

## INVITATION TO NEGOTIATE

“COMMERCIAL DEVELOPMENT OF PROPERTIES IN 5 LOCATIONS—MPD II (SDP II)”:

1. BIELSKO-BIAŁA, UL. 3 MAJA
2. ELBLĄG, AL. GRUNWALDZKA
3. KOŁO, UL. KSIĘDZA OPAŁKI
4. KOSZALIN, AL. ARMII KRAJOWEJ
5. SKARŻYSKO-KAMIENNA, AL. J. PIŁSUDSKIEGO/UL. TOWAROWA

Warsaw, November 2017

## Invitation to Negotiate

Terms defined and used in this Invitation to Negotiate shall have the following meaning:

1. **Investor, the**—the **Potential Investor** or **Potential Investors** selected by way of negotiation for the execution of the **Project**;
2. **Costs of Consultancy**—costs of preparation and management of the **Project** incurred by Xcity Investment sp. z o.o. with regard to the selection of the **Investor**, in particular: costs of legal, financial and real estate market consultancy;
3. **Memorandum, the**—the Information Memorandum;
4. **Response to the Invitation, the**—a written response to the **Invitation to Negotiate**;
5. **Bids** or a **Bid**—binding offers submitted by **Potential Investors/Potential Investor** admitted to the negotiations stage;
6. **Fee, the**—the fee paid by **Potential Investors**:  
**Part 1 of the Fee**—the fee charged for the access to the **Memorandum**;  
**Part 2 of the Fee**—the fee charged by the **Inviting Party** for carrying out the proceeding aimed at selecting the **Investor** for the execution of the **Project** required in the case the **Potential Investor** meets formal requirements and decides to submit a **Bid**;
7. **Potential Investors** or a **Potential Investor**—legal entities, including consortia, which have submitted a **Response to the Invitation**;
8. **Project/Projects**—a joint investment of PKP S.A. and the **Inviting Party** executed by the **Potential Investor** or **Potential Investors**, constituting a development of a property, including the development of a commercial area (hereinafter referred to as the **“Properties”** or individually as the **“Property”**):
  - a) No. 1 with the area of approx. 10,050.00 m<sup>2</sup>, located in **Bielsko-Biała** at ul. 3 maja comprising parts of plots of land Nos. 92/28, 92/30 of Dolne Przedmieście 55 precinct;
  - b) No. 2 with the area of approx. 12,452.00 m<sup>2</sup>, located in **Elbląg** at Al. Grunwaldzka, comprising plots of land Nos. 5/9, 5/10, 5/11, 5/14, 5/15, 5/16, 5/17 and a part of the plot of land No. 5/18 of Elbląg 24 precinct;
  - c) No. 3 with the area of approx. 12,452.00 m<sup>2</sup>, located in **Koło** at ul. Księża Opałki, comprising plot of land No. 30/4 of Koło precinct;

- d) No. 4 with the area of approx. 3,428.00 m<sup>2</sup>, located in **Koszalin** at Al. Armii Krajowej, comprising plots of land Nos. 73/21, 73/22 of Koszalin 10 precinct;
  - e) No. 5 with the area of approx. 15,560.00 m<sup>2</sup>, located in **Skarżysko-Kamienna** at Al. J. Piłsudskiego and ul. Towarowa, comprising the plot of land No. 1/70 of 11 Górna Kamienna precinct.
9. **Company, the**—Xcity Investment sp. z o.o., with its seat in Warsaw at ul. Szczęśliwicka 62, 02-353 Warsaw, entered in the register of entrepreneurs kept by the District Court for the capital city of Warsaw in Warsaw, 12th Commercial Division of the National Court Register under the number KRS 0000526237, REGON statistical number: 147463269, Tax ID number (NIP): 7010443381, with the share capital of PLN 2,210,050, paid in full, participating in the execution of the **Project**, to which PKP S.A. entrusted activities consisting in, in particular, conducting the proceeding concerning the selection of the **Investor** for the **Project/Projects**;
10. **Contract value, the**—the total value of contracts concluded in connection with the execution of commercial developments by Potential Investors/ Potential Investor, specified as not less than PLN 10,000,000.00 (in words: ten million) net;
11. **Inviting Party, the**—the **Company** acting on behalf of PKP S.A.;
12. **Invitation to Negotiate, the**—this **Invitation to Negotiate**.

