	<p style="text-align: center;">Terms of Reference for</p> <p style="text-align: center;">“DESIGN, DELIVERY, ASSEMBLY AND COMMISSIONING OF THE WATER TREATMENT STATION INSTALLATION ALONG WITH FACILITIES AND AUXILIARY INFRASTRUCTURE AT THE PRODUCTION PLANT OF ORLEN POŁUDNIE S.A. AND CONFIRMATION OF GUARANTEED PARAMETERS”</p>
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PROCEDURE Symbol: PKN/2/000499/21

Procedure to select a CONTRACTOR for INVESTMENT titled:

“DESIGN, DELIVERY, ASSEMBLY AND COMMISSIONING OF THE WATER TREATMENT STATION INSTALLATION ALONG WITH FACILITIES AND AUXILIARY INFRASTRUCTURE AT THE PRODUCTION PLANT OF ORLEN POŁUDNIE S.A. AND CONFIRMATION OF GUARANTEED PARAMETERS”

The project shall be carried out as part of the investment task entitled: “Construction of the second-generation bioethanol production installation complex”.

Stage:
Terms of Reference (ToR)

A complete REQUEST FOR PROPOSAL consists of:

ToR Part 1 –INSTRUCTIONS for BIDDERS

ToR Part 2 – Information about the INVESTMENT

ToR Part 3 – EPC CONTRACT Template

Part 1

INSTRUCTIONS for BIDDERS



	<p style="text-align: center;">Terms of Reference for</p> <p style="text-align: center;">“DESIGN, DELIVERY, ASSEMBLY AND COMMISSIONING OF THE WATER TREATMENT STATION INSTALLATION ALONG WITH FACILITIES AND AUXILIARY INFRASTRUCTURE AT THE PRODUCTION PLANT OF ORLEN POŁUDNIE S.A. AND CONFIRMATION OF GUARANTEED PARAMETERS”</p>
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1 Information about the CONTRACTING PARTY

ORLEN POŁUDNIE S.A. (CONTRACTING PARTY, OPD) intends to construct a “LIGNOCELLULOSIC BIOETHANOL PRODUCTION INSTALLATION COMPLEX” on the premises of the Production Plant in Jedlicze, which will consist inter alia of the water treatment station installation along with facilities auxiliary infrastructure.

Under this bidding procedure the CONTRACTING PARTY invites BIDDERS to submit their BIDS for “**DESIGN, DELIVERY, ASSEMBLY AND COMMISSIONING OF THE WATER TREATMENT STATION INSTALLATION ALONG WITH FACILITIES AND AUXILIARY INFRASTRUCTURE AT THE PRODUCTION PLANT OF ORLEN POŁUDNIE S.A. AND CONFIRMATION OF GUARANTEED PARAMETERS**”.

ORLEN POŁUDNIE S.A. shall be the CONTRACTING PARTY in this procedure.

1. Full name: ORLEN POŁUDNIE Spółka Akcyjna [Joint-stock company]
2. Address: ul. Fabryczna 22, 32-540 Trzebinia
3. National Court Register (KRS) number: 0000125856
4. Tax Identification Number (NIP): 628-00-00-977
5. National Business Registry no. (REGON): 272696025
6. Website: www.orldenpoludnie.pl


2 Definitions

For simplification and clarification, the terms used in these INSTRUCTIONS shall receive the following meanings:

Control and Measurement Equipment and Automation – all control and measurement equipment as well as automation included in the water treatment station installation along with facilities and auxiliary infrastructure;

CONNECT – Purchasing Platform of PKN ORLEN S.A. CG handling all PROCEDURES of the CONTRACTING PARTY. Platform address: <https://connect.orlden.pl>. Pursuant to internal ORLEN Południe S.A. regulations, Bidders shall use the PKN ORLEN S.A. – CONNECT purchasing platform to submit and proceed any bids;

As the heat and power plant installation and water treatment station installation (for the needs of the B2G installation) is eligible for financing entitled “**Production of heat from biomass – power**”

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installation included in the second-generation bioethanol (B2G) installation complex at ORLEN Południe S.A. in Jedlicze”, under call no. POIS.01.01.01-IW.03-00-005/19, Orlen Południe S.A. shall publish a procurement notice at: <https://bazakonkurencyjnosci.funduszeuropejskie.gov.pl>;

Pursuant to internal ORLEN Południe S.A. regulations, Bidders shall use the PKN ORLEN S.A. – CONNECT purchasing platform to submit and proceed any bids;

CLTI – the Central Laboratory of Technical Inspection pursuant to the Technical Inspection Act of 21 December 2000 (Dz.U. [Polish Journal of Laws] of 2000, no. 122, item 1321, as amended);

WEAR PARTS – parts the durability of which, if used in accordance with the Operation and Maintenance Manual, is shorter than the Guarantee Period and the CONTRACTING PARTY must replace them in accordance with the maintenance instructions provided by the Contractor;


FINANCIAL DATA – separate (non-consolidated) balance sheet and profit and loss account, authorised by persons authorised to represent the CONTRACTOR;

Effective date of the Contract – day on which representative of the Parties have made the last signature under the Contract;

DDP according to INCOTERMS 2010 – Terms and conditions of delivery – Delivered, duty paid;

Documentation – all documents for which the CONTRACTOR is responsible, needed to select and acquire Equipment and Materials, construct, assemble, launch and commission individual Installations and nodes of the water treatment station installation along with facilities and auxiliary infrastructure as well as to operate and maintain it after the Handover to Operation Certificate is signed, with only exception of documents explicitly excluded from the CONTRACTOR’S obligations. For the purposes of Works, including operation, maintenance and repairs, Documentation shall include in particular: Revised construction design (if necessary) – implementation in line with requirements laid down in part 2 of ToR, Basic Design, Working Designs, Work Organisation Design, any and all designs, data, drawings, P&I diagrams (i.e. diagrams showing details of each technological stage), calculations, diagrams, schedules, specifications, instructions, manuals, know-how and other technical documents concerning the installations and technological nodes, as-built documentation as well as all documents needed to make appropriate notifications, obtain required administrative decisions (in line with part 2 of ToR), arrangements, approvals and permits necessary for the construction, commissioning, start-up and further operation of the Installation as well as individual installations, including the Operation and Maintenance Manual, Registration Documentation, start-up documentation and documentation necessary to control and supervise the Works by the CONTRACTING PARTY. Documentation shall be drawn up in accordance with Polish and, where required, certified by a person holding appropriate industry permits;

Registration Documentation – documentation to be prepared and obtained by the Contractor, being a part of the Documentation, required to obtain approvals, opinions or make arrangements;

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Operation and Maintenance Manual – documentation for which the Contractor is responsible, being a part of the Documentation and containing description of all individual Devices, systems and subsystems of the Installation together with information about their operational parameters and current maintenance;

Adviser/Advisers – Consulting companies supporting the CONTRACTING PARTY in the PROCEDURE and during INVESTMENT implementation. The CONTRACTING PARTY hereby reserves the right to appoint additional ADVISERS at every stage of the PROCEDURE;

Deliveries – Materials and Devices jointly or separately, delivered for the purposes of Works;

Technical Inspection – technical inspection pursuant to the Technical Inspection Act of 21 December 2000 (Dz.U. [Polish Journal of Laws] of 2000, no. 122, item 1321, as amended);

Day – a calendar day. A time limit specified in days shall end with the lapse of the last day. Time limits counted in Weeks, Months or Years end upon expiry of the day the name or date of which corresponds to the starting day of the time limit. If there is no such day in the last month – on the last day of that month. If the beginning of the time limit specified in days is marked by a certain event, the day on which the event occurred is not taken into account when specifying the time limit;

Working Day – a day of the week from Monday to Friday inclusive, excluding Saturdays and public holidays as defined in the Act of on public holidays in Poland of 18 January 1951 (Dz.U. [Polish Journal of Laws] of 2020, item 1920);

Written Form – exchange of hand-written or printed information, with the handwritten signature of a person authorised to submit a given statement or provide the information;


Battery Limits – points of contact of the water treatment station installation along with facilities and auxiliary infrastructure with the remaining part of the Production Site in Jedlicze and other installations included in the second-generation bioethanol production installation complex, which will be provided in detail by the CONTRACTING PARTY at the stage 2 of the bidding procedure and marked on diagrams in part 2 of ToR;

Guarantee – a guarantee of the quality of Works, included Documentation, provided by the Contractor;

Performance Guarantee during the Guarantee Period – guarantee of due performance in the guarantee period;

Guaranteed Parameters – Group A Guaranteed Parameters and Group B Guaranteed Parameters;

Group A Guaranteed Parameters – technical and operational parameters required for the installation, which must be achieved in the water treatment station installation – along with facilities and auxiliary infrastructure so that it could be handed over to operation; if the CONTRACTOR fails

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to achieve them, the CONTRACTING PARTY shall have the right to withdraw from the EPC CONTRACT;

Group B Guaranteed Parameters – technical and operational parameters required for the installation that are required for the water treatment station installation along with facilities and auxiliary infrastructure; if the CONTRACTOR fails to achieve them, the CONTRACTING PARTY shall have the right to charge contractual penalties;

Schedule of Works and Expenditures – an invoicing and Remuneration payment schedule divided into individual Stages of the Works, including a specification of the material scope and the value of the Works, for which a given payment is settled;

Execution Schedule – general schedule of Works developed by the Contracting Party, specifying the time frames and limits assigned for the completion i.a. of individual Stages of the Works. The Execution Schedule shall constitute the basis for the Contractor to prepare the General Execution Schedule and the Detailed Execution Schedule;

Auxiliary infrastructure – all facilities, devices, elements, networks, connections and other infrastructure required for the correct functioning of the water treatment station installation or for connection into a production line with the remaining elements of the Production Plant and other systems included in the second-generation bioethanol production installation complex;

Biogas installation – a complete biogas installation based on a by-product from the Installation for the production of second-generation bioethanol;


Biological wastewater pre-treatment installation – a complete wastewater pre-treatment installation;

Heat and power plant installation – along with facilities and auxiliary infrastructure (EC) – a complete installation for the production of steam and electricity using a biomass boiler (fired with lignin and biogas as well as wood chips), turbine generator along with auxiliary infrastructure;

Second-generation bioethanol (B2G) production installation – an installation that produces second-generation (lignocellulosic) bioethanol from cereals straw with a capacity of at least 25,000 t/y, based on the technology and the Licensor’s Base Design along with facilities and auxiliary infrastructure;

Water treatment station installation (SUW) – an installation that treats water to be used in EC steam boilers and other B2G receivers;

Operating Manual – an operating manual dedicated for this purpose, developed by the CONTRACTOR for the purposes of operation, explicitly marked by the CONTRACTOR as the “Operating Manual”, provided by the CONTRACTOR to the CONTRACTING PARTY as part of the Documentation, illustrating in a sufficient manner the correct operation of individual nodes and components; Operating manual shall consist of operating manuals of individual power units in line

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with the Regulation of the Minister of Energy on occupational health and safety during work on with power equipment of 28 August 2019;

Guarantee Engineer – an experienced specialist provided by the CONTRACTOR for the needs of contracts concluded with the CONTRACTING PARTY in connection with operation of the water treatment station installation – along with facilities and auxiliary infrastructure, who will cooperate with the CONTRACTING PARTY in order to fulfil the obligations under the Guarantee and warranty;

CONTRACT ENGINEER – an experienced representative of the CONTRACTING PARTY, assigned to directly supervise construction works and services needed to execute the INVESTMENT at a time corresponding to the completion and settlement of individual elements of the INVESTMENT tasks by the CONTRACTOR in accordance with the approved Execution Schedule;

INVESTMENT – an investment task entitled “DESIGN, DELIVERY, ASSEMBLY AND COMMISSIONING OF THE WATER TREATMENT STATION INSTALLATION ALONG WITH FACILITIES AND AUXILIARY INFRASTRUCTURE AT THE PRODUCTION PLANT OF ORLEN POŁUDNIE S.A. AND CONFIRMATION OF GUARANTEED PARAMETERS”


Notified Body – a body assessing the conformity that is reported to the European Commission and included in the list of bodies notified in relation to specific directives. A Notified Body is an organisation designated by the national authorities to carry out tasks under the Directives (Decision 768/2008/EC of the European Parliament and of the Council);

CPV CODE (heat and power plant installation planned for EU funding):

31 000 000-6 Electromechanical and electrotechnical machines, apparatus, devices and products
42 162 000-2 Steam-generating boilers
42 164 000-6 Auxiliary systems for heating boilers
42 410 000-3 Lifting and handling equipment
45 000 000-7 Construction works
45 110 000-0 Wiring and electrical installation works
45 310 000-3 Electrical installation works
45 317 000-2 Other electrical installations
45 320 000-6 Insulation works
45 315 100-9 Installation electrotechnical works
45 315 300-2 Electricity supply installations
51 100 000-3 Electrical and mechanical equipment installation services
80 531 000-5 Industrial and technical training services;

Civil Code – the Polish Civil Code of 23 April 1964 (Dz.U. [Polish Journal of Laws], no. 16, item 93, as amended);

Final Technical Investment Acceptance Commission – the Commission appointed by the CONTRACTING PARTY according to the CONTRACTING PARTY’S internal regulations in order to

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confirm that (i) Assembly has been completed, (ii) Mechanical Start-up has been completed, and (iii) the installation has been handed over for the Technological Start-up;

Installation complex – the second-generation (lignocellulosic) bioethanol production installation complex that comprises:

- a) the second-generation bioethanol (B2G) production installation along with facilities and auxiliary infrastructure;
- b) the heat and power plant installation of (i) a biomass boiler with a turbine set along with facilities and auxiliary infrastructure, (ii) installation of the water treatment station along with facilities and auxiliary infrastructure, (iii) a boiler water preparation station along with facilities and auxiliary infrastructure; (iv) structures along with technical infrastructure;
- c) the biogas installation, biological wastewater pre-treatment plant along with facilities and auxiliary infrastructure;
- d) Associated facilities and infrastructure.

