

## EXTRACT FROM THE PGE CG GENERAL PROCUREMENT PROCEDURE

The PGE CG General Procurement Procedure has been in force since 28.12.2025.

### I OBJECTIVES AND SCOPE

**1.1** The aim of the Procedure is to define standards in the process of planning and conducting Procurements at PGE CG Companies.

**1.4** The Procedure applies to non-public procurement procedures, including non-public Dynamic Purchasing System (DS), and to public procurement procedures to the extent that it does not conflict with the *Act of 11 September 2019 – Public Procurement Law and the implementing acts issued on its basis, as amended* (hereinafter: the 'Act'). The Procedure also applies to Procurements co-financed by aid funds to the extent that it does not conflict with applicable legal provisions or the guidelines of specific aid programmes. Each of the PGE CG Companies may introduce internal regulations concerning Procurements co-financed by aid funds.

**1.17** Joint Procurements are governed by the internal regulations of the Procedure Organiser unless the Director of the Procurement Department of PGE S.A. decides to apply other internal regulations.

### II. ABBREVIATIONS AND DEFINITIONS

#### Definitions of terms used for the purpose of this document:

**2.5 Dynamic Purchasing System (DS)** – an electronic, time-limited, special procurement instrument consisting of two stages. In Stage I, Contractors submit Requests to participate in the DS. In Stage II, Contractors admitted to participate in the DS are invited to submit Tenders within the framework of Execution Procedures.

**2.10 Written Form** – a paper document bearing a handwritten signature or an electronic document bearing a qualified electronic signature.

**2.11 PGE Capital Group (CG or PGE CG)** – PGE S.A. and the PGE CG Companies where PGE S.A. holds the status of a parent company within the meaning of Article 4 §1(4) of the Commercial Companies Code.

**2.14 Information on the establishment of the DS** – a document containing information about the DS and the requirements enabling submission of a Request to participate in the DS.

**2.16 Relevant Contractual Provisions (RCP)** – the key terms and scope of the Procurement Agreement, and in the case of public procurement procedures, the draft Agreement.

**2.24 Tender Committee** – a team appointed to prepare and conduct a Procurement Procedure or execution procedure.

**2.27 Most Advantageous Bid** – a Bid that offers the most advantageous balance of quality and other criteria relative to price or cost, or the lowest price or cost.

**2.28 Bid** – a declaration of intent to conclude an Agreement submitted by the Contractor to the Awarding Party in response to an invitation to submit Bids, a Procurement Notice, or a Specification.

**2.29 Preliminary Bid** – a preliminary declaration of intent to conclude an Agreement submitted by the Contractor in the first round of a multi-stage procedure.

**2.32 Electronic Form** – the form of a document, for the recording and reading of which technical means are used to present information digitally, allowing the identification of the author of the document, in particular, a scan of a paper document signed by hand.

**2.33 Bid Increment** – the minimum amount by which a Bid parameter can be increased or decreased during an electronic auction, indicated in the auction invitation.

**2.34 Execution Procedure** – a Procurement Procedure conducted based on a Framework Agreement or within a DS in order to select a Contractor to carry out a procurement covered by the Framework Agreement or DS.

**2.35 Procurement Procedure / Procedure** – a process aimed at selecting a Contractor to provide supplies, services, or construction works, conducted based on internal procurement regulations issued by PGE S.A. for the PGE Capital Group and by the individual Company, as well as the Public Procurement Law or the Civil Code. The Dynamic Purchasing System is also a Procurement Procedure.

**2.36 Procedure** – the *PGE CG General Procurement Procedure*.

**2.39 Specification / ToR / Description of needs and requirements** – a document containing information and requirements allowing the submission of a Preliminary Bid/Bid in a Procurement Procedure, including within a DS.

**2.40 PGE CG Company** – an entity/entities under commercial law within the PGE Capital Group.

**2.43 Procurement System** – an IT tool supporting the procurement process in the PGE CG.

**2.46 Agreement** – a mutual declaration of intent by two or more parties to create, change, or terminate a given legal relationship. The term includes, in particular: Framework Agreements, Procurement Agreements, Agreement annexes, orders under Framework Agreements, SAP MM Orders, and Orders.

**2.47 Framework Agreement** – an Agreement concluded following a Procurement Procedure between the Awarding Party and one or more Contractors, aimed at defining the conditions for paid procurement to be made during the term of the Agreement.

**2.48 Procurement Agreement** – a paid Agreement concluded following a Procurement Procedure between the Awarding Party and a Contractor for the provision of supplies, services, or construction works, including Framework Agreements and Agreements concluded under a DS.

**2.49 Data Processing Agreement** – an Agreement concluded between the Awarding Party and the Contractor as a result of a Procurement Procedure for the entrustment of personal data processing, aimed at establishing the conditions for entrusting personal data for processing due to the necessity of taking actions necessary to perform the service referred to in the Agreement.

**2.50 Data Sharing Agreement** – a Data Sharing Agreement concluded following a procurement procedure between the Awarding Party and the Contractor, establishing the terms for sharing personal data necessary for performing the services under the Agreement.

**2.52 Act** – the Act of 11 September 2019 – *Public Procurement Law and the implementing acts issued on its basis, as amended*.

**2.55 Request to participate in a Procurement Procedure / Request** – a declaration of the Contractor's intent to participate in a Procurement Procedure, submitted in the first round of a multi-stage Procurement Procedure.

**2.56 Request to participate in the DS** – a declaration of the Contractor's intent to participate in the Dynamic Purchasing System.

**2.58 Preliminary Market Consultation** – a set of activities conducted prior to initiating a Procurement Procedure, in the form of market consultations, to gather information necessary for preparing the description of the subject of Procurement, the Specification, or the terms of the Procurement Agreement, and to inform contractors about the Awarding Party's plans and requirements for the contract.

**2.59 Contractor** – a natural person, legal entity, or unincorporated organisational unit that offers the subject of Procurement on the market, seeks to be awarded a Procurement contract, submitted a Request to Participate in a Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid, or concluded an Agreement.

**2.60 Procurement / Order** – a supply, service, or construction work that is the subject of the Procurement Procedure aimed at selecting a Contractor.

**2.61 Awarding Party** – a PGE Group Company for whose needs the Procurement is carried out. In the case of Joint Procurement, this includes all PGE Group Companies participating in the procedure. Where Procurement Procedures are conducted on behalf of a specific PGE Group Company or in the case of Joint Procurement, all references to the Awarding Party in the Procedure apply to the Procedure Organiser or Proxy.

**2.63 Joint Procurement** – a procurement carried out in a Procurement Procedure conducted on behalf of and for at least two PGE CG Companies, provided it does not involve two PGE CG Companies from the same segment of the PGE CG.

**2.64 Request for Information (RFI)** – a request addressed to potential Contractors to gather market information about the conditions for carrying out the Procurement, intended to prepare for a future Procurement Procedure. RFIs do not involve direct consultations or negotiations with Contractors.

