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## REQUEST FOR PROPOSAL NO. 1/2024/T

Implemented as part of the project: *“Improvement of efficiency of intermodal transport services through the expansion of terminal infrastructure of METRANS (Polonia) Sp. z o.o. in Gądku near Poznań”* with respect to which the Ordering Party has applied for project financing as part of competition no. KPOD.09.09-IW.02-001/24, recruitment - Investments: E2.1.3 – Intermodal transport within Poland’s National Recovery and Resilience Plan /component E

### I. ORDERING PARTY

**METRANS (Polonia) Sp. z o.o.**

ul. Żelazna 28/30  
00-832 Warszawa  
NIP: 5260210820  
REGON: 010057044

### II. CONTRACT AWARD PROCEDURE

1. The Ordering Party is not an entity being obliged to apply the provisions of the Public Procurement Law dated 11 September 2019 (Journal of Laws of 2023, item 1605, as amended).
2. The contract will be awarded in accordance with the *Procedure for awarding contracts* of METRANS (Polonia) Sp. z o.o. dated 21 August 2024, and on the terms specified in this procedure.

### III. DESCRIPTION OF THE SUBJECT OF THE CONTRACT

1. **Type of contract:** delivery
2. **Name and code according to the Common Procurement Vocabulary (CPV)**  
42414210-6      Gantry bridges
3. **The subject of the contract** is the preparation of the design, delivery, assembly and putting into service two complete electric rail mounted gantry (RMG) cranes with rated capacity of 37 tons under the spreader, equipped with devices enabling the installation of the automated container handling system, with remote operation station (ROS) comprising two workstations with the necessary equipment enabling the provision of reloading services in accordance with the Detailed Technical Specification, which constitutes schedule no. 1 to this Request for Proposal (hereinafter: **“Subject of the Contract”**).

Within the scope of the contract the Supplier will be obliged to:

- 1) Prepare the design of gantry cranes in accordance with the requirements of METRANS, prepare and deliver technical documentation concerning the devices (Technical Supervision

Office (UDT), occupational health and safety (BHP), fire protection) in paper and electronic form in Polish and in English.

- 2) Manufacture two RMG cranes with necessary equipment and remote operation station (ROS), in accordance with the specification.
  - 3) Hook up the cable terminal to power supply, and equip the gantry crane with a power cable, cable winding devices, medium voltage junction boxes (sockets) and optic fiber, funnel – an element leading cables outside the power chamber.
  - 4) Carry out technological start-ups and necessary operational tests and required handover procedures.
  - 5) Train personnel designated by the Ordering Party with respect to management, operation and maintenance of the gantry crane at the terminal, prepare service and operating instruction manual.
  - 6) Obtain documents required for approval of each device from the relevant authority with permission to use.
4. Supplier guarantees that the machines and devices supplied by it will be brand new, free from any physical and legal defects, and in particular that they do not infringe any third party intellectual property rights and any economic copyrights, trademark protection rights, patents or rights from registration of industrial designs/utility models.
  5. The Ordering Party requires the Subject of the Contract to meet the DNSH principle (Do No Significant Harm).
  6. Whenever in the specification of the Subject of the Contract the Ordering Party used any proper names, the Ordering Party allows for the possibility of submitting an offer providing for equivalent elements. The Ordering Party specified reference manufacturers/suppliers and indicated catalogue numbers of particular elements from the catalogue indicated by the manufacturer/supplier only in order to illustrate, by way of example, which items meet the Ordering Party's requirements. The Ordering Party allows for the possibility of offering other elements and components, equivalent in terms of quality, operational and technical aspects to those indicated by the Ordering Party. When submitting an offer providing for equivalent elements the Supplier must meet the boundary conditions specified in this Request, otherwise the bid being rejected on the grounds that it does not comply with the Request. When offering an equivalent solution the Supplier is obliged to demonstrate the equivalence with respect to the indicated parameters which must be at a level not worse than the parameters indicated by the Ordering Party.

**7. Maximum time limit for execution of the Subject of the Contract**

- 1) Supplier is obliged to deliver, install, start and obtain the required decisions/approvals within max. 14 months from the date of entry in force of the Conditional Agreement for execution of the Subject of the Contract, but not later than until 20 June 2026.

The order shall be deemed executed on the date on which the Ordering Party signs a handover protocol concerning the Subject of the Contract.

By this date the Supplier is obliged to fully complete works and comply with all formalities constituting contractual obligations, and in particular to start up the gantry cranes and obtain final permissions to use and approvals of the relevant authorities.

8. **Place of execution of the Subject of the Contract:** Greater Poland Voivodeship, 62-023 Gądk, ul. Magazynowa 8 – METRANS container terminal.
9. **Quality guarantee:** The Ordering Party requires the Supplier to grant a min. 24 month warranty for the Subject of the Contract, calculated from the date of execution of the handover protocol

concerning the Subject of the Contract, on the terms specified in point 9 of the Detailed Technical Specification which constitutes schedule no. 1 to this Request for Proposal.

