

TENDER DOCUMENTATION
AND
INVITATION TO SUBMIT APPLICATION TO PARTICIPATE

for a public procurement procedure for construction work in the under-the-limit regime to be contracted in negotiated procedure with publication (hereinafter the “**Public Contract**”)

pursuant to Sec. 60 *et seq.* of Act No. 134/2016 Coll., on Public Procurement, as amended (hereinafter the “**PPA**”)

Experimental cave and control hutch for the BEER instrument at ESS

This tender documentation (“**Tender 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 sufficient for participation of suppliers in the procurement procedure, specifically with regard to filing the application to participate and demonstrating required qualifications.

Additional data and information that may be necessary for preparation of bids (hereinafter the “**Bids**”), either a preliminary Bid, or Bid to perform the public contract, respectively, which are not included in this Documentation as they are not yet known, will be provided to suppliers in an invitation to submit preliminary Bids pursuant to Sec. 61 para 5 PPA, or respectively within negotiations on preliminary Bids and in an invitation to submit Bids pursuant to Sec. 61 para 11 PPA.

The rights and obligations of the Contracting Authority and suppliers / bidders, respectively participants in the procurement procedure (hereinafter, for the purposes of this Tender Documentation, only “**Supplier(s)**”) 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:	<p>Ústav jaderné fyziky AV ČR, v. v. i. <i>[Nuclear Physics Institute of the CAS]</i></p> <p>Husinec - Řež, čp. 130, 250 68 Řež, Czech Republic</p> <p>ID No.: 61389005, Tax ID No.: CZ61389005</p> <p>Represented by: Ing. Ondřej Svoboda, Ph.D., Director (hereinafter the "Contracting Authority")</p>
Contracting Authority's Attorney pursuant to Sec. 43 PPA:	<p>HOLEC, ZUSKA & PARTNEŘI advokátní s.r.o.</p> <p>Radlická 3185/1c, 150 00 Praha 5, Czech Republic</p> <p>ID No.: 07759711, Tax ID No.: CZ07759711</p> <p>Represented by: JUDr. Karel Zuska, attorney and executive director</p> <p>Contact person: Mgr. Jan Dudák, attorney</p> <p>E-mail: zakazky@holec-advokati.cz</p> <p>Phone: (+420) 296 325 235 (hereinafter the "Attorney")</p>
Legal process of the Public Contract:	public procurement procedure for a Public Contract for construction work in the under-the-limit regime to be contracted in negotiated procedure with publication pursuant to Sec. 60 <i>et seq.</i> of PPA
CPV Code:	45223000 -6 - structures construction work
Name of the Public Contract:	Experimental cave and control hut for the BEER instrument at ESS
Estimated value of the Public Contract (excl. VAT):	See Article 4.1 hereof.
Assumed schedule of realization of the Work under the Public Contract:	See Article 4.3 hereof.
Availability of Documentation pursuant to Sec. 96 PPA	Documentation has been published online at the Contracting Authority's profile in full extent
Application submission deadline:	In accordance with the published notification on the public contract (hereinafter the " Notification ")
Anticipated Bid submissions date:	September 2023

2 Background, objectives and procedure justification 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 as of June 3rd, 2021 (hereinafter the “**IKCA**”), including its annex „Schedule NSS 6.6 #4” (hereinafter the “**NIK Annex**”), under which the Contracting Authority is obliged to make an *in-kind* contribution, comprising the Subject Matter of this Public Contract, into the 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 referred to also as the “**ESS**”) for the European Spallation Source project (<https://europeanspallationsource.se>, hereinafter referred to as the “**Project**”). The Subject Matter of this Public Contract is financed by the ESS funds granted to the Contracting Authority under the Project.

The purpose of this Public Contract is construction work involving an experimental cave and control hutch for the BEER instrument (Beamline for European Engineering Research diffractometer at the 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.

For the implementation of the Project, professional competencies and close coordination between many entities (including the Supplier, Contracting Authority, foreign partners and ESS) is needed to provide construction that meets all the standards and requirements (including radiation safety requirements) for integrating it along with the BEER instrument into the ESS infrastructure for research, development and innovation. The Contracting Authority cooperates on design, construction and implementation of this instrument with ESS and their partners.

The objective of the procurement procedure for this Public Contract for construction work is to conclude a contract, draft of which is attached hereto as *Annex No. 3* (hereinafter the “**Contract**”), between the Contracting Authority and the Supplier selected in the procedure.

2.2 Justification for the use of the negotiation procedure with publication

The Contracting Authority exercised its right to use the negotiation procedure with publication for the award of this Public Contract, in accordance with the following legal provisions and for the following reasons:

- According to Sec. 60 (1) letter a) PPA, the needs of the Contracting Authority cannot be met without adjusting the performance available on the market,
- According to Sec. 60 (1) letter b) PPA, the performance of the Public Contract includes the design of a solution,
- Considering, among others, the quite unusual subject matter of the Public Contract as well as its research and development nature, the process might require negotiations to take place, in accordance with Sec. 60 (1) letter c) PPA, prior to the commissioning of the work under the Public Contract, and thus the negotiated procedure with publication represents the preferred process, and

- Notwithstanding the foregoing, the Contracting Authority is entitled to use the negotiated procedure with publication, in accordance with Sec. 52 letter b) point 1 PPA, even without fulfilling the conditions under Sec. 60 PPA, since this Public Contract is to be contracted in under-the-limit regime.

3 Subject matter of the Public Contract

3.1 General description of the subject matter of the Public Contract

The subject matter of the Public Contract is construction work, involving an experimental cave and control hutch for the BEER instrument at ESS, to be installed at the ESS address in Lund, Kingdom of Sweden, as defined below, by the selected Supplier as the Contractor for the Contracting Authority as the Client in accordance with the attached Contract including its Annexes (hereinafter the “**Work**”).