The **Inviting Party**, acting on the basis of a power of attorneys of 31.01.2017 and of 04.04.2017 granted by PKP S.A., hereby invites all interested entities to negotiate in order to select the **Investor** for the execution of a **Project**. The **Project** will include investments concerning at least one **Property**.

Only **Potential Investors** that pay **Part 1 of the Fee** for the access to the **Memorandum**, submit a relevant confidentiality statement and a written **Response to the Invitation**, meet formal requirements and show the relevant experience shall be allowed to negotiate. After the formal requirements are met, they are expected to pay **Part 2 of the Fee** for the proceeding aimed at selecting the **Investor** conducted by the **Inviting Party**, and to submit a **Bid** for at least one **Property** listed in the **Project**.

The proceeding regarding the selection of the **Investor** is divided into two stages. During the first stage of the proceeding the **Inviting Party** shall perform an assessment of **Responses to the Invitation** submitted by **Potential Investors**, particularly with regard to formal requirements and the experience of **Potential Investors**. The assessment of submitted concepts for the development of properties included in the **Project** shall be made based on the **Bid** at the negotiations stage. Each **Potential Investor** may submit a **Response to the Invitation** for at least one property included in the **Project**. As a result of the aforementioned assessment, the **Inviting Party** may select several **Potential Investors** with which it shall negotiate. At the second stage of the proceeding, consisting in negotiations, after the submission of binding **Bids** by **Potential Investors** and after the possible execution of additional negotiations with **Potential Investors**, the **Inviting Party** shall select the **Investor/Investors** which have submitted a **Bid** which shows the best relationship based on assessment criteria determined by the **Inviting Party** for individual properties included in the **Project**.

The assessment criteria shall not be disclosed to **Potential Investors**. The **Inviting Party** hereby makes a reservation that the binding legal form of cooperation for the **Potential Investor** shall be the one presented by the **Inviting Party**.

The subject of negotiations shall be, in particular, the following:

- the scope of rights and obligations of PKP S.A., the **Company** and the **Potential Investor**,
- the manner and time for the execution of the **Project**,
- the amount of investment expenditures incurred with regard to the **Project**,
- conditions and the manner of financing for the **Project**,
- the way of determination, time for the execution and the division of income and profit from the **Project** between PKP S.A., the **Company** and the **Potential Investor**,
- securing the financing for the **Project**,
- the possible specification of details with regard to the existing requirements for environmental protection, cultural heritage protection and other binding obligations of

PKP S.A., the **Company** and the **Potential Investor**, resulting from contracts and generally binding legal regulations,

- the proposed manner of **Property** development—an architectural and urban concept,
- the legal form based on which PKP S.A. shall make the Properties available for construction purposes in connection with the **Project**.

The **Inviting Party** shall not reimburse costs incurred by the entities interested in the participation in this proceeding. All costs connected with own participation in the proceeding, including, in particular, those connected with the preparation of the **Response to the Invitation**, the **Bid** or the participation in negotiations shall be borne by the **Potential Investor**. The **Investor** selected as a result of the proceeding shall be required to reimburse **Costs of Consultancy** to the Company, in accordance with the breakdown of costs prepared by the **Inviting Party**. The **Inviting Party** hereby informs, that it may not allow a **Potential Investor** to participate in negotiations, unless the **Potential Investor** secures the reimbursement of **Costs of Consultancy** in the form of a bank guarantee granted by a bank with its seat on the territory of the Republic of Poland, in accordance with the draft determined by the **Inviting Party**, or a non-interest-bearing cash deposit paid to the **Company's** bank account. The information on **Costs of Consultancy** shall be provided to **Potential Investors** qualified for the second stage of the proceeding.