## **VIII RULES OF CONDUCTING NON-PUBLIC PROCUREMENT PROCEDURES**

### **8.1 GENERAL RULES**

**8.1.1.** Procurement Procedures not subject to the Act (non-public procurement procedures) are to be prepared and conducted in accordance with the principles of fair competition and equal treatment of Contractors, as well as the principles of best quality, economic efficiency of Procurements, transparency, and proportionality.

### **8.2 DESCRIPTION OF THE SUBJECT OF PROCUREMENT**

**8.2.1** The internal Customer shall describe the subject of Procurement in a clear and comprehensive manner using sufficiently precise and comprehensible terms, taking into account all requirements and circumstances that may affect the preparation of the Request to Participate in the Procurement Procedure / Preliminary Bid / Bid. In the case of the DS, a detailed description of the subject of Procurement is only required at Stage II of the DS. At Stage I, a general definition of the subject of Procurement in terms of category is sufficient.

**8.2.2** The internal Customer shall specify in the description of the subject of Procurement the required characteristics of the deliveries, services, or construction works. These characteristics may refer in particular to a specific process, production method, method of execution of the required deliveries, services, or construction works, or to a particular process of another stage in their life cycle, even if these factors are not essential elements, provided that they are related to the subject of Procurement and proportionate to its value and objectives.

**8.2.6** It is permissible to modify the description of the subject of Procurement / draft Agreement at any stage of the Procurement Procedure until the final selection of the Most Advantageous Tender, provided this does not violate the principles of fair competition and equal treatment of Contractors.

#### **8.4 BID EVALUATION CRITERIA**

**8.4.1** Bid evaluation criteria must be related to the subject of the Procurement. These may concern:

- a. quality criteria and price or cost,
- b. price or cost,
- c. other aspects related to the subject of Procurement.

**8.4.2** Quality criteria may in particular relate to: quality, including technical parameters, after-sales service, technical support, delivery or performance conditions such as timing, method, or duration of delivery, execution period, aesthetic and functional qualities, social aspects, environmental aspects, innovative aspects, and the organisation, qualifications, and experience of persons assigned to perform the contract—if these factors may affect the quality of performance.

**8.4.3** In procedures where the subject of Procurement includes creative or scientific services, the results of which cannot be described in advance in a clear or exhaustive way, the Most Advantageous Bid is selected solely based on price or cost and quality criteria.

**8.4.4** In the Procurement Notice or the ToR, the Awarding Entity shall specify the criteria for the evaluation of Bids applied in the Procurement Procedure and the weight assigned to each of the criteria selected for the purpose of determining the Most Advantageous Bid. The Awarding Party is not obliged to inform Contractors, before the opening of Bids, of the detailed method of evaluation used within individual criteria as set out in the internal documents of the Procurement Procedure. In the Information on the Establishment of the DS, the Awarding Party may only name the evaluation criteria. The description and weights of the evaluation criteria may be specified only at Stage II of the DS.

**8.4.5** In the Procurement Procedure, the evaluation criteria may relate to the characteristics of the Contractor, particularly their experience.

**8.4.6** The selection of the Contractor to whom the contract will be awarded in an Execution Procedure under a Framework Agreement may be based on price or non-price criteria, in particular those concerning quality, functionality, methodology, creativity of the solution proposed by the Contractor, and the Contractor's attributes, including their experience.

#### **8.5 FORM OF CONDUCTING ACTIVITIES AND COMMUNICATION IN THE PROCUREMENT PROCEDURE**

**8.5.1** The Procurement Procedure shall be conducted using electronic means of communication (including email) and the Procurement System, whereby the Director of the Procurement Department may allow the Procurement Procedure or Execution Procedure to be conducted wholly or partially in written form, in electronic format using electronic means of communication. In the case of a PGE CG Company that does not operate a Procurement System, Procurement Procedures may be conducted in written form, in electronic format using electronic means of communication.

**8.5.2** The form in which the Request to Participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid must be submitted shall be specified in each case in the invitation to participate in the Procedure, the Specification / announcement. However, if the Request to Participate in the Procurement Procedure / Preliminary Bid / Bid is submitted via the Procurement System, such documents must be submitted in electronic format.

**8.5.3** The rules of communication with the Contractor and the formal requirements for documents and statements submitted in the Procurement Procedure are specified in the Procurement Notice, the Information on the establishment of the DS, the invitation to participate in the Procurement Procedure, the Specification, or the Description of needs and requirements.

#### **8.6 BID SECURITY**

**8.6.1** A bid security may be required in the Procurement Procedure.

**8.6.2** The amount of the bid security is set at up to 3% of the estimated value of the Procurement. If the Awarding Party allows partial bids or awarding of Procurements in parts, the amount of the bid security is specified for the relevant part.

**8.6.3** The bid security in the Procurement Procedure may be provided in the following forms: cash, bank guarantee, insurance guarantee. The acceptable forms and amount of bid security are always specified in the Procurement Notice, the invitation to participate in the Procurement Procedure, the invitation to submit Preliminary Bids/Bids, or the Specification or Description of needs and requirements.

**8.6.4** The bid security provided in cash is held in a bank account.

**8.6.5** The Awarding Party returns the bid security to the Contractors, subject to point 8.6.7, immediately after the cancellation of the Procurement Procedure or the selection of the Bid, except for the bid security of the Contractor whose Bid was selected as the Most Advantageous Bid. The bid security of the Contractor whose Bid was selected as the Most Advantageous Bid is returned by the Awarding Party immediately after the conclusion of the Procurement Agreement and the submission of the Procurement Agreement performance bond, if required.

**8.6.6** The bid security provided in cash will be returned to the Contractor to the same bank account from which the bid security was paid unless the Contractor specifies a different bank account along with a justification. The Contractor's request for the return of the bid security to a different bank account is communicated to the compliance area for analysis before the return is made.

**8.6.7** The Awarding Party returns the bid security to the Contractor in the Procurement Procedure in cases where the Contractor has withdrawn the Bid before the deadline for submitting Bids or has not submitted a Bid but has provided the bid security, the Contractor has been excluded, or the Contractor's Bid has been rejected, or the Bid was submitted after the deadline.

**8.6.8** The return of the bid security provided in cash is carried out by the organisational unit designated as responsible in the respective PGE CG Company. The PGE CG Company determines the detailed rules for keeping and returning the bid security in its internal regulations.

**8.6.9** The Awarding Party may retain the bid security in cases where the Contractor fails to enter into the Procurement Agreement, fails to confirm the Bid submitted in the electronic auction, fails to confirm the negotiated terms during trade negotiations, or has not provided the Procurement Agreement performance bond in due time.

## **8.7 MODES OF CONDUCTING PROCUREMENT PROCEDURES**

**8.7.1** Procurements shall be awarded through open procedures, closed procedures, or within the framework of the Dynamic Purchasing System (DS).