3.2 Detailed description of the subject matter of the Public Contract

A detailed description of the subject matter of the Public Contract for the construction Work is provided in the Technical Specification, which forms Annex No. 1 to this Tender Documentation (hereinafter referred to as the “**Technical Specification**”). Further conditions are provided in the binding draft Contract, which forms Annex No. 3 to this Tender Documentation.

The Work shall fully comply with all the requirements stipulated in the Contract and its Annexes including, but not limited to, the specifications, parameters and other requirements stipulated in the Technical Specification.

The Technical Specification comprises the following documents:

- (i.) EXPERIMENTAL CAVE FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS and its Annex 1 named „BEER INSTRUMENT – Experimental cave - Technical requirements and design description“; and
- (ii.) CONTROL HUTCH FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS and its Annex 1 named “BEER INSTRUMENT – Control Hutch – Technical requirements and design description”.

3.3 Minimum technical conditions (which cannot be changed upon negotiation)

Although the Contracting Authority seeks Work complying with all the technical requirements defined in the Technical Specification, the non-negotiable “minimum technical conditions” for the required performance that cannot be changed throughout the procurement procedure within the meaning of Sec. 61 (4) PPA are the following thereof:

- The Experimental Cave shall include all the main units and features described in the “EXPERIMENTAL CAVE FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS” document of the Technical Specification: **(1) Cave shielding with personal and equipment access doors, cable and pipe feedthrough, ceiling with access openings and elevated floor with a pit for sample tower, (2) sliding door, (3) internal**

crane and (4) beam stop. In addition, the minimum technical conditions for Experimental Cave include the requirements **R4, R5, R10, R11, R16, R17, R40 and R51** of Annex 1 named „BEER INSTRUMENT – Experimental cave - Technical requirements and design description, considering the modifications and clarifications described in Section 4.6 of “EXPERIMENTAL CAVE FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS” document of the Technical Specification.

- The BEER Control Hutch minimum technical conditions include the requirements **R1, R2, R4, R5, R6, R15 and R16** of Annex 1 named “BEER INSTRUMENT – Control Hutch – Technical requirements and design description.

3.4 Demonstration of compliance with technical requirements and minimum conditions

The **Supplier shall draft** and submit within the **preliminary Bid and final Bid** a **technical report** describing:

- Supplier’s intended technical approach for fulfilling the requirements given in the Technical Specification including the modifications requested by the Contracting Authority with respect to the conceptual design described in Annexes 1 to the PROJECT SPECIFICATIONS AND REQUIREMENTS documents, as specified in Article 4.6 of those documents; and
- Proposed modifications and/or alternative solutions (if any) with respect to the design comprised in the Annexes 1 to the Technical Specification, should the Supplier consider them necessary, strongly recommendable and/or otherwise appropriate in view of his expertise; however, the modifications or solution proposed by the Supplier in the report shall be included in the only and non-variable Bid price).

The Supplier's technical report shall be made in accordance with the requirements of the Technical Specification and in such level of detail, structure and manner that enables the Contracting Authority to clearly assess its compliance with the said requirements (see Articles 4.5, 4.6 and 5.1 of the PROJECT SPECIFICATIONS AND REQUIREMENTS part of the Technical Specification).

The Supplier's technical report (including the description of the proposed technical solution) must meet the minimum technical conditions pursuant to Article 3.3 of this Tender Documentation. Failure to meet any of these conditions may result in the Supplier being excluded from the public procurement procedure.

The technical report shall be submitted by the Supplier in its preliminary Bid and final Bid and, if the Supplier is selected by the Contracting Authority to conclude the Contract, this report shall become binding as part of the Contract, together with the Technical Specification.

The Contracting Authority reserves the right to verify all the facts stated in the Supplier’s technical report, including the data quoted and the calculations made by the Supplier therein. However, this shall in no way affect (i.e., neither eliminate, nor mitigate) the Supplier's sole responsibility for the accuracy of the Supplier's technical report including the technical solution, data and calculations therein.

3.5 Reserved changes

Given the experimental nature of the BEER instrument and potential development of the technical specifications on the part of the ESS and their requirements or due to other objectively grounded reasons affecting the Public Contract (e.g. international sanctions), with respect to the aforementioned as well as nature and purpose of the Public Contract and in order to maintain economy and observe the principle of fairness in commercial relationships, the Contracting Authority reserves the right to make the following changes to the commitment entered into in the Contract within the meaning of Sec. 100 PPA:

3.5.1 Variations (changes) based on a “Modification Order”

The Contracting Authority shall be entitled to make variations (changes) to the Work hereunder, in particular to reduce, extend or modify its scope and/or time schedule as well as to take into account their impacts on costs and agree on adequate adjustments to the stipulated price, if the following conditions are met:

- the variation (change) to be made to the Public Contract hereunder a) results from the subsequently appearing infeasibility or unsuitability of the original requirements given by the R&D nature of the BEER instrument or other parts of the ESS infrastructure determining the design or construction of the experimental cave and control hatch involved in the Work and/or b) results from the ESS requirements to implement the Variation which (i) has impact to the Work, (ii) arose during the performance of the Public Contract and (iii) have been required by ESS and/or agreed on with ESS as Variation according to Article 8.1 IKCA;
- the terms and conditions for the variation (change) to be made to the Public Contract hereunder based on a binding “Modification Order” according to Article 3.5 *et seq.* of the Contract are either the same or as similar as possible to the Variations required by ESS or agreed on to be implemented according to Article 8.1 IKCA; and
- the variation (change) to be made to the Public Contract hereunder is necessary to implement the ESS requirements on the Work which are mandatory under the IKCA, including Variations under the below Article 8 IKCA, where the Partner means the Contracting Authority and the “Variation” means a change in nature, scope or timing of the Scope of Works:

8. VARIATIONS

8.1 ESS ERIC or the Partner may propose in writing a Variation, or either Party may ask the other Party to propose a Variation. If required, then upon recommendation of the IKRC, the Partner is entitled to an extension of delivery time and compensation for additional costs related to the preparation and submission of such proposals and performance of the Variation. Such compensation may also take the form of recognition of in-kind contribution by the Government of the Czech Republic, following submission to the IKRC and in accordance with the Framework. If the Variation leads to an increase in the cost book value attributed to specific Scopes of Work and if ESS ERIC proposed such Variation or asked for a proposal for such Variation, then the relevant cost book value will be increased adequately by the value of the Variation.

