

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

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

### **Definitions:**

- 1) **Auction** – available via the https electronic protocol, within the online auction application, an electronic auction organised in the Procurement System.
- 2) **Extra time** – extended Basic Auction Bidding Time.
- 3) **Supplies** – the acquisition of goods and other assets, in particular under a contract of sale, delivery, rental, lease and leasing with or without an option to purchase, which may additionally include arrangement or installation.
- 4) **Basic Documents** – relevant - depending on the type of Proceedings - documents specifying the subject-matter and terms and conditions of Procurement, terms and conditions of the Proceedings, including the procedural rules, method of bidding, made available to the Tenderers by the Contracting Entity on its website or in the Procurement System, primarily the notice or ToR (including the appendices).
- 5) **Tenderer** – an entity using the Auction Platform to participate in the Auction.
- 6) **Tender** – each subsequent Increment taken by the Tenderer within the parameters subject to bidding during the Auction.
- 7) **Auctioneer** - an employee of KGHM Polska Miedź S.A. who conducts the Electronic Auction;
- 8) **Auction Organiser** - Head Office of KGHM Polska Miedź S.A. with its registered office in Lubin, ul. M. Skłodowskiej-Curie 48, 59-301 Lubin ;
- 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 Entity aimed at selecting the best Tender 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 Entity;
- 12) **ToR** – Terms of Reference.

- 13) **Auction Jump (Increment)** – the value by which Tender parameters can be increased or decreased.
- 14) **Procurement System** – a set of Internet business applications available through the https electronic protocol, to which the Auctioneer has the rights and which is used by the Auctioneer and to which the Tenderer 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 Entity of Works, Supplies, Services (subject-matter of the Procurement), being an object of a paid contract concluded by and between the Contracting Entity and the Tenderer, from the selected Tenderer
- 17) **Contracting Entity** – HQ, Branch or Group Company of KGHM Polska Miedź S.A. in accordance with the ToR in the given Procurement Proceedings.

## **§ 1. Subject matter of the Rules and Regulations**

The subject matter of these Rules and Regulations are detailed rules of an Auction for Procurement Proceedings, carried out by the Contracting Entity, in accordance with the principles laid down in the Basic Documents for the given Procurement Proceedings.

## **§ 2. Electronic Auction System**

1. The auction shall be conducted using the Procurement System, a description of which can be found on the SAP Ariba Platform.
2. The Auctioneer invites Tenderers 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 Proceedings.

## **§ 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 the particular Procurement Proceedings

## **§ 5. Prices and bidding**

1. The bidding values for each Auction item shall be each time specified within the particular Procurement Proceedings and comply with the Tender assessment criteria, in accordance with the Basic Documents.

2. Information on the Tender ranking in the Auction shall be each time specified in the particular Procurement Proceedings and comply with the formula specified in the Basic Documents.
3. Information about the Auction Jump shall be visible on the Tenderer's console.
4. The available visibility on the Tenderer's console shall be determined each time in the respective Procurement Proceedings.

## **§ 6. Rules of Tender submission**

1. By accepting these Rules and Regulations the Tenderer acknowledges and accepts that:
  - 1.1. The Procurement System shall automatically submit on behalf of the Tenderer the first Tender corresponding to the Tender submitted by the Tenderer in the Procurement Proceedings (Auction with digitalisation), or
  - 1.2. The Procurement System shall accept from the Tenderer as the first the Tender, submitted in accordance with the Auction rule, no higher than the Tender submitted in the Procurement Proceedings (Auction without digitalisation).
  - 1.3. Information on the procedure mode in a manner laid down in item 1.1 or 1.2 will be contained in the Basic Documents referring to the particular Procurement Proceedings.
  - 1.4. Where Tenders of equal value are submitted, the ranking position will be determined by the actual time of submission.
  - 1.5. The Increments are submitted via the System using a login and password without the need to sign the Increment with a qualified signature.
2. The auction shall take place according to the following rule:
  - 2.1. The English Auction is a real-time auction, in which the Tenderers submit their Tenders for Supplies, Works and Services. The starting point is the maximum price at which the bidding starts, i.e. the Tenderers 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 Tenderers submit their Tenders 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 Tenderers submit their Tenders for Supplies, Works and Services. The starting point is the maximum price at which the bidding starts. The price is progressively reduced by a fixed rate. Tenderers confirm the price each time. The auction lasts until none of the Tenderers 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 Tenderers submit their Tenders for Supplies, Works and Services. The starting point is the minimum discount, from which the bidding starts, i.e. the Tenderers 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 the particular Procurement Proceedings at the Auction creation stage.
4. The Tender parameters established as a result of the Auction shall be the parameters binding for the Tenderer. They shall be acknowledged as the parameters to the Procurement, if the Tenderer's Tender is selected. The Parties can conduct additional negotiations. The Contracting Entity has the sole right to initiate the negotiations, while the Tenderer, until these negotiations are completed, shall be bound by the Tender submitted by it during the Auction.
5. In the case a decision is made to stop the Auction during its duration, the Tenderer shall be notified via the Procurement System about the exact time of its suspension. Auction Time is visible on the Tender console. The Tenders which are accepted by the Procurement System after a specified time shall not be taken into account.

