

RULES OF BIDDER SELECTION IN KGHM POLSKA MIEDŹ S.A.

The terms set out in these Rules should be understood in accordance with the definitions and abbreviations provided below:

- 1) **Bidder Base** – a set of Bidders interested in establishing the cooperation with KGHM or any other Capital Group entities registered in the Procurement System;
- 2) **Procurement Project Documentation** – all documentation (in a written, electronic and documented form) necessary for the proper preparation, implementation and completion of the procurement project aimed at contracting an obligation;
- 3) **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, including primarily the announcement (in the System, including RFP) and Terms of Reference (along with appendices).
- 4) **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;
- 5) **Electronic way** – the submission of declarations, applications and documents on electronic data carriers and, in specified situations, via electronic mail or the web page of the Ordering Party;
- 6) **Capital Group** - KGHM Polska Miedź S.A., together with its direct and indirect subsidiaries;
- 7) **Procurer** – a person conducting the Procurement Procedure, alternatively the manager in a given product category.
- 8) **Best bid** – the bid with the lowest price or the bid that represents the best ratio of price and other criteria relevant to the object of the Contract;
- 9) **Bidder**– (anytime this document refers to the Supplier, Contractor, Bidder, Counterparty, these terms should be considered equivalent) - any natural, legal person or organisational unit having no legal personality, which became a participant of the Procurement Procedure by submitting a bid in the course thereof and any entities, which may potentially submit a bid in the Procurement Procedure. The entities entering into the Procedure (for example as a consortium or under any other cooperation agreement) are also the Bidder.
- 10) **Partial bid** – a bid which, in accordance with the contents of the Terms of Reference, provides for performance of a part of the Contract;

- 11) **Variante bid** – a bid providing, in accordance with the terms specified in Terms of Reference, the possibility of a method of performance of the Contract other than that specified by the Contracting Authority;
- 12) **Affiliate** – an entity referred to in Appendix 3
- 13) **Subcontractor** – an entity, with which the Contractor has concluded an agreement, the subject-matter of which are Supplies, Services or Works, constituting a part of the subject-matter of the Procurement, i.e. a separated part from the entire subject-matter of the Procurement. Regulations referring to the Subcontractor are also applied to further subcontractors.
- 14) **Procurement Procedure / Procedure** – the process of procuring goods or services running from the acceptance of request to the selection of the Bidder and entering into the contract, annulment or termination of the Procedure without any selection. The Procedure consists in the Request for Procurement and Procurement Project.
- 15) **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;
- 16) **ToR** – terms of reference, a document describing the subject matter of the Procurement and conditions for the participation in the Procurement Project;
- 17) **Procurement System** – an IT platform used for implementing the Procurement Procedures in modes specified in the Procurement Policy in the KGHM Capital Group.
- 18) **TCO** - (Total Cost of Ownership). The method of determining the total cost of ownership in the specified time period.
- 19) **Services** – all contractual services, the subject-matter of which are not Works or Supplies;
- 20) **Performance bond** – a form of securing of the potential claims of the Contracting Authority for non-performance or undue performance of the contract.
- 21) **Contracting Authority** – KGHM Polska Miedź S.A. Division (including the Headquarters) or the Capital Group company, which performs the activities related to the initiation of the process and for which the Procurement is made.

1. Purpose and scope of the regulations

- 1.1. This document (hereinafter referred to as the "Rules") lays down the terms and conditions of selecting the Contractors in the Procurement Procedures carried out for the Contracting Authority.
- 1.2. The Rules form a part of the Procurement Procedure, are accepted by the Contractors and determine the conditions of performing the process by the participants of the Procurement Procedure aimed at selection of the Contractor.

2. Rules of Procurement Procedure:

- 2.1. The Procurement Procedure is the process of procuring the Supplies, Works, Services running until the selection of the Contractor and entering into the contract, annulment or termination of the procedure without any selection.
- 2.2. The Contracting Authority prepares and conducts the procurement procedure in a manner that ensures protection of market competition, respect for good practices and equal treatment of the Contractors.
- 2.3. The Procurement Project is not public, except for the content of the announcement, and terms and conditions of participation in the Procedure. The Contracting Authority discloses no information that constitute the company's secret in the meaning of the act on combating unfair competition, including also information on the selection of a specific Contractor or a value of the selected bid.