8.2 Subject to Article 8.1 above, ESS ERIC and the Partner shall agree in writing on the Variation and its value and its impact, if any, on the Time Schedule.

8.3 *Where practicable, the value of the Variation and the impact on the Time Schedule shall be agreed between the Parties prior to the Partner's commencement of works relating to the Variation. Nevertheless, before such agreement is reached, the Partner is entitled to refuse performance of works relating to the Variation.*

8.4 *Except in cases of negligence or wilful misconduct, the Partner shall not be liable for additional costs resulting from the extension of delivery time that has been agreed in accordance with Article 8.1 above.*

3.5.2 Postponing deadlines due to delays of related performances of third parties and delays with readiness of site

The Contracting Authority shall be entitled to postpone (change) particular deadline of a milestone listed in the Project Schedule attached as Annex No. 2 to the Contract relating to installation of the Experimental Cave and/or Control Hutch at the site, if the following conditions are met:

- The Supplier's performance (part of the Work) corresponding to a milestone relating to the installation at site objectively cannot be performed due to (i) Contracting Authority's incurred delay with related performance(s) from a third party (including ESS) and/or (ii) delay with readiness of site for Supplier's performance, as the previous performance(s) of a third party and/or the readiness of site are a necessary prerequisite for the Supplier's performance (hereinafter also the "**delay**");
- The deadline is not postponed for longer than the period of delay;
- The delay has not been caused intentionally or negligently by the Supplier's nor Contracting Authority's failure to meet its obligations; and
- The existence of the delay was not known to the Contracting Authority at the time of signing the Contract.

Postponing of a milestone according to this article beyond the end of period for completion of the Work set in Article 4.3 hereof causes also prolongation of the period for completion of the entire Work including the part of construction (i.e., installation) to be completed at the site. The prolonged period for completion of the (entire) Work then ends at the date of last postponed milestone. Notwithstanding the above prolongation of milestones stipulated for partial performances of the Work, the deadline for completion of the Work at the site shall not be postponed nor exceed the initial timeframe of 17-month after the Contract signature by more than 6 months.

3.5.3 Replacing a part of Work or a subcontractor due to international sanctions

The Contracting Authority reserves the right to either remove a particular item or task or their parts from the performance of the Work under the Contract or ask the Supplier for an adequate replacement of it if this particular item, task or part is affected by international sanctions or if it should be performed by a Supplier's subcontractor affected by international sanctions within the meaning of Article 14 hereof.

Note: The Contracting Authority makes the aforementioned reservation due to objective impossibility to predict in advance which entities, supplies, services or construction work may be

affected by international sanctions at the time of providing performance under the Contract. Should international sanctions affect the performance of the Contract, the above reservation's main purpose is to enable the performance of the Contract to continue.

3.5.4 Common provisions

For the sake of clarity, if the Contracting Authority does not call the Supplier for implementation of a Variation based on a binding "Modification Order" as described above in the Article 3.5.1, for postponing a milestone as described above in Article 3.5.2 or for replacing a part of Work or a subcontractor due to international sanctions as described above in Article 3.5.3, the scope, terms and conditions of this Public Contract shall remain unchanged, the Supplier's commitment hereunder shall not be affected and the Supplier shall not be entitled to claim on the Contracting Authority any payment or compensation for not making such change. Postponing a milestone as described above in Article 3.5.2 alone also does not entitle the Supplier to claim on the Contracting Authority any payment or compensation for making such change, without prejudice to the possibility of changing the price in accordance with the above Article 3.5.1 Variations.

4 Estimated value and Place and Time for Performance of the Public Contract

4.1 Estimated value of the Public Contract

This under-the-limit Public Contract estimated value, within the meaning of Sec. 16 *et seq.* PPA, is EUR 1.500.000 (excl. VAT).

4.2 Place of performance

The place of performance of the Public Contract shall be defined for any documentation of the work as the Czech Republic, specifically the seat of the Contracting Authority, and for the construction as the ESS premises in Lund, Kingdom of Sweden.

4.3 Time of performance

Anticipated time of execution

Commencement: immediately after the Contract is signed, published in the Register of Contracts and becomes legally effective

Completion: in 17 months after Contract signature

Contract signature date is expected within the last quarter of 2023; however, it depends on the completion of the public procurement procedure.

Project schedule

To demonstrate the Supplier's ability to construct the Work within the required timeframe and parameters, the Supplier is obliged to draft and submit within the preliminary Bid and final Bid a

project schedule listing the following:

- all milestones, main tasks, delivery dates, actual timeline and other details as required in Article 7.2 of the PROJECT SPECIFICATIONS AND REQUIREMENTS parts of the Technical Specification and
- proposed dates of milestones connected with partial performances and partial payments in their proposed amounts to cover estimated costs up to the recommended maximum defined for the payments in Article 10 of the PROJECT SPECIFICATIONS AND REQUIREMENTS parts of the Technical Specification.

The Supplier's project schedule shall include all milestones defined in the Technical Specification and be made in accordance with the requirements of the Technical Specification and particular deadlines given therein (see Articles 7.1, 7.2, 8 and 10 of the PROJECT SPECIFICATIONS AND REQUIREMENTS parts of the Technical Specification). While the tentative dates of the milestones listed in the Technical Specification are not binding, the Supplier may propose other dates for the milestones listed therein, except for the above period of 17 months for the Work completion, which is binding.

In addition, the dates proposed by the Supplier in the project schedule for the Experimental Cave and Control Hutch must always be consistent with each other so that the Control Hutch milestones WP09.1.2 through WP09.1.4 in Article 10 of CONTROL HUTCH FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS have identical dates to the corresponding Experimental Cave milestones WP01.1.2 through WP01.1.4 in Article 10 of the EXPERIMENTAL CAVE FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS. This is mainly to allow simultaneous payments for the corresponding parts of Experimental Cave and the Control Hutch.

