

## **Part 0 PROCUREMENT DOCUMENTATION**

pursuant to Section 33 of Act No. 134/2016 Coll., on Public Procurement,  
as amended (hereinafter referred to as the "PPA" or the "Act")

# **PUBLIC CONTRACT**

## **"Modernization of WtE Plant SAKO Brno"**

over-the-limit utilities contract for construction works awarded in a negotiated  
procedure with prior publication as per provisions of Section 60 of the PPA



**SAKO Brno, a.s.**

registered address: Jedovnická 4247/2, 628 00 Brno

ID No: 60713470

**Part 0 - Procurement documentation**

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## Part 0 - Procurement documentation

### 1. IDENTIFICATION DATA OF THE CONTRACTING AUTHORITY AND OTHER ENTITIES

#### 1.1. Contracting authority

<b>Name of the contracting authority</b>	SAKO Brno, a.s.
<b>Registered address of the contracting authority</b>	Jedovnická 4247/2, 628 00 Brno
<b>ID of the contracting authority</b>	60713470
<b>Profile of the contracting authority:</b>	<a href="https://zakazky.sako.cz/">https://zakazky.sako.cz/</a>

#### 1.2. Representative of the contracting authority

The contracting authority's representative in matters related to the award of this public contract is MT Legal s.r.o., law firm, with its registered office at Jana Babáka 2733/11, 612 00 Brno, ID number 28305043 e-mail: **SakoOHBII@mt-legal.com**. Pursuant to the provisions of Section 43 of the PPA, the contracting authority's representative is authorized to carry out actions related to this procurement procedure and is also authorized to receive any objections from the participant pursuant to Section 241 et seq. of the PPA (without prejudice to the authorization of the statutory body or any other authorized person of the contracting authority). The contracting authority's representative is also in charge of communication pursuant to Section 2.

#### 1.3. Information on the procurement procedure

The public contract will be awarded in a negotiated procedure with prior publication pursuant to Section 60 et seq. of the PPA.

The negotiated procedure with prior publication takes place in several stages, first the requests to participate are submitted (proof of compliance with the qualification criteria) and, after their evaluation, the contracting authority is entitled to reduce the number of participants pursuant to Section 61 (5) and Section 111 of the PPA and Art. 7 of the qualification documentation (0.b to the procurement documentation), and will subsequently invites the selected qualified participants to submit their indicative tenders. The indicative tender may only be submitted by a participants invited by the contracting authority to submit the indicative tender (a participant who has demonstrated compliance with the qualification and, as the case may be, has succeeded in the process of reducing the number of participants in the procurement procedure). An indicative tender in violation of the above one will not be considered pursuant to Section 61 (7) of the PPA.

Subsequently, the contracting authority will negotiate the indicative tenders with the participants in the procurement procedure (the contracting authority may amend or supplement the procurement terms and conditions during the negotiations, except for the minimum technical conditions pursuant to Section 3.3 of the tender documentation and save for tender evaluation rules pursuant to Section 115 of the PPA, all this pursuant to

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Section 61 (11) of the PPA).

Following the conclusion of the indicative tender negotiations, the contracting authority shall invite the participants to submit their (final) tenders. A tender may only be submitted by a participant in the procurement procedure, who is invited to submit a tender.

If the term "**tender**" is used in the text of this procurement documentation, it shall be understood as both the indicative tender pursuant to Section 61 (5) of the PPA and the (final) tender pursuant to Section 61 (11) of the PPA, unless stated otherwise.

If the procurement documentation contains any document in two language versions – Czech and English, then, shall there be a discrepancy between the two language versions, the Czech language version of the procurement documentation shall prevail. The procurement documentation contains information that is the result of an indicative market consultation.

### **1.4. Preliminary market consultations, persons involved in the preparation of procurement documentation**

On 6th February 2024, the contracting authority posted on its profile<sup>1</sup> an invitation to participate in a preliminary market consultation (hereinafter referred to as "**Invitation to PMC**" and "**PMC**"). In addition to being published on the public authority's profile, the Invitation to PMC was simultaneously addressed to more than 40 potential contractors in electronic form.

As part of the first round of the PMC, a site visit took place on 19th February 2024 attended by a total of 8 contractors.

The second round of the PMC was launched in accordance with Article 2.6 of the Invitation to the PMC, by sending an invitation to submit proposals, which was addressed to the companies INVELT SERVIS, s.r.o., SLOVENSKÉ ENERGETICKÉ STROJÁRNE a.s. and Metrostav DIZ s.r.o. The deadline for submitting the proposals in the second round of the PMC was 15th April 2024 at 12:00 p.m., and the invitation was sent to the PMC participants on 5th March 2024. Proposals were sent within the time-limits by INVELT SERVIS, s.r.o. and SLOVENSKÉ ENERGETICKÉ STROJÁRNE a.s. The crucial information resulting from the PMC conducted with both companies is that the new K1 boiler can be implemented in a reduced scale, at the site of the original, already dismantled, boiler K1. In connection with this fact, for the purposes of submitting the indicative tenders, the contracting authority also allows for the implementation of the project in another location within the contracting authority's site - see the options to be negotiated listed in Art.- of the procurement documentation.

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<sup>1</sup> Preliminary market consultations for the public contract entitled " *New boiler K1 at the SAKO Brno, a.s. site*" are publicly available on the contracting authority's profile under the system number [P24V0000006](https://zakazky.sako.cz/contract_display_110.html) - [https://zakazky.sako.cz/contract\\_display\\_110.html](https://zakazky.sako.cz/contract_display_110.html)

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Parts of the procurement documentation that are the result of a preliminary market consultations	Designation of persons with whom the preliminary market consultations were conducted , which were then reflected in the procurement documentation
Article 3.9.3 of the procurement documentation, i.e. options for alternative location of the technology within the contracting authority's site.	INVELT SERVIS, s.r.o., with registered office at U Školky 357/14, 326 00 Plzeň, ID: 61168254 SLOVENSKÉ ENERGETICKÉ STROJÁRNE a.s., with registered office at Továrenská 210, 935 28 Tlmače, Slovak Republic, ID number 31411690

In addition to the above, the contracting authority states that

a) The PMC were also conducted with the following companies:

- PricewaterhouseCoopers Česká republika, s.r.o, Hvězdova 1734/2c, Nusle, 14000 Prague 4 – identification of possible potential qualified persons/general contractors in the market in the area that is the subject of the public contract;
- POWECON GmbH, Toralf Weber, Gebr.-Watt Str. 3, 82275 Emmering – identification of possible potential suppliers of EPC solutions, boiler manufacturers and flue gas treatment manufacturers;

b) The invitation to the PMC, including annexes and proposals of the PMC participants, i.e. the companies INVELT SERVIS, s.r.o. and SLOVENSKÉ ENERGETICKÉ STROJÁRNE as, were discussed with external experts, specifically with the University of Brno University of Technology and the company EGÚ Brno, a.s. The discussions resulted in the modification of the procurement documentation at specific places (see the table below).

