

## **RULES FOR THE SELECTION OF TENDERERS IN KGHM POLSKA MIEDŹ S.A.**

### **Section 1 Definitions**

Terms in these Rules shall be understood in accordance with the definitions set out below:

- 1) **Electronic auction** - a stage of the Proceedings which enables, by means of a form placed in the Contracting Entity's Procurement System, to enter the necessary data using direct data transmission. In the Electronic Auction, Tenderers shall submit consecutive Tenders, subject to automatic ranking in accordance with the Rules and Regulations of the Auction;
- 2) **Tenderers' Database** - a collection of Tenderers interested in starting cooperation with KGHM or other entities from the KGHM Polska Miedź S.A. Group, registered in the Procurement System;
- 3) **Basic Documents** - documents specifying the subject and conditions of the Contract, terms and conditions of the Procurement Proceedings, including procedural rules, made available to Tenderers in the Proceedings; they include in particular the notice of the Proceedings, the ToR, the draft agreement; are a component of the Procurement Proceedings Documentation;
- 4) **Supplier** - the entity that has been selected and notified of the selection of its Tender following the Procurement Proceeding, and to which the contract for the Supply has been submitted. Whenever reference is made herein to Supplier, Contractor or Counterparty, these terms shall be understood to be the same;
- 5) **Electronic means** - a form of submitting statements, requests, documents on electronic media and, in certain cases, using e-mail, the website or other IT tools of the Contracting Entity;
- 6) **KGHM** - KGHM Polska Miedź S.A.;
- 7) **Most advantageous Tender** - the Tender with the lowest price or the Tender which presents the most advantageous balance of price and other criteria relating to the subject matter of the Contract;
- 8) **Tender** - a statement of intent to conclude an Agreement submitted to the Contracting Entity by the Tenderer within the meaning of the Act of 23 April 1964 - Civil Code.
- 9) **Tenderer** - a natural person, legal entity or organisational unit without legal personality that has become a participant in the Procurement Proceedings by submitting a Tender in the course of the Proceedings and entities that may potentially submit a Tender in the Procurement Proceedings. Tenderers are also entities joining

the Procurement Proceedings jointly (for example, as part of a consortium or other cooperation agreement);

- 10) **Partial Tender** - a Tender which does not cover the entire subject of the Contract, but only a clearly separated part thereof. The submission of a Partial Tender is only permitted if this is provided for in the ToR or the notice of the Procurement Proceedings.
- 11) **Variation Tender** - a Tender providing, in accordance with the terms and conditions specified in the ToR, for a different, additional method of execution of the Contract than that specified by the Contracting Entity;
- 12) **Proceedings Operator** - a person who conducts the Procurement Proceedings;
- 13) **Related Entity** - an entity referred to in Appendix 3
- 14) **Subcontractor** - an entity with whom the Supplier has concluded an agreement, the subject matter of which is the Contract, which constitutes a part, i.e. a separate fragment from the whole, of the subject matter of the Contract. The provisions concerning the Subcontractor shall also apply to further subcontractors.
- 15) **Procurement Proceedings** - the process of acquiring goods or services from the acceptance of a proposal until the selection of a Tenderer and the conclusion of an Agreement, cancellation or termination of the Proceedings without selection. The Proceedings consist of a Purchase Request and a Procurement Project;
- 16) **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;
- 17) **ToR** - Terms of Reference, a document describing the subject matter of the Contract and the conditions of participation in the Procurement Proceedings;
- 18) **Procurement System** - an IT tool to support the execution of Procurement Proceedings
- 19) **TCO** - (Total Cost of Ownership). A means of determining the total cost of ownership over an assumed period of time.
- 20) **Performance Security (PS, Security)**- a form of security for potential claims by the Contracting Entity for non-performance or improper performance of the Agreement, including claims under the quality warranty or statutory warranty.
- 21) **The Contracting Entity** - Branch of KGHM Polska Miedź S.A. (including the Head Office) or a company of the KGHM Polska Miedź S.A. Group, which performs activities related to the initiation of the Procurement Process and on whose behalf the Contract is made;
- 22) **Contract** - shall mean services, supplies, works, sales or other activities performed under the Agreement;

## **Section 2**

### **Purpose and scope of the regulation**

1. This document (hereinafter referred to as the 'Rules') sets out the terms and conditions for the selection of Suppliers in Procurement Proceedings conducted on behalf of the Contracting Entity.
2. The Rules form part of the Procurement Proceedings, are accepted by the Tenderers and define the conditions under which the participants in the Procurement Proceedings conduct the process aimed at selecting the Supplier.

