


	PROJECT PROCEDURES	Issue/date	VI/01/2021
	INTERNAL PROCEDURE FOR CONCLUDING AGREEMENTS AT DB PORT SZCZECIN SP. Z O.O. Applies to projects co-financed or applying for co-financing from EU funds under the Infrastructure and Environment Operational Programme	Page/pages	1 of 14
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Prepared by: <div style="text-align: center;"></div> <p style="text-align: center;">Marta Rula 25.01.2021 date and signature</p>	Verified by: <div style="text-align: center;"> CZŁONEK ZARZADU  Olga Nowak </div> <p style="text-align: center;">Olga Nowak 25.01.2021 date and signature</p>	Approved by: <div style="text-align: center;">  PREZES ZARZADU Daniel Saar </div> <p style="text-align: center;">Daniel Saar 25.01.2021 date and signature</p>
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CONSOLIDATED TEXT
effective from 25.01.2021 and concerning
the procedures initiated from that day

§ 1
GENERAL PROVISIONS

1. The Regulations regulate the mode of conducting procedure for the selection of contractors for construction works, services and supplies, based on the course of procedure adopted by the Company and its experience in the field of carrying out contracts under projects co-financed or applying for co-financing from European Union funds from the Operational Programme Infrastructure and Environment 2014-2020.
2. The purpose of the procedure set out in the Regulations is to specify the procedures and rules for awarding the contracts in order to select the most advantageous bid ensuring the achievement of appropriate quality requirements, time and terms and conditions of implementation, guarantee conditions and / or the optimal purchase price of services and assets.
3. In order to select the most advantageous bid, the Guidelines on the eligibility of expenditure under the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020 (hereinafter referred to as the Guidelines) and the provisions of the Regulations shall apply. In matters not covered in this procedure (regulations), the provisions of the Guidelines shall apply first, in particular sections 6.5, 6.5.1, 6.5.2 and the concluded contract for co-financing a project co-financed from the OPI&E.
4. Subject to paragraph 6 and 7, the Regulations regulate the procedure conducted by DB Port Szczecin Sp. z o. o. [hereinafter also referred to as: DB Port, the Company or the Employer] in order to select the Contractor in accordance with **the principle of competitiveness** within the meaning of *the Guidelines*.
5. The Ordering Party bears all expenses in the project in a clear, rational and effective manner, however, in the case of contracts with a value from PLN 2 000 net to PLN 20 000 net, it may make a market research indicating that a given service, work or delivery was carried out at a price not exceeding the market price. In order to document the conduct of market research referred to above, the Ordering Party may collect in particular:
 - requests for bid addressed to potential contractors together with the bids received or
 - a printout of the contract notice placed on the website together with the bids received or
 - printouts from websites presenting the bids of potential contractors.
6. **[Obligatory market research procedure]** For the contracts with a net value of PLN 20 000 up to and including PLN 50 000 net, i.e. excluding value added tax (VAT), market research is required, which includes at least:
 - a) placing a request for bid on the Company's website¹ or directing a request for bid to at least **three** potential contractors (if there are at least three potential contractors on the market in a given contract);
 - b) collecting the valid bids from at least **two** potential contractors², whereas **one bid is insufficient to document that the contract has been carried out at a price not higher than the market price**, and to document that the bid is not compliant with the announcement / request for bid is not a valid bid.

The market research procedure should be documented by:

- printout of the request for bid posted on the Company's website or confirmation of sending the request for bid to at least three potential contractors;
- all the bids collected in line with the announced request for bid (valid bids), not less than two.

If, as a result of publishing a request for bid or sending a request for bid to potential contractors, **no bids have been received**, it is necessary to collect e.g. at least two printouts of websites with a description of the good / service and the price or printouts of at least two emails with information about the price for a specific goods / service, or other document confirming the existence of at least two bids (a note confirming telephone conversations with potential contractors is not considered as documenting the market research procedure).