**8.7.2** Open procedures include: an open tender and open-format negotiations.

**8.7.3** Closed procedures include: closed-format negotiations, requests for quotation, and single-source procurement.

## **8.8 RULES OF CONDUCTING PROCUREMENT PROCEDURES**

**8.8.1** In a Procurement Procedure, the Tender Committee may first evaluate the Bids and then examine if the Contractor whose Bid was evaluated as the Most Advantageous Bid is not subject to exclusion and meets the conditions for participation in the Procurement Procedure, provided that this possibility is foreseen in the Specification, Procurement Notice, invitation to participate in the Procedure, or invitation to submit Bids. If the Contractor is subject to exclusion or does not meet the conditions for participation, the Awarding Party re-examines and re-evaluates the Bids of the remaining Contractors, and then examines the next Contractor whose Bid was evaluated as the highest for lack of exclusion grounds and compliance with participation conditions. The Awarding Party continues the procedure of re-examining and re-evaluating Bids until the Most Advantageous Bid is selected or the Procurement Procedure is cancelled.

**8.8.2** Extending the deadline for submitting Requests to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bids / Bids, as well as changing the date of negotiations (trade negotiations) or electronic auction, does not constitute a modification requiring acceptance.

**8.8.3** During Procurement Procedures conducted in the form of a request for quotation or closed-format negotiations, to increase competition, additional Contractors may be invited to participate in the procedure before the deadline for submitting Requests to Participate in the Procurement Procedure / Preliminary Bids (in the case of closed-format negotiations), or before the deadline for submitting Bids (in the case of a request for quotation), provided the principle of equal treatment of Contractors is respected.

## **8.9 OPEN TENDER**

**8.9.1** An open tender is a mode in which, in response to a Procurement Notice or Specification, all interested Contractors can submit Bids. An open tender may be used for any Procurement Procedure.

**8.9.2** The Awarding Party initiates a Procurement Procedure in the open tender mode by posting the Procurement Notice or Specification in the Procurement System, and in the case of PGE CG Companies not operating a Procurement System, on the relevant Company's website.

**8.9.5** After the submission of Bids, the Tender Committee shall additionally conduct trade negotiations or an electronic auction, in accordance with the rules set out in points 9.6.3–9.6.15 of the Procedure. The Tender Committee may recommend waiving the conduct of trade negotiations or the electronic auction.

## 8.10 OPEN-FORMAT NEGOTIATIONS

**8.10.1** Open-format negotiations are a procedure in which Contractors are invited to participate in the Procurement Procedure by publishing the Specification or Procurement Notice in the Procurement System. PGE CG Companies that do not have a Procurement System publish the indicated documents on their own website.

**8.10.4** Contractors apply for participation in the Procurement Procedure in the form specified in the Procurement Notice / Specification (Request to participate in the Procurement Procedure or Preliminary Bid).

**8.10.5** The Tender Committee may recommend inviting to negotiations all Contractors who submitted Requests to Participate in the Procedure or Preliminary Bids if no participation conditions or evaluation principles were defined by the Awarding Party to rank Contractors. Alternatively, it may recommend inviting only Contractors who meet the participation conditions or received the highest evaluation scores for meeting the Awarding Party's requirements (prequalification). The Tender Committee may also recommend inviting Contractors who, at the time of the invitation to negotiations, have not yet demonstrated fulfilment of the participation conditions.

**8.10.6** The Tender Committee conducts negotiations with Contractors, which may also be conducted via electronic means of communication. Negotiations with Contractors are confidential.

**8.10.7** Negotiations may concern, in particular: supplementing or clarifying the subject of Procurement, terms of contract performance, and pricing conditions. Following discussions with Contractors, the Awarding Party, based on the information obtained during negotiations, prepares or updates the Specification.

**8.10.8** Upon completion of negotiations, the Awarding Party invites all Contractors who participated in the negotiations to submit Bids by providing the Specification.

**8.10.9** Following the submission of Bids, the Tender Committee additionally conducts trade negotiations or an electronic auction, in accordance with the rules set out in points 9.6.3 to 9.6.15 of the Procedure. The Tender Committee may recommend waiving the conduct of trade negotiations or the electronic auction.

**8.10.10** If only one Preliminary Bid is received or only one is not subject to rejection, the Awarding Party may choose to forgo negotiations or collection of Bids. The provisions of point 8.10.9 apply unchanged.

## 8.11 CLOSED-FORMAT NEGOTIATIONS

**8.11.1** Closed-format negotiations are a procedure in which selected Contractors are invited to participate in the Procurement Procedure — at least three to ensure competition — by providing the Specification or an invitation to the Procurement Procedure. Inviting only two Contractors to participate in the Procurement Procedure requires justification in the procurement request.

**8.11.3** The Tender Committee conducts negotiations with the Contractors, which can also be conducted via electronic means of communication. Negotiations with Contractors are confidential.

**8.11.4** Contractors express their intention to participate in the Procurement Procedure in the form specified in the invitation to participate in the Procurement Procedure or Specification (request to participate in the Procurement Procedure or Preliminary Bid).

**8.11.5** The Tender Committee may recommend inviting to the negotiations all Contractors who have submitted Requests to participate in the Procedure or Preliminary Bids, in cases where the conditions for participation in the procedure or the rules for evaluating the fulfilment of the requirements set by the Awarding Party have not been specified in order to determine the ranking of Contractors, or those Contractors who meet the conditions for participation in the Procedure or have obtained the highest rating for meeting the requirements set by the Awarding Party (prequalification). The Tender Committee may also recommend inviting Contractors who, at the time of the invitation to negotiations, have not yet demonstrated fulfilment of the participation conditions.

**8.11.6** Negotiations may concern, in particular: supplementing or clarifying the subject of Procurement, terms of contract performance, and pricing conditions. Following discussions with Contractors, the Awarding Party, based on the information obtained during negotiations, prepares or updates the Specification.

**8.11.7** Upon completion of negotiations, the Awarding Party invites all Contractors who participated in the negotiations to submit Bids by providing the Specification.

**8.11.8** After the submission of Bids, the Tender Committee shall additionally conduct trade negotiations or an electronic auction, in accordance with the rules set out in points 9.6.3–9.6.15 of the Procedure. The Tender Committee may recommend waiving the conduct of trade negotiations or the electronic auction.

**8.11.9** If only one Preliminary Bid is received or only one is not subject to rejection, the Awarding Party may choose to forgo negotiations or collection of Bids. The provisions of point 8.11.8 apply unchanged.

## 8.12 REQUEST FOR QUOTATION

**8.12.1** A request for quotation is a procedure in which selected Contractors — no fewer than three, to ensure competition — are invited to participate in the Procurement Procedure by being provided with the Specification. Inviting only two Contractors to participate in the Procurement Procedure requires justification in the procurement request.



**8.12.4** After the submission of Bids, the Tender Committee shall additionally conduct trade negotiations or an electronic auction, in accordance with the rules set out in points 9.6.3–9.6.15 of the Procedure. The Tender Committee may recommend waiving the conduct of trade negotiations or the electronic auction.

### **8.13 SINGLE-SOURCE PROCUREMENT**

**8.13.1** Single-source procurement is a procedure whereby the Awarding Party grants the Procurement following negotiations conducted with only one Contractor.

**8.13.3** The Tender Committee provides the Contractor with an invitation to participate in the Procurement Procedure containing information enabling the Contractor to prepare for the negotiations, in particular the RCP or draft Procurement Agreement.

