

TENDER DOCUMENTATION

for a public procurement procedure for supplies in the below-the-limit regime to be contracted in open proceedings

pursuant to Sec. 56 *et seq.* of Act No. 134/2016 Coll., on Public Procurement, as amended (hereinafter the “**PPA**”)

Instrument Shutter for the diffractometer BEER 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 necessary for submission of bid to perform the Public Contract (hereinafter the “**Bid**”). The rights and obligations of the Contracting Authority and suppliers / bidders, respectively participants in the tendering 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:	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 PPA:	HOLEC, ZUSKA & PARTNEŘI advokátní s.r.o. Registered seat: Radlická 3185/1c, Smíchov, 150 00 Praha 5 ID number: 07759711 Contact person: Mgr. Jan Dudák, advokát e-mail: zakazky@holec-advokati.cz tel.: +420 296 325 235 (hereinafter the " Attorney ").
Legal Process:	public procurements procedure for supplies in the below-the-limit regime to be contracted in open proceedings (hereinafter the " Public Contract ")
CPV code:	38000000-5 - Laboratory, optical and precision equipments (excl. glasses)
Name of the Public Contract:	Instrument Shutter for the diffractometer BEER at ESS
Availability of Tender Documentation pursuant to Sec. 96 PPA	Tender Documentation has been published at the Contracting Authority's website profile in full extent
Bid submission deadline:	In accordance with the published contract notice (" Notice ").

2 Background to the implementation 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 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>, hereinafter referred to as the "**Project**"). The manufacture and delivery of the subject matter to be delivered under this Public Contract is financed by the ESS funds granted to the Contracting Authority under the Project.

The purpose of this Public Contract is delivery of a safety shutter 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, 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 with ESS and their partners.

Manufacture and delivery of the System under the Public Contract 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 performance to be executed under the Public Contract will become part of the ESS infrastructure for research, development and innovation in accordance with the IKCA and the NIK Annex; the BEER instrument including the System thus contributed will be also used to carry out research projects within the Project.

The objective of the procurement procedure for this Public Contract is to conclude a public contract between the Contracting Authority and the selected Supplier, draft of which is attached hereto as *Annex No. 2* (hereinafter the "**Contract**").

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 supply of instrument shutter as a part of the "Beamline for European Engineering Research" (BEER) instrument, including manufacture, documentation and other performance in accordance with the attached Contract including its Annexes and delivery of the System to the Buyer at the ESS address in Lund, Kingdom of Sweden, as defined below, including

a free licence to use the System for the needs of the Project and its follow-up phases and installation and alignment of the System (hereinafter the "**System**").

Note: The scope of the System delivery excludes the "excluded parts" as defined and described more in detail in the below Technical Specification.

3.2 Detailed description of the subject matter of the Public Contract and other conditions

A detailed description of the subject matter of the Public Contract 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 (hereinafter referred to as the "**Contract**"), which forms *Annex No. 2* to this Tender Documentation. The System shall fully comply with all the requirements stipulated in the Contract (including its Annexes) and the Technical Specification.

The Technical Specification comprises the following documents and the binding nature of the documents within the Technical Specification and priority in the event of conflict shall apply in the following order, from highest to lowest priority:

- (i.) the specification itself named "TECHNICAL SPECIFICATIONS AND REQUIREMENTS",
- (ii.) its annex named "BEER INSTRUMENT SHUTTER – Design Description" with design description and
- (iii.) the relevant 3D model named "BEER Shutter ESS-14480781_00257376".

Where reference is made to some Article of the Technical Specification in this Tender Documentation, it shall be understood as a reference to the relevant Article of the first part of Technical Specification named "TECHNICAL SPECIFICATIONS AND REQUIREMENTS", unless the context or express wording indicates otherwise.

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

- Suppliers intended technical approach for fulfilling the requirements given in the Technical Specification; and
- Proposed modifications and/or alternative solutions (if any) with respect to the design comprised in the second part of 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 technical report shall be made in such level of detail that is sufficient to assess the compliance of the Bid with the requirements hereof (see Article 4.4 of the Technical Specification).