10. The Ordering Party **does not allow for the possibility** of submitting partial offers.

11. The Ordering Party **does not allow for the possibility** of submitting optional offers.

#### **IV. GROUNDS FOR EXCLUSION FROM PARTICIPATION IN THE PROCEDURE**

1. Suppliers having capital or personal links, being understood as mutual links between the Ordering Party or persons authorized to incur obligations on behalf of the Ordering Party or persons who perform, on behalf of the Ordering Party, any activities related to the Supplier selection procedure, on the one hand, and the Supplier, on the other hand, shall be excluded from participating in the bidding procedure; such links consist in particular of:
  - a) participation in a company as a partner of a civil law company or partnership,
  - b) holding at least 10% of shares or stock (unless a lower threshold arises from the provisions of law)
  - c) acting as a member of the supervisory or management board, registered proxy, attorney-in-fact,
  - d) being married to, being in a direct line of kinship or affinity, consanguinity or affinity in the collateral line up to the second degree, or relation arising from adoption, custody or guardianship, or cohabitation with the Supplier, his legal representative, or members of management or supervisory boards of the Suppliers applying for the award of the contract,
  - e) remaining in such legal or actual relationship with the Supplier that there is reasonable doubt as their impartiality or independence in connection with the procedure for awarding the contract.
2. Suppliers who are subject to exclusion from the bidding procedure on the following grounds shall be excluded from participating in the bidding procedure: pursuant to Article 5k of the Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1), hereinafter: Regulation 833/2014, as amended by the 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, 8.4.2022, p. 1), hereinafter: Regulation 2022/576, i.e., the Ordering Party excludes the following persons from participating in the procedure:
  - a) Russian nationals or natural persons residing in Russia and legal persons, entities or bodies established in Russia,
  - b) legal persons, entities or bodies whose proprietary rights are directly or indirectly owned for more than 50 % by any entity referred to in subpoint a) of this point;
  - c) legal persons, entities or bodies acting on behalf of or controlled by any entity referred to in subpoints (a) and (b) of this point, including Subcontractors or Suppliers, if more than 10% of the contract value is attributable to them.
3. Suppliers who are subject to exclusion from the bidding procedure on the following grounds shall be excluded from participating in the bidding procedure: pursuant to Article 7 sec. 1 of the Act of 13 April 2022 on specific solutions for counteracting support of Russia's aggression against Ukraine and intended to protect national security (Journal of Laws of 2022, item 853), i.e., the Ordering Party excludes:

- a) any Supplier entered on the lists specified in the Regulation 765/2006 and the Regulation 269/2014 or entered on any list on the basis of a decision regarding entry on the list and application of an appropriate measure, as referred to in Article 1 point 3 of the Act,
  - b) any Supplier whose beneficial owner, within the meaning of Act of 1 March 2018 on counteracting money laundering and financing terrorism (Journal of Laws of 2022, item 593 and 655) is a person entered on the lists specified in the Regulation 765/2006 and Regulation 269/2014, or entered on any list or being such beneficial owner since 24 February 2022, as long as such person has been entered on any list on the basis of a decision regarding entry on the list and application of an appropriate measure, as referred to in Article 1 point 3 of the Act,
  - c) any Supplier whose parent company, within the meaning of Article 3 sec. 1 point 37 of the Accounting Act dated 29 September 1994 (Journal of Laws of 2021, item 217, 2105 and 2106) is an entity entered on the lists specified in the Regulation 765/2006 and Regulation 269/2014, or entered on any list or being such beneficial owner since 24 February 2022, as long as such person has been entered on any list on the basis of a decision regarding entry on the list and application of an appropriate measure, as referred to in Article 1 point 3 of the Act.
4. In order to demonstrate that there are no grounds for exclusion from this contract award procedure, as referred to in point 1 above, a Supplier should submit, along with its offer, its declaration regarding the absence of grounds for exclusion in accordance with the template included in the part “Declaration regarding the absence of links with the Ordering Party”, and “Declaration regarding the absence of grounds for exclusion” of Schedule no. 2 to the Request for Proposal “Offer Form”.
  5. An offer of the excluded Supplier shall be deemed rejected.

## V. CONDITIONS OF PARTICIPATION IN THE PROCEDURE AND DESCRIPTION OF THE METHOD OF ASSESSMENT OF THEIR FULFILLMENT

1. Suppliers who meet the condition consisting of **having experience necessary to perform the contract** may participate in the contract award procedure.  
The Ordering Party shall consider that the Supplier meets the above condition if the Supplier demonstrates that within the last 3 years before the expiration of the deadline for submitting offers and – if the period of its activity is shorter – within such period, it performed at least:
  - a) 2 contracts consisting of production, delivery and assembly of a total of at least four container cranes, each with a storage height of at least 3+1, load capacity of at least 37 tons, intended to reload intermodal containers and intermodal semi-trailers with a remote operation station (ROS), automatic crane, trolley and winch positioning function and an automated container handling system.
2. In order to assess whether the Supplier meets the condition specified in point 1. above, the Supplier shall submit, together with its offer, a list of contracts performed using Schedule no. 3 to the Request for Proposal “List of completed contracts”. The list should be accompanied with credentials (issued in Polish, English or German by the recipients of devices) confirming that deliveries have been duly completed and containing information concerning the subject of the contract, technical parameters, date.

