

CURRENT REPORT FILED WITH THE POLISH FINANCIAL SUPERVISION AUTHORITY

DATE: August 23rd 2019

Subject: **Closing of the procedure to estimate the value of significant contracts and delayed disclosure of inside information regarding a request to increase the price of the contract with Nowe Jaworzno Grupa Tauron Sp. z o.o. for the Jaworzno Project [Current Report No. 25/2019].**

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Current Report No. 25/2019

Further to Current Report No. 23/2019 of July 30th 2019, announcing that a procedure to estimate the value of four significant long-term contracts ("**Contracts**") with an aggregate value of approximately PLN 5.7bn (exclusive of VAT), the Management Board of RAFAKO S.A. of Racibórz (the "**Company**") announces that the procedure to review the value of the Contracts has been completed and presents the results of the procedure below.

- 1) The Company updated the estimated costs of the contract of September 30th 2016 with ENEA Wytwarzanie Sp. z o.o. for delivery and installation of a catalytic flue gas NOx reduction system for AP-1650 boilers No. 9 and 10 and for upgrade of the electrostatic precipitators at ENEA Wytwarzanie Sp. z o.o., as announced by the Company in Current Report No. 29/2016 of September 30th 2016 ("**Kozienice Power Plant**"). The contract price is PLN 289,182,112.00 (exclusive of VAT).

Additional costs of the contract, as estimated by the Company, amount to PLN 52.9m and are mainly attributable to an extraordinary increase in market prices that occurred during contract performance and to works which, in the Company's opinion, extend beyond the scope of the contract. The Company has estimated the related claims at PLN 67.8m.

The effect of a change in the estimated costs of the contract for the Kozienice Power Plant on the RAFAKO Group's consolidated result for H1 2019 will be PLN (-)52.9m if no agreement regarding the claims is reached by the H1 2019 results publication date.

- 2) The Company updated the estimated costs of the contract of September 29th 2016 with JSC VILNIAUS KOGENERACINĖ JĖGAINĖ for the construction of a biomass-fired co-generation unit comprising fluidised bed boilers, biomass storage and feeder systems, and a flue gas treatment system, as announced by the Company in Current Report No. 28/2016 of September 29th 2016 ("**Vilnius Project**" or "**Project**"). The price of the contract and annexes thereto is EUR 148,325,000 (exclusive of VAT).

Additional costs of the contract, as estimated by the Company, amount to PLN 61.0m and are mainly attributable to an extraordinary increase in prices on the Lithuanian market that occurred during the performance of the Vilnius Project, works which, in the Company's opinion, extend beyond the scope of the Project, and delays on the Project that occurred through no fault of the Company. The Company has estimated the related claims at PLN 60.7m.

The effect of a change in the estimated costs of the contract for the Vilnius Project on the RAFAKO Group's consolidated result for H1 2019 will be PLN (-)35.6m if no agreement regarding the claims is reached by the H1 2019 results publication date.

- 3) The Company updated the estimated costs of the contract of April 17th 2014 with Nowe Jaworzno Grupa Tauron sp. z o.o. of Jaworzno for the construction of the supercritical 910 MW power generation unit at Jaworzno III Power Plant – Power Plant II, including the steam generator, turbine generator set, main building, electrical and I&C systems, as announced by the Company in Current Report No. 21/2014 of April 17th 2014 ("**Jaworzno Project**"). The price of the contract and annexes thereto is PLN 4,485,514,439.95 (exclusive of VAT).

Additional costs of the contract, as estimated by the Company, amount to PLN 66.0m (exclusive of VAT). A change in total result on the contract for the first half of 2019 will amount to PLN (-)60.6m.

The effect of the change in the estimated result on the contract for the Jaworzno Project on the RAFAKO Group's consolidated result for H1 2019 will be PLN (-)45.6m if no agreement regarding the claims disclosed in the delayed Inside Information report (see below) is reached by the H1 2019 results publication date.

- 4) The Company also reviewed the estimated costs of the contract of December 29th 2017 with PT. PLN (PERSERO), JALAN TRUNOJOYO BLOK M I/135, KEBAYORAN BARU, JAKARTA 12160, INDONESIA, for the construction of two coal-fired steam units (2x50 MW) on Lombok Island, Indonesia, as announced by the Company in Current Report No. 66/2017 of December 29th 2017. However, the Company identified no significant changes in the estimated contract costs. The price of the contract is approximately PLN 850,300,000.00, exclusive of VAT (the Company's consideration is approximately PLN 295,000,000.00, exclusive of VAT).

The Company further announces that, acting under Article 17(4) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of April 16th 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ("**MAR**"), the Company delayed the disclosure of inside information that a request to increase the price of the contract for the Jaworzno Project had been submitted to Nowe Jaworzno Grupa Tauron sp. z o.o. of Jaworzno ("**Inside Information**"). The Inside Information was delayed on March 19th 2019 pursuant to Article 17(4) of the MAR, and the decision of the management board to delay its disclosure was upheld on July 30th 2019.

