

Annex No ...

Contract No/..../2011

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entered into as of 2011 in (Katowice), Procurement Procedure Number: Z-21/VI/2011/PNT, by and between:

Euro-Centrum Science and Technology Park, Limited Liability Company (LLC) [pol.: Park Naukowo-Technologiczny „Euro-Centrum” Sp. z o.o.] with its registered seat in Poland, Katowice, 40-568, ul. Ligocka 103, entered in the National Court Register [pol.: KRS - Krajowy Rejestr Sądowy] maintained by the District Court for Katowice-Wschód [East] in Katowice, VIII Commercial Division of the National Court Register under No. KRS 0000297073, NIP [Tax Identification Number] 634-266-42-78, REGON [National Business Registry Number] 240789585 with the share capital of PLN 3.900.000,00 and the Management Board comprising: **Roman Trzaskalik - President of the Management Board, Mirosław Bobrzyński - Vice-President of the Management Board, Monika Pilip - Member of the Management Board**, with two members of the Management Board or a Proxy acting with a member of the Management Board, having due authorization to represent the Party,

as the Contracting Authority

and

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.....
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as the Contractor

Article 1

THE OBJECT OF THE CONTRACT

1. By virtue of this contract the Contracting Authority awards the contract and the Contractor accepts the award of the contract for:

“Supply of In-House (Indoor) Solar Collectors and Systems Testing Laboratory

for the Solar Systems Test Centre”

with relation to the Project entitled *"Foundation of Euro-Centrum Science and Technology Park - Development and Application of New Technologies in the Field of Energy Conservation and Renewables"*;

implemented within the framework of Priority Axis 5: Diffusion of Innovation;

Measure 5.3: Support for Innovation Centres of the Innovative Economy Operational Programme; co-financed with the European Union funds and the State Budget;

with regard to the Financial Support Agreement dated 8th October 2010, number POIG.05.03.00-00-010/10-00 [POIG - *Innovative Economy Operational Programme*].

2. Within the scope of the object of the contract fall delivery, installation & assembly and commissioning of the in-house (indoor) laboratory equipment for solar collectors and systems testing for the Solar Systems Test Centre. Detailed specification of the laboratory equipment (detailed description together with technical parameters) is contained in the Annex no 1 to this contract.
3. The installation & assembly of the equipment shall take place in the designated premises of the Solar Systems Test Centre in Katowice at Ligocka 103 Street.
4. Within the scope of the object of the contract, the Contractor is also obliged to:
 - a) transmit to the Contracting Authority the necessary guidelines - structure designs concerning the installation & assembly of the laboratory equipment within the Contracting Authority's facility as well as installation designs necessary for its commissioning and the exploitation of the laboratory,
 - b) pack and transport all the components to the installation & assembly location, together with unloading,
 - c) commission the devices installed and assembled (test trials) and draw up related protocols with the participation of the Contracting Authority,
 - d) conduct a two-stage training course which shall be comprised of a theoretical and a practical part, with the aim of transferring knowledge on the applications of the testing unit and the respective components of the laboratory equipment to the participants of the training as well as acquiring practical skills on how to operate all the devices, handle on-going repairs of faults, maintain, diagnose defects, and any other skills indispensable for operations of the laboratory, as well as warranty procedures (warrantor contact rules),

- e) supply the Contracting Authority with the Technical Documentation of the devices, including the supply of such documents as Instructions, Certificate of Conformity, Safety Declaration, Certificate of Approval, Acceptance Certificate of the devices; the results of the conducted measurements, checks, and others;
 - f) The Contractor shall, moreover, be obliged to provide substantial patronage for the Solar Systems Test Centre at the stage of establishing the Centre and obtaining the accreditation for the testing laboratory from the Solar Keymark. This shall encompass the provision of consultations to the Contracting Authority (definition of tracks) under accreditation procedures, if necessary, at the subsequent stage - assisting (substantial support), if the Contractor enters the accreditation track.
5. The laboratory (equipment) shall be manufactured in compliance with the safety requirements of the European Union and delivered with the CE mark, together with plates and inscriptions in the Polish and English language.
6. The Contractor declares that:
- 1) the equipment supplied within the framework of the procurement procedure shall be new equipment that has not been used previously in any other projects,
 - 2) the equipment supplied within the framework of the procurement procedure shall have warranty service based on the warranty provided by the manufacturer or the supplier of the equipment,
 - 3) the equipment supplied within the framework of the contract shall have the appropriate warranty service pack, technical and service support for the users having registered seat in the territory of the Republic of Poland,
 - 4) the Contractor shall provide the Contracting Authority with a 36-month warranty for the object of the contract that has been delivered. Moreover, the Contractor is obliged to submit to the Contracting Authority all and any guidelines and instructions appertaining to the proper and sound use of the supplied laboratory.

