

THE TERMS AND CONDITIONS OF THE OPEN WRITTEN TENDER

for the delivery, installation and commissioning for "The complex of ŻEŃSKO power plants of 7.5 MW power in the Municipality of Krzęcin", consisting of 3 wind power plants of up to 2.5 MW power each, located on the territory of the municipalities of Krzęcin and Choszczno, county Choszczno, province West-Pomeranian.

1. THE PRINCIPAL

KSM ENERGIA spółka z ograniczoną odpowiedzialnością
18/3 Panieńska Street
70-535 Szczecin
Tel.: +48 91 812 15 32
Fax: +48 91 812 15 32

2. THE MANNER OF THE PROCEDURE

The proceedings for granting the order conducted in the manner of the open written tender pursuant to art from 70¹ to 70⁵ of the Civil Code. The proceedings are not subject to the provisions of the act dated 29 January 2004 – The Law of Public Orders.

3. THE OBJECT OF THE ORDER

- 3.1 The name of the object of the order: **The Delivery, Installation and Commissioning as well as Tests and Trials for the wind plants for the "ŻEŃSKO Wind Farm Complex in the municipality of Krzęcin"** consisting of 3 wind power plants of up to 2.5 MW power each, total power up to 7.5 MW, located on the territory of the municipalities of Krzęcin and Choszczno, county Choszczno, province West-Pomeranian.
- 3.2 The specification of the object of the order: Delivery, installation and commissioning and tests and trials of "ŻEŃSKO Wind Farm Complex of 7.5 MW power in the Municipality of Krzęcin" of the following parameters:
- rated power min. 2,3 MW, max. 2,5 MW;
 - average tower height min. 98 m, max. 100 m;
 - rotor diameter up to 100 m
 - the average height of the wind plant including the rotor up to 150 m;
 - the noise level generated by the wind plant not exceeding 105 dB(A) (with the assumed 95 % rated power or 8 m/s wind velocity).
- 3.3 The object of the order is:
- 3.3.1 the delivery and the installation of the wind power plant as specified in these terms and conditions and power plant technical documentation,
 - 3.3.2 the commissioning, tests and trials of the wind plants,
 - 3.3.3 the connection of the internal lightning protection installation within the tower;
 - 3.3.4 the delivery and connection of SCADA monitoring system for the power plants,
 - 3.3.5 the delivery and installation of internal transport lift,
 - 3.3.6 daytime and night-time warning marks in accordance with the Polish standards,
 - 3.3.7 the submission of the set of the test reports and certificates to the Principal.

- 3.4 The remaining obligations and activities of the Supplier included in this order, in particular:
- 3.4.1 the execution of the object of the contract in accordance with the decision on the building permit, legal requirements, standards in force, environment protection requirements, labour safety rules,
 - 3.4.2 management, protection and marking of the building site in accordance with the rules of the act Building Law,
 - 3.4.3 providing the security of property and fire protection on building site,
 - 3.4.4 removal of the dismantled elements impossible to use on the building site in order to execute the order object, as well as the removal of all waste from the building site and their recycling in compliance with the relevant regulations.
- 3.5 The terms and conditions of work execution:
- 3.5.1 the delivery of the wind power plants constituting the object of this order shall take place within 6 May 2011 and 30 September 2011,
 - 3.5.2 the Supplier shall ensure the free passage through all the roads carried in the vicinity of the delivered building site, and if this turns impossible, then it shall secure the access to the individual locations/premises throughout the period of the order execution,
 - 3.5.3 prior to the commencement of the works the Supplier shall notify the Principal of the time of the commencement of the works,
 - 3.5.4 the Supplier shall be obliged to document to the Principal the manner of waste management as a condition of the effecting the final acceptance of the order under execution,
 - 3.5.5 upon the completion of the order object execution the Supplier shall be obliged to restore the order within the premises.
- 3.6 The payment terms:
- 3.6.1 the partial invoicing (advance payments) are admitted,
 - 3.6.2 the final invoice to be issued upon the faultless acceptance of the object of the order made by way of writing the relevant protocol of delivery and acceptance,
 - 3.6.3 the payment time – 21 days commencing from the date of the invoice receipt.
- 3.7 Guarantee:
- 3.7.1 the required period of the quality and maintenance guarantee for the delivered equipment – 2 years after the date of acceptance,
 - 3.7.2 availability during the first year of wind plant operation minimum 95%,
 - 3.7.3 availability since the second year of the operation of the wind power plants minimum 97%,
 - 3.7.4 power curve,
 - 3.7.5 noise emission.
- 3.8 In the contract to be concluded with the Supplier (whose offer shall be chosen by way of this tender), the Parties shall reserve the right for the Principal of the rescind from this contract within 30 days of its signing, if there are not obtained the relevant building decisions to enable the performance of the object of the order.