Since the percentages given in Articles 10 of the PROJECT SPECIFICATIONS AND REQUIREMENTS parts of the Technical Specification are the maximum allowed partial payments (see Article 8.5 of the Contract), the Supplier may require in the project schedule the same or lower amounts of partial payments. Nevertheless, depending on the amount of the partial payments required, these payments may be subject to the Supplier's obligation to provide the Contracting Authority with a bank guarantee beforehand, according to the conditions stipulated in Article 15 of the Contract. The partial payment will be made upon the aforementioned is met and the relevant partial performance according to the defined milestone is complete.

5 Course of the procurement procedure

5.1 Application to participate

Suppliers shall file an Application to participate with the Contracting Authority in a manner defined in Article 8 of this Tender Documentation and within the deadline stipulated therein (hereinafter the “**Application**”). By submitting the Application within the stipulated deadline, Suppliers become participants in the procurement procedure. The Contracting Authority advises that Applications are prepared in accordance with requirements defined in Article 7 hereof. Suppliers shall demonstrate their qualifications within the Application as required in Article 6 hereof.

5.2 Evaluation of the required qualifications

Qualifications (as defined in Article 6 hereof) will be assessed after the Application submissions date expires. Meeting the required standards of qualification represent a prerequisite for further participation in the procurement procedure. Suppliers who fail to demonstrate their qualification in the required standard will be excluded from further procurement procedure and will not be invited to submit a preliminary bid (hereinafter the ***“Preliminary Bid”***). Suppliers who had not been excluded will be invited by the Contracting Authority, in line with Sec. 61 para 5 PPA, to submit Preliminary Bids.

5.3 Evaluation of fulfilment of other conditions for participation in the procurement procedure

Evaluation of fulfilment of other conditions for participation in the procurement procedure will be carried out throughout the individual phases of the procedure, but no later than before the decision on the selection of the winning supplier.

5.4 Submission of preliminary Bids

The **Invitation to submit a preliminary Bid**, within the meaning of Annex 6 to PPA, will contain all information that may be required for proper preparation and submission of the preliminary Bid, including the deadline for such submissions.

Preliminary Bids may be submitted only by those Suppliers who will be invited to do so. Suppliers who were not invited to submit a preliminary Bid may not submit joint preliminary Bid.

Submission of preliminary Bid shall be governed by rules defined in Sec. 107 para 1 and 3 through to 5 PPA. Opening of preliminary Bids shall be governed by Sec. 108 and Sec. 109 PPA. The Contracting Authority assumes that it will negotiate with Suppliers on the contents of preliminary Bids.

The Contracting Authority concurrently reserves the right, in line with Sec. 61 para 8 PPA, not to negotiate on the submitted preliminary Bids and to commission the Public Contract on the basis of submitted preliminary Bids alone. For this reason, the Contracting Authority will open preliminary Bids using the procedure defined in Sec. 108 and Sec. 109 PPA. The Contracting Authority states that it will not be reducing the number of preliminary Bids in accordance with Sec. 112 PPA during negotiations with Suppliers.

5.5 Negotiation with Suppliers (if the Contracting Authority does not invoke the right not to negotiate)

If the Contracting Authority choses to negotiate, it will do so separately with each of the Suppliers, in the order in which the Contracting Authority received their preliminary Bids. In each round of negotiations, one or more meetings can take place with each Supplier. Negotiations will be held at the Contracting Authority's headquarters, at the Attorney's office or online.

Negotiations will commence after the Contracting Authority reviews the content of preliminary

Bids submitted. Then the Contracting Authority shall send out invitations to all Suppliers providing the exact location and date of each meeting; these invitations will be sent out at least five (5) business days before the date of each meeting. The Contracting Authority will be entitled to limit duration of each meeting within the invitation, that will be the same for all Suppliers. The meetings will be held in the Czech or English language.

The Contracting Authority will negotiate with Suppliers in order to improve their preliminary Bids in favour of the Contracting Authority. The Contracting Authority will be also entitled to request an explanation of any part of the preliminary Bid and Suppliers shall provide such either verbally or in writing. The Contracting Authority will produce a record or meeting minutes for each meeting for its purposes, which may be provided, upon request, to the relevant Supplier participating in such meeting.

The Contracting Authority will provide information to all Suppliers in a non-discriminatory manner, i.e., all general information that does not relate to only one particular Supplier and / or is not confidential, will be provided to other Suppliers without delay, but no later than before the next round of negotiations.

The Contracting Authority reserves the right to disclose to all Suppliers, upon completion of each round, changes in the total bid price that was made in negotiations with each Supplier. The Contracting Authority shall, upon completion of each meeting, provide the Supplier with additional time for adjustment of its preliminary Bid, depending on the outcome of the negotiations, unless the Supplier states during negotiations that the preliminary Bid price will not be adjusted in the course of the respective round of negotiations.

The Contracting Authority may modify or amend the terms and conditions, in particular the technical conditions, except for the minimum binding technical conditions defined in Article 3.3 hereof. Any such change or addition to the terms shall be notified by the Contracting Authority to all Suppliers in writing and the Contracting Authority shall provide additional reasonable time to adjust the preliminary Bids.

The Contracting Authority shall notify Suppliers in the written invitations to negotiate which specific round of negotiations will be the final round. Upon completion of such final round of negotiations, the Contracting Authority will not organize any additional rounds. The Contracting Authority reserves the right to carry out only one round of negotiations.

Once the final round of negotiations will have been completed, the Contracting Authority will invite Suppliers, in accordance with Sec. 61 para 11 PPA, to submit their final Bids.

5.6 Submissions of final Bids

The **Invitation to submit final Bids** will contain all information and data that may be required to duly prepare and submit the Bids, as well as terms defined in Annex 6 to PPA, including the Bid submission deadline.