## **Section 3**

### **Principles of Procurement Proceedings**

1. The Procurement Proceedings is a process aimed at awarding Contracts, lasting from the notice until the Supplier is selected. The Procurement Proceedings may be terminated by their cancelling, not making a selection or concluding an Agreement with a Supplier.
2. The Contracting Entity shall prepare and conduct the Procurement Proceedings in a manner that ensures the preservation of market competition, respect for good morals and equal treatment of Tenderers, in accordance with the Procurement Policy in force at KGHM.
3. The course of the Procurement Proceedings is not public, except for the content of the notice, the ToR, the terms and conditions of participation in the Proceedings or amendments thereto. The Contracting Entity shall not disclose information constituting a business secret within the meaning of the Act on Combating Unfair Competition, including information on the selection of a particular Supplier or the value of a selected Tender, unless otherwise stipulated by generally applicable regulations.

## **Section 4**

### **Procedure for the submission of Tenders**

1. The starting date for the submission of Tenders shall be the time of publication of the notice of the Procurement Proceedings or the sending of the invitation to submit Tenders to the selected Tenderers.
2. The conditions for participation in the Procurement Proceedings are set out in the Procurement Proceedings notice or the ToR.
3. The notice of the Proceedings contains, among other things, information on the subject of the Proceedings, the Contracting Entity's requirements regarding the execution of the subject of the Proceedings, conditions to be met by the Supplier, a

list of elements to be included in the Tender, as well as the Tender evaluation criteria.

4. The Contracting Entity may stipulate in the notice the obligation to provide a tender bond or Performance Security.
5. The following forms of tender bond are permitted:
  - 1) cash,
  - 2) bank sureties,
  - 3) bank guarantee
  - 4) insurance guarantees.
6. The tender bond provided in cash is kept on the bank account of KGHM and is not subject to interest.
7. The tender bond may be provided in the following currencies: PLN, EUR, USD. Conversion of PLN into EUR and USD shall be based on the average exchange rate of the National Bank of Poland on the date of notice of the Procurement Proceedings.
8. In the case of providing the tender bond in cash, there should be "Payment Instruction" attached to the Tender with specification of the Bank and the bank account to which the tender bond should be returned. The "Payment Instruction", completed and signed by the Tenderer, is attached to the Tender.
9. The forms and manner of payment of a non-monetary tender bond are specified in the ToR or in the invitation to tender.
10. The Tenderer forfeits the tender bond if:
  - 1) He withdraws a Tender submitted in the Procurement Proceedings after the deadline for submission; or submits another Tender less favourable than the previous one, unless the change is made at the request of the Contracting Entity;
  - 2) He refused to conclude the Agreement under the terms of the Tender;
  - 3) He has not provided a Performance Security under the terms of the Proceedings;
  - 4) The conclusion of the Agreement is impossible for reasons attributable to the Contractor.
11. The tender bond may be credited against the Performance Security if it is paid in cash and the Contractor whose Tender has been selected as the most advantageous one requests it or indicates such a wish in its Tender.
12. The following forms of Performance Security are permitted:
  - 1) cash,
  - 2) bank sureties,
  - 3) bank guarantee
  - 4) insurance guarantees.

