

Specification of Essentials Order Contract Requirements

Unrestricted tender

Procedure reference: ULC-LPL-2600-1/2009

CONTRACTING AUTHORITY: *Civil Aviation Office; ul. Żelazna 59; 00-848 Warsaw, Poland*

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(full name)

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Specification of Essential Order Contract Requirements (SEOCR)

Purchase of the right for temporary use of computer software with an examination assessment program

(order scope)

in a procedure for awarding a public contract, of an estimated value below 133 000 Euro, conducted as an unrestricted tender,

basing on provisions set out in the Public Procurement Act of 29th January 2004 r. – (Prawo zamówień publicznych) (Journal of Laws of 2007, No 223, item. 1655 with later amendments) hereinafter referred as “the Act”.

Contracting authority informs that estimated value of the order is about 130.000 Euro and it covers the purchase of the computer software license and training package.

1. Description of the order scope

The scope of the order is: delivery – purchase of the right for temporary use of computer software with an examination program assessing, in compliance with ICAO requirements, the level of English language proficiency of pilots who conduct operations in the international air space. The order covers the installation of the above mentioned computer software on the Civil Aviation Office server and a training package for conducting assessment examinations and managing the system

(name/title of the order scope)

1. 1 Common procurement vocabulary:

CPV :

Main order item – 48512000-0 – interactive voice answer software package

48517000-5 – IT software package

48700000-5 – application software package

Additional items – 72263000-6 - software implementation services

8050000-9 - training services

1.2.Detailed description of the order scope.

The detailed description of the order scope can be found in Attachment No 1 to SEO CR.

1.3.Conditions and means for conducting the order.

- 1) The order shall be conducted under the conditions and by means defined in:
 - a) SEO CR, including attachments to SEO CR, and specifically those **contained in the detailed description of the order scope and draft contract**,
 - b) Tenderer's offer,
 - c) In cases when the Tenderer wishes to execute the services by means of third persons (subcontractor) he should inform the contracting authority in the offer.
- 2) **The procedure is conducted in Polish language. However due to the specific character of the order the contracting authority allows the offers and other documents to be drawn up in English language, according to the art. 9 of the Act.**
- 3) As the basic version and in force for this procedure the contracting authority submits the Specification of Essential Order Contract Requirements in Polish language and in English language (for information).

2. Description of part offers, if the contracting authority allows division into lots.

Contracting authority does not accept placing part offers.

3. Information about additional supplemental orders, discussed in Article 67 para 1 pt. 7 of the Act

Contracting authority does not foresee supplemental orders.

4. Description of the method for presenting variant offers and minimum conditions that variant offers must comply with, if the contracting authority allows such offers.

Contracting authority does not accept placing variant offers.

5. Time-limit for completion

The completion of service of installation, implementation and configuration of the computer software on Civil Aviation Office servers and training by the Tenderer examiners, raters and system administrators, according to detailed description of the purchase order (attachment no 1) must be completed within a period not exceeding 30 days from the date of signing the contract by both parties.

6. Conditions for participation in the procurement procedure and award criteria

6.1. The following conditions have to be complied by Tenderers participating in the procurement procedure:

- 1) must not be exempt from the procedure basing on circumstances allowing for exemption from the procedure, as defined in Article 24 of the Public Procurement Act,
- 2) must comply with conditions defined in Article 22 para 1 pt 1–3 of the Public Procurement Act, that means:

- a) have the right to conduct the defined economic activity, if legal acts enforce such rights,
- b) have the required knowledge and experience and the technical capacity and human resources capable to deliver the contract or will show written commitment that ,
- c) have an economic and financial capacity to deliver the contract;
- 3) must comply with the following specific conditions:
 - a) the contracting authority requires the confirmation of implementing **at least 2 installations of the above specified product in civil aviation authorities or their equivalents all over the world, value of the installations should be no lower than 20.000 Euro gross each** – compliance with provisions of the Prime Minister’s Ordinance of 19th May 2006 concerning types of documents that the contracting authority can request from the Tenderer and the means by which such documents can be submitted (Journal of Laws No 87 item 605 of 24th May 2006, changes: State Journal of 2008, no 188, item 1155).
 - b) The Tenderer, in order to prove that the offered delivery complies with the requirements defined by the contracting authority is obliged to deliver to the contracting authority a sample of the assessing examination program (demo version) in a form of digital data carrier (for example CD), according to § 3.1 of the above mentioned Prime Minister’s Ordinance.

