

RULES AND REGULATIONS OF THE AUCTIONS **organised by KGHM Polska Miedź S.A.**

Acceptance of these Rules and Regulations within a given Procurement Procedure is a condition for participation in the Electronic Auction conducted by the Auction Organiser.

Definitions:

1. **Auction** – access through the https electronic protocol, within the online auction application, electronic auction organised in the Procurement System.
2. **Extra time** – extended Basic Auction Bidding Time.
3. **Supplies** – the acquisition of things, rights and other goods, in particular on the basis of a contract of sale, delivery, rental or lease with an option of purchase, which may include additional arrangement or installation;
4. **Basic Documents** – relevant - depending on the type of Procedure - documents specifying the subject-matter and terms and conditions of Procurement, terms and conditions of the Procedure, including the procedural rules, method of bidding, made available to the Bidders by the Contracting Authority on its website or in the Procurement System, primarily the announcement or ToR (including the appendices).
5. **Bidder** – an entity using the Auction Platform to participate in the Auction.
6. **Bid** – each subsequent increment taken by the Bidder within the parameters subject to bidding during the Auction.
7. **Operator** – The Procurer from the Procurement Department in the Headquarters of KGHM Polska Miedź S.A. with its registered office in Lubin at ul. M. Skłodowskiej-Curie 48, 59-301 Lubin or an organisational unit in the Division of KGHM Polska Miedź S.A. or in the Company of the KGHM Polska Miedź S.A. Capital Group.
8. **Organiser** – Headquarters of KGHM Polska Miedź S.A. with its registered seat in Lubin at ul. M. Skłodowska-Curie 48, 59-301 Lubin or the Division of KGHM Polska Miedź S.A. or a Company of the KGHM Polska Miedź S.A. Capital Group.
9. **Basic Electronic Auction Bidding Time** – Auction time counted from the moment of its start to the end, excluding the Auction extension resulting from extra time.
10. **Procurement procedure** – a process prepared and implemented by the Contracting Authority aimed at selecting the best bid for procurement of Supplies, Services and Works.
11. **Works/Construction Works** – erection of a building, execution or designing and execution of construction works as understood by Act of 7 July 1994 - Building Law as well as execution of geological, mining, mining and construction works as

understood by the Act of 9 June 2011. Geological and Mining Law, with the use of any means in accordance with the requirements specified by the Contracting Authority;

12. **ToR** – Terms of Reference.
13. **Auction Jump (increment)** – the value, of which the bid parameter can be increased or decreased.
14. **Procurement system** – a set of Internet business applications available through the https electronic protocol, to which the Operator has the rights and which is used by the Operator and to which the Bidder obtains a specific access.
15. **Services** – all contractual services, the subject-matter of which are not Works or Supplies;
16. **Procurement** – procuring by the Contracting Authority of Works, Supplies, Services (subject-matter of the Procurement), being an object of a paid contract concluded by and between the Contracting Authority and the Bidder, from the selected Bidder.
17. **Contracting Authority** – the Headquarters, Division or KGHM Capital Group Company, in accordance with ToR in a given Procurement Procedure.

§ 1. Subject-matter of the Rules and Regulations

1. The subject-matter of these Rules and Regulations are detailed rules of an Auction for Procurement Procedures, carried out by the Contracting Authority, in accordance with the principles laid down in the Basic Documents for a given Procurement Procedure.

§ 2. Electronic Auction System

1. The Auction shall be conducted using the Procurement System described in the SAP Ariba Platform.
2. The Operator invites the Bidders to participate in the Auction electronically via the Procurement System.

§ 3. Object of the Auction

The object of the Electronic Auction is bidding of a values specified each time in the Procurement Procedure.

