

www.bosmal.eu

E-mail:
bosmal@bosmal.com.pl

Secretary Office:
☎ +48 33 8130539
☎ +48 33 8130538

EU VAT No:
PL5472013159

Bank Accounts:
Bank Pekao SA
PL 39 1240 4142 1978
0000 4823 0559,
Swift - PKOPPLPW

Bank Handlowy SA
PL 55 1030 1087 0000
0000 8317 2029
Swift - CITIPLPX

Basic capital:
5 150 000 PLN



AQAP 2110:2016
PN-EN ISO 9001:2015-10



PN-EN ISO 9001:2015-10
PN-EN ISO 14001:2015-09
PN-ISO 45001:2018-06



BADANIA
AB 128



www.bosmal.eu

BOS/26/NZ/20

Re: Open tendering for a supply of a new test bench dedicated for the new generation of automotive engines and hybrid powertrains provided for years 2020-2030, powered by alternative and synthetic fuels BOS/09/NZ/20.

Notice is hereby given that on May 1st 2020, BOSMAL Automotive Research and Development Institute Ltd. received enquiry from potential bidder, regarding the Terms of Reference (Polish: SIWZ).

1. Material Provisions of the Contract

a. Paragraph 1, Point 4, subpoint h.

Please explain what "reports on procedures for checking equipment" you mean.

The only documents that will be supplied are calibration reports for the sensors and measuring apparatus (if such equipment is to be calibrated).

b. Paragraph 1, Point 4, subpoint j.

Please note that it is impossible to supply electronic control panels with Polish-language descriptions. It is impossible to interfere with the original system software.

Therefore, please delete this requirement from the Contract.

c. Paragraph 1, Point 5

Please allow us more time, i.e. 8 weeks from the date of the Contract, for providing you with documents containing "detailed installation conditions". The 4-week period is too short for the preparation of such documents.

Also, please change the date of the organisational meeting at the offices of the Institute to 8 weeks after signing the Contract (Paragraph 2 Point 4.1.1 of the Terms of Reference).

2. Payment conditions and performance bond

The Contracting Authority did not provide an advance payment. Instead, the maximum amount of a performance bond in respect of the Contract is specified.

As no advance payment is provided for, please cancel the requirement for the Contractor to provide a performance bond.

Would the Contracting Authority consider changing the payment terms to the following:

- 30% of the Contract value – advance payment after Contract signing
- 50% of the Contract value – after delivery
- 20% of the Contract value – after signing of the acceptance protocol.

Each time within 30 days from the date of invoice.

3. Training

a. Place of training

Paragraph 5 point 2 of the Contract requires the Contractor to "conduct training at the headquarters of the Contracting Authority", although paragraph 2 Point 4.2.a of the Terms of Reference defines the training location to be the Contractor's head office or training centre, or the Contracting Authority's head office.

Please make the place of training clear, as the cost of the training will depend on where it is to be provided.

b. Scope of training

In principle, the training of the purchased equipment is intended to familiarize the user with the system of equipment operation, its operation and safety issues.

Therefore, the training does not include issues related to:

- discussion of the obligations and requirements that the Contracting Authority is to comply with;
- discussion of the obligations and requirements that the Contractor is to comply with in connection with the delivery of the subject matter of the Contract;
- discussion of the rules of proceeding in case of failure with indication of the way of proceeding of persons trained in such cases,
- discussion of the Contracting Authority's warranty rights under the Contract;
- an indication of the scheme of conduct and rules for the use of technical instructions.

Please delete the above requirements.

Also, please specify the scope of the required training regarding the systems and equipment to be supplied.

Do you require the training to cover the automation system and the software for automated testing, including all the measuring apparatus specified in the Terms of Reference?

4. Spare parts availability

The provisions of paragraph 5, point 7 oblige the Contractor to provide spare parts and post-warranty service for 10 years from the date of signing the acceptance protocol. Given the pace of technological change and the related availability of parts globally, the 10-year period is unacceptable.

Please change it to 5 (five) years. Please also correct the availability of spare parts in the Warranty Card Sample, paragraph 6, point 9.

5. Scope of liability

Please complete the Contract with the following points:

- a. Neither Party shall be liable for failure to perform its obligations under this Contract where such failure is due to an event of force majeure. Detailed provisions regarding force majeure events and their consequences are included in the contract.
- b. The Seller's liability and obligations according to the mandatory product liability laws is excluded, if specific provisions regarding the handling of the Equipment, instructions for its use and/or warning and safety regulations as specified by the Seller have not been observed.
- c. Outside the scope of the mandatory product liability laws, damages shall be compensated only if the Seller is held responsible for intent or gross negligence. In this case, however, claims are limited to personal injury and material damage resulting directly from a defect in the Equipment. All other claims, such as consequential loss of property or profit, costs of product recall are explicitly excluded. Claims must be made in writing within a period of six months from the date of occurrence of the damage, but not later than two years from the date of shipment, otherwise they are forfeited.

