



CONNECT Purchasing process: PKN/2/04284/23

ORLEN S.A.
Płock, Poland

**INQUIRY
FOR
Purchase of technology and EPC execution for the
installation/complex producing hydrogen in the process of
municipal solid waste gasification - Part I**

BIDDING DOCUMENTS (RFP)

Section II: INSTRUCTION TO BIDDERS

[Warsaw, 23 November 2023]

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– INSTRUCTION TO BIDDERS

1. GENERAL INFORMATION

- 1.1. For the purpose of this document:
- 1.1.1. **BIDDER** – shall mean a natural person, a legal person, or an organisational entity not having legal personality, taking part in a PROCEDURE. The provisions relating to BIDDER shall apply accordingly to the economic operators jointly competing for an EPC CONTRACT.
 - 1.1.2. **BIDDING DOCUMENTS** – shall mean ITB with its appendices;
 - 1.1.3. **BIDDING PROCESS** or **PROCEDURE** – shall mean the procedure organised by the OWNER and launched by publication of an RFP. Due to the functionality of the ORLEN Capital Group Purchasing Platform – CONNECT, the PROCEDURE will be organised in the form of two separate purchasing processes (Part I and Part II), described by the following numbers No. PKN/2/004284/23 and No. PKN/2/004285/23;
 - 1.1.4. **CONSORTIUM** – shall mean the economic operators jointly competing for an EPC CONTRACT.
 - 1.1.5. **DIALOGUE** – shall mean the process of conducting a dialogue between the OWNER and BIDDERS who have met the conditions for participating and have been invited to participate in the dialogue on the terms specified in the RoP. The aim of a DIALOGUE is to discuss the solutions proposed by the OWNER and BIDDERS, after which they shall be invited to submit an EPC BID.
 - 1.1.6. **EPC BID** – shall mean a tender submitted by a BIDDER in accordance with the BIDDING DOCUMENTS. EPC BID is created by submitting both a TECHNICAL BID and COMMERCIAL BID. It must be submitted on the terms specified in ITB;
 - 1.1.7. **EPC CONTRACT** – shall mean a contract concluded with the BIDDER whose offer is considered the most advantageous among the EPC BIDs submitted in the PROCEDURE. The EPC CONTRACT template will be provided to BIDDERS after the end of the DIALOGUE conducted on the terms specified in the RoP;
 - 1.1.8. **EPR** – shall mean an entity providing the resources;
 - 1.1.9. **ITB** – shall mean this document entitled “INSTRUCTION TO BIDDERS”;
 - 1.1.10. **NDA** – shall mean non-disclosure agreement as mentioned in sec. 7.7 of the ITB;
 - 1.1.11. **OWNER** – shall mean ORLEN S.A. located at 09-411 Płock, ul. Chemików 7 Poland, that is organizer of the proceedings under the name Purchase of technology and EPC execution for the installation/complex producing hydrogen in the process of municipal solid waste gasification Part I and Part II;
 - 1.1.12. **Polish Civil Code** – shall mean the Act of 23 April 1964 – the Civil Code.
 - 1.1.13. **PROJECT** – shall mean the subject matter of an EPC CONTRACT, which is the construction of a chemical recycling of municipal waste facility, including the GASIFICATION COMPLEX (for syngas production), described in BIDDING DOCUMENTS;
 - 1.1.14. **REQUEST** – shall mean a request to participate submitted by BIDDERS on the terms specified in the RoP;
 - 1.1.15. **RFP** – shall mean a request for proposal announced on ORLEN Capital Group Purchasing Platform – CONNECT <https://connect.orklen.pl/> and in Baza Konkurencyjności;
 - 1.1.16. **RoP** – shall mean Appendix 8 to the ITB “Rules of Procedure”;

- 1.2. The OWNER intends to finance the PROJECT using external sources of funding, in particular it allows for the use of the so-called RRF (Recovery and Resilience Facility), as well as EU structural funds and other EU financial instruments. Therefore, this PROCEDURE has been developed in a way that respects the principles of transparency, and above all, the principles of equal treatment of contractors and fair competition, which constitute the legal foundation of EU law, and which are also shared by the OWNER.
- 1.3. The OWNER informs that there are third parties involved in the BIDDING PROCESS, being commercial, technical and legal advisors to the OWNER and acting on the OWNER's behalf such as:
- a) Technical advisor: Qenergy Sp. z o. o., Aleja 3 Maja 5 m. 7, 00-401 Warszawa
 - b) Legal advisor: WKB Wierciński, Kwieciński, Baehr sp. k., Plac Małachowskiego 2, 00-066 Warsaw

All of the above-mentioned advisors shall hereinafter collectively be referred to as the **"ADVISORS"**. In case there are any new advisors appointed to participate in the BIDDING PROCESS, then the OWNER will notify the BIDDERS about them without undue delay.

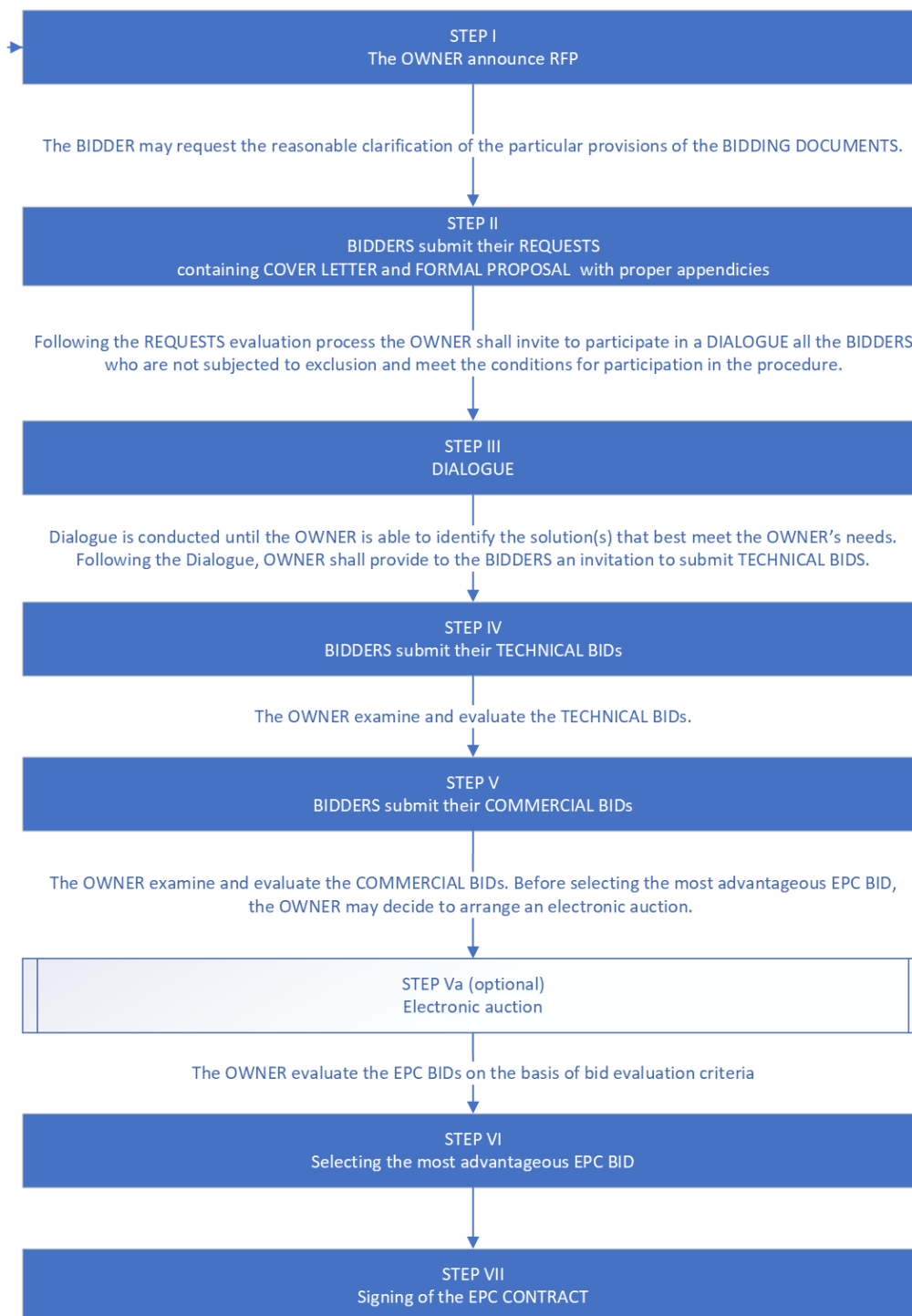
The BIDDER shall submit a statement (signed by authorised persons) that the REQUEST/ EPC BID (including EPC CONTRACT proposal) can be forwarded to the ADVISORS. If there is any additional NDA required, the BIDDER shall inform the OWNER within 2 weeks after issuance of these BIDDING DOCUMENTS at the latest.