13. The Contracting Entity may allow other forms of Security provided for by law, at the request of the selected Supplier, during the course of the Procurement Proceedings and after the Supplier has been informed of the selection of the Tender.
14. The amount of the PS is set at up to 10% of the gross value of the Agreement. In justified cases, it is permissible to set this amount at a higher level.
15. The provision of PS, its permissible forms and deadlines, and the legal consequences of its non-filing are set out in the Basic Documents.
16. The PS provided in cash shall be held in an interest-bearing bank account of the Contracting Entity on terms negotiated by the Contracting Entity. The Security may be provided in the following currency: PLN, USD, EUR, respectively, in the currency in which the Tender price was determined, subject to the provisions of subsection 21.
17. The PS in non-monetary form should be issued as follows:
  - 1) A document for an amount representing 70% of the value of the Security established; the period for which the Security is provided must be at least 30 days longer than the period of execution of the Agreement, which shall be understood to mean the acceptance of the Agreement duly completed by means of an acceptance report;
  - 2) A document for an amount equal to 30% of the value of the Security established; the period for which the Performance Security is provided must be at least 30 days longer than the period covered by the quality warranty or statutory warranty.
18. A single document covering the full Security may be issued, subject to the rules referred to in subsection 17 above.
19. In Proceedings where there is no quality warranty or statutory warranty, the Contractor undertakes to provide one document for the value of 100% of the Security. The provisions of subsection 17 as to the period of the Security shall apply *mutatis mutandis*.
20. Upon receipt of information on the outcome of the Proceedings and the selection of a given Supplier, the Supplier is obliged, within 7 calendar days from the date of its receipt, to send to the unit responsible for Agreements the original of the PS submitted in non-monetary form (a document in writing or in electronic form issued by an authorised institution). The time limit set out in the first sentence of this subsection shall also apply to the sending of proof of payment of the Performance Security in cash.
21. If the provided PS is not used, it shall be refunded at 70%, less the cost of the account, within 30 days of the expiry of the 30-day period referred to in subsection 17 above. The remaining 30% shall constitute security for claims under the quality warranty or statutory warranty and shall be reimbursed, less the cost of the account,

no later than the 30th day following the expiry of the 30-day period referred to in subsection 17 above. In the case of Agreements in which there is no quality warranty or statutory warranty, 100% of the amount of the PS, less the cost of the account, shall be reimbursed within 30 days of the expiry of the 30-day period referred to in subsection 19 above. The amounts retained up to the last day of the periods referred to in subsections 17 and 18, excluding the 30-day return period after the expiry of the guarantee period, shall be deposited in an interest-bearing account on terms negotiated by the Contracting Entity.

22. The security in the form of cash, together with any interest earned, may be credited by the Contracting Entity to cover any amounts owed by the Contracting Entity to the Contractor, in particular in respect of:
  - 1) contractual penalties charged to the Contractor by the Contracting Entity,
  - 2) Costs of rectifying defects;
  - 3) Contractor's overdue invoices issued by the Contracting Entity.
23. Detailed rules for the use of the Performance Security shall be laid down in the Agreement.
24. The Contracting Entity may allow the form of the Security provided by the Contractor to be changed during performance of the Agreement. Such a change must be made at the request of the Contractor, with the written consent of the Contracting Entity. The Security previously provided shall be returned within 30 days of the date on which the new Security is provided, after the Contracting Entity has given its consent to this change.
25. If the ToR includes design documentation, the Contracting Entity may require the Tenderer to collect the design documentation at the location indicated in the Basic Documents (subject to certain conditions which the Contracting Entity has included in the Basic Documents).
26. The Tenderer may ask the Contracting Entity to clarify the content of the Basic Documents within the period specified therein. The Contracting Entity shall respond within the timeframe set out in the Basic Documents.
27. Any changes and clarifications to the content of the Basic Documents shall be communicated to Tenderers as part of the ongoing Procurement Proceedings. The Contracting Entity may modify the content of the Basic Documents at any time before the deadline for submission of Tenders. The modification made in this way shall be included in the notice or the tenderers shall be informed of the change.
28. The terms and conditions of the Contract to be implemented as a result of the Procurement Proceedings, the rights and obligations of the parties to the future Agreement are contained in the draft Agreement which forms part of the Basic Documents.

29. If it corresponds to the nature of the obligation, the Contracting Entity may, in the terms and conditions of the Procurement Proceedings, allow for the possibility of submitting a variant Tender or allow for the possibility of submitting a partial Tender for one or more clearly distinguishable parts.
30. Each of the Procurement Proceedings may be supplemented or preceded by a technical arrangement stage, of which the Contracting Entity shall give due notice in the Procurement Proceedings notice.
31. The Procurement Proceedings may be supplemented by a negotiation stage or an Electronic Auction.
32. Following negotiations, the Contracting Entity may conduct an Electronic Auction in a manner consistent with the "Rules and Regulations for Auctions Organised by KGHM Polska Miedź S.A.". The Contracting Entity may then conduct further negotiations.
33. As a rule, the Procurement Proceedings are conducted in a dedicated Procurement System. Proceedings may also be conducted by e-mail, possibly in traditional (paper) form. Detailed rules on how to communicate with Tenderers and the form of statements are set out in each case in the Basic Documents.
34. Tenderers may apply for selection of the Tender if they:
  - 1) are not subject to exclusion within the meaning of these Rules for the Selection of Tenderers.;
  - 2) meet and have demonstrated their fulfilment of the conditions for participation in the Proceedings:
    - a) have the relevant licenses for the performance of a specific activity or action if the law requires them to have such licenses;
    - b) have the necessary knowledge and experience and possess the technical potential and people capable of performing the subject of the Supply,
    - c) maintain an economic and financial standing that ensures proper execution of the subject of the Contract,
  - 3) are not on the Excluded Entities List (entities on the Excluded Entities List are not admitted to the Proceedings).
35. Tenderers may apply jointly for the selection of a Tender by appointing an attorney to represent them and attaching to the Tender an agreement governing their cooperation.
36. A Tender may only be submitted by one entity from the group of Related Parties in the ongoing Procurement Proceedings. The reservation in question does not apply to:
  - 1) Companies of the KGHM Polska Miedź S.A. Group,

