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**TERMS OF TENDER**

**03/EU/T2/CESTS**

REGARDING FULFILMENT OF THE FUNCTION OF THE  
CONTRACT ENGINEER FOR THE INVESTMENT  
“01/EU/T2/STS – PURCHASE AND DELIVERY OF FIVE  
SHIP TO SHORE QUAY CONTAINER GANTRY  
CRANES”

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**TERMS OF TENDER NO. 03/EU/T2/CESTS**

**REGARDING FULFILMENT OF THE FUNCTION OF THE CONTRACT ENGINEER  
FOR THE INVESTMENT “01/EU/T2/STS – PURCHASE AND DELIVERY OF FIVE  
SHIP TO SHORE QUAY CONTAINER GANTRY CRANES”**

## 1. GENERAL PROVISIONS

### 1.1 Tender organiser

The organiser of this tender (the "**Tender**") regarding purchase and delivery of five ship to shore quay container gantry cranes (the "**Contract**") is DCT Gdańsk S.A. ("**DCT**" or the "**Ordering Party**").

- (a) Name, address of the registered office and registration data of DCT:

DCT Gdańsk S.A.  
ul. Kontenerowa 7, 80-601 Gdańsk, Poland

NIP (Tax Identification Number) 204-000-01-83, REGON (Statistical Number) 192967316, KRS (number of entry into the National Court Register) 0000031077 (District Court Gdańsk-Północ in Gdańsk, 7<sup>th</sup> Economic Division of the National Court Register)

Website: <http://www.dctgdansk.com>

- (b) Correspondence address, contact data of DCT and contact person for issues related to the Tender:

Cezary Osipuk, Purchasing Coordinator  
Dział Finansowy (Finance Department)  
DCT Gdańsk S.A.  
ul. Kontenerowa 7, 80-601 Gdańsk, Poland

phone no. +48 58 737 9167  
e-mail: [t2-sts-tender@dctgdansk.com](mailto:t2-sts-tender@dctgdansk.com)

### 1.2 Legal basis for conducting the Tender

1.2.1 The Tender shall be conducted by DCT on the basis of Article 70<sup>1</sup> of the Civil Code of 23 April 1964 (Journal of Laws Dz. U. No. 16, item 93, as amended).

1.2.2 DCT is not the ordering party within the meaning of the Public Procurement Law of 29 January 2004 (consolidated text of 2010, Journal of Laws Dz. U. No. 113, item 759, as amended), thus, the provisions of the afore-mentioned Law shall not be applicable to the Tender.

### 1.3 Tender Notice

The Tender was announced on 14 August 2014 by means of publication of the notice at Ordering Party's website (the "**Notice**"). The Tender was also announced in the Official Journal of the European Union.

## 2. DEFINITION OF THE SUBJECT OF THE TENDER

The subject of the Tender shall be selection of an entity that will provide to DCT, on the basis of the agreement concluded with DCT (according to the template constituting Annexe No. 2 to the Notice of Tender), services of the Contract Engineer/Third Party Inspection described in Annexe No. 4 to the Notice of Tender, including supervision over a contractor selected by the Ordering Party to design, manufacture, deliver and commission five ship to shore quay container gantry cranes (the "**Investment**") and all any other services or activities not mentioned directly in the agreement, necessary for ensuring due performance of the subject of the agreement.

## 3. COSTS OF PARTICIPATION IN THE TENDER

Entities taking part in the Tender shall incur, on their own, all costs and expenses related to their participation in the Tender, including in particular costs related to the preparation and submission in the course of the Tender of any applications and documents as well as costs of travel, if any, to the registered office of DCT and inspection of the premises. DCT shall not be obliged to cover or reimburse to the entities taking part in the Tender any costs related to their participation in the Tender and undertaking any activities in connection with the Tender.