**8.13.4** In the single-source procurement procedure, trade negotiations or an electronic auction are not conducted after the negotiation process is completed.

### **8.14 DYNAMIC PURCHASING SYSTEM**

**8.14.1** The establishment of a Dynamic Purchasing System begins with the publication of Information on the establishment of the DS (Stage I).

**8.14.2** The Awarding Party makes the Information on the establishment of the DS available in the Procurement System, and any PGE CG Company that does not have a Procurement System publishes the Information on its website.

**8.14.3** The Information on the establishment of the DS remains available in the Procurement System / on the website for the entire duration of the Dynamic Purchasing System.

**8.14.6** The Dynamic Purchasing System may be divided into categories of supplies, services, or construction works defined based on characteristics of the Procurements to be made within each category. These characteristics may, in particular, relate to the permissible size of future Procurements or the geographical area in which the Procurements will be performed.

**8.14.7** In response to the Information on the establishment of the DS, any interested Contractors may submit Requests to participate in the DS.

**8.14.8** Contractors who do not submit their Requests to participate in the DS within the deadline specified in the Information on the establishment of the DS may still do so throughout the entire duration of the DS.

**8.14.10** The Tender Committee invites to participate in the DS those Contractors whose Requests to participate in the DS are not subject to rejection and who meet the participation conditions.

**8.14.11** If the DS has been divided into categories of supplies, services, or construction works, the Tender Committee invites to participate in the DS those Contractors whose Requests to participate in the DS are not subject to rejection in the relevant category and who meet the conditions for that category.

**8.14.12** Contractors who have been qualified to participate in the DS are eligible to take part in the Execution Procedure conducted within the system.

**8.14.13** For each Execution Procedure, the Tender Committee invites all Contractors admitted to the DS to submit Bids for each Procurements within the system, providing them with the ToR.

**8.14.14** If the DS has been divided into categories, the Tender Committee invites all Contractors qualified in a given category to submit Bids for Procurements within that category, and provides them with the ToR.

**8.14.16** The Awarding Party may extend or shorten the duration of the DS without giving a reason. In the event of a change in the duration of the DS, the Awarding Party announces it via the Procurement System / on the website.

**8.14.17** After the submission of Bids, the Tender Committee may conduct trade negotiations or an electronic auction, in accordance with the rules set out in points 9.6.3–9.6.15 of the Procedure.

### **8.15 EXECUTION PROCEDURES FOR FRAMEWORK AGREEMENTS**

**8.15.1** The rules governing the award of Procurements under Framework Agreements concluded as a result of Procurement Procedures are determined by the internal regulations of individual PGE CG Companies.

### **8.16 REQUIREMENTS FOR CONTRACTORS**

**8.16.1** Conditions for Contractors' participation in the Procurement Procedure

**8.16.1.1** Contractors may apply for the award of the Procurement in a Procurement Procedure if they:

**8.16.1.1.1** are not subject to exclusion,

**8.16.1.1.2** meet the participation conditions for the Procurement Procedure, i.e.:

- a. possess the necessary technical or professional capabilities to perform the Procurement, in particular appropriate knowledge and experience, and have access to the technical resources and personnel capable of delivering the Procurement,
- b. hold the authorisations required to conduct the specific business or professional activity, if such authorisations are required by separate regulations,
- c. are in an economic or financial situation ensuring the execution of the Procurement,

provided that these conditions have been specified by the Awarding Party in the Procurement Notice, Information on the establishment of the DS, Terms of Reference (ToR), or invitation to participate in the Procurement Procedure.

**8.16.1.2** The Awarding Party may admit to the Procurement Procedure Contractors jointly applying for the Procurement (e.g., a consortium). In the case of admitting Contractors jointly applying for the Procurement to the Procurement Procedure, the provisions concerning the Contractor apply accordingly. Contractors jointly applying for the Procurement bear joint and several liability for the performance of the Procurement Agreement and for providing the Procurement Agreement performance bond, unless the Awarding Party decides otherwise, in which case Contractors shall be informed accordingly. The Awarding Party may require submission of an agreement governing the cooperation of Contractors applying jointly for the award of the Procurement (e.g. a consortium agreement).

**8.16.1.3** In order to confirm compliance with the participation conditions, and in relevant situations and with respect to a specific Procurement or its part, the Awarding Party may allow a Contractor to rely on the technical or professional capacity or financial or economic standing of entities making their resources available, regardless of the legal nature of the relationship between the Contractor and those entities. This possibility, and the requirements the Contractor must meet when relying on the resources of third parties, should be specified in the Procurement Notice, Information on the establishment of the DS, ToR, or the invitation to participate in the Procurement Procedure. For conditions concerning education, professional qualifications, or experience, Contractors may rely on the capacities of entities providing resources, provided those entities perform the works or services for which such capacities are required.

**8.16.1.4** Where justified by the nature of the subject of Procurement, the Awarding Party may not consent to the execution of the Procurement by subcontractors / specify the obligation for the Contractor to personally execute the entire or part of the contract, of which it shall inform the Contractors in the ToR / invitation to participate in the Procurement Procedure.

**8.16.2** Documents confirming the fulfilment of the conditions for Contractors' participation in the Procurement Procedure

**8.16.2.1** The Awarding Party requires the Contractor to submit a statement on the absence of grounds for exclusion referred to in point 9.4.2 and on meeting the conditions for participation in the Procurement Procedure referred to in point **8.16.1.1.2** of the Procedure, provided these conditions or exclusion grounds were specified in the Procurement Notice, Information on the establishment of the DS, ToR, or invitation to participate in the Procurement Procedure. In the case of mandatory exclusion grounds indicated in point 9.4.3 of the Procurement Procedure, the Awarding Party requires at least a declaration confirming the Contractor is not subject to exclusion on that basis.

**8.16.2.2** To confirm the fulfilment of the conditions for participation in the Procurement Procedure or the absence of grounds for exclusion, the Awarding Party may require the Contractor to submit relevant documents and declarations.

**8.16.2.3** If the Contractor indicates in the Request to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid that relevant current declarations or documents confirming compliance with the conditions to participate in the Procurement Procedure and the absence of exclusion grounds are publicly and freely available in electronic (or digital) form at specific web addresses in public databases, the Tender Committee will retrieve them — provided it has access to those databases.

**8.16.2.4** Where the Contractor indicates in the Request to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid any statements or documents confirming compliance with the conditions for participation in the Procurement Procedure and the absence of grounds for exclusion, which are already in the possession of the Awarding Party – in particular statements or documents held by the Awarding Party in connection with other Procurement Procedures – the Tender Committee may decide to use such statements or documents, provided they remain valid.

**8.16.2.5** The Awarding Party may also use declarations and documents already in its possession and consult databases in which such documents are accessible to the Awarding Party, even if the Contractor has not referred to this circumstance in the Request to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid.

