

SECTION I. GENERAL PART

Chapter 1 – The subject matter of regulations. Definitions

§1

The rules regulate the procedure applied at the selection of Contractors of works and services, Suppliers of goods and the method of concluding contract for Metraco S.A. with its registered office in Legnica.

§2

Definitions used in these “Rules for Selecting Contractors of works and services, Suppliers of goods and the method of concluding contract for Metraco S.A.”, hereinafter referred to as the Rules shall have the following meaning:

- 1) “Supplies” – purchase of things, rights and other goods, especially on the basis of sales, supply, rental or lease contracts;
- 2) “Written form” – shall refer to a written form within the meaning of art. 78 of the Civil Code;
- 3) “Electronic form”- making representations, requests, documents on electronic carriers and, in specific cases, with the use of electronic mail or the website of the Awarding Entity;
- 4) “Awarding Entity” – the Company or an employee of the Company entrusted with the performance of activities connected with preparing, conducting and closing the procedure on the basis of a power of attorney granted or as part of the entrusted scope of responsibilities;
- 5) “The Most Advantageous Tender” – the tender with the lowest price or a tender presenting the most advantageous balance of the price and other criteria referring to the object of the contract’
- 6) “Procedure” – preparation and conduct of the procedure the aim of which is to assume an obligation;
- 7) “Company” – Metraco S.A. of Capital Group Companies which joined the Purchase Policy;
- 8) “Services” – any services the object of which does not include Works or Supplies.

Chapter 2 – Rules for assuming obligations

§3

1. The Company prepares and conducts the award procedure in a manner maintaining market competition and equal treatment of Contractors.
2. The activities connected with preparation and conduct of the procedure the aim of which is to assume the obligation are performed by persons who are obliged to be impartial and neutral.
3. The award shall only be granted to the Contractor selected in accordance with the laws regulating the Rules for selecting Contractors in the Company.

§4

1. The contract award procedure is not public.
2. The Awarding Entity may decide about the public nature of the procedure in the scope related to the notice of the procedure, conditions of submitted tenders and its result unless the object of the award procedure constitutes a business secret.
3. The Awarding Entity shall not disclose information which is regarded as a business secret, within the meaning of the provisions concerning the combating of unfair competition. No later than within the time limit for the submission of tenders or requests to participate in the procedure, the Contractor can make a reservation as regards the information which cannot be disclosed by the Awarding Entity.

§5

1. Open tendering is a preferred contract award procedure.
2. The Awarding Entity may also award a contract by way of:
 - a) a single-source procurement,
 - b) a request for quotation.
3. Each tender procedure can be supplemented by an electronic auction and/or negotiations.

§6

It is the Awarding Entity who is responsible for preparing, conducting and closing the procedure the aim of which is to assume the obligation.

§7

Persons performing actions in connection with the conduct of a contract award procedure shall be subject to exclusion if:

- 1) they are competing for a contract;
- 2) remain in matrimony, consanguinity or affinity in direct line or consanguinity or affinity in indirect line up to the second degree, or is related due to adoption, legal custody or guardianship with a contractor, his legal deputy or members of managing or supervisory bodies of contractors competing for a contract;
- 3) during the three years prior to the date of the start of the contract award procedure they remained in a relationship of employment or service with the contractor or were members of managing or supervisory bodies of contractors competing for a contract;
- 4) remain in such legal or actual relationship with the contractor, which may raise justified doubts as to their impartiality;
- 5) have been legally sentenced for an offence committed in connection with contract award procedures, bribery, offence against economic turnover or any other offence committed with the aim of gaining financial profit.

§8

1. The contract award procedure shall be conducted with the use of IT tools.
2. The contract award procedure shall be conducted in Polish unless the Awarding Entity decides otherwise, which must be reflected in relevant provisions in the Terms of Reference.

Chapter 3 – Fundamental Rights and Obligations

§9

1. Eligible to compete for a contract shall be contractors who:
 - 1) are authorised to perform specific activities or actions, if such authorisations are required by special laws;
 - 2) have the necessary knowledge and experience, and have at their disposal the technical potential and personnel capable of performing the contract;
 - 3) are in a financial and economic situation ensuring the performance of the contract;
 - 4) are not a party to a court dispute with the Company and no ruling has been issued that the Company is entitled to claim damages from the Contractor,
 - 5) are not liable to exclusion from the award procedure pursuant to §11 of these Rules.
2. The Awarding Entity shall not specify conditions for participation in the contract award procedure in a manner restricting fair competition.

