



**Purchase of technology and EPC execution for the  
installation/complex producing hydrogen in the process of  
municipal solid waste gasification - Part I  
– APPENDIX 8 TO INSTRUCTON TO BIDDERS**

**Appendix 8: Detailed course of the DIALOGUE procedure, bid evaluation, and selection  
of the most advantageous bid “RULES OF PROCEDURE”.**

**1. Initial DIALOGUE schedule and general provisions:**

- 1.1. The OWNER assumes that the DIALOGUE will be conducted based on the following framework schedule:
  - 1.1.1. Q1 2024 information on the results of the evaluation of REQUESTS
  - 1.1.2. Q1 2024 invitation of BIDDERS to the DIALOGUE
  - 1.1.3. Q1-Q2 2024 the DIALOGUE (focused on specifying and supplementing the description of requirements)
  - 1.1.4. Q3 2024 the completion of the DIALOGUE
  - 1.1.5. Q3 2024 provision of final BIDDING DOCUMENTS to the BIDDERS and invitation to submit BIDS – TECHNICAL aspects (hereinafter “TECHNICAL BID”)
  - 1.1.6. Q3 2024 submitting a request for clarification of information provided by final BIDDING DOCUMENTS mentioned in 1.1.5
  - 1.1.7. Q3/Q4 2024 submitting the TECHNICAL BIDS by the BIDDERS who have not been eliminated from the PROCEDURE at previous stages
  - 1.1.8. Q3/Q4 2024 examination and evaluation of the TECHNICAL BIDS
  - 1.1.9. Q3/Q4 2024 invitation to submit BIDS – COMMERCIAL aspects (hereinafter “COMMERCIAL BID”)
  - 1.1.10. Q4 2024 examination and evaluation of the COMMERCIAL BID
  - 1.1.11. Q4 2024 possible electronic auction
  - 1.1.12. Q4 2024 selection of the most advantageous EPC BID
  - 1.1.13. Q4 2024/Q1 2025 conclusion of the EPC CONTRACT
- 1.2. The schedule set out in sec. 1.1 hereinabove is only a framework, and the OWNER may modify it at any stage of the PROCEDURE.
- 1.3. The PROCEDURE shall be conducted following the rules of fair competition and equal treatment of BIDDERS, and the OWNER undertakes to act in a transparent and proportionate manner. In particular:
  - 1.3.1. The DIALOGUE shall be conducted with each BIDDER invited to the DIALOGUE separately, based on equal principles,



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- 1.3.2. The OWNER shall independently determine the order of meetings with the BIDDERS within the DIALOGUE,
- 1.3.3. meetings within individual rounds of the DIALOGUE, if envisaged in the invitation, shall be held at the OWNER's premises or at another location designated by the OWNER.
- 1.3.4. The OWNER allows for the DIALOGUE to be conducted via a meeting/video/teleconference,
- 1.3.5. the invitation shall indicate the exact time and venue of the meeting and its form of the meeting (meeting/video/teleconference),
- 1.3.6. in the event that the invited BIDDER fails to appear at the time and venue indicated in the invitation in order to participate in a particular round of the DIALOGUE, the OWNER shall assume that the BIDDER has not participated in the meeting and may not set a further date for the meeting unless it assumes that this would affect the efficiency of the PROCEDURE,
- 1.3.7. in the course of the DIALOGUE, participants may discuss all aspects of the PROJECT, subject to the minimum requirements described in Appendix 9 ITB "Initial TECHNICAL information", that will not be subject to change.
- 1.4. The OWNER shall ensure that all activities related to the conduct of the PROCEDURE are carried out by persons ensuring impartiality and objectivity.
- 1.5. If at any stage of the PROCEDURE the BIDDER considers the information or requirements provided by 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, subject to sec. 1.6 hereinbelow. Otherwise, the BIDDER confirms that the documentation is clear and fully accepts the requirements established within them by the OWNER.
- 1.6. The time limit for submitting a request for clarification of information provided by the BIDDER in the course of the DIALOGUE shall be 5 days from the communication of the information being the subject of the request for clarification. Sec. 8.3. does not apply to submitting a request for clarification of information provided by the BIDDER in the course of the DIALOGUE.