## **IX ACTIVITIES IN A NON-PUBLIC PROCUREMENT PROCEDURE**

### **9.1 CLARIFICATION AND MODIFICATION OF THE TERMS OF THE PROCUREMENT PROCEDURE**

**9.1.1** If, in the course of the Procurement Procedure, the Contractor submits an inquiry concerning the invitation to participate in the Procurement Procedure, the Information on the establishment of the DS, the Specification, or the Procurement Notice, the Tender Committee shall respond. The Tender Committee may decide not to respond to an inquiry submitted less than 3 working days before the deadline for submitting a Request to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid.

**9.1.2** The content of the response is shared with all Contractors, without disclosing the source of the inquiry.

**9.1.3** The Tender Committee may publish the response via the Procurement System or on the website of a company within the PGE CG, without the need to send it individually to Contractors, provided that the invitation to participate in the Procurement Procedure or the Procurement Notice, the Information on the establishment of the DS or the Specification indicated that this would be the form of communication.

**9.1.4** During the course of the Procurement Procedure, the Tender Committee may modify the contents of the invitation to participate in the Procurement Procedure, the Procurement Notice, the Information on the establishment of the DS, the Specification — in particular the description of the subject of the Procurement, the Bid evaluation criteria and their weights, the conditions for participation in the Procurement Procedure, the requirements for qualification to the next stage (prequalification), as well as the RCPs or the draft Procurement Agreement — provided that such changes do not infringe the principles of fair competition and equal treatment of Contractors.

**9.1.5** The Tender Committee, on its own initiative or at the request of a Contractor, may extend the deadline for submitting Requests to participate in the Procurement Procedure or Preliminary Bids / Bids for additional time necessary to prepare the Requests to participate in the Procurement Procedure or Preliminary Bids / Bids. This also applies to changing the negotiation (trade negotiations) and electronic auction dates.

**9.1.6** Information is provided to Contractors participating in the Procurement Procedure on equal terms.

## **9.2 OPENING OF BIDS**

**9.2.1** The opening of Bids in the Procurement Procedure is not public. PGE CG companies may define in their internal regulations the method and scope of information disclosed during Bid opening.

**9.2.2** A Bid submitted after the deadline is not subject to examination and evaluation.

**9.2.3** A Contractor's Bid that was submitted after the deadline is not returned unless the Tender Committee decides otherwise.

## **9.3 CLARIFICATION AND SUPPLEMENTATION OF THE REQUEST / BID**

**9.3.1** The Tender Committee shall call upon Contractors who fail to submit powers of attorney, declarations, or documents required by the Awarding Party on time, or who submit defective or incomplete ones, to supplement or clarify them within a designated time limit.

**9.3.2** During the examination and evaluation of Requests to participate in the Procurement Procedure / Requests to participate in the DS / Preliminary Bids / Bids, the Tender Committee may request Contractors to clarify the content of such documents.

**9.3.3** In case of obvious errors in the Request to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid, the Tender Committee shall correct them and inform the Contractor thereof. In the case of other errors, the Tender Committee may call on the Contractor to consent to the correction of the errors, in the manner indicated by the Awarding Party, within a designated time limit.

**9.3.4** The Tender Committee may refrain from correcting errors, or from requesting supplementation or clarification of Requests to participate in the Procurement Procedure / Requests to participate in the DS / Preliminary Bids / Bids, provided that doing so would not affect the selection of the Most Advantageous Bid.

## **9.4 EXCLUSION OF THE CONTRACTOR**

**9.4.1** The Awarding Party shall exclude a Contractor from the Procurement Procedure who does not meet the specified conditions for participation in the Procurement Procedure or to whom the grounds for exclusion apply, provided that the participation conditions or exclusion grounds (optional grounds) have been set out in the Procedure, subject to points 9.4.3 and 9.4.7 of the Procedure. The conditions for participation in the Procurement Procedure or the grounds for exclusion shall be determined individually for each Procurement Procedure, based on the decision of the Procedure Initiator / Tender Committee, in accordance with point 9.4.2 (optional grounds for exclusion) and subject to point 9.4.3 (mandatory grounds for exclusion).

**9.4.2** A Contractor may be excluded from the Procurement Procedure (optional grounds for exclusion) if:

**9.4.2.1** The Contractor does not meet or has not demonstrated that they meet the conditions for participation in the Procurement Procedure.

**9.4.2.2** The Contractor, if a natural person, or — in the case of other Contractors — a sitting member of its managing or supervisory body, a partner in a registered partnership or professional partnership, or a general partner in a limited partnership or limited joint-stock partnership, or a commercial proxy, has been lawfully convicted of a criminal offence involving:



**9.4.2.2.1** participation in an organised crime group or association aimed at committing a criminal offence or fiscal offence, as referred to in Article 258 of the Penal Code;

**9.4.2.2.2** human trafficking, as referred to in Article 189a of the Penal Code;

**9.4.2.2.3** offences under Articles 228–230a, 250a of the Penal Code, Articles 46–48 of the Act of 25 June 2010 on Sport, or Articles 54(1)–(4) of the Act of 12 May 2011 on the Reimbursement of Medicines, Foodstuffs for Particular Nutritional Uses and Medical Devices;

**9.4.2.2.4** financing a terrorist offence, as referred to in Article 165a of the Penal Code, or the offence of preventing or hindering the establishment of the criminal origin of funds or concealing their origin, as referred to in Article 299 of the Penal Code;

**9.4.2.2.5** a terrorist offence, as referred to in Article 115 § 20 of the Penal Code, or aiming to commit such an offence;

**9.4.2.2.6** employment of underage foreign nationals as referred to in Article 9(2) of the Act of 15 June 2012 on the Consequences of Entrusting Work to Foreigners Staying in Breach of Regulations in the Territory of the Republic of Poland;

**9.4.2.2.7** offences against economic trading, as referred to in Articles 296–307 of the Penal Code; fraud, as referred to in Article 286 of the Penal Code; offences against the credibility of documents, as referred to in Articles 270–277d of the Penal Code; or a fiscal offence; or for an equivalent prohibited act under foreign law.

**9.4.2.3** The Contractor has been prohibited from applying for public contracts.

**9.4.2.4** The Awarding Party may determine, based on reliable premises, that the Contractor has entered into an agreement with other Contractors aimed at distorting competition, in particular where, as part of the same capital group within the meaning of the Act of 16 February 2007 on Competition and Consumer Protection, they have submitted separate Requests to participate in the Procurement Procedure / Requests to participate in the DS / Preliminary Bids / Bids, unless they can demonstrate that these documents were prepared independently.

**9.4.2.5** The Contractor unlawfully influenced or attempted to influence the Awarding Party's actions or tried to obtain or obtained confidential information that could give them an advantage in the Procurement Procedure.

**9.4.2.6** The Contractor does not guarantee the proper execution of the Procurement due to ongoing proceedings against them or members of the Contractor's company bodies for committing a crime related to their business activity.

**9.4.2.7** The Contractor is subject to liquidation, has been declared bankrupt, is managed by a liquidator or court, has entered into an arrangement with creditors, has suspended its business activities, or is in a similar situation arising from a comparable procedure under the law of the place where the procedure was initiated.