3. The bidding procedure and terms and conditions of bid selection.

- 3.1. The initial date for submitting the bids is the time of publishing the announcement on the Procurement Procedure or sending the request for proposal to the specific Contractor.
- 3.2. The terms and conditions of participation in the procurement procedure are specified in the announcement on the Procurement Procedure or ToR.
- 3.3. The announcement contains, among others, information concerning the subject-matter of the procedure, the Contracting Authority's requirements

concerning its implementation, conditions to be met by the Contractor, list of elements to be included in the bid and the bid evaluation criteria.

- 3.4. The Contracting Authority may establish the obligation to deposit a bid security or a performance bond in the announcement.
- 3.5. The following forms of the bid security are accepted:
 - 3.5.1. cash,
 - 3.5.2. bank sureties,
 - 3.5.3. bank guarantees,
 - 3.5.4. insurance guarantees.
- 3.6. The bid security deposited in cash is kept on the bank account of KGHM is not subject to interest.
- 3.7. The bid security may be submitted in the following currencies: PLN, EUR and USD. The PLN is converted into EUR and USD on the basis of the average exchange rate of the NBP on the day preceding the date of announcement (day of publishing in the Procurement System).
- 3.8. In the case of depositing the bid security in cash, there should be "Payment Instruction" attached to the bid with specification of the Bank and the bank account to which the bid security should be returned. The completed and duly signed "Instructions for Payment" constitutes an attachment to the bid.
- 3.9. The original copy of a bid security submitted in non-monetary form (hard copy issued by the authorized institution) shall be submitted to competent financial and accounting services, where it is kept until returning the bid security to the Contractor. The bid security may have an electronic form, with qualified signature, and kept in the Procurement System.
- 3.10. The Bidder loses the bid security, if it:
 - 3.10.1. withdraws the bid submitted in the Procurement Procedure after the deadline for its submission or submitted another bid less favourable from the previous one,
 - 3.10.2. refused to sign the agreement on terms and conditions specified in the offer,
 - 3.10.3. failed to submit a performance bond under the terms of the contract,

- 3.10.4. conclusion of the contract has become impossible for the reasons attributable to the Contractor.
- 3.10.5. The bid security may be credited towards a performance bond, if deposited in cash and the Contractor, offer of which has been selected as the best bid, applies for such crediting or indicates so in the submitted bid.
- 3.11. If the bid security is submitted in a non-monetary form, the Contractor is obliged to send an original of the document issued in accordance with the provisions of ToR to the Contracting Authority before the date set as the bid submission deadline.
- 3.12. The following forms of performance bond are accepted (hereinafter the "Bond"):
- 3.12.1. cash,
 - 3.12.2. bank sureties,
 - 3.12.3. bank guarantees,
 - 3.12.4. insurance guarantees.
- 3.13. The Contracting Authority may allow other forms of Bond provided by law, at the request of the Contractor, upon receiving information about selecting the bid.
- 3.14. The bond shall cover the claims for non-performance or undue performance of the contract. If the Contractor is also the guarantor, the Bond serves also to cover the claims under the quality guarantee.
- 3.15. The amount of the Bod is established at 10% of the gross price. In justified cases, the bid security may be established at a higher level.
- 3.16. Depositing the Bond, its allowable forms and deadlines and legal effects of failure to deposit thereof are laid down in the Basic Documents.
- 3.17. The Bond deposited in cash is kept on an interest bearing bank account of the Contracting Authority on terms negotiated by the Contracting Authority. The Bond may be deposited in the following currencies: PLN, USD and EUR, depending on the currency in which the price was specified.
- 3.18. The Bond in a non-monetary form should be issued in the following way:

