

Terms of Reference

*Delivery of a multi-branch design documentation for the new seat of the Museum of Modern Art in Warsaw and the TR Warszawa Theatre with the infrastructure.*

## **TERMS OF REFERENCE**

**Delivery of a multi-branch design documentation for the new seat of the Museum of Modern Art in Warsaw and the TR Warszawa Theatre with the infrastructure**

10 June 2014

## **1. Contracting Authority**

The Contracting Authority is

The Museum of Modern Art in Warsaw

ul. Pańska 3

00-124 Warsaw POLAND

Phone: +48 731960933

E-mail: [newbuilding@artmuseum.pl](mailto:newbuilding@artmuseum.pl)

Fax: +48 225964022

Contact person: Tomasz Galik

## **2. Procedure**

### **2.1. Contract award mode**

The procedure is conducted in the form of a negotiated procedure with publication.

### **2.2. Procedure designation**

2.2.1. The procedure is designated as "Delivery of a multi-branch design documentation for the building of the Museum of Modern Art in Warsaw and the TR Warszawa Theatre with the infrastructure."

2.2.2. Any and all correspondence and the documentation in this case will make a reference to the above designation.

## **3. Object of the contract**

### **Common Procurement Vocabulary: CPV**

main object: 71220000

The object of the contract is the delivery of a multi-branch design documentation for the building of the Museum of Modern Art in Warsaw and the TR Warszawa Theatre with the infrastructure. The object of the contract includes, among others, the initial analyses, concept design, building permit design and obtaining any and all necessary opinions, decisions and permits, including a building permit and preparation of the working design. The object of the contract also includes the exercise of project architect's supervision during the performance of the building works.

Programme guidelines for the delivery of the design are contained in Appendix No 4 to the ToR.

A description of the duties of the economic operator is also included in the draft contract forming Appendix No 3 to the ToR.

## **4. Partial and variant tenders**

**4.1.** The Contracting Authority does not allow partial tenders.

**4.2.** The Contracting Authority does not allow variant tenders within the meaning of Article 2 clause 7 of the Act.

## **5. Contract delivery deadline**

Requirements regarding deadlines for the delivery of individual Stages of the object of the contract are contained in § 4 of the draft Contract.

## **6. Requirements concerning the tender bond**

- 6.1.** The Contracting Authority requires Economic Operators to deposit a tender bond amounting to PLN 20,000.
- 6.2.** The Economic Operators shall deposit the tender bond before the deadline for submitting the tenders.
- 6.3.** The tender bond may be deposited in one or several of the forms mentioned below:
- 6.3.1. cash;
  - 6.3.2. surety of bank or cooperative savings and credit union, where the surety of the cooperative savings and credit union is always a cash surety;
  - 6.3.3. bank guarantee;
  - 6.3.4. insurance guarantee;
  - 6.3.5. bonds granted by undertakings mentioned in Article 6b item 5, point 2 of the Act of 9 November 2000 on the establishment of the Polish Agency for Enterprise Development (Journal of Laws of 2007, No. 47, item 275 as amended).
- 6.4.** The tender bond deposited in cash shall be paid in by bank transfer to the bank account of the Contracting Authority stipulated hereunder, with the following annotation: "Bank guarantee in the proceedings for the Delivery of a multi-branch design documentation for the building of the Museum of Modern Art in Warsaw and the TR Warszawa Theatre with the infrastructure"
- Bank account number:  
*Bank Polska Kasa Opieki S.A.*  
*Warszawa, ul. Grzybowska 53/57*  
*BIC/SWIFT: PKOPPLPW*  
*IBAN: PL06 1240 6292 1111 0010 4965 9413*
- 6.5.** In the event of the Economic Operator depositing a Tender bond in cash: a copy, certified to be true by the Economic Operator, of the bank transfer of the tender bond to the bank account of the Contracting Authority is required to be attached to the bid. In the event of the Economic Operator depositing the tender bond in the form stipulated in subsections 6.3.2 - 6.3.5 above, he is required to present the Contracting Authority with the original document of the surety or bond before the deadline for submitting the tenders and submit it to the registered office of the Contracting Authority, at the reception desk.
- 6.6.** Tender bonds deposited in cash are held in the bank account of the Contracting Authority.
- 6.7.** The Contracting Authority shall immediately refund the tender bonds to all Economic Operators once the most advantageous / favourable tender has been selected or the proceedings have been invalidated, with the exception of that Economic Operator whose tender was selected as the most advantageous, subject to subsection 6.12.3.
- 6.8.** The Contracting Authority shall refund the tender bond to the Economic Operator whose tender was chosen immediately after the conclusion of the public procurement contract.
- 6.9.** The Contracting Authority shall immediately refund the tender bond at the request of the Economic Operator that withdrew his tender before the deadline for submitting the tender.
- 6.10.** The Contracting Authority shall subsequently require the tender bond to be deposited by an Economic Operator who was refunded the tender bond subject to clause 6.7 if, as a result of the determination of an appeal, the tender of that Economic Operator was chosen as the most advantageous. The Economic Operator shall deposit his tender bond within the term stipulated by the Contracting Authority.
- 6.11.** If the tender bond was deposited in cash, the Contracting Authority shall refund the bond inclusive of interest resulting from the bank account agreement on which it was held, minus the bank fees and bank commission for the bank transfer of the bond amount to the bank account stipulated by the Economic Operator.
- 6.12.** The Contracting Authority shall keep the tender bond including any interest in the following circumstances:

- 6.12.1. the Economic Operator whose tender was chosen refused to sign a public procurement contract on the terms specified in the tender;
- 6.12.2. The public procurement contract could not be concluded for reasons attributable to the Economic Operator;
- 6.12.3. The Economic Operator failed to submit powers of attorney in response to the summons mentioned in Article 26 item 3 of the Public Procurement Act, unless he proves that this is results from reasons not attributable thereto.

## **7. Information about the method of communication with Economic Operators**

- 7.1. The proceedings are held in writing. To observe the deadlines required for specific actions (except submission of tenders, their amendment or withdrawal), the action may be performed by fax or e-mail provided that they are confirmed in writing as soon as possible.
- 7.2. The Economic Operator may request the Contracting Authority to clarify the wording of the ToR. The Contracting Authority shall respond to the question posed by sending both the wording of question and the answer to all Economic Operators that the ToR were dispatched to, without disclosing the source of the question provided that the request for clarification of the wording of the ToR were received by the Contracting Authority no later than by the end of the day on which half the term left until the deadline for tender submission has passed.
- 7.3. Questions should be sent to the person responsible for direct contact with the Economic Operators, i.e.:

Mr Tomasz Galik, Tel. +48 731 960 933, e-mail: newbuilding@artmuseum.pl

Submissions, requests and notifications as well as information conveyed by fax to the following No.: +48 225964022 shall be considered as submitted within the deadline if their wording was received by the addressee before the deadline and was immediately confirmed in writing.

## **8. Place and deadline for submission of tenders**

- 8.1. Tenders should be submitted to the registered office of the Contracting Authority, i.e. in Warsaw, ul. Pańska 3, at the reception desk.
- 8.1. The deadline for submission of tenders expires on 09.07.2014, at 14.00 hrs (local time).

## **9. Manner of preparation of the tender**

- 9.1. Each Economic Operator may submit only one tender.
- 9.2. The tender must be submitted in writing in compliance with the requirements described in the ToR.
- 9.3. The tender shall be executed in the Polish or English language, in a legible manner on a computer, typewriter or in long-hand. The required documents and representations executed in a language other than Polish or English must be submitted together with a translation into the Polish or English language.
- 9.4. The tender form and the documents drawn up by the Economic Operator shall be signed by persons authorised to make declarations of will for the Economic Operator. If the tender is signed by persons whose authorisation to represent does not result from the registry documents enclosed with the request for participation or the tender, the Economic Operator shall be required to enclose with the tender the original of the power of attorney to sign the tender.
- 9.5. All pages of the tender must be permanently bound together and numbered.
- 9.6. It is recommended that all the corrections made by the Economic Operator are initialled by the person signing the tender.
- 9.7. The Economic Operator shall bear any and all expenses connected with preparing and submitting the tender. The Contracting Authority expects a refund of all documented expenses of participation in the tender for all Economic Operators that took part in the negotiated procedure and submitted a tender up to the amount of EUR 3,000.
- 9.8. The tender shall contain:

- 1) The tender form drawn up in accordance with Appendix No 1 to the ToR;
- 2) The power of attorney granted to the persons signing the tender, if the right to represent the Economic Operator in the aforesaid respect does not stem directly from the registry document or powers of attorney enclosed with the request for participation in the negotiated procedure with publication or the tender (the original or a copy certified as consistent with the original by a notary is required);
- 3) A document confirming the provision of the tender bond by the Economic Operator (if the bond has been provided in cash, enclosing a copy of the transfer shall suffice, if the bond has been provided in another form allowed under the Act, the original document confirming the provision of the bond must be submitted);
- 4) The substantive part of the tender:
  - a) an outlined land development concept showing the location of the museum and the theatre in relation to the surrounding - existing and planned development, presented on the local zoning plan in a 1:1000 scale;
  - b) views, including, at least, those showing the relations between the buildings and the park, square and ul. Marszałkowska and the view of the entrance zone of the museum and the theatre;
  - c) diagrams showing ways in which mutual relations between individual functional zones of the museum have been resolved (at least 1 diagram);
  - d) diagrams showing ways in which mutual relations between individual functional zones of the theatre have been resolved (at least 1 diagram);
  - e) a description of the idea presented in the elaborations, referred to in sub-clauses a) -d) supplemented by additional sketches showing, in particular:
    - i) the relations between the newly-designed development and the surrounding space - square, park, ul. Marszałkowska,
    - ii) the relations between the functional zones described in the programme guidelines, /solution used to provide additional light at the gallery/,
    - iii) the manner in which the auditorium is to be connected with the galleries,
    - iv) the manner in which the stages are to be connected with the foyer and the square,
    - v) mutual relation between the stage and the auditorium,

The substantive part of the tender defined in clause 4 sub-clause a)-e) should have the form of 10 stapled A3 sheets filled on one side only. This part of the tender may be drawn up using the Sketchbook conveyed by the Contracting Authority (Appendix No. 7 to the ToR).

#### 9.9. Packaging of the tender

- 9.9.1. The Economic Operator shall place the original of the tender with the required documents in one, non-transparent, permanently secured, closed packaging addressed to the Contracting Authority and marked as follows:

**Oferta na „Wykonanie wielobranzowej dokumentacji projektowej dla budynku Muzeum Sztuki Nowoczesnej w Warszawie oraz dla teatru TR Warszawa wraz z infrastrukturą”**

*„nie otwierać przed dniem 09.07.2013 godz.14.00”*

#### 9.10. Business secret

- 9.10.1. If the Economic Operator stipulates that information constituting business secrets within the meaning of the regulations on combating unfair competition may not be disclosed, this information shall be placed in a separate envelope inside the packaging of the tender/tender, marked: "Informacje stanowiące tajemnicę przedsiębiorstwa". The information on classifying documents constituting a business secret must also be given in

the tender form.

**9.11. Modification or withdrawal of the tender:**

- 9.11.1. The Economic Operator may modify the submitted tender or withdraw it, provided this is done prior to the time limit set for submitting tenders. Both a modification and withdrawal of the tender must be made in writing. Changes in the tender shall be prepared, packaged and addressed in the same way as the tender. The additional packaging in which the modified tender is submitted shall be marked "**ZMIANA**".
- 9.11.2. A written representation on the withdrawal of the tender shall be prepared, packaged and addressed in the same way as the tender. The additional packaging in which the notice is delivered shall be marked "**WYCOFANE**".