4. THE TERMS AND CONDITION OF PARTICIPATING IN THE TENDER AND ORDER SPECIFICATIONS

For granting the order the Suppliers satisfying the following conditions may apply:

- 4.1 Possession of the knowledge and experience, through the evidence, of the proper execution (i) within the last five years before the expiry of offer placing, and if the period of business activity is shorter – within this period, (ii) of at least two works of similar nature consisting in the delivery, assembly and commissioning of the wind power plants for wind farms consisting of at least 3 wind power plants.

In order to provide evidence of satisfying this condition the Supplier should attach to the offer the specification of the works executed including the indication the location of the mounting of the power plants, the number of the mounted power plants, the time of execution of a given task.

- 4.2 Evidence of its economic and financial situation.
The Contractor is under obligation to demonstrate that its economic and financial situation enables to execute the order, that it has paid insurance of the liability towards third parties within the activities conducted related with the object of the order for the minimum insurance sum of 1.5 mio PLN.

5. THE TIME OF THE OBJECT OF ORDER EXECUTION AND WARRANTY

The Principal requires that the object of order is completed by **the 30 September 2011**. Within this time the works should be completed and application for the works final acceptance made – which should be confirmed by the entry in the building log-book and confirmed by the Principal's representative.

6. THE SPECIFICATION OF THE MANNER OF OFFER PREPARATION

- 6.1 The Contractor may place only one offer.
- 6.2 The offer should include:
- 6.2.1 The form of the Offer, constituting the **Enclosure No 1** to these Terms and Conditions,
 - 6.2.2 Declaration of the Supplier of the satisfying of the conditions to participate in the tender, constituting **Enclosure No 2** to these Terms and Conditions.
 - 6.2.3 The Specification of works, constituting the **Enclosure No 3** to these Terms and Conditions.
- 6.3 The offer should be accompanied by the current excerpt from the register of the statement on the entry into the evidence of the economic activities or the statement on the entry.
- 6.4 The Offer must be signed by the duly authorised persons to make declarations of will in behalf of the Contractor. The letter of attorney authorising to sign the offer must be attached to the offer in the original or in the true copy confirmed by the Notary Public, unless it is implied from other documents attached by the Contractor.
- 6.5 The offer must be made in writing in order to be valid. The documents constituting the offer must be submitted in the original or in true copy certified by the Supplier. Every document included in the offer must be legible.
- 6.6 The offer must be prepared either in Polish or in English.
- 6.7 Every amendment (modification) in the contents of the offer, in particular each remake, deletion, supplement, overwriting, deletion by use of the corrector etc must be initialled by the Contractor.
- 6.8 The Principal shall not accept any partial or variant offers.
- 6.9 In case the offer contains the information regarded as the secret of the company in terms of combating the unfair competition, the Contractor should

make a reservation in the manner beyond any doubts which information consists the secret of the company. This information should be placed in a separate internal package, permanently connected and numbered. The secret of a company cannot be considered such information which is announced during the offer opening, ie information on the price, time of the execution, guarantee period and terms of payment contained in the offer.

- 6.10 The offer should be placed in 1 set. It should be submitted in the enclosed package making it impossible to read it without damaging the package. The package should be marked with the name and address of the Contractor, addressed to the Principal at its address:

KSM ENERGIA spółka z ograniczoną odpowiedzialnością
18/3 Panieńska Street
70-535 Szczecin
and marked as follows:

"Do not open before the 15 October 2010, 15:00 hrs"

- 6.11 Prior to expiry of the offer submission time the Contractor may make amendments to the offer submitted or withdraw it altogether. The declaration on the amendments made or withdrawal should be delivered to the Principal in writing in order to be valid before the expiry of the offer submission time. The declarations should be packed in the same manner as the offer, and the package should be additionally marked by word: "AMENDMENT" or "WITHDRAWAL".

7. THE INFORMATION ON THE COMMUNICATIONS BETWEEN THE CONTRACTORS AND THE PRINCIPAL

- 7.1 Any statements, questions, conclusions, notices and other information shall be given by the Principal to the Contractor and vice versa in writing and by fax No +48 91 812 15 32 or by e-mail: gm@renpro.pl.
- 7.2 The Principal may prior to the expiry of time of submission of the offers alter or revoke the contents of the tender terms and conditions. Such alteration should be immediately conveyed to all contractors whose data have been provided to the Principal, and same will be stated at internet website.
- 7.3 During the tender proceedings the following Principal's employees are authorised to contact the contractors:

Grzegorz Małaszuk
Tel.: +48 91 812 15 32
e-mail: gm@renpro.pl

8. THE PLACE AND TIME FOR PLACING THE OFFERS

- 8.1 The offers should be submitted in the seat/registered office of the Principal in Szczecin, at 18/3 Panieńska Street in the Principal place of business by **15 October 2010** and by **12:00 hrs** of local time.
- 8.2 The Supplier shall receive the written receipt for the offer submission.
- 8.3 The offers shall be subject to the registration by the Principal. Each received offer shall be marked with the exact time of its receipt, calendar date, hour and minute. Until their opening time the offers shall be stored in the manner ensuring their being intact or tampered with.
- 8.4 The offer received by the Principal after the expiry of the submission time shall be returned to the Supplier unopened.