- 3.18.1. documents amounting to 70% of the value of the established Bond; the period for which the concerned Bond is deposited, must be longer by no less than 30 days than the period of the implementation of the contract, concluded with a protocol of acceptance of the contract, recognized as duly performed,
- 3.18.2. a document amounting to 30% of the value of the established Bond; the period for which the bond is deposited must be longer by no less than 30 days than the period of the warranty for defects or guarantee. Issuing a single document covering full Bond, in accordance with the above-mentioned terms and conditions, is allowed.
- 3.19. In the procurements without guarantee or warranty, the Contractor is obliged to submit one document for the value of 100% of the Bond.
- 3.20. Upon receiving information on the accepting the bid of a given Contractor, such Contractor is obliged, within 7 calendar days from the date of receiving such information, to submit to the organisational unit competent for the contracts of the original copy of the Bond submitted in a non-monetary form (hard copy issued by an authorized institution). The receiver of the document shall be obliged to provide it immediately to the person competent for performance of the contract, who should then transfer it to the competent financial and accounting services, in which the document will be kept until returning the bond to the Contractor. The Bond may have an electronic form, with qualified signature, and kept in the Procurement System.
- 3.21. The Bond deposited in a non-monetary form is reimbursed to the Contractor by the organisational unit competent for performance of the contract, due performance of which was secured in a non-monetary form.
- 3.22. The Bond is reimbursed in the amount of 70% within 30 days from the date of due performance of the contract. The remaining 30% constitutes a security of claims for defect warranty or quality guarantee and shall be reimbursed no later than on the 30. day after the expiry of defect warranty or quality guarantee. For the contracts without guarantee of warranty, 100% of the Bond is reimbursed within 30 days from the day of due performance of the contract. In the case of retaining by the Contracting Authority of 30% of the Bond deposited in cash for so called guarantee deposit, the organisational unit competent for performance of the contract applies to the competent financial and accounting services within 5 working days (from the day of guarantee

validity) on establishing the micro-account. The amounts kept for deposit until the last day of the guarantee period, excluding 30-day period for reimbursement upon the expiry of the guarantee period, shall be deposited on the account learning interest, on terms and conditions negotiated by the Contracting Authority.

- 3.23. When the retained amounts are not used, the bond along with interest obtained from the interest bearing account, after deducting the cost of maintaining the account shall be reimbursed to the Contractor on the day specified as the bond reimbursement date.
- 3.24. When the defects are not removed for reasons attributable to the Contractor is responsible, the security deposit along with interest will be credited towards the respective Contracting Authority's claims.
- 3.25. The claims of the Contracting Authority shall be settled by deduction of the amounts due (for undue performance of the contract) from the retained amount of bond along with interests. The Contracting Authority's statement about the deduction requires a written form.
- 3.26. The Bond in cash along with generated interests may be credited by the Contracting Authority towards covering of all amounts due by the Contracting Authority from the Contractor, in particular these referring to:
 - 3.26.1. contractual penalties accrued to the Contractor by the Contracting Authority,
 - 3.26.2. the cost of removal of defects by third parties,
 - 3.26.3. invoices issued by the Contracting Authority not paid on time by the Contractor.
- 3.27. The Contracting Authority may accept changing the form of the Bond deposited by the Contractor during the performance of the contract. Such a change must take place on request of the Contractor upon written consent of the Contracting Authority. In case of a change in the form of the bond, the unit responsible for performance of the contract requests the relevant financial and accounting services of the Company to reimburse the previously deposited bond to the Contractor.

- 3.28. Reimbursement of the Bond deposited on an earlier date takes place within 30 days from the date of depositing the new Bond, upon prior consent of the Contracting Authority to do so.
- 3.29. If the ToR contain the project documentation, the Contracting Authority may require the Contractor to retrieve it at a location indicated in the Basic Documents (upon fulfilling the specific conditions included by the Contracting Authority in the content of the Basic Documents).
- 3.30. The Contractor may request the Contracting Authority to clarify the content of the Basic Documents. The Contracting Authority provides answers within the time period set out in the Basic Documents.
- 3.31. All amendments and explanations to the content of the Basic Documents are provided to the Contractors within the pending Procurement Procedure. The Contracting Authority may modify the content of Basic Documents at any time before the deadline for submitting the bids. Such modification is published in the announcement or the Contractors are informed thereof.
- 3.32. The terms and conditions of procuring the goods or services in effect of the Procurement Procedure and mutual obligations and rights of the parties to the future contract are contained in the draft contract constituting the element of the Procurement Procedure Documentation.
- 3.33. If it corresponds to the nature of the obligation, the Contracting Authority may provide for the possibility of submitting a variant bid and for a partial bid for one or more parts in the terms of reference.
- 3.34. Each Procurement Procedure may be supplemented or preceded by the stage of technical arrangements, of which the Contracting Authority notifies duly in advance.
- 3.35. The Procurement Procedure may be supplemented by a stage of negotiations or auction.
- 3.36. Upon carrying out the negotiations, the Contracting Authority may perform an electronic auction in a manner compliant with the "Rules and Regulations of auctions organised by KGHM Polska Miedź S.A.". Then the Contracting Authority may carry out the subsequent negotiations.