6.2. Award criteria:

The assessment of complying with the conditions shall be conducted basing on information presented in documents and statements, mentioned in SEOCR point 7, attached to the offer. The content of the documents and statements must explicitly prove that the Tenderer has complied with the specified conditions. It will be possible to supplement the documents by a specified date, unless the Tenderer’s offer is subject to rejection or it is necessary to cancel the procedure.

In cases of doubt as to the contents of the documents presented by the Tenderer, in order to prove compliance with conditions to participate in the procurement the contracting authority may, on a specific date, call in the Tenderer in order to hear additional clarification.

7. Information concerning statements and documents which have to be submitted by the Tenderer:

- 1) a current copy from an appropriate register or a current attestation that the subject is inscribed into the economic activity register, if separate regulations require such an inscription to such a register or a notification into the economic activity record dated not earlier than 6 months before the time-limit for receipt of offers,
- 2) authorization to sign the offer and attachments, if the right to represent the Tenderer does not arise from other documents submitted with the offer. In cases when Tenderers are applying for the public procurement together (consortium, civil corporation), a plenipotency signed by the authorized representatives of the other Tenderers has to be attached, which authorizes one of the Tenderers to represent all the others,
- 3) In cases when the Tenderer’s location of works or residence address is outside the Republic of Poland, the required documents have to be presented by means defined in § 2 para 1 pt. 1a & 2 of the Prime Minister’s Ordinance of 19th May 2006 concerning types of documents that the contracting authority can request from the Tenderer and

the means by which such documents can be submitted (State Journal No 87 item 605), which states that the Tenderer submits documents issued in the country where his works or home address are located, appropriately confirming that no closure or bankruptcy is under progress. The Tenderer presents a statement of the appropriate court or administration organ of the country of his nationality or residence. The contracting authority encloses with this specification the Polish and English version of the Prime Minister's Ordinance of 19th May 2006 concerning types of documents that the contracting authority can request from the Tenderer and the means by which such documents can be submitted (attachment No 8 to SEOOCR).

- 4) In order to prove compliance with pt. 6.1.3 a) the Tenderer is requested to present a list of deliveries executed in the last 3 years preceding the procedure for awarding a public contract. If the economic activity period is shorter than 3 years, than the Tenderer shall deliver a list of orders equivalent to the type and value of this public contract, specifying their value, specification, delivery dates and contracting parties together with documents confirming, that the deliveries were properly conducted, in compliance with the sample list attached to this SEOOCR (attachment no 7).

As a confirmation that the offered goods comply with the requirements defined by the contracting authority, the Tenderer, in compliance with the Prime Minister's Ordinance of 19th May 2006 concerning types of documents that the contracting authority can request from the Tenderer and the means by which such documents can be submitted (Journal of Laws No 87 item 605 of 24th May 2006), is obliged to attach to the offer a sample of the examination program. The sample should be an identical copy of the appropriate examination assessment program and as required by the order.

7.1. Tenderers applying for the public procurement together (consortium, civil corporation)

In cases when Tenderers are applying for the public procurement together, their offer has to comply with the following conditions:

- 1) Tenderers have to submit with the offer a letter of attorney signed by authorized representatives of the remaining Tenderers,
- 2) all correspondence and settlements shall be conducted with the Tenderer named and authorized by the remaining Tenderers in the letter of attorney,
- 3) the offer has to be signed in such a manner as to effectively bind all Tenderers acting together,
- 4) each Tenderer, separately, must present a statement that he has complied with conditions specified in Article 22 para 1 pt. 1–4 Public Procurement Act – a format of such statement can be found in attachment No 4 to SEOOCR,
- 5) when filling out the offer form, as well as other documents, when reference is made to the "Tenderer" in box "Tenderer's name and address" please give details concerning all Tenderers acting together and not the name of the authorized person.

8. Information on how the contracting authority shall communicate with the Tenderer and means by which documents and statements shall be delivered

The Tenderer can submit information, statements, applications and documents to the contracting authority by:

- fax (no +48 22 520 72 94)
- in writing
- electronically

The contracting authority shall deliver notifications, information and statements to the Tenderer first of all by e-mail. If no confirmation of receiving the e-mail within 48 hours the information shall be sent to the fax number specified in the offer. If such means of communication be impossible the contracting authority shall send notifications, information and statements by post to the address specified in the offer.

9. Clarification and modification of SEOCR:

- 1) The Tenderer can request from the contracting authority to clarify the SEOCR, submitting a request for clarification by means discussed in pt. 8 of the SEOCR. The contents of the clarification shall be sent to all Tenderers, who collected the SEOCR, without disclosing the question source, and shall appear on the contracting authority's website.
- 2) The contracting authority will not summon Tenderers to a meeting.
- 3) In specifically justified cases, the contracting authority, at any point of time, before the expiration of the time-limit for submitting offers, can modify the contents of SEOCR, in compliance with principles set out in Article 38 of the Public Procurement Act.