¹ provided that the co-financing agreement, detailed description of the OPI&E priority axes for 2014-2020 or the regulations of a given competition does not indicate a different website intended for placing requests for bids;

² if only one valid bid is submitted in response to the procurement notice on the public website, then the documentation of the market evaluation procedure should be supplemented with a bid from another source, e.g. a request for bid directly to a potential contractor;

For the contracts with a value of PLN 20 000 net to PLN 50 000 net inclusive, a written contract with the contractor is not required. In this case, it is sufficient to confirm the expenditure incurred in the project based on an invoice, bill or other accounting document of equivalent probative value.

7. The internal bodies authorised to organise and conduct the contract award procedure in accordance with the principle of competitiveness at DB Port is the Purchase Department and the Commission.
8. The Commission is appointed by the Company's Management Board to evaluate the submitted contracts and decide on the selection of the contractor.
9. The employees of the Purchase Department and Members of the Commission are obliged to keep professional and commercial secrets. Information that is a business secret within the meaning of the provisions on combating unfair competition shall not be disclosed.
10. **[Prohibition of relations with contractors]** Persons performing activities on behalf of the Company related to the selection procedure of the contractor in accordance with the principle of competitiveness, including those involved in the bid evaluation process, should be impartial and objective, and may not be personally or capital related to contractors who have submitted bids, whereby capital or personal connections are understood as interrelationships between the Ordering Party or persons authorised to incur obligations on behalf of the Ordering Party or persons performing on behalf of the Ordering Party activities related to carrying out the contractor selection procedure and the contractor, consisting in particular of:
 - a) participating in the company as a partner in a civil partnership or partnership,
 - b) owning at least 10% of stocks and shares, unless the lower threshold results from legal regulations or is not specified by the managing authority of the operational programme,
 - c) performing the function of a member of a supervisory or management body, proxy, attorney,
 - d) remaining in marriage, in a relationship or affinity in a straight line, second degree affinity or second degree affinity in the lateral line or in relation to adoption, care or guardianship.
11. Persons performing activities on behalf of the Company related to the contractor selection procedure, including those taking part in the bid evaluation process, shall submit a **written statement** of no connection referred to in paragraph 10, with contractors who submit bids. The statements constitute the Appendix to **the minutes of the procedure**, referred to in § 7 (8) of the Regulations.
12. In the event that a person performing on behalf of the Company activities related to the contractor selection procedure, including those taking part in the bid evaluation process, a statement of the occurrence of the circumstances referred to above in paragraph 10, the chairman of the Commission immediately excludes this person from further participation in the contract award procedure.
13. Actions in the contract award procedure taken by a person subject to exclusion after becoming aware of the circumstances referred to in paragraph 10, is repeated, except for the opening of bids and other factual activities not affecting the outcome of the procedure.
14. The contract award procedure shall be carried out in one or two stages:
 - a) In one-stage mode: the procedure takes the form of an open tender.
 - b) In two-stage mode: the first stage takes the form of an open tender, while second stage takes the form of:
 - open tender to contractors selected under the first stage,
 - alternatively:
 - negotiations with contractors selected under the first stage.A detailed description of the mode and the procedure for selecting the most advantageous bid by the Ordering Party within a given procedure will be each time specified in the content of the request for bid and the contract documents. Under the second stage, the selection criteria for the contractor may be a maximum of 2 (*two*) criteria for the evaluation of bids that were evaluated in accordance with the criteria for the evaluation of bids adopted under the first stage.
15. The contract award procedure shall be conducted in accordance with the Ordering Party's requirements specified in the request for bid and the documents of the procedure: in writing, in electronic form or using each of these forms within one procedure.
16. The contract award procedure shall be carried out in Polish language, however :
 - a) The Ordering party may make available to the contractors an auxiliary translation of the documents of the procedure in English language version whereas the binding language version providing the basis for interpretation of all documents shall remain the Polish one;



- b) the Ordering Party may allow in the request for bid and in the documents of the procedure that the bid, statements or other documents may be submitted in English language;
 - c) the Ordering Party may allow that the agreement with the selected contractor shall be concluded in Polish and English language version.
17. The chairman of the Commission shall be appointed by the Company's Management Board.
18. The name of each member of the Commission shall be determined by the Company's Management Board. The Commission may be extended by additional Members as required.
19. The Commission shall make its decisions, taking into account pricing terms and conditions and fulfilment of other terms and conditions specified in the request for bid.
20. The Ordering Party shall prepare and conduct the contract award procedure in such a way as to ensure openness, clarity, fair competition and equal treatment of the contractors.
21. Contract shall be awarded to the contractor selected in accordance with the provisions of the Regulations, subject to paragraph 3 above.

