ERBUD S.A.

Topic: Information on the sentence on building contract award procedures favourable for the Issuer, which has been pronounced in the court of second resort
Legal basis: Article 56 section 1 item 1 of the Bid Law - confidential information

Content of report:
The Executive Board of ERBUD S.A. informs about winning the trial of second instance on orders for construction works in open contract award procedures for the project "Building a road border crossing in Budomierz." The Consortium of ERBUD S.A (as the Leader of the consortium), ul. Puławska 300 A, 02-819 Warszawa, and Wolff & Muller GmbH & Co. KG, Schwieberdinger Strasse 107, 70435 Stuttgart in Germany has submitted in this procedure the lowest bid meeting the terms of SIWZ (Specification of essential terms and conditions of the contract) for evaluating the tenders, where the price was an only bid evaluation criterion.

No. / Specified contract data

1) The date of issue of a judgement by the District Court in Rzeszów (second resort) on determinating the public biding for the construction of a road border crossing in Budomierz: 18/12/2009.

2) Investor: Wojewoda Podkarpacki, ul. Grunwaldzka 15, 35-959 Rzeszów.

3) Price quoted by the Issuer: PLN 144,635,383.42 gross (PLN 118,553,592.97 net).

4) Subject of contract: "Building a road border crossing in Budomierz".

5) Place of contract performance: Budomierz.

6) Duration of works: Deadline for completion and commissioning the subject of the contract (Road border crossing in Budomierz) - 36 months from the date of signing the contract.

7) Terms of payment: 30 days from the date of receipt by the Awarding Entity of invoice proven by the Substitute Investor.

8) Performance bond (value, time limit): 5 per cent of gross contract price binding for 30 days from the date of final acceptance.

9) Security of claims for warranty and guarantee (value, time limit): 1.5 % per cent of gross contract price to be refund or released within 14 days after expiration of warranty and guarantee period and after removal of defects encountered during acceptance of works and warranty period against.

10) Other guarantees (kind, value, time limit): 36 months of warranty and guarantee for building works, sanitary installations, power facilities, low-voltage installations, technological installations, networks of outdoor infrastructure equipment, road works and 36 months of guarantee on installed equipment and units for facilities and users of the investment.

11) Penalties
The valid form of compensation are the penalties to be charged in the following circumstances and value:
1. The Contractor shall pay penalties for:
a) delay in performance of the acceptance subject of agreement in the amount of 0.05% of net price fixed in the contract for the subject of acceptance for each day of delay from the date on which the acceptance should took place,
b) delay in removing defects or faults found upon acceptance or during the warranty period for defects of 0.05% of net contract price for the acceptance subject for each day of delay from the date appointed for the removal of defects,
c) termination of the contract for reasons attributable to the Contractor in the amount of 10% of net contract price.
2. The Awarding Entity shall pay penalties to the Contractor:
a) in case of withdrawal for reasons caused by the Awarding Entity in the amount of 10% of net contract price, except where the withdrawal occurred in the event of substantial change in circumstances causing that the execution of the agreement is not in the public interest, what could not be foreseen at the time of agreement conclusion.
3. If the penalties do not cover damage incurred, shall be allowed use of additional compensation to the amount of damage suffered.
4. Principles for assessing compensation for the non-performance or improper performance of the contract shall be based on the provisions of the Civil Code.

After the announcement of judgement of the District Court in Rzeszów (second instance) for the benefit of the Issuer, the Issuer is awaiting further information from the Awarding Entity to continue proceeding related to the above described tender.