2. INFORMATION ABOUT THE PROJECT

- 2.1. The OWNER is planning a construction of chemical recycling facility of municipal waste, including the GASIFICATION COMPLEX (hydrogen production from syngas production). The purpose of which is, the hydrogen produced in this installation shall be used in production related to the automotive industry, and produced CO₂ will either be stored, used in the food industry, or used in the CCU (carbon capture utilisation) projects. The GASIFICATION COMPLEX is planned as a "Zero Waste" plant (minimizing waste from the Units), meaning it will utilize waste streams originating from one installation as raw material for another – streamlining production and reducing the amount of waste which would have to be otherwise disposed of. In its current form, the GASIFICATION COMPLEX will mainly accept sorted municipal waste, its various fractions as well as waste originating from selective collection. The initial description of the PROJECT is included in Appendix 9 of the ITB. Detailed assumptions of the PROJECT, provisions of the EPC CONTRACT, as well as all requirements regarding the need to transfer intellectual property rights or to grant a license will be developed after conducting a DIALOGUE on the terms specified in the RoP.
- 2.2. The PROJECT is scheduled to be accomplished maximum by 36 (thirty six) months from EPC CONTRACT's conclusion. The final term for the execution of the EPC CONTRACT will be specified in the invitation to submit TECHNICAL BIDS.

3. PRELIMINARY SCHEDULE OF THE BIDDING PROCESS

3.1. The OWNER assumes the following schedule of the BIDDING PROCESS:





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- 3.2. The above schedule of the BIDDING PROCESS is preliminary only and may be modified by the OWNER at any time, at the OWNER's sole discretion through CONNECT platform.
- 3.3. A detailed description of the procedure is set out in RoP.

4. CONTENT OF THE BIDDING DOCUMENTS

- 4.1. The scope of the EPC CONTRACT and the OWNER's requirements will be defined in the BIDDING DOCUMENTS. The OWNER will clarify and develop BIDDING DOCUMENTS taking into consideration the information obtained during DIALOGUE. The OWNER will adhere to the principle of equal treatment of contractors when clarifying and developing BIDDING DOCUMENTS.
- 4.2. The BIDDER is expected to review and examine carefully any and all instructions, forms, terms, and specifications included in the BIDDING DOCUMENTS. It is an obligation of, and the sole responsibility of, the BIDDER to furnish all documents and information required by the BIDDING DOCUMENTS and submit the REQUEST/ EPC BID which is to be fully prepared and submitted in accordance with and pursuant to the BIDDING DOCUMENTS.
- 4.3. If at any stage of the PROCEDURE a BIDDER considers the information or requirements provided by the OWNER to be unclear, disproportionate, or incomprehensive in relation to the actions expected of the BIDDER at that stage of the PROCEDURE, the BIDDER shall be obliged to submit a request for appropriate clarification to the OWNER, under the terms of sec. 8 ITB COMMUNICATION AND CLARIFICATIONS. Otherwise, the BIDDER confirms that the documentation is clear and that it fully accepts the requirements established by the OWNER.

5. REQUEST/ EPC BID SUBMISSION REQUIREMENTS

- 5.1. The BIDDER who submits the REQUEST confirms the intention to participate in the PROCEDURE governed by the rules set out in the BIDDING DOCUMENTS. In particular, the BIDDER declares the readiness to participate in DIALOGUE in good faith and with the intention to submit an EPC BID. The OWNER will accept only a complete EPC BID compliant with the BIDDING DOCUMENTS. The OWNER does not allow submitting partial, variant, or alternative bids and any such bids will be rejected.
- 5.2. A BIDDER may submit its REQUEST/ EPC BID individually or jointly with another party (parties) as a CONSORTIUM.
- 5.3. REQUEST/ EPC BID submitted by CONSORTIUM shall comply with the following requirements:
- 5.3.1. the REQUEST/ EPC BID shall be signed so as to be legally binding on all partners in full extent;
- 5.3.2. one of the partners shall be nominated as CONSORTIUM leader and this authorisation shall be evidenced by submitting a power (or powers) of attorney signed legally by all the partners (authorised signatories);
- 5.3.3. CONSORTIUM leader shall be authorised to incur liabilities and receive instructions for and on behalf of any and all partners of the CONSORTIUM and entire execution of the EPC CONTRACT including payment, unless the

OWNER agrees otherwise during the DIALOGUE; such authority shall be included in the power (or powers) of attorney provided by the other partners to the CONSORTIUM leader;

- 5.3.4. with regard to the conditions relating to educational or professional qualifications or experience mentioned in sec. 13 below, CONSORTIUM may rely on the capabilities of the Consortium members if these Consortium members perform the works or services for which these capabilities are required.
- 5.3.5. all partners of CONSORTIUM shall be liable jointly and severally for the execution of the EPC CONTRACT and their EPC BID and relevant statement to this effect shall be included in the authorisation mentioned under Clause 5.3.2 above as well as in the EPC CONTRACT;
- 5.3.6. a copy of the CONSORTIUM agreement entered into by the CONSORTIUM members shall be submitted along with the REQUEST.
- 5.3.7. the OWNER may consider that a change in CONSORTIUM members or adding new CONSORTIUM member(s) during the BIDDING PROCESS, with the exception of change of the CONSORTIUM leader, does not constitute a change in the collective EPC BID submitted by the CONSORTIUM members, and will be approved to continue to further stages of the BIDDING PROCESS. Extension in the CONSORTIUM members by a new entity or any changes in CONSORTIUM members require the signing of an NDA by each new CONSORTIUM partner. The OWNER may accept the change in the CONSORTIUM composition at the OWNER's discretion, with proviso that a modification cannot result in the CONSORTIUM ceasing to comply with the requirements (conditions and exclusion grounds) established in sec. 12 and 13 ITB. The OWNER will verify whether the new member of the CONSORTIUM is not subject to exclusion and whether, after modifying the composition of the CONSORTIUM, it still meets the conditions for participation in the PROCEDURE, applying the provisions of the RoP accordingly.