- 3.37. As a matter of principle, the Procurement Procedure is conducted in a dedicated electronic system. The Procedure may be conducted using email, or alternatively in a conventional (paper) form. Detailed rules of communication with the Bidders and the form of statements are laid down each time in the Basic Documents.
- 3.38. The bid selection will be available to the Contractors, which:
- 3.38.1. are not subject to exclusion and demonstrated this fact:
 - 3.38.2. comply with and demonstrated compliance with the terms and conditions of participation in the procedure;
 - 3.38.2.1. have the licence to perform specific operations or activities, if special provisions require such licence,
 - 3.38.2.2. have necessary knowledge and experience as well as technical and human resources able to perform the subject-matter of the Procurement,
 - 3.38.2.3. are in the economic and financial situation which ensures due performance of the subject-matter of the Procurement;
 - 3.38.3. are not entered into the List of excluded entities (such entities are not allowed into the Procedure).
- 3.39. The Contracting Authority defines no conditions of participation in the procurement procedure in a manner that could hinder the decision in accordance with the principles of fair competition.
- 3.40. The Contractor may jointly submit the bid in the procedure by establishing their representative and attaching the agreement governing their cooperation to the bid.
- 3.41. Within the framework of the Procurement Procedure, the bid may be submitted only by a single entity from a group of affiliates. This solution does not apply to the KGHM Capital Group companies. The above does not apply to the case, in which the affiliates submit the bid for independent parts of the specific Procurement Procedure.
- 3.42. The Contractor submit the list of Affiliates to the bid or a statement that none Affiliate will participate in a given Procurement Procedure or any specific part thereof.

- 3.43. The Contracting Authority shall not allow the Contractor to act at the same time as the sub-contractor of another Contractor participating in the Procurement Procedure or allow the Contractor, which participated in the Procurement Procedure, to be designated as the sub-contractor by the selected Contractor.
- 3.44. The Contracting Authority may allow the participation of the sub-contractors when implementing the subject-matter of the Procurement. Information on this fact is contained in the Basic Documents.
- 3.45. The sub-contractor may be assigned to perform a part of the subject-matter of the Procurement. No performance of the entire subject-matter of the Procurement by the Sub-contractors is allowed. The services which are only related to the subject-matter of the Procurement cannot be considered a part of the subject-matter of the Procurement. Such services include only the services which can be distinguished in the description of the subject-matter of the Procurement.
- 3.46. Subcontracting the performance of a part of the subject-matter of the Procurement does not relieve the Bidder from its liability for due performance of the contract.
- 3.47. The following Contractors are excluded from the procurement procedure:
- 3.47.1. Natural persons, who are convicted of an offence or fiscal offence committed with regard to the procurement procedure, for the offences specified in the chapters: XVII, XVIII, XIX, XX, XXIII, XXV, XXVIII, XXIX, XXX, XXXIII, XXXIV, XXXV, XXXVI and XXXVII of the Penal Code, tax offences or when in the course of the ongoing procedure charges were brought against such person or a security measure was applied;
 - 3.47.2. Partnerships, where a partner has been sentenced by a final and binding ruling for one, or several offences or fiscal offences listed in point 3.47.1;
 - 3.47.3. Legal persons, whose existing member of a management body has been sentenced by a final and binding ruling for one, or several offences or tax offences listed in point 3.47.1;
 - 3.47.4. Collective entities towards against whom the court has issued a ruling stating liability under the provisions concerning liability of collective entities for acts forbidden under the pain of penalty;
 - 3.47.5. Entities that employed illegal aliens in the territory of the Republic of Poland.