3. In the event of a joint application for awarding the contract, at least one Suppliers is obliged to meet the conditions specified w sec. 1. above.
4. The assessment whether the condition of participation in the procedure referred to in point 1 above is met will be carried out through checking whether the declarations submitted by the Supplier confirm the fulfilment of the condition of participation in the procedure, in accordance with the formula “meets – does not meet”.
5. An offer of any Suppliers who does not meet the participation condition specified w point 1 above will be rejected.

## **VI. JOINT APPLICATION FOR AWARDING A CONTRACT**

1. Suppliers may jointly apply for awarding this contract.
2. Suppliers jointly applying for the award of the contract must appoint and indicate a proxy to represent them in this contract award procedure or to represent them in the procedure and at the conclusion of the agreement. The document confirming the appointment of a proxy should contain the number of this Request for Proposal, the appointed proxy and the scope of his/her authority and should be signed by all Suppliers jointly applying for the award of the contract. Further, Suppliers should submit a declaration of acceptance of joint and several liability for performance or improper performance of the contract, signed by all Suppliers jointly applying for the award of the contract.
3. Each of the Suppliers jointly applying for the award of the contract shall submit a separate “Declaration of the absence of grounds for exclusion from the procedure” in the form of Schedule no. 2 to the Request for Proposal “Offer Form”;
4. Any correspondence in the course of the procedure will only be conducted with the proxy referred to in sec. 2.

## **VII. MANNER OF PREPARATION OF AN OFFER**

1. A bid submitted by Supplier should be made using the form constituting *Schedule no. 2* to the Request for Proposal – “*Template of the Offer Form*”.
2. The Ordering Party recommends using the forms attached to this Request for Proposal. It is allowed to submit attachments prepared by the Supplier individually, provided that they contain all required information and declarations included in the Ordering Party’s forms.
3. Bids should be made in Polish or English. Documents in other languages should be submitted with a translation into Polish.
4. An offer and schedules to the offer must be signed by the authorized representative(s) of the Supplier in accordance with the Supplier’s representation method specified in the registration document of the Supplier or by the proxy, in a manner enabling identification of the signatory.
5. The Ordering Party recommends that each offer page containing text (with schedules to the offer) should be numbered consecutively.
6. The completed Offer Form should be accompanied by:
  - 6.1 Declaration of fulfillment of information obligations provided for in Article 13 or Article 14 of the GDPR, the text of which is reflected in *Schedule no. 2* to the Request for Proposal - “*Template of the Offer Form*”.
  - 6.2 Declaration of the absence of grounds for exclusion from the procedure in accordance with the template included in the part “Declaration of no links with the Ordering Party” and

“Declaration of the absence of grounds for exclusion” of Schedule no. 2 to the Request for Proposal “Offer Form”;

- 6.3 List of completed contracts in the form of Schedule no. 3 to the Request for Proposal “List of completed contracts”;
- 6.4 Technical Specification of the Subject of the Contract which will make it possible to verify the requirements and parameters of the Subject of the Contract expected by the Ordering Party – Supplier’s own schedule.
- 6.5 If the offer is signed, on behalf of the Supplier, by the proxy (a person not authorized to take such actions in the registration documents of the Supplier) a scan of an appropriate power of attorney must be attached to the offer.
7. The Ordering Party informs that bids submitted in the procurement procedure are public and are made available from the moment they are opened. Offers are made available at the written request of the Suppliers who submitted bids in the course of the procedure, except for information constituting a trade secret within the meaning of the regulations on combating unfair competition, if no later than on the date of submission of bids the Supplier stipulated that the information cannot be disclosed and demonstrated that the proprietary information constitutes a trade secret. A trade secret within the meaning of the Act of 16 April 1993 on combating unfair competition (consolidated text: Journal of Laws of 2020, item 1913, as amended) shall be understood as any technical, technological, organizational, business and other information of economic value, not disclosed to the public, with respect to which an entrepreneur has taken necessary steps to maintain its confidentiality.
8. If an offer contains any information constituting a trade secret within the meaning of the regulations on combating unfair competition, the Ordering Party recommends that the privileged information should be sent by the Supplier in a separate file or mail with the inscription: “trade secret”, separately from the other public elements of the offer, in a way that raises no doubts which information included in the offer constitute such secret. Pages containing information referred to in the previous sentence should be separately connected to each other, but should be numbered maintaining the continuity of the page number of the offer.
9. Supplier cannot stipulate that any information concerning the price, name (business name), address, completion date, warranty period constitutes privileged information.
10. Supplier may only submit one offer.
11. Prior to the expiration of the deadline for submitting bids Supplier may amend or withdraw its offer.
12. Supplier shall bear all costs related to the preparation and submission of the offer.

### **VIII. OFFER VALIDITY PERIOD**

1. Supplier shall be bound by its bid for **120 days**.
2. The offer validity period shall start to run upon the lapse of the deadline for submission of offers.
3. Supplier, at the request of the Ordering Party, may extend the offer validity period, provided that the Ordering Party may ask the Supplier to grant its consent to the extension of such period by a specified time only once, at least 3 days prior to the expiration of the offer validity period.