§10

1. Contractors may compete for a contract jointly.
2. In the event referred to in paragraph 1, contractors shall appoint a plenipotentiary to represent them in the contract award procedure, including also the conclusion of a contract.
3. The Awarding Entity may demand that a contract regulating the cooperation between the Contractors competing for a contract jointly be attached to the tender or the request.

§11

1. Excluded from contract award procedures shall be:
 - 1) natural persons, who have been validly sentenced for an offence committed in connection with a contract award procedure, offence against the rights of people performing paid work, for an offence against economic turnover or for any other offence committed with the aim of gaining financial profits;
 - 2) registered partnership whose partner has been validly sentenced for one or more offences listed in paragraph 1;
 - 3) professional partnership whose partner or member of the management board has been validly sentenced for one or more offences listed in paragraph 1;
 - 4) limited partnership and limited joint-stock partnership whose general partner has been validly sentenced for one or more offences listed in paragraph 1;
 - 5) legal persons whose active member of the managing body has been validly sentenced for one or more offences listed in paragraph 1;

- 6) collective entities, with respect to whom a court has issued a decision prohibiting them from competing for contracts under the provisions concerning the liability of collective entities for tort under the liability to penalty;
- 7) those who submitted the tender or request not in accordance with the representation principle valid in the enterprise of the Contractor;
- 8) entities which entrusted foreigners staying in the territory of the Republic of Poland against the law with the performance of work.

2. Excluded from contract award procedures shall be:

- 1) Contractors against whom the winding up procedure has been started or whose bankruptcy has been declared,
- 2) Contractors who within last 3 years prior to the launch of the procedure failed to perform the obligation towards the Company or a Subsidiary Company or who performed it in an improper manner,
- 3) Contractors who are in arrears with payment of taxes, charges or social insurance or health insurance premiums, with the exception of cases where they have been legally exempted, their outstanding payments have been deferred or divided into instalments or the execution of a decision of a competent authority has been stopped in its entirety,
- 4) Contractors who directly performed actions in connection with the preparation of the conducted procedure or while preparing a tender used persons performing those actions, unless the participation of such Contractors in the procedure shall not distort fair competition,
- 5) Contractors who fail to comply with the conditions for participation in an award procedure referred to in § 9 with the reservation of § 13,
- 6) Contractors who provided false information having impact on the outcome of the procedure being conducted,
- 7) Contractors who have not submitted a statement about the fulfilment of the conditions for participation in the procedure or documents confirming the fulfilment of those conditions or the submitted documents contain errors,
- 8) Contractors who have not provided a tender deposit, including the one for the extended period during which they must maintain their tenders if the Awarding Entity specified the requirement to establish a tender deposit, or have not agreed to the extension of the period during which they must maintain their tenders.

3. The tender of an excluded contractor shall be considered rejected.

§12

1. In contract award procedures the Awarding Entity may request from the Contractors the following declarations and/or documents necessary to conduct procedures:
 - a) A current extract from a relevant register or a current certificate of entry to business activity register if separate provisions require the entry to the register or registration in business activity register, issued no earlier than 6 months prior to the expiry date for the submission of tenders,
 - b) Certificate of a competent head of the tax office of having no arrears with payment of taxes, charges or a consent to the exemption, deferral or division into instalments of the outstanding

amounts or stopping in its entirety the execution of the decision of a tax authority issued no earlier than 3 month prior to the expiry date for the submission of tenders,

- c) Certificate of a competent Social Insurance Institution of having no arrears with payment of charges or social insurance or health insurance premiums, or certificate in case where they have been legally exempted, their outstanding payments have been deferred or divided into instalments or the execution of a decision of a competent authority has been stopped in its entirety - issued no earlier than 3 month prior to the expiry date for the submission of tenders;
- d) Certificate of Tax Identification Number (NIP) and business statistical number (REGON),
- e) An original or a copy of the court decision as regards the Contractors against whom the winding up procedure has been started or whose bankruptcy has been declared and who entered into a composition approved by a valid court decision thereafter,
- f) Declaration on current structure of shares in business entity competing for a contract,
- g) F-01 report for the last quarter, balance sheet and profit and loss account for the previous financial year or other document confirming turnover in case of entrepreneurs that are not obliged to make financial reports,
- h) Information from the bank in which the contractor has his bank account confirming that the contractor has funds or credit capacity in the amount specified in the Terms of Reference, issued no earlier than 3 month prior to the expiry date for the submission of tenders,
- i) A policy or, in case there is no policy, other document confirming that the contractor has got a civil liability insurance in the scope of conducted business activity (together with the conditions); the amount of the policy shall be specified in the Terms of Reference. The Awarding Entity shall not allow for a possibility of combining policies. The Awarding Entity reserves the right to use templates of insurance policies or to specify their scope,
- j) Statement that the Contractor has qualifications and experience, and has at his disposal the personnel capable of performing the Contract,
- k) Statement that the Contractor has the necessary knowledge and experience, and the technical potential,
- l) Statement that the Contractor is in a financial and economic situation ensuring the performance of the Contract,
- m) Statement that during the performance of the object of the contract the Contractor shall not employ in any form employees of Metraco S.A. to perform the contract under the pain of withdrawal by the Awarding Entity with an immediate effect from the performance thereof in case of the existence of such circumstances, without the right of the Contractor to impose fines or demand compensation,
- n) Statement that the amounts due resulting from the contract, including damages and interest, cannot be traded (assignment, sale) pursuant to Art. 509 of the Civil Code without the written consent of the Awarding Entity,
- o) And other required in connection with the specificity of the Contract.