Submission of Bids shall be governed by Sec. 107 PPA. Opening of Bids shall be governed by Sec. 108 and Sec. 109 PPA.

6 Suppliers' Qualifications

6.1 Fulfilment of Qualification Criteria

Suppliers need to meet requirements relating to qualification as defined in Sec. 73 *et seq.* PPA. Suppliers 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 Suppliers who will duly demonstrate the following in their Bid:

- a) Basic qualification pursuant to Sec. 74 PPA;
- b) Professional qualification pursuant to Sec. 77 PPA; and
- c) Technical qualification criteria pursuant to Sec. 79 PPA.

6.2 Authenticity and age of documents proving qualification

6.2.1 Authenticity

In order for qualification to be proved, the Contracting Authority shall require primarily documents registered in the system that helps identify the certificates requested as a proof of qualification (e-Certis).

Documents to be provided by Suppliers to demonstrate their qualification may be submitted in simple copies pursuant to Sec. 45 (1) PPA; the Contracting Authority will allow that Suppliers substitute, in accordance with Sec. 86 (2) PPA, affidavits in place of documents where applicable. Suppliers 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, Suppliers shall demonstrate that such other person has been duly authorized to take such legal acts, which demonstrates the Supplier's qualification.

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.

6.2.2 Age

Documentation demonstrating basic qualification pursuant to Sec. 74 PPA and professional qualification pursuant to Sec. 77 (1) PPA shall demonstrate fulfilment of the required qualification criterion no later than 3 months prior to the procurement procedure commencement (i.e., these documents shall not be older than 3 months at that time).

6.3 Demonstrating Suppliers' qualifications – foreign entities

In case the required qualification is obtained abroad, it shall be demonstrated by documents issued in accordance with the law of such country, where it has been obtained, in the extent required by the Contracting Authority.

6.4 Basic qualification

6.4.1 Extent

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

- a) have been, in the last 5 years prior to commencement of this procurement 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 procurement 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.

6.4.2 Demonstration of basic qualification

Suppliers demonstrate their fulfilment of basic qualifications under Article 6.4.1 above in relation to the Czech Republic by submitting:

- a) extract from the Criminal Register in relation to Sec. 74 (1) letter a),
- b) confirmation from the competent financial authority in relation to Sec. 74 (1) letter b),
- c) written affidavit in relation to consumption tax as per Sec. 74 (1) letter b),
- d) written affidavit in relation to Sec. 74 (1) letter c),
- e) confirmation from the competent district social security administration in relation to Sec.

74 (1) letter d),

- 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).

If the Supplier is a person headquartered abroad, it shall demonstrate meeting basic qualification with respect to letter a) above only in relation to the country where it has its headquarters.

In accordance with Article 6.2.1 hereof Suppliers may use an affidavit (see, for instance, the template that is attached hereto as *Annex No. 4*) in place of the documents listed in Article 6.4.2 hereof for the purposes of demonstration of basic qualification within their Bids. 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 6.2.1 above).

6.5 Professional qualification

Supplier shall demonstrate its professional qualification in relation to the Czech Republic by submitting an **extract from the Commercial Registry** or similar registry if the law requires such registration.

Documentation demonstrating professional qualification of Suppliers need not be submitted if the laws in the country where such Supplier is headquartered do not require similar professional qualification.

Suppliers may use the template affidavit attached hereto as Annex No. 4.

6.6 Technical qualification

6.6.1 List of important construction work

The Contracting Authority requires that each Supplier submits its documented history of providing clients with constructions similar to the subject matter of this Public Contract that were completed in the last 5 years prior to the commencement of this public procurement procedure. The aforementioned history shall be documented in the form of a **List of important construction work** (LICW) including the client's confirmation of the proper execution and completion of the most important of the work. The work must have been carried out by the Supplier properly in the quality required by the client, completed duly and timely and handed over to the client within the above 5-year period.

Minimum required level of LICW

The Contracting Authority requires that Suppliers provide LICW listing **at least one (1)** piece of important construction work completed in the last 5 years prior to the commencement of this public procurement procedure and similar to the subject matter of this Public Contract. A piece

of important construction work shall be understood as provision of construction work with all of the following parameters:

- a) in a minimum value of EUR 350 000,00 excl. VAT,
- b) including concrete shielding structure of a total weight of more than 50 t, made from cast concrete or pre-cast blocks using the technology proposed for the BEER cave, which satisfies the requirements on accuracy, particularly the maximum allowed gaps (see the Technical Specification, Annex 1 including Conceptual Design named „BEER INSTRUMENT – Experimental cave - Technical requirements and design description“, Section 3.2.1),
- c) including manufacturing of radiation shielding structures from heavy concrete and
- d) including design and construction of neutron shielding.

Note: Compliance with the parameters defined in letters a) to d) above can also be demonstrated by the Supplier through listing multiple pieces of important construction work, the sum of which fulfils all of these parameters, i.e., their cumulative fulfilment is not required solely within a single important construction work.

The LICW shall include the important construction work as required above as well as the designation and brief description of the work showing compliance with all the requirements set out in letter a) to e) above, financial value (price) thereof in EUR excl. VAT (or its equivalent in EUR, if the price was in other currency), period when provided and date of completion, along with identification of the client and its contact details for reference verification.

The LICW shall be accompanied with the client's confirmations of the proper execution (in terms of quality and time) and completion of the most important of the work listed thereon, including confirmation of the level of accuracy as required in letter c) above.

6.6.2 Quality management system

In accordance with Section 79 (2) (e) PPA and Section 81 (1) of the PPA, the Contracting Authority requires the Supplier to **demonstrate that the Supplier has implemented a quality management system** in accordance with **ISO 9001**.

Method of demonstration:

By submitting a valid certificate of the quality management system ISO 9001, issued according to technical standards by an accredited body, or a confirmation from the certification body that the certification has been successfully completed and that a new certificate is being prepared.

