



EUROPEAN UNION
European Structural and Investing Funds
Operational Programme Research,
Development and Education



TENDER DOCUMENTATION AND INVITATION TO SUBMIT A BID

for a public procurement procedure for services in the above-the-limit regime to be contracted
in negotiated procedure without publication

pursuant to Sec. 100 (3) and Sec. 66 of Act No. 134/2016 Coll., on Public Procurement, as
amended
(hereinafter the “**PPA**”)

Design modifications of neutron optics system for BEER – part II

This tender documentation (“**Documentation**”) has been prepared in accordance with Sec. 28 (1) letter b) PPA and represents a set of terms and conditions (except for forms pursuant to Sec. 212 PPA) in the level of detail that is necessary for submission of bid to perform the Public Contract (hereinafter the “**Bid**”). The rights and obligations of the Contracting Authority and supplier / bidder, respectively participants in the tendering procedure (hereinafter, for the purposes of this Documentation, only “**Supplier**”) within this procedure which are not expressly stipulated herein shall be governed by relevant provisions of the PPA.

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1 Basic information about the Public Contract

| | | |
|--|--|--------------------|
| Contracting Authority: | Ústav jaderné fyziky AV ČR, v. v. i. Husinec - Řež, čp. 130, 250 68 Řež, Czech Republic ID No.: 61389005 Tax ID No.: CZ61389005 Represented by: RNDr. Petr Lukáš, CSc., Director (hereinafter the “Contracting Authority”) | |
| Contracting Authority’s Attorney pursuant to Sec. 43 (1) PPA: | HOLEC, ZUSKA & PARTNEŘI advokátní s.r.o. Palác Anděl, Radlická 3185/1c, 150 00 Praha 5, Czech Republic ID No.: 07759711, Tax ID No.: CZ07759711 Represented by: JUDr. Karel Zuska, advokát Contact person: Mgr. Jan Dudák, advokát E-mail: jdudak@holec-advokati.cz Phone: (+420) 296 325 235 (hereinafter the “Attorney”) | |
| Legal Process: | public procurements procedure for services (hereinafter the “Public Contract”) in above-the-limit regime to be contracted in negotiated procedure without publication based on Sec. 100 (3) and Sec. 66 PPA | |
| CPV Code: | 73000000-2 - Research and development services and related consultancy services | |
| Name of the Public Contract: | Design modifications of neutron optics system for BEER – part II | |
| Estimated value of the Public contract (excl. VAT): | EUR 1 200 (excl. VAT) | |
| Schedule of realization of the Public Contract: | Deliverable | Date |
| | Submission of updated SubTG3.2 documentation | 30th November 2019 |
| Bid submissions deadline: | 26th November 2019 at 9:30 AM [CET] | |

2 Background, legal nature and subject matter of the Public Contract

2.1 Background and the objective of the Public Contract

The Contracting Authority, Ústav jaderné fyziky AV ČR, v. v. i. (Nuclear Physics Institute of the CAS, public research institution) is a party to the In-Kind Contribution Agreement of December 10th, 2015 (hereinafter the **“IKC Agreement”**), including its Annex(es), under which the Contracting Authority will be obliged to make an **in-kind** contribution, comprising the Subject Matter of this Public Contract, into large research infrastructure – European Spallation Source ERIC, Reg. No. SW 768200-0018, a European Research Infrastructure Consortium, established by European Commission Decision (EU) No. 2015/1478 in accordance with Regulation (EC) No. 723/2009, which is based in Lund, Kingdom of Sweden (hereinafter the **“ESS”**) for the European Spallation Source project (<https://europeanspallationsource.se/>). The Contracting Authority is the beneficiary of a grant from public resources provided by the Ministry of Education, Youth and Sports (MEYS) from the Operational Programme Research, Development and Education (OP RDE) for project “European Spallation Source - participation of the Czech Republic – OP”, Reg. No. CZ.02.1.01/0.0/0.0/16_013/0001794, a MEYS Large Research Infrastructure programme, and expects to receive a subsidy from the Sponsor from the Operational Programme Research, Development and Education (OP RDE) for project implementation (all the above mentioned projects shall be hereinafter referred to jointly as the **“Project”**).