In order to enable the verification whether **Potential Investors** meet formal requirements for the participation in this proceeding, while replying to the **Invitation to Negotiate** they shall submit a written **Response to the Invitation** with the following documents enclosed:

1. a concise presentation of the **Potential Investor** and its experience (approx. 10 pages of A4 format and, optionally, an additional, concise multimedia presentation), showing, in particular, commercial investments which are currently being executed or are in preparation;
2. statements listed below, constituting essential formal requirements, representing that:

- a) the **Potential Investor** has not been declared bankrupt, no bankruptcy nor liquidation proceedings have been initiated against it, there is no ban on conducting its business activity, its business activity is not subject to compulsory administration nor is it in the process of a composition proceeding with its creditors, nor any recovery proceeding;
- b) in the case of collective entities in the understanding of the Act on the Liability of Collective Entities for Acts Prohibited under Penalty:
  - there are no criminal nor penal-fiscal proceedings against it, nor is there any legally binding decision concerning its liability pursuant to the regulations on the liability of collective entities for acts prohibited under penalty;
  - there has been no gross violation or a non-performance of contractual obligations on its part.
- c) it is not in default with the payment of social insurance contributions and is paying taxes in compliance with provisions of the law;
- d) it possesses the experience as well as technical resources and personnel required for the execution of the **Project**;
- e) in the case of persons authorised to represent collective entities (including all members of the management board, full partners, proxies and attorneys-in-fact appointed for this proceeding), including partners of personal companies:
  - there are no criminal nor penal-fiscal proceedings against them and they have not been convicted with a legally binding decision for corruption crimes, offences against economic turnover or other offences committed for financial gain, as well as fiscal offences or an offence of participation in an organised group or association established to commit a crime or a tax offence;
  - there has been no gross violation or a non-performance of contractual obligations on their part;
- f) the **Potential Investor** is in the economic and financial position ensuring the completion of the **Project**;
- g) the **Potential Investor** has properly executed at least one commercial development project of the **Contract Value** within the five years prior to the date of the **Invitation to Negotiate**, and if its economic activity has been conducted for a shorter period, then within that period;

- h) in case an **Investor** is selected by the **Inviting Party**, it shall reimburse the **Company** with **Costs of Consultancy** in accordance with the breakdown of costs prepared by the **Inviting Party**;
  - i) the **Potential Investor** hereby consents to a free of charge presentation of the architectural and urban concept of the **Project** to persons and institutions engaged in the process of the **Project's** execution;
3. in order to confirm statements mentioned in p. 2, the **Potential Investor** is obliged to provide the following documents:
- a) an excerpt from the National Court Register or other document confirming its entry in the register or in the register of the Central Registration and Information on Economic Activity;
  - b) a certificate from the competent head of Tax Office and the competent unit of the Social Insurance Institution or the Agricultural Social Insurance Fund to confirm that the **Potential Investor** is not in default with the payment of taxes, charges and health or social insurance contributions, respectively, or certificates stating that, in compliance with the applicable regulations, it is either exempted from these payments, it is subject to a deferment of the payments, the overdue amounts have been divided into instalments, there is a full withdrawal of the execution of a competent body's decision or it is not a payer of social insurance contributions – submitted no earlier than 3 months prior to **Response to the Invitation** submission deadline;
  - c) a certificate from the competent head of Tax Office confirming its registration as a VAT active or exempt payer in the case of a **Potential Investor** being a VAT tax payer, or a certificate confirming that it is not registered as a VAT payer;
  - d) a list of persons and entities who will participate in the **Project's** execution or will be cooperating with the **Potential Investor**. The list should include information on the professional qualifications of the aforementioned persons, their experience and education;
  - e) own financial statements for the last two fiscal years, together with an opinion of a statutory auditor, if the financial statement requires such audit in compliance with