2. The contract notice, Terms of Reference or the invitation to tender, or the invitation to negotiations should specify statements or documents proving that the Contractor satisfies:

- 1) The conditions for participation in the procedure,
- 2) Other requirements specified by the Awarding Entity.

3. The Contractor shall provide original statements whereas documents shall be original or the Contractor shall provide their copies certified by authorized persons. Powers of attorney shall be provided in original. Legal counsels or attorneys at law may certify the conformity of the original powers of attorney with their copies.

4. In case of Contractors registered in the Contractors Base, submission of the documents referred to in paragraph 1 is not mandatory provided that such documents have been already sent to the Awarding Entity (during registration in the Base) and are up to date, and the Contractor has mentioned such fact in his tender.
5. Documents referred to in §12 paragraph 1 letter a-l are not required in case of Contractors from Grupa Kapitałowa KGHM Polska Miedź S.A., state institutions and universities.

§13

1. The Awarding Entity may request that the Contractors who have failed to submit statements or documents confirming fulfilment of the conditions for the participation in the procedure or who submitted documents containing errors, or who submitted documents or statement in an improper form, supplement them within specified time limit, unless their tender, although supplemented, is subject to rejection or it would be necessary to cancel the procedure.
2. Statements and documents should confirm the Contractors' fulfilment of the conditions for the participation in the procedure and other requirements of the Awarding Entity.
3. The Awarding Entity may request that the Contractors provide explanations concerning all and any statements or documents presented in the procedure as well as the content of the tender.

§14

1. In award procedures, the Awarding Entity and the Contractors shall provide statements, requests, notifications and information in writing, by fax or by electronic means, subject to the provisions of §12 par. 3.
2. If the statements, requests, notifications and information are provide in other manner than in writing, either party at the request of the other party shall acknowledge the receipt immediately.

§15

1. At the request of the Awarding Entity requests to participate in the procedure, the Contractor shall be obliged to provide the Awarding Entity with tenders and documents and statements referred to in §12 par. 3 simultaneously in a written form (paper form) and in an electronic form on an electronic carrier (CD) in form of a scan (if such requirement has been defined by the Awarding Entity) unless the Awarding Entity specifies other method of submitting requests, tenders, documents and statements.
2. The Awarding Entity may permit the possibility of submitting tenders in form of an e-mail. Then the Awarding Entity shall impose an obligation to send tenders secured with a password, indicate one date for the submission of tenders, one date for sending the password and the date for opening them, which must be reflected in the Terms of Reference and in the Notification.
3. In case of incompatibility between the request or the tender or documents and statements submitted in a written form and the request or the tender or documents and statements presented in the electronic form as a scan, the Contractor may be requested to submit explanations in that scope. In case of any doubts the written form shall be binding.