3.3 Reserved changes

Given the experimental nature of the BEER instrument including the System and potential development of the specifications on the part of the ESS and their requirements, 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:

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

The Contracting Authority shall be entitled to make variations (changes) to the supply 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 determining the System design, manufacture, installation, tests and alignment and/or b) results from the ESS requirements to implement the Variation which (i) has impact to the System, (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 3.4 *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 System 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.*

3.3.2 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 Annex 2 of the Contract relating to installation and/or alignment of the System, if the following conditions are met:

- The Supplier's performance (part of the System) corresponding to a milestone relating to installation and/or alignment of the System 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 ((i) and/or (ii) hereinafter also the “**delay**”);
- The change of deadline to be made in form of postponement for a maximal time of such postponement equal to the duration of the 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 of the Public Contract.

Postponing of a milestone according to this article beyond the end of period for completion of the System set in Article 4 causes also prolongation of the period for completion of the System with respect to the installation and/or alignment. The prolonged period for completion of the System then ends at the date of last postponed milestone. Notwithstanding, the milestones stipulated for production and delivery of the System to the site shall not be postponed nor exceed the initial timeframe of 11-month delivery period after the Contract signature.

3.3.3 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 3.3.1 or for postponing a milestone as described above in Article 3.3.2, 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 3.3.2 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 3.3.1 Variations.

4 Place and Time of Delivery of the System under the Public Contract

The place of delivery of the System shall be defined for the documentation of the System as the Czech Republic, specifically the seat of the Contracting Authority, and for the delivery of the System as well as for its installation and alignment as the ESS premises in Lund, Kingdom of Sweden.

Anticipated time of execution:

Commencement: immediately after the Contract is signed, registered and becomes legally effective

Completion: in 11 months after Contract signature

Contract signature date is expected within the first quarter of 2022; however, it depends on the completion of the tendering procedure.

Project schedule

To demonstrate the Supplier's ability to deliver the System within the required timeframe and parameters, the Supplier is obliged to draft and submit within the Bid a project schedule listing proposed dates of partial deliveries and advance payments in their proposed amounts to cover estimated costs up to the maximum defined for the advance payments in *Annex No. 1 – Technical Specification* and according to the requirements and recommended milestones given therein (see Articles 7.1, 7.2 and 10 thereof).

The project schedule must include all milestones listed in *Annex No. 1 – Technical Specification* (see Article 7.2 and 10 thereof). 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 delivery period of 11 months for the System delivery, which is binding.

The advance payments will be made upon the partial deliveries carried out according to the milestones. Since the percentages of advance payments given in the Technical Specification are the maximum, the Supplier may propose the same or lower amounts of advance payments.

5 Estimated value of the Public Contract

The Contracting Authority set the estimated value of the Public Contract in accordance with Sec. 16 *et seq.* PPA and decided to procure the Public Contract as a below-the-limit public contract. The particulars of the estimated value are not published in the Tender Documentation

6 Suppliers' Qualification**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 within their Bid the following:

- 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

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 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 demonstrating 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 show fulfilment of the required qualification criterion no later than 3 months prior to the commencement of the tender proceeding (i.e. prior to the Notice dispatching for publication).

6.3 Demonstrating Suppliers' qualifications obtained abroad – 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 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.

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. 3* and that can be used by the Suppliers) 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.

6.6 Technical qualification

6.6.1 List of important supplies

The Contracting Authority will require that Suppliers submit a **List of Important Supplies (LIS)** provided in the last **5 years** prior to commencement of this tendering procedure.

The LIS shall include the following data with respect to each important supply:

- designation of the supply,
- a brief description of the subject matter of the supply showing similarity hereto, significance here for and compliance with the requirements hereof,
- financial value of the supply in EUR excl. VAT (i.e. price in EUR excl. VAT or its equivalent in EUR excl. VAT if the price was in other currency),
- date of supply completion (or period of time when the supply was provided) and
- identification of the client and their contact details for verification of the reference supply.