The following parts of the procurement documentation were drawn up by an entity other than the contracting authority:

Parts of procurement documentation drawn up by another entity	Identification of the entity
Organizational and legal parts of the procurement documentation	MT Legal s.r.o. law firm, registered office at Jana Babáka 2733/11, 612 00 Brno, ID 28305043
Definition of the subject of performance (especially option D2)	Brno University of Technology, registered office at Antonínská 548/1, 602 00 Brno, ID 00216305
Formula for the economic model calculation)	EGÚ Brno, a.s., with registered office at Hudcova 487/76a, 612 00 Brno-Medlány, ID number 46900896

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Technical requirements (Part III)	Ramboll Group A/S, Rambøll Danmark, registered office at Hannemanns Allé 53, DK-2300 Copenhagen S, Denmark
Environmental Impact Assessment Study (EIA study) (part of part II.i)	Bucek s.r.o., registered office at Táborská 191/125, Židenice, 615 00 Brno, ID 28266111
Building part of the technical documentation, (Part III Appendix A9 Technical Specifications for Building)	ALEF BRNO spol. s r.o., Smetanova 341/3, 602 00 Brno, ID 46981594
Zoning Permit Documentation (part II.i)	TENZA, a.s., Svatopetrská 35/7, 617 00 Brno, ID 25570722
Layout and 3D model (Part III, Appendices D1-D4)	Complex Project, s.r.o., Svatopetrská 35/7, 617 00 Brno, IDO 05032881

## 2. COMMUNICATION BETWEEN THE CONTRACTING AUTHORITY AND THE PARTICIPANTS

**The public contract is procured fully in electronic manner using the certified electronic tool E-ZAK** (hereinafter referred to as the "**electronic tool**"), available at <https://zakazky.sako.cz/>.

Unless resulting from Section 211 of the PPA, all actions taken within this procurement procedure, as well as all communication between the contracting authority (or its representative) and the Participant, will take place electronically, in particular by means of the electronic tool.

All documents sent via this electronic tool shall be considered duly delivered on the day of their delivery to the user account kept by the addressee in the E-ZAK electronic tool. Delivery of documents will not be affected by whether the document has been read by the addressee or whether the electronic tool has sent a notification to the addressee to the contact e-mail address stating that a new message has been delivered to the user account in the electronic tool or not.

The contracting authority advises the contractor of the fact that in order to make full use of the electronic tools it is necessary to make and complete the so-called contractor registration (to be able to log in the E-ZAK system it is necessary to get registered in the FEN.cz Central Contractor Database (CDD) system at <https://fen.cz/#/registrace> providing all details and instructions for the registration). The manual for the contractor registration in the electronic tool is provided in the user manual entitled "*E-ZAK, version 5 - electronic tool for public procurement and electronic auction hall - user manual for E-ZAK system contractors.*" The contracting authority advises that the registration does not take place immediately and is subject to acceptance by the system administrator within a period of up to 48 hours on

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business days; in case of deficiencies in the application for registration, the registration may also be rejected.

Terms and conditions and information concerning the electronic tool, including information on the use of the electronic signature, are available at <https://ezak.e-tenders.cz/manual.html>.

The contractor is always responsible for becoming properly and timely familiar with the documents sent by the contracting authority via the electronic tool, as well as for accuracy of the contact details provided by the contractor. Pursuant to the PPA, the contracting authority requires that the tenders be properly encrypted and the encryption should be carried out by means of the electronic tool.

In case of answers to any questions regarding the user control of the electronic tool, the user support may be contacted (tel.: +420 538 702 719, e-mail: [podpora@ezak.cz](mailto:podpora@ezak.cz)).

### **3. INFORMATION ON THE SUBJECT OF THE PUBLIC CONTRACT, OTHER TERMS AND CONDITIONS**

#### **3.1. Subject of the public contract (possible options in the indicative tenders for negotiation)**

The subject of the public contract is the design and construction of a high-efficient waste-to-energy facility (OHB II – line K1).

The contracting authority states that the subject of performance, as defined in the procurement documentation, will be the subject of negotiations during the negotiation phase of the procurement procedure, and that it may also be modified in terms of individual "optional" parts of the performance (or otherwise depending on the result of negotiations with the participants). The participants in the procurement procedure will have the opportunity **to offer a solution in the indicative tender**

- a) **in the full scope of the subject of performance (option "OHB II")**, or
- b) **in a reduced scope (option "D2")**, on the basis of implementation options defined below while using the so-called "selectable options" (any or all of them) pursuant to par.3.9 Of the procurement documentation (hereunder referred to only as "**selectable options for negotiation**") for the purposes of this procurement procedure;

however, at any time while maintaining the required processing capacity and design of the new (installed) boiler, with the possibility of offering a proposed solution to both of these options. During the negotiations, the contracting authority will consider the positive and negative aspects of both scopes of performance in the light of the submitted indicative tenders and, as part of the procurement terms and conditions finalization, before closing the negotiation phase and before sending the invitations to submit the final tenders, **the contracting authority will make its binding decision on the specific form of performance (i.e. option "OHB II", or option "D2") on the basis of economic and other related parameters.** Therefore, the participants in the procurement procedure, if

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they deem it appropriate, can partially reduce the scope of the subject of performance in the form of selectable options for negotiation in relation to specific operating units and civil structures defined for this purpose by the contracting authority. The contracting authority also allows the participants in the procurement procedure to propose an alternative site for locating the line within the contracting authority's premises (e.g. on the site of the original, already dismantled, boiler K1 and suitable parts of the existing building where lines K2 and K3 are operated, or in a new building).

The contracting authority expressly draws attention to the fact that this mechanism affects, as a maximum, the negotiation phase of the procurement procedure and **is not understood as admission of optional tenders pursuant to Section 102 of the PPA as the final tenders will only be submitted for one technical design.**

### 3.2. Classification of the subject of the public contract (CPV)

45222100-0 | Waste-treatment plant construction work  
45251140-4 | Thermal power plant construction work  
42320000-5 | Waste incinerators  
45251250-8 | District-heating plant construction work  
45200000-9 | Works for complete or part construction and civil engineering work  
45220000-5 | Engineering works and construction works  
45232140-5 | District-heating mains construction work  
51135110-1 | Installation services of waste incinerators  
45222000-9 | Construction work for engineering works except bridges, tunnels, galleries and underpasses.

### 3.3. Minimum technical conditions

Pursuant to Section 61 (4) of the PPA, the contracting authority defines requirements that represent (unchangeable) minimum technical conditions; the minimum technical conditions are all the requirements of the contracting authority as defined under Section 2 (Guarantee Data) , Part II.g Guarantees (all data and minimum or maximum values are based on Tables 1 to 4 under Section 2 "GUARANTEE DATA").

The contracting authority shall not change or supplement the minimum technical conditions pursuant to Section 61 (11) of the PPA.

### 3.4. Reserved change in obligation and change in the scope of required performance

Pursuant to Section 100 (1) of the PPA, the contracting authority reserves a right to change obligations under the public contract to the extent defined in the procurement documentation, in particular Part I. of the procurement documentation – Contract (wording of the draft contract).

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This shall not affect the right of the contracting authority to modify the scope of the subject of performance during the procurement procedure (while maintaining the minimum technical conditions), inter alia by using the procedure pursuant to Article 3.1 of the procurement documentation, for example in the case of selectable options for negotiation as per items in part 1.2. "*Required options*", sheet "*Inputs*" (p. 3 of the relevant pdf document), of the Binding form of the Economic Model, which forms Part 0.d to the procurement documentation.