### **IX. PLACE AND DATE OF SUBMITTING OFFERS**

1. Offers constituting a response to the Request for Proposal should be submitted through the Competitiveness Base (hereinafter: the **“Competitiveness Base”**)

<https://bazakonkurencyjnoscifunduszeuropejskie.gov.pl/> via the tab “OFFERS” available in the Request for Proposal card (announcements). The detailed instruction for Supplier how to register in the Competitiveness Base and how to add an offer is available at: <https://bazakonkurencyjnoscifunduszeuropejskie.gov.pl/pomoc/50-dodanie-oferty-do-ogloszenia>.

2. The deadline for submitting offers is specified in the announcement published in the Competitiveness Base.
2. An offer with the required schedules must be submitted in the form of a scan of a bid made in writing or in the form of a bid made in electronic form, signed by a qualified electronic signature.
3. The date of submission of an offer shall be understood as the date and time of sending it through the Competitiveness Base in accordance with sec. 1 above.
4. A bid submitted after the deadline shall not be considered.
5. The Ordering Party reserves the right to extend the deadline for submitting offers. In any such case it shall post an appropriate information in the Competitiveness Base at: <https://bazakonkurencyjnoscifunduszeuropejskie.gov.pl/> in the announcement.

## X. OFFER ASSESSMENT CRITERIA AND THE METHOD OF CARRYING OUT THE ASSESSMENT

1. Bids prepared in accordance with the requirements specified in point VII of this Request for Proposal by Suppliers not subject to exclusion from the procedure in accordance with point IV of this Request for Proposal and meeting the condition of participation in the procedure specified in point V of this Request for Proposal shall be assessed according to the following criteria:

OFFER ASSESSMENT CRITERION	SCORE VALUE	DESCRIPTION OF THE METHOD OF AWARDED POINTS FOR MEETING A GIVEN CRITERION OF ASSESSMENT OF OFFERS
<b>Total gross price (<math>K_{price}</math>)</b>	100	<p>In the criterion “Total gross price” the Ordering Party will carry out an assessment, on the basis of information provided by the Supplier in the Offer Form, constituting Schedule no. 2 to this Request for Proposal.</p> <p>In the Offer Form the Supplier is obliged to indicate the net price, the applicable VAT rate and the gross value inclusive of VAT, rounded to two decimal places while maintaining the mathematical rule for rounding numbers. Correct determination of VAT is the responsibility of the Supplier. Foreign Suppliers who, on the basis of separate regulations, are not obliged to pay taxes in Poland, should only indicate the net price. For the purposes of comparing offers, the Ordering Party shall add, to the indicated net offer price of foreign Suppliers, the amount of the applicable (to the Ordering Party in connection with the performance of the agreement) tax on goods and services and customs duty, if any, which the Ordering Party would be obliged to settle in accordance with the applicable regulations.</p> <p>The gross price is the final price including all costs and price-setting components related to the execution of the Subject of the Contract. Supplier is obliged to include in the offer price all costs necessary to properly, fully and timely execute the subject of the Contract, arising from the conditions and obligations specified in the Request for Proposal and schedules hereto, as well as its own knowledge and experience.</p> <p>There can only be one price of the subject of the contract and no price variations are allowed. In order to compare offers, the gross offer price in PLN will be taken into consideration. If Supplier expresses the price in a currency other than PLN, the Ordering Party will adopt an average exchange rate of the National</p>



		<p>Bank of Poland (NBP), which is available at: <a href="http://www.nbp.pl">www.nbp.pl</a>, published on the date of publication of the Request for Proposal in the Competitiveness Base, as the exchange rate to be used to convert such currency.</p> <p>The score value in this criterion will be calculated as follows:</p> $K_{\text{price}} = \frac{\text{total gross price of the cheapest of the submitted offers}}{\text{total gross price of the examined offer}} \times 100$ <p>An offer may be awarded max. 100 points for the criterion "Total gross price".</p>
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2. An offer submitted as part of the Subject of the Contract may score max. 100 points.
3. The final score obtained by a given offer will constitute the sum of points awarded in the above-indicated criteria (i.e.  $K_{\text{price}}$ ). Scores will be rounded up to two decimal places.
4. The offer which has been submitted by Supplier not subject to exclusion in the procedure and which has scored the greatest number of points in the course of the assessment will be considered as the most advantageous offer.
5. If the Ordering Party is not able to select the best offer due to the fact that two or more offers present the same balance of the price and other bid assessment criteria, the Ordering Party will choose, from among such offers, the offer with the lowest price, and if offers providing for the same price have been submitted, the Ordering Party shall request Suppliers who submitted such offers, to provide additional offers. Suppliers submitting additional bids cannot offer prices higher than the ones offered in the previously submitted bids.
6. With respect to Suppliers who submitted offers within the specified deadline, but such offers do not contain the required documents and declarations or the submitted documents and declarations are incomplete, contain errors or raise doubts indicated by the Ordering Party, the Ordering Party shall request them to submit missing documents or declarations, or to supplement or correct them or to provide explanations within the deadline indicated by the Ordering Party, unless despite the submission, supplementation or correction of such documents or provision of explanations the Supplier's offer is subject to rejection or it would be necessary to invalidate the procedure. Supplier's failure to meet the deadline indicated by the Ordering Party will result in the rejection of the offer. Only deficiencies or errors of a formal nature may be supplemented, corrected or explained. It is not allowed to change the conditions of the submitted bid.
7. With respect to Supplier whose offer may contain an abnormally low price in relation to the Subject of the Contract, the Ordering Party reserves the right to request such Supplier, in the manner described in point 6 above, to provide appropriate explanations and present the method of calculation of the gross price of the contract. A price may be considered to be abnormally low if it is lower by at least 30% from the estimated value of the contract or the arithmetic average of the prices of all submitted offers that are not subject to rejection. The Ordering Party shall reject an offer of the Supplier who has not provided explanations, has not provided them within the indicated deadline or if the assessment of the provided explanations with the delivered evidence confirms that the offer contains an abnormally low prices with respect to the Subject of the Contract. The obligation to demonstrate that the offer does not contain an abnormally low price rests with the Supplier.
8. The Ordering Party will post information on the results of the procedure in the Competitiveness Base at: <https://bazakonkurencyjnosci.funduszeuropejskie.gov.pl> in the "OFFERS" card of the announcement.
9. The Ordering Party reserves the right to invalidate or cancel the procedure at any phase thereof if:
  - a. no bid has been submitted or no bid which is not subject to rejection has been submitted;