## 4. GENERAL CONDITIONS OF PARTICIPATION IN THE TENDER

- 4.1 A bidder may be a person acting independently as a natural person or a legal person interested in submission of a bid in the Tender procedure and meeting the subjective, financial and technical conditions of participation in the Tender (the "**Bidder**").
- 4.2 Tender guarantee requirements are defined in point III.1 of the Notice.
- 4.3 The subjective, financial and technical conditions of the participation in the Tender (Information about the Bidder and Tender entry criteria) are defined in point III.2 of the Notice.
- 4.4 Bid evaluation criteria are defined in point IV of the Notice.

## 5. CLARIFICATIONS WITH REGARD TO THE DOCUMENTATION AND AMENDMENTS TO THE TEMPLATE OF THE AGREEMENT

- 5.1 The Bidder may request DCT in writing or by e-mail (to the address indicated in point 1.1.b) above) to clarify the content of the Tender documentation, in particular of the Notice of Tender, Terms of Tender with Annexes, including CESTS Detailed Scope of Work (the "**Documentation**") not later than **22 August 2014**. DCT shall provide clarifications not later than **29 August 2014**, and if it turns out to be impossible, DCT may set a later tender submission date and notify all Bidders thereof by placing relevant information on the website set out in point 1.1.a) above.
- 5.2 The content of enquiries and clarifications shall be placed by DCT on the website set out in point 1.1.a) above, without disclosing the source of the enquiry.

- 5.3 The Bidder may propose not later than till **22 August 2014** that amendments be introduced to the Documentation. DCT shall present its position on the proposed amendment not later than **29 August 2014** and in the event that it turns out to be impossible, DCT may set a later bids' submission date and notify all Bidders thereof by placing relevant information on the website set out in point 1.1.a) above.
- 5.4 The content the proposed amendment to the Documentation with the position of DCT on the proposed amendment shall be placed by DCT on the website set out in point 1.1.a) above, without disclosing the source of the enquiry.
- 5.5 Setting a later bids' submission date shall not affect the running of the time limits set out in points 5.1 and 5.3, unless DCT decides otherwise. The date for presentation by DCT of its position set out in point 5.3 shall be properly postponed according to the period indicated by DCT.
- 5.6 DCT shall publish the answers and amendments on DCT's website set out in point 1.1 a) above in the table "questions and answers". Each question shall be assigned with a chronological number, i.e. the number shall correspond to the order of receipt thereof by DCT. In the event of any discrepancy or inconsistency in the answers given by DCT, the answer that was given later shall prevail (higher enquiry number).
- 6. MANNER OF PREPARATION AND SUBMISSION OF THE BID**
- 6.1 The Bidder shall prepare the bid in writing, typed, in a clear and unequivocal way (i.e. raising no doubts), otherwise the bid shall be rejected. The bid shall be signed by the Bidder's authorised representative and prepared in compliance with the requirements regarding both the form and the content, described in the Documentation, in particular this point 6 of Terms of Tender. The Bidder shall enclose to the bid an electronic copy of the bid in the form of a scan of the signed bid, placed on a CD/DVD in PDF format.
- 6.2 The bid shall be prepared in English. In the event that documents in any other language are enclosed to the bid, such documents shall be submitted with their translation into English.
- 6.3 All documents submitted by the Bidder as part of the Tender procedure should be submitted in the form of the original or a copy certified for compliance with the original by the Bidder's authorised representative.
- 6.4 The Bidder's representative shall be:
- 6.4.1 a person authorised to represent the Bidder in compliance with the valid extract from the Register of Entrepreneurs of the National Court Register or an equivalent register, and in the event that the Bidder's registered office is located beyond Poland, from the register maintained for the Bidder, issued not earlier than 3 (three) months prior to the expiry of the bids' submission date, or
- 6.4.2 the Bidder's proxy, possessing a special power of attorney to represent the Bidder in the Tender.

