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Warsaw, 21 02 2020

ZDM/DZP/ 367 /20/ZZ
ZDM-DZP.3411. 132 .2020.MBA

Notice concerns: procurement for the public contract in an open-tender procedure for the:
Programme for the Development of Bicycle Traffic in Warsaw, no.
ZDM/UM/DZP/119/PN/99/19

Capital City of Warsaw — Municipal Road Authority, on the basis of Article 38 (1)(3 and 4) Act of 29 January 2004 — Public Procurement Law (Dz.U.2018.1986, as amended), answers the tenders requests of clarification and modifies the content of Specification Of The Essential Terms Of The Contract by extension of the time limit for the submission of tenders and changing the time of opening of the tenders.

Question 1. In reference to the procurement for the public contract in an open-tender procedure for the: 'Programme for the Development of Bicycle Traffic in Warsaw' we request a change SPECIFICATION OF THE ESSENTIAL TERMS OF THE CONTRACT in item 7.2.2.1. in accordance to proposal below:

Current requirement:

7.2.2.1 in the last three years — prior to the time-limit for the submission of tenders or requests to participate, and if the duration of conducting business activity is shorter, then in such shorter duration — has performed (or, for periodic or continuous services or supplies, is still performing) the following contracts:

- 1) Programme for the development of the bicycle traffic of a city or urban area above 200 thousand inhabitants or other strategic document of planning nature, related as to its object to the development of bicycle traffic for an urban area above 200 thousand inhabitants, in the number of 1 such document.

Proposal of a new requirement:

7.2.2.1 in the last three years — prior to the time-limit for the submission of tenders or requests to participate, and if the duration of conducting business activity is shorter, then in such shorter duration — has performed (or, for periodic or continuous services or supplies, is still performing) the following contracts:

- 1) Programme for the development of the bicycle traffic of a city or urban area above 170 thousand inhabitants or other strategic document of planning nature, related as to its object to the development of bicycle traffic for an urban area above 170 thousand inhabitants, in the number of 1 such document.

The current requirement limits the number of participants which meet the requirements as well as limits the competition. The proposed changes will allow more participants to take part in a tender and more offer may be submitted. As a consequences, the Contracting Authority may have a better opportunity to choose the best offer.

Answer 1. The Contracting Authority do not agree for changing the conditions. In the Contracting Authority point of view, the competition rule is not limited. Moreover, the requirements are rational and guarantee adequate performance of the contract.

Question 2. I kindly ask to amend the entry in section 7.2.2.2 of the Specification of the Essential Terms of the Contract (SETC) reading:

2. Team preparing the study — a minimum of 2 people — not applicable — 1 year of experience:

participation in market surveys or participation in planning, research and related works connected with the development of bicycle traffic, pedestrian traffic — employment contract

with the following wording:

2. Team preparing the study — a minimum of 2 people — not applicable — 1 year of experience: participation in planning, research and related works connected with the development of bicycle traffic, pedestrian traffic — not applicable

The definition of employment relationship is included in Article 22(1) of the Labour Code pursuant to which, by entering into an employment relationship, an employee undertakes to perform a specific type of work to the benefit of and under the supervision of the employer and at the place and time designated by the employer, and the employer – to employ the employee for remuneration. Pursuant to the judgment of the Gdańsk Court of Appeal of 26 July 2016, file ref. No III AUa 490/16 and earlier, the employment contract is a contract of due diligence; when providing an employment contract, the employee is subordinated to the employer as to the time, place and manner of its performance. Due to that fact, people who are experts in a given field, with a high level of competence, often cooperating with different contracting entities, are not willing to sign employment contracts treating this form of commitment as an exclusive commitment to a specific employer. Moreover, it seems that the activities carried out by these persons do not consist of providing work in accordance with the definition quoted hereinabove. In addition, nowadays, using modern technologies and possibilities of on-line remote work, on the basis of B2B relations (business to business), there is a possibility of creating a team with international experience, which is expected by the Contracting Authority, which can be deduced from the records in the Specification of the Essential Terms of the Contract (SETC) (e.g. 12% increase in bicycle traffic not yet seen in Polish conditions).

Therefore, in order to be able to create a team with knowledge, skills and features that allow us to perform the object of the contract with due diligence and care, please amend the entry in the Specification of the Essential Terms of the Contract (SETC) quoted hereinabove.

Answer 2. The Contracting Authority do not agree for changing the conditions

New time-limit for the submission of tenders and time for opening the tenders:

Time for submission of tenders: 05 March 2020, 10:00 AM

Time for opening the tenders: 05 March 2020, 11:00 AM

Regarding the above, the Section I, clause 8.12, 13.1 and 15.1 of Specification Of The Essential Terms Of The Contract are modified:

- 8.12. The Tender must be placed in a sealed envelope preventing the contents from being read without damaging the packaging. The envelope should be designated with the Tenderer's name (business name) and address, addressed to the Municipal Road Authority, ul. Chmielna 120, 00-801 Warszawa, and described:
Oferta na: „Program Rozwoju Ruchu Rowerowego.”. Nr postępowania ZDM/UM/DZP/119/PN/99/19. Nie otwierać przed dniem 05.03.2020r. do godz. 11:00”
- 13.1. Tenders should be submitted to the Contracting Authority's seat in Warsaw, ul. Chmielna 120, Kancelaria (Bureau), **by 05.03.2020, 10.00 a.m.**
- 15.1. The tenders will be opened at the Contracting Authority's seat at ul. Chmielna 120, in Warsaw, **room 311, on 05 March 2020, 11:00 a.m.**

Because Specification Of The Essential Terms Of The Contract was modified, the Contracting Authority will modify the contract notice, on the basis of Article 38(4a)(1) PPL Act.

At the same time, the Contracting Authority, without delay upon publishing the modified contract in in the Bulletin of Public Information, will publish the information about modification on the website, on the basis of of Article 12a(3) PPL Act.

ZASTĘPCA NACZELNIKA WYDZIAŁU
ZAMÓWIEŃ PUBLICZNYCH
Małgorzata Szczepanik