- b. the price of the most advantageous offer or the offer with the lowest price exceeds the amount which the Ordering Party intends to use to finance the contract, unless the Ordering Party can increase such amount to the price of the most advantageous offer;
- c. the procedure is affected by an irreparable defect which makes it impossible to award the contract while respecting the principles of fair competition and equal treatment of Suppliers or the applicable provisions of law;
- d. a significant change of circumstances occurred which causes that the conduct of the procedure or the execution of the contract is not in the interest of the Ordering Party, which could not have been predicted at the time of publication of the Request for Proposal.

Suppliers shall have no claims against Ordering Party in the event that the Ordering Party exercises any rights indicated in the previous sentence.

## **XI. EXPLANATIONS OF THE REQUEST FOR PROPOSAL AND THE METHOD OF COMMUNICATION OF THE ORDERING PARTY WITH THE SUPPLIER**

1. Supplier may approach the Ordering Party with a request for explanation of the Request for Proposal with the intermediation of the Competitiveness Base via the tab “**QUESTIONS**”, available in the Request for Proposal card (announcements). A detailed instruction how to ask questions through the Competitiveness Base is available at: <https://bazakonkurencyjnosci.funduszeuropejskie.gov.pl/pomoc/53-zadawanie-pytan>.
2. The Ordering Party shall provide explanations no later than 2 days before the lapse of the deadline for submitting offers, provided that the request to provide explanations regarding the Request for Proposal has been submitted to the Ordering Party no later than until the end of the day on which half of the deadline for submitting offers expires. If the request for explanation of the Request for Proposal is received by the Ordering Party at a later date or concerns the explanations provided, the Ordering Party may provide explanations or leave the request without consideration.
3. The Ordering Party shall post the explanations and answers in the Competitiveness Base in the tab “**QUESTIONS**” available in the Request for Proposal card (announcements). Explanations and answers will constitute an integral part of the Request for Proposal no. 1/2024/T.
4. The Ordering Party reserves the right, at any time before the lapse of the deadline for submitting offers, to change or supplement the Request for Proposal. In the event of such change or supplementation, information thereof shall be immediately reflected in the announcement posted in the Competitiveness Base.
5. If the change referred to in point 4 above makes it necessary to modify the offers, the Ordering Party shall simultaneously extend the deadline for submitting offers in the manner described in point 4.
6. The extension of the deadline for submitting offers shall not affect the deadline for submitting the request referred to in point 2 above.

## **XII. MATERIAL TERMS OF THE SUBJECT OF THE CONTRACT, FORMALITIES RELATED TO THE EXECUTION OF THE CONTRACT AND THE AGREEMENT**

### **1. ASSEMBLY AND START-UP**

- a) As part of the Subject of the Contract the Supplier is obliged to install the delivered machines and devices and ensure the participation of a sufficient number of appropriately qualified and competent personnel in the assembly and start-up process. The Ordering Party

guarantees proper cooperation of the personnel designated to carry out the assembly, in particular that such personnel shall follow Supplier's instructions and guidance; in the event of any delay in assembly arising from reasons attributable to the personnel of the Ordering Party the deadlines provided for by the time schedule shall be appropriately adjusted. In the event of any delay caused by reasons attributable to the personnel of the Ordering Party, no sanctions related to the delay in assembly shall be imposed on the Supplier.

- b) Supplier shall ensure personnel necessary to perform the contract.