### **§ 7. Tender confirmation**

The Tender binding for the Tenderer is the last Tender accepted by the Procurement System and submitted by the Tenderer during the Auction and requiring no additional confirmations. Subject to Section 6(4), this Tender is binding for the Tenderer until notified on the selection of the other Tender.

### **§ 8. Responsibility of the Contracting Entity and the Organiser**

1. The Tenderer acknowledges that the potential access and use of the Procurement System depends on the availability and quality of the data transmission connections between the Tenderer and the data transmission service provider, whose connections are used by the Tenderer and others, which are beyond the control of the Contracting Entity and of the Auction Organiser. Therefore, neither the Contracting Entity nor the Auction Organiser are liable for the related problems and limitations.
2. In the case of Procurement System unavailability, the Auction shall be cancelled. The Tenderer shall be notified about the new date of the Auction electronically. The renewed Auction starts with the last Tenders 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 Entity nor the Auction Organiser shall be liable for the lack of possibility to provide technical assistance referred to in § 10.
4. Neither the Contracting Entity nor the Auction Organiser shall be liable for any damages resulting from the actual participation in the Auctions by an entity other than the Tenderer, 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 Tenderer. The Tenderer bears responsibility for the actions of such persons as for their own.

## **§ 9. Objections by the Contracting Entity and the Auction Organiser**

1. The Contracting Entity reserves the right to annul or terminate the Procurement Proceedings as well as to withdraw from the Auction without providing reasons. The Tenderers are not entitled to any claims in this respect.
2. Auction Organiser has the right to **annul, withdraw, repeat, resume, modify the conditions, postpone, suspend or terminate** the Auction without providing reasons. The Tenderers are not entitled to any claims with respect to the Contracting Entity or the Auction Organiser.
3. If a decision is made to annul or withdraw from the Auction, the Auction Organiser shall notify the Tenderer 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 the particular Procurement Proceedings shall remain valid. In such case, the Auction Organiser shall inform the Tenderer about the new date and time of the Auction.
5. **Submitting the best Tender by the Tenderer during the Auction does not confer the selection of its Tender by the Auction Organiser and the Contracting Entity and therefore constitutes no winning Tender.**

## **§ 10. Support during Auction**

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

## **§ 11. Fees**

No fees are payable by the Tenderer for participation 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. Problems with the Auction may occur when:
  - a) there are several windows in the browser opened with the Ariba Procurement System pages,
  - b) several Tenderer users are 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 a new browser window and logging back into your 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 Tender 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 Tender must be lower from the previous price);
    - b) infringing the equal-value Tender (the rule specifies whether the equal-value Tenders are allowed);
    - c) infringing the rule of value threshold (the threshold value is the maximum price to be submitted in the auction. If the Tender for the value exceeding this price is attempted, the message informing that the Tender is too high will be displayed);
    - d) Change of event status when an event is in progress;
    - e) Submitting a duplicate Offer: in this case, the following error message will be displayed: Duplicate Tenders are prohibited. Send a Tender that is not identical to your previous Tender. In this case, it is necessary to post a revised Tender before resubmitting.

### **§ 13. Final Provisions**

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