- legal regulations, or if the period of conducting business activity has been shorter, then for that period, together with the most recent F-01 financial statement, or, in the case the **Potential Investor** is not obliged to keep accounts in accordance with the Accounting Act, copies of tax statements for the last two fiscal years;
- f) a breakdown of commercial investment and construction projects executed (completed) over the last five years, or if the period of conducting business activity has been shorter, then during that period, with the value of no less than PLN 10,000,000.00 (in words: ten million) net, together with possible credentials (this breakdown may include projects completed by the **Potential Investor** as a part of a consortium or a capital group);
  - g) a power of attorney to represent the **Potential Investor** in the case the **Response to the Invitation** is signed by persons whose right to represent it does not result from their position in **Potential Investor's** administrative bodies;
  - h) a certificate of clean criminal record of the **Potential Investor** and persons authorised to represent the **Potential Investor** (including all members of the management board, full partners, proxies and possible attorneys-in-fact for this proceeding) and partners in personal companies, submitted no earlier than 6 months prior to **Response to the Invitation** submission deadline;
  - i) any other documents, which may be considered important by the **Potential Investor**.
4. In the case of a **Potential Investor** with its seat outside of the Republic of Poland, instead of Polish documents listed above, it must present:
- a) a document certifying that the **Potential Investor** is authorised to appear in legal transactions, in accordance with the legislation of the country in which it has its seat. The document should clearly determine the manner and persons authorised to represent the entity;
  - b) documents issued by competent bodies certifying that in the country in which the **Potential Investor** has its seat, it is not in default with the payment of taxes, charges and social insurance contributions, or that it is exempted or deferred from such payments, or overdue payments have been divided into instalments;



- c) own financial statements for the last two fiscal years, together with an opinion of a certified auditor, if the financial statement requires such an audit to be conducted in compliance with legal regulations, or if the period of conducting business activity has been shorter, then for that period, together with a balance sheet, a profit and loss account and a cash flow statement drawn up at the end of the quarter preceding the date of submission of the **Response to the Invitation**;
  - d) a certificate of clean criminal record of the **Potential Investor** and persons authorised to represent the **Potential Investor** (including all members of the management board, full partners, proxies and possible attorneys-in-fact for this proceeding) and partners in personal companies, issued by an administrative body in the country of **Potential Investor's** seat and, respectively, by bodies in the country pertinent to the citizenship of the person authorised to represent the **Potential Investor** or attorneys-in-fact for this proceeding;
  - e) should one, several or all documents referred to in items a–d above not be issued or drawn up in the country in which the **Potential Investor** has its seat, the **Potential Investor** may replace them with one or a number of documents containing relevant statements made by the **Potential Investor** before a relevant judicial, administrative, professional or economic body, or before a notary public in the country of **Potential Investor's** seat.
5. In the case of a **Potential Investor** qualified for the negotiations stage, it shall confirm the validity and completeness of documents submitted at the initial stage by submitting a written **Bid** containing the following documents individually for each **Property**:
- a) an initial architectural and urban concept for the **Project** for at least one **Property** with its visualisation in an electronic version on a DVD and a hard copy in the form of a bound volume as well as stiff boards in A1 format enclosed in approx. 6 copies. Each concept should have a description and a breakdown of area enclosed;
  - b) an initial estimate of costs and expenses for the **Projects**;
  - c) an initial business plan for the **Projects**;

- d) the manner and time (schedule) for the execution of the **Projects**, the amount of expected profit from the execution of the **Projects** and their division between PKP S.A., the **Company** and the **Investor**, including an annual cash flow forecast divided into individual stages;
- e) a concept of legal and business partnership with PKP S.A. and the **Company**, taking into account legal situation in which the cooperation is to take place, manner of **Project** financing, etc.;
- f) a presentation of PKP S.A.'s and **Company's** benefits from the participation in the execution of **Projects**.

All documents drawn up in a foreign language must be translated into Polish by a sworn translator, and their translations shall be submitted together with primary documents.

