



## **SPECIFICATION OF ESSENTIAL TERMS OF THE CONTRACT**

**concerning for the performance of the task**

PR\_WS2273781133\_NIROEGR\_KZS\_2024 Zakup i dostawa wosku mikrokrystalicznego w latach 2025-2026 (Purchase and delivery of microwax in 2025-2026)

**Procedure No.: WS2273781133**

**The contract is not subject to the provisions of the Act of 11 September 2019 - Public Procurement Law (consolidated text: Journal of Laws of 2024, 1320).**

**Bieruń, 20.11.2024**

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## I. BACKGROUND INFORMATION:

### 1. Ordering Party:

**NITROERG S.A.** with its registered office in Bieruń, address: Plac Alfreda Nobla 1, 43-150 Bieruń,

registered under the number KRS 0000268394 with the District Court in Katowice, 8th Commercial Department of the National Court Register, where the Company's documentation is kept,

statistical no. REGON: 240484673, tax ID NIP: 646-274-69-61,

Share capital (paid-up): 61 892,000 PLN

### 2. Organizer of the Tender:

The Tendering and Contracting Department of NITROERG S.A. with its registered office in Bieruń at Alfred Nobel 1, 43-150 Bieruń.

### 3. Leader of the Tender (Buyer):

Monika Cinal

Tendering and Contracting Specialist  
NITROERG S.A.

Pl. A. Nobla 1, 43-150 Bieruń, Poland

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***in working days, from 7 a.m. to 13 p.m.***

### 4. Procedure reference number:

The procedure concerned by the Specification of Essential Terms of the Contract (hereinafter referred to as the SETC) is marked with the following sign: **WS2273781133**.

### 5. Contract award procedure:

The procedure will be conducted in accordance with the "Rules of bidder selection in KGHM Polska Miedź S.A." (published on the website: <https://kgm.com/en/tenders/documents-and-information-for-suppliers>).

The general terms and conditions of procurement concerning tender procedures conducted for KGHM Polska Miedź S.A. Capital Group are specified in Annex no.1 to the SETC.

## II. DESCRIPTION OF THE OBJECT OF THE CONTRACT:

1. The object of the contract shall be purchase and delivery of microwax in 2025-2026 (application: production of emulsion explosives) in the approximate amount of 120 tons for NITROERG S.A. in 2025-2026.

2. The object of the contract must strictly meet the requirements of the Ordering Party specified in the Quality Characteristic no. 78/PMW, ed. 3<sup>1</sup> constituting Annex no. 1 to the Draft agreement, (Annex no. 5 to the SETC).

**The lack of conformity of the offered product with the above requirements shall constitute a basis for rejecting the offer.**

3. The Ordering Party requirements for the implementation of the subject of the order:

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<sup>1</sup> The quality characteristics will be made available after sending the completed and signed Annex no. 8 to the SETC - Confidentiality Statement, the current registration document and completed Annex no. 5 to the SETC - Contractor's Statement regarding the processing of personal data in connection with conducting the tender procedure in the purchasing system).

- a) packaging method: in accordance with point 2 of Quality Characteristics no. 78/PMW, ed. 3,
- b) minimum single delivery volume: 3-4 tons,
- c) deliveries shall occur in working days from 6 AM to 1:00 PM, to the address: Plac Alfreda Nobla 1, 43-150 Bieruń,
- d) for each delivery an attached certificate for compliance with the parameters set out in the Quality Characteristics,
- e) the Ordering Party requires the Contractor to attach a shipping note/CMR or a VAT invoice to each delivery.

4. Additional requirements of the Ordering Party:

- a) The Ordering Party requires that the payment term for the completed subject of the order be **60 days** from the date of issuing the correct invoice.
- b) The Ordering Party requires (for informational purposes only) submission of the certificates confirming possessing the following systems:
  - Quality management system,
  - Environmental management system,
  - Information safety system,
  - Health and safety system.

The requirement mentioned above is for informational purposes only, thus, lack of any of those certificates does not provide the grounds for the rejecting an offer.

5. The Ordering Party **does not allow** for the submission of a partial offer.
6. The Ordering Party **does not allow** for the submission of a variant offer.
7. The Ordering Party **envisage** the conclusion of [an open framework agreement](#)<sup>2</sup>. Detailed orders will be implemented in a simplified purchasing process, depending on the needs of the Ordering Party, in the form of executive/simplified proceedings in the procurement system.
8. The Ordering Party reserves the right to conclude a framework agreement with more than one Contractor.
9. The Ordering Party requires that the unit price given in SAP ARIBA in this procedure is the maximum price that the Contractor will be able to offer in the individual executive/simplified procedures<sup>3</sup>.
10. The Ordering Party **allows for** the possibility of participation of Subcontractors in the performance of the contract, only in terms of transport services.
11. Other requirements of the Ordering Party regarding the performance of the contract are specified in the Draft Agreement constituting Annex no. 5 to the SETC.