The Contracting Authority shall accept equivalent documents issued in a Member State of the European Union as well as other evidence of equivalent quality assurance measures.

6.6.3 Conflict of Interest

In the event it is demonstrated that the Supplier has a conflict of interest, which could negatively affect performance of the Public Contract, the Contracting Authority may, pursuant to Sec. 79

(1) PPA, deem the technical qualification not duly demonstrated.

6.7 Demonstrating qualification through other persons (Sec. 83 PPA)

Suppliers may demonstrate certain parts of their technical qualification through (an)other person(s) according to Sec. 83 PPA. Suppliers shall be in such cases required to provide the Contracting Authority with the following documentation:

- a) documentation demonstrating fulfilment of professional qualification pursuant to Sec. 77 (1) PPA by another person,
- b) documentation demonstrating fulfilment of the missing part of the qualification by another person,
- c) documentation demonstrating fulfilment of the basic qualification pursuant to Sec. 74 PPA by another person, and
- d) a commitment certified by such another person in writing to provide performance intended for the Public Contract or to provide assets or rights with which the Supplier will be authorized to dispose during execution of the Public Contract, at least in the extent, in which such another person demonstrated its qualification on behalf of the Supplier. This requirement will be deemed to have been met, if the written commitment of another person includes joint and several liability of this person for the performance of the Public Contract along with Supplier. Should a Supplier demonstrate qualification through another person, and submit documentation pursuant to Sec. 79 (2) letter b) PPA relating to such person, the commitment in writing made out by such person shall also include, that such person shall perform those services that are directly related to the qualification criterion it demonstrated.

6.8 List of Qualified Suppliers

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

6.9 Certified Suppliers System

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

6.10 Changes in Suppliers Qualification

Should the Suppliers' qualification change, after the documentation or affidavits demonstrating qualification had already been submitted in the procurement procedure, Suppliers 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.

7 Method of preparation and form of the Application

7.1 Application language

Applications and Bids may be prepared in **the Czech or the English language** in line with the Contracting Authority's requirements stipulated in the Tender Documentation and in the PPA; this requirement does not apply to documents submitted within the Application or 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, Suppliers 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.

7.2 Recommended structure and contents of the Application

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

- a) Cover Sheet according to Annex No. 6 hereto;
- b) Power of Attorney for the person authorized by the Supplier's statutory representative to act and sign on behalf of the Supplier (where applicable);
- c) documentation demonstrating fulfilment of basic qualification;
- d) documentation demonstrating fulfilment of professional qualification;
- e) documentation demonstrating fulfilment of criteria relating to technical qualification;
- f) List of subcontractors (if any) according to Article 16.1 d) hereof (where applicable);
- g) statement of the Supplier that there is no Russian involvement on their part in the Public Contract according to Annex 8 hereto.

7.3 Formal requirements for the Application

Pursuant to the mandatory requirements of PPA, the Contracting Authority requires that Applications are submitted only in writing in electronic form using the relevant electronic tool as follows.

Detailed information for Application submission by electronic means:

- a) For Application submission by electronic means Suppliers 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. Detailed instructions for submitting an Application via

the E-ZAK electronic tool can be found in the manual called "Contractor user guide", which is available on-line at <https://ezak.ujf.cas.cz/manual.html?lang=en> and also contains requirements for the operation of the E-ZAK system, instructions for submitting an electronic Application and instructions for electronic signatures in the E-ZAK application. All files constituting the Application shall be uploaded by the Supplier to the electronic tool E-ZAK as attachments.

- b) The Supplier has to register (for the possibility of Application submission) as a supplier in the electronic tool E-ZAK (see the button „Contractor sign up“ at <https://ezak.ujf.cas.cz?lang=en> or directly the linked webpage <https://ezak.ujf.cas.cz/registrace.html?lang=en>) or via the Central Supplier Database of the FEN.cz portal at <https://cdd.fen.cz/#/registrace>. The Supplier's user must be assigned the appropriate role and permissions in the system to submit an Application. The registration process takes a maximum of 48 hours (at Business days) upon submission of all required documents (in particular, Supplier's identification data and an electronic signature based on qualified certificate may be required for registration completion) and is free of charge (i.e., the registration is not charged with any fees).
- c) 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 document 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.
- d) The Contracting Authority is not responsible for technical conditions and circumstances on Supplier's part. The Contracting Authority recommends Suppliers to consider in particular the stability and (upload) speed of their internet connection when submitting the Application so that it is submitted within the stipulated Deadline. Please note that Application submission means the final posting of the complete Application (i.e., after uploading all its attachments) to the electronic tool E-ZAK.

8 Manner, time and place for Application submissions

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

<https://ezak.ujf.cas.cz/vz00000663>

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

The deadline for Application submission is specified in the Notification (hereinafter the "**Deadline**").

9 Application opening

Applications shall be opened by means of the relevant electronic tool after expiry of the Deadline for their submission specified in the Notification.

Application opening is not public because only electronic means are allowed for their submission.

10 The bid Price and other values to be filled in by Suppliers in the Preliminary Bid and in the final Bid corresponding to the evaluation criteria

10.1 Structure of the bid Price in the Preliminary Bid and in the final Bid

Supplier shall specify the total bid price for the whole supply comprising execution of the Work (including delivery of the System) being subject-matter of the Public Contract in the Bid (hereinafter the "**Bid Price**"); the Bid Price shall be specified in EUR excl. VAT.

The Bid Price shall be quoted in the draft Contract (see the highlighted parts).

The Bid Price shall be determined and expressed as complete, total and fixed for the entire period of the Contract and non-exceedable during the same period. The Bid Price shall include all costs relating to the execution of the Public Contract under the terms and conditions defined in the binding draft Contract. Hence, the Supplier shall include in the Bid Price all costs associated with the execution of the Public Contract, in particular all the costs of design work, supply of materials, manufacture, delivering, storing, transporting, testing, installation and commissioning of the System, licensing fees, staff salaries and other expenses incurred in relation to carrying out or managing the work being subject of the Public Contract, including customs, insurance, taxes, administration fees and costs of measures imposed by authorities for the execution of the Public Contract.