- 3.47.6. Entities that have illegally influenced or attempted to influence the Contracting Authority's activities or obtain confidential information that may give them an advantage in the Procurement Procedure;
- 3.47.7. Entities that took part in preparing the Procurement Procedure or whose employee, as well as a person performing work on the basis of a contract of mandate, contract for a specific task, agency or other contract for the provision of services, took part in the preparation of such a Procurement Procedure, unless the resulting distortion of competition can be eliminated in a manner other than by excluding the Contractor from participation in the Procurement Procedure;
- 3.47.8. Entities that have concluded with other Contractors agreements aimed at disruption competition in the procurement procedure, which the Contracting Authority can evidence.
- 3.47.9. Entities that submitted untrue information influencing the outcome of the procurement procedure;
- 3.47.10. In the case, in which a person sentenced for the offences referred to in point 3.47.1 at the Contractor's
 - 3.47.10.1. holds directly or indirectly a majority of votes at the shareholders' meeting or at the general meeting, also as a pledgee or usufructuary, or on the management board also by virtue of agreements with other persons, or
 - 3.47.10.2. is authorised to appoint or recall the majority of Contractor's management board members, and also on the basis of agreements with other persons, or
 - 3.47.10.3. is authorised to appoint or recall the majority of contractor's supervisory board members, and also on the basis of agreements with other persons, or
 - 3.47.10.4. holds directly or indirectly a majority of votes in the company of the Contractor, or
 - 3.47.10.5. the members of the Management Board of that person constitute more than half of the members of the Management Board of the Contractor, or
 - 3.47.10.6. an agreement has been concluded between this person and the Contractor providing for the management of the Contractor's business or the transfer of profit by the Contractor.
- 3.47.11. having the seat in the state covered by embargo or international sanctions,
- 3.47.12. which have not accepted the "Contractor's Charter"

- 3.47.13. who submitted an incomplete bid or submitted it incorrectly.
- 3.48. The Contracting Authority may exclude the following from the Procurement Procedure:
- 3.48.1. the Contractors for which the liquidation proceedings have been opened or who have been declared bankrupt,
 - 3.48.2. the Contractors which, in the last 3 years prior to the commencement of the Procurement Procedure, have failed to fulfil their obligations to any entity of the KGHM Capital Group or have performed them unduly;
 - 3.48.3. the Contractors being the affiliates of the Contractor, which within the last 3 years prior to initiation of the procurement procedure was excluded from the procurement procedures conducted by the Contracting Authority;
 - 3.48.4. Contractors being in arrears with taxes, fees or health or social insurance contributions, except where they have obtained an exemption, deferment, division of outstanding payments into instalments or withholding the full execution of a decision issued by a competent authority as provided by the law;
 - 3.48.5. the Contractors which have not dispose the bid security or the bid security has been improperly deposited, including security for the extended bid validity period, if the Contracting Authority defined the requirement to deposit the bid security or has not agreed for the extension of the bid validity period;
 - 3.48.6. the Contractors being the affiliates, which submitted the bids in the same Procurement Procedure;
 - 3.48.7. the Contractors involved in a litigation or of conflicting interests in the administrative proceeding with any entity from the KGHM Capital Group or the entities, for which any decision was made, according to which such Capital Group entity is entitled to claim for damages against the Contractor.
- 3.49. Until the explanatory activities are carried out by the Security Department, the Executive Director for Administration and Procurement is entitled to suspend the participation of the Contractors in the Procurement Procedures organised for the KGHM Capital Group Entities for the period of up to 3 months. Suspension of the Contractor's in the Procurement Procedures requires a relevant justification.