The purpose of the Project is delivery of a part of the neutron optical system for the BEER (Beamline for European Engineering Research) diffractometer at the ESS (European Spallation Source), which is the in-kind contribution to be made on behalf of the Czech Republic into the construction of the ESS large research infrastructure. Supply of this equipment will provide Czech researchers with increased access to ESS measurement capacity. At the same time, related individual research will be carried out within the Project. For the implementation of the Project professional competencies and close coordination between many entities (including the supplier selected for “Delivery of neutron optics system for the BEER diffractometer – part I – Round 2” as well as for “Delivery of neutron optics system for the BEER diffractometer” – part II – Round 2”, Contracting Authority, foreign partners and ESS) is needed to deliver a supply that meets all the standards and requirements (including radiation safety requirements) for integrating the BEER instrument into the ESS infrastructure for research, development and innovation. The Contracting Authority cooperates on design, construction and implementation of this instrument especially with ESS and Helmholtz-Zentrum Geesthacht Zentrum für Material- und Küstenforschung GmbH, with its registered office at Max-Planck-Straße 1, 21502 Geesthacht.

Execution of the work under the existing contracts for Delivery of neutron optics system for the BEER diffractometer – part I – Round 2” as well as “Delivery of neutron optics system for the BEER diffractometer” – part II – Round 2” represents the necessary prerequisite for successfully implementing the Project and making the in-kind contribution (on behalf of the Czech Republic) into the ESS. Based on that contribution the system to be delivered by the supplier as a result of the work to be executed under the contracts will become part of the ESS infrastructure for research, development and innovation in accordance with the IKC Agreement including its Annex(es); work thus contributed will be also used to carry out research projects within the

Project in the fields relating to exploring properties of materials for a wide range of applications in medicine, renewable resources, pharmaceuticals, information technology, or transport. Execution of the work includes important elements of research and development activities and represents a unique supply for the research and development project implemented in cooperation between the ESS and the Contracting Authority.

Based on the outcome of the intermediate design review carried out by ESS, additional research and service activities involving design modifications as specified herein are required to meet the new ESS requirements for neutron guide alignment method. The objective of the procurement procedure for this Public Contract is to conclude a public contract between the Contracting Authority and the selected Supplier in accordance with the binding terms and conditions attached hereto as *Annex No. 2* (hereinafter the “**Contract**”).

2.2 Subject matter of the Public Contract

The subject matter of the Public Contract is additional research and service activities, involving design modifications of the focusing section of “Beamline for European Engineering Research” neutron guide system, as described in the detail in Annex No. 3 Technical Specification (hereinafter the “**Services**”).

2.3 Justification for use of the negotiated procedure without publication

The Contracting Authority is entitled to use the negotiated procedure without publication for rendering new services in accordance with Sec. 100 (3) PPA since the Contracting Authority reserved this right in the Tender Documentation for the previous public procurement procedure, i.e. the procedure for the Public Contract named „Delivery of neutron optics system for the BEER diffractometer – part II – Round 2“, particularly in Article 2.2 of the Tender Documentation as well as in Article 3.5 of the contract for work concluded on 29/12/2018 between the Contracting Authority and the selected supplier as a result of the said procedure.

2.4 References in the Documentation

References contained in the Documentation to specific suppliers or products, patents or inventions, industrial designs, trademarks or denominations of origin, shall be interpreted to allow the Supplier to propose an equivalent solution within the meaning of Sec. 89 (6) PPA.

3 Place and Time for Performance of the Public Contract

The place of performance of the Public Contract (for delivery of the outcome of the Services) shall be defined as the Czech Republic, specifically the seat of the Contracting Authority.

The time for performance of the Public Contract shall be defined as the schedule in Annex No. 3 Technical Specification hereto.

4 Supplier's Qualifications

4.1 Fulfilment of Qualification Criteria

Supplier needs to meet requirements relating to qualification as defined in Sec. 73 *et seq.* PPA. Supplier shall demonstrate that they meet these qualification requirements in the manner and extent specified herein.

Qualification requirements for this Public Contract shall be met by Supplier who will duly demonstrate within his Bid the **basic qualification** pursuant to Sec. 74 PPA.

4.2 Authenticity and age of documents proving qualification

4.2.1 Authenticity

According to Sec. 86 (1) PPA the Contracting Authority requires primarily documents registered in the system that helps identify the certificates requested as a proof of qualification (e-Certis).