**10. Description of the method of calculating the tender price**

- 10.1.** The Economic Operator shall give in the tender the net price and the gross price (including the VAT).
- 10.2.** The tender price shall be presented in PLN with accuracy to 1/100 PLN.
- 10.3.** The contract shall be concluded with the price expressed in PLN and settled in PLN.
- 10.4.** The tender price must include any and all costs necessary for the delivery of the contract resulting directly from the Programme Guidelines for the delivery of the design, the tender of the Economic Operator and the draft Contract, as well as those not included therein but necessary for the delivery of the contract.
- 10.5.** The price given in the Preliminary tender shall be a fixed price applying throughout the period of delivery of the object of the contract and may not be changed, subject to Article 144 of the PPL Act.
- 10.6.** In a situation where foreign entities who under separate regulations are not obligated to pay the VAT in the country. The tenders drawn up by such Economic Operators contain a price with a 0% VAT rate. In accordance with the provisions of the Goods and Services Tax Act of 11 March 2004 (Journal of Laws of 2004, No. 54, item 535), in the event of purchasing goods or services from the aforementioned foreign entities, the tax liability rests upon the purchaser of these goods or the recipient of these services, who in the case of this public procurement procedure is the Contracting Authority. This tax, together with the price, make up the actual amount disbursed by the Contracting Authority. According to Article 91 item 3a, if a tender has been submitted, the selection of which would lead to the creation of a tax liability of the contracting authority in accordance with the goods and services tax regulations, to the extent pertaining to an intra-Community acquisition of goods, the contracting authority, in order to assess such tender, shall add to the price given therein the goods and services tax which the contracting authority would be obligated to pay in accordance with regulations in force.
- 10.7.** The Contracting Authority shall take into account the net price increased by the equivalent of the VAT calculated at the rate of 23%.

**11. Tenders assessment criteria and selection of the most advantageous offer**

When evaluating the tenders the Contracting Authority shall apply the following criteria:

- price criterion - weight 20%
- substantive concept assessment criterion - weight 80%, including:

**11.1. With regard to the price criterion** the cheapest tender will receive the maximum number of points, i.e. 20.

The remaining tenders will be awarded the number of points calculated according to the following formula:

$$\text{number of points of the evaluated tender} = \frac{\text{lowest price}}{\text{price examined}} \times 20 \text{ pts}$$

**11.2.** With regard to the **substantive concept assessment criterion**, the Contracting Authority will evaluate the following aspects of the tenders:

### **11.2.1. Town planning**

- 1) The following will be evaluated on the basis of the substantive part of the tender:
  - a) The spatial relations and the shaping of the designed buildings (complex) in the context of the neighbourhood, square, park, Palace of Culture and the planned development;
  - b) the proposed solutions for the entrance zone and common zones of both buildings.
- 2) The highest score will be awarded to solutions which:
  - a) take into account the vicinity of the square as a vibrant meeting place and treat the entrance zone of the museum and the foyer of the theatre as its extension - linked to the square visually and functionally;
  - b) to the north manage to connect the complex with the park and make it accessible to those inside the complex. The highest score will be awarded to solutions which ensure a direct functional and spatial link between the park and the complex;
  - c) create a stylistically, functionally and spatially coherent concept of both buildings (complex) while respecting the assumption that the museum and the theatre are separate institutions;
  - d) ensure free access and movement of people both between the entrance areas of the museum and the theatre and between the park;
  - e) underline the separateness of the entrance areas by shaping them appropriately.

For the best fulfilment of all the aforementioned requirements the tender may be awarded a maximum of 32 points.

If the tender meets only some of the above requirements or meets them partly, it will be awarded between 1 and 32 points, depending on the number of requirements met or the degree of compliance with the requirements.

If the tender fails to meet any of the requirements, it will be given no points.

### **11.2.2. Functional-spatial structure of the museum**

- 1) The functional-spatial solutions proposed for the museum building will be evaluated on the basis of the substantive part of the tender.
- 2) The highest score will be awarded to solutions which:
  - a) thanks to the linking of the exhibition functions with the public spaces encourage people to enter the museum by allowing contact with art and by displaying it not just in the gallery zones, but also from the side of the public spaces,
  - b) thanks to the correct shaping of the relations between the gallery, auditorium and

the entrance zone create a functionally flexible, continuous space allowing diverse activities and the intermingling of the activities typical for each of these zones.