- 6.5 The original or copy, certified by the Bidder's representative for compliance with the original, of a document confirming authorisation of the representative to represent the Bidder should be enclosed to the documents submitted by the Bidder in the Tender.
- 6.6 Each page of the bid should be initialled by the Bidder's representative. All pages of the bid should be numbered subsequently and connected in a way making it impossible to disconnect them. It is advisable that the bid contains the table of contents (at the beginning of the document).
- 6.7 The bid should include at least the following documents:
- 6.7.1 form of the bid in compliance with Annexe No. 1 to Terms of Tender (provision of duly filled Annexe No. 1 does not preclude Bidder from submitting own bid/offer letter subject to compliance of information provided in all documents, in particular in terms of proposed prices),
- 6.7.2 documents required in compliance with point III.2 of the Notice,
- 6.7.3 Bidder's declaration in compliance with Annexe No. 2 to Terms of Tender.
- 6.8 The Bidder may submit only one bid. DCT does not permit for submission of two or more bids by Bidders belonging to the same capital group within the meaning of the Prevention of Unfair Market Practices Act of 16 February 2007; in the event of violation of this provision, all such bids shall be rejected.
- 6.9 The bid should be submitted in a closed, non-transparent envelope, protected against accidental opening, with the reception of the administrative building of the registered office of DCT, whose address is provided in point 1.1.b) above, not later than the date set out in point 6.12 (change in submission date should be taken into account by Bidder while marking the envelope with a bid). The bid shall be marked as follows:
- "Bid submitted as part of Tender procedure No. 03/EU/T2/CESTS – Fulfilment of the function of the Contract Engineer for the investment "01/EU/T2/STS – Purchase and delivery of five ship to shore quay container gantry cranes" (do not open before 5 September 2014, 1.00 p.m.) ."
- The administration worker responsible for collecting correspondence shall enter the date and time of the receipt of the bid by DCT.
- 6.10 The Bidder may, prior to the expiry of the bids' submission date, make amendments and supplementations to the bid submitted by it. The afore-mentioned amendments and supplementations shall be prepared in the same way as the bid, and the envelope in which they are delivered to DCT should be additionally marked as follows: "Amendment and supplementations to the bid submitted as part of Tender procedure No. 03/EU/T2/CESTS – Fulfilment of the function of the Contract Engineer for the investment "01/EU/T2/STS – Purchase and delivery of five ship to shore quay container gantry cranes". Open with the bid.")
- 6.11 The Bidder may withdraw the bid submitted by it, prior to the expiry of the bids' submission date, on the basis of a written request submitted with DCT. The afore-

mentioned request should be submitted by the Bidder in the registered office of DCT set out in point 1.1.b above, prior to the expiry of the bids' submission date.

**6.12 The bids' submission date expires on 5 September 2014, at 1.00 p.m.**

6.13 DCT reserves its right to set a later bids' submission date at any time prior to the expiry thereof. DCT shall notify all Bidders of setting a later bids' submission date by placing relevant information on the website set out in point 1.1.a) above.

6.14 Bids received after the bids' submission date shall not be opened and shall be immediately returned to the Bidder.

6.15 The Bidder shall be bound by the bid for the period of 60 (sixty) days of the date of opening of bids set out in point 6.12. At a reasonable request of DCT submitted to the Bidder in writing, the Bidder shall be obliged to extend the tender validity period by the period indicated by DCT, however not longer than 30 (thirty) days.

**7. OPENING OF BIDS**

7.1 Bids shall be opened in the Room of the Management Board, in the administrative building on the premises of DCT, ul. Kontenerowa 7, 80-601 Gdańsk, on 5 September 2014 at 1.30 p.m.

7.2 Opening of bids shall not be attended by Bidders' representatives nor invitees.

**8. CRITERIA OF EVALUATION OF BIDS AND SELECTION OF THE BEST BID**

8.1 DCT shall examine and evaluate bids behind the closed door.

8.2 DCT shall make formal evaluation of the submitted bids by verification of the compliance by Bidders with Terms of Tender defined in point III.2 of the Tender Notice (evaluation "meets-does not meet").

8.3 DCT may request the Bidder to amend formal defects, including omissions, in the bid submitted by the Bidder. The Bidder shall amend formal defects, including omissions, of the bid within the time limits reasonably set by DCT. If the Bidder does not provide the Ordering Party with all requested information within two rounds of questions, the bid may be rejected.

8.4 DCT may request the Bidder to provide clarifications related to the content of the tender submitted by it. The Bidder shall provide clarifications within the time limits reasonably set by DCT. If the Bidder does not provide the Ordering Party with all requested clarifications within two rounds of questions, the bid may be rejected.