Documents to be provided by Supplier to demonstrate his qualification may be submitted in simple copies (pursuant to Sec. 45 (1) PPA); the Contracting Authority will allow that Supplier substitutes, in accordance with Sec. 86 (2) PPA, affidavits in place of documents where applicable.

Supplier providing affidavits in place of documents shall make sure that such affidavits are duly signed by statutory representatives of the Supplier or, if signed by another person, Supplier shall demonstrate that such other person has been duly authorized to take such legal acts demonstrating the Supplier's qualification. The Contracting Authority will not require that signatures on affidavits are officially verified.

The Contracting Authority shall require, in accordance with Sec. 86 (3) PPA, that the selected Supplier submits, prior to concluding the Contract hereunder, originals / notarized copies of documents demonstrating Supplier's qualification, which the Contracting Authority shall keep as a part of the Public Contract documentation.

4.2.2 Age

Documentation demonstrating basic qualification pursuant to Sec. 74 PPA shall show fulfilment of the required qualification criterion **no later than 3 months prior to the commencement of the public procurement procedure** (i.e. prior distributing this Invitation to submit a bid).

4.3 Basic qualification

4.3.1 Extent

Supplier who [within the meaning of Sec. 74 (1) PPA]

a) have been, in the last 5 years prior to commencement of this tendering procedure, finally

convicted of a criminal offence listed in Annex 3 to PPA or similar criminal offence(s) under the laws of the Supplier's headquarters country; sentences that had already been struck will not be considered;

- b) have, in the Czech Republic or country of its headquarters, payable tax arrears (outstanding unpaid tax);
- c) have, in the Czech Republic or country of its headquarters, payable insurance arrears or sanction(s) relating to public health insurance;
- d) have, in the Czech Republic or country of its headquarters, payable social security insurance arrears or sanction(s) relating to social security insurance or contributions toward the state employment policy; or
- e) are in liquidation, or subject to insolvency, bankruptcy, under forced administration (receivership) in accordance with other legal regulation or in similar situation according to the laws of the country where headquartered

WILL BE DEEMED TO HAVE BEEN DISQUALIFIED HEREFROM.

If the Supplier is a legal entity, the conditions imposed by Sec. 74 (1) letter a) PPA shall be met by the legal entity and each member of its statutory body. Should a legal entity be a member of the Supplier's statutory body, the conditions imposed by Sec. 74 (1) letter a) PPA shall be met simultaneously by:

- a) such legal entity,
- b) each member of its own statutory body and
- c) the person representing this legal entity within the statutory body of the Supplier.

Should the participant in the tendering procedure be a branch of an enterprise

- a) of a foreign legal entity, the conditions imposed by Sec. 74 (1) letter a) PPA shall be met by the legal entity and the manager of the branch of such enterprise,
- b) Czech legal entity, the conditions imposed by Sec. 74 (1) letter a) PPA shall be met by persons listed in Sec. 74 (2) PPA and the manager of the branch of such enterprise.

4.3.2 Demonstration of basic qualification

Supplier demonstrates his fulfilment of basic qualifications under Article 5.3.1 above in relation to the Czech Republic by submitting:

- a) extract from the Criminal Register in relation to Sec. 74 (1) letter a) PPA,
- b) confirmation from the competent financial authority in relation to Sec. 74 (1) letter b) PPA,
- c) written affidavit in relation to consumption tax as per Sec. 74 (1) letter b) PPA,
- d) written affidavit in relation to Sec. 74 (1) letter c) PPA,
- e) confirmation from the competent district social security administration in relation to Sec. 74 (1) letter d) PPA,
- f) extract from the Commercial Register or by affidavit in writing in case the person has not been registered with the Commercial Register, in relation to Sec. 74 (1) letter e) PPA.

In accordance with Article 5.2.1 hereof Supplier may use an affidavit (see, for instance, the

template that is attached hereto as *Annex No. 1*) in place of the documents listed in Article 5.4.2 hereof for the purposes of demonstration of basic qualification within his Bid. Nevertheless, prior concluding the Public Contract the Contracting Authority shall require the selected Supplier to submit also the originals/notarized copies of the above listed documents demonstrating basic qualification if they have not been submitted by the Supplier within the Bid (see Article 5.2.1 above).