## 2. TERMS OF ACCEPTANCE OF THE SUBJECT OF THE CONTRACT

- a) The Ordering Party may at any time request from the Supplier an inspection of the progress of execution of the Subject of the Contract, and the Supplier should immediately enable the Ordering Party to carry out such inspection, no later than within 7 calendar year from making such request by the Ordering Party.
- b) The test shall be conducted directly after the completion of the startup tests and delivered to the Ordering Party by Supplier well in advance. During the test the operational personnel must follow instructions of the supervision inspectors of the Supplier's installation.
- c) The condition and compliance of the Subject of the Contract delivered to the Ordering Party with the terms set out in the Request for Proposal and in the Specification of the Subject of the Contract will be confirmed by the execution of a faultless Handover Protocol (hereinafter: the "**Handover Protocol**")
- d) If machines and devices covered by the Subject of the Contract do not meet all technical conditions described in the Detailed Technical Specification constituting Schedule no. 1 to the Request for Proposal, then the Ordering Party is entitled to:
  - i. refuse to sign the final handover protocol if there are any defects/flaws:
    - preventing machines and devices from being used in accordance with the terms specified in point 2 d) above, and the Supplier's offer,
    - adversely affecting the functionality and/or suitability of the installation for the Ordering Party's purposes as indicated in the Request for Proposal, or in the event that the Subject of the Contract is not complete, until such defects are removed
  - or
  - ii. sign the final handover protocol with comments, with indication of flaws/defects.
- e) Any flaws/defects of machines and devices indicated in the final handover protocol (both the final handover protocol signed by the Ordering Party with indication of flaws/defects and the final handover protocol not signed by the Ordering Party with justification of the refusal to sign it) should be removed by Supplier, at its expense, within 30 days from the date of drawing up the final handover protocol.

## 3. PAYMENT TERMS

The price (contractual remuneration) shall be paid in installments on the basis of appropriate VAT invoices issued by the Supplier after the fulfilment of the conditions of payment of the respective installment, as described below:

- a) 30% (in words: thirty percent) payable in advance, within 7 days from the date of entry into force of the agreement for execution of the subject of the contract,
- b) 20% (in words: twenty percent) payable in advance at the halfway point of the deadline for delivery on the basis of the approved production and delivery schedule,

- c) 30% (in words: thirty percent) after confirmation by supplier of its readiness to carry out the delivery;
  - d) 20 % (in words: twenty percent) after the assembly, start-up of all devices comprising the Subject of the Contract and acceptance thereof;
- 4. **WARRANTY** - In accordance with point 9 of the Detailed Technical Specification constituting schedule no. 1 to this Request for Proposal.
- 5. **TRAINING OF THE ORDERING PARTY'S EMPLOYEES:** As part of the Subject of the Contract Supplier is obliged carry out a training for employees of the Ordering Party with respect to management, operation and maintenance of the gantry crane at the terminal, and prepare an operation and maintenance manual.
- 6. **THIRD PARTY LIABILITY INSURANCE:** Throughout the term of the agreement, i.e., until the date of execution of the final handover protocol, Supplier is obliged to maintain business liability insurance, and insurance for its fixed and current assets related to the Subject of the Contract against any fortuitous events, for an insurance sum equal to the contractual remuneration. Supplier will be obliged to provide a copy of the liability insurance policy confirming that insurance has been taken out no later than on the date of execution of an agreement for execution of the Subject of the Contract.
- 7. **CONTRACTUAL PENALTIES:**
  - a) If the deadlines specified w section III.7 of the Request for Proposal are exceeded by more than 14 days for reasons attributable to the Supplier, then the Ordering Party is entitled, from the 15<sup>th</sup> day, to deduct 0.5% of the total price net of VAT for each commenced day of delay, not to exceed 20 % of the total price net of VAT, without being required to provide evidence of loss.
  - b) If the Documentation is not delivered on time the Ordering Party is entitled to withhold payment for the delivery until the documentation is provided. With respect to revised electrical documentation, the latest submission date is the date of completion of the Contract.
- 8. **FORCE MAJEURE**
  - a) Neither the Ordering Party nor the Supplier (hereinafter: a Party) shall be liable for any damage caused by the occurrence of any force majeure event.
  - b) Force majeure shall be understood as any extraordinary and external event the occurrence and duration of which is beyond a Party's control and which such Party has not been able to prevent despite exercising due care.
  - c) The Party which cannot perform its contractual obligations due to a force majeure event should inform the other Party thereof within 14 days from the date of occurrence of such event. This obligation to inform the other Party shall also apply in case of cessation of such event. The failure of the Party which cannot perform its contractual obligations due to the occurrence of a force majeure event to inform the other Party thereof shall result in the deprivation of such Party of the right to invoke the force majeure event in order to evade liability.

If a force majeure event occurs the time allowed for the Parties to perform their obligations shall be extended by the duration of the force majeure event and the period of removal of its consequences.

## 9. **PERFORMANCE BOND**

- a) No later than upon execution of the agreement Supplier will be obliged to provide a performance bond of 5% of the total price indicated in the offer.

- b) The performance bond should be provided in one or more forms specified in the Civil Code.
- c) The performance bond is intended to cover claims for non-performance or improper performance of the agreement.
- d) If a bid bond is provided in cash, Supplier can agree that the bid bond may be credited towards the performance bond.
- e) The duration of the performance bond must last from the end of the warranty period.
- f) If the Supplier provides security in the form of a bank or insurance guarantee, such guarantee should be unconditional, irrevocable, payable on first demand and each subsequent demand and agreed by the Ordering Party.