6. RULES GOVERNING THE BIDDING PROCESS

- 6.1. The EPC CONTRACT shall be deemed as validly concluded (executed) at the moment of signing the relevant documents containing the text of the EPC CONTRACT by duly authorised representatives of the OWNER and the BIDDER whose EPC BID was recognised as the most advantageous EPC BID. The EPC CONTRACT will be concluded only after obtaining all required corporate consents and after the contract has been signed by the OWNER and the selected BIDDER.
- 6.2. The PROCEDURE:
 - 6.2.1. is not subject to the provisions of the Act of 11 September 2019 – Public Procurement Law or any implemented acts issued on its basis;
 - 6.2.2. is governed by the Polish Civil Code.
- 6.3. The BIDDER shall bear all costs and expenses which the BIDDER has incurred arising from or associated with the BIDDING PROCESS, including costs and expenses arising from or associated with the preparation and submission of its REQUEST/ EPC BID,

attendance in site visits, meetings or interviews. The OWNER shall not be responsible nor liable for such costs and expenses and shall not reimburse the BIDDER for any such costs and expenses, regardless of the conduct or outcome of the BIDDING PROCESS and whether the BIDDING PROCESS is changed or cancelled by the OWNER for any reason or without stating a reason. For the avoidance of doubt, the BIDDER shall not be entitled to any claims towards the OWNER in the case of considering its REQUEST/EPC BID as noncompliant with the BIDDING DOCUMENTS, changing or cancelling the BIDDING PROCESS.

- 6.4. The OWNER may at their discretion cancel the BIDDING PROCESS or change the terms and conditions, either in whole or in part, including withdrawing from negotiations, in whole or in part, at any time, without the need to provide any justification. The OWNER shall immediately notify the BIDDERS of such actions and the BIDDERS shall not be entitled to any claims against the OWNER resulting therefrom. The BIDDING DOCUMENTS shall not oblige the OWNER to take any specific action.
- 6.5. The OWNER shall not be responsible nor held liable for the contents of tender announcements published on websites other than the official website of the ORLEN Capital Group Purchasing Platform – CONNECT (<http://connect.orlen.pl>) and Baza Konkurencyjności.
- 6.6. The EPC CONTRACT will only be concluded when signed by the OWNER and the selected BIDDER. Any representation about selection of an EPC BID shall not be understood as acceptance of the EPC BID and is not sufficient to assume the EPC CONTRACT is concluded.
- 6.7. The EPC CONTRACT may be signed on the part of the OWNER, solely by persons duly entitled to represent it, or persons duly authorised based on a relevant power of attorney provided by the persons entitled to represent the OWNER.

7. CONFIDENTIALITY

- 7.1. The BIDDER undertakes to respect the confidential nature of all information resulting from this BIDDING PROCESS pursuant to Article 11 of the Act of 16 April 1993 on Combating Unfair Competition.
- 7.2. These BIDDING DOCUMENTS are to be used by the BIDDER solely for the purpose of preparation and submission of the EPC BID.
- 7.3. The information included in the BIDDING DOCUMENTS must be kept confidential at all times. These BIDDING DOCUMENTS are provided solely for the purpose of the REQUEST/ EPC BID preparation and submission on the expressed condition that neither the BIDDING DOCUMENTS nor the information contained therein shall be disclosed to others or used for any other purpose without the expressed prior written consent of the OWNER.
- 7.4. The BIDDER undertakes to treat BIDDING DOCUMENTS and any and all of the information pertaining to this BIDDING DOCUMENTS as confidential. The fact of inviting the BIDDER for participation in the BIDDING PROCESS, the fact of REQUEST/ EPC BID submission, conduct of commercial negotiations and conclusion of EPC CONTRACT may not be provided by the BIDDER without written permission of the OWNER (this includes disclosing to third parties or publication of such information).



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Any breach of this confidentiality obligation by the BIDDER may result in rejection of the REQUEST/ EPC BID or other actions deemed appropriate by the OWNER.

- 7.5. Should the BIDDER require a special confidentiality arrangement before REQUEST/ EPC BID submission then the BIDDER shall inform the OWNER within 2 weeks after receipt of these BIDDING DOCUMENTS at the latest. .
- 7.6. The submitted REQUEST/ EPC BID will not be returned to the BIDDER, unless otherwise agreed upon in writing. The content of the rejected or unsuccessful EPC BIDS will remain confidential and will only be made available to OWNER's employees, agents, advisors or representatives in relation to evaluation of REQUESTS/ EPC BIDS and awarding of the EPC CONTRACT.
- 7.7. The OWNER shall provide the BIDDER with an NDA draft together with the Invitation to DIALOGUE. The NDA draft might be subject to further clarifications by the OWNER. The BIDDER shall submit the NDA signed by the authorised representatives of the BIDDER in order to gain full access to the documents submitted at the DIALOGUE stage. The provision of 12.8 shall apply accordingly.

8. COMMUNICATION AND CLARIFICATIONS

- 8.1. The announcement of the PROCEDURE was published on ORLEN Capital Group Purchasing Platform – CONNECT and in Baza Konkurencyjności. However, communication between the OWNER and the BIDDERS – including submitting REQUESTS and EPC BIDS – takes place exclusively in electronic form using the CONNECT platform, which is necessary due to the need to protect particularly sensitive information which cannot be guaranteed otherwise.
- 8.2. The BIDDER may request the reasonable clarification of the particular provisions of the BIDDING DOCUMENTS or submit other reasonable questions regarding the BIDDING PROCESS. The purpose of such a request or question is to enable the OWNER to clarify the provisions of the BIDDING DOCUMENTS to the extent that they are ambiguous for the BIDDER.
- 8.3. The OWNER's clarifications and answers to BIDDER(S) questions will be provided to all BIDDERS participating in the BIDDING PROCESS. Should the content of the question refer to a sensitive or confidential information, which should not be disclosed with the answer to the remaining BIDDERS, then it shall be clearly marked by the BIDDER, and the OWNER reserves the right to provide an answer only to the BIDDER who asked the question. If such a response would be relevant to the preparation of a REQUEST or EPC BID, the OWNER will provide such information to all BIDDERS, ensuring that sensitive information is not shared.
- 8.4. The BIDDER may send any requests and questions to the OWNER no later than 10 calendar days before the deadline for submitting the REQUEST/ or particular parts of the EPC BID. In the case of requests and questions sent after this deadline, the OWNER shall not be obliged to consider the BIDDER's requests or questions nor to provide clarifications or answers. If clarifications of the content of the BIDDING DOCUMENTS are necessary for the proper preparation and submission of a request to participate, the OWNER shall give an explanation in this respect without delay, but no later than 5 days before the expiry of the time limit for submission of REQUESTS or TECHNICAL BID, provided that the request for clarification has been received by