4.4 List of Qualified Suppliers

Supplier may demonstrate his qualifications by presenting a certificate from the List of Qualified Suppliers, in the manner and extent required in Sec. 228 *et seq.* PPA.

4.5 Certified Suppliers System

Supplier may demonstrate his qualifications by presenting a certificate from the approved system of certified suppliers, in the manner and extent required in Sec. 233 *et seq.* PPA.

4.6 Changes in Supplier's Qualification

Should the Supplier's qualification change, after the documentation or affidavits demonstrating qualification had already been submitted in the tendering procedure, Supplier shall be obliged to notify such change to the Contracting Authority within 5 business days thereof, and submit, within 10 business days from notification, new documentation of affidavits concerning such changed qualification.

5 Requirement on Bid language

Bids may be prepared in **the Czech or the English language** in line with the Contracting Authority's requirements stipulated herein and in the PPA; this requirement does not apply to documents submitted within the Bid outside the Contracting Authority's requirements (e.g. supplementary promotional documents).

Should the PPA or the Contracting Authority require submission of a document according to the laws of the Czech Republic, Supplier may submit a similar document according to the laws of the country, where such document is being issued; such foreign documents shall be submitted along with their translation into Czech (or English). Should the Contracting Authority have doubt about the correctness of the translation, it may request that an official translation is procured using a qualified translator into the Czech (or English) language who is registered on the list of authorized translators and interpreters. Documents in Slovak and education certificates (diplomas etc.) in Latin may be submitted without translation. Should the requested document not be issued under the laws of the 'issuing' country, it may be substituted by an affidavit.

6 Recommended method of preparation and form of the Bid

6.1 Structure and contents of the Bid

The Contracting Authority recommends that the Bid is structured as follows:

- a) Cover Sheet – filled-in in accordance with Annex No. 4 hereof including the Bid price in the structure required herein and acceptance of the terms and conditions defined in Annex No. 2 hereto;
- b) Documentation demonstrating fulfilment of basic qualification under Article 4 hereof;
- c) List of subcontractors (if any) according to Article 15.1 c) hereof (where applicable).

6.2 Recommended formal requirements for the preparation of the Bid

The Contracting Authority requires that Bids are submitted only in writing in electronic form using the relevant electronic tool as follows.

Detailed information for Bid submission by electronic means:

- a) For Bid submission by electronic means Supplier shall use the certified electronic tool E-ZAK (hereinafter „E-ZAK“) available on-line at <https://ezak.ujf.cas.cz?lang=en>, where also basic instructions on how to use it and user support contacts can be found.
- b) For this purpose, the Supplier should dispose with proper equipment (e.g. a personal computer, notebook or similar device) meeting the E-ZAK system requirements, including the operational system requirements and internet browser requirements, namely the following: a common internet browser, preferably a newer version, should suffice provided that SW Java, preferably version 1.8 or higher (required for work with an electronic signature applet), or Java Runtime Environment is installed and enabled and that cookies are allowed. The system requirements for Bid submission within the E-ZAK environment are outlined at https://ezak.ujf.cas.cz/test_index.html?lang=en and described in detail at <http://www.ezak.cz/faq/pozadavky-na-system>.
- c) The Supplier has to register (for the possibility of Bid submission) as a supplier in the electronic tool E-ZAK (see the link „sign up“ at <https://ezak.ujf.cas.cz?lang=en> or directly the linked webpage <https://ezak.ujf.cas.cz/registrace.html?lang=en>). In particular, Supplier's identification data and an electronic signature based on qualified certificate may be required for registration completion. The registration is not charged with any fees.
- d) All files constituting the Bid shall be uploaded by the Supplier to the electronic tool E-ZAK as attachments.
- e) If in this Tender Documentation is required that a specific document has to be signed by the Supplier (or the person duly authorized to sign on its behalf) while its replacement by a copy or scan is not allowed, the documents has to be signed electronically with an electronic signature based on a qualified certificate according to the Act No. 297/2016 Coll., on trust services for electronic transactions, as amended.
- f) The Contracting Authority is not responsible for technical conditions and circumstances on Supplier's part. The Contracting Authority recommends Supplier to consider in

particular the stability and (upload) speed of their internet connection when submitting the Bid so that it is submitted within the stipulated Deadline. Please note that Bid submission means the final posting of the complete Bid (i.e. after uploading all its attachments) to the electronic tool E-ZAK.

