



EXPLANATIONS

Re. the procedure for the delivery of dissolved oxygen sensors, CTD (water level, temperature, salinity) sensors, pH loggers and data loggers for the Institute of Oceanology of the Polish Academy of Sciences (procedure no. IO/ZN/17/2025)

The Contracting Authority – the Institute of Oceanology of the Polish Academy of Sciences – provides explanations in response to the following question submitted on May 16th, 2025 in the procedure for **the delivery of dissolved oxygen sensors, CTD (water level, temperature, salinity) sensors, pH loggers and data loggers** for the Institute of Oceanology of the Polish Academy of Sciences (procedure no. IO/ZN/17/2025):

„(...) Could it be possible to change the TERMS of this tender? We cannot accept the terms we point to in the attached document.”

The Contracting Authority indicates that the document attached by the Contractor, named „Tender Contract Reservations”, includes the following reservations:

1) the Contractor quoted:

- Chapter V, section 2 of the Contract Notice:
„The payment for the delivered subject of the contract will take place on the basis of an invoice delivered to the Institute of Oceanology of the Polish Academy of Sciences, following the signing of the acceptance protocol by the Contracting Authority without reservations”, and
- § 4, section 8 of the Contract template (Appendix no. 3 to the Contract Notice):
„The advance payment, no higher than 20% of remuneration referred to in paragraph 1, can be made on the Contractor’s request. The advance payment will be made based on an advance invoice. The advance payment will be transferred from the account of the Contracting Authority to the Contractor's account specified on the advance invoice within 14 days from the date of receipt of the advance invoice properly issued by the Contractor.”

Below the quoted contents, the Contractor added a reservation:

„The subject of the contract is to be paid in full upon contract signing”.

the Contracting Authority's stance:

The Contracting Authority considers the above reservation made by the Contractor to be a request to change quoted Chapter V, section 2 of the Contract Notice, as well as quoted § 4, section 8 of the Contract template. What is more, taking into account the above request, the Contracting Authority would also have to amend at least:

- § 4, section 4 of the Contract template which says: „The Parties agree that the payment for the delivered subject of the contract will take place on the basis of the invoice delivered to the Institute of Oceanology of the Polish Academy of Sciences, following the signing the acceptance protocol by the Contracting Authority without reservations”, and

- § 4, section 6 of the Contract template which says: „Payment will be transferred from the account of the Contracting Authority to the Contractor's account specified on the invoice or advance invoice within 30 days counted from the date of acceptance of the subject of the contract without reservations and after receipt of the invoice properly issued by the Contractor”.

The Contracting Authority does not agree to introduce the above amendment, i.e. to stipulate that the subject of the contract is to be fully paid for upon contract signing.

2) the Contractor quoted:

- § 2, section 4 of the Contract template:
„Under the contract the Contractor shall deliver the subject of the contract to Longyearbyen (Svalbard), Norway (SIOS Knowledge Centre, Eleanor Jones, Dariusz Ignatiuk, Piotr Kuklinski, PO Box 156, N - 9171 Longyearbyen, Norway), including packaging and insurance during delivery of the subject of the order.”
- § 4, section 3 of the Contract template:
„The amount referred to in section 1 includes all costs related to the performance of the contract, including but not limited to cost of the subject of the contract (with documentation), cost of packaging, transport to the place of destination and insurance during delivery to the place of destination, cost of warranty and warranty service”.

Below the quoted contents, the Contractor added a reservation:

„The Contractor shall not be pay for the shipping nor be liable for damages during shipping.”

the Contracting Authority's stance:

The Contracting Authority considers the above reservation made by the Contractor to be a request to change quoted § 2, section 4 and § 4, section 3 of the Contract template. What is more, taking into account the above request, the Contracting Authority would also have to amend:

- Chapter II, section 5 of the Contract Notice which says: „The subject of the contract must be new, free from defects or damage, not used, free of third-party rights. The Contracting Authority does not allow the equipment from the exhibition to be offered”
- § 2, section 5 of the Contract template which says: „The Contractor shall provide, within the specified period of time, brand new devices from current production, which meet all the functional and technical requirements specified by the Contracting Authority, and are free from any defects and damage, without previous use and not subject to third-party rights. The delivered devices cannot be post-exhibition equipment (from the exhibition)”
- Chapter VI, section 5 of the Contract Notice which says: „The bid price (net value) quoted in the bid shall include all costs related to the performance of the contract, including but not limited to cost of the subject of the contract (with documentation), cost of packaging, transport to the place of destination and insurance during delivery to the place of destination, cost of warranty and warranty service”, and
- note no. 1 to section 2 of the Bid form (Appendix no. 1 to the Contract Notice) which says: „A bid price (a net value) should contain all costs related to the performance of the contract, including but not limited to cost of the subject of the contract (with documentation), cost of packaging, transport to the place of destination and insurance during delivery to the place of destination, as well as cost of warranty and warranty service”.

The Contracting Authority does not agree to introduce the above amendments, i.e. to stipulate that the Contractor shall not pay for the shipping nor be liable for damages during shipping.

- 3) the Contractor quoted § 3, section 1 of the Contract template:
„The subject of the contract referred to in § 2 will be delivered not later than within 8 weeks from the date of signing the contract”

Below the quoted content, the Contractor added a reservation:

„Normal delivery time is 8 weeks.”

the Contracting Authority's stance:

The Contracting Authority can only assume the above reservation made by the Contractor was supposed to express a request to change quoted § 3, section 1 of the Contract. What is more, taking into account the above request, the Contracting Authority would also have to amend Chapter III, section 1 of the Contract Notice which says: „Deadline of the execution of the contract (of delivery): no later than within 8 weeks from the date of signing the contract”.

The Contracting Authority does not agree to introduce the above amendment. Both the Contract Notice and the Contract template must contain clear and unambiguous provisions regarding the maximum time for execution of the contract, regardless of the expected or/and standard order execution time offered by different Contractors.

- 4) the Contractor quoted § 7, section 1 of the Contract template:
„The Contractor shall pay to the Contracting Authority stipulated penalties in the amount of: a) 0.2% of the net value of the contract as is defined in § 4 section 1 of this contract for each day of default in delivery of the subject of the contract; b) 0.2% of the net value of the contract as is defined in § 4 section 1 of this contract for each day of default in removal of defects found during or after the acceptance of the subject hereof; c) 20% of the net value of the remuneration as is defined in § 4 section 1 of this contract for the withdrawal from the contract by the Contractor for reasons not attributable to the Contracting Authority; d) 20% of the net value of remuneration as is defined in § 4 section 1 of this contract for the withdrawal from the contract by the Contractor for reasons attributable to the Contractor, especially as defined in § 8 section 2 of the contract.”

Below the quoted content, the Contractor added a reservation:

„The Contractor shall not be subject to penalties for delayed shipment and/or delayed removal of defects.”

the Contracting Authority's stance:

The Contracting Authority considers the above reservation made by the Contractor to be a request to change quoted § 7, section 1, letter a) and b) of the Contract template.

The Contracting Authority does not agree to introduce the above amendment, i.e. to remove from the Contract template provisions regarding penalties for a default in delivery of the subject of the contract and in removal of defects found in the subject of the contract. At the same time, the Contracting Authority stresses out that the above-mentioned penalties would have to be paid by the Contractor only in case of a delay caused by reasons attributable to the Contractor. The above means that the Contractor could be

released from the obligation to pay the aforementioned contractual penalties by proving that the delay was caused by circumstances beyond his control.

- 5) the Contractor quoted § 10, section 7 of the Contract template:
„In case of the preparation and signing of the English version of the contract, the Polish version is the basis for the interpretation of the contract.”

Below the quoted content, the Contractor added a reservation:

„The English version of the contract will be the basis for interpretation.”

the Contracting Authority's stance:

The Contracting Authority considers the above reservation made by the Contractor to be a request to change quoted § 10, section 7 of the Contract template.

The Contracting Authority does not agree to introduce the above amendment, i.e. to stipulate that the English version of the contract is the basis for its interpretation. The Contracting Authority must respect the provisions of the Act of 7 October 1999 on the Polish language. Polish is the official language for the Contracting Authority and as such, must be used in official documents. The English version of the documentation has been published on the procedure's website to enable foreign entities to participate in the proceedings in question. However, the Polish version of documents, including the Contract template, shall prevail.