- 2) in the event that Related Parties submit a Tender for independent parts of the specific Procurement Proceedings.
37. The Tenderer shall attach to the Tender a list of Related Entities or a statement that no Related Entity of the Tenderer will participate in the particular Procurement Proceedings or in a particular part thereof.
38. The Contracting Entity may allow the participation of Subcontractors in the execution of the subject matter of the Contract, An information in this respect is contained in the Basic Documents.
39. The Contracting Entity shall not allow the Tenderer to act in the Proceedings or, in the case of admitting partial Tenders, in the Proceedings for the same part of the Contract, at the same time as a Subcontractor or consortium member of another Tenderer participating in the Proceedings, nor shall the Contracting Entity consent to the Tenderer who participated in the Proceedings being indicated as a Subcontractor or consortium member by another Tenderer, whose Tender was selected as the most advantageous, with whom the Contracting Entity will conclude the Agreement.
40. A Subcontractor may be entrusted with the performance of a part of the subject matter of the Contract. The execution of the entire subject matter of the Contract by means of Subcontractors is not permitted.
41. Entrusting a part of the subject matter of the Contract to Subcontractors does not relieve the Supplier of its responsibility for the proper performance of the Agreement.
42. The following Tenderers are excluded from the Procurement Proceedings:
  - 1) Natural persons who have been validly convicted of a criminal offence or a fiscal offence committed in connection with the Procurement Proceedings, for the offences specified in chapters: XVII, XVIII, XIX, XX, XXIII, XXV, XXVIII, XXIX, XXX, XXXIII, XXXIV, XXXV, XXXVI, XXXVII of the Criminal Code, fiscal offences, or when they have been charged or subject to a protective measure in ongoing proceedings;
  - 2) Partnerships whose partner has been validly convicted of one or more of the offences or fiscal offences listed in point 1 above;
  - 3) Legal persons whose incumbent member of the management body has been convicted by a judgment which has the force of res judicata of one or more of the offences listed in point 1 above;
  - 4) Collective entities against which a court has issued a decision establishing liability under the provisions on liability of collective entities for offences;
  - 5) Entities that have entrusted work to foreigners staying in the territory of the Republic of Poland against the regulations;

- 6) Entities that have unlawfully influenced or attempted to influence the Contracting Entity's actions or obtain confidential information that may give them an advantage in the Procurement Proceedings;
  - 7) Entities that have been involved in the preparation of the Procurement Proceedings or whose employee or person performing work under a commission contract, contract for specific work, agency contract or other contract for the provision of services has been involved in the preparation of such Procurement Proceedings, unless the distortion of competition caused thereby can be eliminated otherwise than by excluding the Tenderer from participation in the Procurement Proceedings;
  - 8) Entities that have entered into an agreement with other Tenderers to distort competition in the Procurement Proceedings;
  - 9) Entities that have submitted false information affecting the outcome of the Procurement Proceedings;
  - 10) In the event if a person convicted of the offences set out in subsection 1 above with the Tenderer:
    - a) holds directly or indirectly a majority of the votes at the shareholders' meeting or at the general meeting, also as a pledgee or usufructuary, or on the management board also on the basis of agreements with other persons, or
    - b) is entitled to appoint or dismiss a majority of the members of the Tenderer's management board, including by means of agreements with other persons, or
    - c) is entitled to appoint or dismiss a majority of the members of the Tenderer's supervisory board, including by means of agreements with other persons, or
    - d) holds directly or indirectly a majority of the voting rights in the Tenderer's company, or
    - e) the members of that person's management board constitute more than half of the members of the Tenderer's management board, or
    - f) a contract has been concluded between that person and the Tenderer providing for the management of the Tenderer's business or the transfer of profits by the Tenderer.
  - 11) Based in an embargoed or internationally sanctioned country;
  - 12) has not accepted the 'Contractor Charter';
  - 13) Who have submitted an incomplete tender or have submitted their tender incorrectly, despite being asked by the Contracting Entity to supplement it or submit it correctly.
43. The Contracting Entity may exclude from the Procurement Proceedings Tenderers:

- 1) For whom liquidation has been opened or bankruptcy has been declared;
  - 2) Who in the last 3 years prior to the commencement of the Procurement Proceedings have not performed an obligation to any entity in the KGHM Polska Miedź S.A. Group, or have performed them improperly;
  - 3) Being entities related to the Contractor who, within the last 3 years prior to the commencement of the Procurement Proceedings, was excluded from the Procurement Proceedings conducted by the Contracting Entity;
  - 4) Who are in arrears in the payment of taxes, fees or contributions to social or health insurance, except where they have obtained an exemption, deferral, payment in instalments or suspension in full of the execution of a decision of a competent authority as provided for by law;
  - 5) Who have failed to provide a tender bond or who have provided a tender bond inadequately, including for an extended tender validity period, where the Contracting Entity has specified a requirement to provide a tender bond, or who have not agreed to an extension of the tender validity period;
  - 6) Related Parties who have submitted Tenders in the same Procurement Proceedings. In such a case, in the first instance, following a request by the Contracting Entity, these entities should take action to retain the Tender by only one of the Related Entities. It is up to the Tenderers to decide on this. In the event that the Related Tenderers do not decide to withdraw the remaining Tenders from the Proceedings, all Related Tenderers will be excluded;
  - 7) Being in litigation or having conflicting interests in administrative, court or arbitration proceedings with any entity of the KGHM Polska Miedź S.A. Group, or entities in whose favour any judgment has been issued from which it results that an entity of the Group is entitled to compensation claims against the Contractor;
  - 8) Who participated in the Proceedings and did not conclude the Agreement despite the selection of their Tender as the most advantageous;
44. The Tender of the Tenderer excluded from the Proceedings shall be rejected.
45. Pending investigation by the Contracting Entity, the Chief Procurement Officer shall have the right to suspend the participation of Tenderers in Procurement Proceedings organised for KGHM Group entities for a period of up to 3 months. The suspension shall be notified to the Tenderer.
46. In the Procurement Proceedings, the Contracting Entity may require from the Tenderers, in addition to those specified in the notice of the Proceedings, additional statements or documents necessary for the acceptance of the Tender in the Procurement Proceedings and confirming the fulfilment of the conditions of participation in the Proceedings.

47. Documents, including statements in the Procurement Proceedings must be submitted electronically using the Procurement System, unless a different method of submission is specified in the relevant Proceedings. The Contracting Entity may decide that, in the given Proceedings, documents are to be submitted electronically via password-protected e-mail or in traditional (paper) form.
48. Powers of attorney must be submitted electronically with a qualified signature in the Procurement System. The Contracting Entity accepts the submission of powers of attorney in the original or a certified copy (notarised or by a professional attorney representing the Tenderer in the Procurement Proceedings). Legal advisers or solicitors may certify copies of the powers of attorney granted to them in the Procurement Proceedings as true copies of the original, unless the Contracting Entity has specified a different method of presentation of documents.
49. Detailed rules on the manner, form of submission and form of statements adopted in the particular Proceedings are set out in the Basic Documents.
50. Tenderers from the KGHM Polska Miedź S.A. Group, state institutions and state universities may be exempted from presenting registration and financial documents.
51. The Contracting Entity may call on Tenderers to provide clarifications regarding any statements or documents presented in the Procurement Proceedings and the content of the Tender.
52. A Tenderer may submit only one Tender in the given Proceedings.
53. Tenders may be supplemented or amended after the deadline for the submission of Tenders only upon request or with the agreement of the Contracting Entity.
54. A Tenderer may submit a Variant Tender only if such a possibility has been provided for by the Contracting Entity in the Basic Documents.
55. A Tenderer may submit a Partial Tender only if this possibility has been provided for by the Contracting Entity in the Basic Documents.
56. In the case referred to in subsection 55 above, the Tenderer may submit Partial Tenders for one or more parts of the Contract.
57. The Tenderer may correct obvious clerical errors in the content of the Tender and obvious calculation errors in the calculation of the price, immediately notifying the Contracting Entity thereof. The final qualification as to whether the notified changes constitute an obvious clerical or accounting error shall rest with the Contracting Entity.
58. The Contracting Entity may correct obvious clerical errors in the content of the Tender and obvious calculation errors in the calculation of the price, immediately notifying the Tenderer thereof.