### **3.5. Requirements of the contracting authority intended for further negotiations**

Except for requirements listed pursuant to Section 3.3 of the procurement documentation as the minimum technical conditions, all other requirements (except for the requirements concerning the course of the procurement procedure) are intended to be negotiated with participants during the procurement procedure, at any time according to the requirement of the contracting authority.

### **3.6. Further requirements**

A participant who demonstrates compliance with the qualification and will be invited to submit an indicative tender pursuant to the provisions of Section 61 (5) and (6) of the PPA, is obliged to take into account the above minimum technical conditions under Section 3.3 in the submitted indicative tender. The contracting authority stipulates that more detailed conditions and details regarding the conditions of performance will be further negotiated with the qualified participants who submit indicative tenders in the next stage of the procurement procedure, while the contracting authority will be entitled pursuant to Section 61 (10) of the PPA to specify further binding procurement conditions, which the participants shall respect in their tenders. This is without prejudice to the contracting authority's right to proceed pursuant to Section 19.3 of the procurement documentation. This is without prejudice to the contracting authority's right to proceed pursuant to Section 19.3 of the procurement documentation.

The time, place and method of submitting the indicative tenders will be specified in the next stage of the procurement procedure, i.e. in the invitation to submit indicative tenders pursuant to the provisions of Section 61 (5) of the PPA sent to qualified participants, while for the submission of indicative tenders and tenders is subject to Articles 11 and 12 of the procurement documentation.

### **3.7. Subcontracting**

The contracting authority requires that the participant in the procurement procedure should submit a list of subcontractors in the indicative tender, if known to the participant at that time, and should indicate which part of the public contract each of the subcontractors will perform (in doing so, the participant shall respect the limits set by the procurement terms and conditions). If the subcontractors are known to the participant only after the submission of the indicative tender or the final tender, they shall give such information to the contracting authority only when the subcontractors are known to the

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participant, if invited to do so. This is without prejudice to the contractor's sole responsibility for providing proper performance.

### **3.8. Further information/requirements of the contracting authority - protection of confidential information**

The part of the procurement documentation that cannot be disclosed pursuant to Section 96 (1) of the PPA due to the procedure pursuant to Section 36 (8) of the PPA shall be provided in a different suitable manner once the contractor has adopted reasonable measures to ensure confidentiality of information that the contracting authority provides or discloses during the procurement procedure. Reasonable measures are understood as entering into the Non-Disclosure Agreement according to Part 0.f to the procurement documentation. Without entering into the Non-Disclosure Agreement (Part 0.f of the procurement documentation), it is not possible to

provide the participant with the procurement documentation in full (information according to Annex No. 1 to the Non-Disclosure Agreement will not be provided; information under this point will only be provided to a participant who demonstrates compliance with the contracting authority's qualification requirements and who has gone through the process of reducing the number of participants in the procurement procedure,

- to negotiate with the participant the indicative tender,
- to conclude the contract for the performance of the subject of the public contract with the participant.

A request for part of the procurement documentation, which was not provided pursuant to Section 96 (1) of the PPA, may be addressed to the representative of the contracting authority referred to under Section 1.2 of the procurement documentation by e-mail or a data message to the contact person provided under Section of the procurement documentation or by means of the electronic tool. Attached to the request will be a duly signed Non-Disclosure Agreement on the Protection of Confidential Information in accordance with Appendix Part 0.f of the procurement documentation (either with a valid electronic signature based on a qualified certificate or in the form of conversion of the originally signed paper document).

The contracting authority shall provide the signed Non-Disclosure Agreement and the protected part of the procurement documentation within 3 business days from the delivery of the duly signed draft by the contractor, however,

- only by a qualified participant in the procurement procedure who was invited to submit an indicative tender, and
- no earlier than together with the dispatching of the invitation to submit indicative tenders.

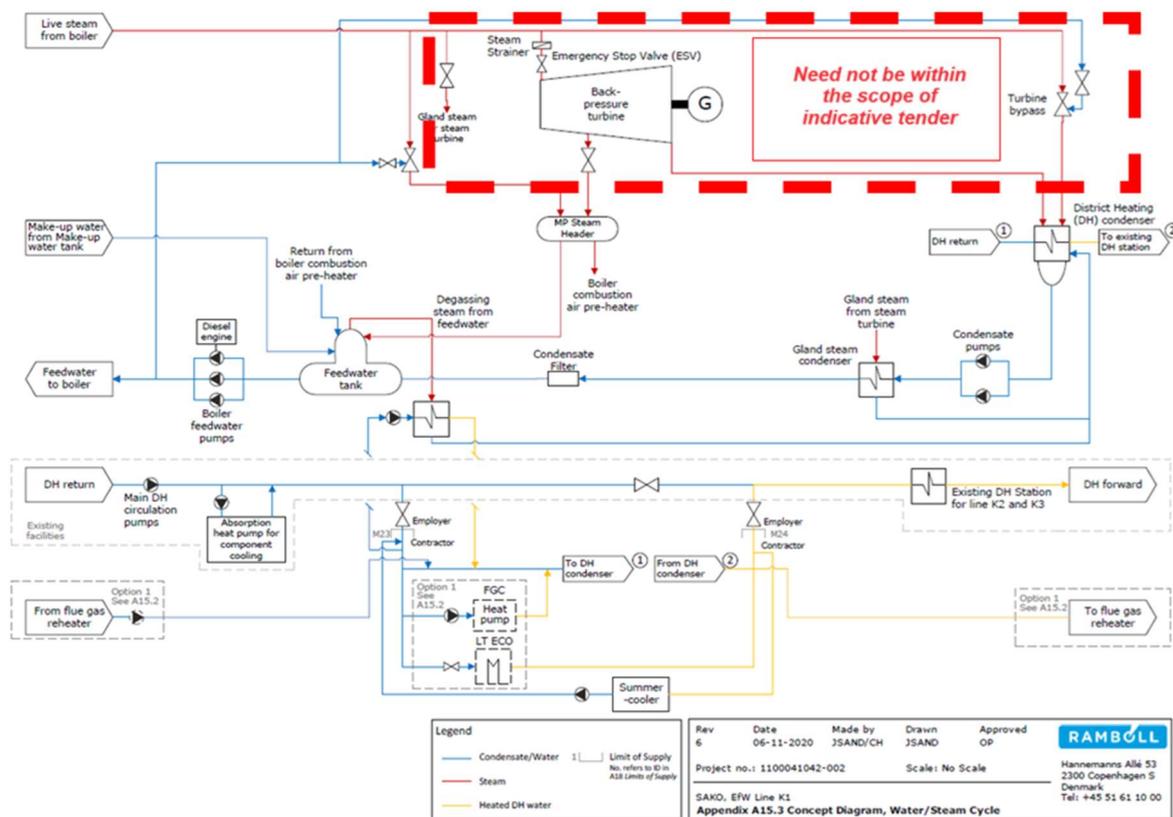
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### 3.9. Selectable options for negotiations - operating sets and civil structures defined by the contracting authority

With reference to Article 3.1 (b) of the procurement documentation, the contracting authority specifies "optional" parts of the performance, the inclusion of which in the final form of the subject of performance will be the subject of negotiations during this procurement procedure in the event that some (or all) of these selectable options are offered by a participant in their indicative tenders; the contracting authority repeats that the participants can offer a solution in relation to the scope of the subject of performance in their indicative tenders pin its full scope (the "full scope" option) or in a reduced scope ("reduced scope" option), i.e. without optional parts of the performance. For the purposes of the indicative tender, the contracting authority considers the following as "optional" parts of the performance:

#### 3.9.1. Steam turbine and generator

Thanks to this selectable option for negotiation, the participant does not have to include the steam turbine and generator including accessories in its scope of the subject of performance in the indicative tender but shall maintain the possibility of supplying heat to the district heating steam and hot water network. At the same time, the outlet steam pipe must enable a connection to the existing outlet steam collector from the existing boilers K2 and K3 so that the produced steam can also be supplied to the existing steam condensing turbine.



