

Signature: **EZP.270.23.2022**

Otwock, 19.08.2022r.

Awarding Entity

Narodowe Centrum Badań Jądrowych
05-400 Otwock-Świerk
ul. Andrzeja Sołtana 7

With reference to the public procurement procedure, conducted in the basic mode with an option for negotiations, called **“The Design, Manufacture and Delivery including installation of a helium cooling system for the Polish Free Electron Laser - PoIFEL at the premises of the National Centre for Nuclear Research in Otwock-Świerk”**.

I. Pursuant to Article 132(1) of the Public Procurement Law Act of 11 September 2019 (Journal of Laws of 2021, item 1129, as amended), the Ordering Party quotes the content of the questions and provides explanations to the submitted questions:

Question no. 1:

Paragraph §6/8. QUALITY GUARANTEE OF THE SUBJECT OF THE AGREEMENT

Please amend this section of the paragraph as follows, otherwise we cannot accept this part of the contract:

“In the event of the circumstances indicated in paragraph 7, the Awarding Entity may also appoint, together with the contractor, two experts (each of them shall propose one of the expert) on coexisting installations in order to assess the impact of the failure of the helium cooling system on coexisting installations, to assess the extent of the damage, the effects of the damage, valuation of the damage found to have occurred as a result of the failure of the helium cooling system. The assessment will be the basis for claims for the damage caused against the Economic Operator.”

Response no. 1

The Awarding Entity agrees to appoint the experts jointly with the Economic Operator in the event of circumstances indicated in paragraph 7 of the Proposed Provisions of the Agreement. The relevant paragraph §6/8 of the TOM II IDW EZP.270.23.2022 will be amended accordingly.

Question no.2 :

Paragraph §11/3. CONTRACTUAL PENALTIES

Is it possible to change the paragraph §11/3 as follows?

„The sum of contractual penalties shall not exceed 8% of the total net remuneration referred to in §7 paragraph 1 of this Agreement.”

Response no. 2:

The Awarding Entity recognizes the arguments behind the need for lowering the aggregated contractual penalties. However, the Awarding Entity does not agree to limit the aggregated contractual penalties to 8% of the total net remuneration and has set this limit to 10%. The relevant paragraph §11/3 of the TOM II IDW EZP.270.23.2022 will be amended accordingly.

At the same time, the Awarding Entity agrees to limit to 8% the contractual penalties for withdrawal from the Agreement for reasons attributable to the Economic Operator. The relevant paragraph §11/1/f of the TOM II IDW EZP.270.23.2022 will be amended accordingly.

Question no.3 :

Would it be possible if we provide a direct bank guarantee from [Name of the bank]?

Can we transfer the guarantee with SWIFT?

If yes, please send us the SWIFT code of the bank which should receive the guarantee.

Response no. 3:

The Awarding Entity will accept the tender bond in the form of a direct guarantee from the bank of the Economic Operator submitted to the bank of the Awarding Entity with SWIFT provided that the SWIFT relationship between the banks has been established and that the guarantee will conform to all the requirements, as stipulated in the Specification of Terms of Reference (TOM I IDW EZP.270.23.2022). In particular, the notification on the guarantee and the confirmation of its authenticity by the bank of the Awarding Entity must reach the Awarding Entity before the deadline for the tender submission.

The bank of the Awarding Entity is

PKO Bank Polski

SWIFT BPKOPLPW

II. Pursuant to Article 137(1), (6) of the Public Procurement Law Act of 11 September 2019 (Journal of Laws of 2021, item 1129, as amended), the Ordering Party modifies the STR in the scope of:

TOM II IDW EZP.270.23.2022:

a) § 6 "QUALITY GUARANTEE OF THE SUBJECT OF THE AGREEMENT", paragraph 8, of the Proposed Provisions of the Agreement is replaced by the following:

"In the event of the circumstances indicated in paragraph 7, the Awarding Entity and the Economic Operator may also appoint experts on coexisting installations in order to assess the impact of the failure of the helium cooling system on coexisting installations, to assess the extent of the damage, the effects of the damage, valuation of the damage found to have occurred as a result of the failure of the helium cooling system. The assessment will be the basis for claims for the damage caused against the Economic Operator."

b) § 11 "CONTRACTUAL PENALTIES", paragraph 1, letter f, of the Proposed Provisions of the Agreement is replaced by the following:

" for withdrawal from the Agreement for reasons attributable to the Economic Operator in the amount of 8% of the total remuneration referred to in § 7 paragraph 1 of this Agreement."

c) § 11 "CONTRACTUAL PENALTIES", paragraph 3, of the Proposed Provisions of the Agreement is replaced by the following:

"The sum of contractual penalties shall not exceed 10% of the total net remuneration referred to in § 7 paragraph 1 of this Agreement."

The above changes do not change the contract notice and constitute an integral part documentation of the procedure (SWZ) and should be taken into account during preparing offer.

In order to avoid any ambiguities, the Ordering Party publishes a full, uniformized text of the relevant part of the documentation:

- TOM II IDW EZP.270.23.2022_zmiana 19.08.2022;
- EN-TOM I IDW EZP.270.23.2022_zmiana 19.08.2022;

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*(signature of the authorized representative
of the Ordering Party)*