10. Persons authorized to contact the Tenderers

Anna Matusiak tel. +48 22 520 72 99, e-mail: amatusiak@ulc.gov.pl
Jasińska Jolanta tel. + 48 22 520 74 03, e-mail: jjasinska@ulc.gov.pl;

11. Requirements concerning deposits and guarantees

Contracting authority does not require any guarantees or deposits.

12. Time-frame during which the Tenderer must be bounded with offer

The Tenderer is bounded by the offer for 30 days.

The tenderer's bounding time-frame of 30 days begins with the offer submission dead-line that is on the 04.01.2010 (January 4, 2010).

13. Description of how to prepare the offer

- 1) All costs related with preparing and submitting the offer are covered by the Tenderer.
- 2) The contracting authority does not anticipate refunding costs of participation in the procurement procedure.
- 3) The Tenderer should acquaint himself with the whole of SEOCR.
- 4) The Tenderer must prepare the offer in compliance with SEOCR, including the offer form (attachment No 3 to SEOCR).
- 5) A filled out "offer form" is the binding offer. All documents listed in SEOCR must be attached to the offer.
- 6) The offer must be submitted, subject to it being recognizing as invalid, in a written form. It is permissible to submit the offer in English language.
- 7) The offer must be signed by the Tenderer or a person authorized by the Tenderer. If the Tenderer is represented by a plenipotentiary, a letter of attorney defining the scope of powers has to be attached.
- 8) The person signing the offer must:

- a) sign all pages of the offer and statements submitted by the Tenderer ,
 - b) initialize all places, where the Tenderer made changes.
- 9) All documents submitted by the Tenderer in the procurement procedure, specifically information and explanations, have to be signed by the Tenderer or authorized representative. The right to sign documents must arise from the copy of the economic activity register or a copy of notification from economic activity record or the attached letter of attorney. The enclosed authorization must be an original issued by the Tenderer or a copy authenticated by a notary.
 - 10) The required documents have to be originals or photocopies according to list of documents attached to the offer which is the attachment no 9 to SEO CR.
 - 11) Initializing or signing a photocopied document by the person signing the offer means that this person authenticates the photocopy of the document as consistent with the original. All initials or signatures on pages of photocopied documents attached to the offer must be consistent with the initials or signature on the first page of the offer. The contracting authority allows initializing the documents by one of the persons signing the offer.
 - 12) It is recommended that all pages of the offer be fastened securely together with attachments and numbered one after the other. The numbering should begin with a 1 on the first page of the offer.
 - 13) The offer has to be submitted in two intact closed envelopes – outside and inside one. The envelopes should be addressed to the contracting authority to the address:

„Civil Aviation Office; ul. M. Flisa 2; 02-247 Warsaw, Poland”
(contracting authority’s address)

The following information should be placed on the outside envelope of the offer:

“Offer for the purchase of the right for temporary use of software and assessment examination program assessing, in compliance with ICAO requirements, the level of English language proficiency of pilots who conduct operations in the international air space. The order covers the installation of the above mentioned computer software on the Civil Aviation Office server and a training package for conducting assessment examinations and managing the system”

“DO NOT OPEN BEFORE 04.12.2009, 15.15 hour.”

If this information is missing the contracting authority is not responsible for incidents that can arise due to the lack of such information, e.g. accidental opening of the offer before the dead line. If offers are delivered by post or dispatch post the contracting authority is not responsible for not opening the offers during the session if delivered late, i.e. after the dead-line for receipt of offers. .

- 14) Apart from the above, please print the name and address of the Tenderer on the inside envelope.
- 15) Tenderer’s confidential information should be marked in such a manner to allow the contracting authority to easily define the scope of the confidential information. Lack of an appropriate provision will be considered as an explicit consent to the inclusion of the entire set of submitted documents and data into the procedure documentation and their disclosure according to provisions of the Act.

14. Place and time-limit for receipt of the offers:

- 1) The offer should be delivered to Civil Aviation Office, Warsaw 02-247, ul. M. Flisa 2, Punkt Obslugi Klienta, ground floor.
- 2) Dead-line for receipt of offers closes on 04.12.2009, 15.00 hour.
- 3) The offers shall be opened on 04.12.2009 at 15.15 hours at contracting authority's headquarters at the address: M. Flisa 2, room no 350 (third floor).
- 4) The opening of offers is public.
- 5) Offers received after the dead-line shall be returned without opening. The date and the hour of receiving the offer from the Tenderer by the contracting authority shall be proof of timely delivery, and not the date of its mailing by post or dispatch post.