If the participant makes use of this option and does not include the steam turbine and generator including accessories into the scope of the subject of performance in its indicative

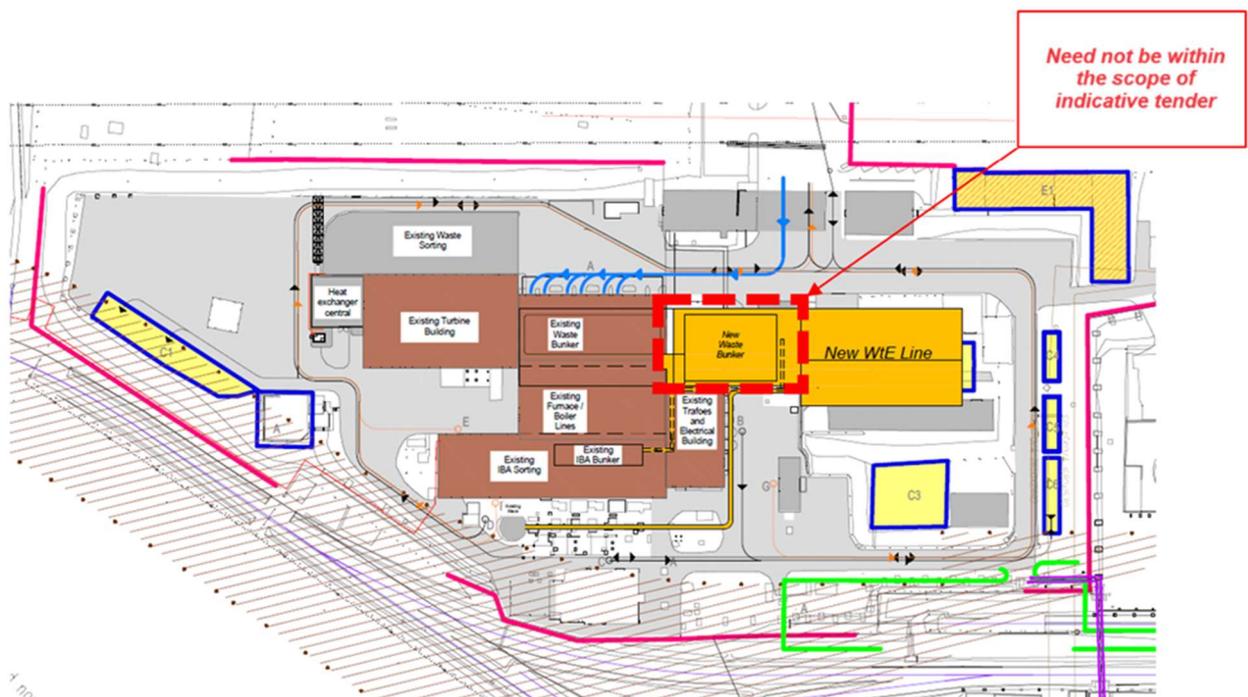
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tender , he must assess all the impacts of this option on the function of the subject of performance as a whole and propose an optimal solution, especially in the areas of:

- condensate system,
- district heating system,
- HV and LV power supply,
- control system,
- civil structures (turbine hall),
- availability of power supplies, etc.

### 3.9.2. Expansion of the waste storage hall

This selectable option for negotiations means that the participant does not have to include extension of the waste storage hall in the north-east direction into the scope of the subject of performance in its indicative tender, i.e. the existing capacity of the waste storage hall will be kept. The contracting authority advises that if this option is used, a turbogenerator must not be part of the proposed solution either. Therefore, if the waste storage hall is not expanded, the turbogenerator will not be addressed, either.



If the participant uses this option and does not include the expansion of the waste storage hall in the north-east direction in the scope of the subject of performance in its indicative tender, he must assess all impacts and propose an optimal solution, especially in the areas of:

- the impact of this design change on the validity of permits issued so far,

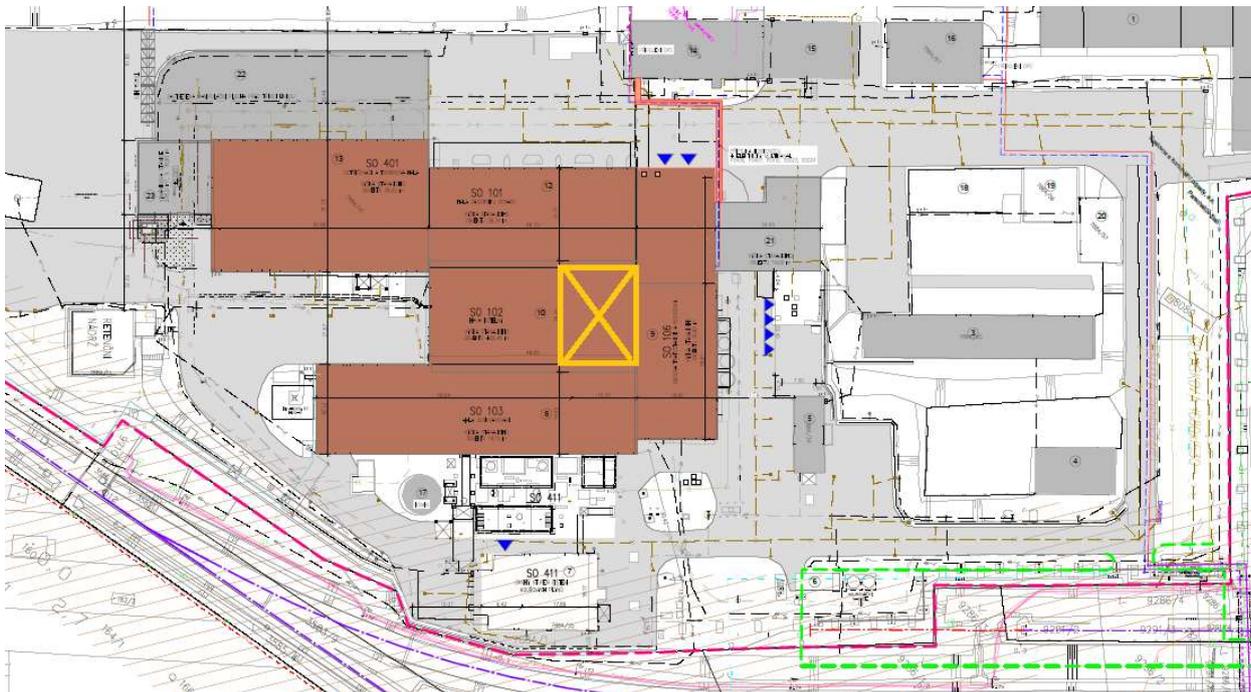
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- the construction process and addressing the clash between the new hopper and the existing technological equipment (crane cabin, crane, fire protection, switchboards, etc.),
- assessment of the capacity of the waste crane in relation to the potential concurrent operation of 3 boilers,
- achievable operating capacity of the waste bunker, etc.