For the best fulfilment of all the aforementioned requirements, the tender may be awarded a maximum of 16 points.

If the tender meets only some of the above requirements or meets them partly, it will be awarded between 1 and 16 points, depending on the number of requirements met or the degree of compliance with the requirements.

If the tender fails to meet any of the requirements, it will be given no points.

### **11.2.3. Spatial-functional structure for the theatre**

- 1) The functional-spatial solutions proposed for the theatre building will be evaluated on the basis of the substantive part of the tender.
- 2) The highest score will be awarded to solutions which:
  - a) determine the character of the theatre as an institution open not just to those who have made a deliberate decision to come and see a show but also to those who find themselves on the square (passers-by, museum visitors) by creating a fluid relation between the exterior (pl. Defilad) and the interior of the theatre (the foyer, stage "D");
  - b) allow meetings, debates, conversations, meetings open to the audience as well as to the museum visitors and those coming to the park, and passers-by to be held at any moment, regardless of the shows taking place at the time.

For the best fulfilment of all the aforementioned requirements the tender may be awarded a maximum of 16 points.

If the tender meets only some of the above requirements or meets them partly, it will be awarded between 1 and 16 points, depending on the number of requirements met or the degree of compliance with the requirements.

If the tender fails to meet any of the requirements, it will be given no points.

### **11.2.4. Architectural expression**

- 1) Formal, material and aesthetic solutions proposed for the complex will be assessed on the basis of the substantive part of the tender.
- 2) The highest score will be awarded to solutions which:
  - a) identify the museum as an institution dealing with modern art,
  - b) identify the theatre as an institution open to experiments in performing arts,
  - c) are coherent, attractive, rational and clear as regards the plan, facade and design of the complex.

For the best fulfilment of all the aforementioned requirements the tender may be awarded a maximum of 16 points.

If the tender meets only some of the above requirements or meets them partly, it will be awarded between 1 and 16 points depending on the number of requirements met or the degree of compliance with the requirements.

If the tender fails to meet any of the requirements, it will be given no points.

### **11.3. Method of tenders assessment**

Every member of the committee will evaluate the tenders in accordance with the aforementioned substantive assessment criteria and award points to a given tender.

Subsequently, the points awarded by the committee members will be added up and divided by the number of members of the tenders assessment committee. The result will be the number of points awarded to a given tender in the substantive concept assessment



criterion.

The points awarded to a given tender in the substantive concept assessment criterion will be added to the points awarded in the price criterion. The sum will be the total number of points awarded to that tender.

The tender with the highest number of points will be deemed as being the most advantageous tender.

#### **11.4. Tender validity period**

The Economic Operator shall be bound by the tender for a period of 90 days. The tender validity period shall commence upon the expiry of the tenders submission deadline.

#### **12. Contract conditions**

**12.1.** The draft of the Contract is included in Appendix No 2.

**12.2.** Possibilities and conditions of making amendments to the contract are contained in the draft Contract.

#### **13. Formalities which must be completed prior to contract signing**

**13.1.** A public procurement contract will be concluded with the Economic Operator whose tender has been chosen as the most advantageous within the meaning of the PPL Act.

**13.2.** The contract will be concluded no earlier than 10 days after the date of delivery of the notice of the selection of the most advantageous tender.

#### **14. Information on the legal remedies available to the Economic Operators in the course of a public contract award procedure**

**14.1.** In the course of a public contract award procedure its participants are entitled to the legal remedies provided in section VI of the Public Procurement Law Act of 29 January 2004 (i.e. Journal of Laws of 2013, item 907, as amended) - an appeal and a complaint to the regional court filed in the manner and within the time limits specified in the Act. The legal remedies specified in Section VI are afforded to the Economic Operators as well as to other entities, if they had or have an interest in securing a given contract and have or may suffer damage as a result of a breach of the provisions of the Act by the contracting authority.