15. Changes to and offer withdrawal

- 1) The Tenderer has the right to make changes, corrections, modifications and supplement the offer before the time-limit concludes, under the condition of informing the contracting authority of such changes, corrections, modifications and supplements in writing before the time-limit concludes. The notification should be done in the same manner as the delivery of the offer, i.e. in two envelopes (outside and inside one), appropriately marked with an annotation "CHANGE".
- 2) The Tenderer has the right to withdraw from the procurement procedure by submitting a written notification (in a similar manner as for changes and corrections) with an annotation on the envelope „WITHDRAWAL” before the time-limit concludes.
- 3) The envelopes with the annotation „CHANGE” shall be opened together with the offer of the Tenderer who incorporated changes, and having assessed that the procedure applied is correct shall be attached to the offer.
- 4) The envelopes with the annotation „WITHDRAWAL” shall be opened first, and once assessed that the procedure applied is correct and consistent with the offer inside envelopes shall not be opened.

16. Method for calculating the value of the offer and slip rules.

- 1) The offer has to be calculated in such a manner to cover the complete value of the order item, including its full scope and delivery time. The final price has to include all elements that sum up to the total value of delivering the order, and specifically include all costs, profit, fees, taxes and other possible elements that the Tenderer has to cover.
- 2) Additionally, it is requested to quote the price in compliance with instructions given in the offer form (attachment no 3 to SEO CR), meaning it is required to multiply fee (given in Euro) for 1 exam times 1700 people.
- 3) The Tenderer should include in his price calculation information given in the Detailed description of the purchase order (Attachment No 1 to SEO CR), this including:
 - The contract shall be signed for a period of 3 years;
 - CAO anticipates, that during the contract validity about 1700 candidates shall be tested.
- 4) The price quoted in the offer has to be given in Euro. Price calculation base in Euro will be the mean conversion rate announced by the Polish National Bank on the day of commencement of the tender by the contracting authority which is 19.11.2009.

- 5) In cases when an offer is submitted by a Tenderer, whose business address is outside the Polish Republic (a foreign Tenderer) the Tenderer shall quote only the net price and this value should be expressed in Euro. The appropriate columns of the offer form (attachment No 3 to SEOCR) allocated to inscribing the VAT value and gross price shall be crossed out. In order to compare foreign Tenderers' offers with offers of national Tenderers, the contracting authority shall add to the foreign Tenderer's net price the appropriate VAT value charged to the contracting authority.
- 6) Contracting authority is allowed to correct in the offer:
- 1) obvious typing mistakes,
 - 2) obvious calculation mistakes, including consequences of these corrections,
 - 3) other mistakes concerning discrepancy between the offer and SEOCR, which do not cause crucial change in the offer content
- and is obliged to inform the Tenderer, whose offer was corrected immediately – according to art. 87 point 2 of the Act.

Moreover contracting authority explains that:

- Ad 1) the obvious typing mistake is understood as a mistake that is a result of oversight or improper word match. According to the sentence of administrative court of April 23, 2001 the typing error (this notion is to be recognized analogically to typing mistake) is to be understood as “visible, beyond intention misuse of the word, visible misspelling or visible, not intended missing a word”. The notion of obvious typing mistake concerns both the text and the content of the offer.
- Ad 2) the obvious calculation mistake is understood as a mistake made by the Tenderer in price calculation as a result of incorrect arithmetical calculation, provided that elements of calculation are correct and the mistake can be unambiguously corrected knowing the arithmetical rules.

Contracting authority accepts below mentioned, exemplary rules of correcting calculation mistakes:

1. In case of multiplying particular prices and numbers of units:
 - a) If the calculated price is not relevant with the product of the particular price and number of units, it is assumed that number of units and particular price are given correctly,
 - b) If the particular price is given divergently in words and as a figure, it is assumed that number of units and particular price record that is relevant with the price calculation are given correctly;
2. In case of summing up prices for particular parts of the order:
 - a) If the calculated price is not relevant with the sum for parts of the purchase order, it is assumed that prices for parts of purchase order are correct,
 - b) If the price for the part of the purchase order is given divergently in words and as a figure, it is assumed that the correct record is the one relevant with the price calculation,
 - c) If nor the price for the part of the purchase order given as a figure, nor the one given in words are not relevant with the calculated price, it is assumed that prices for parts of the purchase order are given correctly;
3. In case of an offer with a price defined for the whole scope of the purchase order or its' part (outright price):

- a) It is assumed that the outright price is correct, no matter how it was calculated,
- b) If the outright price given as a figure is not relevant with the outright price given in words, it is assumed that the correct price is the one given in words,
- c) If the calculated price is not relevant with the price of the sum of outright prices, it is assumed that particular outright prices are correct.