RESERVE LIST – A list of BIDDERS who have participated in trade negotiations, but were not selected as the PREFERRED BIDDER;

Materials – all substances and materials required for due and full performance of the EPC CONTRACT by the CONTRACTOR. The materials shall be new and manufactured not earlier than 1 year before the Effective date of the Contract;


Consumables – deliveries used during regular operation;

Best Available Technology (BAT) – a document drawn up on the basis of a BREF reference document, adopted by the European Commission by way of a decision, in accordance with regulations relating to industrial emissions, laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant remediation measures;

Final Acceptance – acceptance carried out after the lapse of the longest Guarantee Period, in order to confirm that the Contractor has duly completed all of their contractual obligations, including that the Contractor has rectified all Defects, removed (closed) all Open Points, as confirmed upon signing of the Final Acceptance Certificate (FAC);

BIDDER – An entrepreneur or entrepreneurs jointly participating in the Procedure – under a formula based on cooperation of consortium partners – who have been invited to submit their Bid and have declared that they submitted a Bid in the Procedure;

CONTRACTOR’S BID – a set of documents submitted as required by ToR as well as any part of the Bid submitted by the Bidder under the PROCEDURE, containing the Bidder's commitment to perform the CONTRACT;

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General Execution Schedule – general schedule for performance of the EPC CONTRACT developed by the CONTRACTOR, specifying planned dates of significant events as part of the Works and the time limits assigned for the execution and completion of individual Stages of the Works;

Guarantee Period – the Guarantee Period for a given element of Works;

PAC – a document signed by the CONTRACTING PARTY and the CONTRACTOR, which acknowledges that guaranteed parameters have been achieved. This certificate is signed only if technological start-up is successful and warranty measurements are performed with a positive result, being a minimum for guaranteed parameters;

PED – Directive 2014/68/EU of the European Parliament and of the Council of 15 May 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of pressure equipment (Pressure Equipment Directive) (OJ UE L.2014.189.164, as amended);

CONTRACTOR’S PERSONNEL – all employees of the Subcontractors and Sub-suppliers and all persons employed by the CONTRACTOR in any form or performing any contractual tasks on behalf of the CONTRACTOR, Subcontractors or Sub-suppliers;

CONTRACTING PARTY’S PERSONNEL – all employees of the CONTRACTING PARTY, employed by them in any form or performing any contractual tasks on behalf of the CONTRACTING PARTY;


PKN ORLEN – Polski Koncern Naftowy ORLEN S.A.;

SHP Plan – the Safety and Health Plan for Site Works, compliant with the applicable provisions of the Construction Law and Regulation of the Minister of Infrastructure of 23 June 2003 on health and safety information and on the health and safety plan (Dz.U. [Polish Journal of Laws], no. 120, item 1126);

Sub-suppliers – all direct and indirect Sub-suppliers who are CONTRACTOR’S suppliers or sub-suppliers, performing Supplies on behalf of the CONTRACTOR or the Subcontractor;

Subcontractors – all direct and indirect subcontractors of the CONTRACTOR, who perform any Works or parts of Works under the EPC CONTRACT, including Subcontractors of Construction Works, Sub-suppliers and subcontractors of services, as commissioned by the Contractor, Subcontractor or indirect Subcontractor;

Subcontractors of Construction Works – all direct and indirect (further) subcontractors within the meaning of Article 647¹ of the Polish Civil Code, who perform Construction Works or other works that constitute a construction object within the meaning of the Construction Law, commissioned by the CONTRACTOR, Subcontractor or indirect Subcontractor, in relation to which the CONTRACTING PARTY may be obliged to pay remuneration as envisaged in Article 647¹ of the Polish Civil Code;

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Warranty Measurements – measurements of Guaranteed Parameters to be performed during Technological Start-Up in line with the Documentation, in order to verify whether the installation achieves and maintains required Guaranteed Parameters;

PROCEDURE – the Procedure conducted by PKN ORLEN S.A. for and on behalf of the CONTRACTING PARTY, aimed at negotiating the terms of the Bid, including the EPC CONTRACT, with invited Bidders and selecting the CONTRACTOR with whom the EPC CONTRACT will be concluded;

Contractor’s Permits – administrative decisions, permits, arrangements, opinions, approvals, notifications, certifications and attestations other than Contracting Party’s Permits, statements and other acts or activities required by or in accordance with applicable Polish law in connection with the Works;


Contracting Party’s Permits – administrative decisions obtained by the CONTRACTING PARTY related to the execution of the Installation Complex;

Construction Permit – any final and legally binding decision on the construction permit for the Installation Complex, issued on the basis of the Construction Law;

Use Permit – any final and legally binding decision on the use permit for the Installation Complex or for individual parts of the Installation Complex, issued on the basis of the Construction Law;

Works – all services provided by the CONTRACTOR, including, but not limited to:

- selection with calculations, design of the water treatment station installation along with facilities and auxiliary infrastructure, including execution, arrangement of the Documentation and delivery thereof to the CONTRACTING PARTY;
- providing guidelines for performance of earthworks and foundation works by the CONTRACTING PARTY for the water treatment station installation along with facilities and auxiliary infrastructure; (earthworks and foundation works and building structures fall beyond the scope of the EPC CONTRACT and shall be carried out under a separate procedure);
- reporting significant changes to the applicable Construction Permit and agreeing with the CONTRACTING PARTY upon the scope of changes in relation to the applicable Construction Design. Participation in the development of the alternative construction design by providing assumptions and design documentation to the alternative Construction Design for the water treatment station installation along with facilities and auxiliary infrastructure that do not significantly violate the decision on the environmental permit for the Installation Complex. The CONTRACTING PARTY shall coordinate and issue an alternative Construction Design and obtain an alternative construction permit in support of the Contract Engineer;
- design and construction of connections and tie-ins within the Battery Limits;
- purchase of Materials and Equipment and delivery thereof to the Construction Site;
- execution of industry works (excluding earth and foundation works and construction of the building) and assembly works;
- supply and use of Equipment;

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- construction of the water treatment station installation along with facilities and auxiliary infrastructure;
- conducting required tests;
- tests and functional tests, start-up of devices and installations, EX marking (if required), CE marking;
- commissioning of the water treatment station installation along with facilities and auxiliary infrastructure, Start-up as specified in part 2 of ToR;
- conducting training of Contracting Party's personnel as specified in part 2 of ToR;
- guarantee that the water treatment station installation along with facilities and auxiliary infrastructure meets all Guaranteed Parameters and other technical parameters, operational characteristics, operational safety and other requirements laid down in part 2 of ToR by the Contracting Party at the second stage of the bidding PROCEDURE;
- supply of spare parts, critical parts, Wear Parts and Consumables as laid down in part 2 of ToR;
- obtaining Constructor's permits;
- execution of any other works required for completing the stage of Handover to Operation, and Final Acceptance;

Note: detailed scope of works shall be provided for in part 2 of ToR at the second stage of the bidding procedure.

Construction Law – the Act of 7 July 1994 – the Construction Law (Dz.U. [Polish Journal of Laws] of 1994, no. 89, item 414, as amended) with implementing regulations thereto;

Preferred Bidder – a Bidder from the Short List who has been selected after evaluation of the BIDS and negotiations conducted, in line with item 15;


Test Run Procedure – a document drawn up for the water treatment station installation along with facilities and auxiliary infrastructure that lays down detailed conditions, scope, schedule and procedures governing the Test Run;

Mechanical Start-up Programme – a document specifying detailed conditions, scope, schedule and procedures for cooperation between the Parties in the area of Mechanical Start-up. The Mechanical Start-up Programme is drawn up by the CONTRACTOR based on the Mechanical Start-up Procedure;

Technological Start-up Programme – a document specifying detailed conditions, scope, schedule and procedures for cooperation between the Parties in the area of Technological Start-up;

Adjustment Run Programme – a document specifying the principles for conducting the Adjustment Run, being the first stage of the Technological Start-up;

Test Run Programme – a document specifying the principles for conducting the Test Run;

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Quality Assurance and Control Programme – a document drawn up based on general principles and guidelines of the quality assurance and control system provided for in part 2 of ToR, which includes procedures for carrying out tests, examinations, runs and measurements, separately for each Work, subject to the approval of the CONTRACTING PARTY;

Construction Design – a construction design within the meaning of the Construction Law, drawn up by the CONTRACTING PARTY, constituting the basis for issuing the Construction Permit;

Revised Construction Design – an alternative construction design that provides the basis for obtaining a final and legally binding decision on the construction permit for the installation complex, replacing the Construction Permit after the Effective Date, as laid down in part 2 of ToR;

Work Organisation Design – a document that specifies how the Works are organised at the Construction Site, including i.a. SHP and development plan of the Construction Site consistent with the Construction Design;

Basic Design – a design presenting technical solutions for the water treatment station installation along with facilities and auxiliary infrastructure, constituting the basis for the development of a revised Construction Design and detailed designs in all industries, enabling coordination of design works conducted;

Working Designs – studies being part of Documentation, drawn up by the CONTRACTOR for the water treatment station installation along with facilities and auxiliary infrastructure, as required by part 2 of ToR, taking into consideration conditions provided for Contractor’s Permits and Contracting Party’s Permits;


Acceptance Certificate – a document signed by the authorised Representatives of both Parties, confirming the correct performance of a part of the Works or Deliveries by the CONTRACTOR, and particularly of a Stage of the Works;

Final Acceptance Certificate (FAC) – a document signed by the authorised Representatives of both Parties, confirming completion of the longest Guarantee Period and correct performance of all obligations resulting from the EPC CONTRACT by the CONTRACTOR;

Mechanical Start-up Acceptance Certificate – a document that confirms that the Mechanical Start-up has been completed, including all Functional Tests conducted as part of the Mechanical Start-up;

Performance Acceptance Certificate (PAC) – a document signed by authorised Representatives of both Parties, confirming that Test Run has been successfully completed. Performance Acceptance Certificate (PAC) can be signed by both Parties only if hand-over conditions are met and Handover to Operation Certificate is signed by authorised Representatives of both Parties;

Final Technical Acceptance Certificate – an internal certificate drawn up by the Final Technical Acceptance Commission after the Mechanical Start-up Acceptance Certificate is signed;

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Handover to Operation Certificate – a document signed by the authorised Representatives of both Parties, confirming that:

- (i) Technical Start-up has been completed;
- (ii) Performance Acceptance Certificate (PAC) has been signed and that the voivodeship inspector of environmental protection has controlled the installation after notification made pursuant to Article 76(4) of the Environmental Protection Law of 27 April 2001 (Dz.U. [Polish Journal of Laws], no. 62, item 627, as amended);
- (iii) the CONTRACTOR has performed all obligations arising from the EPC CONTRACT, except only those expressly indicated in the EPC CONTRACT as those to be performed after the Installation is handed over to Operation;

Hand-Over to Technological Start-up Certificate – a document signed by authorised Representatives of both Parties, confirming that the Contractor has obtained on behalf of the Contracting Party an integrated permit for the water treatment station installation along with facilities and auxiliary infrastructure, or the Installation Complex, permit to use the Installation and hand it over to Technological Start-up, as well as that the Contractor has performed all obligations arising from the Contract, except only those expressly indicated in the Agreement as those to be performed after the Installation is handed over to Technological Start-up;


Functional Tests – tests aimed at checking and confirming the proper operation of individual devices and systems of the water treatment station installation along with facilities and auxiliary infrastructure;

Post-Assembly Tests and Measurements – tests performed after all Equipment is assembled, aimed at: a) checking if the processing and sanitary systems, has been correctly assembled, checking electrical systems, Control and Measurement Equipment and Automation (including the so-called pre-delivery inspections), b) checking if assembly is correct and if all control and measurements works (including configuration and parameterisation of programmable devices) and other works necessary for correct operation have been performed;

Construction Works – construction works included in the scope of the Works within the meaning of the Polish Civil Code and Construction Law;

Start-up – period in which Works are executed that takes place when Assembly is completed. Start-up includes Mechanical Start-up and Technological Start-up;

Mechanical Start-up – Works’ performance period occurring directly after the Completion of Installation and execution of the Assembly Acceptance Certificate, in which the CONTRACTOR shall perform all activities required for confirming that the Equipment and systems of individual elements of the water treatment station along with facilities and auxiliary infrastructure are functionally operable and safe. As part of Mechanical Start-up, the CONTRACTOR shall particularly confirm the correct installation of the Instrumentation and rinse technological installations. Detailed regulations regarding the performance of the Mechanical Start-up shall be provided for in part 2 of ToR;

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Technological Start-up – the Works’ performance period after (i) the completion of Mechanical Start-up and after the CONTRACTOR’S readiness for Technological Start-up is confirmed by the Final Technical Investment Acceptance Commission in the Final Technical Investment Acceptance Certificate) and after (ii) the Permit for use is obtained, after which period the charge is for the first time supplied and all activities necessary to achieve the stable operation of the water treatment station installation along with facilities and auxiliary infrastructure are performed, including Adjustment Run and Test Run;

Adjustment Run – the first part of Technological Start-up, the purpose of which is to adjust and optimize operation of individual nodes and elements of the water treatment station installation along with facilities and auxiliary infrastructure under various load conditions and achieving all Guaranteed Parameters; all these must be in line with the readings of Control and Measurement Equipment and Automation;