#### **List of appendices to the ToR**

Appendix No 1	Tender form
Appendix No 2	Draft contract
Appendix No 3	Description of the object of the contract (The Building Program for a Unified Home for MUSEUM OF MODERN ART IN WARSAW and TR WARSZAWA)
Appendix No 4	Local spatial development plan in the area of the Palace of Culture and Science in Warsaw.
Appendix No 5	Draft amendment of the local spatial development plan.
Appendix No 6	Compact disc containing: 1) Terms of Reference (PDF) 2) Draft contract (PDF, DOC - track changes)

- 3) The Building Program for a complex of buildings for the MUSEUM OF MODERN ART IN WARSAW and TR WARSZAWA THEATRE (PDF)
- 4) Local spatial development plan in the area of the Palace of Culture (PDF, JPG-map)
- 5) Draft amendment of the local spatial development plan (PDF)
- 6) Map from the state geodetic archive (PDF, JPG, DWG)
- 7) Drawings of the initial concept for the relocation of the underground infrastructure around our plot (PDF i DWG):
  - 01\_01\_Ultimate services layout and services slated for removal for the entire current Plac Defilad area district heating.
  - 01\_02\_Ultimate services layout and services slated for removal for the entire current Plac Defilad area electrical network
  - 01\_03\_Ultimate services layout and services slated for removal for the entire current Plac Defilad area sewage network
  - 01\_04\_Ultimate services layout and services slated for removal for the entire current Plac Defilad area teletechnical network
  - 01\_05\_Ultimate services layout and services slated for removal for the entire current Plac Defilad area water pipes
  - 01\_06\_Ultimate services layout and services slated for removal for the entire current Plac Defilad area gas
  - 02\_01\_Conceptual design for relocating services district heating
  - 02\_02\_Conceptual design for relocating services electrical network
  - 02\_03\_Conceptual design for relocating services sewage network
  - 02\_04\_Conceptual design for relocating services teletechnical network
  - 02\_05\_Conceptual design for relocating services water pipes
  - 03\_01\_Ultimate services rerouting layout heating
  - 03\_02\_Ultimate services rerouting layout electrical network
  - 03\_03\_Ultimate services rerouting layout sewage
  - 03\_04\_Ultimate services rerouting layout teletechnical network
  - 03\_05\_Ultimate services rerouting layout water pipes
  - 03\_06\_Technology tunnel

**Appendix No 1 to the ToR**

.....  
 .....  
 .....

(name and address of the economic operator)<sup>1</sup>

**TENDER**

**I.**

Responding to the invitation to submit tenders in a procedure aimed at awarding a public procurement contract conducted in the form of negotiated procedure with publication by the Museum of Modern Art in Warsaw for the Delivery of a multi-branch design documentation for the new seat of the Museum of Modern Art in Warsaw and the TR Warszawa Theatre with the infrastructure,

we offer to deliver the object of the contract in compliance with the Terms of Reference for a net price of PLN .....  
 gross price with the VAT:.....<sup>2</sup>

We represent that the tender offer includes all the costs of contract delivery and provision of the future contractual performance.

We represent that we have read the provisions of the Terms of Reference and the draft contract and have no objections regarding them, and in the event of our tender being selected we will sign the contract proposed by the Contracting Authority on the conditions no less advantageous for the Contracting Authority than those set forth in the Terms of Reference.

We declare that we shall remain bound by this tender for a period of 90 days from the expiry of the tenders submission deadline.

Information contained on \_\_\_\_\_ pages of the tender constitutes business secrets within the meaning of the Act on Combating Unfair Competition and as such may not be made public<sup>3</sup>.

We intend to outsource the following parts of the contract to subcontractors<sup>4</sup>:

No	Contract part

<sup>1</sup> In the case of economic operators appearing jointly the names and addresses of all such economic operators must be given.

<sup>2</sup> Please give prices in accordance with clause 12.6 of the ToR.

<sup>3</sup> Fill in only if applies .

<sup>4</sup> Fill in only if applies .

We enclose the following with the tender:

1. ...
2. ...
3. ...
- 4.

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*(Signature of person/persons authorised  
to represent the Economic Operator)*

Place ..... date