Ad 3) “Other mistakes concerning discrepancy between the offer and the SEOCR which do not impose crucial changes in the offer content” are understood by the contracting authority as the possibility of making corrections of obvious mistakes. Contracting authority when making corrections of “other mistakes” will apply the narrow interpretation of this record (art. 87 item 2 point 3 of the Act) e.g. vocabulary mistakes.

In case of “other mistakes” the Tenderer is obliged to give the opinion on the corrections put by the contracting authority within 3 days from receiving the notice about corrections.

17. Information concerning foreign currencies in which settlements can be executed between the contracting authority and the Tenderer

The contracting authority allows for the possibility of settling accounts with the Tenderer in EURO currency only.

18. Description of award criteria, which will be applied by the contracting authority when choosing the offer, their meaning and evaluation method

- 1) The evaluation of offers is conducted by a Team.
- 2) Firstly, the Team shall evaluate whether the Tenderers, who submitted offers are not subject to exclusion from the procedure, and secondly whether the offers are not subject to rejection.
- 3) Award criteria:
Gross offer price – 100%

Calculated as below:

$$C = \frac{C_N}{C_{OB}} \times 100 \text{ points}$$

where:

- C – number of points awarded for the price
- C_N = lowest offered price
- C_{OB} = offered price in the offer under evaluation

- 4) The award criteria shall be applied only to offers not rejected – valid.
- 5) **The most beneficial offer which has obtained the highest score (a sum of points awarded for each criteria) shall be chosen from those not rejected – valid offers.**

19. Information about formalities, that have to be complied with after the offer selection, in order to sign a public order contract

- 1) Immediately after selecting the most beneficial offer the contracting authority shall inform all participants of the procurement procedure about:

- a) selecting the most beneficial offer, giving the name and address of the Tenderer, whose offer has been selected together with the justification of the choice. Additionally, the contracting authority shall specify the names and addresses of all participants who submitted offers, a comparison of all offers with awarded scores for each criterion and the total score.
 - b) Tenderers whose offers were rejected with a factual and legal justification,
 - c) Tenderers who were excluded from the procurement procedure with a factual and legal justification.
- 2) Within a period not shorter than 7 days from the date of notification about the offer selection and not later than the termination date of the time-limit bounding the Tenderer, a contract shall be signed with the Tenderer whose offer was most beneficial, subject to Article 94 para 1a of the Public Procurement Act.
 - 3) The contracting authority shall inform the Tenderer, whose offer was selected about the date and place where the contract shall be signed.
 - 4) Persons representing the Tenderer, who are signing the contract should have with them appropriate documents confirming their powers to act in the name of the Tenderer, unless such powers arise from documents attached to the offer.

20. Requirements concerning provisions for the appropriate execution of the contract

Contracting authority does not require provisions for the appropriate execution of the contract.

21. Contract draft

1. Along with the SEOCR the contracting authority presents a contract draft which is attachment No.2.to SEOCR.
2. The contracting authority shall sign a contract with conditions specified in the draft contract mentioned in point 1 with the Tenderer, whose offer was deemed as the most beneficial.

22. Instruction about legal protection means to which the Tenderer is entitled during the procurement procedure

1. The Tenderer has the right to appeal in a form of a protest, as stated in Part VI of the Public Procurement Act in Articles 179–183, if his legal interest has sustained or may sustain loss as a result of infringing the provisions of the Act by the contracting authority. Protests should be submitted to the contracting authority in writing or by fax, in compliance with Article 27 para 2 of the Public Procurement Act.

The following attachments constitute an integral part of the SEOCR:

Attachment No 1: Detailed description of the order scope

Attachment No 2: Contract draft - format

Attachment No 3: Offer form - format

Attachment No 4: Statement on compliance with participation procedure conditions - format

Attachment No 5: ICAO Language Proficiency Rating Scale

Attachment No 6: Receipt of Goods Delivery

Attachment No 7: List of completed deliveries (projects)

Attachment No 8: The Prime Minister's Ordinance of 19 May 2006 on the types of documents that may be requested by the awarding entity from the economic operator and forms in which these documents may be submitted (Journal of Law No. 87, item 605)

Attachment No 9: List of documents attached to the offer