## **2. Invitation to the DIALOGUE**



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- 2.1. The OWNER shall invite all BIDDERS who submitted REQUEST and are not subjected to exclusion and meet the conditions for participation in the procedure.
- 2.2. The invitation to the DIALOGUE shall include at least:
  - 2.2.1. Details of the agenda for the DIALOGUE.
  - 2.2.2. Information on the date and venue of the DIALOGUE.
  - 2.2.3. Information on the language or languages in which the DIALOGUE will be conducted.
  - 2.2.4. Description of the subject matter of the DIALOGUE, including information on the OWNER's expected direction of the DIALOGUE.
  - 2.2.5. Information on the documents and information that the OWNER will be expected to provide in the DIALOGUE.
  - 2.2.6. The weighting assigned to the evaluation criteria, and if at a given stage of the DIALOGUE the OWNER is unable to assign weightings to the various criteria, the order of importance of such criteria shall be indicated in the invitation, corresponding to the order adopted at the previous stage.
  - 2.2.7. Detailed communication rules during the DIALOGUE, as well as rules for demonstrating that the BIDDER is authorised to represent it during the DIALOGUE.
  - 2.2.8. The assumed manner of completion of a given round of the DIALOGUE.
- 2.3. Where a part of the description of the needs and requirements has not been made available by the OWNER on the website of the PROCEDURE due to the need of protection of particularly sensitive information, the OWNER shall make available, together with the invitation to the DIALOGUE, the unavailable part of the description of the needs and requirements and its possible changes and clarifications of the content of this part of the description of needs and requirements, as well as other procurement documents directly related to the PROCEDURE. In that case the OWNER may determine in the invitation to participate in the DIALOGUE the requirement concerning the confidentiality of the information provided to the BIDDER during the PROCEDURE (e.g., the obligation to submit a signed NDA – non-disclosure agreement).
- 2.4. The OWNER declare its readiness to conclude an agreement provided by the BIDDER or any other confirmation of obeying requirement concerning the confidentiality of the information provided to the OWNER. The OWNER reserves, however, that such an agreement or other type of confirmation may not prevent the OWNER from fulfilling its legal obligations to provide documents to empowered public entities, including entities



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controlling the spending of EU funds or other funds granted to the OWNER. Sec. 7 ITB shall apply accordingly.

2.5. With the invitation to participate in the DIALOGUE, the OWNER shall provide to the BIDDER, at a minimum, information concerning the goals of the PROJECT, and technical assumptions. It shall also indicate the technical and organizational requirements in the areas listed below:

- 2.5.1. Subject matter of the EPC CONTRACT.
- 2.5.2. Battery Limits.
- 2.5.3. Functional-utility properties/requirements.
- 2.5.4. Feedstock, products and utilities properties.
- 2.5.5. Warranties.
- 2.5.6. Guaranteed technical parameters.
- 2.5.7. Construction and execution standards.
- 2.5.8. Commissioning and acceptance procedures.
- 2.5.9. Requirements concerning the technical documentation.
- 2.5.10. Instructions for preparing a technical offer.

2.6. The OWNER assumes that in the invitation to the DIALOGUE, as well as during the course of its conduct, will successively provide key information, including Initial Specification of Essential Terms of Contract, technical requirements and drafts of the proposed provisions of the EPC CONTRACT as well as the required provisions regarding the license. The information and documents will be provided in a way enabling all the BIDDERS to become familiar with such information and documents for the proper preparation and participation in the DIALOGUE and submission of BIDS, taking into account the principles of equal treatment of the BIDDERS and fair competition.

### **3. Principles of the DIALOGUE**

- 3.1. The OWNER may discuss all the terms and conditions of the BIDDING DOCUMENTS with the invited BIDDERS during the DIALOGUE, provided that the DIALOGUE is conducted in the scope and manner specified in the invitation.
- 3.2. The OWNER shall not provide information in a manner that may give some BIDDERS an advantage over other BIDDERS.
- 3.3. The exchange of the information in the course of the DIALOGUE is confidential.
- 3.4. The DIALOGUE shall be conducted in accordance with the schedule in the form and scope specified in the invitation.



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- 3.5. The OWNER may at any time decide to terminate the DIALOGUE earlier if it decides that, based on the information obtained during the DIALOGUE, it is able to identify the solution(s) that best meet the OWNER's needs.

**4. Conclusion of the DIALOGUE and invitation to submit a TECHNICAL BID**

- 4.1. The OWNER shall simultaneously inform all participating BIDDERS of the end of the DIALOGUE.
- 4.2. Following the DIALOGUE, the OWNER shall provide to the BIDDER(S) participating in the DIALOGUE an invitation to submit TECHNICAL BIDS setting out the requirements of the OWNER in an unambiguous and exhaustive manner, using precise and understandable terms, taking into account all the challenges and circumstances that may affect the development of the bid. The invitation shall indicate in particular the date, manner and form of submission of TECHNICAL BIDS, reference number on the CONNECT platform under which the PROCEDURE is being conducted at the current stage and shall include at least:
- 4.2.1. the final draft of the EPC CONTRACT, including
    - provisions regarding necessary license – in the event the BIDDER is the licensor,
    - final provisions on the modifications of the EPC CONTRACT, with the reservation that regardless of the results of the DIALOGUE, the EPC CONTRACT modifications will be allowed at least on the terms specified in sec. 9.
  - 4.2.2. the final draft of the license agreement to be concluded between the BIDDER as a licensee and the entity being licensor – in the event the BIDDER is not a licensor,
  - 4.2.3. a template of the declaration of the entity with which the BIDDER will conclude license agreement reflecting provisions of the final draft of the license agreement specified in sec. 4.2.2 above. The OWNER will require the BIDDER, who's EPC BID has been selected as the most advantageous, to conclude such license agreement as well as to transfer the rights thereunder to the OWNER at the day of signing the EPC CONTRACT at latest,
  - 4.2.4. a final description of the subject matter of the EPC CONTRACT described in an unequivocal and exhaustive manner, by means of sufficiently precise and



