

Specification of Essentials Order Contract Requirements

Unrestricted tender

Procedure reference: ULC-LOB-3/2600-00001/2008

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

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Specification of Essential Order Contract Requirements (SEOCR)

Purchase for the Civil Aviation Office of the Republic of Poland of the right for temporary use of computer software with an examination program assessing the ability to analyse x-ray images of cabin and hold baggage pieces in order to identify in those images prohibited articles.

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) (Official Journal of 2007, No 223, item 1655; O.J. 2008, No 171, item 1058).

1. Description of the order scope

The scope of the order is: the purchase for the Civil Aviation Office of the right for temporary use of license of computer software with an examination program assessing ability of persons to analyse x-ray images of cabin and hold baggage in order to identify prohibited items (listed in the European Commission Regulation of 8 august 2008 820/2008 laying down measures for the implementation of the common basic standards on aviation security) in those baggage. The order covers the installation of the above mentioned computer software on the Civil Aviation Office server and computer units and a training package for conducting assessment examinations and managing the system.

1.1 Common procurement vocabulary:

CPV :

Main order item – 48000000-8- software license

Additional items – 72263000-6 - software implementation services; 80500000-9 - training package

1.2.Detailed description of the order scope

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

1. Conditions and means for conducting the order

- 1) The order shall be conducted under the conditions and by means defined in:

- a) SEOCR, including attachments to SEOCR, and specifically those **contained in the detailed description of the order scope and draft contract**,
- b) Tenderer's 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.**
- 3) **The procedure is conducted in Polish language. 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 ~~accepts~~/ does not accept* placing part offers.

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

Contracting authority foresees*/~~does not foresee*~~ supplemental orders of a value not exceeding 20% of basic order.

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 ~~accepts~~/ does not accept* placing variant offers.

5. Time-limit for completion

The contract must be completed within a period not exceeding 7 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 exempted 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,
 - c) have an economic and financial capacity to deliver the contract;

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 (original or copy confirmed by the Tenderer);
- 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 (original or a copy confirmed by a notary);
- 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 (Official Journal No 87 item 605 and Official Journal 2008, No 188, item 1155), 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 (original or copy confirmed by the Tenderer). 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 6 to SEO CR).
- 4) Information, that the Tenderer carries unlimited right of using the license of the software, including right to grant and/or sell the right to use the license.

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. 1–3 Public Procurement Act – a format of such statement can be found in attachment No 4 to SEO CR,
- 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 74 71)
- in writing
- by e-mail on the e-mail atroczynski@ulc.gov.pl

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 24 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 sent notifications, information and statements by post to the address specified in the offer.

9. Clarification and modification of SEOOCR:

- 1) The Tenderer can request from the contracting authority to clarify the SEOOCR, submitting a request for clarification by means discussed in pt. 8 of the SEOOCR. The contents of the clarification shall be sent to all Tenderers, who collected the SEOOCR, 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 SEOOCR, in compliance with principles set out in Article 38 of the Public Procurement Act.

10. Persons authorized to contact the Tenderers

Adam Troczyński tel. 0048 22 520 7472 atroczynski@ulc.gov.pl;

11. Requirements concerning deposits and guarantees

Contracting authority ~~requires~~*/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 3rd of January 2009.

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 SEOOCR.

- 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 attachments to the offer,
 - c) 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. Originals and photocopies of submitted documents have to be initialized by the person signing the offer.
- 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. Żelazna 59; 00-848 Warsaw, Poland”

“OFFER FOR the Civil Aviation Office for the purchase of the right for temporary use of license of computer software with an examination program assessing ability of persons to analyse x-ray images of cabin and hold baggage in order to identify prohibited items in those baggage”

DO NOT OPEN BEFORE 05.12.2008, 14.45 HOUR. ”

In case the above-mentioned 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 00-848, ul. Zelazna 59, Punkt Obslugi Klienta, entrance B, ground floor.
- 2) Dead-line for receipt of offers closes on 5th December 2008, 14.30 hour.
- 3) The offers shall be opened on 5th December 2008 year at 14.45 hours at contracting authority's headquarters at the address: Łucka street 2/4/6, room no 27.
- 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. Rules of introduction of writing, calculation and other corrections.