§ 2

RULES OF CONDUCTING AND SETTING THE VALUE OF THE CONTRACT

1. The basis for determining the value of the contract is the contractor's total estimated remuneration, excluding value added tax, determined with due diligence, taking into account any supplementary contracts referred to in § 8 of the Regulations.
2. **The process of estimating the value of the contract should be documented** and the documentation kept for control purposes in a manner that ensures an adequate audit trail.
3. When determining the value of the contract, it should be taken into account that individual expenses in the project constitute one contract if the following conditions are met:
 - a) services, supplies and construction works are identical in type or function,
 - b) it is possible to award the contract at the same time,
 - c) it is possible to perform the contract by one contractor.
4. In the case of awarding a contract in parts (for specific economic, organisational and purpose-related reasons), the value of the contract is determined as the total value of its individual parts. The estimated value of the contract is a net value, i.e. excluding value added tax (VAT).
5. For **the description of the subject matter of the contract**, the names and codes specified in the Common Procurement Vocabulary³ referred to in Regulation (EC) No. 2195/2002 of the European Parliament and of the Council of 5 November 2002 *on the Common Procurement Vocabulary (CPV) shall be used*⁴.
6. In accordance with the principle of non-discriminatory description of the subject matter of the contract, the description of the subject matter of the contract should not refer to a specific product or source or trademarks, patents, types or specific origin, unless such reference is justified by the subject matter of contract and the scope of equivalence has been determined.
7. **The terms and conditions** of participation in the contract award procedure and a description of how to evaluate their fulfilment, provided they are included in the request for bid, are determined in a manner proportional to the subject matter of the contract, ensuring fair competition and equal treatment of contractors. **In accordance with the principle of equal access** for business entities from all Member States, in particular understood as a prohibition to impose requirements causing discrimination against contractors from other Member States, there will be no requirements regarding:
 - the contractor's experience in performing the contracts in Poland,
 - the contractor's experience in the implementation of contracts co-financed under EU or national funds.

³ <http://kody.uzp.gov.pl/>

⁴ Official Journal WE L 340 of 16 December 2002, p. 1, with later amendments;

8. **Criteria** for the evaluation of bids submitted in the context of a contract award procedure are formulated in such a way as to ensure fair competition and equal treatment of contractors, with:
- each bid evaluation criterion must refer to a given subject matter of the contract,
 - each criterion (and description of its use) must be formulated clearly and precisely so that every correctly informed bidder who exercises due diligence may interpret them in the same way,
 - the weight (meaning) of individual criteria should be determined in a way that allows selection of the most advantageous bid,
 - the criteria for the evaluation of bids should not relate to the characteristics of the contractor, and in particular to its economic, technical or financial reliability and experience,
 - the price may be the only bid evaluation criterion. Apart from requirements related to the price it is advisable to apply as a evaluation criterion other requirements relating to the subject matter of the contract, such as, for example, quality, functionality, technical parameters, environmental, social, innovative aspects, service, contract completion date, exploitation costs and the organisation, professional qualifications and experience of persons appointed to perform the contract, if they can have a significant impact on the quality of the contract.