Test Run – the second part of Technological Start-up, assuming the Works’ performance period after the completion of the Adjustment Run. The purpose of a Trial Run is to carry out and verify Warranty Measurements;

TOR / REQUEST FOR PROPOSAL / INQUIRY – ToR – Terms of Reference means a complete REQUEST FOR PROPOSAL that consists of three parts:

- I. INSTRUCTIONS for BIDDERS;
- II. Information about the INVESTMENT;
- III. Template of the EPC CONTRACT;


Construction Equipment – all machines, tools, materials and other means owned by the CONTRACTOR, using which the CONTRACTOR shall perform the Works, which will not be included in the water treatment station installation along with facilities and auxiliary infrastructure;

ARCHEO System – Technical Archives of PKN ORLEN Capital Group – an application intended for CONTRACTORS of PKN ORLEN Capital Group used to transfer and archive Documentation;

Transport Technical Inspection – Transport Technical Inspection pursuant to the Technical Inspection Act of 21 December 2000 (Dz.U. [Polish Journal of Laws] of 2000, no. 122, item 1321, as amended);

Construction Site – area (including any space, places and sites), on which the water treatment station installation along with facilities and auxiliary infrastructure shall be constructed, and which shall be officially made available to the CONTRACTOR based on the CONTRACTING PARTY’S long-term permit and the remaining construction site made available temporarily;

Office for Technical Inspection – the Office for Technical Inspection pursuant to the Technical Inspection Act of 21 December 2000 (Dz.U. [Polish Journal of Laws] of 2000, no. 122, item 1321, as amended);

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EPC CONTRACT – the Contract concluded by the CONTRACTOR and the CONTRACTING PARTY, together with all Appendices and any possible amendments introduced in form of Annexes;

Equipment – all machines, instruments and other devices and parts necessary for the proper performance of the CONTRACTOR’S obligations, with the exception of the Site Equipment, including also machines, instruments and other devices and parts included in the Installation under the Warranty or delivered by the CONTRACTOR to the CONTRACTING PARTY as spare parts for water treatment station installation. The Equipment shall be new and manufactured not earlier than 1 year before the Effective Date;

Defect – any non-compliance of the Works or parts thereof with any requirement laid down in the Contract or Documentation;

CONTRACTOR – (i) an entrepreneur or (ii) entrepreneurs who jointly perform the Subject Matter of the Contract, are jointly and severally liable for the performance or improper performance of the EPC CONTRACT based on the principle of cooperation of consortium partners, with whom the CONTRACTING PARTY will conclude the EPC CONTRACT for the INVESTMENT;

Production Plant – CONTRACTING PARTY’S production site in Jedlicze, on the premises of the Construction Site is located;

Assembly Completion – completion of all significant Works related to the water treatment station installation along with facilities and auxiliary infrastructure so that they constitute a complete, functional whole, ready for Mechanical Start-up;


CONTRACTING PARTY – ORLEN POŁUDNIE S.A.;

Contracting Party’s Regulations – internal acts (including rules and regulations, guidelines) implemented by the CONTRACTING PARTY and provided to the CONTRACTOR in whole or in part; the CONTRACTOR shall be obliged to comply with these Regulations during the performance of the Contract;

Amendment – a change in the scope of obligations of the Parties.

3 Type of contract award procedure


- 3.1 The contract shall be awarded after the completion of the PROCEDURE in accordance with the INSTRUCTIONS for BIDDERS, according the internal procedures of PKN ORLEN S.A. and ORLEN POŁUDNIE S.A. and the Guidelines on the eligibility of expenditure under the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020. Guidelines of the Minister of Development and Finance on the eligibility of expenditure under the Operational Programme Infrastructure and Environment for 2014-2020 dated 21 December 2020 (or another version applicable on the PROCEDURE initiation date, which ended with a conclusion of the contract) and other binding guidelines and documents

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related to the Operational Programme Infrastructure and Environment published on the Programme website (at <http://www.pois.gov.pl/strony/o-programie/dokumenty/#/domyslne=1>). The procedure involves multi-stage negotiations intended to determine the final text of the CONTRACT, after which the BIDS shall undergo evaluation and the CONTRACTOR shall be selected.

The contract shall be co-financed by the Operational Programme Infrastructure and Environment under the project entitled “**Production of heat from biomass – power installation included in the second-generation bioethanol (B2G) installation complex at ORLEN Południe S.A. in Jedlicze**”.


- 3.2 The provisions of the Public Procurement Act of 29 January 2004 (Dz.U. [Polish Journal of Laws] of 2019, item 1843, as amended) or the Public Procurement Act of 11 September 2019 (Dz.U. [Polish Journal of Laws] of 2019, item 2019, as amended) and any secondary legislation thereto shall not apply to any activities performed by the CONTRACTING PARTY.
- 3.3 This REQUEST FOR PROPOSAL constitutes an invitation to commence negotiations pursuant to Article 72 of the Polish Civil Code (Dz.U. [Polish Journal of Laws] of 2019, item 1145, as amended). And therefore the provisions of Article 66 et. seq. of the Polish Civil Code regarding bids and regulations concerning auctions, as set forth in Articles 70¹-70⁵ of the Polish Civil Code shall not apply.
- 3.4 The BIDDER shall bear on its own the full costs related to the preparation and submission of the BID, participation in site inspections and meetings and/or participation in negotiations and the cost of concluding the CONTRACT; the above costs shall not be reimbursed by the CONTRACTING PARTY, regardless of the course or outcome of the procurement procedure and whether or not the procedure has been modified or cancelled by the CONTRACTING PARTY for any reason or no reason. Under no circumstances shall be CONTRACTING PARTY be obligated to return any documents comprising the BID to the BIDDERS.
- 3.5 The CONTRACTING PARTY reserves the right to conduct multi-stage negotiations with the BIDDERS in various forms, e.g. direct negotiations tele- /- videoconferences or negotiations conducted via an electronic auction system.
- 3.6 Any BIDS received during possible negotiations conducted via the electronic auction system may be included in subsequent negotiations with the BIDDERS in one of the forms listed in item 3.5.
- 3.7 After completing one of the stages of negotiations and before the beginning of another one, the CONTRACTING PARTY shall notify the BIDDERS of the completion of a given stage and possible advance to the next stage of negotiations. After signing the EPC CONTRACT with the BIDDER whose BID was deemed the most beneficial, the CONTRACTING PARTY shall notify the remaining BIDDERS of the closure of the PROCEDURE. The CONTRACTING PARTY shall not be required to disclose the name of the successful Bidder;
- 3.8 The CONTRACTING PARTY reserves the right to select any company/companies, with which

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it will enter into negotiations for the scope of the submitted BIDS, in whole or in part, and to enter into an EPC CONTRACT with more than one BIDDER selected through negotiations, where the scope of such EPC CONTRACT may cover the scope of the submitted BID, in whole or in part. BIDDERS shall not be entitled to any claims against the CONTRACTING PARTY based thereon.

- 3.9** The CONTRACTING PARTY reserves the right to change or cancel the REQUEST FOR PROPOSAL or the terms and conditions of the PROCEDURE, either in whole or in part, to annul or terminate a PROCEDURE, either in whole or in part, including to terminate negotiations, either in whole or in part, at any time, without providing any justification, of which the CONTRACTING PARTY shall immediately notify the BIDDERS. BIDDERS shall not be entitled to any claims against the CONTRACTING PARTY based thereon. The REQUEST FOR PROPOSAL shall not obligate the CONTRACTING PARTY to take any specific action.
- 3.10** The CONTRACTING PARTY shall not be held liable for the contents of any announcements concerning the PROCEDURE, published on other websites than the official ORLEN CG - CONNECT Purchasing Platform and <https://bazakonkurencyjnoscifunduszeuropejskie.gov.pl>.
- 3.11** If the BIDDER has failed to fulfil any formal or technical requirements specified in the ToR, the CONTRACTING PARTY reserves the right to reject the BID without analysing the commercial part. Submitting a BID against the terms and conditions of this document and/or after the deadline may cause a BID to be rejected.
- 3.12** Activities and preliminary schedule of the PROCEDURE:

I	ROUND 1	PRELIMINARY DATES (by these time limits)
1	Publication of the REQUEST FOR PROPOSAL on the CONNECT Platform, https://bazakonkurencyjnoscifunduszeuropejskie.gov.pl	18 February 2021
2	Submitting the OFFICIAL BID	22 March 2021
3	Completion of the evaluation of BIDS submitted under ROUND 1	07 April 2021
II	ROUND 2	
1	Publication of the remaining parts of the ToR by the CONTRACTING PARTY on the CONNECT Purchasing Platform for BIDDERS who qualified for Round 2 - Part 2 – Information about the INVESTMENT - Part 3 – EPC CONTRACT Template	09 April 2021
	Stage 1	
2	Submission of the following parts of the BID by the BIDDERS:	31 May 2021

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	- declaration of acceptance of the key terms of the contract and comments to the EPC CONTRACT; - technical bid.	
3	Evaluation of technical bids and key terms of the EPC CONTRACT and qualification of the bids to Stage 2	01 July 2021
	Stage 2	
4	Submission of commercial bids	22 July 2021
5	Selection of the PREFERRED BIDDER	01 September 2021
6	Negotiations with the PREFERRED BIDDER	29 September 2021
III	Signing the EPC CONTRACT	29 October 2021

3.13 The CONTRACTING PARTY hereby reserves the right to render complete BIDS or their individual parts or possible revisions available to the external advisers from outside Orlen S.A. CG and experts at Orlen S.A. CG.

3.14 The CONTRACTING PARTY hereby advises that the CONTRACT shall be executed the moment it is signed by ORLEN POŁUDNIE S.A. and the BIDDER. Any announcement of the selection of CONTRACTOR shall not mean that a BID has been accepted and shall not suffice for deeming an EPC CONTRACT concluded.

3.15 The CONTRACTING PARTY hereby advises that any agreed terms of the EPC CONTRACT shall be only confirmed on behalf of ORLEN POŁUDNIE S.A. by duly authorised representatives of the company or persons having a pertinent letter of attorney, stipulating their right to represent the CONTRACTING PARTY.


3.16 The BIDDER undertakes to treat any and all information arising out of this REQUEST FOR PROPOSAL as confidential,

3.17 All and any information contained in this REQUEST FOR PROPOSAL may be only used according to its intended purpose, i.e. to prepare a BID for ORLEN POŁUDNIE S.A.

3.18 The BIDDER undertakes to protect any information submitted by ORLEN Południe S.A. or PKN ORLEN S.A. as part of this REQUEST FOR PROPOSAL using at least the same means as are used to protect the BIDDER'S materials.

3.19 The BIDDER shall be fully responsible for ensuring that the entities participating in the development of the BID and on behalf of the BIDDER in the PROCEDURE comply with the confidentiality obligation.

3.20 Any information concerning the fact of inviting the BIDDER to reply to this REQUEST FOR PROPOSAL, the fact of giving a reply, conducting commercial negotiations and CONTRACTS

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concluded may be only disclosed by the BIDDER after obtaining prior written consent of ORLEN POŁUDNIE S.A. for disclosing such information.

- 3.21** If a BIDDER who received this REQUEST FOR PROPOSAL does not accept the clauses above, this material should be immediately returned to ORLEN POŁUDNIE S.A., and all copies (both hard and soft) should be destroyed.
- 3.22** The CONTRACTING PARTY may reject a BIDDER’S application for the issue of references regarding the project under the PROCEDURE without providing any justification.
- 3.23** The Contracting Party is entitled to exclude the BIDDERS from the procedure and reject their bid without giving any reason.

4 Language of the PROCEDURE

- 4.1** The PROCEDURE shall be conducted in Polish or in English.

The CONTRACTING PARTY shall provide to the BIDDERS:

- a) ToR Part I – INSTRUCTIONS for BIDDERS in Polish and in English.
In the event of any discrepancies, the Polish language version shall prevail.
- b) ToR Part II – Information on the INVESTMENT, primarily in the Polish language version. The Contracting Party shall provide documents in English included in the scope of part 2 of the ToR, as available.
In the event of any discrepancies, the Polish language version shall prevail.
- c) ToR pt. 3 - EPC CONTRACT Template in Polish and in English.
In the event of any discrepancies, the Polish language version shall prevail.


The CONTRACTING PARTY shall provide the BIDDERS with the ToR in a soft version, in ADOBE files (.pdf) and editable files, if available (to simplify the BIDDERS’ works), however, if any discrepancies are claimed between these documents, the ADOBE (.pdf) version shall prevail.

The **FORMAL BID** must be prepared in Polish or in English.

The **TECHNICAL BID** and possible comments to the EPC CONTRACT must be prepared in Polish or in English.

The **COMMERCIAL BID** must be prepared in Polish or in English.

The **EPC CONTRACT** must be prepared in Polish or in Polish and in English.

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4.2 Negotiations shall be conducted in Polish or in English. The BIDDER shall be obligated to ensure that they are capable of conducting talks / negotiations / correspondence in Polish as well.

4.3 If the BIDDER shall submit any formal documents according to item 8.1. of the INSTRUCTIONS for the BIDDERS, issued in any other language than Polish or English, they shall be obligated to submit them in their original wording and enclose a sworn Polish or English translation of these documents. In justified cases, at the request of the BIDDER, the CONTRACTING PARTY may release the BIDDER from the obligation to provide a sworn Polish or English translation.

Translation of the documents must be also certified by the person/persons authorised to represent the BIDDER according to an applicable document issued by a pertinent registry authority (e.g. National Court Register) or by duly authorised attorneys. This requirement pertains to submission of a non-sworn translation confirmed by the BIDDER.