1. The contracting authority corrects in the offer:
 - a) obvious writing errors,
 - b) obvious calculation errors, taking into considerations further calculation consequences of the corrections made;
 - c) other errors making an offer incompliant with SOECR that do not result in significant changes in the offer

and informs the Tenderer, the offer of whom has been corrected in accordance with art. 87 par. 2 of the Pzp.

Moreover the contracting authority explains that:

- a) an obvious writing error is such an error that it is doubtless that error occur as a result of misprint or improper wording. In accordance with General Administrative Court sentence of 23rd April 2001 a misprint is “clear, inadvertent improper use of a word, misprint or clear, inadvertent omission of a word”.
- b) an obvious calculation error is such an error made by the Tenderer in calculating of an offer price that resulted in improper result of calculation, on the condition that components of calculation are correct and the error may be undoubtedly corrected on the basis of the arithmetic knowledge.

The contacting authority takes on following rules of introduction of calculation corrections:

1. in case of multiplication of unit price and units of measurement:
 - a) if the calculated price does not relate to the product of the unit price and unit of measurement, it is recognized that the unit price and unit of measurement is correct;
 - b) if the unit price in words does not relate to the price in numbers, it is recognized that that the unit price and unit of measurement as well as wording of unit price is correct;
2. in case of adding prices for particular parts of the order:
 - a) if calculated price does not relate to the sum for parts of the order, it is recognized that the prices for the parts of the order are correct;
 - b) if the price for the order in words does not correlate to the price in numbers it is recognized that the correct one is the price that correlates to the result of the calculation of the price;
 - c) if neither price for the part of the order in words nor in numbers does not correlate to the calculation of the prices it is recognized that the prices for the parts of the order in words are correct.
3. in case of the offer with the price calculated for the whole order or for its part (flat rate price):
 - a) it is recognized that the flat rate price is correct no matter the way it has been calculated;
 - b) if the flat rate price in number does not correlate flat rate price in words it is recognized that the price in words is correct one;
 - c) if the calculated total price does not correlate to the sum of flat rate prices, it is recognized that flat rate prices are correct.

The contracting authority defines “other errors making an offer incompliant with SOECR that do not result in significant changes in the offer” as possibility to make corrections of obvious errors. Correcting those errors the contracting authority will follow narrow interpretation of the provision of art. 87 par. 2 pt 3 of the Pzp, for instance: terminological errors.

In case of “other errors” Tenderer is obliged, within 3 days from the reception of information, to take a stance on the corrections made by the contracting authority.

17. Method for calculating the value of the offer

- 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.
- 3) The price quoted in the offer has to be given in Polish zloty. It is allowed to quote the price in EUROS, converted into Polish zloty in compliance with the Regulation of the President of the Polish National Bank dated 10.05.1995 concerning the methods and use of national currency rates versus foreign currencies, announced by the Polish National Bank. The conversion rate of EURO in zloty shall be calculated **according to the mean conversion rate announced by the Polish National Bank on the 26th November 2008 r, published on the NPB website (ww.nbp.gov.pl).**
- 4) In cases when an offer is submitted by a Tenderer, whose business address is outsider the Polish Republic (a foreign Tenderer) the Tenderer shall quote only the net price and this value should be expressed in Polish zloty. 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.

18. 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 foreign currencies - EURO.

19. 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 criterium shall be applied only to offers not rejected – valid.
- 5) **The most beneficial offer which has obtained the highest score awarded the criterium shall be chosen from those not rejected – valid offers.**

20. 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.

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

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

22. 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 discussed in point 1 with the Tenderer, whose offer was deemed as the most beneficial.

23. 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.
2. The Tenderer has the right to appeal regarding the protest's settlement in accordance with art. 184 para 1a of the Public Procurement Act.
3. 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
- Attachment No 3: Offer form.
- Attachment No 4: Statement on compliance with participation procedure conditions - format
- Attachment No 5: Receipt of Goods Delivery
- Attachment No 6: 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
- Attachment No 7: Commission Regulation (EC) No 820/2008 of 8 August 2008 laying down measures for the implementation of the common basic standards on aviation security
- Attachment No 8: Act of August 29, 1997 on the Protection of Personal Data (unified text – Journal of Laws of July 6, 2002, No. 101, item 926)