§ 4. Auction Bidding Time

The date, start time, Basic Electronic Auction Bidding Time, Extra Time and the Auction Jump (increment) are specified each time in a particular Procurement Procedure

§ 5. Price and bidding

1. The bidding values for each Auction item shall be each time specified within a given Procurement Procedure and comply with the bid evaluation criteria, in accordance with the Basic Documents.
2. Information on the bid ranking in the Auction shall be each time specified in a given Procurement Procedure and comply with the formula specified in the Basic Documents.
4. Information on the Auction Jump shall be visible in the Bidder console.
5. The visibility available in the Bidder console shall be each time specified in a given Procurement Procedure.

§ 6. Rules of bid submission

1. By accepting these Rules and Regulations the Bidder acknowledges and accepts that:
 - 1.1. The auction system shall automatically submit on behalf of the Bidder the first bid corresponding to the bid submitted by the Bidder in the Procurement Procedure (Auction with digitalisation), or

- 1.2. The auction system shall accept from the Bidder as the first the bid, submitted in accordance with the Auction rule, no higher than the bid submitted in the Procurement Procedure (Auction without digitalisation).
- 1.3. Information on the procedure mode in a manner laid down in point 1.1 or 1.2 will be contained in the Basic Documents referring to a given Procurement Procedure.
- 1.4. If the bids identical in terms of value are submitted, the position in the ranking shall be decided by the actual time of their submission.
- 1.5. The increments are submitted via the System using the login and password, without the need to sign the Increment with a qualified signature.
2. The auction shall take place in accordance with the following rule:
 - 2.1. The English Auction is a real-time auction, in which the Bidders submit their bids for Supplies, Works and Services. The starting point is the maximum price at which the bidding starts, i.e. the Bidders submit increasingly lower price for the offered Supply, Good and Service. The auction is often a follow-up to a previously conducted Request for Proposal.
 - 2.2. The Dutch Auction is a real-time auction, in which the Bidders submit their bids for Supplies, Works and Services. The starting point is the minimum price at which the bidding starts. It is gradually increased by a fixed rate. The auction lasts until someone decides to sell for the current price. The auction is often a follow-up to a previously conducted Request for Proposal.
 - 2.3. The Japanese Auction is a real-time auction, in which the Bidders submit their bids for Supplies, Works and Services. The starting point is the maximum price at which the bidding starts. The price is gradually decreased by a fixed rate. The bidders confirm the price each time. The auction lasts until none of the Bidders confirms a given price. The auction is often a follow-up to a previously conducted Request for Proposal.
 - 2.4. The Discount Auction is a real-time auction, in which the Bidders submit their bids for Supplies, Works and Services. The starting point is the minimum discount, from which the bidding starts, i.e. the suppliers submit increasingly higher discount for the offered good. The auction is often a follow-up to a previously conducted Request for Proposal.
3. The rule for conducting the Auction shall be specified each time in a given Procurement Procedure in the Basic Documents.
4. The bid parameters established as a result of the Auction shall be the parameters binding for the Bidder. They shall be acknowledged as the parameters to the Procurement, if the Bidder's bid is selected. The Parties can conduct additional negotiations. The Contracting Authority has the sole right to initiate the negotiations, while the Bidder, until these negotiations are completed, shall be bound by the bid submitted by it during the Auction. The Contracting Authority reserves its right to conduct additional negotiations with other Auction participants as well.
5. In the case a decision is made to stop the Auction during its duration, the Bidder shall be notified via the Procurement System about the exact time of its suspension. Auction Time is visible on the bid console. The bids which are accepted by the system after a specified time shall not be taken into account.

§ 7. Bid confirmation

The bid binding for the Bidder is the last bid accepted by the system and submitted by the Bidder during the Auction and requiring no additional confirmations. Subject to § 6(4), this bid is binding for the Bidder until notified on the selection of the other bid.