**9.4.2.8** The Contractor has failed to perform or has improperly performed an obligation under another Procurement Agreement concluded with a PGE CG Company or other entities.

**9.4.2.9** The Contractor has advised on or otherwise been involved in the preparation of the Procurement Procedure, and such involvement resulted in a distortion of competition due to the Contractor's prior engagement or that of an entity belonging to the same capital group as the Contractor (within the meaning of the Act of 16 February 2007 on Competition and Consumer Protection), unless such distortion of competition can be remedied by means other than exclusion from the Procurement Procedure.

**9.4.2.10** The Contractor has failed to perform or has improperly performed a Procurement Agreement concluded with the given Awarding Party.

**9.4.2.11** The Contractor has refused to conclude an Agreement following the completed Procurement Procedure.

**9.4.2.12** The Contractor, through recklessness or negligence, provided misleading information which could have significantly influenced the decisions made by the Awarding Party in the Procurement Procedure.

**9.4.2.13** The Contractor, by deliberate action or gross negligence, misled the Awarding Party in providing information concerning non-exclusion, fulfilment of participation conditions, or selection criteria, which could have significantly influenced the Awarding Party's decisions in the Procurement Procedure, or has concealed such information.

**9.4.2.14** The Contractor is in arrears with payment of taxes, charges, or contributions for social or health insurance, unless the Contractor made such payments before the deadline for submitting the Request to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid and can demonstrate this to the Awarding Party.

**9.4.3** A Contractor shall be excluded from the Procurement Procedure (mandatory grounds for exclusion) if:

**9.4.3.1** The Contractor is listed in the registers specified in Council Regulation (EC) No. 765/2006 of 18 May 2006 concerning restrictive measures in connection with the situation in Belarus and Belarus's involvement in Russia's aggression against Ukraine ('Regulation 765/2006') and in Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty

and independence of Ukraine ('Regulation 269/2014'), or is listed based on a decision concerning inclusion on a list implementing a measure referred to in Article 1(3) of the Act of 13 April 2022 on Special Measures for Counteracting Support for Aggression against Ukraine and for the Protection of National Security ('Act on Counteracting Support for Aggression').

**9.4.3.2** The Contractor's beneficial owner, as defined in the Act of 1 March 2018 on Counteracting Money Laundering and Terrorist Financing, is a person listed in the registers referred to in Regulation 765/2006 and Regulation 269/2014, or has been listed as such a beneficial owner since 24 February 2022, based on a decision concerning inclusion on a list implementing a measure referred to in Article 1(3) of the Act on Counteracting Support for Aggression.

**9.4.3.3** The Contractor's parent undertaking, within the meaning of Article 3(1)(37) of the Accounting Act of 29 September 1994, is an entity listed in the registers referred to in Regulation 765/2006 and Regulation 269/2014, or has been listed as such a parent undertaking since 24 February 2022, based on a decision concerning inclusion on a list implementing a measure referred to in Article 1(3) of the Act on Counteracting Support for Aggression.

**9.4.3.4** A Contractor shall be excluded if it involves:

- a. a Russian national, a natural person residing in Russia, or a legal person, entity or body established in Russia;
- b. a legal person, entity or body whose proprietary rights are directly or indirectly owned for more than 50 % by a natural or legal person, entity or body referred to in point (a) of this paragraph; or
- c. a natural or legal person, entity or body acting on behalf or at the direction of a natural or legal person, entity or body referred to in point (a) or (b) above, including subcontractors, suppliers, or entities whose capacities the given Contractor relies upon in order to demonstrate fulfilment of the conditions for participation in the Procurement Procedure, as understood within the meaning of the EU procurement directives (Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC), if the share of such persons exceeds 10% of the value of the Procurement.

**9.4.4** A Contractor who has not been invited to the next stage of the Procurement Procedure following prequalification shall be treated as excluded.

**9.4.6** Exclusion of a Contractor shall apply in the cases specified:

- a. in points 9.4.2.2.1 to 9.4.2.2.7, for a period of 5 years from the date the judgment confirming the exclusion grounds becomes final, unless a different exclusion period has been specified in that judgment;
- b. in point 9.4.3.2, for the duration of the ban on seeking public contracts;
- c. in points 9.4.2.4–9.4.2.5, 9.4.2.7–9.4.2.8, and 9.4.2.10–9.4.2.11, for a period of 3 years from the occurrence of the event constituting the grounds for exclusion;
- d. in point 9.4.2.12, for a period of 1 year from the occurrence of the event;
- e. in point 9.4.2.13, for a period of 2 years from the occurrence of the event;
- f. in points 9.4.3.1–9.4.3.4, for the duration of the relevant circumstances described therein.

**9.4.7** The Awarding Party may decide not to exclude a Contractor for the reasons specified in points 9.4.2.2, 9.4.2.4, 9.4.2.7–9.4.2.8, or 9.4.2.10–9.4.2.13 above if the Contractor cumulatively demonstrates that:

**9.4.7.1** It has remedied or has undertaken to remedy the damage caused by the offence, misconduct or breach, including by financial compensation;

**9.4.7.2** It has provided a comprehensive explanation of the facts and circumstances relating to the offence, misconduct or breach and the damage caused thereby, and has actively cooperated with the competent authorities, including law enforcement authorities or the Awarding Party;

**9.4.7.3** It has taken technical, organisational or personnel measures appropriate to prevent further offences, misconduct or breaches, in particular by:

- a. severing all ties with persons or entities responsible for the misconduct,
- b. reorganising its personnel,
- c. implementing a reporting and control system,
- d. establishing internal compliance monitoring structures,
- e. introducing internal regulations on liability and damages for non-compliance with laws, internal rules or standards.

**9.4.8** The evaluation of the circumstances set out in point 9.4.7 shall take into account the seriousness and specific circumstances of the Contractor's misconduct and whether the measures taken are sufficient to demonstrate its reliability. If the Awarding Party deems the measures referred to in point 9.4.7 above taken by the Contractor insufficient to prove its reliability, the Contractor shall be excluded.

**9.4.9** If a Contractor is excluded pursuant to point 9.4.2.8 or 9.4.2.10 of the Procedure and Article 109(1)(5) or (7) of the Public Procurement Law, the Director of the procurement unit of the relevant PGE CG Company, or of the service-providing company responsible for procurement, or the Director of the organisational unit supervising

procurement in the relevant PGE CG Company, shall, within 7 days from the date of the exclusion decision, inform the procurement units of other PGE CG Companies of the Contractor's exclusion, providing the Contractor's name, address, tax identification number (NIP), and the legal and factual basis for exclusion.