Article 2

REMUNERATION AND PAYMENT CONDITIONS

1. The Contractor is entitled to the following total remuneration(EUR) net/gross (in words:) consisting of:
 - a)
 - b)
 - c)
 - d)
2. Remuneration shall be payable in accordance with the disbursement schedule constituting an annex to this contract, including:
 - a)

- b)
- c)

3. The remuneration under this Article constitutes lump-sum remuneration; it shall not be subject to indexation and it shall take account of all and any required fees and costs necessary for the performance of the contract.

4. The acceptance protocol of the object of the contract, as referred to in Article 5 paragraph 5, executed by both Parties hereto, shall serve as the basis for issuance of the invoice and remuneration for the performance of the object of the contract, with the exception of the advance payments. Effectuation of the advance payment shall be documented/confirmed with the invoice issued by the Contractor. The invoices are payable (except for the advanced invoices) within 21 days from its receipt by the Contractor.

5. The Contracting Authority provides for advance payments to be remitted for the performance of the contract in the amounts arising from the disbursement schedule hereof. The advance payment shall be payable, on condition that a separate request for advance payment (in the amount arising from the schedule) is submitted and the advance payment guarantee is deposited for the amount no lesser than the sum of all parts of the pre-financing as stipulated in the disbursement schedule hereof, in one or several of the following forms:

a) in cash to the Contracting Authority's bank account number 25 1020 2313 0000 3602 0192 1493 with the note: "advance payment guarantee - Supply / Indoor Laboratory/stage",

b) in bank or insurance guarantee.

The Contractor is obliged to submit the request for the advance payment as well as the proof of submitting the advance payment guarantee (the original copy of the insurance policy or the proof of payment of the amount requested by the Contracting Authority) no later than 5 working days prior to the advance payment date, as stipulated in the contract's disbursement schedule. The contract schedule, constituting an annex to the contract, determines the date and amount of the advance payment or amounts of the advance payments. The Contracting Authority reserves the right to verify the correctness of depositing the advance payment guarantee in the form of bank or insurance policy.

6. The Contracting Authority requires the advance payment deposit/advance payment guarantee to be binding and valid until the final acceptance referred to in Article 5 paragraph 5 hereof. The advance payment date is the date of debiting the Contracting Authority's account. The Contracting Authority shall return to the Contractor the document of the advance payment guarantee upon the Contractor's written request within 21 days from the receipt of the Contractor's request. The request for return of the advance payment guarantee is subject to the performance of the contract (acceptance under the acceptance and delivery protocol), referred to in Article 5 paragraph 5.

In the event of a delay in the conclusion of works, the Contractor is obligated to extend the validity period of the advance payment guarantee for the time



indispensable for the conclusion of the performance of the object of the contract. As regards non-pecuniary forms of guarantee of due performance of the contract, if the Contractor fails to perform the above obligation, the Contracting Authority is entitled to extend the validity period of a bank or insurance guarantee at the expense of the Contractor and thus shall be entitled to claim and collect the receivables arising from the reimbursement of the related costs that have been so incurred.

7. The advance payment shall be billed with an invoice for the performance of the object of the contract, as referred to in paragraph 4. The Contracting Authority provides for subsequent advance payments to be remitted, on condition that the Contractor proves to have performed the contract within the amount of the previously remitted advance payments.

Article 3

TIME LIMIT FOR CONTRACT PERFORMANCE

1. Time limit for contract performance:
 - 1) The Contractor shall deliver the object of the procurement procedure within the time limit not exceeding **8 months from the day of commencement of the awarded contract**.
 - 2) The Contractor shall install & assembly and commission as well as complete the training procedure, as referred to in within the time limit not exceeding **1 month from the day of the delivery of the object of the contract**.
2. Detailed interim time limits are set out as follows:
 - 1)
 - 2)
3. In case the time limits should change during the performance of the contract, it is necessary to update the disbursement schedule constituting an annex to this contract.

Article 4

PACKAGING AND TRANSPORT

1. The Contractor undertakes to deliver the object of the procurement procedure by its own means of transport, at its own expense and risk. The equipment shall be shipped after being appropriately packed and loaded by the Contractor.
2. The Contractor shall be liable for any damage resulting from the defective or improper packing of the equipment.
3. Transport of the devices from the registered seat of the Contractor to the registered seat of the Contracting Authority shall be prepared and paid by the Contractor.

4. Terms of delivery: DDP in accordance with INCOTERMS 2000.
5. Unloading shall be arranged by the Contractor and at its own expense.
6. Transport insurance covering the route from the plant at the registered seat of the Contractor to the plant of the Contracting Authority shall be provided by the Contractor on its own terms and at its own expense.

