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AB 128



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BOS/36/NZ/20

**Re: Open tendering for extension of the competence center for the development of hybrid, electrical and alternative motor vehicles BOS/30/NZ/20.**

Notice is hereby given that on July 29th 2020, BOSMAL Automotive Research and Development Institute Ltd. received enquiry from potential bidder regarding the Terms of Reference (Polish: SIWZ), as below:

In connection with the announced tender, we request that you make changes in the following points of the tender documentation:

**Material provisions of the Contract**

**Payment conditions**

Please modify the payment conditions to the following:

- 30% of the contract value - payable after signing the Contract
- 50% of the contract value - payable after delivery of goods
- 20% of the contract value - payable after the commissioning and signing of the acceptance protocol.

Each time within 30 days of the invoice date.

In the current draft of the provisions of the Contract, the last payment of 30% does not reflect the work already carried out and completed (it is mainly about the value of the goods already delivered to the Customer) and is too high in relation to the scope of services remaining to be provided (commissioning of equipment).

The advance payment, in turn, after signing the Contract in the amount of 20% of the value is too low, all the more so because the Contracting Authority requires additional security for proper performance of the contract in the amount of 10%.

Therefore, please change as at the beginning.

**The scope of responsibility**

Please complete the Contract with the following points:

1. The Seller's liability and obligations according to the mandatory product liability laws is excluded, if specific provisions regarding the handling of the Equipment, instructions for its use and/or warning and safety regulations as specified by the Seller have not been observed.

2. Outside the scope of the mandatory product liability laws, damages shall be compensated only if the Seller is held responsible for intent or gross negligence. In this case, however, claims are limited to personal injury and material damage resulting directly from a defect in the Equipment. All other claims, such as consequential loss of property or profit, costs of product recall are explicitly excluded. Claims must be made in writing within a period of six months from the date of occurrence of the damage, but not later than two years from the date of shipment, otherwise they are forfeited.

Simultaneously, please modify the entry in Paragraph 7 point 5. It refers to force majeure. If the force majeure event lasts longer than 30 days, both parties have the right to withdraw from the Contract without any cost consequences.

Since it cannot be determined at what point the force majeure event shall occur and the Contractor may be at an advanced stage of performance of the Contract, incurring significant costs in connection with the performance of the Contract, we cannot agree to the provision "without consequences in the form of costs".

Please add a clause to this point: "In the event of withdrawal from the Contract for the reasons referred to above, the Contracting Authority shall allow for the reimbursement of documented costs incurred by the Contractor".

### **We provide the following explanations.**

#### **Ad.1 Material provisions of the Contract**

The Contracting Authority agrees to amend the terms of payment as indicated below:

- 30% of the value of the Contract - payable after signing the Contract
- 50% of the contract value - payable after delivery of goods
- 20% of the contract value - payable after commissioning and signing the acceptance protocol

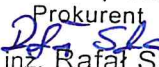
Each time within 30 days of the invoice date.

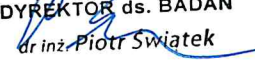
#### **Ad.2 The scope of responsibility**

The Contracting Authority agrees to add the following provision to the contract:

1. The Seller's liability and obligations according to the mandatory product liability laws is excluded, if specific provisions regarding the handling of the Equipment, instructions for its use and/or warning and safety regulations as specified by the Seller have not been observed.

Simultaneously, the Contracting Authority declares that it does not agree to introduce other changes suggested by the potential contractor.

Instytut Badań i Rozwoju Motoryzacji  
BOSMAL Sp. z o.o.  
Prokurent  
  
dr inż. Rafał Sala

Instytut Badań i Rozwoju Motoryzacji  
BOSMAL Sp. z o.o.  
Przes Zarządu  
DYREKTOR ds. BADAŃ  
  
dr inż. Piotr Świątek