#### **10. FORMALITIES RELATED TO THE EXECUTION OF THE ORDER**

- 1) The Ordering Party shall request, in writing or by e-mail, the Supplier whose offer was selected as the most advantageous offer with respect to the Subject of the Contract, to conclude an Agreement for execution of the order and specify the place and date of execution thereof.
- 2) The agreement constitutes a conditional agreement which enters into force as of the date of execution by the Ordering Party of the Agreement for financing of the execution of the project as part of competition no. KPOD.09.09-IW.02-001/24, recruitment - Investments: E2.1.3 – Intermodal transport within Poland's National Recovery and Resilience Plan /component E.
- 3) The agreement shall be in force from the date of entry into force thereof (fulfillment of the condition referred to in sec. 2) until the date of execution of the handover protocol referred to in point III. 7 of this Request for Proposal.
- 4) Within 5 (five) Business Days from the date on which the Ordering Party becomes aware of execution of the Financing Agreement referred to above, the Ordering Party shall inform the Supplier thereof in writing.
- 5) The selected Supplier is obliged to contact the Ordering Party within the deadline indicated in the request to agree on all issues related to the executed agreement.
- 6) If the Supplier whose offer has been selected refrains from signing an agreement with the Ordering Party or evades executing it, the Ordering Party may enter into an agreement with another Supplier which obtained the next highest score in the contract award procedure.
- 7) The formalities to be completed before the execution of the agreement include:
  - a. indication of persons authorized to execute the agreement and presentation of powers of attorney (if the power of attorney must be held in the circumstances),
  - b. indication of banks and account numbers to which performances in money payable to the parties to the agreement are to be transferred.
  - c. delivery of a performance bond.
  - d. submission to the Ordering Party of an agreement regulating the cooperation of the Suppliers jointly applying for awarding the contract.
  - e. delivery of a copy of the insurance agreement (policy). The document confirming the insurance will constitute an appendix to the Agreement.

<b>XIII. TERMS OF AMENDMENT OF THE AGREEMENT EXECUTED AS A RESULT OF THE CONTRACT AWARD PROCEDURE</b>
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1. The Ordering Party reserves the right to change the Agreement in the event of occurrence of at least one of the circumstances listed below, subject to the indicated conditions of making such amendments:
  - 1.1. changes concern the execution of any additional deliveries from the existing Supplier, not covered by the main order, if they have become necessary and the following conditions have been jointly met:
    - a) a change of the Supplier cannot be made due to economic or technical reasons, in particular concerning replaceability or interoperability of equipment, services or installations, ordered as part of the main order,
    - b) a change of the Supplier would cause a significant inconvenience or significant increase in costs for the Ordering Party,
    - c) the value of each subsequent change does not exceed 50% of the contract value initially specified in the Agreement,
  - 1.2. the change does not lead to a change of the nature of the agreement and the following conditions have been jointly met:
    - a) the necessity to change the Agreement is caused by the circumstances which the Ordering Party could not have predicted despite exercising due care,
    - b) the value of the change does not exceed 50% of the contract value initially specified in the Agreement,
  - 1.3. the Supplier to which the Ordering Party awarded the contract is to be replaced by a new Supplier:
    - a) as a result of any merger, demerger, transformation, bankruptcy, restructuring or acquisition of the existing Supplier or its business, as long as the new Supplier meets the conditions of participation in the procedure, there are no grounds for excluding it and it does not involve any other material changes to the agreement,
    - b) as a result of the Ordering Party's assumption of the Supplier's obligations towards its subcontractors. In the event of a change of a subcontractor, the Ordering Party may execute an agreement with a new subcontractor without changing the terms of execution of the order, subject to payments for the works performed thus far,
  - 1.4. the change does not lead to a change of the general nature of the agreement, and the total value of changes is less than the EU thresholds within the meaning of Article 3 of the Public Procurement Law and at the same time is less than 10% of the value of the contract initially specified in the agreement in the case of contracts for services or deliveries, in the case of contracts for construction works, is less than 15% of the value of the contract initially specified in the agreement.
  - 1.5. The deadline for or scope of execution of the Object of Agreement may change in the following situations:
    - a) In the event of Force Majeure, i.e., an extraordinary and external event the occurrence and duration of which is beyond the Ordering Party's or the Supplier's control and which they have not been able to prevent despite exercising due care. In such case the deadline for performance of the Agreement shall be extended by the duration of Force Majeure and the period of removal of the consequences thereof. The term "force majeure" means any circumstances which could not have been predicted at the time of execution of the Agreement and which are caused by extraordinary events such as war, social unrest, fire, flood, earthquake and natural calamities, sudden supply shortages,

epidemic/pandemic, which partially or completely prevent or impede the performance of the Agreement.

- b) In the event of any circumstances beyond the Supplier's or the Ordering Party's control, provided that such change arises from the circumstances which the Supplier or the Ordering Party could not have predicted at the stage of publication of the Request for Proposal or submission of the offer and is not due their fault. The deadline for performance of the Agreement shall be extended by the time necessary to eliminate the circumstances for which the Ordering Party or the Supplier is not responsible.
- c) Suspension of deliveries by the Ordering Party for technical or organizational reasons, which temporarily make it impossible to perform the Agreement during the suspension period. The Ordering Party shall notify the Supplier of the suspension of the service indicating the reason for suspension.
- d) If it is necessary to make any changes to the design of the Ordering Party, which require an approval of the Intermediate Body (a party to the subsidy agreement). In such case the deadline for performance of the Agreement may be extended by the time equal to the period between the submission of the request for a change of the design by the Ordering Party and the date of acceptance of the changes by the Intermediate Body.