The Contracting Authority states that the important supplies listed on the LIS must have been made within the last 5 years, i.e. duly completed and handed over to the client within that period.

The Contracting Authority considers necessary to require important supplies listed on the LIS to be provided in the last 5 years (instead of only the last 3 years) to ensure an adequate level of competition. Due to the nature of the System being technically difficult there is a concern that not many Suppliers (worldwide) may have a relevant experience in the form of important supply which have been made within last 3 years and such limit could severely limit the number of Suppliers capable to participate in this tender for System and therefore limit level of competition.

6.6.2 Minimum LIS requirements

The Contracting Authority requires that Supplier provide LIS listing **at least 1 important supply**. Important supply shall be understood as:

- Manufacture, delivery and installation of a system including pneumatic motion for load capacity higher than 300 kg and position accuracy better than 0.1 mm (for the end positions).

6.6.3 Quality management system and certification for the welding company

In accordance with Section 79 (2) (e) PPA and Section 81 (1) of the PPA, the Contracting Authority requires the Supplier to demonstrate the following:

A) 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.

B) The Supplier meets the requirements for the welding company according to ISO 3834-2

Method of demonstration:

By submitting a valid certificate of ISO 3834-2 certification for the welding company, issued in accordance with 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 documents on equivalent quality assurance measures.

6.6.4 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 tendering 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 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, 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 the above Bid language. Should the Contracting Authority have doubt about the correctness of the translation, it may request that an official translation into the Bid language is procured using a qualified translator 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 at all, Supplier may substitute it by an affidavit.

8 Recommended method of preparation and form of the Bid

8.1 Recommendations relating to structure, contents and preparation of the Bid, incl. documents relating to qualification

8.1.1 Bid structure

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

- a) Cover Sheet according to *Annex No. 4* 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 criteria relating to technical qualification;
- f) a list of subcontractors (if any) according to Article 16.1 c) hereof (where applicable);
- g) draft Contract with all pertinent data filled in (see the highlighted / yellow marked parts) including the Bid price quoted in the structure according to the guidelines given in Article 12 hereof; this draft Contract shall fully comply with terms and conditions stipulated herein – *Annex No. 2*; the Contract shall be accompanied with all requested Annexes;
- h) technical report (as part of the Supplier's Bid) describing the system offered by the Supplier according to the requirements given in *Annex No. 1 – Technical Specification* (see Article 5.1, first bullet point);
- i) project schedule proposed by the Supplier for delivery of the System according to the guidelines and milestones given in Article 4 hereof and requirements and recommended milestones given in *Annex No. 1 – Technical Specification* (see Articles 7.1, 7.2 and 10).

8.1.2 Recommended formal requirements for the preparation of the Bid

The Contracting Authority requires submission of Bids in writing and only 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 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.
- 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/regitrace.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 Suppliers 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.

8.2 Requirements on a joint Bid

A joint Bid means a Bid which has been submitted by several Suppliers together. In such a case the Suppliers submitting a joint Bid shall be deemed one Supplier.

Submission of a joint Bid shall be considered as a joint commitment of all the Suppliers involved, and the Suppliers shall be liable jointly and severally in accordance with Section 1874 of Act No. 89/2012 Coll., the Civil Code. Hence the Contracting Authority advises that in the event that the 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 Bid.

9 Tender Documentation Clarification

Suppliers may request in writing (only by electronic means) that the Contracting Authority provides clarification to this Tender Documentation (by e-mail, databox or via an electronic tool).

Clarification requests shall be submitted in the Czech or English language to the Attorney (see Article 1 hereof). Clarification requests shall be delivered in line with Sec. 98 (3) PPA no later than 7 business days prior to the Bid submission deadline.

Clarifications shall be published at the Contracting Authority's web profile in line with Sec. 98 (4) PPA within 3 business day from receipt of the request.

The Contracting Authority may provide clarifications to Suppliers without receiving specific requests where it feels such clarification may be necessary. The Contracting Authority shall publish/distribute such clarification no later than 4 business days prior to the Bid submission deadline.