Chapter 4 – Terms of Reference

§16

1. Terms of Reference shall include in particular:

- 1) name (company name) and address of the awarding entity;
 - 2) procedure for awarding the contract;
 - 3) description of the object of contract;
 - 4) time limit for contract performance;
 - 5) standard technical requirements;
 - 6) description of the conditions for participation in the procedure and the description of the method used for the evaluation of the fulfilment of those conditions;
 - 7) information concerning declarations and documents to be provided by Contractors to confirm the fulfilment of the conditions for participation in the procedure;
 - 8) information on the manner of communication between the Awarding Entity and Contractors as well as of dispatch of declarations and documents, indication of persons authorised to communicate with the Contractors;
 - 9) time limit during which a contractor must maintain its tender;
 - 10) description of the manner of the tender preparation;
 - 11) date and place of the submission and of the opening of tenders;
 - 12) description of the method of the price or remuneration calculation;
 - 13) description of criteria (with weights for a given criterion and the description of the method of tender evaluation) which the Awarding Entity will apply in selecting a tender,
 - 14) information concerning actions which should be met following the selection of a tender in order to conclude a contract;
 - 15) requirements concerning the deposit (unless the deposit has not been established);
 - 16) requirements concerning the security on due performance of the contract (unless it has not been established);
 - 17) provisions of essence to the parties which will be introduced into the concluded public procurement contract or a template/draft of the contract;
 - 18) reservation on the possibility of:
 - a) a change or cancellation of the contract award procedure;
 - b) a change or cancellation of the conditions of the procedure;
 - c) closing the procedure at each stage without a reason;
 - d) conducting an electronic auction and/or negotiations as an extension.
 - 19) request for a bank account to which deposit will be returned.
2. The Awarding Entity may request that the Contractor indicate the part of the contract which the Contractor intends to subcontract and provide names of subcontractors if he permitted the performance of the contract by subcontractors.
3. The Awarding Entity may specify in the Terms of Reference which part of the contract cannot be subcontracted.
4. The Awarding Entity may stipulate in the Terms of Reference that specific samples and models shall be subject to destructive examination.

5. The Awarding Entity shall return to the Contractors whose tenders have not been selected, at their request, their plans, designs, drawings, models, samples, computer programmes and other similar materials unless it has been stipulated that samples, models, patterns shall be subject to destructive examination or that they constitute an integral part of the tender of the Contractor.
6. The following forms of deposits are acceptable:
 - 1) cash;
 - 2) Bank sureties;
 - 3) Bank guarantees;
 - 4) Insurance guarantees.
7. It is the Awarding Entity who decides on establishing the deposit.
8. The deposits shall be returned to the Contractors within 14 days if:
 - 1) the time limit during which the Contractor must maintain his tender has expired;
 - 2) the public procurement contract has been concluded and the security on due performance of this contract has been provided;
 - 3) the Awarding Entity cancelled or closed the contract award procedure,
 - 4) at the request of the Contractor in case the Contractor withdrew the tender prior to the expiry of the date for the submission of tenders,
 - 5) the Contractor has been excluded from the procedure (the Contractor shall be notified of such fact in writing after the tender procedure has been resolved),
 - 6) the tender of the Contractor has been rejected (the Contractor shall be notified of such fact in writing after the tender procedure has been resolved),
 - 7) Contractors have not been selected to perform the task after the record of the selection of the most advantageous tender has been approved.
9. The deposit may be counted against the security on due performance of the contract if it has been made in cash, and the Contractor whose tender has been selected as the most advantageous tender shall submit a relevant request or indicate such will in the submitted tender.
10. The Awarding Entity shall retain the deposit if the Contractor:
 - a) Withdrew the tender submitted in the tender procedure after the time limit set for its submission or submitted another tender, less advantageous than the previous one,
 - b) refused to sign or evades the public procurement contract on the terms specified in the tender within the set time limit;
 - c) failed to produce the required security on due performance of the contract on the terms specified in the contract;
 - d) the public procurement contract could not be signed due to a fault on the part of the Contractor.
11. The original document confirming that the deposit has been made in a non-cash form shall be stored by the Awarding Entity.
12. The deposit made in cash shall be returned via bank transfer from the bank account of the Awarding Entity to the bank account indicated by the Contractor in the tender in the same amount it has been made.
13. Non-cash deposit shall be returned with a confirmation of receipt to the address of the Contractor indicated in his tender.
14. The Awarding Entity may request the Contractor to provide security on due performance of the contract, hereinafter referred to as the security.
15. The following forms of security are acceptable:

- 1) Cash,
- 2) Bank surety,
- 3) Bank guarantee.

The Awarding Entity may permit other forms of security.