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- the OWNER no later than 10 days before the expiry of the time limit for submission of REQUEST or TECHNICAL BID.
- 8.5. The BIDDER's request for clarification and/or answer shall:
- 8.5.1. indicate which specific part of the BIDDING DOCUMENTS the question refers to; and
- 8.5.2. specify what the BIDDER's concern that requires the OWNER's clarification consists of.
- 8.6. The OWNER's clarifications and answers to the submitted requests shall be binding on the BIDDER(S) and implemented by the BIDDER(S) into the REQUEST(S) and EPC BID(S). Any changes and specifications introduced through such clarifications and answers shall become an integral part of BIDDING DOCUMENTS.
- 8.7. Clarifications and answers shall be made aware to the BIDDERS using the CONNECT platform.
- 8.8. The OWNER shall not be responsible nor liable for clarifications regarding the provisions of BIDDING DOCUMENTS, provided to the BIDDERS by third parties, not authorised to contact the BIDDERS, with the exception of the representatives listed in Clause 8.9 below or persons replacing such representatives, who are providing information through the CONNECT platform.
- 8.9. The OWNER's representatives authorised to contact the BIDDERS and provide all information on this BIDDING PROCESS are: Igor Bykowski, igor.bykowski@orlen.pl, tel. no. +48 24 256 6123 and Maciej Dukiewicz, maciej.dukiewicz@orlen.pl, tel. no. +48 24 256 7831; or upon their absence at work – another person designated by the OWNER or designated as replacement on the CONNECT platform.
- 8.10. The OWNER's clarifications and answers to BIDDER(S) questions will be provided to all BIDDERS participating in the BIDDING PROCESS. Where changes of BIDDING DOCUMENTS declared in clarifications and answers are significant for drawing up REQUESTS or EPC BIDS the OWNER shall extend, as appropriate, the time limit for submission of REQUESTS to participate or the time limit for submission of TECHNICAL BID.
- 8.11. All statements, applications, notifications, or information shall be exchanged by the OWNER and the BIDDERS using the CONNECT that is online platform available at [<https://connect.orlen.pl/>]. It is required that all statements and declarations of the BIDDER constituting part of the REQUEST and EPC BID are submitted in the form a scanned copy containing the signatures of the authorised representatives of the BIDDER or signed electronically (a qualified signature is required). Detailed rules of functioning of CONNECT are available at Appendix 12 to ITB.
- 8.12. The BIDDER should be aware that access to the CONNECT platform is not possible for the BIDDERS who have been previously informed that they had been given the "disqualified" status as a result of a transparent procedure conducted by authorised entities within the ORLEN Capital Group and aimed at ensuring the implementation of standards and protection of values respected by the OWNER or in the ORLEN Capital Group. The OWNER also states that each entrepreneur who obtained "disqualified" status was immediately informed about it in a special decision. Such a decision was consulted with the legal services of the ORLEN Capital Group before being delivered to the addressee and contained at least:

- 8.12.1. information about the "disqualified" status and block on the CONNECT platform;
- 8.12.2. reasons and consequences of granting the status of "disqualified";
- 8.12.3. information on the possibility of conditional admission to subsequent purchasing procedures;
- 8.12.4. information on actions to be taken to change the received status and regain access to the CONNECT platform;
- 8.12.5. method of communication and possible reporting of objections in connection with granting the "disqualified" status.

Consequently, BIDDERS who have been informed of the revocation of their "disqualified" status have access to the CONNECT platform.

9. AMENDMENT TO THE BIDDING DOCUMENTS

- 9.1. The OWNER may for any reason whatsoever on its own initiative, amend or modify the BIDDING DOCUMENTS by the issuance of an addendum to the BIDDING DOCUMENTS ("**ADDENDUM**"). The ADDENDUM shall form a part of the BIDDING DOCUMENTS and shall be binding as of the day of its issuance by the OWNER on the CONNECT platform, and all provisions hereof referring to "BIDDING DOCUMENTS" shall be understood to refer to the BIDDING DOCUMENTS as amended or supplemented by the ADDENDUM.
- 9.2. The ADDENDUM, if any, will be provided via the CONNECT platform to the BIDDERS.
- 9.3. For the avoidance of doubt, under no circumstances shall amending or supplementing the BIDDING DOCUMENTS in any way by the OWNER be interpreted by any BIDDER as an action in bad faith on the part of the OWNER.

10. LANGUAGE OF THE BIDDING PROCESS AND THE REQUEST/ EPC BID

- 10.1. The BIDDING PROCESS shall be carried out in English.
- 10.2. The REQUEST and the EPC BID prepared by a BIDDER and any correspondence and documents related to the EPC BID, exchanged between the BIDDER and the OWNER, shall be in English.
- 10.3. Any documents related to the EPC BID submitted by the BIDDER may be prepared in another language as long as these documents are accompanied with an English translation of their pertinent passages, in which case the English translation shall prevail for purposes of interpretation of the REQUEST/ EPC BID.
- 10.4. All formal documents regarding possible foreign subcontractors, submitted by the BIDDER with the REQUEST/ EPC BID, must be drawn up or translated into English as well, as stipulated by point 10.3.
- 10.5. Considering the principle of equal treatment of BIDDERS and fair competition, the OWNER may allow for the additional use of the Polish language in communication.

11. PRE-BID MEETING AND SITE INSPECTION

- 11.1. The OWNER may organize a pre-bid meeting with the BIDDERS in the OWNER'S seat or in any locations that are important from the perspective of the PROJECT goals. The



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purpose of the pre-bid meeting (which can be alternatively held in the form of tele/videoconference) is to provide the BIDDER with clarifications and to answer any questions that may be raised in connection with the BIDDING DOCUMENTS and preparation and submission of the EPC BID. The date of the pre-bid meeting will be mutually determined by the OWNER and the BIDDERS.

- 11.2. As a result of the pre-bid meetings, the OWNER may introduce modifications to the BIDDING DOCUMENTS.
- 11.3. The BIDDER is obliged to carry out site inspection if it would be required by the OWNER. The BIDDER shall obtain for itself at its own cost and risk all information that may be necessary for preparing the EPC BID and entering into the EPC CONTRACT.
- 11.4. The date of site inspection shall be agreed with the OWNER at least 10 days before the scheduled date of carrying out such site inspection.
- 11.5. The OWNER shall give the requirements to be fulfilled by the BIDDER to get access to the site. Not later than 6 (six) business days before the scheduled date, the BIDDER shall submit to the OWNER a list of its participants specifying ID characteristics (name, surname, nationality, company, passport number), and vehicle's reference (brand, plate numbers), personal computers (serial number) and other documents required by the OWNER.
- 11.6. The OWNER may establish specific requirements regarding participation in the site visit, including, in particular, prohibitions on taking photos or video recordings during site inspection.
- 11.7. Attending the pre-bid meeting and carrying out site inspection shall be at the BIDDER's own cost and expense. In particular, the BIDDER shall make their own travel arrangements and bear the costs of fares, local transportation, accommodation, and other out-of-pocket expenses.

12. EXCLUSION GROUNDS

12.1. From the procedure, the OWNER may exclude a BIDDER:

- 12.1.1. which has breached the obligations relating to the payment of taxes, levies or social or health insurance contributions.
- 12.1.2. which has unlawfully influenced or has attempted to influence the activities of the OWNER, has attempted to obtain or has obtained confidential information that may confer upon it advantages in the PROCEDURE
- 12.1.3. which has not met or has not proved fulfilment conditions for participation.
- 12.1.4. which employs any ORLEN S.A. employees or the employees of the ORLEN S.A. Capital Group.
- 12.1.5. which is involved in a CONFLICT OF INTEREST within the meaning of sec. 26 ITB.
- 12.1.6. which has not declared compliance with the Code of Conduct for ORLEN S.A. suppliers, Policy on the Prevention of Corruption and Fraud in the ORLEN Capital Group, Policy for Accepting and Giving Gifts in the ORLEN Group, Conflict of Interest Management Policy at the ORLEN Group and Human Rights Protection Policy in the ORLEN Capital Group.