### 3.9.3. Location of the line within the contracting authority's premises

As part of this selectable option, the participant may offer any other location for the subject of performance within the contractor's premises, which will be different from the site currently defined by the permits issued and valid so far (see Part II.i - Planning and Permitting). An example of this is the alternative location of the Line in the area of the former K1 boiler, as shown in the figure below.

Settlement of the impacts of the change of location on the overall solution of the subject of performance, permits issued so far (including potential new permits that will have to be obtained for the new location proposed by the participant) is fully within the responsibility of the participant during the implementation of the subject of performance. The above also applies to any necessary related works and activities.



When choosing this option, the participant must assess all impacts and propose an optimal solution, especially in the areas of:

- layout of the contracting authority's premises,
- the impact of project changes in relation to permits issued so far and the need to obtain new permits,

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- the construction process and the solution to potential clashes in relation to the contracting authority's existing equipment,
- external battery limits (e.g. utility networks).

### **3.9.4. General requirements regarding the optional parts of the performance**

If the participant makes use of the above option not to include any or all of the optional parts of the performance (selectable options for negotiation) in the indicative tender and if he uses procurement documentation documents (texts, tables, pictures, graphs, drawings, diagrams, etc.) as part of the description of his technical solution in the indicative tender, these must be adjusted so that the scope of supplies, equipment connection, parameters, etc. fully correspond to the participant's technical solution, which is offered as part of the indicative tender.

## **4. TIME AND PLACE OF THE PUBLIC CONTRACT EXECUTION**

The contracting authority preliminary expects that the public contract execution will begin immediately after the entry into force of the contract with the selected contractor.

The place of executing the public contract is the premises at the registered address of the contracting authority or, as the case may be, other places defined by the contracting authority.

Further details are set out in the appendices to the procurement documentation.

## **5. SITE VISIT**

The contracting authority will enable a visit to the place of the public contract execution during the period for the submission of indicative tenders or even during the period for the submission of final tenders. The date and time of the site visit will be determined depending on the course of the procurement procedure. The purpose of the site visit is for the contractors to become familiar with the place of future execution. During the site visit, the contractors' representatives may ask questions, however, the answers provided orally are informative only and cannot be considered binding. This is without prejudice to the contractor's authorization to request an explanation of the procurement documentation pursuant to Section 0 of this procurement documentation.

The site visit will only be enabled to those participants who prove compliance with the qualification requirements set out by the contracting authority and who will be invited to submit their indicative tenders and, as the case may be, the final tenders (if the site visit takes place within the time-limit for submission of final tenders). Further information will be provided by the contracting authority in the invitation to submit indicative and final tenders.

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### **6. CONDITIONS AND REQUIREMENTS FOR PREPARING AND SUBMITTING THE REQUEST TO PARTICIPATE**

#### **6.1. Conditions for submitting the requests to participate in electronic form**

The request to participate may only be submitted in electronic form, using the electronic tool according to Section 2 of the procurement documentation. The request to participate shall be encrypted in accordance with the legal requirements and the electronic tool.

Address for submitting the request to participate: <https://zakazky.sako.cz/>

#### **6.2. Other requirements for the request to participate (language, content)**

The requirements for the language of the request to participate are the same as the requirements for the language of the indicative tender (Section 8.3) save for documents for which submission is required exclusively in Czech or Slovak or their translation into Czech or Slovak is required pursuant to the relevant provisions of the PPA.

#### **6.3. The contracting authority recommends submitting the request to participate in the following structure :**

- cover sheet with identification data of the contractor (Section 28 (1)(g) of the PPA);
- list of contents of the request to participate;
- contract according to Section 5.5 Part 0.b of the procurement documentation (the Qualification documentation) in case of joint participation of the contractors;
- documents proving contractor's compliance with the qualification criteria;
- documents for the purposes of reducing the number of participants according to Section 7 Part 0.b of the procurement documentation (the Qualification documentation);
- other documents that the contractor deems appropriate.

#### **6.4. Time-limit for submitting the request to participate**

The time-limit for submitting the requests to participate is set out in the contract notice.

### **7. NUMBER OF PARTICIPANTS ENGAGED IN THE INDICATIVE TENDERS NEGOTIATIONS**

**7.1.** The contracting authority will evaluate participants' compliance with the qualification, and if at least 5 or more participants comply with it, the contracting authority will be entitled to reduce their number pursuant to Section 111 of the PPA in accordance with Section 7 of the Qualification documentation, which forms Part 0.b of the procurement documentation.

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- 7.2.** The contracting authority shall exclude from participation in the procurement procedure those participants who have not demonstrated compliance with the qualification or have not been selected when reducing the number of participants in the procurement procedure. The contracting authority will invite the non-excluded participants in the procurement procedure to submit their indicative tenders.

### **8. CONDITIONS AND REQUIREMENTS FOR PREPARING AND SUBMITTING THE INDICATIVE TENDERS**

- 8.1.** The invitation to submit indicative tenders will be preceded by a stage during which participants' compliance with the qualification will be evaluated (see e s is assessed on the basis of requests to participate (see the adjustment and requirements in the qualification documentation, which forms Part 0.b to the procurement documentation).
- 8.2.** An indicative tender may only be submitted by a participant who has been invited to submit an indicative tender. The invited participants in the procurement procedure may not submit a joint indicative tender.
- 8.3.** The indicative tender shall be prepared in Czech, Slovak or English.
- 8.4.** The indicative tenders may only be submitted in electronic form, using the electronic tool according to Section 2 of the procurement documentation. The indicative tender shall be encrypted in accordance with the legal and the electronic tool requirements. The address for submitting electronic indicative tenders will be provided in the invitation to submit indicative tenders pursuant to Section 61 (5) of the PPA.

### **9. REQUIREMENTS FOR THE INDICATIVE TENDERS**

- 9.1.** Indicative tenders submitted by several contractors in case of joint participation of contractors shall meet the following requirements:
- a) One of the contractors shall be designated as the lead participant responsible for the public contract and this designation will be confirmed by the submission of a power of attorney to represent all the other participants.
  - b) In the indicative tenders, the contractors shall demonstrate the specific division of activities (not responsibilities) in performing the public contract; this is without prejudice to the joint and several liability of the contractors submitting a joint request to participate in accordance with Part 0.b of the procurement documentation (Qualification documentation).