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comprehensible terms, taking into account the requirements, circumstances, and relevant documents which could affect the preparation of a tender,

4.2.5. requirements concerning a bid bond and a contract performance guarantee where the OWNER provides for an obligation to lodge a bid bond or the contract performance guarantee,

4.2.6. period of validity of the EPC BIDS,

– in an up-to-date version, i.e., considering changes, clarifications, or additions made as a result of the DIALOGUE.

4.3. The invitation to submit a TECHNICAL BID shall specify the date, manner, and form of submission of the TECHNICAL BIDS, the weighting of the contract award criteria if it has not been determined at an earlier stage of the PROCEDURE.

4.4. The BIDDERS may request clarification of the wording of the Invitation and its appendices under the terms of sec. 8 ITB COMMUNICATION AND CLARIFICATIONS.

## **5. TECHNICAL BID examination and evaluation**

5.1. The OWNER shall examine and evaluate the TECHNICAL BIDS based on the grounds for rejection and bid evaluation criteria set out in the Invitation.

5.2. The OWNER may call upon the BIDDER(S) for clarification of the content of the submitted TECHNICAL BID(S), subject to:

5.2.1. during the process of clarification of the content of the submitted TECHNICAL BID, no negotiation between the OWNER and the BIDDER concerning the submitted TECHNICAL BID is permitted, subject to point 5.2.2.;

5.2.2. while clarifying the content of the TECHNICAL BID, it shall only be possible to modify it in the event of a clerical or calculation error, provided that it is an obvious error that the OWNER is able to correct on the basis of the information available to it. In such a case, the OWNER shall set the BIDDER a reasonable period in which to agree to or challenge the correction of the error in the TECHNICAL BID. Failure to respond within the specified period shall be deemed to be consent to the correction of the error.

## **6. COMMERCIAL BID submitting, examination and evaluation**

6.1. A BIDDER whose TECHNICAL BID is not rejected will be invited to submit a COMMERCIAL BID.



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- 6.2. The invitation shall state the date, manner, and form for submission of COMMERCIAL BID.
- 6.3. The OWNER shall examine and evaluate the COMMERCIAL BIDS based on the grounds for rejection and bid evaluation criteria set out in the invitation. Point 5.2. shall apply accordingly.
- 6.4. If the offered price seems to be abnormally low in relation to the subject matter of the EPC CONTRACT, i.e., in particular, it differs by more than 30% from the arithmetic mean of the prices of all valid bids that are not subject to rejection, or raises doubts in the OWNER as to the possibility of performing the subject matter of the contract in accordance with the requirements specified in the invitation or resulting from separate regulations, the OWNER shall demand that the BIDDER submit clarifications, including submitting evidence as to the calculation of the price or cost, within a specified time limit. The OWNER shall assess these explanations in consultation with the BIDDER and may only reject that bid if the explanations submitted together with the evidence do not justify the price quoted in that bid.

**7. The grounds for rejection and bid evaluation criteria**

- 7.1. The OWNER shall reject an EPC BID when:
- 7.1.1. submitted after the deadline for EPC BID submission;
  - 7.1.2. submitted by the BIDDER:
    - 7.1.2.1. subject to exclusion on the basis established in sec. 12 ITB.
    - 7.1.2.2. who has not demonstrated fulfilment of the conditions for participation established in sec. 13 ITB.
  - 7.1.3. it is invalid under separate provisions;
  - 7.1.4. its content does not comply with the terms of the invitation;
  - 7.1.5. it has not been developed or provided in accordance with the technical and organisational requirements for the development or provision of bids by electronic means of communication specified by the OWNER;
  - 7.1.6. has been submitted as an act of unfair competition within the meaning of the act of 16 April 1993 on combating unfair competition;
  - 7.1.7. it contains an abnormally low price or cost in terms of the subject matter of the EPC CONTRACT;
  - 7.1.8. was submitted by a BIDDER not invited to submit a EPC BID;
  - 7.1.9. contains errors in the price calculation;





