

2nd MODULE OF POLISH INTEGRITY PACT (SIGNED ON 20.07.2017)

TERMS OF REFERENCE (ToR) FOR AN OPEN TENDER TO DESIGN AND BUILD NO. 1 RAILWAY LINE BETWEEN CZĘSTOCHOWA AND ZAWIERCIE.

VOLUME II CONTRACTUAL TERMS AND CONDITIONS (PASSAGES REFERRING TO THE INTEGRITY PACTS)

DEFINITIONS

Integrity Pact – Integrity Pacts are civil control mechanisms for safeguarding EU funds, Phase II, grant contract No. 2015CE16BAT098 funded by European Commission.

Agreement – the Agreement between the Stefan Batory Foundation and PKP Polish Railways S.A to enforce the Integrity Pact in the framework of public procurement contract for the design and build line Częstochowa - Zawiercie section of line No. 1 between Warsaw and Katowice.

Consultant – a natural person, legal entity or a unit without legal entity authorised by the Social Partner to be responsible for monitoring the Contract implementation. Several Consultants (designer, lawyer etc.) may be involved in the project.

Social Partner – an entity whose main responsibility in the framework of the Integrity Pact will be to monitor compliance by the Parties with the standards of transparency and integrity of Contract implementation. For the purpose of Contract, the Social Partner will be the Stefan Batory Foundation seated in Warsaw, ul. Sapieżyńska 10a, 00-215 Warsaw, entered into the register of associations, other non-governmental and trade organisations, foundations and independent public healthcare units at the District Court for the Capital City of Warsaw, XII Business Section of the National Court Register, under KRS number 0000101194, VAT No. 5261046481, REGON 002188077.

Abuse – any conduct in violation of the laws and regulations or the provisions of this contract that is designed to obtain undue benefits, whether financial, personal or business, in particular: bribery, bid rigging, extortion, financial and resource fraud, misappropriation of other assets, misrepresentation, fraudulent financial reporting, conflict of interest.

Suspected Abuse – any situation where an investigation is launched within the organisation or by an enforcement agency, the Office for Public Procurement or the Office for Consumer and Competition Protection, in order to identify possible Abuse.

THE ENGINEER, SOCIAL PARTNER OR CONSULTANT CLAUSE

Sub-Clause 3.6 AUTHORISATION FOR THE SOCIAL PARTNER OR CONSULTANT

The Social Partner or the Consultant shall have the right to request that the Contractor present documents, information or evidence for meeting the obligations set out in Sub-Clause 4.1.16 – 4.1.25

The Social Partner or the Consultant shall receive from the Contracting Authority a copy of the signed Contract and a copy of official documents submitted by the Contractor prior to signing the contract, i.e. a copy of the performance bond, authorisation and powers of attorney for staff seconded to the Contract, the consortium agreement etc.

The Social Partner or the Consultant shall receive from the Engineer a copy of any amended public project contract including accompanying correspondence (e.g. request for amendment, Engineer's ascertainment, necessity report, etc.).

The Social Partner or the Consultant shall receive from the Contractor a copy of any contracts signed with building subcontractors.

Whereas under Sub-Clause 20.1 the Social Partner shall be informed by the Engineer about the Contracting Authority's and the Contractor's claims on a monthly basis and a copy of accompanying documentation will be disclosed for cases selected by the Social Partner.

The Social Partner or the Consultant shall have the right to perform site visits subject to prior arrangements with the Contractor.

Each instance of communication by the Social Partner or the Consultant to the Contractor must be in an electronic form with a copy to the Contracting Authority.

The Parties undertake to hold regular meetings, no less frequently than once a quarter, to review the implementation of the Integrity Pact. The meetings will be organised by the Social Partner in a venue of its choice. All the expenses of such regular meetings will be covered by the Social Partner.

CLAUSE 4. THE CONTRACTOR

SUB-CLAUSE 4.1 GENERAL CONTRACTOR'S OBLIGATIONS

16. The Contractor undertakes to ensure that neither the Contractor nor its representatives or employees acting in their professional capacity will ever demand or accept any gifts, favours, bargain offers or any other items or behaviour of a corrupt or bribe-related nature.

17. The Contractor undertakes to submit to the Social Partner, upon a written request, statements from all approved building subcontractors that non of subcontracted works performed by them are in any way related to any gifts, favours, bargain offers or any other items or conduct of a corrupt or bribe-related nature, whether demanded, required or accepted.

18. The Contractor shall develop an Ethical Management and Whistleblower Protection Policy (hereinafter called the Policy) within 30 days of the date of the Contract. The Policy will set ethical standards for the Contractor, employees, representatives the Contractor and subcontractors while dealing with persons reporting abuse in connection with a Public Procurement Contract. Such Policy should be developed based on guidelines outlined in Attachment No. 10 to the Instruction for Contractors.

19. The said Policy will be presented to the Social Partner for review in terms of compliance with the guidelines. In case the Contractor already has a document that fulfills the said requirements it will present it to the Social Partner for review.

20. The Social Partner shall review the submitted Policy or document solely and exclusively in terms of its compliance with the guidelines. The Social Partner shall issue its opinion on the said Policy or document and such opinion will be binding for the Contractor, i.e. the Contractor shall make such amendments as outlined in the opinion.

21. The Contractor shall make the said amendments within 15 days of the day of receiving an opinion from the Social Partner regarding the Policy or document.

22. Having made the relevant amendments, the Contractor shall resubmit the Policy or document to the Social Partner for review – Sub-Clause 4.1.20 and 4.1.21 shall apply, respectively.

23. The finally reviewed Policy or document will be published on the Contractor's website as soon as possible and communicated to all the Contractor's employees, representatives and subcontractors.

24. The Contractor shall immediately inform the Social Partner about any actual or suspected Abuse in connection with the Contract.

25. The Contractor shall submit the following documents to the Social Partner within 30 days of concluding the Contract:

- 1) A statement confirming that it has submitted a bid on its own without communication, agreement or arrangement with other contractors which participated in the public tender for the design and build of the Railway No. 1 between Częstochowa and Zawiercie, or
- 2) A statement confirming that it has submitted a bid in agreement, agreement or arrangement with another Contractor or Contractors which participated in the public tender

for the design and build of the Railway No. 1 between Częstochowa and Zawiercie. In such case, the Contractor shall additionally specify in writing the Contractors with which such steps have been made and explain the nature of such co-operation, agreement or arrangement and represent that this does not constitute an act of unfair competition, as defined in the law on fighting unfair competition.

3) A statement whether the Contractor had or had not passed to other contractors which participated in the public tender for the design and build of the Railway No. 1 between Częstochowa and Zawiercie any of the following types of information prior to submitting its bid:

- a) The price, the pricing formula and calculation;
- b) The decision to bid;
- c) Details regarding the implementation of the Public Procurement Contract.

If any such information listed in Item 3, Letter a, b, c had been passed the Contractor shall additionally represent that this did not constitute an act of unfair competition, as defined in the law on fighting unfair competition.