment.
8. In matters not covered by this procedure, the provisions of the "Guidelines on the eligibility of expenditure under the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020", in particular sections 6.5, 6.5.1, 6.5.2, and the provisions of the concluded contract for co-financing of the project co-financed from the Operational Programme Infrastructure and Environment shall apply.