In any case, in the event of discrepancies between the English and Polish version of the document, the Polish version shall prevail.

4.4 All formal documents concerning possible foreign SUBCONTRACTORS supplied by the BIDDER in the BID must be also drawn up in or translated into Polish or English as set forth in item 4.3.

4.5 All documents of the TECHNICAL BID **shall be prepared and submitted in the Polish or English language version.**


4.6 All additional materials, such as advertisements or general information which is not required and not evaluated by the CONTRACTING PARTY may be submitted by the BIDDER in English or in Polish.

5 General description of the subject of the EPC CONTRACT

5.1 The subject of the EPC CONTRACT is the design, assembly (using materials and equipment supplied by the contractor), commissioning and start-up, in a “turnkey” system, of the water treatment station installation along with facilities and auxiliary infrastructure at the production plant of ORLEN Południe S.A. and confirmation of guaranteed parameters, including the design and execution of connections and tie-ins at the BATTERY LIMITS marked on the Map as power connections and supplementary tie-ins with the existing infrastructure (part 2 of these ToR), including obtaining all REQUIRED administrative and third-party permits and approvals specified in part 2 of these ToR.

A general description of the investment project is included in appendix 3 to the part 1 of ToR - INSTRUCTIONS for BIDDERS.

5.2 The scope of the INVESTMENT was specified in Part 2 of these ToR.

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- 5.3** The outcome of the PROCEDURE will consist in the selection of a CONTRACTOR who shall be obligated, under the EPC CONTRACT, to design, assemble and start-up, in a “turnkey” system, of the water treatment station installation along with facilities and auxiliary infrastructure at the Production Plant of ORLEN Południe S.A. along with confirmation of guaranteed parameters.
- 5.4** The INVESTMENT in question shall be located on the premises of ORLEN POŁUDNIE S.A. in Jedlicze (Poland). An overview of the location of the planned INVESTMENT is included in Appendix 3 hereto.
- 5.5** The CONTRACTING PARTY shall particularly scrutinize the technical, organizational and financial credibility of the BIDDERS. The CONTRACTING PARTY shall also expect the technology to take into account the detailed requirements listed in Part II of these ToR.
- 5.6** The BIDDER shall ensure stable operation of the water treatment station installation along with facilities and auxiliary infrastructure at the Production Plant of ORLEN Południe S.A. and that guaranteed parameters laid down in part 2 of ToR and the EPC CONTRACT are satisfied.


6 CONTRACT Completion Date

- 6.1** The EPC CONTRACT shall commence in November 2021. The expected INVESTMENT implementation period shall be as short as possible, comply with the implementation schedule of the project entitled “Construction of the second-generation bioethanol production installation complex”:
- Construction date of the water treatment station installation along with facilities and auxiliary infrastructure (SUW) at the production plant of ORLEN Południe S.A. anticipated by the CONTRACTING PARTY: **20 months** from the date of signing the EPC CONTRACT(*);
 - The dates of trial runs and warranty and performance tests: **not later than within 4 months from the date of handover to technological start-up(**).**

(*) This date stands for the end of mechanical start-up, obtaining a permit for use and handover of the installation for technological start-up.

(**) This date stands for the end of the adjustment trial run, testing and successful completion of warranty measurements and the handover of the water treatment station installation along with facilities and auxiliary infrastructure FOR FINAL OPERATION according to the provisions of the EPC CONTRACT.

At the second stage of this bidding PROCEDURE the CONTRACTING PARTY shall provide the CONTRACTORS with an excerpt from the Construction Design for the water


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treatment station installation (SUW) along with facilities and auxiliary infrastructure. The Contracting Party shall provide the CONTRACTOR with the construction permit at the latest on the execution day of the EPC CONTRACT. The BIDDER selected shall prepare assumptions and documents to the revised Construction Design (if required) on their basis, as agreed with the CONTRACTING PARTY.

The CONTRACTING PARTY hereby advises that the Contractor must take into account the operating conditions in the Jedlicze Production Plant of ORLEN Południe S.A. and any hindrances resulting from works carried out by other entities at and in the vicinity of the construction site in the work organization plan and schedule related to the construction of the water treatment station installation along with facilities and auxiliary infrastructure. Relevant information shall be provided to the CONTRACTOR at Stage 2 of this bidding PROCEDURE.


7 Conditions of participation in the procedure and description of the method of evaluating these conditions

- 7.1** The CONTRACTING PARTY hereby advises that Part 2 of the ToR (Information on the INVESTMENT) and Part 3 of the ToR (EPC CONTRACT Template) shall be provided to the BIDDERS who submitted their proposals on the CONNECT Platform in Round 1 and qualified for ROUND 2.
- 7.2** The CONTRACTING PARTY requires the BIDDERS participating in the PROCEDURE to submit their BID for the complete scope of WORKS specified in the ToR. The CONTRACTING PARTY reserves the right not to consider partial BIDS, i.e. stipulating the completion of a part of the subject of contract. The CONTRACTING PARTY shall not accept optional or variant BIDS except the options which may be explicitly requested by the CONTRACTING PARTY.
- 7.3** The Contracting Party admits bids submitted by consortia. Bids submitted by a consortium consisting of two or more entities should meet the following requirements:
 - 7.3.1** The bid should be signed in such a way as to be legally binding on all members of the consortium;
 - 7.3.2** One of the consortium members should be appointed as a consortium leader to represent all other consortium members or to represent the consortium in the purchasing procedure and to conclude the CONTRACT as a result of selection of the consortium's bid. It is required to submit an appropriate letter of attorney for the consortium leader signed by authorised representatives of all consortium members.
 - 7.3.3** The consortium leader is authorised to make obligations and receive instructions for and on behalf of all members of the consortium and shall be responsible for performance of the entire CONTRACT, including for settlement of remuneration with the Contracting Party for performance of the CONTRACT, unless otherwise agreed by the parties at the stage of negotiating the CONTRACT; such authorisation shall be included in the power of attorney granted by the remaining members of the consortium to the relevant member of the

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consortium.

- 7.3.4** All members of the consortium are jointly and severally liable for the performance of the CONTRACT, and a relevant statement in this respect shall be included in the above-mentioned authorisation as well as in the Contract.
- 7.3.5** A copy of the consortium agreement by and between the consortium members and/or the attachment of the relevant letters of intent must be submitted with the bid.
- 7.3.6** The Contracting Party may consider that a change in consortium members or an expansion of the consortium during the procurement process, except for a change in the consortium leader, does not constitute an amendment to the bid submitted by the consortium members and will be admitted to further stages of the procurement process. The enlargement of the consortium with a new entity or any change in the composition of the consortium requires the written consent of the Contracting Party and the signing of a confidentiality agreement by each new consortium partner. The Contracting Party may accept a change in the composition of the consortium at its discretion.
- 7.4** Only BIDDERS who fulfilled the conditions of item 8 shall be admitted to participate in the PROCEDURE.
- 7.5** The CONTRACTING PARTY shall have the right to exclude a BIDDER from the PROCEDURE and to reject their BID, providing a justification, at every stage of the PROCEDURE. In particular, the CONTRACTING PARTY hereby advises that the rejection of a BID may apply to each:
- a.** BIDDER who incurred damage to any of the companies from the PKN ORLEN S.A. Capital Group, failing to perform or incorrectly performing any contract, unless, in the opinion of the CONTRACTING PARTY, this BIDDER had taken suitable mitigation measures before the commencement of the PROCEDURE (i.e. self-cleaning),
 - b.** BIDDER whose assets were assumed with a liquidation proceeding, a recovery or enforcement proceeding, or who announced bankruptcy,
 - c.** BIDDER who is in arrears with the taxes, any duties and contributions to social security or health insurance,
 - d.** BIDDER who is a natural person who was finally sentenced for:
 - a crime against any persons performing gainful work,
 - a crime against the environment, bribery,
 - a crime against economic trading under Chapter XXXVI of the Penal Code of 6.06.1997 (Dz.U. [Polish Journal of Laws] of 2019, item 1950, as amended), or for any other felony committed for financial gain, as well as for any tax offence or for participation in an organised group or association for the purpose of committing a felony or a tax offence.
 - e.** BIDDERS operating under a registered partnership, one of the partners of which was finally sentenced for the crime listed in item (d) above,

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- f. BIDDERS operating under a professional partnership, one of the partners or board members of which was finally sentenced for the crime listed in item (d),
 - g. BIDDERS operating under a limited partnership or limited joint-stock partnership, one of the general partners of which was finally sentenced for the crime listed in item (d) above,
 - h. BIDDERS being natural persons, one of the management members in office of which was finally sentenced for any of the crimes listed in item (d) above,
 - i. BIDDERS being collective entities, which were banned from running a business activity by a court of law pursuant to regulations laying down the liability of collective activities for acts prohibited under penalty,
 - j. BIDDERS who directly performed activities connected with preparation of the PROCEDURE for the CONTRACTING PARTY or enlisted the help of persons participating in performance of these activities for the purpose of preparation of the BID, unless participation of these BIDDERS in the PROCEDURE does not impede fair competition,
 - k. BIDDERS who have given false information intended to influence or which may influence the outcome of the PROCEDURE,
 - l. BIDDERS who did not fulfil all conditions for participation in the PROCEDURE.
- 7.6** The CONTRACTING PARTY reserves the right to grant consent to the participation in the PROCEDURE to any BIDDER who was initially excluded under item 7.5(a), if the BIDDER has presented evidence that the means taken by them are sufficient for proving their reliability, and particularly to display that the harm incurred to the CONTRACTING PARTY was rectified, adequate technical, organizational and human resources measures were taken and are adequate for preventing any future BIDDER’S offences.


8 Contents of a complete BID

The BIDDER shall submit a BID prepared in the following manner:


8.1 FORMAL BID:

Completed “FORMAL BID” form (according to the templates in the appendices to the INSTRUCTIONS), including formal and legal annexes, i.e.:

- 8.1.1.** A signed consortium agreement laying down the obligations of individual consortium members and a consortium leader (in the case of a consortium);
- 8.1.2.** Letter of attorney authorising to sign and submit the BID (if applicable); a letter issued by all consortium members, authorising the consortium leader to sign a joint BID, in the form of letters of attorney or adequate provisions of the consortium agreement, which clearly indicate that a power of attorney was granted to the consortium leader;

	<p style="text-align: center;">Terms of Reference for</p> <p style="text-align: center;">“DESIGN, DELIVERY, ASSEMBLY AND COMMISSIONING OF THE WATER TREATMENT STATION INSTALLATION ALONG WITH FACILITIES AND AUXILIARY INFRASTRUCTURE AT THE PRODUCTION PLANT OF ORLEN POŁUDNIE S.A. AND CONFIRMATION OF GUARANTEED PARAMETERS”</p>
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- 8.1.3.** Current excerpt from the business register maintained according to the regulations of the country of the official seat of the BIDDER (e.g. a current excerpt from the National Court Register) issued not earlier than within 3 months before the lapse of the deadline for submitting the FORMAL BID. If the BID is submitted by several companies acting jointly as part of a consortium, the register document must be submitted by each consortium member;
- 8.1.4.** Financial data certified by the authorised representatives of the BIDDER, i.e. the balance sheet and the profit and loss account, cash flow statement (unit and consolidated statements) for 2018, 2019 and the most recent document for 2020 (in the case of a consortium, the required data must be submitted by each consortium member). If financial statements for a given period are not available, the BIDDER shall notify the CONTRACTING PARTY thereof and the CONTRACTING PARTY shall send a list of necessary financial data required for verifying the BIDDER’S financial situation. In the event of loss at any time the Bidder shall be obliged to present explanations in this regard;
- 8.1.5.** Certificate that the BIDDER or all consortium members are not in arrears with the taxes and social security contributions. A current certificate from the Internal Revenue Service (Urząd Skarbowy, US), stating that the BIDDER / consortium members was/were registered as active VAT payers (issued no earlier than within 3 months) or a printout from the tax website of the Ministry of Finance, signed by authorised persons. In the case of foreign companies, equivalent documents must be obtained in the countries where these companies have registered their business, issued not earlier than within 3 months before the deadline for submitting the FORMAL BID, including a sworn English or Polish translation, and if such documents are not issued - a pertinent statement made to a notary public by the authorised representative of the BIDDER, including their attorney;
- 8.1.6.** A copy of the Occupational Health and Safety Management System Certificate issued according to: ISO 45001 or PN-N-18001:2004 or equivalent (e.g. BS 8800, OHSAS 18001, SCC, ISO-18001). In the case of a consortium, the certificate must be submitted by each consortium member.
- 8.1.7.** Statements that the CONTRACTOR shall take full responsibility for adherence to effective regulations and occupational health and safety principles, fire safety rules, as well as process safety rules effective in the PRODUCTION PLANT by their employees and the employees of their SUBCONTRACTORS. In the performance of the EPC CONTRACT granted by the CONTRACTING PARTY, all SUBCONTRACTORS contracted to perform any work by the CONTRACTOR shall be also obligated to adhere to effective regulations and occupational health and safety principles, fire safety rules, as well as process safety rules effective in the PRODUCTION PLANT, as specified in Appendices to ToR p. 2;
- 8.1.8.** A reference list in a table with at least 3 installations of water treatment stations performed within the last 10 years, with the following reservations:

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8.1.8.1. At least one of the references provided should refer to a facility based on water treatment technology described in this REQUEST FOR PROPOSAL and required by the CONTRACTING PARTY, with value of the completed facility should not be less than PLN 8 million net;

8.1.8.2. The remaining two of the three required references should refer to installations of water treatment station based on membrane technologies, in configuration other than the one described in this request, or based on a non-membrane technology, in the scope not exceeding a single degree of water treatment offered to SUW. The value of each of the reference installations presented in this manner should exceed PLN 6 million net.