8.5 DCT may correct obvious errors in the content of the bid and notify the Bidder thereof.

8.6 While evaluating bids DCT shall use the criteria and weights assigned to them (if applies) as presented in point IV of the Notice.

8.7 DCT shall select the best bid with the use of the criteria set out in point IV of the Notice from among all bids submitted and not rejected on the basis of the provisions of the

Documentation. The best bid shall be deemed as the bid that received the highest total of points obtained jointly for particular criteria.

- 8.8 In the event that, in the reply to the Notice, only one bid is submitted or among all submitted bid only one bid is not subject to rejection, DCT may still select the bid or close the Tender without selecting the best bid in compliance with point 12 below.
- 8.9 DCT shall immediately but not later than within 90 (ninety) days of the bids' opening date, notify all Bidders that submitted bids subject to opening of the selection of the best bid.
- 8.10 If two or more bids receive the same number of points and, in view of the above, it is impossible to select the best bid, DCT shall immediately invite Bidders whose bids received the same number of points to submit, within 10 (ten) business days of the date of the invitation, supplementary bids. Supplementary bids shall be evaluated by DCT under the principles indicated in the invitation to submit supplementary bids, which shall be identical for each Bidder invited to submit a bid. Supplementary bids may not be less beneficiary to DCT than the original bids submitted at first. In the event that, despite submission of supplementary bids, it is still impossible to select the best bid, DCT shall be entitled to close the Tender in compliance with point 12.
- 8.11 If, in the period between the bids' opening date and the date of selection of the best bid, there is a significant change of the market conditions, DCT shall invite the Bidders that submitted bids to submit, within 10 (ten) business days of the date of the invitation, to submit supplementary bids. Supplementary bids shall be evaluated by DCT under the principles indicated in the invitation to submit supplementary bids, which shall be identical for all Bidders invited to submit a bid. In case of a significant change of the market conditions, DCT shall also be entitled to close the Tender in compliance with point 12. A change of the market conditions shall be understood as revocation or suspension of the consent of the Supervisory Board of DCT or DCT's lenders to the performance of the Contract or Investment.

## **9. CONCLUSION OF THE AGREEMENT**

- 9.1 Upon the selection of the best bid by DCT, DCT shall provide the Bidder whose bid was selected as the best one with information on the place and planned date of conclusion of the agreement.
- 9.2 DCT may require that the Bidder whose bid was selected as the best one provide a guarantee of due performance of the agreement in the form of a bank or insurance guarantee, in compliance with the template of the agreement enclosed to draft of the agreement.
- 9.3 The agreement shall be signed at the earliest upon the expiry of 10 (ten) days of the date of provision of notice on selection of the best bid. The agreement may be concluded prior to the expiry of the time limits set out in the previous sentence if only one bid was submitted in the Tender procedure.
- 9.4 In the event that the Bidder whose bid was selected as the best one refuses to conclude the agreement, DCT shall be entitled, at its own discretion, without making another

evaluation of bids, to select the second best bid from among the other bids submitted by Bidders and notify Bidders of the selection of the best bid from among the other bids or to close the Tender in compliance with point 12.

- 9.5 The Bidder whose bid was selected in the circumstances set out in point 9.4 above as the best bid from among the other bid shall be obliged to conclude the agreement with DCT if at the time of notification of this Bidder by DCT of the selection of its bid is binding in compliance with the provisions of point 6.15 above or bid's validity was extended by the Bidder in writing.