Article 5

INSTALLATION & ASSEMBLY, COMMISSIONING AND FINAL ACCEPTANCE

1. Installation & assembly and commissioning of the equipment shall be carried out by the Contractor, or by an entity designated by the Contractor, and at its own expense. Transport, installation & assembly and commissioning of the equipment in the target location (the Solar Systems Test Centre in Katowice) may be preceded by the “pre-inspection” acceptance of the equipment under supply, at the registered seat of the Contractor, within the time limit stipulated in the delivery schedule.
2. The Contractor may and should make a prior acceptance of the premises where the installation & assembly of the laboratory equipment is to be conducted, in order to inspect whether they meet the required parameters and utility interconnections, as stipulated in Article 1 paragraph 4 letter a) of this contract. The inspection should be conducted within prior to the scheduled installation & assembly.
3. The Contracting Authority shall provide cooperation of the support personnel with the installation & assembly.
4. The final acceptance of the object of the contract shall take place at the Contracting Authority’s plant and shall be preceded by commissioning and performing tests.
5. The results of the conducted acceptance shall be included in the final acceptance protocol which shall be executed by both parties.
6. The Contractor undertakes the installation & assembly of the laboratory equipment to be conducted by certified staff members, appropriately qualified and experienced in the field of delivery and installation & assembly of the object of the contract.
7. The Contractor shall be solely responsible for any risk of loss of or damage to the object of the contract until the execution of the formal written acceptance of the object of the contract by the Contracting Authority. Upon the launch of the installation & assembly works, the Contractor shall also become liable for all and any damage which might occur to the Contracting Authority’s property, as well as any other third parties’ property, arising out of or in connection with the installation & assembly works.

Article 6

DOCUMENTATION

1. The Contractor shall provide technical documentation i.e., among others, structure design documentation, installation documentation and operation documentation in the Polish language, 1 set in PDF format and 2 sets in the printed version, as well as programming manual in Polish or English.
2. The Contractor shall transmit to the Contracting Authority the drawings as well as all and any documents necessary for inspection by the Polish Office of Technical Inspection [*pol.: UDT - Urząd Dozoru Technicznego*] and, if necessary, the Contractor, together with the Office of Technical Inspection, shall carry out in its plant the inspection of the structure and the indispensable tests.
3. The acceptance protocol related documentation concerning the above tests shall be stamped by the Office of Technical Inspection and shall be transmitted to the Contracting Authority in 2 copies.
4. The Contractor shall bear all costs connected with the inspection of the structure and the tests specified in paragraph 2 herein.

Article 7

TRAINING COURSE

1. The Contractor undertakes to conduct a two-stage training course in the operations of the laboratory under supply up to 6 persons designated by the Contracting Authority.
2. The training course shall comprise of a theoretical and a practical part. The training course shall aim at transferring knowledge on the respective components of the laboratory equipment to the participants of the training as well as acquiring practical skills on how to operate all the devices, handle on-going repairs of faults, maintain, diagnose defects, and any other skills indispensable for operations of the laboratory as well as warranty procedures (warrantor contact rules).
3. The duration of the training course (respective stages) is/ shall depend upon
4. The Contractor shall provide the training course in Polish / English or in German.
5. The Contracting Authority allows the training course to be conducted partly at the registered seat of the Contracting Authority and /or at the registered seat of the Contractor. In case the training course should be conducted outside the registered seat of the Contracting Authority, the Contractor shall bear the costs of accommodation and

board of the participants of the training. Moreover, the Contractor is obliged to develop and print out the appropriate number of the training handouts.

6. Travel expenses of the participants of the training course shall be covered by the Contracting Authority.
7. The Contractor shall issue diplomas/certificates for the specialists participating in the training course conducted by the Contractor.
8. The trained specialists shall be additionally certified in order to be authorised to perform the post-warranty repairs.

Article 8

WARRANTY

1. The Contractor guarantees high quality of the object of the contract, whereas the warranty period amounts to 36 months commencing from the date of commissioning and delivering the object of the contract to the Contracting Authority for exploitation.
2. The Contracting Authority shall inform the Contractor in writing of all and any claims providing the detailed description of the fault or failure. The written description of the fault or failure can be transmitted to the Contractor by fax or by electronic means.
3. Upon the receipt of the warranty claim, the Contractor shall proceed to remove the fault or failure within 48 hours (excluding Saturdays, Sundays and holidays).
4. The warranty period shall be extended for the period in which the laboratory (a device) was out of operation, provided that the fault or failure occurred due to the Contractor.
5. The Contractor shall ensure the sale of spare parts as well as the after-sale service of the laboratory equipment for the period of 10 years from the date of expiry of the warranty.
6. Within the warranty period, the Contractor shall also be obliged to carry out periodic maintenance checks subject to the following conditions:
 - 1) the first maintenance check, either upon the lapse of the first year after the delivery date or after 500 hours of the laboratory operations,
 - 2) subsequent maintenance checks, either every two years or after 1000 hours of the laboratory operations.