## **9.5 REJECTION OF THE CONTRACTOR'S REQUEST / BID**

**9.5.1** The Awarding Party shall reject the Contractor's Request to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid if:

- a. the Request to participate in the Procurement Procedure / Preliminary Bid / Bid was submitted after the deadline for submitting Requests to participate in the Procurement Procedure / Preliminary Bids / Bids. This condition does not apply to Requests to participate in the DS;
- b. the Request to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid was submitted by a Contractor subject to exclusion or failing to meet the conditions for participation in the Procurement Procedure;
- c. the Request to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid does not meet the requirements set out by the Awarding Party in the Procurement documentation, subject to point 9.5.3 below;
- d. the Bid contains an abnormally low price or cost in relation to the subject of the Procurement;
- e. the Preliminary Bid / Bid is invalid under applicable law;
- f. the Contractor, upon request of the Awarding Party, did not correct errors in the Request to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid, or did not agree to such corrections by the Awarding Party;
- g. the Contractor failed to supplement or explain its Request to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid upon the Awarding Party's request, it being understood that the Awarding Party has the right to request clarification or supplementation more than once;
- h. the Contractor submitted a Request to participate in the Procurement Procedure / Preliminary Bid / Bid without having been invited to do so, if the Procurement Procedure is conducted in a mode requiring an invitation to submit a Request to participate in the Procurement Procedure / Preliminary Bid / Bid. This condition does not apply to Requests to participate in the DS;
- i. the Request to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid was submitted under conditions constituting an act of unfair competition as defined in the Act of 16 April 1993 on Combating Unfair Competition;
- j. the Contractor did not agree to extend the validity period of the Preliminary Bid / Bid or did not agree to the selection of their Bid after the expiry of the validity period of the Preliminary Bid / Bid;
- k. the Contractor did not submit a bid bond or failed to maintain it until the expiry of the bid validity period, or submitted it incorrectly;
- l. the Bid was submitted without a mandatory site visit or without reviewing documents required for the execution of the order that were available on site at the Awarding Party's premises, if such requirements were specified in the Procurement documentation;
- m. the Request to participate in the Procurement Procedure / Request to participate in the DS / Preliminary Bid / Bid was prepared or submitted in a manner inconsistent with the technical or organisational requirements for the preparation or submission of Requests to participate in the Procurement Procedure / Requests to participate in the DS / Preliminary Bids / Bids as specified in the ToR, the Procurement Notice / invitation to participate in the Procedure, the Information on the establishment of the DS;
- n. in the case referred to in point 9.6.23 of the Procedure.

**9.5.3** In justified cases, the Tender Committee may decide to admit a Contractor to commercial negotiations whose Preliminary Bid / Bid does not meet certain requirements specified by the Awarding Party in the Procurement documentation. If such negotiations do not lead to the Preliminary Bid / Bid being brought into compliance with the Procurement documentation, it shall be rejected pursuant to point 9.5.1(c) above.

## **9.6 SELECTION OF THE MOST ADVANTAGEOUS BID**

**9.6.1** In the Procurement Procedure, Bids are evaluated based on the bid evaluation criteria established by the Tender Committee. The Tender Committee is not obliged to inform Contractors of the detailed evaluation methodology within each criterion before the evaluation. Only the Bid of a Contractor who has demonstrated compliance with the participation conditions in the Procurement Procedure and the absence of grounds for exclusion, as required in the Procurement Notice / Information on the establishment of the DS / Terms of Reference (ToR) / invitation to participate in the Procurement Procedure, may be considered the Most Advantageous Bid.

**9.6.3** All Contractors who submitted Bids or Preliminary Bids that are not subject to rejection shall be invited to participate in trade negotiations or an electronic auction, subject to point 9.5.3 above. In the case of a prequalification procedure (if such information was included in the invitation to participate in the Procurement Procedure, Procurement Notice or ToR), the invitation shall be extended to those whose Requests to participate in the Procurement Procedure or Preliminary Bids received the highest scores.

**9.6.4** Trade negotiations are conducted to obtain optimal commercial conditions for the Awarding Party. If the trade negotiations result in a material change to the subject of Procurement, the Bid evaluation criteria, or an increase in

the Contractor's Bid price, the Tender Committee shall invite the remaining Contractors not participating in the trade negotiations to engage in negotiations or to revise their Bids.

**9.6.5** In the case of PGE CG Companies that operate a Procurement System, the Contractor shall confirm the negotiated terms in the Procurement System or by electronic means of communication. For PGE CG Companies that do not have a Procurement System, the Contractor shall confirm the negotiated terms by electronic means of communication or in writing.

**9.6.6** If an electronic auction is conducted for the selection of the Most Advantageous Bid, the following rules apply:

- a. the Bid evaluation criteria during the electronic auction shall enable automatic evaluation of Bids and shall be indicated in the contract notice, Terms of Reference or invitation to participate in the Procurement Procedure;
- b. the electronic auction is single-stage;
- c. the electronic auction may be conducted if at least two Bids not subject to rejection have been submitted;
- d. the Tender Committee may decide to conduct the auction with only one Contractor.

**9.6.7** The person conducting the auction or the secretary shall electronically invite the Contractors selected by the Tender Committee to participate in the electronic auction.

**9.6.8** The invitation shall inform Contractors, in particular, of:

- a. the ranking of their submitted Bids;
- b. the minimum increment values to be submitted during the electronic auction;
- c. the opening time of the electronic auction;
- d. the closing time and conditions of the electronic auction;
- e. the method for evaluating Bids during the electronic auction.

**9.6.9** The opening time of the electronic auction must not be earlier than two business days from the date of sending the invitation unless all invited Contractors have agreed to shorten this period.

**9.6.10** The method for evaluating Bids during the electronic auction shall include the recalculation of Bid increments, taking into account the scores obtained before the auction opened.

**9.6.11** During the electronic auction, Contractors shall submit successive improved Bid increments using a form available on the website, enabling the direct online entry of required data, which are automatically ranked.

**9.6.12** During the electronic auction, each Contractor shall receive ongoing updates about the ranking of their Bid. Until the auction closes, no information enabling the identification of Contractors shall be disclosed.

**9.6.13** From the moment the electronic auction opens until it closes, all submissions, declarations, and other communications shall be made electronically.

**9.6.14** The Awarding Party shall close the electronic auction either:

- a. at the time specified in the invitation to the electronic auction, or
- b. if no new Bid increments are submitted within the timeframe set in the invitation.

**9.6.15** A Contractor's Bid shall cease to be binding to the extent that the Contractor submits a more advantageous Bid during the electronic auction. The binding period for the Bid is not interrupted. At the request of the Awarding Party, the Contractor is obliged to confirm the auctioned terms (i.e. the Bid submitted in the electronic auction) using electronic means of communication or in writing, no later than by the deadline indicated by the Awarding Party. The submission of the Most Advantageous Bid during the electronic auction does not constitute the selection of the Bid as the Most Advantageous Bid. After the conclusion of the electronic auction, the Tender Committee may decide to conduct commercial negotiations with the Contractor who submitted the Most Advantageous Bid during the electronic auction.

**9.6.17** Based on the evaluation of the Bids, the Tender Committee shall recommend the selection of the Most Advantageous Bid.

**9.6.18** If it is not possible to select the Most Advantageous Bid in the Procurement Procedure because Bids with identical prices were submitted and price is the sole criterion for evaluation, the Tender Committee shall request the Contractors who submitted those Bids to submit additional Bids within a specified deadline. In submitting additional Bids, Contractors may not offer prices higher than those offered in their originally submitted Bids.