9. THE TIME OF THE OFFER BINDING

The time for offer binding is 30 days. The time of binding by the offer shall commence on the expiry of the offer submission time.

10. THE OFFER OPENING AND EVALUATION

10.1 The Principal shall open the offers in its place of business, ie in Szczecin, at 18/3 Panieńska Street on **30 October 2010** at **15 hrs** local time. The opening of the offers shall not be secret.

10.2 The Principal may summon the Suppliers at the time decided by itself to submit the explanations concerning the declarations or the documents confirming the fulfilment of the conditions and the elements of the offer affecting the price.

10.3 Should the Supplier fail to submit the explanations or supplement the documentation pursuant to item 10.2 of these Terms and Conditions, the Principal shall reject the offer from this Supplier.

10.4 During the examination and evaluation of the offers the Principal may demand from the Suppliers any explanations regarding the contents of their offers.

11. THE CRITERIA FOR THE CHOICE OF THE MOST ADVANTAGEOUS OFFER

11.1 While choosing the most advantageous offer the Principal shall apply exclusively the criterion of the "investment ratio" in the location of the wind power plants.

11.2 The evaluation shall be conducted by the members of the Tender Committee, following the principle that the offer unrejected, quoting the lowest investment ratio is the most advantageous offer.

11.3 Following the criterion of the "investment coefficient" the offers shall be examined according to the formula:

$$\text{investment ratio} = \frac{\text{price net}}{\text{annual production forecast}}$$

11.4 The investment ration shall be determined by the Principal according to the aforesaid formula with the application of the quoted net price for the three wind power plants and basing on the forecast of the annual energy production of all three power plants (wind farm) in terms of MWh/year determined on the basis of the power curve of the offered wind power plant. The forecast of the annual production of electric energy of all three power plants is the gross value, ie includes only energy losses caused by the mutual counteractions of the turbines in the system, however, it does not include any other losses or calculation uncertainties. This is also P(50) value, or in other words 50% of the probability of the excess for the normal statistic distribution. The calculation shall be made on the basis of the data from the local measurement mast obtained within December 2007 and January 2010, revised in correlation with the many-years data of the NCAR base, National Centre of Atmospheric Research in Boulder, Co, USA (the data from 30 years for the point 52.5N 15.0E of the data grid of NCAR). The calculations shall be made by the application of the WindPRO software version 2.7, made by EMD International A/S Denmark, calculation model N.O. Jensen.

11.5 If it turns out impossible to choose the most advantageous offer since the offers submitted quoted the same investment ratio, the Principal shall summon the Suppliers who submitted these offers, to participate in the

negotiations. Upon completion of the negotiations the Principal shall choose the offer of the Supplier who had quoted during the negotiations the lowest price resulting in the lowest investment ratio.

12. CLOSING OF THE TENDER

- 12.1 The Principal reserves its right to close the tender proceedings at each and every stage thereof without making any choice and without stating its reasons.
- 12.2 The Principal shall notify immediately on the tender closing all the Suppliers who placed the offers.

13. THE GRANTING OF THE ORDER

- 13.1 The Principal shall grant the order to the Supplier whose offer shall be deemed the most advantageous pursuant to the rules stipulated in item 11 of these Terms and Conditions.
- 13.2 Immediately upon the choice of the most advantageous offer the Principal shall advise the Suppliers who have submitted the offers of its choice, stating the name, address and the place of business of the Contractor whose offer has been chosen as well as the justification of such choice and the names, addresses and the places of business of the Contractors who submitted the offers including the summary of their evaluation and the comparison of the offers submitted together with the number of points scored by the offers under each criterion of the evaluation and total points scored;
- 13.3 The Supplier whose offer has been chosen shall be indicated by the Principal about the place and time of concluding the offer.
- 13.4 The contract shall be concluded within 30 days of the choice of the most advantageous offer.
- 13.5 In case the Contractor whose offer has been chosen denies to conclude the contract or fails to pay the required security of the proper performance of the contract, the Principal shall be entitled to make the choice of the most advantageous offer amongst the remaining ones, without repeating their examination and evaluation.

14. THE INFORMATION ON FOREIGN CURRENCIES WHICH MAY BE APPLIED FOR THE SETTLEMENTS BETWEEN THE PRINCIPAL AND THE SUPPLIER

The settlements between the Principal and the Contractor/Supplier shall be made in EURO.

15. THE LIST OF ENCLOSURES TO THE PRESENT TERMS AND CONDITIONS

- 15.1 The draft of offer form – Enclosure No 1
- 15.2 The draft of the form: The Supplier's declaration of the fulfilment of the tender requirements – Enclosure No 2,
- 15.3 The draft of the form: Specification of works – Enclosure No 3.