16. Security shall serve to cover claims in respect of non-performance or improper performance of a contract. If the Contractor is at the same time a guarantor, this security shall also serve to cover claims in respect of quality guarantee.
17. In the contract award procedure it is the Awarding Entity who decides about the security and its amount. The security shall be fixed at 10% of the gross price.
18. Security on due performance of the contract made in cash shall be kept on an interest-bearing account of the company on the terms negotiated by the Awarding Entity.
19. In case of non-cash security on due performance of the contract the Contractor shall be obliged to provide to the place indicated by the Awarding Entity original bank guarantees/sureties for the total amount of 10% of the gross price.
 - 19.1. The said bank guarantee/surety shall be issue in the following manner:
 - a) Bank guarantee/surety for the amount constituting 70% of the value of the security; the period covered by the security must be by at least 30 days longer than the period of contract realization, closed by way of a delivery-acceptance report upon the collection of the contract deemed to be properly performed,
 - b) Bank guarantee/surety for the amount constituting 30% of the value of the security; the period covered by the security must be by at least 30 days longer than the period covered by the warranty or guarantee.
 - 19.2. The Awarding Entity permits the issuance of one document covering total security, save the aforementioned principles.
20. The Awarding Entity shall keep the original document confirming the security on due performance of the contract in other form than cash in periods corresponding to the provisions of par. 21 and 22.
21. The security shall be returned in the amount of 70% within 30 days of the date of the completion of the contract and acknowledgement by the Awarding Entity as duly performed. The remaining 30% is to secure claims for warranty for defect or guarantee of quality and shall be returned no later than on 30th day after the expiry of the period of warranty for defect or guarantee of quality. In case of contracts with no guarantee or warranty, 100% of the security shall be returned within 30 days of the date of the completion of the contract and acknowledgement by the Awarding Entity as duly performed.
22. If the retained amounts have not been used, the security paid and the interest obtained in the interest-bearing account, less the costs of its operation, shall be returned to the Contractor on the date defined for the return of the deposit.
23. In case of a failure to remove defects due to reasons attributable to the contractor, the guarantee deposit and the interest obtained from the account shall be recognized against related claims of the Awarding Entity.
24. Claims of the Awarding Entity shall be realized by deducting amounts due (on account of improper performance of the contract) from the amount of the deposit retained together with interest obtained from the account. The statement of the Awarding Entity on deduction must be made in writing.
25. Security made in cash together with the interest can be recognized by the Awarding Entity against any amounts due to the Awarding Entity from the Contractor, especially concerning:
 - a) Contractual fines imposed by the Awarding Entity to the Contractor,
 - b) Costs of removing defects by third parties,

- c) Invoices issued by the Awarding Entity unpaid on time by the Contractor.
26. In the course of the execution of the contract the Awarding Entity may change the form of security made by the Contractor. In case of contracts executed in stages, such change is only possible after due performance of the first stage. Such change shall be effected at the request of the Contractor with a written consent of the Awarding Entity. Previously paid security shall be returned within 30 days of the date of making a new security, after a prior approval of such change by the Awarding Entity.

§17

1. Terms of Reference shall be published in the website of the Awarding Entity or delivered to the Contractors invited to participate in the procedure.
2. In case of publishing Terms of Reference on the website of the Awarding Entity, its delivery shall be deemed effective to the Contractor provided that it has been confirmed that the Terms of Reference have been downloaded electronically or in writing, giving the name of the contractor and the address of the company.
3. If Terms of Reference contain the design documentation, the Awarding Entity may demand that the Contractor collect it in the place indicated in ToR (having fulfilled specific conditions put by the Awarding Entity in ToR and in the Notice).

§18

1. The Contractor may request the Awarding Entity to explain the content of ToR. The Awarding Entity provides response within the time limit specified in ToR.
2. Any changes and explanations of the content of ToR shall be published on the website of the Awarding Entity and submitted via electronic mail to all Contractors indicated in §17 par. 1.
3. The Awarding Entity may at any time prior to the expiry of the time limit for the submission of tenders modify the content of ToR. Such modification shall be published on the website of the Awarding Entity and submitted via electronic mail to all Contractors who have been provided with ToR, subject to §17 par. 2.
4. The Awarding Entity may prolong the time limit for the submission of tenders if it is justified by the circumstances of the procedure; par. 2 shall be applied accordingly.

SECTION II. PROCEDURES OF ASSUMING OBLIGATIONS

Chapter 1 – Open tendering

§19

Open tendering means contract award procedure in which all interested Contractors may submit their tenders.

§20

1. In open tendering the award procedure commences by placing the contract notice in the website of the Awarding Entity.
2. The Awarding Entity may also decide to publish the contract notice in Polish and international papers.

