ERBUD S.A.

Current Report No. 76/2018
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Topic:

Conclusion of a framework agreement on the establishment of conditions for awarding and performance of a construction contract valued at PLN 139.1 million.
Legal basis:
Article 17(1) of the MAR – confidential information

Content of report:

The Management Board of Erbud S.A. (Issuer) informs that on 21 November 2018, PBDI S.A. from Toruń (a subsidiary 90% owned by the Issuer), acting in a consortium of companies consisting of *PBDI S.A.* headquartered in Toruń (PBDI, Consortium Leader), *Gotowski - Budownictwa Komunikacyjne i Przemysłowe Sp. z o. o. w restrukturyzacji* headquartered in Bydgoszcz and *Przedsiębiorstwo Inżynieryjnych Robót Kolejowych TOR-KRAK Sp. z o. o.* headquartered in Kraków (jointly referred to as the Consortium), concluded with the *City of Bydgoszcz and Miejskie Wodociągi i Kanalizacja w Bydgoszczy Sp. z o. o.* [Municipal Water Supply and Sewerage Systems in Bydgoszcz Sp. z o. o.] with headquarters in Bydgoszcz (Customer) a framework agreement concerning the determination of the conditions for the award and execution of a construction contract for works under the name: "Construction of a tram route along Kujawska Street from the Kujawskiego roundabout to the Bernardyńskiego roundabout in Bydgoszcz, including the extension of the road system" (Framework Agreement).

The net value of the Framework Agreement amounts to PLN 139,077,415.00 and it results from the contractor's bid with the highest price. The price offered by the Consortium was PLN 136,130,439.98 net. The Framework Agreement is valid for no longer than 4 years from the date of its signing, i.e. until 21 November 2022. During the term of the Framework Agreement, the Customer may award contracts to contractors with whom it has been concluded such agreements without calling them to tendering again. As the first one, the Customer notifies the Consortium which submitted the most advantageous offer. If the Consortium consents to carry out works, a construction contract will be concluded between the Consortium and the Customer (Construction Contract). The Contractors are not entitled to any claims against the Customer due to lack of the commission.

The Customer may withdraw from the Framework Agreement in the following cases:
(i) there is a material change in the circumstances causing its performance not to be in the public interest, which could not have been foreseen at the time it was concluded;
(ii) if the contractor improperly performs works (e.g. delayed or defective performance, non-performance) under the Construction Contract;
(iii) if the contractor, without the consent of the Employer, transfers by assignment or otherwise all or part of the rights or obligations under the Framework Agreement.

The Construction Contract will be concluded on the following terms and conditions:

1. Contract value: PLN 136,130,439.98 net, of which 50% is attributable to PBDI. The remuneration is based on unit prices.
2. Completion period: 24 months from the date of signing the Construction Contract.
3. Payment terms: 30 days from the invoice date. Stage inspections have been provided for entitling to partial payments for the works performed.
4. The Customer shall have the right to make deductions from the Contractor's remuneration in events of defects specified in the Construction Contract.
5. Performance Bond: Bank or insurance guarantee of 7% of gross remuneration with an expiry date of min. 30 days longer than the deadline for completing the Works under the Construction Contract.
6. Defects Liability Bond: Bank or insurance guarantee of 2.1% of gross remuneration with an expiry date of min. 8 years and 15 days longer than the deadline for completing the Works under the Construction Contract.
7. Guarantee/Warranty period: 8 years from the date of Final Acceptance Certificate for Works.
8. Penalties:
   - for the Contractor's delay in relation to the deadline for completion of Works - 0.1% of the estimated gross remuneration of the Contractor for each commenced day of delay from the deadline for

completion of Works to the actual date of its completion;

- for exceeding the deadline for obtaining an operating permit by the Contractor within two months from the date of completion of Works - PLN 10,000.00 for each day of delay;
- for withdrawal from the Construction Contract for reasons attributable to the Contractor or the Customer, respectively - 5% of the estimated gross remuneration of the Contractor. In this case, the Customer shall have the right to claim under the warranty and guarantee for Works already carried out.

The limit of contractual penalties that the Customer may claim from the Contractor for all titles provided for in this Agreement shall be 15% of the estimated gross remuneration of the Contractor. The limit of contractual penalties that the Contractor may claim from the Customer for all titles provided for in this Agreement shall be 25% of the estimated gross remuneration of the Contractor. If the contractual penalty shall not cover the damage suffered, the Parties may seek extra compensation in accordance with general rules set forth in the Civil Code.

9. The Customer shall be entitled to withdraw from the Construction Contract, among others,
   a) if the Contractor fails to perform the Contract or performs it improperly for reasons for which it is at fault and despite a written instruction will not satisfy the Customer's request within a technically reasonable time;
   b) if the Contractor interrupts the works for a period longer than 7 working days without a justified reason and despite an additional written request does not undertake them within 3 working days from the date of delivery of such a request;
   c) if the Customer has to pay the remuneration three times directly to the subcontractor or a further subcontractor.

10. The Contractor shall be entitled to withdraw from the Construction Contract, among others,
    a) if the Customer's delay in the delivery of design documentation or construction site exceeds 30 days;
    b) if, despite the additional written request for payment, the Contractor does not receive the remuneration within 30 days after the due date;
    c) if, as a result of the Customer's instruction, the break or delay in the performance of Works lasts longer than 90 days.