## **10. MANNER OF COMMUNICATION IN THE COURSE OF THE TENDER**

- 10.1 Tender shall be conducted in the English language in the written form.
- 10.2 Save for the provisions regarding the manner of preparation and submission of bids, all and any correspondence containing declarations, requests, notices and any other information between DCT and Bidders shall be provided by post, courier service or by e-mail and in agreed cases the information shall be provided also through the website of DCT set out in point 1.1 a). Declarations, requests, notices and other information provided by Bidders by e-mail shall be deemed as submitted on time if the content thereof reaches the address set out in point 1.1(b) above prior to the expiry of the time limits defined by DCT. DCT may request the Bidder to confirm in writing submitted information, declarations or documents.
- 10.3 All and any correspondence directed by Bidders to DCT in the course of the Tender should be marked at the header, for its validity, with the following tender number: 03/EU/T2/CESTS.
- 10.4 DCT shall process data of Bidders only for the purpose of selection of the Bidder performing the subject of this contract. DCT shall send, to the e-mail addresses provided by Bidders, information related to the course and determination of the Tender.

## **11. AMENDMENTS TO THE DOCUMENTATION**

DCT may, at any time prior to the expiry of the bids' submission date, amend the content of the Documentation, including in the scope, save that the said change does not cause any deterioration of the conditions of competitiveness with regard to the terms of participation in the Tender and evaluation of bids. DCT shall notify Bidders of amendments to the content of the Documentation immediately by means of publication of relevant information on the website of DCT set out in point 1.1. a) above, and it shall set a later bids' submission date, if necessary.

## **12. CLOSURE OF THE TENDER**

- 12.1 DCT may, at any time, including upon the opening of bids, close the Tender without selecting any bid, in particular if it turns out in the course of the Tender that the performance of the Contract or design or performance of the Investment-related construction works encompassing new deep-water landing pier and adjacent stacking yards may be delayed or withdrawn from or the situation set out in point 8.8 or 8.10 above takes place or market conditions set out in point 8.11 above change. DCT shall



not be obliged to justify the decision on closure of the Tender. In such an event, DCT shall place a declaration on closure of the Tender without selection of any bid on its website set out in point 1.1.a) above.

- 12.2 DCT shall bear no liability to Bidders in connection with the closure of the Tender without selection of any bid. In the event of closure of the Tender by DCT without selection of any bid, Bidders shall pursue no claims against DCT for reimbursement of costs or expenses related to the participation in the Tender (including in particular the costs of advisors) and preparation of the documentation submitted by them in the course of the Tender.

13. **REMEDIES**

All and any disputes related to the Tender shall be subject to determination by a common court appropriate for the registered office of DCT.

**ANNEXE NO. 1  
FORM OF TENDER**

.....  
*Bidder's company seal*

In reply to Tender Notice No. **03/EU/T2/CESTS** we declare that we will perform the Contract in compliance with the agreement constituting Annexe No. 2 to the Notice of Tender, available at [www.dctgdansk.com](http://www.dctgdansk.com), for the net amount of EUR .....

	Town/city and date	
Persons authorised to sign this declaration on behalf of the Bidder		
	Name and surname	Signature
1.		
2.		

## ANNEXE NO. 2 BIDDER'S DECLARATION

.....  
*Bidder's company seal*

While proceeding to the participation in the Tender **03/EU/T2/CESTS** regarding purchase and delivery of five ship to shore quay container gantry cranes we declare that:

1. We possess all licences required by law for the performance of the Contract defined in 03/EU/T2/CESTS Tender Documentation
2. Our economic and financial situation allows to perform the Contract
3. We possess necessary knowledge and experience proven by successful realization of contracts concerning provision of Contract Engineer/Third Party Inspection services from the design stage through manufacturing, erection and testing of minimum 30 STS cranes within the last 5 years since the issuance of the Notice of Tender as well as technical potential and human resources able to perform the Contract and are familiar with formal and administrative procedures applicable in Poland
4. We have made ourselves familiar with the entire Tender Documentation, in particular Terms of Tender and the template of the agreement constituting Annexe No. 2 to the Notice of Tender and make no reservations thereto
5. We propose the following persons possessing required experience and qualifications set out in point III.2.B.c of the Notice for the performance of the Contract:

	Project Manager	Structural Engineer	Welding Engineer	Mechanical Engineer	Electrical Engineer
Name and surname					
Position in the team of the Bidder					

Qualifications					
Professional experience (scope and time)					

Town/city and date		
Persons authorised to sign this declaration on behalf of the Bidder		
	Name and surname	Signature
1.		
2.		