Article 9

PENALTIES

1. The parties agree that if the contractual date for the supply of the equipment stipulated in Article 1 is exceeded by the Contractor by more than 14 days, the Contractor shall pay to the Contracting Authority the contractual penalty on account of the delay



amounting to 0,1% of the contract value for each day of the delay.

2. The sum of contractual penalties on account of the delay in supply of the equipment must not exceed 10% of the price stipulated in Article 2, paragraph 1 herein.
3. The Contracting Authority is entitled to claim damages exceeding the amount of contractual penalties.

Article 10

PERFORMANCE GUARANTEE

1. Within 14 days from the execution of the contract, the Contractor deposits guarantee of due performance of the Contract in the gross amount equivalent to 6% of the remuneration stipulated in Article 2, paragraph 1, i.e. ... EUR in the form of (in cash or in the form of insurance or bank guarantee that shall be unconditional, irrevocable and payable upon first demand) for the period until The bank or insurance guarantee document requires the approval from the Contracting Authority.
2. The guarantee, stipulated in paragraph 1, as deposited by the Contractor shall secure the claims for non-performance or undue performance of the Contract as well as warranty claims concerning quality / removal of faults and failures.
3. The Contracting Authority shall reimburse the Contractor with 70% of the value of the performance guarantee upon a written request from the Contractor within 30 days following the day of the execution of the final protocol of delivery and acceptance of the object of the procurement procedure.
4. The Contracting Authority shall reimburse the Contractor with the remaining 30% of the value of the performance guarantee upon a written request from the Contractor no later than on 15th day lapsing after the expiration of the guarantee period.
5. The Contracting Authority provides for the Contractor to deposit two separate guarantees (guarantee documents) in the amount stipulated in paragraph 3 (due contract performance guarantee until the final acceptance) and in the amount stipulated in paragraph 4 (warranty claims security).
6. In the event of failure to deposit the guarantee, the Contracting Authority is entitled to renounce the contract by means of a written statement submitted to the Contractor.
7. In the event of a delay in the time limit for the final acceptance, the Contractor is obligated to extend the validity period of the due contract performance guarantee for the time indispensable for the conclusion of the performance of the object of the procurement procedure. As regards non-pecuniary forms of guarantee of due performance of the contract, if the Contractor fails to perform the above obligation, the Contracting Authority is entitled to extend the validity period of a bank guarantee, insurance guarantee or bank surety at the expense of the Contractor and shall be entitled to claim and collect the receivables arising from the related costs that have been so incurred.

Article 11

ARBITRATION

1. All and any disputes and differences of opinions arising out of or in relation to this contract shall be amicably resolved.
2. If the parties fail to reach an agreement, the matter shall be settled by the Court having territorial and subject matter jurisdiction over the Contracting Authority's registered seat, in accordance with the Polish law.

Article 12

GENERAL PROVISIONS

1. All and any amendments and supplements to this contract must be made only and solely in writing, signed by both parties, otherwise being null and void.
2. Neither party hereto shall be entitled to transfer any rights or obligations arising from or relating to this contract to third parties without prior written consent of the counter party.
3. The Contractor shall be liable to the Contracting Authority for claims for damages of third parties, infringement of patent rights, trade name rights, or industrial design rights, arising from the use of the object of supply. In case a third party should file/address any claim or charges against the Contracting Authority for infringement of its rights, the Contractor will take legal and factual action aiming to avoid the Contracting Authority's liability to a third party, whereas the entire legal and financial liability which may arise from such claims or charges is solely the Contractor's liability. Shall the Contracting Authority incur damage or costs resulting from claims for damages of third parties, as described hereinabove, the Contractor is obliged to compensate for such damage and reimburse the costs thus sustained, in both cases up to its full value.
4. This contract has been made in 2 counterparts in Polish and two counterparts in English, 1 counterpart of each language version for each of the parties.
5. The general language for interpretation of this contract is the Polish language and in case of any disputes arising out of or in connection with the performance of this contract, the Polish version shall prevail.

ANNEXES:

- Annex No1 - the Technical Specification and the Scope of the Supply,
Annex No 2 - the Contractor's Tender,
Annex No 3 - the Specification of Essential Terms of the Contract,
Annex No 4 - the Disbursement Schedule,

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**INNOWACYJNA
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NARODOWA STRATEGIA SPOJNOŚCI



Euro-Centrum
Park Naukowo-Technologiczny

UNIA EUROPEJSKA
EUROPEJSKI FUNDUSZ
ROZWOJU REGIONALNEGO



the Contractor

the Contracting Authority