ERBUD S.A.

Current Report No.57/2017
Report date: 2017-11-10

Topic:

Signing of a significant Design & Build Contract worth PLN 29.66 for the tasks: Task No. 1: “New seat of the Malopolska Centre of Burns Treatment and Rehabilitation, Plastic and Reconstructive Surgery and Intensive Care Unit for Children"; Task No. 2: “Refurbishment of hospital facilities for the purpose of "Małopolska Centre of Maternity and Woman’s Medicine".

Legal basis:
Article 17(1) of the MAR – confidential information

Content of report:

The Management Board of Erbud SA (the “Issuer”) informs that on 10 November 2017 a significant contract was signed on the following terms and conditions.

Contract execution date: 10.11.2017.

Investor: Szpital Specjalistyczny im. Ludwika Rydygiera w Krakowie sp. z o.o.; os. Złotej Jesieni 1, 31 – 826 Kraków; KRS 0000352784; NIP 6783105119.

Contract value: PLN 29,662,170.73 net.

Contract subject: Design & Build Contract for:
- Task 1: “New seat of the Malopolska Centre of Burns Treatment and Rehabilitation, Plastic and Reconstructive Surgery and Intensive Care Unit for Children";
- Task 2: “Refurbishment of hospital facilities for the purpose of "Małopolska Centre of Maternity and Woman’s Medicine".

Site location: 31 – 826 Kraków, os. Złotej Jesieni 1.

Completion period: Task 1 - 15 months from the conclusion of the Contract (10.11.2017 - 10.02.2019); Task 2 - 7 months from the conclusion of the Contract (10.11.2017 - 10.06.2018)

Performance Bond: PLN 500,000 for the period 10.11.2017 - 09.03.2019.

Defects Liability Bond: PLN 150,000 for the period 10.03.2019 - 25.03.2024.

Other guarantees: To secure any receivables (if any) due to penalties the Contractor shall undertake (at his own expense and risk) that within 14 days from the date of conclusion of the Contract, the Contractor will submit to the Customer a statement in the form of a notarial deed on voluntary submission to enforcement under Art. 777(1) item 5 of the Code of Civil Procedure up to PLN 500,000 (five hundred thousand Zlotys).
The Contractor shall grant to the Customer:
– a warranty for 60 months covering Works, built-in materials and equipment and works under the Contract associated with greenery. The Warranty periods commences on the day of signing the Final Acceptance Certificates, separately for Task No. 1 and No. 2.
- 25 years of manufacturer's system warranty on the structural network.

Penalties for non-performance or improper performance of the Contract (irrespective of the cause) or breach of the terms referred to in the Contract (irrespective of the cause): The Contractor shall be obliged to pay the Customer a penalty under Art. 3531, in conjunction with Art. 473(1) of the Civil Code, in the following cases:

a) Failure to meet the deadline for Completion of Works specified in § 4(1) - 0.4% of the gross contractual remuneration (for a specific Task) specified in §1(1) point a. or b., for each day of delay;
b) Failure to meet the deadlines for the removal of material defects - 0.4% of the gross contractual remuneration agreed for the performance of the particular Task to which the material defect relates, for each day of delay;
c) Failure to meet the deadlines for the removal of irrelevant defects and defects (in the broad sense) referred to in § 12(4) - 0.08% of the gross contractual remuneration agreed for the performance of a particular Task to which the defect relates, for each day of delay;
d) Breach of arrangements set out in § 10(1) point i. - 0.16% of the gross contractual remuneration agreed for the performance of the particular Tasks to which the violation relates, for each day of delay;
e) Breach of arrangements set out in § 3 – PLN 10.000 (ten thousand Zlotys) for each day of delay;
f) Non-compliance with instructions given by the Customer (§ 10(2)) - PLN 2 000 (two thousand Zlotys) for each breach found;

g) Non-compliance with obligation specified in § 10(3) point a. sentence 2 - PLN 5 000 (five thousand Zlotys) for each violation;
h) Breach of arrangements set out in § 10(3) point d., § 10(3) point f., and § 10(3) point h. - PLN 50,000 (fifty thousand Zlotys) for each violation;
i) Non-compliance with arrangements set out in § 10(4) point b. or failing to notify such a change – PLN 10,000 (ten thousand Zlotys) for each violation;
j) Failure to perform or improper performance of the obligations referred to in § 10(6) point a. - PLN 2 000 (two thousand) for every breach found;
k) Non-compliance with OH&S and site regulations - PLN 5 000 (five thousand Zlotys) for every breach found;
l) Unauthorized interference in building structural elements PLN 50,000 (fifty thousand Zlotys) for every breach found;
m) Failure to participate in tests on completion or final inspection by the Contractor – PLN 10,000 (ten thousand Zlotys) for each absentee on the appointed date;
n) Failure to pay or late payment of remuneration due to subcontractors or their subcontractors, according to the terms scheduled in contracts concluded with subcontractors - 0.1% of gross contractual remuneration, for each day of delay;
o) Failure to amend a subcontracting contract in terms of the payment date if it has been scheduled contrary to legal rules (in the broad sense) - 0.08% of gross contractual remuneration for each day until the divergences are removed;
p) Failure to amend a subcontracting contract in terms of the payment date if it has been changed from compliant to non-compliant with legal rules (in the broad sense) - 0.08% of gross contractual remuneration for each day until the divergences are removed;
q) Submission of a false statement by the Contractor or the Subcontractor (including its Subcontractor) - PLN 10,000 (ten thousand Zlotys) for each case found;
r) Breach of arrangements set out in § 10(1) point c. - PLN 5 000 (five thousand Zlotys) for each day of delay;
s) Failure to submit by the Contractor of any document (including updates) required by the Customer or legal rules (in the broad sense) with the exception of documents referred to in § 13(3) points r., t., u. and v. within the time required by the Contract, functional specification or legal rules (in the broad sense) - PLN 5,000 (five thousand Zlotys) for each day of delay;
t) Failure to submit by the Contractor to the Customer of a document referred to in § 2(5) - PLN 20,000 (twenty thousand Zlotys) for each day of delay;
u) Failure to submit by the Contractor to the Customer of a document referred to in § 13(4) - PLN 10,000 (ten thousand Zlotys) for each day of delay;
v) Failure to submit by the Contractor to the Customer of a document referred to in § 13(5) - PLN 10,000 (ten thousand Zlotys) for each day of delay;
w) Withdrawal or termination of the Contract for reasons attributable to the Contractor - 16% of gross contractual remuneration.

The Parties agree that the penalties provided for in the Contract and other mutual receivables shall be totaled up and deducted from the current remuneration due to the Contractor, and if it proves impossible, the Contractor shall pay the penalties to the bank account of the Customer within 7 days after the receipt (including e-mail or fax) of a debit note or a request for payment of a penalty.

Only in case the General Court has ruled on the ineffectiveness or invalidity of the provisions concerning the abovementioned penalties, the Parties absolute have the right to apply the provisions of Art. 483 and Art. 484 of the Civil Code.

Remarks: Other conditions of this contract are at arm's length principle.