26/11/2019 Current Report No. 59/2019 (01:18 p.m.)

Topic:
Signing of a significant agreement of the value of 72.5 million for Construction of a semi-dry flue gas cleaning installation for BC 50 unit and WR-40 reserve unit in TAURON Ciepło sp. z o.o. Zakład Wytwarzania Tychy by a consortium composed of ERBUD S.A. (Issuer) and its subsidiary Erbud Industry Sp. z o.o.

Legal basis:
Article 17(1) MAR - confidential information.

Content of the Report:
The Management Board of the Issuer informs that on 16 November 2019 an agreement was signed for Construction of a semi-dry flue gas cleaning installation for BC 50 unit and WR-40 reserve unit in TAURON Ciepło sp. z o.o. Zakład Wytwarzania Tychy by a consortium composed of ERBUD S.A. (Issuer) and its subsidiary Erbud Industry Sp. z o.o. (100% subsidiary of ERBUD S.A.).

The agreement has been signed with the following terms:

1. Date of the contract conclusion: 26.11.2019 - Consortium Erbud Industry Sp. z o.o. (leader) and Erbud S.A. (partner) with Tauron Ciepło Sp. z o.o. (Employer)
2. Investor (exact name and registered office): Tauron Ciepło Sp. z o.o. ul. Grażyńskiego 49, 40-126 Katowice
3. Contract value: PLN 72,500,000 net (including PLN 71,593,750 - Erbud Industry Sp. z o.o.; PLN 906,250 - Erbud S.A.)
4. Subject of the contract: "Construction of a semi-dry flue gas cleaning installation for the BC 50 unit and WR-40 reserve unit in TAURON Ciepło sp. z o.o. Zakład Wytwarzania Tychy"
5. Place of contract: Tychy Manufacturing Plant
6. Deadlines for completion: commissioning of the installation to operation within 21 months of the date of the Instruction to Commence Work, i.e. from 26 November 2019.
7. Payment terms: the remuneration shall be paid on the basis of partial invoices issued by the Contractor after the completion and acceptance of the individual Stages of the Execution indicated in Appendix 6 to the Agreement (Material and Financial Schedule) for amounts corresponding to the values of the individual Stages of the Execution. The Employer shall pay the amounts due by bank transfer within 30 (thirty) days from the date of receipt of a correctly issued VAT invoice together with the required documents.
8. Performance bond (value, term of validity): the Contractor shall obtain and deliver a Performance bond in the form of a bank guarantee or insurance guarantee in the amount of PLN 8,917,500.00 (eight million nine hundred and seventeen thousand five hundred Polish zlotys), constituting 10% (ten per cent) of the Remuneration, with the term of validity from the date of conclusion of the Agreement to the lapse of 24 (twenty-four) months from the date of conclusion of the Agreement plus 30 (thirty) days.
9. Warranty for repair of defects and faults (value of the term of validity): the Contractor shall obtain and deliver the Warranty in the form of a bank guarantee or insurance guarantee for the warranty period (the Basic Warranty Period is 24 months from the date of commissioning of the installation to operation) in the amount of PLN 2,675,250 (two million six hundred and seventy-five thousand two hundred and fifty Polish zlotys), constituting 3% (three percent) of the Remuneration, with the term of validity until the expiry of the warranty period plus 15 (fifteen) days.
10. Other guarantees (type of guarantee, value, term of validity): None
11. Penalties:

22.5 The parties agree that the Contractor shall be obliged to pay the Employer contractual penalties in the following cases:
22.5.1 in the event of delay in meeting the deadlines specified in the following items of the Material and Financial Schedule:

(i) execution and submission of the construction design to the Employer,

(ii) obtaining a final decision on the permit to use the Installation,

in the amount of 0.02% (two hundredths of a percent) of the Remuneration for each day of delay. A delay in the completion of the above mentioned intermediate stones shall not result in the calculation of the said contractual penalty, if the Contractor meets the final deadline for the completion of the Agreement specified in Article 8.1 (planned date of signing of the Protocol of Commissioning of the FGC Installation to Operation).
22.5.2 in the event of a delay in meeting the Agreement performance deadline specified in Article 8.1 (planned date of signing of the Protocol of Commissioning of the FGC Installation to Operation) - in the amount of 0.2% (two tenths of a percent) of the Remuneration for each day of delay, taking into account the maximum amount of contractual penalties specified in Article 22.9;
22.5.3 in the event of a delay in meeting the deadline for signing of the Final Acceptance Protocol - in the amount of 0.1% (one tenth of a percent) of the Remuneration for each day of delay, taking into account the maximum amount of contractual penalties specified in Article 22.9;
22.5.6 in the event of a delay in the confirmation of receipt of a Complaint concerning a limiting Defect - in the amount of PLN 13,000 (thirteen thousand Polish zlotys) for each commenced hour of delay;
22.5.7 in the event of a delay in proceeding to remove a limiting Defect - in the amount of PLN 13,000 (thirteen thousand Polish zlotys) for each commenced hour of delay;
22.5.8 in the event of a delay in complete removal of a limiting Defect - in the amount of PLN 13,000 (thirteen thousand Polish zlotys) for each commenced hour of delay.
22.5.9 In the case of timely and complete removal of a limiting Defect, the Employer shall not charge the penalties specified in Articles 22.5.6, 22.5.7 and 22.5.8;
22.5.10 in the event of a delay in the confirmation of receipt of a Complaint concerning a non-limiting Defect - in the amount of PLN 2,700 (two thousand seven hundred Polish zlotys) for each commenced hour of delay;
22.5.11 in the event of a delay in proceeding to remove a non-limiting Defect - in the amount of PLN 2,700 (two thousand seven hundred Polish zlotys) for each commenced hour of delay;
22.5.12 in the event of a delay in complete removal of a non-limiting Default - in the amount of PLN 2,700 (two thousand seven hundred Polish zlotys) for each commenced hour of delay;
22.5.13 in the event of timely and complete removal of a non-limiting Defect, the Employer shall not charge the penalties specified in Articles 22.5.10, 22.5.11 and 22.5.12;
22.5.14 in the event of exceeding the guaranteed parameter of non-availability within the basic period
22.5.15 in the event of a failure to meet any of the following Group B Guaranteed Technical Parameters during the Guarantee Measurements

a) for exceeding the consumption of hydrated lime by each 100 kg/h - 3,200,000 (three million two hundred thousand Polish zlotys) PLN,
b) for exceeding the consumption of quicklime by each 100 kg/h - 2,900,000 (two million nine hundred thousand Polish zlotys) PLN,
c) for exceeding the consumption of compressed air by each 100 m3/h - 130,000 (one hundred and thirty thousand Polish zlotys) PLN
d) for exceeding the consumption of electricity by each 50 kWh/h - 590,000 (five hundred and ninety thousand zlotys) PLN,

Penalties for each of the parameters specified in subsections a) - d) above will be calculated for the working point with the maximum exceeding (for each parameter separately);

22.5.16 in the event of a failure to meet any of the Group B Guaranteed Technical Parameters during the Basic Guarantee Period during Control Measurements:

a) for exceeding the consumption of hydrated lime by each 100 kg/h - 3,200,000 (three million two hundred thousand Polish zlotys) PLN,
b) for exceeding the consumption of quicklime by each 100 kg/h - 2,900,000 (two million nine hundred thousand Polish zlotys) PLN,
c) for exceeding the consumption of compressed air by each 100 m3/h - 130,000 (one hundred and thirty thousand Polish zlotys) PLN
d) for exceeding the consumption of electricity by each 50 kWh/h - 590,000 (five hundred and ninety thousand zlotys) PLN,

Penalties for each of the parameters specified in subsections a) - d) above will be calculated for the working point with the maximum exceeding (for each parameter separately);

22.9 Total maximum amount of contractual penalties to be paid by the Contractor:

22.9.1 for contractual penalties for failure to meet the Group B Guaranteed Technical Parameters referred to in Article 22.5.15 and Article 22.5.16 shall not exceed 20% (twenty percent) of the Remuneration;

22.9.2 for any delay in the Agreement completion dates referred to in Articles 22.5.1 and 22.5.2 shall not exceed 20% (twenty percent) of the Remuneration;

22.9.3 for all reasons specified in the Agreement shall not exceed 25% (twenty-five percent) of the Remuneration; however, the penalty specified in Article 22.5.19 shall not be taken into account when summing up the penalties.

12. Comments: On 26.11.2019. The Employer delivered to the Contractor a statement - the Instruction to commence the works, which authorizes the Contractor to commence the performance of the Agreement.