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- 7.1.10. the BIDDER contested the correction of the error within the deadline;
  - 7.1.11. the BIDDER has not lodged a bid bond, if required, or has lodged it incorrectly or has failed to maintain the guarantee continuously until the expiry of the deadline for the bid submission;
  - 7.1.12. the acknowledgement of the EPC BID would undermine public safety or a vital national security interest, and that safety or interest cannot otherwise be ensured;
  - 7.1.13. The EPC BID includes IT devices or software identified in the recommendation referred to in Article 33(4) of the Act of 5 July 2018 on the National Cyber Security System, stating their negative impact on public security or national security.
- 7.2. The OWNER shall evaluate the EPC BIDS on the basis of bid evaluation criteria, the final content of which shall be formulated at the latest in the invitation to submit EPC BIDS. In particular, the OWNER shall provide a detailed description of the criteria, the manner in which the points will be awarded, and the weightings.
- 7.3. The OWNER declares that the BID evaluation criteria will be as follows, in order of importance from high to low, as it is not possible to provide their weightings at this stage:
- 7.3.1. Cost (C)
  - 7.3.2. Proposed technology (T)
  - 7.3.3. Energy efficiency (EE)
  - 7.3.4. Impact on the natural environment (NE)
  - 7.3.5. Experience (E)
- 7.4. From among EPC BIDS that are not subject to rejection, the OWNER shall select the most advantageous EPC BID that has scored the highest number of points awarded on the basis of the BID evaluation criteria set out in accordance with the principles described in the previous points.
- 7.5. If the most advantageous EPC BID cannot be selected because two or more EPC BIDS present the same balance of price or cost and other contract award criteria, the OWNER shall select from among those EPC BIDS the one with highest score in the criterion Cost (C).

## **8. Electronic auction and final provisions**

- 8.1. Before selecting the most advantageous EPC BID, the OWNER may decide to hold an electronic auction. The OWNER shall simultaneously invite to the electronic auction all





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the BIDDERS which have submitted non-rejectable TECHNICAL BIDS and COMMERCIAL BIDS.

- 8.2. In the invitation to the electronic auction, the OWNER shall inform the BIDDER of:
- 8.2.1. the result of the examination and evaluation of the EPC BID of that BIDDER;
  - 8.2.2. minimum values of the bid increments submitted in the course of an electronic auction;
  - 8.2.3. the opening date of the electronic auction;
  - 8.2.4. the date and conditions for closing the electronic auction;
  - 8.2.5. the manner of evaluation of EPC BIDS in the course of the electronic auction;
  - 8.2.6. a mathematical formula to be used in the electronic auction to automatically create subsequent classifications on the basis of new prices or values presented;
  - 8.2.7. a timetable for each stage of the electronic auction.
- 8.3. During the course of the electronic auction, the OWNER shall provide the BIDDER on ongoing basis with information enabling it to determine the position of its EPC BID in the classification of EPC BIDS.
- 8.4. Until the electronic auction is closed, no information shall be disclosed enabling the identification of BIDDERS participating in a given stage of the electronic auction.
- 8.5. The EPC BID of the BIDDER ceases to be binding in the event it submits a more advantageous EPC BID during the electronic auction.
- 8.6. If the failure of the ICT system results in the interruption of the electronic auction, the OWNER shall set a date for the continuation of the electronic auction for the following working day after the failure has been remedied, taking into account the status of EPC BIDS after the last approved bidding.
- 8.7. Prior to the selection of the most advantageous EPC BID, the OWNER may, in order to confirm the financial commitments or other conditions set forth in the bid, negotiate the final terms and conditions of the EPC CONTRACT with the BIDDER whose bid scored highest, provided that this does not result in changes to the essential components of the bid or in changes to the needs and requirements set out in the contract notice or in the description of needs and requirements, or lead to distortion of competition or the unequal treatment of the BIDDERS.

**9. The minimum allowable scope of modifications to the EPC CONTRACT**

- 9.1. It is permissible to modify the EPC CONTRACT:



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9.1.1. where it concerns the performance, by the BIDDER, of additional supplies, services or works which were not included in the EPC CONTRACT, provided that they have become necessary and all following conditions are met:

9.1.1.1. the change of the BIDDER shall not be made for economic or technical reasons, in particular as regards the interchangeability or interoperability of equipment, services or installations ordered under the EPC CONTRACT,

9.1.1.2. the change of the BIDDER would result in a significant inconvenience or significant increase in costs for the OWNER,

9.1.1.3. the price increase due to each subsequent modification shall not exceed 50% of the value of the EPC CONTRACT ;

9.1.2. if the need to modify the EPC CONTRACT is caused by circumstances which the OWNER, acting with due diligence, could not foresee, unless the modification alters the general nature of the EPC CONTRACT and the price increase caused by any subsequent modification does not exceed 50% of the value of the EPC CONTRACT.

9.2. It is permissible to modify the EPC CONTRACT irrespective of the value of the modification, when it is provided for in the EPC CONTRACT, in the form of clear, precise and unambiguous contractual provisions.