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

Suppliers shall fill only the highlighted parts in the templates provided hereunder (e.g., yellow cells in the Contract) and they have to fill-in all of them. Any modification to the templates provided hereunder (with the exception of information that the Suppliers are required to fill in) or any missing response might result into disqualification of the Bid.

The data provided in any part of the Bid (e. g. in the draft Contract and its Annexes) must be fully in line with the (same) data provided in other parts of the Bid (e.g., in the technical part), otherwise the Bid might be disqualified from the procurement procedure.

11 Evaluation of the Preliminary Bids or Final Bids, respectively

11.1 Evaluation criteria

Bids to perform the Public Contract (or Preliminary Bids, should the process follow process defined in Sec. 61 para 8 PPA) 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 shall be evaluated on the basis of the following evaluation criteria:

Criterion	Weight %
Bid Price in EUR excluding VAT	100 %

Economical advantage of Bids shall be thus evaluated, on the basis of the criterion of the lowest quoted Bid Price (i.e., total Price of Work in EUR excluding VAT) offered by the Supplier.

11.2 Bid Price in EUR excl. VAT

The Bid Price that will be evaluated shall be understood, for the purposes of evaluation, as the Bid Price in EUR excl. VAT determined in the manner defined in Article 10.1 hereof, i.e., the **total Price of Work defined in the binding draft Contract, in EUR excluding VAT**. The Bid price shall be quoted as the total fixed price, not subject to any adjustment whatsoever during the entire term of the Contract 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 the binding draft Contract.

11.3 Evaluation method

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 respecting / 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 total bid price**.

The Contracting Authority will not evaluate Bids if it should evaluate only one Bid supplied by one Supplier.

The Contracting Authority shall produce a report on the Bid evaluation (if any) and this report shall form a part of the Notification on the Selection of the Supplier within the meaning of Sec. 123 PPA.

12 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 detail in the binding draft Contract which is attached hereto as *Annex No. 3*.

Except that the Contracting Authority does invoke the right not to negotiate with Suppliers on

the contents of Preliminary Bids and to commission the Public Contract on the basis of submitted Preliminary Bids alone, the Contracting Authority shall negotiate on the submitted Preliminary Bids with Suppliers in order to improve their Preliminary Bids in favour of the Contracting Authority (see Article 5.4 and 5.5 hereof). Based on these negotiations the final binding draft Contract shall be stipulated. Therefore, the Contracting Authority reserves the right to amend or define additional (commercial) terms or other requirements during the procurement procedure, especially in connection with its negotiations with Suppliers according to Sec. 61 para 10 PPA, however without modifying the minimum binding technical conditions defined in Article 3.3 hereof.

Suppliers shall fill in the required information into this binding draft Contract (especially their own identification data, information relating to evaluation criteria and other data as may be highlighted throughout the text of the draft Contract). The resulting filled-in binding draft Contract shall be then submitted as their own draft Contract within their Bid.

Suppliers shall not be authorized to amend or modify the text of the binding draft Contract with the exception of information that they are required to fill in. Should a Supplier amend or modify any part of the Contract, 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.

The Contracting Authority advises that in the event that the Application or the subsequent Preliminary Bid is submitted by more Suppliers jointly, the Contracting Authority will require, in line with Sec. 103 (1) letter f) PPA, that these Suppliers bear the liability for performance of the Public Contract jointly and severally, and to unequivocally demonstrate this joint and several liability for the performance of the Public Contract within their Preliminary Bid and final Bid.

13 Communication between the Contracting Authority and Suppliers

No communication between the Contracting Authority and Suppliers may prejudice confidentiality of Applications, preliminary Bids or final Bids or completeness of the information contained therein. The Contracting Authority shall not be allowed to access contents of any of these documents before the Deadline for their submission.

The Contracting Authority requires, in order to maintain legal clarity of the procurement 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 including the form of negotiations conducted according to Article 5.5 of this Tender Documentation. All acts by the Contracting Authority towards Suppliers or acts by Suppliers 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.

If an Application, preliminary Bid or final Bid is submitted by more Suppliers jointly, they are

required to state therein what is their (one) joint electronic address for any correspondence with the Contracting Authority. Transmission of any document to this joint address shall constitute a proper delivery to all participants involved in the joint Application, preliminary or final Bid. The Contracting Authority however reserves the right to send documents to each Supplier - party to a joint Application, preliminary or final Bid separately.

14 Compliance with international sanctions

Suppliers and their subcontractors participating in this public procurement procedure shall be aware of the legal and economic risks in case current or future international sanctions are affecting their participation in the procedure for, conclusion and/or performance of the Public Contract (i.e., prohibition or restriction as regards, for instance, entering into a Contract, get paid for the supply, export or import of a certain type of goods, etc.).

By submitting an Application to participate, Suppliers declare that in connection with this Public Contract they comply and shall further comply with all legal regulations imposing international sanctions including those imposed as coercive measures applied against States, non-State entities or individuals that pose a threat to international peace and security. A false affidavit or a breach thereof may be sanctioned or lead to non-execution of the contract or non-payment for the supply provided. A false affidavit thereon or a breach thereof may lead to, among others, exclusion from the public procurement procedure, non-execution of the Contract or non-payment for the supply provided thereunder.

The Contracting Authority may proceed in accordance with valid legal regulations imposing international sanctions and may apply international sanctions under such legal regulations, for example, freezing of economic resources, stop performance of the Contract or withdraw from the Contract, where applicable.