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<sup>2</sup> It is allowed to conclude Open Framework Agreements, to which new bidders may accede. In order to accede to the continuing Open Framework Agreement, the new bidder shall notify the Ordering Party in writing the will to conclude the Framework Agreement, submitting an offer based on the documentation and rules specified for the purchasing procedure conducted in order to conclude the Framework Agreement.

<sup>3</sup> In the event of significant changes in the production costs of the product that is the subject of the contract, it is permissible to negotiate the maximum price, which will be valid no earlier than 12 months from the date of conclusion of the contract, in accordance with the provisions of paragraph 4, section 9.

### III. CONDITIONS OF PARTICIPATION IN THE PROCEDURE, AND REQUIRED DOCUMENTS:

1. Contractors who meet the conditions referred to in the General Terms and Conditions of the Contract, which are an integral part of the SETC, may apply for the contract – Annex no. 1 to the SETC.
2. Required documents and certificates:
  - a) completed Annex no. 2 to SETC – Statement on the particulars of the person who submits the offer in the procurement system on behalf of the Contractor,
  - b) completed Annex no. 3 to SETC - Contractor's Declaration regarding the processing of personal data in connection with conducting a tender procedure in the procurement system,
  - c) completed Annex no. 4 to SETC – the Contractor's Charter,
  - d) Annex no. 6 to SETC - list of affiliated entities, as defined by the definition of a Affiliated Entity “Rules of bidder selection in KGHM Polska Miedź S.A.”, drafted not earlier than 6 months before the deadline for bid submission (in the absence of related parties, a relevant statement shall be submitted),
  - e) a valid copy of the entry in the appropriate register or up-to-date certificate of registration in the business activity record (or appropriate generated digital documents equivalent to a copy of the entry or certificate), if separate regulations require an entry in a register or in business activity record, issued not earlier than 6 months before the tender submission deadline,
  - f) a copy of the relevant court decision and, in the absence thereof, an appropriate announcement in the relevant official journal (in particular in the Court and Economic Monitor), in relation to Contractors with respect to whom liquidation has been opened, restructuring proceedings (as well as remedial, arrangement or other proceedings) have been opened or whose bankruptcy has been declared, including Contractors who, after declaring bankruptcy, entered into an arrangement approved by a final court decision or whose arrangement with creditors has been approved in restructuring proceedings or other similar proceedings,
  - g) a certificate issued by an applicable Head of Tax Office confirming that the entity is not in default with payment of any taxes or charges, or a permission to exempt, postpone or divide the late payments into instalments, or suspend execution of the tax body’s decision in whole, issued not earlier than 3 months before the tender submission deadline,
  - h) a certificate from an applicable Social Insurance Institution Division confirming that the Contractor is not in default with payment of any charges and premiums for health and social insurance, or a certificate that the entity was awarded a permission to exempt, postpone or divide the late payments into instalments, or suspend execution of the tax body’s decision in whole, issued not earlier than 3 months before the tender submission deadline,
  - i) the Buyer reserves the right to ask the Contractor for presenting documentation which confirm the income (e.g. the F-01 report for the last quarter along with the balance and profit and loss account for the previous financial year or another document confirming the turnover, in the case of entrepreneurs not obliged to prepare financial statements),
  - j) **a Contractor’s declaration of compliance with the required parameters set out in Quality Characteristics no. 78/PMW ed. 3,**
  - k) **Material Safety Data Sheet in Polish or English,**

- l) completed Annex no. 8 to the SETC - Confidentiality Statement,
- m) documents (certificates) confirming possession of the systems referred to in point II.4 b).

**3. Method of submitting documents:**

- a) all documents listed in point 2 should be attached to the offer in the procurement system in the form of a scan of the paper version or signed by the Contractor with a qualified electronic signature (s) in the PAdES format,
- b) documents required in original, i.e.: any Powers of Attorney referred to in section V item 11 of Annex no. 1 to the SETC – Rules of bidder selection, should be added to the purchasing system in electronic form signed by the Contractor with a qualified electronic signature(s) in the PAdES format or sent in paper form to the following address: NITROERG S.A., Plac Alfreda Nobla 1 in Bieruń (43-150), in a closed envelope marked as follows: "Appendices to the offer for the non-public procurement entitled "PR\_WS2273781133\_NIROEGR\_KZS\_2024 Zakup i dostawa wosku mikrokrystalicznego w latach 2025-2026 (Purchase and delivery of microwax in 2025-2026)" – Send to the Tenders and Contracts Unit, Buyer: Monika Cinal, do not open before 06.12.2024, 10:00 a.m.". The name of the Contractor should also be included on the envelope.