59. The Tenderer may, before the expiry of the deadline for the submission of Tenders, request a person conducting the Procurement Proceedings to amend the submitted Tender or to withdraw it.
60. When submitting subsequent Tenders in a given Tender, Tenderers may not offer terms and conditions less favourable to the Contracting Entity than those offered in the previously submitted Tender (this proviso shall also apply to individual prices making up the total value of the Tender), unless a change is made at the request of the Contracting Entity.
61. The Tenderer shall be bound by the Tender until the deadline specified in the terms and conditions of the Proceedings. The Contracting Entity may request Tenderers to extend the Tender validity period.

## **Section 5**

### **Tender selection**

1. The opening of Tenders shall not be open to the public and shall take place at a time indicated by the Contracting Entity immediately after the deadline for their submission.
2. A Tender shall be rejected if:
  - 1) it has been submitted by a Tenderer who does not meet the requirements referred to in Section 4 (34) (1) and (2);
  - 2) the contents of the Tender do not correspond to the contents of the Basic Documents, in particular when:
    - a) in spite of a request for supplementation, the Tender still does not comply with any of the substantive conditions regarding the subject matter or execution of the subject matter of the Supply (their non-fulfilment) imposed by the Contracting Entity in the documents made available to Tenderers,
    - b) it has been prepared or transmitted in a manner inconsistent with the technical and organisational requirements for the preparation or transmission of Tenders specified by the Contracting Entity, including if submitted after the deadline for the submission of Tenders or if submitted in a manner inconsistent with the rules on the representation of business entities,
    - c) submission of the Tender constitutes an act of unfair competition within the meaning of the Act on Combating Unfair Competition.
3. The Contracting Entity shall select the most advantageous Tender on the basis of the Tender evaluation criteria set out in the Terms and Conditions of Proceedings.
4. The criteria for the evaluation of the Tenders shall be the price (remuneration) or the price (remuneration) and other criteria relating to the subject matter of the Proceedings. The criteria for the selection of the Tender must be arithmetically

- quantifiable, unless the specific nature of the subject matter of the Proceedings permits the use of subject criteria.
5. The Contracting Entity shall, insofar as it is possible or expedient to do so, evaluate the Tenders by means of a TCO analysis.
  6. If a Tender is submitted, the selection of which would lead to the creation of a tax obligation of the Contracting Entity, the Contracting Entity shall, for the purpose of evaluating such a Tender, add taxes to the price presented therein in accordance with the applicable regulations.
  7. Once the results of the Procurement Proceedings have been approved, the Contracting Entity shall notify the Tenderer electronically (via the Procurement System or e-mail) of the selection of the most advantageous Tender, in such a way that no later than the next working day after the approval of the results of the Proceedings, information on the winning of the Procurement Proceedings shall be communicated to the Tenderer who submitted the most advantageous Tender. The Operator of the Proceedings shall send information to the other Tenderers that another Tender has been selected.
  8. The Contracting Entity may cancel the Procurement Proceedings or terminate them without selecting a Tender in whole or in part, at any stage of the Proceedings, without giving any reason.
  9. The Contracting Entity shall notify all Tenderers simultaneously of the cancellation or termination without selection of a Tenderer in the Procurement Proceedings.
  10. Selection of a Tender by the Contracting Entity, invalidation of the Tender or termination of the Tender by the Contracting Entity without selecting the Tender in whole or in part shall be final and shall not be subject to any appeal.
  11. Following notification of the selection of the Tender, the Tender validity period shall be extended until the conclusion of the Agreement, but no longer than 60 days from the date of notification of the selection of the Contractor.

## **Section 6**

### **Conclusion of the Agreement**

1. From the moment a copy of the Agreement is handed over to the Supplier, it should be signed within 7 calendar days.
2. If the Contractor, whose Tender was selected, evades the conclusion of the Agreement or fails to submit the required Tender, the Contracting Entity may select the most advantageous Tender from among the remaining Tenders. In this case, the Contractor who has evaded the conclusion of the Agreement shall not acquire any claims against the Contracting Entity.
3. The scope of the Contractors' services set out in the Agreement shall be consistent with the Tender on which the selection is based.