A number of entities may jointly participate in the procedure solely in the form of a Consortium. The above statement also concerns companies within capital groups. Any established Consortium must submit a copy of the Consortium contract certified for its compliance with the original to the **Inviting Party**.

The purchase of a **Memorandum** containing detailed information on **Projects**, the procedure and the structure of a response to the **Invitation to Negotiate** shall take place after the payment of **Part 1 of the Fee** in the amount of PLN 5,000.00 (in words: five thousand) net, payable by wire transfer to the **Company's** bank account No. **51 1140 1010 0000 5523 3400 1001** with the following title: "Opłata – Komercyjne Zagospodarowanie Nieruchomości dla 5 lokalizacji - MPD II" ("Fee—Commercial Development of Properties in 5 Locations—MPD II (SDP II)").

Any written applications for explanations connected with the **Project** may be submitted solely by **Potential Investors** who purchase a **Memorandum**; such applications can be submitted up to seven days before the deadline for the submission of **Responses to the Invitation**.

The contact person responsible for providing explanations concerning the rules of granting access to the **Memorandum**, receiving applications and granting access to the **Memorandum** is Marcin Bajorek, mobile +48 661 044 920, e-mail address: marcin.bajorek@xci.pl, Xcity Investment sp. z o.o., ul. Szczęśliwicka 62, 02-353 Warsaw. The **Memorandum** will be issued upon a confirmation of its receipt after a prior arrangement by phone on work days: from 1 December 2017 until 09 February 2018, between 9.00 a.m. and 4.00 p.m.

In order to receive the **Memorandum** the **Potential Investor** should have an authorised representative present a confirmation of payment of **Part 1 of the Fee** for the acquisition of the **Memorandum**, current documents (i.e. issued no earlier than 3 months prior to their presentation) allowing for the identification of the **Potential Investor** (a current excerpt from the National Court Register or an excerpt from other document confirming its entry in the register or the Central Registration and Information on Economic Activity) and submit a confidentiality statement compliant with the contents of the electronic version of the document posted on the website [www.xci.pl](http://www.xci.pl). The **Memorandum** shall not be sent to a **Potential Investor** via e-mail or by post.

In the case of a collection of the **Memorandum** by a person other than the one making the confidentiality statement, the **Potential Investor** should present a power of attorney for the person authorised to collect the **Memorandum**, signed by its authorised representatives.

**Part 2 of the Fee** amounts to PLN 15,000.00 (in words: fifteen thousand) net. Provisions regarding the payment of **Part 2 of the Fee** are listed in the **Memorandum**.

The person responsible for providing explanations regarding **Projects** is Marcin Bajorek, mobile +48 661 044 920, e-mail address marcin.bajorek@xci.pl, who can be contacted on work days: from 1 December 2017 until 09 February 2018, between 9.00 a.m. and 4.00 p.m.

**Responses to the Invitation** should be submitted in accordance with the information included in the **Memorandum** at the **Company's** seat at ul. Szczęśliwicka 62 in Warsaw by 6 April 2018 by 2 p.m. **Potential Investors** shall be informed about the results of the initial proceeding and their qualification for the negotiations stage by 08 June 2018.

**The Inviting Party** hereby reserves its right to:

- select one or several **Potential Investors** for negotiations,
- select one **Potential Investor** for the execution of the investment on several properties included in the **Project**;
- select several **Potential Investors** for the execution of several **Projects**;
- withdraw from negotiations with one, several or all **Potential Investors** at every stage of the proceeding without indicating the reasons;
- extend the deadline for the submission of **Responses to the Invitation** or **Bids**;
- demand additional information from **Potential Investors** who submit a **Response to the Invitation**;
- postpone the date for informing about the examination of **Responses to the Invitation** or **Bids**;
- change the procedure and schedule of negotiations;
- cancel the proceeding in whole or in the part at every stage (relating to one or more **Properties**) without indicating reasons for such decision;
- refuse to enter into an investment contract in the case when PKP S.A. does not obtain approval from its corporate bodies, the Minister of Transport or other public administration body, if such approval is required by law.