06/10/2020 Current Report No. 58/2020 (12:23 p.m.)

Topic:
Signing of a significant Construction Works Agreement between the consortium of Erbud Industry Sp. z o.o. ul. Wapienna 40, 87-100 Toruń (Leader) and Erbud S.A. ul. Klimczaka 1, 02-797 Warsaw (Partner); and Michelin Polska S.A. ul. Leonharda 9, 10-454 Olsztyn ("Employer"). The contract value of PLN 31.9 million net (including PLN 1.2 million net remuneration for milestone M0, i.e. the design stage, and PLN 30.7 million net for milestones M1 to M6, i.e. the execution stage) consisting in the construction of a second gas-fired boiler in the existing gas-fired boiler room building (No. 58). Construction of a turnkey second gas-fired steam boiler with a power of 42MWt and a steam output of 55t/h, together with reconstruction of the necessary infrastructure within the new boiler house located at Michelin Polska S.A. plant in Olsztyn.

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

Content of the Report:
The Management Board of Erbud S.A. (Issuer) informs of signing of a significant construction works agreement with the following terms.

1. Contract conclusion date: "6 October 2020 – between the consortium of Erbud Industry Sp. z o.o. ul. Wapienna 40, 87-100 Toruń (Leader) and Erbud S.A. ul. Klimczaka 1, 02-797 Warsaw (Partner); and Michelin Polska S.A. ul. Leonharda 9, 10-454 Olsztyn ("Employer")";
2. Investor (exact name and registered office): Michelin Polska S.A. ul. Leonharda 9, 10-454 Olsztyn;
3. The contract value PLN 31,900,000 net (including PLN 1,200,000 net remuneration for milestones M0, i.e. the design stage, and PLN 30,700,000 net remuneration for milestones M1 to M6, i.e. the execution stage); under this agreement, the Employer entrusts the performance of works of the first Execution Stage [M0, also referred to as the design stage] referred to in point [10.1(a)] and Appendix No. 1. In the event of further implementation of the SAGE_GAS BOILER 2 Project by the Employer, i.e. Execution Stage [M1 - M6; together also referred to as the Execution Stage], the Contractor shall proceed to perform the services covered by this Stage to the extent and for remuneration described in point [10.1(b)] and Appendix No. 1 only on the basis of a unilateral declaration of the Employer made not later than by 31 January 2021. The declaration shall be made in writing or otherwise null and void and shall be signed by an authorised representative of the Employer. The Contractor undertakes to perform the Execution Stage [M1 - M6] in accordance with the terms of this Agreement. The Contractor may not refuse to execute the Execution Stage [M1 - M6] without prior approval of the Employer, including in particular the right to withdraw for any reason.
4. Subject matter of the contract: "Order name: "Installation of a second gas-fired boiler in the existing gas-fired boiler house (No. 58)" Subject of the contract: Construction of a "turnkey" second natural gas-fired steam boiler with a power of 42MWt and a steam output of 55t/h, together with reconstruction of the necessary infrastructure within the new boiler house located at Michelin Polska S.A. plant in Olsztyn".
5. Place of contract performance: Elektrociepłownia Michelin Polska S.A. ul. Leonharda 9, 10-454 Olsztyn
6. Performance period: from signing of the agreement until 30 November 2022 (Final Acceptance);
7. Payment terms: 60 days from the date of receipt of a correctly issued invoice based on an agreed material and financial schedule;

8. Performance bond: “19.1 The Contractor shall obtain and provide the Employer with a Performance Collateral (Performance Collateral) in the form of a bank guarantee in the amount:
   19.1.1. PLN [120,000.00] (say: one hundred and twenty thousand 00/100 PLN), which constitutes [10] % of the part of the net Contract Price corresponding to the value of the M0 design stage within 21 days from the date of the Agreement.
   19.1.2. PLN [3,070,000.00] (say: three million seventy thousand 00/100 PLN), which constitutes [10] % of the part of the net Contract Price corresponding to the value of the execution stage (M1, M2, M3, M4, M5 and M6) within 21 days from the date of receipt of the statement referred to in point [2.3] of the Agreement. The term of validity until 30.11.2022”;
9. Warranty for repair of defects and faults (value, term): 19.8 Within 14 days prior to the expiry date of the Performance Collateral specified in point 19.1.2 above, the Contractor shall obtain and provide the Employer with a Collateral for the Basic Guarantee Period (Collateral for the Guarantee and Warranty Period) in the form of a bank guarantee in the amount of PLN [1,595,000.00] (say: one million five hundred and ninety-five thousand 00/100 PLN), which constitutes [5] % of the Net Contract Price. Failure to submit the Collateral for the Guarantee and Warranty period by the Contractor within this period shall constitute the basis for the Employer to use the existing Performance Collateral. The term of validity until 30.11.2024;
10. Other guarantees (type, value, term)
11. Penalties: “20.2 The Parties agree that the Contractor shall be obliged to pay contractual penalties to the Employer in the following circumstances, including, among others
    a) in the case of delay in proper performance of the complete Subject of the Agreement, which shall mean failure to achieve the Final Acceptance, i.e. Stage M0 and M6 within the deadline specified in item E.2 of Appendix 3 - in the following amount:
        i. [0.2]% of the Net Contract Price for each day of delay;
    b) in the case of delay in the proper performance of the part of the Subject of the Agreement in the form of Execution Stage M5 in relation to the relevant dates specified in item E.2 of Appendix No. 3 (respectively, execution dates for M0, M5) in the following amount:
        i. [0.2]% of the value of the part of the Net Contract Price assigned to Execution Stage M5 in accordance with point [10.2] above for each day of delay;

    The maximum total amount of contractual penalties due from the Contractor specified in point 20.2 in the Agreement is 20% of the net Contract Price.
    The maximum total amount of contractual penalties due from the Contractor specified in the Agreement is 25% of the net Contract Price. 20.11 The maximum total liability for damages of either Party towards the other Party for costs, losses, liability or damages, arising during and/or as a result of performance or non-performance of this Agreement for any reason whatsoever, including but not limited to contractual or tort grounds, including the provisions of clause 20.2, 20.3 and 20.4 of the Agreement will not exceed [100%] of the net Contract Price. The parties exclude mutual liability for lost profits (lost profits include loss of orders, loss of income, third party contractual claims covering lost profits).”
12. Comments none