- 12.1.7. which is the subject of winding-up or insolvency proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended, or it is in any analogous situation arising from a similar procedure under national provisions.
- 12.1.8. that frustrates or obstructs the finding of the criminal origin of money or conceals its origin, due to the inability to determine the beneficial owner.
- 12.1.9. that did not complete all the documents required by the OWNER in BIDDING DOCUMENTS, despite the request to complete the documents (on the basis of sec. 12.8. or 13.7 ITB).
- 12.1.10. where the BIDDER, as a result of deliberate action or gross negligence, has been guilty of serious misrepresentation in supplying the required information or documents, what might have a material influence on the decisions made by the OWNER in the PROCEDURE, has withheld such information or is not able to submit the required information or documents.
- 12.2. The OWNER shall also exclude the following from the PROCEDURE:
- 12.2.1. any BIDDER referred to in the lists set out in Council Regulation (EC) No. 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 134, 20.05.2006, p. 1, as amended), hereinafter referred to as "Regulation 765/2006", and Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 78, 17.03.2014, p. 6, as amended), hereinafter referred to as "Regulation 269/2014", or listed on the basis of a decision on entry in the list determining the application of the measure referred to in Article 1(3) of the Act of 13 April 2022 on Specific Solutions to Counteracting Support for Aggression against Ukraine and to Protect National Security (i.e. Journal of Laws 2023, item 1497, as amended), hereinafter referred to as "Act on Special Solutions";
- 12.2.2. any BIDDER whose beneficial owner, as understood in the Act of 1 March 2018 on the Prevention of Money Laundering and Terrorist Financing (Journal of Laws of 2022, item 593 and 655), is a person referred to in the lists set out in Regulation 765/2006 and Regulation 269/2014, or listed or being such a beneficial owner as of 24 February 2022, provided that they have been listed on the basis of a decision on entry in the list determining the application of the measure referred to in Article 1(3) of the Act on Special Solutions;
- 12.2.3. any BIDDER whose parent company, as understood in Article 3(1)(37) of the Accounting Act of 29 September 1994 (Journal of Laws of 2021, item 217, 2105 and 2106), is a body referred to in the lists set out in Regulation 765/2006 and Regulation 269/2014, or listed or being such a parent company as of 24 February 2022, provided that it has been listed on the basis of a decision on entry in the list determining the application of the measure referred to in Article 1(3) of the Act on Special Solutions;
- 12.3. The OWNER respects the rules established in the Article 5k of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's

destabilising actions in Ukraine (OJ L 229 of 31.7.2014, p. 1), hereinafter referred to as “Regulation 833/2014”, as amended by Council Regulation (EU) 2022/576 of 8 April 2022 amending Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 111 of 8.4.2022, p. 1), hereinafter: “Regulation 2022/576”, which establish a ban on the participation of Russian contractors in public contracts and concessions awarded in all Member States of the European Union, shall exclude from the PROCEDURE all BIDDERS:

- 12.3.1. who are Russian nationals, natural or legal persons, entities or bodies established in Russia;
- 12.3.2. who are legal persons, entities or bodies the ownership rights to which directly or indirectly in more than 50% belong to Russian nationals or natural or legal persons, entities or bodies established in Russia;
- 12.3.3. who are natural or legal persons, entities or bodies acting on behalf of or under the direction of:
 - a) Russian nationals or natural or legal persons, entities or bodies established in Russia, or
 - b) legal persons, entities or bodies the ownership rights to which directly or indirectly in more than 50% belong to Russian nationals or natural or legal persons, entities or bodies established in Russia;
- 12.3.4. whose subcontractor(s), supplier(s) or EPR(s) account for more than 10% of the value of the EPC CONTRACT, if such a subcontractor, supplier or EPR belongs to any of the categories of entities listed in points 12.3.1.-12.3.3. above.
- 12.4. The BIDDER may be excluded by the OWNER at any stage of the PROCEDURE.
- 12.5. In order to demonstrate that there are no grounds for exclusion pursuant to:
 - 12.5.1. sec. 12.1.1., the BIDDER shall submit a current certificate from the relevant tax office or social security office confirming that there are no tax arrears or documents mentioned in sec. 12.6. ITB.
 - 12.5.2. sec. 12.1.4-12.1.7, 12.2.-12.3., the BIDDER shall submit a declaration, a specimen of which is attached as Appendix No. 1 to the ITB FORMAL PROPOSAL.
 - 12.5.3. sec. 12.1.8., the BIDDER shall submit BENEFICIAL OWNER STATEMENT attached as Appendix No. 2 to the ITB and information declared in Central Register of Beneficial Owners within the meaning of Article 2 para. 2 point 1 of the Act of 1 March 2018 on anti-money laundering and terrorist financing or documents mentioned in sec. 12.6. ITB.
- 12.6. If in the country where the BIDDER has its registered office or place of residence the official documents referred to in sec. 12.5.1. or 12.5.3. are not issued they shall be replaced respectively in their entirety or in part by a document containing a statement by the BIDDER, indicating the person or persons authorised to represent it, as well as a short explanation confirming that in the country where the BIDDER has its registered office or place of residence, the official documents referred to in paragraph 12.5.1. or 12.5.3. are not issued.



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- 12.7. If there are reasonable grounds to consider that a previously submitted document is no longer valid, the OWNER may at any time call upon the BIDDER(S) to submit all or some of the documents valid as of the date of submission.
- 12.8. If the BIDDER did not submit a required statement or document, or if they are incomplete or contain errors, the OWNER shall request the BIDDER to submit, correct, or supplement them within the designated time limit. This request will be made unless the BIDDER's EPC BID shall be rejected regardless of their submission, supplementation or correction. The BIDDER shall submit a demanded statement or document valid as of the date of its submission.
- 12.9. The OWNER may demand clarifications from the BIDDER(S) as to the content of the statements or other documents or statements submitted in the PROCEDURE.
- 12.10. The rights established in sec. 12.8. and 12.9. can be applied by the OWNER repeatedly.
- 12.11. If any CONSORTIUM member is in a situation constituting grounds for exclusion as indicated in sec. 12.1-12.3, then the CONSORTIUM will be subject to exclusion.
- 12.12. The BIDDER must not be in a situation subject to exclusion (according to the sec. 12 ITB) at any moment during the PROCEDURE.