8.1.8.3. The minimum capacity for each of the reference installations presented by the BIDDER should not be less than $Q=20\text{m}^3/\text{h}$ of treated water (after the last treatment stage);


8.1.8.4. The reference facilities presented by the BIDDER shall be executed either individually by the BIDDER or jointly with another entity within the consortium;

8.1.8.5. The references submitted shall contain for example the following information:

- project names,
- brief descriptions of the scope,
- description of execution (the Bidder must be a general contractor of the investment related to the water treatment station installation along with facilities and auxiliary infrastructure),
- duration of the project,
- construction end year,
- contract value or Bidder's statement that the criteria concerning the minimum contract value – see item 8.1.9.1 and 8.9.1.2 expressed in Polish zlotys or in a different currency, converted according to the average NBP exchange rate from the date of announcement of the REQUEST FOR PROPOSAL on the CONNECT Platform) have been fulfilled,
- contact details, including, if possible, the investor's representative responsible on behalf of the investor for the construction of the facility and the investor's representative responsible for the operation of the reference installation;

8.1.9. A copy of signed insurance agreement / agreements (policy/policies), or a declaration of entering such an agreement before executing the EPC CONTRACT, covering the following risks, which shall be maintained throughout the effective term of the EPC CONTRACT and in the period of all warranties granted:

- general and contractual civil liability insurance covering the CONTRACTOR and their SUBCONTRACTORS for a total insurance sum of minimum **PLN 20,000,000** (or equivalent, expressed in a different currency, according to the average NBP


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exchange rate from the date of announcement of the REQUEST FOR PROPOSAL on the CONNECT Platform), for all and any events, extended to include the Pure Financial Losses Clause, with a total insurance sum of minimum **PLN 5,000,000** (or equivalent, expressed in a different currency), extended to include civil liability for third-party damages caused by mechanical vehicle traffic during the execution of WORKS;

- health insurance covering, among others, the liability of designers and architects, inspectors, construction engineers, land surveyors, including the civil liability of the CONTRACTOR, as well as their SUBCONTRACTORS in connection with any malpractice exhibited by the designer, architect, inspector, construction engineer or land surveyor and consisting particularly in the incorrect development of documentation, assessments, analyses and studies comprising the line of business of the CONTRACTOR and any parties, with whom the CONTRACTOR jointly performs the subject of the CONTRACT, as well as incorrect design author's supervision;
- employee and employer insurance covering all risks related to accidents at work, if such insurance is required by effective laws;
- insurance covering all damages to deliveries, incurred during transport to and on the Construction Site, including damages incurred in the course of loading and unloading procedures;
- insurance covering damages incurred to the environment or in connection with (accidental) contamination of the environment.

Note: The detailed scope of insurance coverage of CONTRACTOR and the CONTRACTING PARTY was specified in the CONTRACT template. The CONTRACTING PARTY shall be obligated to obtain insurance covering the construction and installation site (CAR - EAR) for this investment task.

- 8.1.10.** BIDDER'S consent to sharing their BID and its possible revisions with the Advisers from outside Orlen S.A. Capital Group and experts in Orlen S.A. Capital Group;
- 8.1.11.** Statement that the BIDDER or the consortium has sufficient knowledge and experience and sufficient technical and human resources to complete the SUBJECT OF THE EPC CONTRACT;
- 8.1.12.** Statement of the absence of ongoing liquidation, restructuring or bankruptcy, enforcement proceedings involving the BIDDER or any other consortium members;
- 8.1.13.** Statement of the absence of any grounds for exclusion under item 7.5 (in the case of a consortium - signed separately by each consortium member);
- 8.1.14.** Statement that the BIDDER does not employ any employees of PKN ORLEN S.A. and companies from ORLEN S.A. Capital Group, including ORLEN POŁUDNIE S.A.;

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- 8.1.15.** Statement of the existence or absence of capital ties with the CONTRACTING PARTY, PKN ORLEN S.A. or any other companies from PKN ORLEN S.A. Group;
- 8.1.16.** Statement that the BIDDER has read and undertakes to adhere to: Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 24 July 2016, reference number 32, concerning: the implementation of “Instructions for use of safety signs and signals”, appended as appendix to ToR p. 2;
- 8.1.17.** Statement that any employees and officers, as well as partners/shareholders of the BIDDER do not remain in any legal or factual relationship with the CONTRACTING PARTY and their officers and employees, which could raise reasonable doubts as to the impartiality of CONTRACTOR selection by the CONTRACTING PARTY;
- 8.1.18.** Declaration that the BIDDER is not subject to economic sanctions in line with the Act on the prevention of money laundering practices and financing of terrorism of 1 March 2018 (Dz.U. [Polish Journal of Laws] of 2020, item 971);
- 8.1.19.** Bidder’s declaration about the beneficial owner, and an excerpt from the Central Register of the Beneficial Owners (Company entries in the Central Register of the Beneficial Owners) (domestic Bidders);
- 8.1.20.** Declaration that the Bidder is not in a court dispute with ORLEN POŁUDNIE S.A., PKN ORLEN S.A. or with Companies from ORLEN S.A. PKN Capital Group;
- 8.1.21.** Declaration on submission of FORMAL BID that is complete and consistent with requirements laid down in ToR;
- 8.1.22.** Bidder’s declaration on acceptance of the terms and conditions of this REQUEST FOR PROPOSAL.


If any of the formal criteria, including the reference criteria and contract criteria 0/1, are not met, the Contracting Party shall be entitled to reject the BID.

Financial statements shall be verified by the CONTRACTING PARTY. Qualification to the subsequent stages of the PROCEDURE shall depend on positive verification of given BIDDER.

8.2 TECHNICAL BID:

The following materials will be provided to BIDDERS who are qualified for the technical round:

- a) the complete technical part of the REQUEST FOR PROPOSAL (ToR p. 2);
- b) draft EPC CONTRACT (ToR p. 3) along with information on key terms and conditions of the contract;

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c) "TECHNICAL BID" form.

Completed “TECHNICAL BID” form (according to the templates in the appendices to part 2 of these ToR) together with Technical Appendices, i.e.:


- 8.2.1. Statement that the BIDDER has submitted a complete TECHNICAL BID in accordance with the ToR, for the complete scope of the subject of the PROCEDURE, and offers to perform the EPC CONTRACT within the entire scope of the Terms of Reference, whereas all and any doubts regarding the technical part have been notified and resolved with the CONTRACTING PARTY as set forth in item **9** of these INSTRUCTIONS;
- 8.2.2. Declaration that the water treatment station installation along with facilities and auxiliary infrastructure shall meet technical parameters that **are not worse** than the ones provided for in part 2 of ToR;
- 8.2.3. Declaration that the water treatment station installation along with facilities and auxiliary infrastructure shall meet Guaranteed Parameters as required by part 2 of ToR;
- 8.2.4. Statement that the technical solutions applied in the installation assumed with the EPC CONTRACT shall be adapted to the Polish climate and shall fulfil Polish legal requirements;
- 8.2.5. Declaration that the guarantee period for the scope of the EPC CONTRACT shall not be shorter than:
 - **24 (twenty four) months** for the equipment delivered, other Supplies and results of WORKS related to the water treatment station installation along with facilities and auxiliary infrastructure;
 - **36 (thirty six) months** for assembly, other works and for the Documentation;
 - **48 (forty eight) months** for anti-corrosion and paint coatings, protection of building structures and chemical resistant coatings for anti-corrosive protection of internal surfaces of the water treatment station installation.

In each and every case above, the guarantee period runs from the commissioning date of the water treatment station installation along with facilities and auxiliary infrastructure (execution of PAC);

- 8.2.6. Declaration to deliver machinery and devices, electrical elements, automation sourced from acceptable suppliers fulfilling the technical requirements and standards specified in part 2 of the ToR or technically equivalent.

Note: The CONTRACTING PARTY permits deviations from the CONTRACTING PARTY’S standards, after prior justification and approval of the CONTRACTING PARTY. Should this be the case, all BIDDERS shall be notified of any changes.


- 8.2.7. Declaration that BIDDER’S employees will have the required licenses applicable to their industries: e.g. civil engineering, water and sewage, electrical, OHS and Fire Safety, Technical Supervision, or other, as required for the implementation of the INVESTMENT;
- 8.2.8. Statement that the design solutions applied will fulfil the requirements of BAT and BREF, if

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applicable;


- 8.2.9. An obligation to document the sources of origin and the quality of materials and devices, whenever requested by the CONTRACTING PARTY;
- 8.2.10. Statement that the BIDDER has sufficient knowledge, experience and equipment to perform the CONTRACT as well as fulfil any other obligations stemming from the REQUEST FOR PROPOSAL;
- 8.2.11. Statement that the BIDDER has sufficient licenses, permits and/or concessions required by the law to provide the Services assumed with this REQUEST FOR PROPOSAL and the EPC CONTRACT;
- 8.2.12. Statement that the BIDDER has read and shall comply with any regulations in force in the CONTRACTING PARTY'S PRODUCTION SITE and in Poland while performing the EPC CONTRACT and shall observe them while performing the subject matter of the EPC CONTRACT, in line with appendix to part 2 of these ToR;
- 8.2.13. Statement of service provided for all key machinery and devices and automation systems assumed with the CONTRACT by a company situated in the European Union throughout the warranty period;
- 8.2.14. A list of potential SUBCONTRACTORS enclosed to the technical part of the BID, specifying the works to be contracted to these SUBCONTRACTORS;
- 8.2.15. A statement that the BIDDER has rights (if formally and legally required) to the offered technology and to the designs, and has the right to license / sub-licence (if required) – a written confirmation issued by the BIDDER or the Licensor that licensing does not exclude the exclusive rights of third parties shall be required;

Note: The rights may be presented to the consortium members or SUBCONTRACTORS listed in the BID, with whom Contracts or Letters of Intent have been signed as part of the BID offered.
- 8.2.16. Declaration that the BIDDER has read and undertakes to adhere to: The Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 25 March 2015, reference number 16, concerning: the implementation of “Regulations for individual and material traffic in ORLEN Południe S.A. facilities”, as included in an appendix to part 2 of these ToR;
- 8.2.17. Declaration that the BIDDER has read and undertakes to adhere to: Internal Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 25 January 2016, reference number 7, concerning: the implementation of “Regulations for internal road traffic in ORLEN Południe S.A. – Zakład Jedlicze”, as included in an appendix to part 2 of these ToR;
- 8.2.18. Declaration that the BIDDER has read and undertakes to adhere to: The Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 24 March 2016, reference number 19, concerning: the implementation of “Instructions for use of personal protective equipment”, as included in an appendix to part 2 of these ToR;
- 8.2.19. Declaration that the BIDDER has read and undertakes to adhere to: The Disposition of the

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Chief Executive Officer of ORLEN Południe S.A. dated 24 July 2016, reference number 32, concerning: the implementation of “Instructions for use of safety signs and signals”, as included in an appendix to part 2 of these ToR;

- 8.2.20. Declaration that the BIDDER has read and undertakes to adhere to: Internal Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 17 October 2016, reference number 52, concerning: the competences of personnel in charge of executing and supervising works involving the assembly and disassembly of flanged connections in ORLEN Południe S.A. facilities or commissioned by ORLEN Południe S.A.”, as included in an appendix to part 2 of these ToR;
- 8.2.21. Declaration that the BIDDER has read and undertakes to adhere to: Internal Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 2 November 2017, reference number 53, concerning: the implementation of “occupational health and safety during manual handling of loads and other works involving physical effort”, as included in an appendix to part 2 of these ToR;
- 8.2.22. Declaration that the BIDDER has read and undertakes to adhere to: Internal Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 18 December 2017, reference number 65, concerning: the implementation of “Instructions for works at height”, as included in an appendix to part 2 of these ToR;
- 8.2.23. Declaration that the BIDDER has read and undertakes to adhere to: Internal Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 21 December 2017, reference number 68, concerning: the implementation of “Instructions for preparation and execution of works in tanks”, as included in an appendix to Part II of these ToR;
- 8.2.24. Declaration that the BIDDER has read and undertakes to adhere to: Internal Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 9 November 2018, reference number 6, concerning: the implementation of “Post-accident procedure”, as included in an appendix to part 2 of these ToR;
- 8.2.25. Declaration that the BIDDER has read and undertakes to adhere to: Internal Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 16 May 2018, reference number 16, concerning a list of hazardous works applicable to ORLEN Południe S.A. facilities, as included in an appendix to part 2 of these ToR;
- 8.2.26. Declaration that the BIDDER has read and undertakes to adhere to: Internal Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 27 March 2019, reference number 40, concerning: the implementation of “Instructions for the safe operation of machinery and tools in work environments”, as included in an appendix to part 2 of these ToR;
- 8.2.27. Declaration that the BIDDER has read and undertakes to adhere to: Internal Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 10 April 2019, reference number 44, concerning: the principles of executing a power lock using the LOTO System in ORLEN Południe S.A. installations, as included in an appendix to part 2 of these ToR;
- 8.2.28. Declaration that the BIDDER has read and undertakes to adhere to: Internal Disposition of

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the Chief Executive Officer of ORLEN Południe S.A. dated 25 October 2019, reference number 65, concerning: the implementation of “Instructions for measurements of hazardous substances”, applicable to ORLEN Południe Capital Group, as included in an appendix to part 2 of these ToR;

