

Warsaw, 8 August 2024 r.

ADZ.261.14.2024

**To the Economic Operators –
Participants in the Proceedings**

Regarding the public procurement procedure with a value exceeding the EU thresholds, conducted in the form of an open tender for: “Supply of Biophysical Equipment: Sale, Delivery, Installation, and Commissioning of a Brand New Mass Photometer KPO3” (case number ADZ.261.14.2024).

NOTICE OF INVALIDATION OF THE PROCEEDINGS

The International Institute of Molecular and Cell Biology in Warsaw, as the Contracting Authority, acting pursuant to Article 253 of the Act of 11 September 2019 - Public Procurement Law (Journal of Laws of 2023, item 1605), hereinafter referred to as the "Act," hereby notifies of the results of the proceedings.

Offers Submitted by the Contractors and the Evaluation of the Offers

In the public procurement proceedings conducted in the form of an open tender, one offer was submitted, which was evaluated by the Contracting Authority for grounds for rejection in accordance with the requirements specified in the Terms of Reference ("SWZ"). The details of the submitted offer and the results of its evaluation are provided below:

Offer Number	Name and Address of Contractor	Net Offer Price (EURO)	Number of Software Licenses for Data Analysis and Presentation Related to the Device (UNITS)	Delivery Time (WEEKS)
1.	Refeyn GmbH 10117, Berlin, Pariser Platz 4A, c/o BRL Boege Rohde Leubbehuesen Brandenburg, Germany Tax Identification Number: DE343188453	249 745,00	6	4

Rejection of the Offer

Pursuant to the provisions of the Terms of Reference (SWZ), the Contracting Authority, following the examination of the offers submitted in the present proceedings, rejected the Economic Operators Refeyn GmbH 10117, Berlin, Pariser Platz 4A, c/o BRL Boege Rohde Leubbehuesen Brandenburg, Germany offer. Factual and Legal Justification for the Rejection of the Offer:

FACTUAL JUSTIFICATION FOR THE REJECTION OF THE OFFER

The Economic Operator's offer, consisting of a completed Annex No. 3 to the Terms of Reference (SWZ), was not signed with any electronic signature. The Economic Operator submitted the document in an editable .doc file format and did not attach an external qualified electronic signature file. The only document showing evidence of an attempt to apply a qualified electronic signature is the European Single Procurement Document ("ESPD"); however, even it was signed with an "Adobe Acrobat Sign" signature, which is not considered an electronic signature under Article 78¹ of the Civil Code: "For the electronic form of a legal act to be preserved, it is sufficient to make a declaration of intent in electronic form and affix it with a qualified electronic signature." According to the Contracting Authority's verification using a dedicated verification tool, it constitutes an "advanced electronic seal based on a qualified certificate." It is not a qualified signature, which is required under the penalty of invalidity in accordance with Article 63 of the Public Procurement Law (PZP). If the offer had been signed in the same manner as the ESPD, it would have also been rejected. According to the PZP, in procedures with values equal to or exceeding the EU thresholds, submitting an offer without a qualified electronic signature results in the rejection of such an offer.

VIDE: KIO Judgment 3521/21:

Pursuant to Article 28(1) of the eIDAS Regulation, "Qualified Certificates for Electronic Signatures," qualified certificates for electronic signatures have to meet the requirements set out in Annex I.

Annex I of the regulation specifies the following requirements for qualified certificates for electronic signatures:

Qualified certificates for electronic signatures contain the following information:

- a) an indication - at least in a form allowing automatic processing - that the certificate was issued as a qualified electronic signature certificate;*
- b) a set of data uniquely representing the qualified trust service provider issuing the qualified certificates, including at least the Member State in which the provider is established, and
 - in relation to a legal person: the name and, if applicable, the registration number in accordance with the official register,*
 - in relation to a natural person: the person's name and surname;**
- c) at least the signatory's name and surname or their pseudonym; if a pseudonym is used, this fact is clearly indicated;*
- d) data for validating the electronic signature, corresponding to the data for putting the electronic signature;*
- e) the start and end date of the certificate's validity period;*
- f) a certificate identification code, which has to be unique to the qualified trust service provider;*
- g) an advanced electronic signature or an advanced electronic seal of the issuing qualified trust service provider;*
- h) a location where the certificate accompanying the advanced electronic signature or advanced electronic seal referred to in point (g) is available free of charge;*
- i) the service location where the validity status of the qualified certificate can be checked;*
- j) whenever the data for putting the electronic signature associated with the data for validating the electronic signature is in a qualified electronic signature creation device, an indication of this fact at least in a form allowing automatic processing.*

The determination of whether a signature is a qualified signature can only be made through the validation process. As stated in recital 57 of the eIDAS Regulation preamble, to ensure legal certainty

regarding the validity of the signature, it is necessary to specify the elements of a qualified electronic signature that should be assessed by the relying party conducting the validation.

Article 32(1) of the eIDAS Regulation sets out the requirements for validating qualified electronic signatures. Thus, the validation process of a qualified electronic signature confirms the validity of the qualified electronic signature, provided that:

- a) the certificate accompanying the signature was, at the time of signing, a qualified electronic signature certificate compliant with Annex I;*
- b) the qualified certificate was issued by a qualified trust service provider and was valid at the time of signing;*
- c) the data for validating the signature corresponds to the data provided to the relying party;*
- d) the unique set of data representing the signatory placed in the certificate is correctly provided to the relying party;*
- e) if a pseudonym was used at the time of signing, it is clearly indicated to the relying party;*
- f) the electronic signature was put using a qualified electronic signature creation device;*
- g) the integrity of the signed data has not been compromised;*
- h) the requirements set out in Article 26 were met at the time of signing.*

VIDE: KIO Judgment 3521/21.

LEGAL JUSTIFICATION FOR THE REJECTION OF THE OFFER:

According to Article 226(1)(5) of the Act: "The Contracting Authority shall reject an offer if its content does not comply with the terms of the contract."

According to Article 226(1)(3) and (4) of the Act: "The Contracting Authority shall reject an offer if it is inconsistent with the provisions of the Act" or "the offer is invalid under separate provisions." In conjunction with Article 63(1) of the Act: "In proceedings for the award of a contract (...) with a value equal to or exceeding the EU thresholds, the offer, (...), shall be submitted, under penalty of nullity, in electronic form." In conjunction with Article 78¹ of the Civil Code § 1: "For the electronic form of a legal act to be preserved, it is sufficient to make a declaration of intent in electronic form and affix it with a qualified electronic signature."

Invalidation of the Proceedings

Following the rejection of the sole offer submitted in the proceedings, it is necessary to invalidate the proceedings based on the factual and legal justifications provided below:

FACTUAL JUSTIFICATION FOR INVALIDATION OF THE PROCEEDINGS:

As a result of rejecting the offer submitted by Refeyn GmbH, 10117 Berlin, Pariser Platz 4A, c/o BRL Boege Rohde Leubbehuesen, Brandenburg, Germany, based on the factual and legal grounds stated above, there are no other offers in the proceedings—all offers are subject to rejection.

LEGAL JUSTIFICATION FOR INVALIDATION OF THE PROCEEDINGS:

According to Article 255(2) of the Public Procurement Law (PZP): The Contracting Authority shall invalidate the proceedings for the award of a contract if all requests to participate or offers submitted are subject to rejection.