6. Warranty Card Sample

a. Please modify the provision of clause 2 point 1 b to the following:

Demand, from the Guarantor, compensation limited to such personal injury and property damage resulting directly from a defect in the supplied equipment which are suffered by the Contracting Authority as a result of the defect. Please delete the expression in the brackets from that subclause, i.e. *covering both losses and lost profits*.

b. Please complete paragraph 2 with a provision limiting contractual penalties to 5% of the value of the Contract.

c. Please modify the provisions of paragraph 5:

- Regular mode: The Guarantor is obliged to proceed to remove the revealed defect within 10 business days. The deadline for removal of defects cannot be longer than 21 business days.

- Emergency mode: The Guarantor is obliged to proceed to remove the revealed defect within 5 business days. The deadline for removal of defects cannot be longer than 14 business days.

We wish to draw your attention to the fact that the equipment to be supplied is highly specialised equipment and, therefore, not all of its components are in stock. Many of the parts are custom made only to the customer's specifications.

Therefore we ask You to complete the following sentence: „*In case it is necessary to send the device or its parts to the Contractor's service point **or if it is necessary to replace a highly specialised part**, the repair date will be agreed upon additionally*” and the use of this provision for both modes.

Currently, this provision applies to the regular repair mode only.

7. Terms of Reference

The Contracting Authority requires tests according to the 40 CFR 10390 standards, but it is not clear which tests are to be performed. As there are several such tests, please specify which of the tests below should be supplied. Please ignore the numbers in the left-hand column; they are catalogue product codes.

EPA 1039 (NonRoad CI)

TEMAC042A.01 iGEM 2 EPA 1039 NRTC

TEMAC043A.01 iGEM 2 EPA 1039 NRSC C1 DMC

TEMAC044A.01 iGEM 2 EPA 1039 NRSC C1 RMC

TEMAC047A.01 iGEM 2 EPA 1039 NRSC D2 DMC

TEMAC048A.01 iGEM 2 EPA 1039 NRSC D2 RMC

TEMAC076A.01 iGEM 2 EPA 1039 NRSC G2 DMC

TEMAC077A.01 iGEM 2 EPA 1039 NRSC G2 RMC

TEMAC068A.01 iGEM 2 EPA 1039 NTE

TEMAC113A.01 iGEM 2 EPA 1039 4Mode RMC for TRU Engines

TEMAC114A.01 iGEM 2 EPA 1039 4Mode DMC for TRU Engines

TEMAC058A.01 iGEM 2 EPA US SMOKE

We provide the following explanations.

Ad1a.

If the report on procedures for checking equipment is a calibration protocol, then such a document is sufficient for the Contracting Authority.

Ad1b.

Description of all control elements should be in Polish. The Contracting Authority agrees that this does not apply to electronic control panels if they are an integral part of the software in English.

Ad1c.

The Contracting Authority agrees to extend the deadline for delivery of the installation conditions and the date of the organizational meeting in order to determine the work schedule (after signing the contract) to 8 weeks, if this does not affect the completion date of the investment.

Ad 2.

The Contracting Authority waives the 10% performance bond, while the payment terms remain unchanged:

„The settlement of the contract concluded with the selected Contractor shall be based on the invoice in the amount:

- a. 50% of the contract value, payable after delivery;
- b. 50% of the contract value, payable after commissioning and signing the final protocol.

The condition for payment of the final invoice with a payment period of 30 days is installation of the device, its start-up, conducting a training (at least 3 days), providing the Contractor with the documents required in the contract and signing the Final Equipment Acceptance Protocol by the Parties.

Invoices will be sent electronically to the address: Invoice_Purchase@bosmal.com.pl and will be paid in the currency of the offer”

Ad 3a.

The place of training is correctly defined in the ToR in paragraph 2, point 4.2 and these provisions are to be considered as valid also for the provisions in the contract.

"The Contractor is obliged to conduct the training at the tenderer's seat, its training centre or at the Contracting Authority's seat".

Ad 3b.

The Contracting Authority agrees that the scope of training has been included in the ToR §2 point 4.2 in too general manner.

Therefore, the Contracting Authority agrees to delete the provision:

„Time of training - at least 3 days of training covering the following scope:

- discussion of the duties and requirements imposed on the Contracting authority,
- discussion of duties and requirements imposed on the Contractor in connection with the performance of the subject of the contract,
- detailed discussion of the handling of the subject matter of the contract and the systems supplied,
- discussion of the rules of conduct in case of failure, with an indication of the way of conduct of persons trained in such cases,
- discussion of the principles of guarantee rights in relation to the subject of the contract offered,
- indication of the procedure diagram and rules for using the technical instructions,
- discussion of changes introduced in the control system of the test bench.

and replace it with provisions as follows:

„Time of training - at least 3 days of training including the following scope:
the training is to cover the automation system and software for automatic test execution.
The training shall include:

1. Issues to be covered by the training on the automation system of the test bench:
 - a. demonstration of the control system of the test bench;
 - b. discussion of the control program structure
 - c. Creating a project structure for a new object:
 - configuration of the test bench
 - new variable names
 - archiving settings
 - parameterisation of the new engine
 - communication with the motor controller via ASAP3 protocol
 - configuration of the connection to additional equipment, e.g. exhaust emission analysers, indicators, etc.
 - d. Conducting practical exercises at stands simulating the operation of a test bench
 - e. Practical exercises in test preparation – simulators
 - f. Analysis and export of test results
 - g. Project and data management
2. A training subject for automatic test execution software:
 - a. Presentation of the possibilities of the program
 - b. Operation of the program
 - c. Definition of test unit parameters
 - d. Configuration of tests
 - e. Configuration and parameterisation of external measuring devices
 - f. Fuel parameter settings, including gas fuels and for dual fuel engines
 - g. Analysis of test reports e.g. NRTC, NRSC, WHTC and WHSC
 - h. Analysis of implemented calculation formulas and use of own formulas".

Ad 4.

The Contracting Authority agrees to shorten the period of availability of spare parts and post-warranty service to 7 years.

Thus, the provisions contained in the ToR §9 point 1.4, the Warranty Card Sample §6 point. 9 and §5 point 7 of Material Provisions of the Contract are changed:

„Availability of spare parts and post-warranty service for a period of at least 7 years from the date of signing the acceptance protocol.”

Ad 5a.

The Contracting Authority agrees to include the following in the contract:

„The parties shall not be liable for any failure to fulfil their contractual obligations if this was due to reasons beyond their control which could not have been foreseen at the time of conclusion of the contract and which could not have been avoided. Force majeure events may include disasters, fire, explosions, strikes, war. In case of force majeure, the Parties undertake to act in accordance with international rules and principles of mutual goodwill.

If the event of force majeure lasts longer than 30 days, both Parties have the right to withdraw from the Contract, without the consequences in the form of costs.

Ad 5b.

The Contracting Authority does not agree to the introduction of a provision into the Contract.

Ad 5c.

The Contracting Authority does not agree to the introduction of a provision into the Contract.

Ad 6a. and Ad 6b.

The Contracting Authority agrees to change the provision in Warranty Card Sample § 2 point 1b and 1c for the following one:

„In the event of any defect in the subject matter of the Contract, the Contracting Authority shall be entitled to:

- a) indicate the procedure for the removal of the defect/replacement of the item with a defect-free one;
- b) demand from the guarantor compensation limited only to personal and material damages resulting directly from the defect of the device, which the Contracting Authority suffered as a result of the defects.
- c) demand from the Guarantor a contractual penalty for untimely commencement of the removal of defects / replacement of the item with a defect-free item in the amount of 0.2% of gross remuneration (including VAT) specified in the Contract, for each week of delay. The amount of the penalty cannot exceed 5% of the contract price”.

Ad 6c.

The Contracting Authority does not agree to change the provision of §5 point.1. The regular mode remain unchanged. The existing provisions are valid.

„Regular mode:

1. The Guarantor is obliged to proceed to remove the revealed defect within 4 days (except for statutory holidays) from the date of receiving the call referred to in § 4 or the date of drawing up the Guarantee Review Protocol. The deadline for removal of defects cannot be longer than 15 days from the date of reporting the defect, except for public holidays or from the date of drawing up the Protocol of the Guarantee Review. In case it is necessary to send the device or its parts to the Contractor's service point, the repair date will be agreed upon additionally.

The Contracting Authority, on the other hand, make a minor change to the provision in §5 point 2.

„Emergency mode:

2. When the revealed defect restricts or prevents the operation of a part or the whole object of the contract, as well as when the revealed defect may result in a threat to human life or health, pollution of the environment, occurrence of irreparable damage to the Contracting Authority or third parties, as well as in other cases of no delay (about which the Contracting Authority shall inform the Guarantor in the summons referred to in §4): the Guarantor is obliged to:
 - ⇒ proceed to remove the revealed defect immediately, but not later than within 2 days (except for public holidays) from receiving the call referred to in § 4, or from drawing up the Guarantee Review Protocol,
 - ⇒ remove the defect at the earliest possible date, not later than within 7 calendar days (except for public holidays) from receiving the call referred to in § 4 or the date of drawing up the Guarantee Review Protocol.

For emergency mode, the recording from regular mode also applies:

“In case it is necessary to send the device or its parts to the Contractor's service point, the repair date will be agreed upon additionally”.

Ad 7.

The contracting authority requires at least 2 tests to be provided: NRTC and NRSC C1 RMC according to standards 40 CFR 1039.

Yours sincerely

Instytut Badań i Rozwoju Motoryzacji
BOSMAL Sp. z o.o.
Zastępca Prezesa Zarządu
D Y R E K T O R

dr inż. Arkadiusz Stojecki

Instytut Badań i Rozwoju Motoryzacji
BOSMAL Sp. z o.o.
Zastępca Prezesa Zarządu
D Y R E K T O R ds. BADAŃ
dr inż. Piotr Świątek