13. CONDITIONS FOR PARTICIPATION IN THE BIDDING PROCESS

- 13.1. The OWNER shall invite all BIDDERS who are not subjected to exclusion on the basis that are indicated in sec. 12 above and meet the conditions for participation in the BIDDING PROCESS listed below.
- 13.2. The OWNER indicates that the required conditions for participation in a manner proportionate to the subject-matter of the contract. This allows for the possibility to assess a BIDDER's ability to perform the contract, by expressing them as minimum levels of ability that concern:
- 13.2.1. suitability to pursue the professional activity:
- a) the BIDDER is an entity conducting business activity, the scope of which is consistent with the subject of the PROCEDURE.
- 13.2.2. economic or financial standing that meets the following conditions:
- a) no negative shareholders' equity resulting from the last available quarterly financial statement or, if it is not available, the financial statement for the last closed fiscal year.
 - b) the net loss for the last closed fiscal year cannot exceed:
 - o 25% of the current equity value and
 - o 25% of the total revenues achieved for the last closed fiscal year.
 - c) total revenues achieved for the last closed fiscal year not less than 315.000.000,00 PLN or the equivalent in the 'BIDDER's settlement currency.
 - d) debt ratio, understood as total liabilities/total assets for the last closed fiscal year, not higher than 0.9.
 - e) disputed entries not higher than 10% of the value of total revenues for the last closed fiscal year or undisputed entries not exceeding 1% of the

- value of total revenues for the last closed fiscal year (entries regarding the BIDDER as a debtor) – can demonstrate by appropriate means;
- 13.2.3. technical or professional ability that meets the following conditions:
- a) the BIDDER has implemented and maintained health & safety standards in compliance with ISO 45001:2018 (or equivalent).
 - b) the BIDDER has the technology of gasification of municipal solid waste (MSW) and purification system, resulting syngas, which reached TRL=9 and the technology is ready to implement at the industrial level.
- 13.3. Means of proof and other documents or statements which the BIDDER shall submit in order to confirm fulfilment of the conditions for participation in the PROCEDURE are as follows:
- a) Ad 13.2.1.a) – a current excerpt from the relevant register of the professional or trade registers kept in the country in which the BIDDER has its seat or place of residence;
 - b) Ad 13.2.2.a)-d) – statement included in Appendix No. 1 to the ITB FORMAL PROPOSAL as well as following documents confirming suitable economic and financial standing:
 - i) the complete financial statements for two full reporting years, including profit and loss account (income statement),
 - ii) balance sheet,
 - iii) statement of changes in equity (fund),
 - iv) cash flow statement, and
 - v) the most up-to-date quarterly financial report for the current period including profit and loss account (income statement).
 - c) Ad 13.2.2.e) – statement included in Appendix No. 1 to the ITB FORMAL PROPOSAL. The OWNER will verify that the BIDDER meets the condition referred to in the sec. 13.2.2. e) based also by verifying any other appropriate means, including the data contained in the National Debt Register (Krajowy Rejestr Długów) or in other registers kept pursuant to the provisions of the Act of 9 April 2010 on the sharing of economic information and exchange of economic data.
 - d) Ad 13.2.3.a) – the certificate drawn up by independent body attesting that the BIDDER complies with health and safety standards in accordance with ISO 45001:2018 (or equivalent).
 - e) Ad 13.2.3.b) – statement included in Appendix No. 1 to the ITB FORMAL PROPOSAL about having access to the technology mentioned in sec. 13.2.3.b).
- 13.4. Where BIDDERS submit documents containing amounts expressed in currencies other than PLN, for the purpose of evaluating compliance with the condition specified above, the OWNER shall apply the average exchange rate of the currency in question published by the National Bank of Poland on the date of publication of the ITB as the basis for currency conversion. If, on the day of publication of the ITB, the National Bank of Poland does not publish the average exchange rate of a given currency, the average exchange rate published on the first day following the day of publication of the ITB notice is used as the basis for conversion.
- 13.5. If in the country where the BIDDER has its registered office or place of residence the official documents referred to in sec. 13 are not issued, they shall be replaced

respectively in their entirety or in part by a document containing a statement by the BIDDER, indicating the person or persons authorised to represent it.

- 13.6. If there are reasonable grounds to believe that a previously submitted document or statement is no longer valid, the OWNER may at any time call upon the BIDDER(s) to submit all or some of the documents or statements valid as of the date of submission.
- 13.7. If BIDDER did not submit a required statement or document or if they are incomplete or contain errors, the OWNER shall request the BIDDER to submit, correct or supplement them within the designated time limit, unless the BIDDER's EPC BID shall be rejected regardless of their submission, supplementation or correction. The BIDDER shall submit a demanded statement or document valid as of the date of its submission.
- 13.8. The OWNER may demand clarifications from the BIDDERS as to the content of the statements or other documents or statements submitted in the PROCEDURE.
- 13.9. The BIDDER must meet the participation conditions in the PROCEDURE throughout the entire duration of the PROCEDURE.

14. USE OF THE POTENTIAL OF ENTITITES PROVIDING RESOURCES

- 14.1. The BIDDER may, in order to confirm the fulfilment of the conditions for participation in the BIDDING PROCESS referred to in sec. 13 of the ITB, in appropriate situations and in relation to the PROJECT or its part, rely on the technical or professional abilities of the EPR, irrespective of the nature of the legal relationship between them.
- 14.2. With regard to the conditions relating to an educational or professional qualifications or experience, BIDDERS may rely on the capabilities of the EPRs if these EPRs perform the work(s) or services for which these capabilities are required.
- 14.3. The BIDDER who relies on the capacity or standing of the EPR shall submit, together with the EPC BID, a written confirmation of commitment of the EPR to make available the necessary resources for the purpose of completion of the PROJECT ("**COMMITMENT**") or other means of proof confirming that the BIDDER, while performing the PROJECT, will have at its disposal the necessary resources of that EPR. A COMMITMENT form constitutes Appendix No. 10 to the ITB. The COMMITMENT should be submitted in electronic form by a person(s) authorised to represent the EPR. If the authority of the person(s) signing the COMMITMENT does not directly result from the document stating the legal status of the EPR, a power of attorney must be attached in electronic form.
- 14.4. The COMMITMENT of the EPR shall confirm that the relationship between the BIDDER and the EPR guarantees actual access to those resources and shall specify, in particular:
 - 14.4.1. the scope of the resources of the EPR made available to the BIDDER;
 - 14.4.2. the manner and period in which the resources of EPR will be made available to and used by the BIDDER in the performance of the PROJECT;
 - 14.4.3. whether and to what extent the EPR, on whose capacities the BIDDER relies upon with regard to the conditions of participation concerning educational or professional qualifications or experience, will perform the works or services to which the indicated capacities relate.

- 14.5. The OWNER shall assess whether the technical or professional capacities made available to the BIDDER by the EPR enable the BIDDER to demonstrate the fulfilment of the conditions for participation in the BIDDING PROCESS and shall examine whether there are any grounds for exclusion of that EPR.
- 14.6. If the technical or professional capacities of the EPR do not confirm that the BIDDER meets the conditions for participation in the BIDDING PROCESS or there are grounds for exclusion of that EPR, the OWNER shall demand that the BIDDER, within a time limit specified by the OWNER, replace that EPR with another EPR or EPRs, or demonstrate that it meets the conditions for participation in the BIDDING PROCESS on its own.
- 14.7. The EPR shall be jointly and severally liable with the BIDDER, that relies on its financial or economic standing, for any damage the OWNER has incurred as a result of failure to make available those resources, unless the EPR is not at fault for the non-availability of the resources.

15. DOCUMENTS COMPRISING THE REQUEST:

- 15.1. The REQUEST shall consist of the:

VOLUME 1: COVER LETTER (the OWNER does not provide any template of COVER LETTER) that shall include:

- Subject of the REQUEST,
- Name, registered seat address of the BIDDER and tax identification number,
- List of persons dedicated for contact with the OWNER during the BIDDING PROCESS,
- Names of persons authorised to act in the BIDDER's name in matters related to the BIDDING PROCESS (including address for correspondence, if it differs from registered address of BIDDER, telephone and e-mail addresses); a power of attorney shall be attached, if applicable (Appendix F1 to FORMAL PROPOSAL),
- List of exhibits (Volumes) which constitute the REQUEST,
- Power of attorney (Appendix F1 to FORMAL PROPOSAL) declaring the authorisation to sign the REQUEST and EPC BID, unless the right to sign the REQUEST and EPC BID results from other documents submitted with the REQUEST. The wording of the power of attorney must expressly define the activities the representative is authorised to perform.
- Power of attorney to represent all BIDDERS jointly (if applicable).
- A declaration that the BIDDER is not aware of the existence of any CONFLICT OF INTEREST as understood in relation to the meaning established in sec. 26 below (statement included in Appendix No. 1 to the ITB).