4. In particularly justified cases, it shall be permissible to change the manner of performance before the conclusion of the Agreement as a result of circumstances that could not have been foreseen at the time of selection of the most advantageous Tender, or such changes are beneficial to the Contracting Entity, and the Contractor and the Contracting Entity have agreed to such changes. Changes in the manner of performance may not affect the Contractor's obligations contained in the Tender which were evaluated during the Procurement Proceedings.

## **Section 7**

### **Tenderers Database**

1. The Contracting Entity maintains a Tenderers Database divided into product categories (industries, goods), which is composed of data of potential Contractors interested in establishing cooperation with entities of the KGHM Group (through self-registration).
2. Those interested in being included in the Tenderers Database are obliged to select their product categories with integrity and to update their data, including e-mail addresses to which notifications regarding the Procurement Proceedings will be sent.
3. Contractors registered in the Tenderers Database are subjected to a qualification process, which is carried out through the application of one or more evaluation methods, and which results in the granting of a specific status to the Tenderer, which results in its placement on:
  - 1) List of active entities - which includes Tenderers, Suppliers who receive invitations to participate in Procurement Proceedings organised by the KGHM Polska Miedź S.A. Group;
  - 2) List of excluded entities - which includes Tenderers, Suppliers who have been excluded from participation in Procurement Proceedings in the KGHM Polska Miedź S.A. Group.
4. A change in the status of the Tenderer referred to in subsection 3 may take place through re-qualification.
5. On the Excluded Entities List, a Tenderer may be included which:
  - 1) Has received a negative evaluation as part of the evaluation of the implementation of the Agreement or as part of an ad hoc evaluation.
  - 2) By executing the Agreement or participating in the Proceedings, has caused or contributed to damage to the property or image of any entity of the KGHM Polska Miedź S.A. Group.
  - 3) Has put the employees of KGHM at immediate risk of loss of life or health or caused such consequences.
  - 4) Has intentionally contributed to environmental damage or other significant devastation of the environment.

- 5) Has unreasonably withheld the signing of the Agreement after the selection of the Tender.
  - 6) Is an affiliate of a Tenderer/Contractor on the Excluded Parties List.
  - 7) Has been placed on the government's list of sanctioned individuals and entities.
6. A Tenderer entered on the List of Excluded Entities is excluded from participation in the Procurement Proceedings and other contracting with entities of the KGHM Polska Miedź S.A. Group for a period of 3 years from the date of entry, also as a Subcontractor or consortium member, with the exclusion of the entities specified in subsection 5(7), which are placed on the List of Excluded Entities for the duration of the sanction.

## **Section 8**

### **Final Provisions**

1. Disputes related to the Proceedings shall be settled amicably, and in the event that no agreement can be reached, the Parties shall submit the dispute to the competent court of law at the registered office of the Contracting Entity.
2. The Tenderer is obliged to keep up to date with the information provided by the Contracting Entity via the Procurement System.
3. Tenderers shall bear on their own any and all costs associated with participation in the Proceedings, in particular those associated with the preparation and submission of the Tender, the request to participate in the Proceedings or other documents, regardless of the outcome of the Proceedings. The Contracting Entity shall not under any circumstances be liable for any costs incurred by Tenderers in connection with their participation in the Proceedings and does not provide for reimbursement of the costs of participation in the Proceedings.
4. By submitting the Tender, the Tenderer irrevocably undertakes not to raise any claims against the Contracting Entity in connection with the ToR, the Proceedings or the Tender. The Tenderers shall not be entitled to any claims against the Contracting Entity in particular in the following cases: rejection of the Tender; non-selection of the Tender; exclusion of the Tenderer from the Tender; cancellation or termination of the Tender; request for supplementation or clarification of the Tender; request for participation of the Tenderer in meetings, videoconferences or teleconferences; cancellation or change of dates of meetings previously announced by the Contracting Entity; change of the terms and conditions of the Tender, including the ToR and the draft Agreement; change of deadlines for submission of questions for clarification of the ToR, deadlines for submission of Tenders and other deadlines previously announced by the Contracting Entity.
5. If the Contracting Entity's interests so warrant, the Contracting Entity may amend the provisions of these Rules in whole or in part. Notice of the amendment shall be given to all Tenderers in the respective Procurement Proceedings.

## **APPENDICES**

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