- 8.2.29. Declaration (including the signed appendix 6 to the Regulations) that the BIDDER has read and undertakes to adhere to: Internal Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 6 December 2019, concerning: the implementation of the “Environmental, Occupational Health and Safety Principles applicable on the premises of ORLEN Południe S.A.”, as included in an appendix to part 2 of these ToR;
- 8.2.30. Declaration that the BIDDER has read and undertakes to adhere to: Internal Disposition of the CEO of ORLEN Południe S.A. of 29 September 2020, ref. no.: 63, concerning: the implementation of “Instructions on performance of works based on written permits and orders”, the content of which is appended to Part II of these ToR;
- 8.2.31. Declaration that the BIDDER has read and undertakes to adhere to: Internal Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 19 October 2020, reference number 62, concerning: the implementation of “Instructions for the organisation of secure work with power equipment”, as included in an appendix to Part II of these ToR;
- 8.2.32. Declaration that the BIDDER has read and undertakes to adhere to: Internal Disposition of the Chief Executive Officer of ORLEN Południe S.A. dated 10 November 2020, reference number 64, concerning: the implementation of “Instructions for earth works”, as included in an appendix to Part II of these ToR;
- 8.2.33. Document: “Team organization”, laying down the offered method of completing the subject of contract and the key team members;
- 8.2.34. Document: “Schedule” containing a framework schedule divided into basic activities carried out in stages, presented as a Gantt chart;
- 8.2.35. Document: “Risk analysis”, in which the BIDDER:
 - identifies basic risks that may arise during performance of the contract;
 - describes proposed actions to avoid the risk and reduce likelihood of this risk;
 - describes how reduced risk impacts the performance of the contract, if it occurs.
- 8.2.36. Declaration to commence the INVESTMENT according to the expected implementation schedule in accordance with an appendix to part 2 of ToR and to complete the investment on time;
- 8.2.37. Statement confirming construction date of the offered scope of works and handover for technological start-up: **up to 20 months** from the date of signing the EPC CONTRACT;
- 8.2.38. Document - “Quality Assurance and Control Programme”;
- 8.2.39. Declaration of acceptance of the key terms of the contract in line with part 3 of ToR;

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8.2.40. List of comments to the EPC CONTRACT template.

At this stage, the Technical team shall have the right to reject the technical BIDS which do not fulfil any of the 0/1 technical criteria or which were not completed or verified.

8.3. PRICE BID


1. The BIDDER shall submit a Commercial Offer and quote a lump sum amount (hereinafter referred to as "Contract Price") covering all work to be performed under the CONTRACT and the Contract Price shall be quoted as per the requirements of the "Commercial Offer" form made available to BIDDERS along with ToR p. 2 and 3.
2. The Contract Price shall be deemed to be the full amount due to the Bidder for the performance of the subject matter of the CONTRACT, including all costs and expenses associated with the performance of the CONTRACT and all activities of the CONTRACTOR in accordance with the terms of the CONTRACT.
3. The BIDDER shall price the project in **EURO currency**. All prices given in the quote shall be net prices (without VAT).
4. All duties, taxes and other charges being on the part of the CONTRACTOR as per the CONTRACT (ToR p. 3) or arising from any other cause shall be included in the contractual remuneration.

9 Information on the method of communication between the CONTRACTING PARTY and the BIDDERS

- 9.1 The BIDDER shall communicate with the CONTRACTING PARTY **solely** in the electronic form, i.e. **through the CONNECT Platform**, whenever requesting an explanation to any of the ToR, or with other inquiries concerning the PROCEDURE.

NOTE: If the question concerns a unique solution of the BIDDER and cannot be disclosed to other BIDDERS along with the answer, this has to be explicitly reserved in the question's heading.


- 9.2 All questions (including proposed changes) should be submitted and agreed on with the CONTRACTING PARTY in accordance with item 9 of these INSTRUCTIONS **before submitting the BID**. If the CONTRACTING PARTY has consented to a solution proposed by a BIDDER, this solution shall be treated as complying with the requirements of the ToR. The CONTRACTING PARTY shall notify all BIDDERS both of the BIDDER'S proposal and of the stance of the CONTRACTING PARTY. Subject to the provisions of item 9.4, the text of the inquiry, including the explanation of the CONTRACTING PARTY, shall be announced by the CONTRACTING PARTY on the CONNECT Platform to all BIDDERS, without disclosing the source of the inquiry, with the stipulation that all inquiries must be submitted to the CONTRACTING PARTY within 7 business days before the deadline for submitting individual parts of the BIDS at the latest. Before this deadline, the CONTRACTING PARTY reserves the right to not reply to any inquiries.

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- 9.3** If the question concerns a unique solution of the BIDDER and cannot be disclosed to other BIDDERS along with the answer, **which has to be explicitly reserved by the BIDDER in accordance with item 9.1**, the CONTRACTING PARTY reserves the right to reply only to the BIDDER who made the original inquiry.
- 9.4** The CONTRACTING PARTY reserves the right refuse to reply to any inquiries, providing a justification thereto.
- 9.5** Any explanations and replies published by the CONTRACTING PARTY shall be binding for the CONTRACTING PARTY and the BIDDERS, and possible changes, specifications implemented as a result of these explanations shall become an integral part of these ToR. The explanations and replies shall be sent to the BIDDERS via the CONNECT Platform.
- 9.6** The CONTRACTING PARTY shall not be liable for any explanations provided to the ToR to the BIDDERS by any other persons or companies which have not been authorised to contact the BIDDERS, except for the person indicated in item 9.8 or their official substitutes, authorised to issue binding information via the CONNECT Platform.
- 9.7** All representations, applications, notifications and information shall be exchanged between the CONTRACTING PARTY and the BIDDERS solely using the CONNECT Platform. All statements and declarations of the BIDDERS must be submitted in the form of a scan of a document, with the signatures of all persons authorised to represent the BIDDER, except for questions and their contents, as specified in item 9.1, which should not include any information which could be used to identify the BIDDER.
- 9.8** On behalf of the CONTRACTING PARTY, all issues related to contacting the BIDDERS and providing information on the PROCEDURE shall be handled by: slawomir.lorenc@orlen.pl, working between 8.30 a.m. and 3:00 p.m., phone: **+48 24 256 69 08**, or a substitute designated by the CONTRACTING PARTY in CONNECT, in the event of his absence.

10 Site inspection

- 10.1.** The BIDDER may conduct a site inspection at the Production Plant (site inspection is not mandatory) in order to examine the actual state of the construction site.
- 10.2.** The dates and conditions of the site inspection must be agreed on with the CONTRACTING PARTY via the CONNECT Platform. The BIDDER shall be obligated to obtain the CONTRACTING PARTY'S written approval of the date and conditions of the site visit, issued at least 7 days before the planned date of the site inspection.
- 10.3.** The CONTRACTING PARTY shall specify the requirements to be fulfilled by the BIDDER in order to gain access to the CONTRACTING PARTY'S PRODUCTION SITE.
- 10.4.** In order to perform a site inspection on the agreed upon date, the BIDDER must provide the CONTRACTING PARTY with a list of site inspection participants at least 7 business days before planned date of the site inspection. The list should contain the following data: company name,

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full name, position, type and no. of identification document. In the case of foreigners, the following data should be additionally submitted: citizenship, date and place of birth. Any persons who received passes authorizing entry to the CONTRACTING PARTY'S site shall be identified as site inspection participants, specifying the company name, full name and position. The remaining data referred to above shall not be necessary - please indicate in the information submitted that these persons have passes.


- 10.5.** The CONTRACTING PARTY shall not give any explanations which are not related to the INVESTMENT site. All and any inquiries related to any issues stemming from the site inspection of the CONTRACT performance site shall be submitted to the CONTRACTING PARTY in writing only, and replies shall be given as specified in item 9.2.
- 10.6.** The BIDDERS will be required to notify the CONTRACTING PARTY beforehand if they intend to take photographs during the site inspection.
- 10.7.** The BIDDERS shall take part in the site inspection at their own cost and risk. The CONTRACTING PARTY shall not insure the representatives of the BIDDERS against any accidents, losses or damages incurred as a result of the site inspection. The BIDDERS should insure their own representatives according to applicable principles and regulations.
- 10.8.** The BIDDER shall not have the right to take any measures or perform any activities on the CONTRACTING PARTY'S site without prior approval of the CONTRACTING PARTY.
- 10.9.** The site inspection shall take place under the supervision of the CONTRACTING PARTY.

11 BID validity period

- 11.1.** The CONTRACTING PARTY shall require a **6-month** BID validity period, counted from the date of submitting the COMMERCIAL BID, with the possibility of extending this term.
- 11.2.** The BIDDER may extend the BID validity period.
- 11.3.** The CONTRACTING PARTY may request a specific extension of the BID validity period.
- 11.4.** A BIDDER who will not agree to extend the BID validity period may be excluded by the CONTRACTING PARTY from the PROCEDURE, and their BID may be rejected.

12 Description of the manner of preparation of the BIDS


- 12.1.** These documents are the Terms of Reference and their provisions shall remain in effect until the date of submitting the BIDS. The BIDDER should familiarize with the contents of all provisions of these ToR. The ToR should be read together with any possible modifications and amendments made by the CONTRACTING PARTY in accordance with item 9.
- 12.2.** For the purposes of the PROCEDURE, a BID shall comprise a set of documents compiled

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according to the requirements of the ToR, as well as any explanations given to the CONTRACTING PARTY by the BIDDER in the course of the PROCEDURE.

- 12.3.** Individual parts of the BID should be drawn up according to the templates included in appendices to these INSTRUCTIONS. The CONTRACTING PARTY shall not accept partial BIDS, i.e. stipulating the completion of a part of the subject of CONTRACT.
- 12.4.** Each BID should be submitted through the CONNECT Platform in two versions:
 - a. a scan of documents signed by the authorised representatives of the BIDDER (marked as an original copy) and
 - b. their editable versions (if possible).

In the case of any discrepancies between them, the original in the form of a scan shall prevail.
- 12.5.** The BIDDER shall be obligated to keep the original BID and all documents submitted in connection with the PROCEDURE in hard copy. Individual documents comprising the BID must be placed in the order they are listed in these INSTRUCTIONS, and their order must be clearly and visibly marked (e.g. digital or colourful tabs). The CONTRACTING PARTY reserves the right to request any documents from the BIDDER within the period of 5 years after the completion of the PROCEDURE, i.e. after the BIDDERS have been notified of the result of the PROCEDURE.
- 12.6.** The BID should be drawn up in writing, or shall otherwise be deemed null and void (in the form of a computer printout according to the requirements specified in item 4, guaranteeing the full legibility of its contents - a scan of the bid must be placed in the CONNECT system). Illegible BIDS shall not be considered.
- 12.7.** All BIDS, including the pages from all appendices, should be numbered in order.
- 12.8.** Each BID document must be signed and sealed with a personal stamp of the person authorised to represent the BIDDER in legal circulation and to incur liabilities on their behalf under pertinent statutory regulations, or empowered, at least in connection with the subject matter of the CONTRACT, to make declarations of intent on behalf of and for the BIDDER (printing out or signing the full name, function of the signatory is acceptable instead of the personal stamp). Each page of the BID containing any content should be signed or initialled by at least one of the signatories of the BID. If a document copy is enclosed to the BID, the copy should be marked as “certified true copy” or “true copy” and signed by the person(s) authorised to represent the BIDDER according to the registry document, or an authorised representative of the BIDDER, acting under a letter of attorney, or a notary public (in a manner that the signature may be identified). The letter of attorney or notarial certification must be also enclosed.
- 12.9.** All and any changes to the text of the BID (corrections, crossed out text, added text) should be signed by the BIDDER - otherwise they will not be taken into account.
- 12.10.** All notes made in the BID must be written in a permanent and legible manner.
- 12.11.** The BID must contain a letter of attorney authorizing the recipient to sign the BID, unless the right to sign the BID stems from other documents submitted with the BID. The text of the letter

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of attorney must explicitly specify the activities which are authorised thereunder. The letter of attorney must be submitted in its original or a certified true copy issued by the person granting the power of attorney. In the case of BIDDERS who are jointly applying for the award of contract (consortium), they shall appoint an attorney authorised to represent them in a procedure for the award of EPC CONTRACT, or to represent them in the procedure and conclude the EPC CONTRACT when their joint BID is selected. If a consortium BID is selected, all consortium members shall sign the EPC CONTRACT and accept joint and several liability with the CONTRACTING PARTY for the completion of the EPC CONTRACT. The members shall choose one of them (leader) who will be exclusively and irrevocably authorised to settle the fee with the CONTRACTING PARTY for the performance of the EPC CONTRACT, unless the PARTIES agree otherwise at the stage of negotiating the terms of the EPC CONTRACT.


13 Place, date and conditions for submitting the BIDS

- 13.1.** Individual parts of the BID should be submitted via the CONNECT Platform.
- 13.2.** The time limit for submitting individual parts of the BID shall be indicated on the CONNECT Platform. The CONTRACTING PARTY reserves the right to reject any BIDS submitted after the time limit.

The CONTRACTING PARTY shall notify the BIDDERS of any changes to the deadlines for submitting individual parts of the BID via the CONNECT Platform.


- 13.3.** A complete BID shall consist of the following parts:

Part of the BID	Expected submission deadline, the exact dates shall be announced on CONNECT	Conditions for submitting the BID
1. Submitting the FORMAL BID according to the Instructions for BIDDERS	22 March 2021	If the BID is submitted by a consortium, all statements shall be required for all consortium members, or from an authorised consortium leader acting under a pertinent letter of attorney, and appendices shall be required from each consortium member.