§ 8. Responsibility of the Contracting Authority and of the Organiser

1. The Bidder acknowledges that the potential access and use of the Procurement System depends on the availability and quality of the data transmission connections between the Bidder and the data transmission service provider, whose connections are used by the Bidder and others, which are beyond the control of the Contracting Authority and of the Organiser of the Auction. Therefore, neither the Contracting Authority nor the Organiser are liable for the related problems and limitations.
2. In the case of Procurement System unavailability, the Auction shall be cancelled. The Bidder shall be notified about the new date of the Auction electronically. The renewed Auction starts with the last bids accepted by the Procurement System before the cancellation of the Auction.
3. If a technical problem is reported two minutes before the planned closing time of the Auction or later, neither the Contracting Authority nor the Organiser shall be liable for the lack of possibility to provide technical assistance referred to in § 10.
4. Neither the Contracting Authority nor the Organiser shall be liable for any damages resulting from the actual participation in the Auctions by an entity other than the Bidder, in particular if the use of the Auction by another entity resulted from loss or theft, as well as intentional or unintentional transfer of information necessary to use the Auction to a third party by the Bidder. The Bidder bears responsibility for the actions of such persons as for their own.

§ 9. Contracting Authority's and Organiser's reservations

1. The Contracting Authority reserves the right to annul or terminate the Procurement Procedure as well as to withdraw from the Auction without providing reasons. The Bidders are not entitled to any claims in this respect.
2. The Organiser has the right to **annul, withdraw, repeat, resume, modify the conditions, postpone, suspend or terminate** the Auction without providing reasons. The Bidders are not entitled to any claims with respect to the Contracting Authority or the Organiser.
3. If a decision is made to annul or withdraw from the Auction, the Organiser shall notify the Bidder of this fact.
4. If a decision is made by the Organiser to postpone or repeat the Auction, these Rules and Regulations and the Auction parameters specified in a given Procurement Procedure shall remain valid. In such case, the Organiser will inform the Bidder about the new date and time of the Auction.

5. **Submitting the best bid by the Bidder during the Auction does not confer the selection of its bid by the Organiser and the Contracting Authority and therefore constitutes no winning bid.**

§ 10. Support during Auction

1. During the Auction, the bidder may use the Operator's telephone support under the provided telephone number.
2. The Operator may, on the Bidder's request, remove its bid, which is an obvious mistake, and only during the Auction.

§ 11. Fees

The Bidder pays no fees for participating in the Auction.

§ 12. Technical requirements

1. Participation in the Auction requires the IT resources meeting the technical requirements specified on the on the provider's login page to the Procurement System.
2. The Auction-related problems may occur, when:
 - a) there are several windows in the browser opened with the Ariba procurement system pages,
 - b) several Bidder users is connected to the same account,
 - c) there was no correct logging-out from the previous session and the new session is opened,
 - d) inactive link was used for logging-in (e.g. from the email on password reset).
3. Problem solving requires taking the following steps:
 - a) Deleting cookies and browsing history from the browser. We recommend regular deletion of Internet files, cookies, caches and browsing history to ensure undisturbed operation.
 - b) Closing all browser windows.
 - c) Opening the new browser window and re-logging on the dedicated account.
4. The most frequent reason behind rejecting the increment is an attempt to submit it after the end of the bidding time.
5. Ariba does not recommend to send the responses (increment) within the last several seconds of an open event due to the time necessary to process the bid by the system, including in particular when the event contains a large number of participants or parties.
6. The additional possible reasons behind rejecting the increment are provided below:

- a) infringing the adjustment rule (the rule specifies the value by which the bid must be lower from the previous price);
- b) infringing the equal-value bid (the rule specifies whether the equal-value bids are allowed);
- c) infringing the rule of value threshold (the threshold value is the maximum price to be submitted in the auction. If the bid for the value exceeding this price is attempted, the message informing that the bid is too high will be displayed);
- d) Change of event status, when the event is in progress;
- e) Submitting a duplicated bid: in such case the following error message displays: Duplicated bids are prohibited. Send the bid which is not identical with your previous bid. In such case, submitting a changed bid is required prior to re-sending.

§ 13. Final provisions

Accepting these Rules and Regulations is a condition for the admission of the Bidder to the Auction.