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- 9.2. The indicative tender shall also include a list of subcontractors (Part III, Appendix F1 *Subcontractors* ), including subcontractors with whom the participant may have demonstrated compliance with the qualification criteria.
- 9.3. The indicative tenders must also include a list of members of the implementation team, through which the participant has demonstrated compliance with the qualification criteria.
- 9.4. The indicative tenders shall indicate whether the participant submits the indicative tender for
- a) option OHB II, or
  - b) option D2 (i.e. with defined specific selectable options for negotiation),
- pursuant to Article 3.1 and 3.9 of the procurement documentation. **Specifically, the participants may submit a proposed solution only in relation to the subject of performance in the scope of OHB II, or in relation to the subject of performance in the scope of "option D2".** As part of the indicative tender negotiations, the contracting authority also allows for the possibility of further reduction/partial change of the subject of performance according to the content of the indicative tenders.
- 9.5. Other terms and conditions, including the required structure of documents for the indicative tender, will be set out in the invitation to submit indicative tenders pursuant to Section 61 (5) of the PPA.

### **10. TIME-LIMIT FOR THE SUBMISSION OF INDICATIVE TENDERS**

The address for submitting indicative tenders will be provided in the invitation to submit indicative tenders pursuant to Section 61 (5) of the PPA.

The indicative tenders shall be submitted no later than the time-limit defined in the invitation to submit indicative tenders pursuant to Section 61 (5) of the PPA. The participant is responsible for timely delivery of the indicative tender.

### **11. NEGOTIATIONS CONCERNING INDICATIVE TENDERS**

11.1. The contracting authority will discuss the indicative tenders with the participants in the procurement procedure with the aim of improving the indicative tenders in favour of the contracting authority. Any terms and conditions of performance contained in the indicative tenders may be the subject of negotiations. The contracting authority may also negotiate the procurement terms and conditions of the public contract. Unless agreed otherwise , or unless the contracting authority

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decides otherwise with respect to all circumstances, negotiations with the participants will be held in the order of time of their submission of indicative tenders starting with the participant who submitted the indicative tender as the first, to the participant who submitted the indicative tender as the last. In the event of the same time of the indicative tender submission, the order of the negotiations with these participants will be determined by drawing lots.

- 11.2.** The contracting authority shall conduct negotiations with the participants in the procurement procedure in the Czech or Slovak language. However, the contracting authority reserves the right to negotiate with the participants in English. The contracting authority shall inform the participants in the procurement procedure of this fact sufficiently in advance before each specific meeting (at the latest in the invitation to the meeting); in such a case, the participant shall arrange for an interpreter at its own expense if the participant is unable to communicate in English at the level required for negotiating the subject of the public contract and related terms and conditions. The contracting authority is entitled to change or supplement the tender terms and conditions during negotiations, with the exception of the minimum technical conditions according to par.3.3 of the procurement documentation and save for the tender evaluation rules pursuant to Section 115 of the PPA. The contracting authority will inform the participants in the procurement procedure in writing (such as in the form of a protocol or in another suitable manner) of such a change or supplement to the procurement terms and conditions and will provide the participants with a reasonable time to modify their indicative tenders. If the contracting authority does not request submission of a modified indicative tender, the participant shall take into account the changed or supplemented procurement terms and conditions in its tender submitted after the end of the negotiations on the basis of the invitation to submit (final) tenders.
- 11.3.** The participant will be duly invited to each meeting no later than 5 calendar days in advance, unless the date of the next meeting is agreed as part of meetings. The participant will be invited to each meeting in the form of a request (invitation), in which at least the date and venue of the meeting shall be specified with at least a generally defined subject matter of the meeting. The invitation may include an invitation to more than one meeting. The obligation to invite the participant to the negotiations in the form of a request (invitation) will not apply if the participant acknowledged the date and venue of further negotiations at a previous meeting. The contracting authority reserves the right to change the date of such a meeting. One negotiation may be divided by the contracting authority into several rounds or phases.
- 11.4.** A maximum of five persons (participants' representatives) may attend one meeting, at least one of whom shall be demonstrably authorised to represent the participant in the meeting (e.g. on the basis of a power of attorney), unless the contracting

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authority (especially at the request of the participant) allows for a higher number of participants.

- 11.5.** The contracting authority is entitled to stipulate no later than 5 business days (unless it agrees with the participant on a different date) before each subsequent meeting that the next meeting will be the final meeting.
- 11.6.** In addition to face-to-face meetings, individual meetings may, based on the decision of the contracting authority, take place remotely, in the form of electronic communication, primarily through the electronic tool or video conference (using appropriate software for this purpose) or, as the case may be, in in any other agreed method.
- 11.7.** The contracting authority will negotiate with the participants separately or jointly, at its discretion.
- 11.8.** The subject matter of the negotiations may be any and all aspects of the performance of the public contract based on the decision of the contracting authority while taking into account the purpose of the negotiations under Section 11.1 of the procurement documentation.
- 11.9.** With respect to each and every face-to-face meeting with the participant, i.e. the meeting in the physical presence of the contracting authority's representatives and the participant's representatives, the contracting authority shall draw up minutes or a protocol containing arrangements or substantial conclusions made during the meeting, the date of the meeting, the subject matter of the meeting and its outcome. Attached or as part to this protocol will always be the list of participants in the meeting (attendance list), in which the participants in the meeting will be entered at the beginning of each meeting. The protocol/minutes of the meeting will be drawn up by the contracting authority no later than 7 business days after the meeting. The participant is entitled to inspect the protocol of the meeting and to make extracts or copies thereof; the participant is entitled to request a copy of the protocol.
- 11.10.** In the case of a negotiation conducted remotely, the written communication/ video conference record between the participant and the contracting authority or, as the case may be, its representative, will serve as a record of the course of the negotiations, having the character of documentation pursuant to Section 216 of the PPA, for the validity of which no further authorisation is required.
- 11.11.** The contracting authority reserves the right not to conduct further negotiations with a participant who failed to attend a face-to-face meeting in at least two cases or did not respond properly to the specified requirements in writing in at least two cases,

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or if the person authorized to act on behalf of the participant was evidently unprepared for the meeting.

**11.12.** The contracting authority reserves the right to stipulate additional terms and conditions for negotiating with the participants.

**11.13.** The outcome of the indicative tender negotiations will be binding for the submission of the tender, unless the contracting authority specifies otherwise, however, the participant may also offer more favourable terms and conditions in its tender.

## **12. REQUIREMENTS FOR THE PREPARATION AND SUBMISSION OF THE FINAL TENDER**

**12.1.** The final tender may only be submitted by a participant who has been invited to submit the tender. The invited participants in the procurement procedure may not submit a joint final tender.

**12.2.** The participants in the procurement procedure shall submit only a complete **electronic form of the final tender**, using the electronic tool according to Section 2 of the procurement documentation. **The final tender shall be encrypted in accordance with the legal and the electronic tool requirements.**

**12.3.** The same applies to the language of the final tender as to the required language of the indicative tender (Art.8.3) .

**12.4.** The list of subcontractors (Part III, Annex F1 *Subcontractors*) shall form a part of the final tenders including subcontractors through which the participant may have demonstrated compliance with the qualification criteria.

