Warszawa, 16.09.2015 r**.**

### STATEMENT No 6

The Commission on public procurement of Institute of Aviation informs, that we have received a questions from Economic Operator to the tender procedure ref. No. 75/DE/Z/15. According to article 38 paragraph 1 of Public Procurement Law of 29 January 2004, the Awarding Entity answers as follows:

**Question 1**

Regarding ToR section 7.7.  In it, it says the following:  “…the Economic Operator shall submit a judicial record of these persons issued by a competent judicial or administrative authority from the place of residence within the scope specified in Article 24.1, (5-8), (10), (11) issued not earlier than 6 months before the deadline for submitting tenders, but in the case when such documents are not issued in the place of residence of these persons – they shall be replaced by a certificate authenticated by a notary the appropriate judiciary, administrative, professional or business organization body from the place of residence by a notary.”

Without knowing what is in the Articles that are referenced, I am assuming the passage highlighted in yellow is probably what we will need. We are just not clear on what you are asking for.  It asks for a notarized certificate from one of the professional/judicial bodies that are mentioned…but does not specify what we are certifying.  What do you want it to say?

**Answer**

Due to the received question the Awarding Entity modifies §7.7 of ToR in the following way:

„If – in the case of the Economic Operator with its registered office on the territory of the Republic of Poland - the persons referred to in Article 24.1 (5-8), (10), (11) of the Act reside outside the territory of the Republic of Poland, the Economic Operator shall submit a judicial record of these persons issued by a competent judicial or administrative authority from the place of residence within the scope specified in Article 24.1, (5-8), (10), (11) issued not earlier than 6 months before the deadline for submitting tenders, but in the case when such documents are not issued in the place of residence of these persons – they shall be replaced by a certificate authenticated by a notary the appropriate judiciary, administrative, professional or business organization body from the place of residence by a notary.”

**Question 2**

I know the ToR also says that all tender responses must be submitted in hardcopy originals, and that electronic copies will not be accepted.  Would it be possible to reconsider this position and accept electronic copies?  This would give us another week of “cushion”, as it will take several days to ship the hard copy documents to you.

**Answer**

According to requirements of Public Procurement Law, the tender procedure shall be conducted in writing.

**The Awarding Entity informs, that modifies ToR in the following areas:**

1. In §3 of ToR „Definition of the subject matter of contract” position 6 is added:

# The Awarding Entity provides for option clause. The option clause is based on the possibility of purchasing of the subject matter of the contract together with the rights to use under the terms of § 5 of appendix 4 to ToR, by leasing. Where the Awarding Entity decides to use the option clause for the realization of the subject matter of the contract, the Economic Operator is obliged to sign the contract with the Lessor chosen in accordance with the Public procurement law of 29 January 2004 Public Procurement Law with the proviso that leased automatic fiber placement system will be compliant with the tender in terms of technical parameters and remuneration.

Based on the above mentioned proviso and model contract (appendix 4 to ToR) within a scope of the subject matter of the contract, the contract provisions will be agreed beetwen the Lessor and Economic Operator without the Awarding Entity.

The Awarding Entity shall inform the Economic Operator about the decision of using the option clause before the date of payment of the first tranche mentioned in §6.4 of appendix 4 to ToR.”

1. In §25 of ToR „Amendments to granting public procurement agreement position 4 is added:

“Where the Awarding Entity decides to use the option clause based on the possibility of purchasing of the subject matter of the contract together with the rights to use by leasing, the method and terms of payment will be changed. The remuneration for the Economic Operator will be paid by the Lessor.”

1. In §1 of model contract (appendix 4 to ToR) position 2 is added”

“The Awarding Entity provides for option clause. The option clause is based on the possibility of purchasing of the subject matter of the contract together with the rights to use under the terms of § 5, by leasing. Where the Awarding Entity decides to use the option clause for the realization of the subject matter of the contract, the Economic Operator is obliged to sign the contract with the Lessor chosen in accordance with the Public procurement law of 29 January 2004 Public Procurement Law (Journal of Laws of 2013, item 907 as amended) with the proviso that leased automatic fiber placement system will be compliant with the tender in terms of technical parameters and remuneration.

Based on the above mentioned proviso and model contract (appendix 4 to ToR) within a scope of the subject matter of the contract, the contract provisions will be agreed beetwen the Lessor and Economic Operator without the Awarding Entity.

The Awarding Entity shall inform the Economic Operator about the decision of using the option clause before the date of payment of the first tranche mentioned in §6.4 of the contract.”

1. In §6 of model contract (appendix 4 to ToR) position 5 shall be replaced:

“Regarding the payment of an advance, the Awarding Entity permits a possibility of granting an advances of 30% of the value described in § 6.1 of the Agreement (it does not refer to situation where the Awarding Entity decides to use the option clause based on the possibility of purchasing of the subject matter of the contract by leasing). A condition for granting advances is lodging a security of the advances by the Economic Operator for the period of completing the order or settlement of advances. The Awarding Entity allows for securing the advances in the following way: an in blanco bill of exchange with a promissory note declaration, as agreed between parties, a bank guarantee, an insurance guarantee covering at least the amount of the granted advances which the Awarding Entity requests and which includes clauses of payment of the amount of cover payable to the Awarding Entity unconditionally and at their first request. “

1. In §6 of model contract (appendix 4 to ToR) position 6 shall be replaced:

“The payment of the advances will be made by a bank transfer within 30 days from receiving the blanco bill and signed by a person authorized for representing the Economic Operator and the agreed contents of a promissory note declaration or the original of the insurance guarantee or the bank guarantee issued within the scope described in item 5. The Economic Operator is obliged to confirm the obtaining of the advances forthwith.”

1. In §6 of model contract (appendix 4 to ToR) position 12 is added:

“Where the Awarding Entity decides to use the option clause based on the possibility of purchasing of the subject matter of the contract by leasing, The Awarding Entity shall inform the Economic Operator about the decision of using the option clause before the date of payment of the first tranche mentioned in §6.4 above. In this situation the method and terms of payment will be changed. The remuneration for the Economic Operator will be paid by the Lessor.”

1. In §11 of model contract (appendix 4 to ToR) position 2 is replaced:
2. a change in the mandatory legislation occurs which influences the completion of the order subject;
3. The Economic Oparator will offer equipment with technical parameters better than the minimal technical parameters presented in the description of the tender subject provided that the payment for completing the order will not increase
4. A necessity of changing dates of completing the order will occur caused by objective factors related to the Awarding Etentity needs, independent of the Economic Operator provided that the remuneration paid to the Economic Operator will not increase.
5. Where the Awarding Entity decides to use the option clause based on the possibility of purchasing of the subject matter of the contract together with the rights to use by leasing, the method and terms of payment will be changed. The remuneration for the Economic Operator will be paid by the Lessor.