§ 3

REQUEST FOR BID AND THE SUBJECT MATTER OF THE CONTRACT

- Before announcing the procedure, **a request for bid** will be drawn up (together with a possible **description of the subject matter of the contract** constituting the appendix to the request for bid) and **a model contract with the contractor**.
- The request for bid and the description of the subject matter of the contract prepared by the Purchase Department in cooperation with the Management Board and properly prepared organisational units of the Company, subject to the requirements specified in § 2 (5-8) of the Regulations and the following requirements:
 - the description of the subject matter of the contract should describe the subject matter of the contract in a complete and comprehensive manner, i.e. in such a way that all necessary data can be compared during the procedure; the subject matter of the contract is described in an unambiguous and comprehensive manner, measurable / quantifiable by means of sufficiently accurate and understandable terms, taking into account all the requirements and circumstances that may affect the preparation of the bid; the description of the subject matter of the contract takes place by means of technical and quality features, however, it is possible to depart from the description of the subject matter of the contract by means of technical and quality features if an accurate description of the subject matter of the contract is provided by indicating functional requirements.
 - bid requirements must be prepared in such a way as to ensure that all technical and financial data can be compared for individual bids.
- After drawing up the request for bid and description of the subject matter of the contract, the Purchase Department submits it to the Management Board for approval.
- After the Management Board accepts the provisions of the request for bid and a description of the subject matter of the contract, an announcement is made of the intention to award the contract (making the request for bid public) in the manner indicated in § 4 of the Regulations.
- The request for bid** includes at least:
 - name (business name) and address of the Company as the Ordering Party;
 - description of the subject matter of the contract (due to the need to protect business secrets, it is allowed to limit the scope of the description of the subject matter of the contract, which will be made public, however, it is required to send a supplement to the excluded description of the subject matter of the contract to a potential contractor who has undertaken to maintain confidentiality in relation to the information provided);
 - the conditions for participating in the procedure and a description of how to evaluate compliance with them, whereas setting the terms and conditions for participation is not obligatory;
 - bid evaluation criteria;

- e) information on point or percentage weights assigned to individual bid evaluation criteria;
 - f) a description of how the points are awarded for meeting the given bid evaluation criteria;
 - g) deadline⁵ for submitting bids, the deadline for submitting bids is at least 7 days in the case of supplies and services, and in the case of construction works at least 14 days from the date of publication of the request for bid; in the case of contracts with an estimated value equal to or exceeding the EU procurement thresholds within the meaning of Article 3 of the Act of 11 September 2019 Public procurement law - the deadline for submitting bids is not less than 30 days;
 - h) deadline for performance of the agreement (implementation of the contract);
 - i) information on the prohibition of personal or capital connections between the contractors and the Ordering Party, referred to in §1 (10) of the Regulations;
 - j) specification of the terms and conditions of significant changes to the contract concluded as a result of the contract award procedure provided that the contract can be amended;
 - k) information on the possibility of submitting partial bids, if the Ordering Party provides for such a possibility⁶;
 - l) description of the method of submitting variant bids and the minimum conditions which have to be met by variant bids together with the selected evaluation criteria, if the Ordering Party requires or allows their submission;
 - m) information about planned supplementary contracts for services or construction works, referred to in § 8 (2) of the Regulations, their scope and terms and conditions on which they will be awarded (if the Ordering Party provides for the award of such contracts);
 - n) list of statements and documents to be provided by the contractors in order to confirm the fulfilment of the terms and conditions for participation in the procedure;
 - o) indication of the person (s) authorised to communicate with the contractors;
 - p) requirements for bid security, if the Ordering Party requires its submission;
 - q) term of being bound by the bid;
 - r) description of bid preparation;
 - s) deadline and place of submitting and opening the bids;
 - t) description of price calculation method;
 - u) requirements concerning performance bond, if the Ordering Party requires its submission;
 - v) the provisions relevant for the parties to the agreement, which will be introduced into the content of the concluded agreement regarding contract, the general terms and conditions of the agreement or the model agreement;
 - w) information about the fact that the Company has received or applied for co-financing of the project from the OPI&E funds.
6. In the contract award procedure, the Ordering Party may demand from contractors statements and documents confirming compliance with the conditions for participation in the procedure, if these documents are specified in the request for bid.
7. The Ordering Party may require the contractor to indicate in the bid the part of the contract which it intends to entrust to subcontractors, as well as the names (companies) and addresses of the proposed subcontractors, whom the Ordering Party knows at the bid submission stage, or to inform the Ordering Party about planned participation of the subcontractor(s) at the later stage.