7 Manner, time and place for Bid submissions

Supplier shall submit its Bid **in writing by electronic means** through the electronic tool E-ZAK on the following electronic address for Bid submission:

<https://ezak.ujf.cas.cz/vz00000266>

All data and information that may be necessary for Bid submission by electronic means are provided in this Tender Documentation.

The deadline for Bid submission shall be **26th November 2019 at 9:30 AM** [CET] (hereinafter the "**Deadline**").

8 Bid opening

Bid shall be opened by means of the relevant electronic tool upon expiry of the Deadline.

Bid opening is not public because only electronic means are allowed for its submission.

9 The Bid price and other data to be filled in by Supplier in the Bid

Within the Bid, the Supplier shall insert the quoted Bid price into the draft Contract according to this Article and to fill-in also the other required data into the Contract, as follows:

9.1 Structure of the Bid price in the Bid

The Bid price shall be specified in EUR as the **total price for the Services** (i.e. all the services described in Annex No. 3 hereto) rendered in accordance with the terms and conditions hereof and delivered within the deadline stipulated herein. The Bid price must be described as the price excluding VAT, the VAT and applicable VAT rate and the price including VAT.

The Bid price, processed in the above structure, shall be inserted into the Cover Sheet, whose template is attached hereto as Annex No. 4.

9.2 General instructions for filling-in the required data into the prescribed templates

The Supplier shall fill in just the highlighted parts in the templates provided hereunder (e.g. all of the yellow cells). Any unauthorized modification to the templates provided hereunder or any missing response might result into disqualification of the Bid.

10 Evaluation of the Bid

Bids to perform the Public Contract will be evaluated strictly in reference to their economic advantage, i.e. in accordance with Sec. 114 et seq. PPA, that constitutes the fundamental criterion for Bids evaluation.

Economical advantage of Bids shall be thus evaluated on the basis of the lowest quoted bid price.

| Criterion | Weight % |
|---|----------|
| Total bid price in CZK (or calculated in CZK) excl. VAT | 100 % |

The total bid price that will be evaluated shall be understood, for the purposes of evaluation, as the total bid price for the Services in EUR excl. VAT.

The Bid price shall be quoted as the fixed price, not subject to any adjustment whatsoever during the entire term of the Contract. It shall be specified as the maximum acceptable price including all associated costs and fees and shall include all costs relating to the execution of the Public Contract under the terms and conditions defined in Annex No. 2 hereto.

The Contracting Authority shall determine the order of Bids according to the quoted bid price. The winning bid (first in this order) shall be the bid quoting the lowest bid price while meeting all terms and requirements defined in the Tender Documentation provided that the Supplier demonstrated fulfilment of qualification requirements. The Contracting Authority shall select the Supplier to conclude the Contract with, whose Bid had been evaluated as the most economically advantageous, i.e. as the bid quoting the lowest bid price.

Having regard to the principle of this Public Contract, there is only one participant (Supplier) in this procurement procedure. The Contracting Authority will not evaluate Bids if it should evaluate only one Bid supplied by one Supplier. According to Sec. 122 (2) PPA the Contracting Authority can select the Supplier without evaluation.

11 Commercial and other terms

Commercial and other terms within the meaning of Sec. 37 (1) letter c) PPA, defining the future framework for the contractual relationship between the Contracting Authority and the selected Supplier, have been stipulated in the *Binding terms and conditions* which are attached hereto as *Annex No. 2* and will constitute the Contract, which will be concluded with the Supplier. Supplier shall confirm his agreement with these binding terms and conditions in his Bid.

Supplier shall not be authorized to amend or modify the text of these binding terms and conditions with the exception of information that the Supplier is required to fill in. Should a Supplier amend or modify any part of the binding terms and conditions, which the Contracting Authority did not authorize, or enters information that are contrary to the Contracting Authority's requirements, the Bid shall be considered to have failed to comply with tendering terms and conditions.