- 3.50. Within the Procurement Procedure, the Contracting Authority may require the Contractors to provide statements or documents necessary for the implementation of the Procurement Procedure and confirming the compliance with terms and conditions of participation in the Procurement Procedure.
- 3.51. The documents, including the statements in the Procurement Procedure should be submitted electronically via the Procurement System, unless a given Procedure specifies another method for submission of documents. The Contracting Authority may decide that the documents in the given Procedure should be submitted electronically via email, protected by password or traditionally (in paper form).
- 3.52. The bid (bid form) and statement of the Bidder on data of person submitting the bid, compliance with the conditions of participation and being not subject to exclusion, bid security in a non-monetary form or performance bond in a non-monetary form are submitted electronically in the Procurement System. If a specific procedure allows for submitting the documents in traditional form, the documents should be submitted in writing in their original copies.
- 3.53. If the bids are submitted electronically via email, the Contracting Authority is obliged to establish the obligation to send the bids secured with a password, set a single date for bid submission, a single date for sending the password and the date of opening thereof. The method of bid encryption and password sending must guarantee the inviolability of the bid from the time of its submission to its opening by the Procurer within a specified period of time.
- 3.54. The letters of attorney should be presented in the original copy or a true copy (confirmed by a notary or a professional representative of the Bidder in the Procurement Procedure). Legal counsellors or attorneys may confirm the copies (transcripts) of the letters of attorney to be the true copies of the original, provided that the Contracting Authority may specify another way of presenting the documents.
- 3.55. In the case of documents, including statements, other than listed in point 3.52 or 3.54, submission of their copies (e.g. scan, photocopy) is sufficient, unless the documents made available by the Contracting Authority state otherwise. The Contracting Authority is always entitled to claim confirmation of the submitted copies by presenting the original copies.

- 3.56. Detailed rules of the method, form of submission of documents and form of statement adopted in a given procedure are specified in the Basic Documents.
- 3.57. In respect of Contractors registered in the Contractor Base, the submission of some of the documents referred to in point 3.55, specified in the documents made available to the Bidders is not obligatory, insofar as those documents have been previously submitted to the Contracting Authority (during registration in the Base), remain valid, and the Contractor indicates this fact in its bid.
- 3.58. The Contractors from the KGHM Capital Group, state institutions and public higher education institutions may be relieved from presentation of the register and financial documents.
- 3.59. The Contracting Authority may call the Contractors which, in the specified deadline, failed to submit the statements or documents confirming their compliance with the terms of participation in the Procurement Procedure or submitted the documents with errors, or submitted the documents or statements in an improper form, to supplement them in the specified deadline, unless, in spite of their supplementation, the Contractor's bid is subject to rejection or it would be necessary to invalidate the Procurement Procedure.
- 3.60. The Contracting Authority may call the Contractors to submit the explanations concerning any statements or documents presented in the procurement procedure and the content of the bid.
- 3.61. In a single procurement procedure, the Contractor may submit only a single bid in a given scope or part of the procedure, unless the rules of the Procedure allow for submitting the bid by a single Contractor for all stages of the Procedure, or all parts thereof.
- 3.62. A Contractor may modify or withdraw the bid before the deadline for submitting the bids.
- 3.63. A Contractor is bound by the bid until the expiry of the deadline specified in the ToR.

4. Bid selection

- 4.1. Opening of bids is not open and takes place on the date specified by the Contracting Authority, immediately upon the expiry of the bid submission deadline.
- 4.2. The bid is rejected if:
 - 4.2.1. submitted by the Bidder failing to meet the requirements referred to in 3.38.1- 3.38.2;
 - 4.2.2. submitted in violation of the provisions of the Civil Code or the Code of Commercial Companies or other generally applicable laws;
 - 4.2.3. the content of bid fails to comply with the content of Basic Documents, including in particular when:
 - 4.2.3.1. the bid is not compliant with any technical conditions referring to the subject-matter of the Procurement or its performance (failure to meet the conditions) presented by the Contracting Authority in the documents made available to the Bidders,
 - 4.2.3.2. preparing or providing in a manner not compliant with the technical and organisational requirements of preparation or provision of bids laid down by the Contracting Authority, including if the bid is submitted after the deadline for submitting the bids or submitted in contrary to the principles of representation of the entities conducting a business activity;
 - 4.2.4. submitting of the bid constitutes an act of unfair competition as defined by the regulations on counteracting unfair competition.
- 4.3. The Contracting Authority selects the best bid on the basis of the evaluation criteria specified in ToR.
- 4.4. The bid evaluation criteria include the price (remuneration) or price (remuneration) and other criteria relating to the subject-matter of procedure. The bid evaluation criteria must be countable arithmetically, unless the nature of the subject-matter of the procedure allows for the application of subjective criteria.
- 4.5. If possible, the Contracting Authority evaluates the bids by analysing the TCO (*Total Cost of Ownership*).