§ 4

⁵ the deadline shall run from the day following the day of publication of the request for bid, and end upon the expiry of the last day; if the end of the period falls on Saturday or a public holiday, the deadline shall be the day following the public holiday(s);

⁶ in the event that the Ordering Party allows partial bids, the procedure may end with several contractors selected;

MAKING THE REQUEST FOR BID PUBLIC

The request for bid (together with a description of the subject matter of the contract) is public and will be made public as described below:

- a) making the request for bid public consists in placing it in the competitiveness database,⁷ on the website of the Ordering Party and in the registered office of the Ordering Party in a publicly accessible place, and in the case of suspending the operation of the base confirmed by an appropriate message of the minister competent for regional development - sending a request for bid to at least three potential contractors, if there are three potential contractors on the market for a given contract and making this request public at least on the beneficiary's website, if it has such a website. Making the request for bid public means initiating the contract award procedure under the project.
- b) if the estimated value of the contract is equal to or exceeds the EU procurement thresholds within the meaning of Art. 3 of the Act of 11 September 2019 Public procurement law, the Ordering Party **may additionally** place a request for bid in the EU Official Journal;

§ 5 BID SUBMISSION

1. The deadline for bid submission will be given in the request for bid.
2. The bids will be submitted in the place indicated in the request for bid.
3. Depending on the form of submission of bids indicated by the Ordering Party in the request for bid and the documents of the procedure: the bid may be delivered in person, by a messenger, via a postal operator and using electronic means of communication or submitted in the competitiveness database. The bids delivered after the deadline will be rejected. The date of receipt of the bid by the Ordering Party to the address indicated in the request for bid and the documents of the procedure or the date of the bid submission in the competitiveness database is decisive.
4. The bids should be signed by the person or persons authorised to represent the bidder.
5. Bids submitted in writing should be in sealed envelopes with written information on the subject matter of the procedure. The Ordering Party may request that an electronic version of the bid be submitted along with the written bid in the manner indicated in the request for bid. Bids submitted in electronic form should be sent to the e-mail address provided by the Ordering Party, in the manner and in the format indicated in the request for bid and the documents of the procedure, along with information on the subject matter of the procedure or should be submitted in the competitiveness database.
6. The bid should be made according to the requirements presented in the request for bid. Bids not complying with the requirements laid down by the Ordering Party shall be rejected as provided for in the request for bid.
7. **Contractors who are related to the Ordering Party by way of connections of personal or financial kind are excluded** from the contract award procedure, whereby capital or personal relations are understood as interrelationships between the Ordering Party or persons authorised to incur obligations on behalf of the Ordering Party or persons performing on behalf of the Ordering Party activities related to the preparation and carrying out of the procedure for selecting the Contractor and the Contractor, consisting in particular in:
 - a) participating in the company as a partner in a civil partnership or partnership,
 - b) owning at least 10% of stocks and shares, unless the lower threshold results from legal regulations or is not specified by the managing authority of the operational programme,
 - c) being a member of a supervisory or management body, proxy, attorney,
 - d) remaining in marriage, in a relationship or affinity in a straight line, second degree affinity or second degree affinity in the lateral line or in relation to adoption, care or guardianship.
8. The contractors who **shall be excluded** from the contract award procedure are those who:
 - a) do not meet the conditions for the participation in the procedure;

⁷ website indicated in the communication of the minister responsible for development, intended for submitting requests for bids (<https://bazakonkurencyjnosci.funduszeuropejskie.gov.pl/>)

- b) with regard to whom ground for exclusion set forth in the request for bid exists. .
9. The Ordering Party shall notify contractors who have been excluded from the contract award procedure, providing justification.
10. The bid of the excluded contractor shall be deemed rejected.