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- a COMMITMENT submitted by the EPR to place the necessary resources at the disposal of the BIDDER, or other means of proof as referred to in paragraph 14.3 of the ITB, if applicable.

VOLUME 2: FORMAL PROPOSAL form with appendices according to Appendix 1 to the ITB.

16. FORM OF THE EPC BID

16.1. The EPC BID shall consist of the two main parts:

PART I: TECHNICAL BID which shall contain the following components:

VOLUME 3: TECHNICAL PROPOSAL

VOLUME 4: COMMERCIAL UNPRICED

PART II: COMMERCIAL BID which shall be presented in strict accordance with the provisions of this SECTION II of the BIDDING DOCUMENTS and shall include:

VOLUME 5: COMMERCIAL PRICED PROPOSAL

17. DOCUMENTS COMPRISING PART II OF THE EPC BID

- 17.1. The BIDDER shall submit **VOLUME 5** and quote the lump sum amount (further on referred to as “**CONTRACT PRICE**”) in consideration for, all works to be performed under the EPC CONTRACT.
- 17.2. The CONTRACT PRICE shall be deemed to be the full amount payable to the EPC contractor for the works, including any and all costs and expenses connected with performance of the EPC CONTRACT and all activities of the EPC contractor according to the terms and conditions of the EPC CONTRACT.
- 17.3. Any duties, taxes and other levies payable by the EPC contractor according to the EPC CONTRACT (SECTION III), or for any other cause, shall be included in contractual remuneration, submitted by the BIDDER.

18. FORMAT AND SIGNING OF THE REQUEST/ EPC BID

- 18.1. BIDDER shall thoroughly familiarize itself with the provisions of the BIDDING DOCUMENTS, which must be read and interpreted together with the possible modifications and amendments made by the OWNER.
- 18.2. Particular parts of the REQUEST/ EPC BID should be drawn up in accordance with templates included in appendices to these BIDDING DOCUMENTS. The OWNER will

not accept partial EPC BIDS, which means proposals for the execution of a part of the EPC CONTRACT.

- 18.3. The REQUEST/ EPC BID shall be submitted via the CONNECT platform in two versions: (i) in the form of scanned copies of documents signed by the authorised representatives of the BIDDER (marked as original) or electronically signed documents (a qualified signature is required); and (ii) in editable version (word, excel) wherever possible. In the event of any inconsistencies between these documents, the original in the form of scanned copies shall prevail. Particular documents making up the REQUEST/ EPC BID must be properly ordered, and their order must be clearly marked.
- 18.4. All pages of the REQUEST/ EPC BID, including all pages of appendices, should be in numerical order.
- 18.5. The REQUEST/ EPC BID document must be signed by and sealed with the personal stamps of the authorised representative(s) of the BIDDER, entitled to perform all legal activities and to make liabilities on its behalf, as stipulated by pertinent regulations, or entitled, at least with respect to the subject of the EPC CONTRACT, to make declarations of will for and on behalf of the BIDDER (if a seal is not possible, the documents must include a printed or manually entered: full name and position of the signatory
- 18.6. Any changes to the REQUEST/ EPC BID (amendments, write offs, supplements):
- 18.6.1. may be made until the applicable deadline for submitting a REQUEST or particular parts of the EPC BID;
- 18.6.2. should be signed or initialled by the BIDDER.
- 18.7. The REQUEST must include a power of attorney (Appendix F1 to FORMAL PROPOSAL) declaring the authorisation to sign the REQUEST and EPC BID, unless the right to sign the REQUEST/ EPC BID results from other documents submitted with the REQUEST. The body of the power of attorney must expressly define the activities the representative is authorised to perform.

19. SUBMISSION OF THE REQUEST/ EPC BIDS

- 19.1. REQUEST may only be submitted via the CONNECT platform by 19th of January 2024, 4:00 p.m. (CET).
- 19.2. The deadline and method of submitting TECHNICAL BID and COMMERCIAL BID will be indicated in the invitation on the terms specified in the RoP.
- 19.3. The OWNER shall not be responsible for incorrectly submitted REQUEST or EPC BID or their incorrect marking.

20. MODIFICATION AND WITHDRAWAL OF THE REQUESTS/ EPC BIDS

- 20.1. The BIDDER may modify or withdraw its REQUEST/ EPC BID after its submission on the CONNECT platform. Such modification or withdrawal shall be received by the OWNER on the CONNECT platform no later than by the REQUEST/ EPC BID submission deadline.
- 20.2. Any changes regarding the terms of the REQUEST/ EPC BID must be made as revisions clearly indicating the amended provision(s), and a reference to corresponding

pages and sections of the REQUEST/ EPC BID. Such amendments must be prepared and submitted in an identical manner to the REQUEST/ EPC BID itself.

- 20.3. No REQUEST/ EPC BID may be unilaterally modified or withdrawn by the BIDDER after the deadline for submission of REQUEST/ EPC BID.

21. EXAMINATION OF THE REQUEST, DETERMINATION OF ITS COMPLIANCE:

- 21.1. The REQUEST should be submitted via the CONNECT platform.
- 21.2. If the BIDDER has failed to submit documents or statements required in the BIDDING PROCESS, or if they are incomplete or contain errors, the OWNER shall call upon the BIDDER to submit, correct, or supplement them, as appropriate, within the prescribed time limit, unless the REQUEST shall be rejected regardless of its submission, supplement, or correction, or there are grounds for cancellation of the BIDDING PROCESS.
- 21.3. The OWNER may request an explanation from BIDDER(S) concerning the content of documents or statements submitted in the BIDDING PROCESS.
- 21.4. The opening of REQUESTS will take place without BIDDERS, using the CONNECT platform.
- 21.5. The OWNER rejects the REQUEST if the REQUEST
- 21.5.1. was submitted after the deadline;
 - 21.5.2. was submitted by a BIDDER that:
 - 21.5.2.1. is subject to exclusion from the BIDDING PROCESS,
 - 21.5.2.2. does not fulfil the conditions for participation in the BIDDING PROCESS,
 - 21.5.2.3. has failed to submit documents or statements constituting the subject-matter means of the proof confirming the lack of grounds for exclusion or fulfilment of the conditions for participation in the BIDDING PROCESS;
 - 21.5.3. is invalid under separate provisions;
 - 21.5.4. has not been prepared or submitted in a manner consistent with the technical and organisational requirements for the preparation or transmission of the REQUEST specified by the OWNER.