- 4.6. Immediately upon selecting the bid of the Procurement Procedure, the Contracting Authority notifies the Contractors (via the System or email) electronically on selecting the best bid in a manner that no later than on the working day following the day of approval of the results of the procedure information on the awarded Procurement Procedure is communicated to the Contractor which presented the best bid. The remaining Contractors receive information from the Procurer on selecting the other bid and this information is sent to the competent unit carrying out the reimbursement of the bid security (if deposited).
- 4.7. The Contracting Authority may annul or terminate the Procurement Procedure with no selection in its entirety or partially, at its every stage, without providing the reason.
- 4.8. Annulment or termination without a selection within the Procurement Procedure shall be communicated by the Contracting Authority simultaneously to all Contractors.

5. Conclusion of the contract

- 5.1. The date of concluding the contract is the date of bilateral signing thereof, unless the announcement or request for proposals state otherwise. From handing-over a copy of the contract to the party, it should be signed within 7 calendar days.
- 5.2. Should the Contractor, whose offer has been selected, evades concluding the contract or fails to deposit the required performance bond, the Contracting Authority may choose the best bid from among the other bids, without carrying out their re-evaluation. In such case the Contractor, who evaded the obligations, acquires no right to claim against the Contracting Authority.
- 5.3. The scope of Contractors' obligations specified in the contract should comply with the Contractor's bid constituting the basis for selection.
- 5.4. In particularly justified cases, it is acceptable to change the method of the performance of the obligation before entering into the contract, as a result of circumstances that could not have been foreseen at the time of selection of the best bid or these changes are beneficial for the Contracting Authority, and the Contractor and the Contracting Authority express their consent to do so. The

changes in the method of performing the obligation cannot relate to the Contractor's obligations contained in the bid, that have been evaluated in the Procurement Procedure.

6. Bidder base

- 6.1. The Contracting Authority keeps the Bidder Base divided into product categories (industries, goods), which comprises of data of the Contractors interested in establishing cooperation with the entities of the KGHM Polska Miedź S.A. Capital Group (via self-registration).
- 6.2. The entities interested in cooperation are obliged to reliably select the product categories and update their data, including e-mail addresses to which notifications concerning the Procurement Procedures will be sent.
- 6.3. The Contractors registered in the Base are subject to the qualification process, carried out with the use of one or several evaluation method and resulting in assigning each Contractor a specific status, in effect of which the Contractor is included into the following:
 - 6.3.1. List of active entities – in which the Contractors invited to participate in the procurement procedures organised by a KGHM Polska Miedź S.A. are listed.
 - 6.3.2. List of excluded entities - in which the Contractors deprived of the opportunity to participate in the Procurement Procedures organised by KGHM Polska Miedź S.A. are listed.
- 6.4. The Contractor's status may change as a result of re-qualification.
- 6.5. The List of excluded entities may include any Contractor, which:
 - 6.5.1. received an assessment of "poor" for the performance of a contract in accordance with the separate procedure,
 - 6.5.2. receives an assessment of "negative" during an ad hoc assessment,
 - 6.5.3. caused or contributed to damage to finance or image of any Capital Group entity,
 - 6.5.4. exposed the KGHM Polska Miedź S.A. Capital Group employees into risk,
 - 6.5.5. received a negative assessment performed by the Security Department in the KGHM Headquarters,
 - 6.5.6. unjustifiably withdrew from signing of the contract created in the course of the procurement procedure, in which the particular Contractor was selected,

- 6.5.7. is an affiliate of the Contractor entered into the List of excluded entities,
- 6.5.8. is entered into the governmental list of sanctioned persons and entities.

6.6. The Contractor entered into the List of excluded entities is excluded from the opportunity to participate in the procurement procedures and the remaining contracting with the KGHM Capital Group entities for the period of 3 years from the date of entry, also as the sub-contractor or a consortium member, excluding the entities referred to in point 6.5.8, which are entered into the List of excluded entities for the period of sanctions.

7. Final provisions

The Contracting Authority reserves its right to amend or annul these Rules in total or in part. This information is communicated to all Contractors.

APPENDICES:

1. Contractor's Charter
2. Rules and regulations of the auctions organised by KGHM Polska Miedź S.A.
3. Definition of affiliate