**12.5.** The final tenders shall also include a list of members of the implementation team, through whom the participant has demonstrated compliance with the qualification criteria.

**12.6.** The contracting authority expressly advises that the participants will not offer proposed solutions to the subject of performance in different scopes in the framework of the final tenders; this option only applies to the submission of indicative tenders. Prior to the invitation to submit the final tenders, the tender terms and conditions will be finalized by the contracting authority in a form that will contain a precisely defined subject of performance.

**12.7.** Other terms and conditions for the tender will be set in the invitation to submit the final tenders.

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### **13. TIME-LIMIT FOR THE SUBMISSION OF FINAL TENDERS**

The time-limit for submitting the tenders will be provided in the invitation to submit the final tenders pursuant to Section 61 (12) of the PPA and Section 62 (4) of the PPA.

The time-limit for submitting the tenders will be provided in the invitation to submit the final tenders pursuant to Section 61 (12) of the PPA and Section 62 (4) of the PPA. The due and timely submission of the final tender is within the responsibility of the participant.

### **14. TENDER EVALUATION**

The tenders will be evaluated in accordance with Section 114 et. seq. of the PPA on the basis of their economic advantageousness. The most economically advantageous tender is the tender which, in summary, meets the defined evaluation criteria best.

Pursuant to Section 116 of the PPA, the contracting authority specified the evaluation criteria and rules for tender evaluation, the details of which are set out in more detail in Part 0.c of the procurement documentation (Detailed definition of evaluation criteria and rules for tender evaluation).

### **15. BINDING NATURE OF THE CONTRACTING AUTHORITY'S REQUIREMENTS**

The information and data specified in the procurement documentation define the binding requirements of the contracting authority for the performance of the public contract. However, the contracting authority advises that these may, in addition to the minimum technical conditions referred to under Section 3.3 of the procurement documentation, and save for the tender evaluation rules pursuant to Section 115 of the PPA, undergo changes during the indicative tender negotiations with the participants. The participant is obliged to fully and unconditionally meet the requirements arising from invitation to submit tenders in its final bid. Failure to accept the contracting authority's requirements shall be considered as non-compliance with the procurement terms and conditions.

Where the procurement terms and conditions contain references to trade names, first and last names, specific designations of goods and services which are characteristic of a particular person or his/her organizational unit, invention patents, utility models, industrial designs, trademarks or designation of origin, the contracting authority explicitly allows the use of other, qualitatively and technically similar solutions, which will ensure the functionality required by the contracting authority or functionality obvious to an expert (unless stated otherwise in the relevant case).

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### **16. EXPLANATION, CHANGES OR SUPPLEMENTS TO THE PROCUREMENT DOCUMENTATION**

The contractors may request an explanation of the procurement conditions.

Such requests shall be delivered to the contracting authority within the period specified under Section 98 (3) of the PPA (8 business days before the end of the time-limit of the relevant period in the relevant pending stage of the procurement procedure - e.g. the time-limit for submission of the requests to participate or the tenders).

The contracting authority advises that **all communication with the contracting authority within the procurement procedure concerning this public contract shall be conducted in electronic form only, in particular through the electronic tool , or**, as the case may be, through a data box or to the **email address of the contracting authority's representative** according to Section 1.2 of the procurement documentation.

Within the statutory period of 3 business days, the contracting authority shall publish an explanation of the procurement documentation, including the exact wording of the request, on the contracting authority's profile.

The contracting authority is entitled to publish on the contracting authority's profile under the conditions of Section 98 (1) of the PPA, explanations to the procurement documentation also on its own initiative Pursuant to the provisions of Section 99 of the PPA, it may also publish a change or supplement to the procurement documentation in this manner.

### **17. TERMS AND CONDITIONS FOR CONCLUDING THE CONTRACT WITH THE SELECTED CONTRACTOR**

**17.1.** The contractor who has been identified by the contracting authority (committee) as the selected contractor shall submit the following at the request of the contracting authority under the terms and conditions of Section 2 of the procurement documentation (i.e. in electronic form)

- a) qualification documents that the contracting authority requested and does not have available, including documents according to Section 83 (1) of the PPA,
- b) affidavit that the data conclusive for assessing compliance with the qualification criteria contained in the documents according to Article 5.2 Part 0.b of the Qualification documentation available to the contracting authority have not changed, or new documents, if the conclusive data contained in these documents have changed.

**17.2.** If the selected contractor is a Czech legal entity, the contracting authority will obtain data about the beneficial owner from the register of beneficial owners

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maintained in accordance with Act No. 37/2021 Coll., on the registration of beneficial owners. If it is not a person to whom a legal exemption applies, the data of the beneficial owner shall be entered in the register of beneficial owners. The selected contractor, who is a Czech legal entity with a beneficial owner, will be excluded from the procurement procedure if data of its beneficial owner cannot be obtained from the register of beneficial owners; an entry made available in the register of beneficial owners after the notification of the exclusion of the contractor has been sent will be dismissed. The selected contractor, who is a foreign legal entity, falls under the provisions of Section 122 (6) of the PPA.

### **18. AWARD PERIOD AND SECURITY**

The contracting authority sets out the requirement for the award period (Section 40 of the PPA) and the provision of security (Section 41 of the PPA).

The period during which the participants may not withdraw from the procurement procedure (award period): 8 months from the end of the time-limit for the submission of (final) tenders.

The tender award period shall be extended by the period during which the contracting authority may not enter into a contract pursuant to Section 246 of the PPA, according to a decision made by the Office for the Protection of Competition or according to an imposed interim measure.

The tender award period may be extended by the period agreed upon by the contracting authority with the participants in the procurement procedure during the procedure, or, as the case may be, under the terms and conditions set out in under Section 40 (2)(a) of the PPA.

Amount of the required security: CZK 25,000,000

Form of the security:

- a) pecuniary security - depositing a sum of money into the contracting authority's account, or
- b) irrevocable and unconditional bank guarantee - security document in electronic form (pursuant to the provisions of Section 2029 et seq. of Act No. 89/2012 Coll., Civil Code, as amended) or b) irrevocable and unconditional bank guarantee - security document in electronic form (pursuant to the provisions of Section 2029 et seq. of Act No. 89/2012 Coll., Civil Code, as amended) or
- c) suretyship insurance in electronic form (pursuant to the provisions of Section 2868 of Act No. 89/2012 Coll., Civil Code, as amended)

The security shall be provided in Czech crowns

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### **a) Deposit of pecuniary security:**

The document demonstrating the deposit of the pecuniary security to the account specified by the contracting authority is also a bank statement of the participant's account which shows that the contractor transferred the amount corresponding to the required security to the account, or the bank's confirmation of the amount corresponding to the required security listed below. Data required for depositing the pecuniary security are as follows:

bank institution:	Komerční banka
account number and bank code:	79033621/0100
	IBAN CZ8701000000000079033621
variable symbol:	contractor 's ID number (or its equivalent).

The pecuniary security shall be credited to the account within the time-limit for submission of tenders. Unless the contractor stipulates otherwise, the pecuniary security will be returned to the account from which it was paid by the contractor provided that legal terms and conditions are met.