§ 6

RIGHTS AND OBLIGATIONS OF THE BIDDER AND THE ORDERING PARTY

1. The potential contractor has the right to contact in matters related to the procedure with the person/persons indicated in the request for bid or submit requests in the form and to the address indicated in the request for bid and the documents of the procedure.
2. Clarifications and amending the request for bid:
 - a) **clarifications regarding the request for bid:**
 - the contractor may ask the Ordering Party for clarification of the content of the request for bid. The Ordering Party shall provide clarifications immediately, however, not later than within 6 (*six*) days before the deadline for submitting bids, provided that the request for clarification is received by the Ordering Party no later than 14 (*fourteen*) days before the deadline for submitting bids;
 - if the Ordering Party does not provide clarifications within the deadline, referred to above, then it shall extend the deadline for submitting bids for the period necessary for all interested contractors to acquaint themselves with clarifications which are necessary for the proper preparation and submission of the bids;
 - if the application for clarification of the content of the request for bid (including description of the subject matter of the contract) has been submitted after the deadline, referred to above, the Ordering Party is neither obliged to provide explanations nor to extend the deadline for submitting bids;
 - the extension of the deadline for submitting bids does not affect the running of the deadline for submitting an application for clarification of the content of the request for bid;
 - the Ordering Party shall publish the content of the contractors' queries without disclosing the source of the query together with the Ordering Party's clarifications in the manner in which request for bid has been published and may also answer to queries in the form of electronic correspondence.
 - b) **amendment to the request for bid:**
 - the Ordering Party may amend the content of the request for bid before the deadline for submission of bids provided for in the request for bid; the Ordering Party shall publish the amendment made in the manner in which the request for bid was published; and may also inform about the amendment in the form of electronic correspondence; the amendment shall be an integral part of the request for bid; the published request for bid should include information about the amendment, including at least: **the date of publication of the amended request for bid and a description of the amendments made;**
 - if, due to the scope of introduced amendments to the content of the request for bid, additional time is necessary to introduce amendments to the bids, the Ordering Party shall extend the deadline for submitting bids and inform in the manner in which the request for bid was published, and can also inform in the form of electronic correspondence.
3. In order to provide better effectiveness and speed the Ordering Party may set forth in the request for bid that all inquiries and responses to inquiries, requests to supplement deficiencies or to provide explanations, information about possible amendment to the request for bid, information on the results of the procedure, including exclusion or rejection of the bid and information about closing the procedure without selection of the most advantageous bid (cancellation of the procedure) as well as other statements, applications, notifications and information in cases indicated in request for bid may be sent in the form of electronic correspondence to the address of the Ordering Party indicated in request for bid and the address of the contractor indicated in the bid.
4. Persons acting on behalf of potential contractors who are not at the same time persons authorized to represent them should present, upon each request, an appropriate written letter of attorney granted by authorized persons.

§ 7 SELECTION OF THE BID

1. After submitting the bids, they shall be evaluated according to the criteria adopted in the request for bid.
2. The evaluation shall be carried out by the Commission based on the bids collected and submitted to the Management Board.
3. After reviewing the bids, the Commission selects the most advantageous of the bids submitted by contractors meeting the terms and conditions for participation in the contract award procedure based on the evaluation criteria set out in the request for bid. In the event that none of the submitted bids meets the criteria contained in the request for bid, the procedure may be cancelled.
4. The bids shall be rejected if:
 - a) they do not correspond to the content of the request for bid;
 - b) they were submitted after the deadline for submitting the bids specified in the request for bid;
 - c) they were submitted by the contractor who:
 - shall be excluded from the procedure, or
 - do not meet conditions for the participation in the procedure, or
 - has not submitted statements and documents required by the request for bid and deficiencies indicated by the Ordering Party in this respect have not been supplemented by the contractor within the prescribed period on the terms set forth in the request for bid, or
 - has not expressed its consent to rectify error in accordance with request for bid, or
 - has not agreed to extend the bid validity period;
 - d) they contain an abnormally low price in relation to the subject matter of the contract;
 - e) they contain errors in the calculation of price or costs;
 - f) they have been submitted within conditions of an act of unfair competition within the meaning of the Act of 16 April 1993 on combating unfair competition;
 - g) are invalid on the basis of separate regulations;
 - h) have not been secured by the bid bond in accordance with the requirements of the request for bid or have not been secured by the bid bond for the extended bid validity period.
5. **Information on the result of the procedure** shall be made public in the same way as the request for bid. Moreover, the Ordering Party provides notification concerning the results of the procedure to all contractors who have submitted their bids, additionally it informs the contractors whose bids have been rejected – about the reasons for rejecting their bid, and the contractors who have been excluded from the procedure – about the reasons for their exclusion.
6. Information on the outcome of the procedure **should contain at least the name of the selected contractor, its head office and the contract price**. At the request of the contractor who submitted the bid, there is an obligation to provide the applicant with minutes of the contract award procedure, excluding some bids constituting the business secret⁸.
7. The Commission shall draw up written minutes of the contract award procedure carried out in accordance with the principle of competitiveness. The minutes of the procedure shall be signed by all members of the Commission.
8. **The minutes of the contract award procedure** shall include at least:
 - a) information on the method of publishing the request for bid,
 - b) list of bids received in response to the request for bid, together with an indication of the date of receipt of the bid by the Ordering Party,
 - c) information on contractors meeting the terms and conditions for participation in the procedure, if such terms and conditions were set,
 - d) information on contractors meeting the condition of no connections of personal or financial kind with the Ordering Party, as specified in § 5 (7) of these Regulations;
 - e) information about point or percentage weights assigned for specific evaluation criteria and the method of awarding points to individual contractors for meeting a given criterion,
 - f) indication of the selected bid together with the justification for the selection,
 - g) date of the minutes of the contract award procedure and signature of the Ordering Party,