10 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/vz00000515>

All information required for submission of the Bid in electronic form is provided in this Tender Documentation.

The time limit for submitting bids expires on the date stated in the Notice ("**Deadline**").

11 Bid opening

Bids 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.

The opening of the Bids will be carried out in accordance with Sec. 109 PPA.

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

Within the Bid, Suppliers 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:

12.1 Structure of the Bid price in the Bid

Suppliers shall specify the Bid price as the total price for the complete supply of the subject of the Public Contract, including delivery of the System and all costs relating to the execution of the Public Contract under the terms and conditions defined in the binding draft Contract. The Bid price shall be determined as an absolute amount in EUR and as non-exceedable price for the entire subject matter of the Public Contract.

The costs to be included in the Bid price shall particularly comprise also the following:

all expenses related to production engineering, production, transport, delivery and handover of the System, including documentation, warranty service, any customs duties, fees, insurance, packaging and its disposal and all other Supplier's costs required to meet his obligations under the Contract as well as the costs associated with creation and protection of intellectual property and Supplier's claims arising on the basis of intellectual property laws. The costs for installation and alignment of the System included in the price for the System shall include, without limitation, all travel expenses and expenses related to the stay of the Supplier's employees.

The Bid price shall be determined quoted in the Bid according to the following structure:

- the total Bid price in EUR excluding VAT,
- the applicable percentage rate of VAT and the amount of VAT in EUR,

- the total Bid price in EUR including VAT.

The Supplier is responsible for the correctness of the VAT rate. Please note that the place of supply is in Sweden and that in some cases Suppliers providing services or supplies of goods with a place of supply in Sweden are required to register for value added tax in Sweden while the VAT rate valid in Sweden may be applicable.

The Bid price, processed in the above structure, shall be inserted into Article 8.1 of the binding draft Contract given in *Annex No. 2* hereto.

12.2 Other data to be filled in by Supplier in the Bid

Supplier shall fill-in all the data into the binding draft Contract and its Annexes (see the highlighted / yellow marked parts).

12.3 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) must be fully in line with the (same) data provided in other parts of the Bid (e.g. in the Annexes), otherwise the Bid might be disqualified from the tendering procedure.

13 Evaluation of the Bids

13.1 Evaluation criteria

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 EUR excl. VAT	100 %

The total Bid price that will be evaluated shall be understood, for the purposes of evaluation, as the **total Bid price in EUR excl. VAT**, determined in the manner defined in Article 12 of the Tender Documentation.

13.2 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 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 and this report shall form a part of the Notification on the Selection of the Supplier within the meaning of Sec. 123 PPA.

14 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. 2*.

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.

15 Communication between the Contracting Authority and Suppliers

No communication between the Contracting Authority and Suppliers may prejudice confidentiality of Bids or completeness of the information contained therein. The Contracting Authority shall not be allowed to access contents of any of these Bids before the deadline for their 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 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 a 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 Bid. The Contracting Authority however reserves the right to send documents to each Supplier - party to a joint Bid separately.

16 Other

16.1 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 Suppliers in connection with their participation in this tendering procedure;
- e) The Contracting Authority may assess fulfilment of conditions relating to participation in the tendering procedure before or after the evaluation of the Bids;
- f) The Contracting Authority is entitled to cancel the tendering procedure in line with Section 127 (2) d) PPA for economic reasons (ESS financing withdrawal) until the Contract conclusion pursuant to Section 124 (1) PPA.

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 basic qualification if they have not been submitted by the Supplier within the Bid.

Beside that the selected Supplier, who is a foreign legal entity, shall submit also the following information and documents prior to concluding the Contract:

- a) either an extract from a register similar to the Ultimate Beneficial Owners Register, or, if there is no such register,
- b) identification data for all persons who are the ultimate 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 has its registered office abroad (i.e. outside the Czech Republic) and is a joint-stock company or has a legal form similar to a joint-stock company, they 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.