§21

The notice concerning open tendering procedure contains in particular:

1. name (company name) and address of the Company (the Awarding Entity).
2. type of the contract award procedure - open tendering
3. the website address where the ToR is posted or other method of making ToR available
4. definition of the object of contract and of the volume or scope of the contract, stating whether it is possible to submit tenders for lots;
5. information concerning the possibility of submitting variants
6. description of the conditions for participation in the award procedure as well as description of how compliance with these conditions is evaluated
7. criteria for evaluation of tenders and their significance;
8. place and time limit for submission of tenders;
9. time limit during which the contractor must maintain his tender;
10. information on the intention to conclude a framework agreement;
11. Reservation on the possibility of:
 - a) a change or cancellation of the contract award procedure;
 - b) a change or cancellation of the conditions of the procedure;
 - c) closing the procedure at each stage without a reason;
 - d) conducting an electronic auction as an extension.

§22

Together with the tender the Contractor shall provide a statement on fulfilling the conditions for participation in the contract award procedure and, at the request of the Awarding Entity, documents confirming the fulfilment of the conditions, subject to §12 par. 4 and 5.

Chapter 2 – Single-source procurement

§23

1. Single-source procurement means contract award procedures in which the Awarding Entity awards a contract after having negotiated with only one Contractor.
2. Along with the invitation to negotiation, the Awarding Entity shall dispatch information necessary to conduct the procedure in form of ToR or inquiry, including provisions that are important for the parties, which shall be inserted in the content of the public contract, general terms of contract or the standard form or draft of the contract.
3. Together with the response the Contractor submits an initial tender.
4. After negotiations the Contractor submits the final tender in form of a corrected initial tender or a report of the negotiations.

§24

The procedure can be conducted in the interest of the Company if at least one of the following circumstances has occurred:

1. The contract can only be executed by one Contractor:
 - 1) for technical reasons of objective character;
 - 2) for reasons connected with protection of exclusive rights, resulting from separate provisions;
 - 3) in the case of creative and artistic activities;
 - 4) for other justified reasons especially on account of qualifications of the Contractor.
2. In case of substantiated risk of breakdown or catastrophe especially posing threat to people's life or health or resulting in the risk of a significant damage connected with maintaining a process line.
3. During successive award procedure of which at least one was conducted under open or restricted tendering, negotiations with the notice or electronic auction, no request to participate in the procedure has been submitted, no tenders has been submitted or all the tenders have been rejected due to their incompatibility with the description of the object of contract.
4. Where a hitherto Contractor of services or construction works is awarded additional contracts not included in the main contract, necessary for its proper performance and their execution became necessary as a result of unforeseeable circumstances, if :
 - 1) for technical or economic reasons the initiation of the procedure for the purpose of selecting a Contractor would require incomparably high costs to be incurred, or
 - 2) the completion of the main contract by the Contractor is conditional upon the performance of the additional contract directly connected with the contract under completion, that could not have been foreseen on the date of contracting the obligation up to 10% of the main contract.
5. In the case of the award, within 3 years from the award of the main contract, to the hitherto contractor, of the obligation assumed after other procedures than those specified in §36 have been conducted, if the change of the contractor would make it necessary to purchase items of different technical parameters, what would result in technical incompatibility or disproportionately serious technical difficulties in use and care, and the possibility of assuming obligations in the specified scope was provided for in the Contractor's obligation.
6. It is possible to assume an obligation related to supplies on particularly advantageous terms, in connection with the winding-up procedure of the business activity of another entity, enforcement proceedings or bankruptcy proceedings.
7. Due to the test procedures of the object of the contract it is possible to assume the obligation with the use of market prices.
8. Due to the possible extension of the previously concluded contract, without a significant change as regards the object of the contract (the so-called *Rollout*).
9. It is possible to apply single-source procurement procedure with reference to the tender obtained by the Awarding Entity from the Contractor, submitted as a will of cooperation. Such procedure can only be initiated if the circumstances referred to in par. 1 occur.
10. It is possible to apply single-source procurement procedure with reference to the tender which served as a basis for evaluating the tender of Grupa Kapitałowa KGHM Polska Miedź S.A. that has previously won in the tender procedure previously conducted by the Awarding Entity.

Chapter 3 – Request for quotation

§25

Request for quotations means contract award procedures in which the Company sends a request for quotations to selected Contractors of his choice and invites them to submit tenders.

§26

1. The Awarding Entity shall commence a request for quotations procedure by inviting at least 2 Contractors providing supplies or services being the object of the contract. The number of invited Contractors should ensure competition and the selection of the most advantageous tender.
2. ToR shall be attached to the invitation to submit tenders.
3. The Awarding Entity reserves the right to provide a request for quotations indicating the so-called asking price, i.e. the maximum value of the tender that cannot be accepted in the procedure. In such case the Awarding Entity shall be obliged to extend the procedure and conduct an electronic auction which can be attended by all Contractors who have submitted tenders which are not subject to rejection.

