ERBUD S.A.

Topic:
Winning a case in the court for a public contract
Legal basis: Article 56 section 1 item 1 of the Bid Law - confidential information

Content of report:

The Executive Board Erbud S.A. informs of winning a court hearing before the District Court in Rzeszów for the contract award procedure related to the public tender for the project "Expansion and redevelopment of existing building of Regional Rehabilitation & Education Centre for Children and Youth in the Provincial Hospital No. 2 in Rzeszów. The case No. was ZP250/94/2008 and conditions as follows:

1. Date of ending the proceeding: 05.06.2009
2. Investor: Provincial Hospital No. 2 in Rzeszów at 60 Lwowska St., 35-301 Rzeszów
3. Contract value: PLN 51,100,412.27 net and PLN 41,885,583.83 gross
4. Subject of the contract: Expansion and redevelopment of existing building of Regional Rehabilitation & Education Centre for Children and Youth in the Provincial Hospital No. 2 in Rzeszów
5. Place of execution: Rzeszów, Leszka Czarnego St
6. Duration of works: 26 months from the conclusion of contract
7. Terms of payment: 30 days from invoice delivery
8. Performance bond: 5% of the gross contract price valid for 30 days after the date of issue a certificate of completion
9. Repair works guarantee: 1.5% of the gross contract price valid for 15 days after the date of issue a final approval certificate (after remedying defects), signed by the awarding entity after ending a guarantee period
10. Other guarantees: 36 months for construction and installation works and 24 months for machines, devices and equipment
11. Penalties: In the event of non-performance or improper performance of the agreement by the contractor or breach of contract provisions by the awarding entity, the parties have agreed that:
    a) the contractor will pay the following contractual penalties to the awarding entity:
    • for each day of delay in commencement and completion for reasons attributable to the contractor - 0.04% of the gross contract price as fixed in in art. 6 item 2 of the agreement, but not more than 20% of the gross contract price;
    • for each day of undue interruption in the execution of works with regard to the schedule referred to in section 5, for reasons attributable to the contractor - 0.04% of gross contract price as fixed in art. 6 item 2 of the agreement, but not more than 20% of the gross contract price; penalties will be charged in the case of breaks of more than 14 days after the additional notice and regardless of the consequences arising from section 14 of the agreement;
    • for each day of delay in timely remedying defects and faults recorded by taking over and over a guarantee period - 0.02% of gross contract price as fixed in art. 6 item 2 of the agreement, by virtue of the fact that there exist work defects which can not be removed - in the amount determined by the final acceptance committee calculated as a percentage of the gross contract price;
    • in the event of termination by the contractor/awarding entity, if it is due to a cause

attributable to the contractor - 10% of the gross contract price fixed in art. 6 item 2 of the agreement.

b) The awarding entity will pay to the contractor contractual penalties as follows:

• for each day of delay in the delivery of the site or its part as agreed - 0.04% of the gross contract price fixed in art. 6 item 2 of the agreement, but not more than 20% of the gross value of the contract;

• for each day of delay in delivery of the detailed design - 0.02% of the gross contract price fixed in art. 6 item 2 of the agreement, but not more than 10% of the gross contract price;

• for each day of delay in final taking over of works (for reasons attributable to the awarding entity) - 0.02% of the gross contract price fixed in art. 6 item 2 of the agreement, but not more than 10% of the gross contract price;

• in the event of termination by the contractor/awarding entity, if it is due to a cause attributable to the awarding entity - 10% of the gross contract price fixed in art. 6 item 2 of the agreement.

c) In the event that a damage exceeding the established contractual penalty will occur as a result of non performance or improper performance of the agreement by the contractor, the awarding entity has the right to request additional compensation from the contractor.

d) In the event of circumstances justifying the payment of contractual penalties, the contractor is obliged to pay them within 14 days from the date of receipt of a written notice from the awarding entity.

e) In case of charging penalties, the contractor agrees to deduct the penalties from his remuneration.

12. Value of works: PLN 51,100,412.27 gross and PLN 41,885,583.83 net; the estimated value of works to be executed in 2009 amounts to PLN 15 million.