According to Sec. 122 (7) PPA, the Contracting Authority shall exclude the selected Supplier who has not provided the required data or documents, or if it is a Czech legal person that has an ultimate beneficial owner but it has not been possible to ascertain the details of the ultimate beneficial owner from the register of Ultimate Beneficial Owners; the entry made available in the register of Ultimate Beneficial Owners after the notice of exclusion has been sent shall not be taken into account.

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 constitute mandatory requirements. Each Supplier shall be obliged to fully and unconditionally comply with these requirements when processing / preparing their respective Bids. 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 tendering procedure.

16.4 Confidentiality

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

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.

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 a guarantee under Sec. 41 PPA 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.

The Tender Documentation contains information resulting from the preliminary market consultations that have been held in order to predetermine certain characteristics of the Public Contract.

The following Suppliers participated in the preliminary market consultations:

- **AWGE Technologies S.L.**, CDTUC Fase A, P-209, Avda. Castros s/n, 39005 Santander, Cantabria, Spain;
- **Kinetic d.o.o.**, Sarajevo, Tvornicka 3, 71210 Sarajevo Dio, Bosnia-Herzegovina;
- **NUVIA a.s.**, Modřínová 1094, 674 01 Třebíč, Czech Republic;
- **Centrum výzkumu Řež s.r.o.**, Hlavní 130, Řež, 250 68 Husinec, Czech Republic;
- **SKO spol. s r.o.**, Mařádkova 3049/30, 746 01 Opava, Czech Republic;
- **AVS - added value solutions**, Pol. Ind. Sigma, Xixilion Kalea 2 bajo, Pabellón 10, 20870 Elgoibar, Gipuzkoa, Spain;
- **Mirrotron Ltd.**, Konkoly-Thege Miklós út 29-33, H-1121 Budapest, Hungary;
- **Axilon AG**, Robert-Bosch-Str. 1b, 503 54 Hürth, Germany.

The subject of the preliminary market consultations was in particular to examine the following:

- Suppliers' ability to deliver the system (instrument shutter) in the full scope (design review, manufacturing, installation) as described in the draft technical specification.
- Technical feasibility and cost-efficiency of the manufacturing according to the design in the draft technical specification.
- Suppliers' qualifications in terms of welding certificates and quality management system implementation
- Suppliers' ability to provide the system with an extended warranty of 5 years.
- Whether the Suppliers, given their expertise, consider the extended life time of > 40 000 closing cycles instead of designed 10 000 feasible without substantial increase of cost.
- Feasibility of the proposed schedule.

- Supplier's responsibility for revising, modifying and refining the existing construction design and relevant impacts of such contractual arrangement on the scope of the supply and estimated price. Possible non-binding cost estimate of the Supplier for the supply.

The Contracting Authority indicates the information used in the Tender Documentation based on the results of the preliminary market consultations:

- Technical Specification – change in the scope of the supply and excluded parts
- Technical Specification – initial design for the System including the 3D model
- Technical Specification – requirements on the System in terms of extended life time
- Tender Documentation – technical qualification – quality and certification requirements
- Contract – liability of the Supplier for the whole supply and its defects
- Contract – quality warranty for the System and its duration
- Tender Documentation, Contract and Technical Specification – requirements on time of delivery (delivery period, schedule, milestones etc.), extension of the delivery period
- Tender Documentation - Estimated value of the Public Contract.

Annexes:

Annex No. 1 - Technical Specification, including (i) the specification itself named “TECHNICAL SPECIFICATIONS AND REQUIREMENTS”, (ii) its annex named “BEER INSTRUMENT SHUTTER – Design Description” with design description and (iii) the relevant 3D model named “BEER Shutter ESS-14480781_00257376”

Annex No. 2 - binding draft Contract

Annex No. 3 - form affidavit to basic qualification

Annex No. 4 - Cover Sheet

In Řež on 21/01/2021

RNDr. Petr Lukáš, CSc., director

Ústav jaderné fyziky AV ČR, v. v. i.