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2	Submitting the declaration of acceptance of the key terms of the EPC CONTRACT	31 May 2021	
3.	Submitting the declaration of acceptance of the EPC CONTRACT or providing amended EPC CONTRACT template (WITHOUT INFORMATION ABOUT THE PRICE)	31 May 2021	<p>A declaration of acceptance of the CONTRACT or providing amended contract.</p> <p>It must be submitted through CONNECT.</p>
4.	Submitting the TECHNICAL BID	31 May 2021	It must be submitted through CONNECT.
5	Submission of: The COMMERCIAL BID AND the CONTRACT <u>along with information about the price</u>	<p>22 July 2021</p> <p>The exact deadline shall be announced by the CONTRACTING PARTY on CONNECT.</p>	<p>If the BID is submitted by a consortium, all statements shall be required for all consortium members, or from an authorised consortium leader acting under a pertinent letter of attorney. It must be submitted through CONNECT.</p>

- 13.4.** The CONTRACTING PARTY hereby advises that all BIDS shall be kept secret.
- 13.5.** The CONTRACTING PARTY shall not be held liable for any incorrectly submitted BID or its incorrect marking.
- 13.6.** The BIDDER is entitled to make changes or withdraw a submitted BID before the deadline for submitting BIDS.
- 13.7.** Any changes in the BID should be drawn up in the form of revisions containing the amended text, including a reference to applicable pages and items in the BID. These changes should be prepared and submitted in the same manner as the BID.

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14 BID evaluation and qualification criteria

- 14.1. A BID may be qualified to the individual stages of the PROCEDURE if it is submitted by the BIDDERS with respect to the requirements of the ToR, including the criteria provided below.

The CONTRACTING PARTY shall evaluate and qualify the BIDS based on the following criteria:

14.1.1. Formal – 0/1 (failed / fulfilled)

The formal criteria which will be used for grading the bids have been described in item 8.1 of the INSTRUCTIONS. If any of the formal criteria are not met, the CONTRACTING PARTY shall be entitled to reject the BID.

14.1.2 Technical

14.1.2.1. – grade 0/1 (failed / fulfilled)

Technical criteria which will be used for grading the bids have been described in item 8.2. of the INSTRUCTIONS. If any of the technical criteria are not met, the CONTRACTING PARTY shall be entitled to reject the BID. The BIDS will be evaluated to verify if they fulfil/fail to fulfil the requirements. The requirements of the CONTRACTING PARTY shall assume the complete scope of the ToR. BIDS shall be verified against the technical requirements specified in the REQUEST FOR PROPOSAL. The BIDS shall be evaluated in terms of completeness and quality by the CONTRACTING PARTY'S Purchasing Team. In analysing and evaluating the BIDS, the CONTRACTING PARTY may request explanations from the BIDDERS concerning the contents of their BIDS, or to request a BID or any of its part to be revised in a form proposed by the CONTRACTING PARTY.

BIDDERS who submit any documents against the requirements of the ToR may be requested to complete them or provide additional information. In each instance, the CONTRACTING PARTY shall set the date and method of completing documents or providing explanations.


14.1.2.2. Grading

Technical BIDS shall be verified against the technical requirements specified in the REQUEST FOR PROPOSAL.

- Maximum number of points: 100
- Weight in the overall assessment of the bid: 10%
- Total points = (item 1 + item 2 + item 3) x weight 10%

The assessment consists of:

Item 1 Water treatment technology – water demand for the SUW's own needs – ratio of the quantity of raw water taken for treatment/quantity of water treated – **maximum number of points: 50**

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Methodology:

- WTP with the lowest raw water demand rate needed to produce 1 m³ of treated water (from the bids assessed) shall receive the maximum number of points (50);
- WTP with the intermediate raw water demand rate needed to produce 1 m³ of treated water (from the bids assessed) shall receive a proportionally calculated number of points:

$$((x_{\max} - x_{\text{bid}})/(x_{\max} - x_{\min})) * \text{max_number_of_points}$$

where:

x min: the lowest raw water demand rate from the bids submitted

x max: the highest raw water demand rate from the bids submitted

x bid: raw water demand indicator for the bid under consideration

maximum number of points: 50

Item 2 Energy consumption of technological processes – electricity demand for the production of treated water – maximum number of points: 40

Methodology:

- The lowest rate of electricity demand for production of treated water per 1 m³ of treated water produced (from the bids assessed) shall receive the maximum number of points (40);
- The intermediate rate of electricity demand for production of treated water per 1 m³ of treated water produced (from the bids assessed) shall receive a proportionally calculated number of points:

$$((x_{\max} - x_{\text{bid}})/(x_{\max} - x_{\min})) * \text{max_number_of_points}$$

where:

x min: the lowest electricity demand rate from the bids submitted


x max: the highest electricity demand rate from the bids submitted

x bid: electricity demand rate for the bid under consideration

maximum number of points: 40;

Item 3 Lifetime of UF/RO filtration membranes – time of reliable operation of membrane systems, counted from the commencement of water treatment to the time when filtration membranes should be replaced – maximum number of points: 10

Methodology:

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- The longest lifetime of filtration membranes, converted into the quantity of water produced, from the bids considered shall receive the maximum number of points (10);
- The intermediate lifetime of filtration membranes, converted into the quantity of water produced, from the bids considered shall receive a proportionally calculated number of points:

$$(x_bid/x_max)*max_number_of_points$$

where:

x bid: lifetime of filtration membranes from the bid considered;

x max: the longest lifetime of filtration membranes from the bids considered;

maximum number of points: 10;

If the lifetime of membranes is longer than 24 months, the Contracting Party expects that warranty for these elements be extended to a period not shorter than the period specified as the lifetime of these membranes.


14.1.3. Conditions of the contract - EPC CONTRACT

14.1.3.1 Key terms of the contract – grade 0/1 (failed / fulfilled).

The 0/1 criteria shall include but not be limited to acceptance of all key contract terms in the BID, assessed either as failed/ fulfilled. If any of the key contract terms are not met, the CONTRACTING PARTY shall be entitled to reject the BID.

In the first place in Round 2 the bidders should send the accepted key terms of the contract, which will include, in particular, the following requirements (concise description of the key terms of the contract is provided below; the exact provisions of the contract shall be provided to the bidders along with the contract template):

1. Terms of the contract comply with the Guidelines of the Minister of Investment and Development on eligibility of expenditure under the European Regional Development Fund, the European Social Fund, and the Cohesion Fund for 2014-2020 of 21 December 2020 (or another version applicable on the PROCEDURE initiation date, which ended with a conclusion of the contract), Guidelines of the Minister of Development and Finance on the eligibility of expenditure under the Operational Programme Infrastructure and Environment for 2014-2020 and other binding guidelines and documents related to the Operational Programme Infrastructure and Environment published on the Programme website (at <http://www.pois.gov.pl/strony/o-programie/dokumenty/#/domysln=1>). This applies in particular to the terms of the contract regarding amendments in the contract concluded, engaging subcontractors, contractors and service providers, and possible liability of the CONTRACTING PARTY for any claims of these entities.
2. Performance of the contract in the EPC (“turnkey”) formula shall comprise – as part of the lump-sum contractual fee – the performance of the subject matter of the contract

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related to design (excluding designs provided by the CONTRACTING PARTY), deliveries, construction, start-ups, commissioning, and handover for operation of the Installation as an integrated whole satisfying guaranteed parameters and safety levels required by the CONTRACTING PARTY for the material scope offered:


3. The statement that the quality guarantee period shall not be shorter than:
 - 24 (twenty four) months for the equipment delivered, other Supplies and results of WORKS related to the water treatment station installation along with facilities and auxiliary infrastructure;
 - 36 (thirty six) months for assembly, other works and for the Documentation;
 - 48 (forty eight) months for anti-corrosion and paint coatings, protection of building structures and chemical resistant coatings for anti-corrosive protection of internal surfaces of the water treatment station installation.

In each and every case above, the guarantee period runs from the commissioning date of the water treatment station installation along with facilities and auxiliary infrastructure (execution of PAC).

4. Submission of the EPC CONTRACT performance bond by the CONTRACTOR effective throughout the effective term of the EPC CONTRACT amounting to **at least 5%** of the total net remuneration. The performance bond shall be provided in the form of a bank or insurance guarantee (unconditional, irrevocable, payable on first demand) issued by a bank or an insurance company with a registered office or branch in Poland.
5. Statement that the minimum part of remuneration accepted by the CONTRACTING PARTY and paid to the CONTRACTOR (i) shall amount to (i) **2%** of the net remuneration after signing the Mechanical Start-up report for the Installation and (ii) **3%** of the net remuneration after signing the Provision Acceptance Certificate (PAC).
6. Upon the official handover of the Construction Site to the CONTRACTOR, the CONTRACTOR shall assume liability for the Construction Site and the Works carried out at the Construction Site. The CONTRACTOR shall be obliged to maintain all property of the CONTRACTING PARTY that is located at the Construction Site in the same good condition and bear the risk of accidental loss, destruction or damage of the property, Works and the responsibility to protect, secure and supervise them.
7. Polish law as the substantive law for the Contract.
8. In the case of a bilingual contract (in Polish and in English) – in case of discrepancies between the two versions – the Polish language version shall prevail (this condition shall not apply to annexes to the contract, the binding language version of which will be determined at a later stage).

14.1.3.2. Grading of the EPC CONTRACT

Contract grading conditions – EPC CONTRACT

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Maximum number of points: 100


Weight in the overall assessment of the bid: 10%

Point calculation method:


Total points obtained = points in accordance with the table below x weight 10%

The following graded criteria have impact on the individual assessment of the BIDDER:


CRITERIA		WEIGHT
		Total
1.	Scope of the contract	15%
	Overall scope and objective of the EPC contract (in the “turnkey” system).	
	Confirmation that guaranteed parameters have been achieved at the time of signing the PAC.	
	Obligation to comply with statutory requirements (including technical and construction, environmental, health and safety regulations). Obligation to comply with guidelines concerning best available techniques (BAT), according to European Commission reference documents (“BREF”). Obligation to comply with internal regulations/dispositions of PKN ORLEN pertaining to performance and execution of works.	
	Full liability for the construction site from its official handover to signing of the PAC in terms of CONTRACTOR’S works.	
	CONTRACTOR relying on the “Rely-Upon Information”, their scope (extensions to the CONTRACTING PARTY’S proposal).	
	CONTRACTOR’S obligations related to decisions, permits and other administrative acts being issued.	
	Spare parts (associated obligations of the CONTRACTOR).	
	Obligations of the CONTRACTING PARTY (extension in relation to the suggested contract).	
	Delivery of equipment, materials and technical documentation at the risk and cost of the CONTRACTOR in line with DDP (SITE) INCOTERMS 2010.	
	Terms and conditions for completion of works (CONTRACTOR’S acceptance of the terms and conditions of acceptance, commissioning, test runs).	
2.	Cooperation of the CONTRACTOR with the CONTRACTING PARTY, CONTRACT ENGINEER and other CONTRACTORS. Intellectual property rights, confidentiality.	15%
	Obligation to closely cooperate and coordinate works with the CONTRACTING PARTY, Contract Engineer and other CONTRACTORS.	
	Obligation to further cooperate in case of unsuccessful tests of guaranteed parameters.	
	The CONTRACTING PARTY and CONTRACT ENGINEER may give the CONTRACTOR binding orders.	
	Scope of intellectual property rights assessment [assessment of transferred fields of use: basic / extended. License or transfer of copyrights].	

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3.	The CONTRACTING PARTY and CONTRACT ENGINEER can control and enforce the performance of the EPC CONTRACT.	25%
	The right to review, comment on, approve CONTRACTOR'S documentation, request changes of the remuneration (and at any stage).	
	Extent of the CONTRACTING PARTY'S / CONTRACT ENGINEER'S right to inspect CONTRACTOR'S works.	
	The right to refuse acceptance of improperly performed works (its scope, premises, changes in the definition of Limiting and Non-Limiting Defects).	
	Detailed implementation schedule and remedial schedule.	
	Approval of subcontractors, suppliers, service providers of the CONTRACTOR [subcontractors of constructions works, condition [0/1].	
	Assignment [may be allowed in case of the transfer of CONTRACTOR'S rights – e.g. to a financing institution – but not in case of their obligations].	
	Obligation to maintain stable operation of the Installation and to maintain guaranteed performance during the Test Run period.	
	Guaranteed parameters tests.	
	CONTRACTING PARTY'S rights in case of non-achievement of the guaranteed parameters.	
	CONTRACTING PARTY'S right to order substitute performance. Charging the CONTRACTOR with the costs of substitute performance.	
	Key milestones / completion dates in the Schedule.	
	Contractual penalty for delay in completing key stages (milestones).	
	Contractual penalty for delay in timely removal of defects during the quality guarantee period.	
	Contractual penalty for failure to achieve the guaranteed parameters (Group B) / Right to withdraw in the event of failure to achieve Group A parameters.	
	Contractual penalty for other violations.	
	The total amount of contractual penalties for delays in key milestones shall be limited to [15] % of the total contract price.	
	The total amount of contractual penalties for failure to achieve the guaranteed parameters shall be limited to [20] % of the total contract price.	
	The total amount of the contractual penalties for untimely performance of the guarantee obligations shall be limited to [10] % of the total contract price.	
	Proper performance of the EPC CONTRACT secured by a performance bond – 5% of the EPC CONTRACT price.	
	Performance bond during the period of liability for defects – [5] % of the contract price, respectively.	
	The Contracting Party's right to accept the guarantor (bank / insurer), requirements for the standing of the financial institution.	
	Prerequisites determining the Contracting Party's right to withdraw from the EPC CONTRACT (including the right to withdraw in the event of delay in the performance of the Contract).	