### **b) Provision of a bank guarantee:**

Security in the form of a bank guarantee shall be provided by submitting a bank document demonstrating the bank's obligation to pay the security to the contracting authority based on its notice on fulfilment of terms and conditions pursuant to Section 41 (7) of the PPA. This document does not need to be submitted in the tender in the original or an officially certified copy. The participant in the procurement procedure is obliged to ensure the validity of the bank guarantee throughout the duration of the tender period. If the legal terms and conditions for returning the security are met, the contracting authority shall provide the contractor or the bank designated by the contractor, at its request, with information on meeting the terms and conditions for returning the security provided in the form of bank guarantee

### **c) Provision of suretyship insurance:**

Security in the form of a suretyship insurance shall be provided by submitting an insurance company document demonstrating the insurance company's obligation to pay the security to the contracting authority based on its notice on fulfilment of terms and conditions pursuant to Section 41 (7) of the PPA. The suretyship insurance need not be submitted in the original or an officially certified copy. If the legal terms and conditions for returning the security are met, the contracting authority shall provide the contractor or the insurance company designated by the contractor, at its request, with information on meeting the

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terms and conditions for returning the security provided in the form of suretyship insurance.

### **19. CONTRACTING AUTHORITY'S RESERVATIONS**

- 19.1.** The costs incurred by participating in the procurement procedure shall be borne by the participant.
- 19.2.** The contracting authority reserves the right to change, supplement or modify the procurement conditions, save for the minimum technical conditions pursuant to Section 61 (4) of the PPA and save for the tender evaluation rules according to Section 115 of the PPA.
- 19.3.** Pursuant to Section 170 of the PPA, the contracting authority reserves the right to cancel the procurement procedure pursuant to the relevant provisions of Section 127 of the PPA.
- 19.4.** The contracting authority does not allow for the submission of multiple tenders by one participant.
- 19.5.** The contracting authority reserves the right to proceed pursuant to Section 46 of the PPA, if there is a need to clarify the requests to participate or the indicative tenders or to supplement them and the participant is entitled to amend the request to participate or the indicative tender so as to meet the requirements of the contracting authority.
- 19.6.** The contracting authority may verify the credibility of the provided data and documents and may also obtain it itself, for example from third parties or from publicly available sources. The participant is obliged to provide all the necessary cooperation in this regard.
- 19.7.** The contracting authority reserves the right to exclude from the procurement procedure a participant who, directly or via a subcontractor through which the participant demonstrates its compliance with qualification, breaches the provisions of Section 4b of Act No. 159/2006 Coll., on Conflict of Interests, as amended.
- 19.8.** The contracting authority advises that the selected contractor is in accordance with Section 2 (e) of Act No. 320/2001 Coll., on Financial Control, as amended, an entity obliged to cooperate during the exercise of the financial control.
- 19.9.** In the event that some data in the participant's documents/information is provided in a currency other than CZK, without this being contrary to the procurement documentation, the foreign exchange rate announced by the Czech National Bank as of the date of commencement of the procurement procedure shall be used for conversion to CZK.
- 19.10.** The contracting authority preliminarily anticipates a part of funds to be provided from the Modernization Fund, the Modernization of Thermal Energy Supply Systems

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(HEAT) program within the project of "Modernization of ZEVO of SAKO Brno aimed to increase its processing capacity and operational efficiency", reg. no. "Modernization of WtE SAKO Brno to increase its processing capacity and operation efficiency 7210200001.

### **20. INFORMATION ON DATA PROCESSING**

- 20.1.** Pursuant to Article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereinafter referred to as the "GDPR") and Act no. 110/2019 Coll., on the processing of personal data, as amended, the contracting authority acting as a data controller hereby informs the participants in the procurement procedure about their data processing or the purposes of conducting the procurement procedure pursuant to the PPA.
- 20.2.** The contracting authority may process data of the contractors and their subcontractors (from amongst natural persons engaged in business), members of statutory bodies and contact persons of the contractors and their subcontractors, persons through which the contractor demonstrates compliance with qualifications, members of the contractor's implementation team and the contractors' beneficial owners.
- 20.3.** The contracting authority will only process such data to the extent necessary to conduct the procurement procedure and only for the period stipulated by legal regulations, in particular the PPA. Data subjects are entitled to exercise their rights under Articles 13 to 22 of the GDPR in writing at the registered address of the contracting authority.
- 20.4.** The contracting authority transfers the data for processing to the contracting authority's representative as the data processor for the purposes of administering the procurement procedure pursuant to Section 43 of the PPA. LIST OF APPENDICES

### **21. SANCTIONS AGAINST RUSSIA AND BELARUS**

- 21.1.** By submitting the tender, the participant confirms that, in the event of entering into the contract with the contracting authority, the payments provided by the contracting authority in relation to the implementation of the public contract will not be provided directly or indirectly, even in part, to any person subject to the so-called individual financial sanctions pursuant to Article (2) of the Council Regulation (EU ) No. 208/2014 of 5th March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, Council Regulation (EU) No. 269/2014 of 17th March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine and Council Regulation (EC) No. 765/2006 of 18th May 2006 concerning restrictive measures against President Lukashenko

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and certain officials of Belarus and which are listed in the so-called sanctions lists (according to Annex No. 1 of these Regulations)<sup>2</sup>.

- 21.2.** By submitting the tender, the participant furthermore confirms that the terms and conditions set out in Council Regulation (EU) 2022/576 of 8th April 2022 amending Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine are not met, i.e. in particular that it is not a contractor who is:
- a Russian citizen, a natural or legal person based in Russia,
  - a legal entity that is more than 50% directly or indirectly owned by one of the persons listed in the previous bullet point, or
  - a natural or legal entity acting on behalf of or at the instructions of any of the persons listed in the previous bullet points.
- 21.3.** The above applies to any of a joint participant submitting a joint tender as well as to the cases where the participant intends to hire a subcontractor (or another entity demonstrating compliance with the qualification criteria on behalf of the participant) for the implementation of the public contract to which any of the above bullet points apply and which will participate in the implementation of the public contract for more than 10% of the public contract value (according to the tender price in CZK excl. VAT).
- 21.4.** If the participant has doubts as to whether the terms and conditions according to Article 21.1 or 21.2 of the tender documents are met, the participant shall list conclusive circumstances and designate such person or persons in the final tender. The participant may also, at its discretion, provide information and documents which, in a credible manner, dispel doubts as to the previous sentence, or, as the case may be, documents about the measures taken on the part of the participant.
- 21.5.** If the participant is subject to any of the sanctions referred to under Articles 21.1 or 21.2 of the procurement documentation, the contracting authority will proceed in accordance with Section 48a of the PPA.

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<sup>2</sup>The current list can be found, for example, at <https://www.financnianalytickyurad.cz/blog/rusko-a-belorusko-seznam-sankcionovanych-subjektu>

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### **22. LIST OF APPENDICES**

The procurement documentation includes the following Appendices

Part 0.a – Table of Contents

The procurement documentation includes all documents listed in the document and entitled as "Part 0.a - Table of content.xlsx "and documents explicitly referred to in any document forming the procurement documentation

**SAKO Brno, a.s.**  
legally represented by  
MT Legal s.r.o., law firm