15 Direct payments to subcontractors at their request

The Contracting Authority shall be entitled to direct payments to the Supplier's subcontractors (i.e., to transfer amounts already due for payment for the performance of the subject matter of the Public Contract to subcontractors) at their request under the following conditions:

- a) the Supplier's subcontractor applies for a direct payment by a written request delivered to the Contracting Authority,
- b) the written request includes the requested amount of payment corresponding to the relevant portion of the price for the supply agreed in the Contract and its justification demonstrating the extent of the part of the supply carried out by the subcontractor as well as the fact that the relevant portion of price for this part is already due under the Contract,
- c) the written request is forwarded by the Contracting Authority to the Supplier for review or comments and, based on this possible review or comments, the Contracting authority will not assume any significant doubt as to the appropriateness of the subcontractor's request
- d) such transfer (i.e., direct payment) is prevented neither by legal regulations nor international sanctions and
- e) the payment is transferred by the Contracting Authority directly to the subcontractor.

16 Other

16.1 Further rights of the Contracting Authority

The Contracting Authority reserves also the following rights and terms:

- a) As stated in Article 5 of this Tender Documentation, with regard to the selected type of procurement procedure (negotiated procedure with publication), the Contracting Authority, in accordance with Sec. 61 (10) PPA, has reserved the right to change the procurement conditions during the negotiations, to negotiate with the Supplier on the terms and conditions, including commercial ones but excluding the minimum technical requirements, as well as to discuss the Bids submitted or the Contract to be concluded.
- b) The Contracting Authority may also provide explanations of or make changes to the Tender Documentation in the procedure 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.
- c) Given the nature of the subject-matter of the Public Contract, the Contracting Authority will not allow alternative Bid pursuant to Sec. 102 PPA;
- d) **The Supplier is obliged to specify in the Bid the parts of the Public Contract that it intends to perform through subcontractors, if any, and to submit a list of subcontractors, if known to the Supplier, and to indicate which part of the Public Contract each of the subcontractors will perform** (the Supplier may use the template List of Subcontractors, which forms Annex No. 5 to the Tender Documentation);
- e) The Contracting Authority shall not make any payment to Suppliers in connection with their participation in this public procurement procedure;
- f) The Contracting Authority may carry out an assessment of the fulfilment of the conditions for participation in the procurement procedure either before the evaluation of the Bids or after the evaluation of the Bids

16.2 Additional requirements before conclusion of the Contract

As described in Article 6.2.1 above, prior concluding the Public Contract with the Contracting Authority the selected Supplier will be required to submit originals/notarized copies of documents demonstrating qualification if they have not been submitted by the Supplier within the Bid.

Beside that the selected Supplier, who is a foreign legal entity, i.e., with registered office abroad / outside the Czech Republic, shall submit also the following information prior to concluding the Contract:

- a) either an extract from Beneficial Owners Register or
- b) Identification data for all persons who are the beneficial owners of the 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.

In case that the selected Supplier is a foreign legal entity, i.e., has its registered office abroad / outside the Czech Republic, and is either a joint-stock company or has a legal form similar to a joint-stock company, it will be required to submit also an affidavit showing which persons are holders of shares whose aggregate nominal value exceeds 10 % of the registered capital of the Supplier, and indicating the source on which the information on the amount of the share of shareholders is based.

16.3 Binding nature of the Contracting Authority's requirements

The information and data stipulated by the Contracting Authority in various parts of the Tender Documentation (and subsequently in the Invitation to submit a Preliminary Bid, or in the Invitation to submit the final Bid) constitute mandatory requirements. Each Supplier shall be obliged to fully and unconditionally respect these requirements when processing / preparing their respective Applications, preliminary Bids or final Bids (according to their relevance to each respective document). Non-acceptance of the Contracting Authority's requirements specified in the Tender Documentation may constitute failure to fulfil tender terms and conditions hereof and may result in exclusion of the Supplier from the procurement procedure.

16.4 Confidentiality

Suppliers 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). Suppliers 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 Suppliers within this Public Contract procurement 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.

With respect to 218 (1) PPA, the Contracting Authority recommends the Supplier to explicitly mark as confidential any information or communication provided by the Supplier to the Contracting Authority in the procurement procedure that the Supplier considers to be confidential. Similarly, the Contracting Authority recommends the Supplier to explicitly identify as such any information the disclosure of which would or might violate the Supplier's right to the protection of business secrets or might affect competition.

16.5 Site inspection

The Contracting Authority does not organize any site inspection of the place of performance under this Public Contract pursuant to Sec. 36 (6) and Sec. 97 PPA.

16.6 Tender period

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

16.7 Guarantee

The Contracting Authority does not require, within the meaning of Section 41 of the PPA, a guarantee to ensure fulfilment of the Supplier's obligations arising out of participation in the procurement procedure.

16.8 Preparation of the tender terms and conditions

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

16.9 Information on preliminary market consultations

No preliminary market consultations with respect to the Public Contract were held.

Annexes:

Annex No. 1 - Technical Specification, including the following documents:

- (i.) EXPERIMENTAL CAVE FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS and its Annex 1 - „BEER INSTRUMENT – Experimental cave - Technical requirements and design description“; and*
- (ii.) CONTROL HUTCH FOR THE BEER INSTRUMENT AT ESS – PROJECT SPECIFICATIONS AND REQUIREMENTS and its Annex 1 - “BEER INSTRUMENT – Control Hutch – Technical requirements and design description”.*

Annex No. 2 - Folders with relevant parts of documents from the ESS repository named CHESS, including BEER project documents and ESS guidelines and regulations referred to as ESS-xxxxxxx in the Technical Specification. Namely as follows:

- Cave - Project specifications and requirements*
- Cave - Technical Requirements and Design Description*
- Hutch - Project specifications and requirements*
- Hutch - Technical Requirements and Design Description*
- CAD (Step file / 3D model)*

Annex No. 3 - Contract (binding draft)

Annex No. 4 - Affidavit to basic and professional qualification (template)

Annex No. 5 - List of subcontractors (template)

Annex No. 6 - Application Cover Sheet (template)

Annex No. 7 - Affidavit on Russian Non-involvement (template)

In Řež on 13. 7. 2023

prof. RNDr. Anna Macková, Ph.D., Vice Director

On behalf of:

Ing. Ondřej Svoboda, Ph.D., Director

Ústav jaderné fyziky AV ČR, v. v. i.