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	Prerequisites for the CONTRACTOR'S right to withdraw from the Contract.	
4.	Price and payment	5%
	Fixed, non-variable lump sum remuneration, grounds entitling the CONTRACTOR to change the remuneration.	
	Schedule of payments for milestones	
	Terms of payment for the achievement of PAC (Performance Acceptance Certificate). The part of remuneration accepted by the CONTRACTING PARTY and paid to the Contractor (i) shall amount to (i) 2% of the net remuneration after signing the Mechanical Start-up report for the Installation and (ii) 3% of the net remuneration after signing the Provision Acceptance Certificate (PAC).	
	Bidder's request for an advance payment and its amount. An advance payment secured by an advance payment guarantee and paid upon submission of the advance payment (or a performance bond).	
	The net contract price including all taxes, fees, customs duties, etc. (excluding VAT).	
5.	Liability and compensation obligations.	20%
	Transfer of ownership of works/equipment/materials/products (and transfer time).	
	Obligation to supervise the Construction Site and works performed. Principles and time of transferring the risk and liability for works accepted.	
	The CONTRACTOR bears liability for actions or omissions to act of Subcontractors, their representatives or employees as if they were the acts or omissions of the CONTRACTOR [a non-negotiable criterion – 0 or 5].	
	Principles of CONTRACTOR'S liability [strict liability principle (full, in certain aspects), aggravated fault principle (to which extent), exclusions, a professional required to exercise due diligence].	
	Extent and limits/exclusions of the CONTRACTOR'S indemnity obligations.	
	Extent and limits/exclusions of the CONTRACTING PARTY'S indemnity obligations (evaluation of deviations from the EPC CONTRACT template suggested by the bidder).	
	Force majeure – evaluation of bidder's deviations from the clause included in the CONTRACT template.	
	The maximum limit of CONTRACTOR'S aggregate liability – [35] % of the contractual price.	
	Exclusions from the maximum limit of the CONTRACTOR'S aggregate liability.	
6.	Applicable law, dispute resolution, amendments and claim management.	10%
	In the case of a bilingual contract (in Polish and in English) – in case of discrepancies between the two versions – the Polish language version shall prevail [this condition shall not apply to annexes to the contract, the binding language version of which will be determined at a later stage].	
	Amendments to the EPC CONTRACT (subject matter, price and terms thereof) – CONTRACTING PARTY'S right to amend the Contracts, grounds thereof.	

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	CONTRACTOR'S right to request the EPC CONTRACT be amended – scope / prerequisites / grounds. Amendment of the contract term and/or price.	
	Binding nature and the procedure of approving the request to amend the Contract made by the CONTRACTING PARTY and the CONTRACT ENGINEER [a unilateral decision to amend, binding the CONTRACTOR].	
	Failure to meet the deadline for submitting a claim shall result in the loss of the CONTRACTOR'S right to submit a claim.	
	Claim assessment procedure, participation of the CONTRACT ENGINEER in preliminary resolution of claims, CONTRACTOR'S right to challenge decisions of OPD/ENGINEER.	
	Suggested dispute resolution mechanism.	
	Place of dispute resolution (competent court / place of arbitration), rules (regulations) for dispute resolution, language of dispute resolution, Polish law as the law substantive to the contract.	
7.	Guarantees and sureties	10%
	The performance bond shall be provided in the form of a bank or insurance guarantee (unconditional, irrevocable, payable on first demand) issued by a bank or an insurer with a registered office or branch in Poland.	
	Obtaining a guarantee for maintaining guaranteed parameters after PAC.	
	Scope / complexity of the quality guarantee (e.g. an extent of delivery of a new device if its part is replaced; detailed classification of equipment).	
	Defect removal procedure under the quality guarantee (deadlines, CONTRACTOR'S responsibilities).	
	Warranty periods for the different categories of works.	
	Extended warranty period (e.g. for the entire Device in which a given element is repaired or replaced).	

METHODOLOGY:

Grades shall be awarded using a scale from 0 to 5, with 5 being the highest grade and 0 being the lowest. 0 points may be awarded for a proposal of the BIDDER that is not acceptable for the CONTRACTING PARTY.

Grades shall be awarded based on the following criteria.

- Full acceptance of the EPC CONTRACT template – 5 points;
- Acceptance of the EPC CONTRACT with minor amendments neutral from the legal and business perspective of the CONTRACTING PARTY – 4 points;
- Acceptance of the EPC CONTRACT with major amendments that are acceptable from the legal and business perspective of the CONTRACTING PARTY – 3 points;

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- Introduction of amendments that deteriorate legal and business standing of the CONTRACTING PARTY – 2 points;
- Introduction of amendments that significantly deteriorate legal and business standing of the CONTRACTING PARTY – 1 point;
- Deletion of an essential provision of the EPC CONTRACT template or introduction of amendments that reverse / change its meaning (deal breaker) – 0 points.

NOTE:

1. The CONTRACTING PARTY shall assess the amendments in line with the above methodology, in support of the ADVISERS, in particular based on the *Guidelines of the Minister of Investment and Development on eligibility of expenditure under the European Regional Development Fund, the European Social Fund, and the Cohesion Fund for 2014-2020* of 21 December 2020 (or another version applicable on the PROCEDURE initiation date, which ended with a conclusion of the contract).
2. Each bidder shall be notified on the number of points obtained based on the assessment of amendments to the EPC CONTRACT carried out by the CONTRACTING PARTY.
3. Meetings are planned with each BIDDER who has been invited to Round 2 to discuss the essentials of part 2 and part 3 of ToR. The meetings shall be aimed at discussing the most important technical issues and clarifying key terms of the contract the non-acceptance of which to the minimum extent required shall result in the exclusion of the bidder.
4. If the CONTRACTING PARTY does not approve amendments/comments of the BIDDER, the BIDDER shall not be admitted to the next stage of the PROCEDURE. The BIDDER may also not be admitted to the next stage of the PROCEDURE if amendments introduced to the EPC CONTRACT template make it impossible to compare their BID to other BIDS. Criteria which will be used for grading the bids have been described in item 14 of the INSTRUCTIONS.
5. The BIDS shall be evaluated in terms of completeness and quality by the CONTRACTING PARTY'S Purchasing Team. In analysing and evaluating the BIDS, the CONTRACTING PARTY may request explanations from the BIDDERS concerning the contents of their BIDS, or to request a BID or any of its part to be revised in a form proposed by the CONTRACTING PARTY.
6. BIDDERS who submit any documents against the requirements of the ToR may be requested to complete them or provide additional information. In each instance, the CONTRACTING PARTY shall set the date and method of completing documents or providing explanations.

14.1.4. Commercial evaluation of the Bid

- 14.1.4.1.** Qualification to the price round shall mean that the BIDDER is admitted to direct negotiations or any other form of negotiations. After the negotiations, the bidders will be asked to submit their final revisions of the graded commercial bid and terms of contract.

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- 14.1.4.2.** If the CONTRACTING PARTY chooses the form of electronic auction, the detailed principles of conducting an electronic action will be published for the BIDDERS during the PROCEDURE in the form of auction regulations. Additionally, a trial auction will be conducted to allow the BIDDERS to learn the interface and the auction regulations before the proper auction, in order to select the PREFERRED BIDDER.
- 14.1.4.3.** Selection of the PREFERRED BIDDER shall take place based on the methodology described in item 15. Revisions of Commercial Bids shall be evaluated, which will result in selecting the PREFERRED BIDDER who received the highest grade. A BIDDER who received the highest grade in line with grading methodology and weights adopted shall become a SELECTED BIDDER.
- 14.1.4.4.** The CONTRACTING PARTY reserves the right to change the grading criteria, while maintaining the required procedures. Exercising this possibility shall be permitted before the deadline for submitting the BIDS, or before the extended deadline for submitting the bids, allowing for their adaptation to new circumstances.

15 Procedure after the selection of the PREFERRED BIDDER

15.1. The PREFERRED BIDDER shall be selected after price negotiations in line with the following methodology:

- A. Total Cash Out understood as financial flows related to the EPC CONTRACT, which shall be discounted accordingly: weight of 80%

The price of the lowest bid shall be compared to the price of other bids (the lowest price shall receive 80 points). Every other bid shall be awarded points resulting from the following formula:

$C = (C_n : C_x) \times 80\%$ where:

C - point value of the bid price,

C_n - lowest bid price,

C_x - price of the next examined bid

- B. Grading of technical BID – weight of 10%, Methodology according to item.14.1.2.2 of the INSTRUCTIONS.


- C. Grading of the EPC CONTRACT – weight of 10%,
Methodology according to item.14.1.3.2 of the INSTRUCTIONS.

The bid will be evaluated according to the formula: $P = \text{point A} + \text{point B} + \text{point C}$

Note:

The PREFERRED BIDDER will be selected on the basis of the highest number of points (P) obtained by the Bidder.

15.2. The BIDDER selected by the CONTRACTING PARTY according to the aforesaid principles shall be notified by the CONTRACTING PARTY of being named the PREFERRED BIDDER,


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which means that their BID was selected for further negotiations aiming at e.g. completing the negotiations devoted to the terms of the EPC CONTRACT. The remaining BIDDERS from the SHORT LIST shall be notified about their qualification to the RESERVE LIST.

- 15.3. This stage of negotiations shall be deemed completed if the CONTRACTING PARTY accepts all elements assumed with negotiations with the PREFERRED BIDDER.
- 15.4. If, in the course of negotiations, the CONTRACTING PARTY does not accept all elements of the BID negotiated with the PREFERRED BIDDER, the CONTRACTING PARTY shall have the right to deprive the PREFERRED BIDDER of the title and to commence negotiations with the first BIDDER from the RESERVE LIST, who will be then named the PREFERRED BIDDER. In this case, the current PREFERRED BIDDER shall be placed on the RESERVE LIST.
- 15.5. The CONTRACTING PARTY advises that, in order to conclude the EPC CONTRACT, the CONTRACTING PARTY must obtain internal corporate consents according to the CONTRACTING PARTY'S effective internal regulations.
- 15.6. If internal corporate consents are not obtained and the EPC CONTRACT is not concluded, the PREFERRED BIDDER whose BID was selected as the most beneficial one shall not be entitled to any claims against the CONTRACTING PARTY in connection with the BID, and shall particularly not be entitled to claim any damages or demand the EPC CONTRACT to be executed;
- 15.7. If a BIDDER whose BID is selected as the most beneficial one evades the execution of the EPC CONTRACT, the CONTRACTING PARTY reserves the right to name the BIDDER who submitted the most beneficial BID qualified for the RESERVE LIST the PREFERRED BIDDER.

16 Requirements for the performance bond

- 16.1. The CONTRACTOR shall provide the performance bond in the amount of not less than 5% (% to be specified in the EPC CONTRACT template – part 3 of ToR) of the net REMUNERATION as a bank or insurance guarantee for the term of the EPC CONTRACT and primary guarantee awarded to the CONTRACTING PARTY. The aforesaid guarantees, the content of which has been accepted by the CONTRACTING PARTY, shall be an irrevocable and unconditional obligation of the issuing bank or insurance company to pay upon the first written request of the CONTRACTOR and shall be issued by a bank/insurance company accepted by the CONTRACTOR. The templates of the aforesaid guarantees shall be appended to part 3 of ToR.
- 16.2. Detailed rules for providing the bond for the performance period and for the basic guarantee granted in form of a bank or insurance guarantee are laid down in the EPC CONTRACT template, constituting part 3 of ToR.

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17 Confidentiality

The BIDDER undertakes to treat all and any information connected with this REQUEST FOR PROPOSAL and other information disclosed during the PROCEDURE as confidential pursuant to Article 72(1) of the Polish Civil Code and Article 11 of the Act of 16 April 1993 on combating unfair competition (Dz.U. [Polish Journal of Laws] 2019, item 1010 as amended). Any information concerning the fact of inviting the BIDDER to reply to participate in the PROCEDURE, the fact of submitting a BID, conducting negotiations and contracts concluded may be only disclosed by the BIDDER after obtaining prior written consent of the CONTRACTING PARTY for disclosing such information to third parties or for publishing it.

18 Template of the EPC CONTRACT

Part 3 of these ToR shall constitute a template of EPC CONTRACT with a list of appendices, which shall be **provided to those BIDDERS who qualified for ROUND 2**.

The CONTRACTING PARTY hereby reserves the right to amend the EPC CONTRACT template at every stage of this PROCEDURE.

19 SUBCONTRACTORS

- 19.1** As part of their BID, submitted in accordance with the ToR, the BIDDER shall present a list of planned SUBCONTRACTORS, according to the requirements laid down in Part 2 of the ToR.
- 19.2** Contracting any works to any SUBCONTRACTORS shall require prior written consent of the CONTRACTING PARTY, according to the ToR.

20 APPENDICES

20.1. APPENDICES TO THE INSTRUCTIONS FOR BIDDERS (Part 1 of ToR)

- Appendix 1 - “FORMAL BID” form
- Appendix 2 - Code of Code of Conduct for the Suppliers along with the Anti-Corruption Policy
- Appendix 3 - General description of the investment project
- Appendix 4 - DECLARATION about the Beneficial Owner

20.2. APPENDICES PROVIDED TO PART 2 AND 3 OF ToR

Appendices to be provided to the BIDDERS along with part 2 and 3 of ToR.

- Appendix 1 - “TECHNICAL BID” form
- Appendix 2 - “Declaration of acceptance of the EPC CONTRACT template” form
- Appendix 3 - “COMMERCIAL BID” form