1.7. Other changes:

- a) In the event of any changes of legal provisions, applicable after the date of execution of the Agreement with the Supplier, which introduce new requirements with respect to the performance of the Agreement;
- b) If a decision is obtained from the Intermediate Body concerning the management of funds from the Poland's National Recovery and Resilience Plan, including any changes of the scope of tasks, the deadline for performance of the Agreement or imposing additional provisions which the Supplier will be obliged to perform.

2. Amendment terms:

2.1. Initiation of changes – at the request of the Ordering Party and/or Suppliers;

2.2. Form of changes – a written annex to the Agreement which has been previously agreed by the Parties, in particular with respect to the necessity to change the contractual deadlines and costs, on pain of nullity of changes.

#### XIV. PERSONAL DATA PROCESSING

In accordance with Article 13 sec. 1 and 2 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L, 119. 04.05.2016, p. 1), hereinafter the “GDPR”, please be advised that:

1. The Ordering Party – **METRANS (Polonia) Sp. z o.o. ul. Żelazna 28/30, 00-832 Warszawa Warszawa** is a personal data controller.
2. All questions concerning personal data processed may be addressed to the Controller at: [rodo@metrans.eu](mailto:rodo@metrans.eu).
3. Personal data shall be processed on the basis of Article 6 sec. 1 c of the GDPR in order to conduct the procedure for awarding a contract and to award the contract, to enter into an agreement concerning the order and to perform the agreement, as well as to document the procedure for awarding the contract and to archive the records.
4. Recipients of personal data shall be persons or entities to which the documentation of the procedure will be made available on the basis of the applicable laws, including in particular the Act of 6 September 2001 on access to public information (consolidated text: Journal of Laws 2018.1330, as amended), as well as entities authorized by the provisions of law, e.g., public authorities, in connection with the proceedings being conducted, entities carrying out evaluations at the request of the Managing Authority, the Intermediate Body or the Beneficiary. Your personal data may also be entrusted to specialist companies, carrying out, at the request of the Managing Authority, the Intermediate Body or the Beneficiary, inspections and audits as part of competition no. KPOD.09.09-IW.02-001/24, recruitment - Investments: E2.1.3 – Intermodal transport within Poland’s National Recovery and Resilience Plan /component E, conducted by the Centre for EU Transport Project, and to entities providing the Management Authority with services related to operation and development of telecommunication and IT systems.
5. Personal data shall be stored for the period necessary to perform and settle the agreement for financing of the Ordering Party, under which the contract is co-financed, i.e., the period referred to in Article 140 sec. 1 of the Regulation 1303/2013, and at the same time not shorter than 10 years from the date of granting the last aid as part of investments supporting robotization and digitization in enterprises from the Poland’s National Recovery and Resilience Plan.
6. The Supplier’s obligation to provide personal data arises from the participation in the procedure for awarding a contract covered by the Request for Proposal no. 1/2024/T.
7. With respect to the obtained personal data no decisions shall be made in an automated manner, pursuant to Article 22 of the GDPR;
8. Persons whose personal data will be provided to the Ordering Party in the course of this procedure have:
  - a) on the basis of Article 15 of the GDPR, the right of access to personal data concerning them;
  - b) on the basis of Article 16 of the GDPR, the right to rectification of their personal data;
  - c) on the basis of Article 18 of the GDPR, the right to obtain from the controller restriction of processing of personal data, except as referred to in Article 18 sec. 2 of the GDPR;



- d) right to lodge a complaint to the President of the Personal Data Protection Office if the Supplier considers that the processing of its personal data infringes the provisions of the GDPR;

9. Supplier does not have:

- a) in connection with Article 17 sec. 3 b, d or e of the GDPR, the right of erasure of personal data;
- b) the right of personal data portability referred to in Article 20 of the GDPR;
- c) on the basis of Article 21 of the GDPR, the right to object to personal data processing since the legal basis of personal data processing is Article 6 sec. 1 c of the GDPR.

Supplier is obliged to provide the above information to all persons whose personal data will be provided to the Ordering Party in connection with the submission of an offer in response to the Request for Proposal no. 1/2024/T and the execution of the order, which the Supplier confirms by an appropriate declaration of fulfillment of the information obligations provided for in Article 13 or Article 14 of the GDPR contained in the Offer Form, constituting Schedule no. 2 to the Request for Proposal.

## **XV. SCHEDULES TO THE REQUEST FOR PROPOSAL**

Schedule no. 1 to the Request for Proposal	“Detailed Technical Specification”
Schedule no. 2 to the Request for Proposal	“Template of the Form offer”
Schedule no. 3 to the Request for Proposal	“List of completed contracts”
Schedule no. 4 to the Request for Proposal	“Design of crane track and crane track surface (crane beam)”
Schedule no. 5 to the Request for Proposal	“Design of the gantry crane power chamber”
Schedule no. 6 to the Request for Proposal	“Normal cross-section”