

**CURRENT REPORT FILED WITH THE POLISH FINANCIAL  
SUPERVISION AUTHORITY IN WARSAW**

DATE: December 21st 2023

**Subject:** [Receipt of notice of withdrawal from Contract and Settlement submitted by St. John Paul II 'MEMORY AND IDENTITY' Museum in Toruń \[CR No. 127/2023\]](#)

**Text of the report:**

The Management Board of RAFAKO S.A. of Racibórz (the “**Company**”) – further to Current Reports (i) No. 5/2019 of April 16th 2019, announcing the execution by the Company and Muzeum PAMIĘĆ I TOŻSAMOŚĆ im. św. Jana Pawła II (in formation) of Toruń (the “**St. John Paul II 'MEMORY AND IDENTITY' Museum in Toruń**” or the “**Employer**”) of a design & build contract for the construction of the St. John Paul II MEMORY AND IDENTITY Museum Building (the “**Contract**”), (ii) No. 49/2021 of December 23rd 2021, announcing the execution of an annex to the Contract, and (iii) No. 101/2023 of October 13th 2023, announcing the execution of a settlement agreement between the Company and the St. John Paul II ‘MEMORY AND IDENTITY’ Museum in Toruń (the “**Settlement**”) – hereby announces that on December 20th 2023 it received from the Employer a notice of withdrawal from the Contract and the Settlement. In addition, the Employer called on the Company to carry out a survey of the work performed under the project as at **December 21st 2023**.

The Company challenges in full the Employer’s right to withdraw from the Contract and the Settlement, as stated in a letter to the project owner of December 21st 2023, in which the Company firmly declared that it considered the notice to be ineffective and, as such, to produce none of the intended legal effects. In its letter to the Project Owner of December 21st 2023, the Company explained that the legal grounds for withdrawal from the Contract and the Settlement invoked by the Employer, i.e. the provision of Clause 3.15(b) of the Settlement dated December 13th 2023, are without merit due to the fact that there is no basis in fact or in law for concluding that the relevant condition for the exercise of the withdrawal right set forth therein, i.e.: ‘b. failure to submit, within 30 days of signing the Settlement, of a Detailed Time and Payment Schedule for the Remedy Plan;’ had been met.

The Company further stated in its letter of December 21st 2023 that, contrary to the Employer’s unfounded assertions, the Detailed Time and Payment Schedule for the Remedy Plan, drawn up in accordance with the relevant requirements defined in the Settlement and consistent with the template attached as Schedule 11A and 11B to the Settlement, was effectively submitted by the Company to the Employer by the deadline provided for in the Settlement. Moreover, the Company, acting in good faith, made appropriate revisions to the Detailed Time and Payment Schedule for the Remedy Plan at each request from the Employer, with the result that the alleged faults in the document raised by the Employer, i.e.: (i) failure to specify the cost of removing individual Defects, (ii) failure to indicate the method of removing the Defects, and (iii) division of the ‘Method of Defect removal’ column into two columns ‘Subcontractor’s comments’ and ‘RFK’s comments’, **regardless of their lack of validity – did not exist as at the date on which the Employer submitted the notice of withdrawal from the Contract and the Settlement (i.e. December 20th 2023)**, as they had already been rectified by the Company as requested by the Employer on November 29th 2023 and December 15th 2023, respectively. In the Company’s opinion, the Employer, by submitting the notice of withdrawal from the Contract and the Settlement, abused the legal right vested in it under Art. 5 of the Polish Civil Code. In fact, in the Company’s opinion, there is no doubt that the consensual intention of the Parties to the Settlement at the time when it was executed was that the contractual condition for the exercise of the withdrawal right under Clause 3.15(c) of the Settlement dated October 13th 2023 would only apply in the event of the

Contractor's failure to meet the 30-day deadline, and not in the event of failure to obtain the Project Owner's approval following prior review and revision of the document's content, as was clearly confirmed by the negotiations of the Settlement terms. In addition, the Company points out that the Settlement dated October 13th 2023 explicitly stipulates that if the Detailed Time and Payment Schedule for the Remedy Plan submitted on time is not approved, the Employer is entitled to introduce binding changes to the document's content, rather than reject it in its entirety, especially when there are no reasonable grounds for doing so.

In addition, the Company emphasises that the steps taken by the Project Owner on December 20th 2023 are clear proof of bad faith on the Project Owner's part, which directly prevents the Company from further implementing the Remedy Plan, and thus from satisfying its obligations under the Settlement binding on the Parties. Accordingly, in its letter to the Employer dated December 21st 2023, the Company:

1) reiterated its demand stated in letter Ref. No. RAFAKO/DPG01/2023/146 of December 18th 2023 for the Project Owner to provide RAFAKO with a guarantee of payment under Art. 649'1 of the Polish Civil Code for an amount corresponding to the amount of the Contract Price that has not been paid to date, including: the amount under VAT invoice No. FMP/23080002 of October 13th 2023, the Increase Amount and the Milestone 11 amount, **i.e. a total of PLN 31,264,487.18 inclusive of VAT**, and

2) called upon the Project Owner to immediately cease breaching the Contract and the Settlement through unlawful denial of access to the Museum site to the Company's representatives (including its employees) and to the Company's subcontractors involved in implementing the Remedy Plan (including employees of the subcontractors), by December 22nd 2023 at the latest, failing which the Company shall take all available legal remedies to safeguard its interests, including withdrawal from the Contract and the Settlement through the fault of the Project Owner.

Legal basis:

Article 17(1) of the Market Abuse Regulation – inside information.

Robert Kuraszkiewicz – President of the Management Board

Andrzej Marciniak – Member of the Management Board