§27

1. Each Contractor can only submit one tender.
2. The Awarding Entity may award a contract to the contractor who has offered the most advantageous tender.

SECTION III. SELECTION OF THE TENDER

Chapter 1 – Procedure of selecting the tender

§28

1. The Contractor can only submit one tender in one procedure, subject to §29.
2. The content of the tender must correspond to the content of ToR.

§29

1. ToR may permit the possibility of submitting variants if it corresponds to the nature of the commitment.
2. ToR may permit the possibility of submitting tenders for lots if it corresponds to the nature of the commitment.
3. In the case, referred to in paragraph 2, the Contractor may submit tenders for one or more lots.

§30

1. The Contractor may change or withdraw his tender prior to the expiry of the time limit for submission of tenders.
2. Tenders submitted after the expiry of the time limit for submission of tenders shall be returned without opening.
3. The Contractor must maintain his tender until the expiry of the time limit specified in ToR.
4. In justified cases the Contractors may extend such time limit by a specific period of time.
5. The period, during which a contractor must maintain his tender, shall commence with the expiry of the time limit for submission of tenders.

§31

1. The opening of tenders shall not be public unless the Awarding Entity has stated otherwise in the content of ToR or in the Notice.

2. Tenders are open immediately after the expiry of the time limit for submitting them, whereas the expiry date for the submission of tenders shall be the opening day.
3. If the opening is public, the Awarding Entity provides names (company names) and addresses of Contractors who submitted tenders.

§32

The Awarding Entity shall correct obvious misprints in the content of the tender as well as computational errors related to the calculation of the price, immediately notifying the Contractor who has submitted the tender.

§33

1. The tender shall be rejected if:
 - 1) It has been submitted in breach of the provisions of the Civil Code or the Code for Commercial Companies or other applicable laws regulating the rules of representation of entities conducting business activity;
 - 2) Has been submitted in breach of the Rules or conditions of participation in the procedure;
 - 3) The content of the tender does not correspond to the content of ToR;
 - 4) Submission of the tender is an act of unfair competition within the meaning of the provisions concerning the combating of unfair competition;
 - 5) Has been submitted by a contractor excluded from the award procedure or one that has not been invited to the tender;
 - 6) Is not valid under separate provisions.
2. The Awarding Entity may reject a tender if the Contractor has a dispute with the Company before the court or arbitrator in the case concerning the performance of obligations or a ruling has been issued towards the contractor on the compensation for damage for the Company.

§34

1. The Awarding Entity selects the most advantageous tender on the basis of tender evaluation criteria laid down in ToR.
2. Tender evaluation criteria shall be price or price and other criteria linked to the object of the contract, in particular quality, functionality, technical parameters, use of best available technologies with regard to the impact on the environment, exploitation costs, after-sales service, usefulness, guarantee period, period of contract performance, certificates or other criteria specified by the Awarding Entity. The aforementioned criteria referring to the object of the contract must be countable. In case of contracts concerning counselling or training services etc. other criteria are acceptable than the ones listed above, i.e. object criteria concerning for instance experience of the contractor.
3. If possible, the Awarding Entity evaluates tenders through the analysis of TCO – Total Cost of Ownership.
4. If the tender has been submitted and selected, which would result in a tax obligation of the Awarding Entity according to the value added tax law in the scope related to intra-community acquisition of goods, for the purpose of evaluation of such tender the Company increases the

price presented therein by value added tax that the Contractor would be obliged to pay according to the applicable laws.

5. Further tenders submitted by the Contractors cannot be less advantageous for the Awarding Entity than the tenders previously submitted.

Chapter 2 – Closing of the contract award procedure

§36

Immediately after selection of the most advantageous tender the Awarding Entity notifies the Contractor whose tender has been selected for execution of the selection thereof. The other participants whose tenders have not been selected receive acknowledgement of their participation in the procedure and the name and address of the Contractor whose tender has been selected.

§37

1. The Awarding Entity shall cancel or close the contract award procedure at each stage without giving any reason.
2. If tenders for lots are allowed to be submitted, the provision in par. 1 shall be applied accordingly to cancel or close the part of the procedure.
3. The Awarding Entity shall notify simultaneously notify all Contractors of the procedure having been cancelled or closed.