22. EXAMINATION OF THE EPC BIDS, DETERMINATION OF COMPLIANCE

- 22.1. In the course of examination of EPC BIDS, the OWNER will examine both the TECHNICAL BID and COMMERCIAL BID to determine whether they are complete, whether the documents are properly signed and do not contain any impermissible deviations from the BIDDING DOCUMENTS or are in any other way substantially noncompliant with the BIDDING DOCUMENTS, i.e., the OWNER will in particular examine:
- 22.1.1. whether the submitted EPC BID contains all the required documents and information and whether these documents and the information have the form and content as specified in the BIDDING DOCUMENTS;



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- 22.1.2. whether the proposed technical solution of the PROJECT meets the technical requirements set out in the BIDDING DOCUMENTS or whether it does not contain any impermissible deviations therefrom, whether it does not influence the scope and quality of the technology and whether the technology proposed by the BIDDER meets the general requirements prescribed in the BIDDING DOCUMENTS and serves the required purpose of the PROJECT;
 - 22.1.3. whether the submitted EPC BID contains any reservations noncompliant with the BIDDING DOCUMENTS, limiting substantially the OWNER's rights or CONTRACTOR's obligations under the EPC CONTRACT.
- 22.2. The OWNER shall reject an EPC BID on the grounds specified in sec. 7 RoP.

23. EVALUATION OF THE EPC BIDS, CLARIFICATION AND REVISION OF THE EPC BIDS

- 23.1. The BIDDERS are not entitled to participate in the opening or evaluation of the EPC BIDS by the OWNER. The opening and evaluation of the EPC BIDS will be carried out by the OWNER.
- 23.2. In order to facilitate the EPC BID evaluation, the OWNER may, at its discretion, request BIDDERS to provide clarifications of the submitted EPC BID, and/or supplementary information and/or documents to the EPC BID.
- 23.3. Should the BIDDER fail to respond to the OWNER's query and/or request for clarification or supplementary information in a timely manner, the OWNER may, at the OWNER's sole discretion, consider such BIDDER'S EPC BID as non-compliant with the BIDDING DOCUMENTS.

24. SIGNING OF THE EPC CONTRACT

- 24.1. Prior to the expiration of the validity period of EPC BID, the OWNER invite the BIDDER whose EPC BID has been selected as the most advantageous to sign the EPC CONTRACT. Invitation includes all relevant information on a form and method of signing the EPC CONTRACT.
- 24.2. If the BIDDER whose EPC BID has been selected as the most advantageous, refuses to conclude the EPC CONTRACT or does not provide the required contract performance guarantee (if required), the OWNER may re-examine and evaluate the tenders from among the EPC BIDS remaining in the PROCEDURE and select the most advantageous EPC BID or cancel the PROCEDURE.

25. BONA FIDE BID

- 25.1. Each BIDDER undertakes and agrees that it shall be a condition of being awarded the EPC CONTRACT, that its EPC BID is a bona fide bid, intended to be competitive and that the BIDDER has not fixed or adjusted the amount of the EPC BID by or under or in accordance with any agreement or arrangement with any other Person. The BIDDER also certifies that the BIDDER has not done, and undertakes that the BIDDER will not do any of the following:

- (i) prior to the submission of the EPC BID, communicate to any Person the amount or approximate amount of the proposed EPC BID;
 - (ii) enter into any agreement or arrangement with any other Person to reveal the amount of any EPC BID submitted, or reveal the details of any supplementary or revised EPC BID(S);
 - (iii) offer to pay or give, or agree to pay or give, any sum of money or consideration directly or indirectly to any Person for doing or having done or causing or having caused to be done in relation to any other EPC BID or proposed EPC BID any act or thing of the sort described above.
- 25.2. The term “Person” shall mean any natural or legal person or entity, corporate or incorporate and “any agreement or arrangement” includes any such transaction formal or informal, whether legally binding or not.

26. CONFLICT OF INTERESTS

- 26.1. The OWNER shall take measures in order to prevent, identify, and eliminate CONFLICTS OF INTERESTS if they arise in connection with the conduct of the BIDDING PROCESS or during the performance of EPC CONTRACT. If it is not possible to eliminate the CONFLICT OF INTEREST in a different way, especially by changing members of the OWNER’S team responsible for conducting the BIDDING PROCESS, the OWNER shall exclude the BIDDER affected by the CONFLICT OF INTEREST from the BIDDING PROCEDURE as well as reject his REQUEST or EPC BID.
- 26.2. A CONFLICT OF INTEREST shall be understood as any situation in which persons participating in the preparation or conduct of the BIDDING PROCESS or possessing real or potential influence on the outcome of the BIDDING PROCESS have, directly or indirectly, a financial, economic, or other personal interest that could lead to doubts about their impartiality in relation to the BIDDING PROCESS. A CONFLICT OF INTEREST shall particularly include situations defined as such in the Conflict of Interest Management Policy at the ORLEN Group.
- 26.3. The BIDDER is required to inform the OWNER about the occurrence of any CONFLICT OF INTEREST as soon as they identify its existence. Failure to fulfil this obligation may be the grounds to exclude the BIDDER affected by the CONFLICT OF INTEREST from the BIDDING PROCEDURE as well as rejection of his REQUEST or EPC BID.
- 26.4. As arising a CONFLICT OF INTEREST shall be in particular considered the following connections of the persons mentioned in sec.26.2.:
- 26.4.1. participation in a BIDDER (company or partnership) as a partner in a civil law partnership or other partnership, holding at least 10% of shares (unless a lower threshold is established by law), being a member of a supervisory or management board, a proxy or a representative;
 - 26.4.2. be married as well as be a lineal blood relative, sibling or lineal relative by affinity, collateral relative by blood or affinity up to the second degree, or be related by adoption, custody or guardianship, or cohabitating with the BIDDER, its legal deputy, or the members of the management or supervisory board of the BIDDER;



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26.4.3. have such a legal or factual relationship with the BIDDER that there is a reasonable doubt concerning their impartiality or independence in relation to the BIDDING PROCESS;

26.4.4. any of the connections considers as a CONFLICT OF INTEREST under the Conflict of Interest Management Policy at the ORLEN Group.

27. GOVERNING LAW AND SETTLEMENTS OF DISPUTES

27.1. This BIDDING PROCESS and any OWNER'S and BIDDERS' rights and obligations arising in connection with it shall be governed by, construed, and interpreted in accordance with the laws of Poland.

27.2. All disputes arising from, or in relation to, the EPC BID or the ITB shall be resolved by the court competent for the OWNER's registered office.

27.3. If at any stage of the procedure the BIDDER identifies any doubts regarding the provisions of the Procedure documentation, in particular related to the principles of transparency, equal treatment of BIDDERS and proportionality respected by the OWNER, the BIDDER should inform the OWNER about them or request further explanations. Otherwise, the BIDDER confirms that the documentation is clear and that it fully accepts the requirements established by the OWNER. Section 8 COMMUNICATION AND CLARIFICATIONS applies.

28. APPENDICES

- Appendix 1 FORMAL PROPOSAL form
- Appendix 2 Beneficial Owner Statement
- Appendix 3 POLICY on the Prevention of Corruption and Fraud
- Appendix 4 Policy for Accepting and Giving Gifts in the ORLEN Group
- Appendix 5 Supplier Code of Conduct
- Appendix 6 Conflict of Interest Management Policy at the ORLEN Group
- Appendix 7 Human Rights Protection Policy in the ORLEN Capital Group
- Appendix 8 RoP
- Appendix 9 Initial Technical information on the subject of the BID / CONTRACT
- Appendix 10 Commitment of the entity providing resources
- Appendix 11 Information Clause
- Appendix 12 Connect Bidders manual
- Appendix 13 INFORMATION for the representatives of Bidders in the procurement procedure regarding the participation of an economic security expert