**4. In the case of Contractors who do not deliver the subject of the order to NITROERG S.A., the document confirming the declaration referred to in section III item 2 sub-item h) is a positive result of tests confirming suitability for production, conducted by NITROERG S.A. on the basis of a free sample of the subject of the order. The testing procedure will be conducted in accordance with the content of Annex no. 7 to the SETC. Failure to deliver the samples within the prescribed period or a negative result of the tests carried out will result in the rejection of the offer and exclusion of the Contractor from the procedure.**

Samples of the subject of the order should be sent by the deadline specified as deadline for submitting offers in the purchasing system, to the following address:

NITROERG S.A.  
Sekcja Zaopatrzenia Surowcowego  
**Plac Alfreda Nobla 1**  
**43-150 Bieruń**

on working days from 6.00 AM to 13.30 PM.

The packaging should be marked as follows: "PR\_WS2273781133\_NIROEGR\_KZS\_2024 Zakup i dostawa wosku mikrokrystalicznego w latach 2025-2026 (Purchase and delivery of microwax in 2025-2026)".

**IV. TENDER VALIDITY PERIOD:**

The Contractor shall be bound by the tender submitted for a period of 90 days.

**V. TIME AND PLACE OF CONTRACT PERFORMANCE:**

**1. Required time of contract performance:**

Deliveries from **22.01.2025 to 31.12.2026** on separate call/order.

**2. The place of the contract performance:**

DAP Bieruń (43-150), Plac Alfreda Nobla 1, Poland (according to Incoterms 2020).

## VI. DATE OF TENDER SUBMISSION AND OPENING:

1. The offer should be submitted electronically before **06.12.2024 at 10:00 a.m.** via the procurement system SAP Ariba.
2. Deadline for asking questions: 4 working days before the deadline for submitting bids.
3. Deadline for answering: 2 working days before the deadline for submitting bids.

## VII. DESCRIPTION OF THE TENDER EVALUATION METHOD AND DESCRIPTION OF THE CRITERIA THE ORDERING PARTY WILL APPLY TO SELECT THE TENDER AND SIGNIFICANCE OF THE CRITERIA:

1. The evaluation stage shall be entered only by tenders meeting all the requirements of the SETC.
2. The offers will be assessed in terms of meeting technical parameters, completeness of documents and meeting all requirements specified in the SETC. The price conditions will be determined by the Ordering Party as a result of the executive/simplified proceedings.
3. The evaluation and selection of Suppliers to conclude the open framework agreement will be made by meeting the conditions for participation in the procedure (including technical parameters) and accepting all the conditions specified in the SETC, in particular the Draft Framework Agreement constituting Annex no. 5 to the SETC.
4. The tender price must be unambiguous and include all costs related to the performance of the contract, in accordance with the applicable regulations in force and the requirements specified in the SETC and in all annexes to the SETC.
5. The price given in the purchasing system is the maximum price that the Contractor may offer in the simplified proceedings.
6. The price should be stated in EUR or PLN.
7. If the tender is submitted in a currency different than PLN, a conversion factor shall be applied to compare the tenders, i.e. the average exchange rate at the National Bank of Poland for the relevant currency as of the day preceding the day indicated in the SETC as the tender submission deadline, and payment for performance of the task shall be made in the currency the Contractor stated in his tender. In that case, the contents of the agreement shall be adapted to the applicable regulations in force.
8. If a tender is submitted whose selection would lead to tax obligation for the Ordering Party in accordance with the regulations on the goods and services tax [VAT] with regard to intra-Community acquisition of goods, the Contractor shall only state the net value, and the Ordering Party, in order to evaluate such a tender, shall add the goods and service tax he would be obliged to pay in accordance with the applicable regulations in force to the value stated in the tender.
9. In the simplified proceedings, the evaluation of offers will be carried out by analysing **the net price of the offer**.
10. The Ordering Party reserves the right to reject the Contractor's offer at any stage of the procedure, in the event of non-compliance in the course of the procedure between the Contractor's offer and the content of the SETC, along with attachments and correspondence with Contractors conducted in the course of the procedure and as a result of negotiations with Contractors.

## **VIII. REQUIREMENTS CONCERNING THE TENDER BOND AND PERFORMANCE BOND:**

### **A. TENDER BOND**

The Ordering Party does not require a tender bond to be provided.

### **B. PERFORMANCE BOND**

The Ordering Party does not require a performance bond to be provided.

## **IX. ANNEXES TO THE SPECIFICATION OF ESSENTIAL TERMS OF THE CONTRACT:**

Annex no. 1 to SETC – Terms of Reference of the Contract

Annex no. 2 to SETC – Statement on the particulars of the person who submits the offer in the PSS on behalf of the Contractor

Annex no. 3 to SETC – Contractor's Declaration regarding the processing of personal data

Annex no. 4 to SETC – Contractor's Charter

Annex no. 5 to SETC – Draft framework Agreement

Annex no. 6 to SETC – List of entities affiliated

Annex no. 7 to SETC – Testing procedure

Annex no. 8 to SETC – Confidential Statement

*In the event that the provisions of the Specification of the Essential Terms of the Contract are different from the provisions of the Rules of selection of contractors, the provisions of the SETC shall prevail.*