§38

1. The Awarding Entity shall conclude a public procurement contract no later than prior the expiry of the time limit during which a contractor must maintain its tender, subject to par. 2.
2. The agreement on assuming the obligation can be concluded after the expiry of the time limit during which a contractor must maintain his tender unless the Contractor expressed his consent to conclude the agreement on the terms specified in the submitted tender.
3. If the Contractor whose tender has been selected refuses to conclude a public procurement contract or fails to provide the required security on due performance of the contract the awarding entity may select the best of the remaining tenders without their re-evaluation.

SECTION IV. SPECIFIC PROVISIONS

Chapter 1 – Public procurement contracts

§39

1. The end of the procedure for the purpose of assuming the obligation is the conclusion of the contract with a selected Contractor according to the contract conclusion procedure applicable in Metraco S.A.
2. The provisions of the Act dated 23 April 1964 – the Civil Code (Journal of laws no. 16 item 94 as amended) shall be applied to contracts concluded by the Company.

§40

1. The scope of the Contractor's performance resulting from the procurement contract shall be identical with the tender of the Contractor being the basis for selection.
2. In particularly justified cases it is acceptable to change of the method of providing services prior to the conclusion of the contract due to the occurrence of circumstances that could not have been foreseen at the moment of selecting the most advantageous tender or such changes are advantageous for the Awarding Entity, and the Contractor agrees to them. Changes of the method of providing services shall not entail obligations of the contractor included in the tender which have been evaluated in the course of the procedure.

§41

The provisions of the concluded contract cannot be modified with reference to the content of the tender based on which the contractor has been selected unless the necessity to make such changes results from circumstances that could not have been foreseen at the moment of concluding the contract or such changes are advantageous for the Company.

§42

The Awarding Entity may concluded a framework agreement with the Contractor after conducting the full procedure.

§43

1. A framework agreement is concluded for a period not longer than 3 years, however the agreement may be concluded for a longer period of time or for an indefinite period for reasons related to the object of contract and to the particular interests of the Company.
2. A framework agreement shall be conclude with one or a bigger number of Contractors, depending on the specificity of the contract.
3. The Awarding Entity may not use the framework agreement to restrict competition.
4. The framework agreement specifies the rules for establishing and the maximum amount of remuneration of an independent Contractor for the execution of the contract submitted in the performance of the framework agreement.
5. The framework agreement must be made in writing, otherwise being null and void.
6. It is permitted to conclude open framework agreements (the list of which together with a description of terms and conditions of the participation in the tender procedure shall be published by the Awarding Entity on the website www.swz.kghm.pl) on the following terms: for a new Contractor to accede to the concluded open framework agreement, the Contractor expresses his will to accede to the agreement in writing.
7. The Awarding Entity provides the interested Contractor with tender documentation constituting the basis for the submission of tenders in the procedure the aim of which was to conclude the framework agreement, for the purpose of submitting a tender by him.
8. The rules for submission of tenders for the purpose of acceding to the open framework agreement cannot differ from the rules applied by the Awarding Entity in the tender procedure the aim of which was to conclude the framework agreement.
9. Submission of a tender by a new Contractor is tantamount to the acceptance of the terms and conditions of the framework agreement.
10. In case of the Contractor's failure to fulfil the conditions specified by the Awarding Entity, his tender shall not be permitted to participate in the further procedure.

11. If the tender of the Contractor corresponds to the requirements of the Awarding Entity, the framework agreement with the new Contractor shall be concluded.

§44

1. If more than one framework agreement has been concluded to perform the contract, in the executive procedure, the most advantageous tender shall be selected in accordance with the provisions included in the framework agreement.
2. The Awarding Entity shall notify Contractors of the applied selection method.
3. The framework agreement with the Contractor who failed to accede to the executive procedure three times can be terminated.

Chapter 2 – Contractors Base

§45

1. The Awarding Entity conducts a Base of potential contractors containing the data of contractors interested in the cooperation with Grupa Kapitałowa KGHM Polska Miedź S.A. (by self-registration) and identified by CBZ.
2. Entrepreneurs who while registering submitted documents and statements in accordance with the requirements of the Awarding Entity shall not be obliged to submit them again together with the tender if the data included therein have not changed and the suitable information has been included in the tender.
3. The base of potential contractors is divided into assortment (industry) groups.
4. Contractors who executed contracts in a proper manner shall be put on the list of qualified Contractors.

SECTION V. FINAL PROVISIONS

§46

1. If it is necessary to assume obligations according to the interest of the Company, the Management Board of Metraco S.A. can refrain from applying these Rules or adopt other methods than the ones included herein.
2. In issues concerning explanations of the provisions of these Rules decisions shall be made by the Management Board of Metraco S.A.