The delayed Inside Information reads as follows:

"The Management Board of RAFAKO S.A. of Racibórz ("**Company**") announces that on March 19th 2019 the Company and its subsidiary E003B7 Sp. z o.o. of Racibórz ("**SPV**") submitted to Nowe Jaworzno Grupa Tauron Sp. z o.o. of Jaworzno ("**Employer**"), a subsidiary of Tauron Polska Energia S.A. of Katowice, a request to increase by PLN 65,974,380.23 the price of the contract of April 17th 2014 for the construction of new coal-fired generation capacities at TAURON Wytwarzanie S.A. – Construction of a supercritical 910 MW generating unit at the Jaworzno III Power Plant – Power Plant II: Steam boiler, turbine generator set, main building, electrical and I&C systems ("**Unit**") ("**Contract**"), as announced by the Company in Current Report No. 21/2014 of April 17th 2014. The request to increase the price of the Contract is justified by the fact that, in the opinion of the Company and SPV ("**Contractor**"), an extraordinary change in conditions occurred during Contract performance, which mainly consisted of a significant increase in construction and installation prices. When reviewing the price bid for the project, the Contractor assumed that construction and installation works (excluding the turbine island) that needed to be subcontracted would cost PLN 2,123.7m. These works represent the most risky part of the Contractor's expenses; when reviewing its price bid, the Contractor assumed a reserve needed to be established within the budget for the risk of price increases, of PLN 12.7m, or 0.6% of the cost of the works by 2013 prices. In late 2013 and early 2014, the Contractor had the last opportunity to check whether its bid was correct, and it estimated potential changes to bid calculations made in early 2014. Based on the available data, the Contractor prepared a forecast in which it assumed that the downward trend in prices would continue, but would be gradually slowing down. Analysis shows that the estimated price of the work designated for subcontracting may have increased by 0.558% relative to the end of 2013.

An analysis prepared after Q1 2018 revealed that in September 2015 (ten months after the construction site was handed over), subcontractors' average valuations exceeded the Contractor's projections. Continued performance of the Contract led to deteriorating financial performance in the scope covered by subcontractors' work. In the Company's and SPV's opinion, the subcontractors, which perform their work over much shorter periods, are in a significantly better position compared with the Contractor's. As the market was changing, the subcontractors (as well as the Contractor before signing the contract) analysed price changes and raised the prices in line with a corresponding methodology. In its estimates, the Contractor assumed that a subcontractor would carry out work on the construction site for ten months on average, and that two months, on average, would pass from the valuation to awarding a contract to a subcontractor. On this basis, in their valuations the subcontractors assumed change of costs over time, projecting an increase after seven months. This opportunity was not available to the Contractor, who was unable to predict such extraordinary price movements in the construction market.

The Contractor's analysis of changes in prices applicable to subcontracts (excluding the contract with Siemens companies) shows that the difference between the actual cost and the forecast was PLN 99,302,336.64. Taking into account the risk assumed in the Contractor's bid, the difference between the actual cost and the forecast was PLN 65,974,380.23. In the Company's and the SPV's opinion, the above circumstances give

grounds for increasing the Contractor's remuneration due to an extraordinary change in relations.

Having completed the above work, on March 19th 2019 the Company and the SPV submitted to the Employer a request for increasing the Contract price by PLN 65,974,380.23."

This Inside Information pertains to the initial stage of the Transaction understood as a protracted process under Article 17(4) of the MAR. The Company decided to delay the publication of the inside information due to the following circumstances:

- 1) Its immediate disclosure was not necessary given the initial stage of negotiations and the Company's negotiating position;
- 2) Its immediate disclosure could have an adverse effect on the possibility to commence, and the outcome of, negotiations to amend the Contract, given the risk of competitors' affecting the commencement and progress of negotiations, as well as of the public opinion's pressure on the negotiating parties, including the Company and SPV;
- 3) Its immediate disclosure could result in the SPV's subcontractors demanding to renegotiate their subcontracts in order to increase their remuneration, which, prior to conclusion of negotiations with the Employer and given their uncertain outcome, could expose the Company and SPV to the risk of not completing the Contract within the agreed time limit and having to pay millions in contractual penalty claims for delayed completion of the construction of the Unit;
- 4) Delayed disclosure of the information did not give rise to the risk of misleading the public as the content of the inside information is not related to any information announced by the Company prior to becoming aware of the subject matter of the inside information or during the delay period (it is neither the same as nor contrary to any such information, and it does not refer or relate to such information in any way). Moreover, no reports or rumours emerged on the market concerning the subject matter of the delayed inside information which could pose a risk of misleading the public by delaying the disclosure;
- 5) The Company ensured that the Inside Information remained confidential throughout the period of delay.

Disclosure of Inside Information relating to the negotiations was made conditional upon the commencement and progress of negotiations between the Company, SPV, the Employer and Tauron Polska Energia S.A. on amendment of the Contract, with a maximum delay until September 30th 2019 (the initial delay until July 31st 2019 was subsequently extended by the Management Board's decision of July 30th 2019).

The Company's Management Board decided to disclose the delayed inside information to the public given that the risk of an adverse effect of the disclosure on the outcome of the negotiations no longer applies and the Company is no longer able to guarantee the confidentiality of the Inside Information.

The Company also announces that the Parties are still negotiating amendments to the Contract. The Company will announce the results of the negotiations in subsequent current reports.

Legal basis: Article 17(1) of the Market Abuse Regulation – Inside information

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