

Current report 33/2012

Subject: material agreement – the agreement with the consortium of Rafako S.A. and PBG S.A. under liquidation arrangement

Pursuant to Article 56 section 1 item 2 of the Act on Public Offering as well as § 5 section 1 item 3 and § 9 of the Ordinance by the Minister of Finances of 19 February 2009 on current and interim information communicated by issuers of securities and on the conditions for regarding as equivalent the information required by the provisions of the law in force in a non-Member State (Dz. U. [Journal of Laws] of 2009, No. 33, item. 259, as amended), the Management Board of Zespół Elektrociepłowni Wrocławskich KOGENERACJA S.A. with its registered office in Wrocław hereby reports that on 6 December 2012, the following agreement was entered into: *The Design, Construction and Start-up of the Flue Gas Desulphurisation System Using a Wet Lime-gypsum Process at Elektrociepłownia Wrocław.*

1. The agreement was entered into on 6 December 2012.
2. The Parties to the agreement are as follows:
 - a. the Contractor – the Consortium of: RAFAKO S.A. with its registered office in Racibórz – the Consortium Leader – a company whose primary business is the design and manufacture of boilers and the environment protection equipment for the power industry, and PBG S.A. under liquidation arrangement with its registered office in Wysogotowo near Poznań – a company whose primary business is the provision of specialised services in the field of comprehensive manufacture of natural gas, crude oil and fuel systems, the power industry investment support and construction activities;
 - b. the Customer – Zespół Elektrociepłowni Wrocławskich KOGENERACJA S.A. with its registered office in Wrocław, represented by EDF Polska CUW Sp. z o.o. with its registered office in Warszawa acting as a proxy.
3. The subject of the agreement is the implementation of the project: “The Design, Construction and Start-up of the Flue Gas Desulphurisation System Using a Wet Lime-gypsum Process at Elektrociepłownia Wrocław” on the turnkey basis.”
4. Pursuant to the agreement, the Customer shall pay the Contractor the fee in the net amount of: PLN 199,000,000 (PLN one hundred ninety nine million).
5. The total amount of liquidated damages resulting from all breaches of the agreement (including in respect of a delay in the performance of the agreement, a delay in removal of defects identified during the basic warranty period, failure to ensure technical and operational parameters guaranteed under the agreement and the offered characteristics of the subject of the agreement), which can be sought by the Customer from the Contractor, shall not exceed 25% of the above-mentioned fee.
6. Notwithstanding the right to claim liquidated damages, each Party shall have the right to seek damages exceeding the amount of liquidated damages based on general rules, with the exception

of cases where the Customer can seek from the Contractor the liquidated damages for a delay in the performance of the agreement, a delay in removal of defects identified during the basic warranty period and failure to ensure technical and operational parameters guaranteed under the agreement and the offered characteristics of the subject of the agreement. In the above-mentioned cases, the liquidated damages shall be the only and exclusive remedy in respect of the breaches stipulated in the agreement.

7. The Contractor shall pay the Customer liquidated damages for withdrawing from the agreement for reasons related to the Contractor in the amount of 15% of the above-mentioned fee.
8. The Contractor shall meet the milestone deadlines specified in the agreement for the performance of work, including putting the subject of the agreement into operation not later than 38 months from the date of signing the agreement and at the same time not later than on 31 October 2015.
9. The total Contractor's liability for damages under the Agreement shall not exceed 115% of the fee.
10. The agreement is deemed material as its value has reached 10% of the Issuer's equity.

Legal basis: article 56 section 1 item 2 of the Act on Public Offering – current and interim information, § 5 section 1 item 3 and § 9 of the Ordinance by the Minister of Finances of 19 February 2009 on current and interim information communicated by issuers of securities and on the conditions for regarding as equivalent the information required by the provisions of the law in force in a non-Member State (Dz. U. of 2009, No. 33, item 259, as amended).