12 Communication between the Contracting Authority and Supplier

No communication between the Contracting Authority and Supplier may prejudice confidentiality of Bids or completeness of the information contained therein. The Contracting Authority shall not be allowed to access contents of Bid before the Deadline for its submission.

The Contracting Authority requires, in order to maintain legal clarity of the tendering procedure, that all communication with the Contracting Authority is conducted solely and exclusively in writing by electronic means. Any other methods of communication, e.g. personal meetings, telephone conferences etc., shall be excluded except as expressly regulated in a statutory procedure. All acts by the Contracting Authority towards Supplier or acts by Supplier toward the Contracting Authority within the tender procedure shall be in writing by electronic means. Acts toward the Contracting Authority shall be made in electronic form and addressed to the Attorney referred to in Article 1 hereof.

13 Other

13.1 Further rights of the Contracting Authority

The Contracting Authority reserves also the following rights and terms:

- a) Provide explanations to the Documentation in the extent and until expiry of deadlines as defined in Sec. 98 PPA, or subsequently amend or add tender terms contained in this Documentation in the extent permitted by Sec. 99 PPA;
- b) Given the nature of the subject-matter of the Public Contract, the Contracting Authority will not allow alternative Bid pursuant to Sec. 102 PPA;
- c) Suppliers are obliged to identify those parts of the Public Contract in the Bid which they may potentially execute using subcontractors and provide a list of such subcontractors, that are known to them, with identification which specific part will be performed within the Public Contract by the subcontractors;
- d) The Contracting Authority shall not make any payment to Supplier in connection with his participation herein;
- e) The Contracting Authority is entitled to cancel the negotiated procedure without publication in line with Section 127 (3) PPA until the Contract conclusion pursuant to Section 124 (1) PPA.

13.2 Additional requirements before conclusion of the Contract

Prior concluding the Public Contract with the Contracting Authority, the selected Supplier will be required to submit originals/notarized copies of documents demonstrating basic qualification if they have not been submitted by the Supplier within the Bid.

Simultaneously, provided that the selected Supplier's beneficial owner cannot be identified under the procedure pursuant to Sec. 122 (4) PPA, the Supplier will be required to submit the following:

- a) either an extract similar to the extract from Beneficial Owners Register or
- b) identification data for all persons who are the beneficial owners of the Supplier as a legal entity, pursuant to the Act No. 253/2008 Coll., on selected measures against legitimisation of proceeds of crime and financing of terrorism, as amended, and documents showing the relationship of all these persons to the Supplier; these documents include but are not limited to:
 - a. Extract from the Commercial Register or other similar register,
 - b. List of shareholders,
 - c. Decision of the statutory body on distribution of profits,
 - d. Articles of association, bylaws or Founder's Deed.

13.3 Confidentiality

Supplier shall be obliged to treat all information that will be provided to them during the tender procedure period as strictly confidential (except for information that were published). Supplier shall be obliged to refrain from any acts that might disrupt the transparent and non-discriminatory conduct of the procurement procedure, in particular any actions that could result in a distortion of competition between Supplier within this Public Contract tendering procedure.

Should parties hereto exchange any information identified as confidential with each other during the Contract negotiations, the receiving party to which the information was provided shall not disclose such information to any third party, nor use it contrary to their purpose for its own needs, regardless of whether the Contract is eventually concluded or not. The party breaching this duty shall be liable to pay damages, in accordance, by analogy, with Sec. 2913 Act No. 89/2012 Coll., Civil Code, as amended.

13.4 Site inspection

There will be no site inspections.

13.5 Tender period

The Contracting Authority does not define a specific tender period within the meaning of Sec. 40 PPA.

13.6 Guarantee

The Contracting Authority does not require a guarantee under Sec. 41 PPA.

13.7 Preparation of the tender terms and conditions

The terms and conditions hereof were not prepared by any person outside the Contracting Authority.

Annexes:

Annex No. 1 – Form affidavit to basic qualification

Annex No. 2 – Binding terms and conditions

Annex No. 3 - Technical Specification

Annex No. 4 - Cover Sheet

In Prague on 22nd November 2019

Mgr. Jan Dudák, advokát

HOLEC, ZUSKA & PARTNEŘI advokátní s.r.o.

On behalf of:

Ústav jaderné fyziky AV ČR, v. v. i.