**9.6.19** If it is not possible to select the Most Advantageous Bid in the Procurement Procedure because two or more Bids represent the same balance of price and other criteria, the Tender Committee shall recommend the Bid with the lower price.

**9.6.20** If the Contractor who submitted the Most Advantageous Bid refuses to conclude the Procurement Agreement or fails to provide the required performance bond, the Awarding Party may select the Most Advantageous Bid from the remaining Bids. The Awarding Party may also select the Most Advantageous Bid from among the Preliminary Bids, provided that the contract notice or the Specification included the possibility of concluding the Procurement Procedure after the stage of submitting Preliminary Bids.

**9.6.21** The Tender Committee shall notify the Contractor who submitted the Most Advantageous Bid of the outcome of the Procurement Procedure and inform the remaining Contractors of its conclusion. Each of the GK PGE Group Companies may, in their internal regulations, specify the scope of information to be communicated to Contractors along with the notification of the conclusion of the Procurement Procedure.

**9.6.22** If the performance of the Procurement Agreement requires the Contractor to process personal data on behalf of the Awarding Party under a data processing agreement, the Tender Committee shall request the Contractor whose Bid received the highest score to submit, within a specified deadline, a questionnaire regarding guarantees for the security of personal data processing.

**9.6.23** If the Contractor, acting as a data processor, fails to submit the questionnaire on personal data processing security guarantees within the prescribed deadline, or if, after reviewing the questionnaire, the Awarding Party determines that the Contractor does not provide sufficient guarantees, the Contractor's Bid shall be rejected. In such a case, the Awarding Party may select the Most Advantageous Bid from the remaining Bids.

## **9.7 INVALIDATION OF THE PROCUREMENT PROCEDURE**

**9.7.3** The Awarding Party may decide to invalidate the Procurement Procedure without stating a reason.

## **11.2 PERFORMANCE BOND FOR THE PROCUREMENT AGREEMENT**

**11.2.1** In the Procurement Procedure, the Awarding Party may require the submission of a performance bond for the Procurement Agreement. Information on the requirement to provide such a bond shall be included in the Procurement Notice, Information on the establishment of the DS, Specification, Description of needs and requirements, or the Invitation to participate in the Procurement Procedure.

**11.2.2** The amount of the performance bond shall be determined by the Tender Committee, but may not exceed 5% of the total price stated in the Bid or the maximum nominal value of the Awarding Party's liability under the Procurement Agreement. In justified cases, a higher bond may be required.

**11.2.3** The bond may be submitted in the form of a cash deposit (by transfer to a bank account indicated by the Awarding Party), sureties or bank guarantees, or insurance guarantees. At the request of the Contractor, the Awarding Party may apply the bid bond provided in cash towards the performance bond, provided the Contractor pays the remaining amount of the performance bond, if necessary.

**11.2.4** The terms of return of the bond shall be specified in the Procurement Agreement. It is recommended that at least 30% of the bond amount be returned to the Contractor only after the expiry of the guarantee or warranty period, depending on which expires later.

## **XII RULES FOR THE ASSESSMENT OF CONTRACTORS' PERFORMANCE OF PROCUREMENT AGREEMENTS**

### **12.2 ASSESSMENT OF THE PERFORMANCE OF THE PROCUREMENT AGREEMENT IN A PUBLIC PROCUREMENT PROCEDURE**

**12.2.1** For a Procurement Agreement concluded as a result of a public Procurement Procedure, the assessment of its performance — conducted to prepare information required for the publication of a contract completion notice — shall be carried out in accordance with the provisions of this Procedure. Additionally, in the cases specified in the Public Procurement Law, the Awarding Party is required to prepare a contract performance report. The person responsible for fulfilling obligations related to the performance of the Procurement Agreement, particularly for preparing the report and assessing contract performance, is the owner of the Procurement Agreement.

**12.2.2** The assessment of the performance of the Procurement Agreement concluded under the provisions of the Act shall include at least the following information concerning the course of performance of the Agreement: an indication of whether the Agreement was performed; the date of performance of the Agreement, including information on whether the Agreement was performed within the originally specified period; information on amendments to the Agreement, including the legal basis entitling the parties to amend the Agreement, the reasons for the amendments, a brief description of the Contract following the amendment, the value of the amendment together with information on any increase in remuneration in connection with the amendment of the Agreement (if applicable, this should be indicated as many times as necessary); the total amount of remuneration paid under the executed Agreement; information on whether the Agreement was performed properly; an indication of whether, during the performance of the Contract, the Awarding Party carried out inspections to determine whether the Contractor met the requirements concerning the performance of the Contract as stipulated in the concluded Agreement (if applicable); with regard to employment under a contract of employment, in the circumstances referred to in Article 95 of the Act; covering social, environmental or innovative aspects in accordance with Article 96 of the Act; in the scope of the requirement for a specific label or reference to applicable label requirements, in accordance with Article 104 of the Act; and an indication of whether there are grounds for drawing up the Report referred to in point 12.2.3.

**12.2.3** A Contract Performance Report shall be drawn up in the following cases:

- a. where the amount spent on the performance of the Contract exceeds the value of the bid price by at least 10%;



- b. where the Contractor has been subject to contractual penalties amounting to at least 10% of the bid price;
- c. where there have been delays in the performance of the Agreement exceeding at least:
  - 90 days in the case of Contracts for construction works with a value equal to or exceeding the equivalent in Polish zloty of EUR 20,000,000 for construction works and EUR 10,000,000 for supplies or services;
  - or exceeding at least 30 days in the case of Contracts with a value lower than the equivalent in Polish zloty of EUR 20,000,000 for construction works and EUR 10,000,000 for supplies or services.
- d. where the Awarding Party or the Contractor has withdrawn from the Agreement in whole or in part, or terminated it in whole or in part.

**12.2.4** The Contract Performance Report referred to in point 12.2.3 must include at least:

- a. an indication of the amount spent on the performance of the Contract, and a comparison of that amount with the value resulting from the estimated value of the Contract and the total price stated in the Bid, or the maximum nominal value of the Awarding Entity's obligation resulting from the Agreement, if the Bid stated a unit price or unit prices;
- b. an indication of the circumstances referred to in point 12.2.3 and the reasons for their occurrence;
- c. an assessment of the manner in which the Contract was performed, including the quality of its performance;
- d. conclusions on the possible modification of the method for executing future contracts or the definition of the subject matter of the contract, taking into account the purposefulness, economy and efficiency of the use of public funds.

**12.2.5** The owner of the Procurement Agreement shall draw up the report within one month from the date of the acceptance protocol or from the recognition of the Agreement as performed or its termination following the submission of a statement of withdrawal or termination.

**12.2.6** The owner of the Procurement Agreement shall prepare an assessment of the performance of the Agreement within 20 days of its completion.

**12.2.7** In the case of a Procurement Agreement concluded as a result of the resolution of a Procedure conducted under the provisions of the Act, a contract performance notice shall be published in the Public Procurement Bulletin within 30 days of the execution of the Agreement.