⁸ business secret should be understood in accordance with the laws on combating unfair competition - the Act of 16 April 1993 on combating unfair competition, Journal of Laws of 2003, item 1503, with later amendments;



h) the following **Appendices**:

- confirmation of publication of the request for bid made in the manner indicated in § 4 of these Regulations including amendments to the request for bid, if any amendments have been made;
- submitted bids,
- statement/statements about no connections of financial and personal kind indicated in § 1 (11) of these Regulations with contractors who have submitted bids, signed by persons performing on behalf of the Ordering Party activities related to the contractor selection procedure, including those involved in the bid evaluation process.

§ 8

SUPPLEMENTARY CONTRACTS

1. It is possible to award the contractor selected in accordance with the principle of competitiveness with contracts for additional supplies, consisting in partial replacement of delivered products or installations or increasing current supplies, or expanding existing installations, if the change of contractor would lead to the acquisition of materials with other technical properties, which would cause technical incompatibility or disproportionate major technical difficulties in the use and maintenance of these products or installations. The duration of the contract for additional supplies may not exceed 3 years.
2. The Ordering Party may award to the contractor selected in accordance with the principle of competitiveness within 3 (three) years from the award of the basic contract, supplementary contracts for services or works consisting in the repetition of similar services or works, provided that supplementary contracts are provided for in the request for bid, specifying their scope and conditions under which they shall be awarded.

§ 9

TERMINATION OF THE PROCEDURE

1. After carrying out the procedure in accordance with the principle of competitiveness, the contract is concluded with the contractor. In the event that the selected contractor refuses to sign the contract with the Ordering Party, it is possible to conclude the contract with the next contractor who obtained the next highest number of points in the contract award procedure.
2. In the event that as a result of conducting the procedure in accordance with the principle of competitiveness, no bid was received or only rejected bids were received or all contractors were excluded from the procedure or did not meet the terms and conditions for participation in the procedure – it is possible to award the contract without applying the procedure in accordance with the principle of competitiveness under the condition that the original terms of the contract have not been significantly changed.
3. The Ordering Party has the right to terminate (cancel) the procedure without selecting the most advantageous bid, at any stage, without giving reasons, in particular if:
 - a) no bid has been submitted;
 - b) all submitted bids have been rejected;
 - c) circumstances arise which cause that running of the procedure or conclusion of the agreement appears to be disadvantageous for the Ordering Party for economic, technical or operational reasons;
 - d) the price of the most advantageous bid exceeds the amount which the Ordering Party intended to spend on the implementation of the agreement;
 - e) the procedure is affected by a defect that makes conclusion of the agreement impossible;
 - f) the contractor has not provided performance bond (if required) or has evaded conclusion of the agreement;
 - g) the Ordering Party does not receive EU funding or receives it to a smaller extent than assumed at the time the procedure commenced.
4. After the procedure is terminated, the Ordering Party shall refund the bid security paid to each of the bidders in accordance with the terms and conditions indicated in the request for bid.
5. The contract with the selected contractor takes effect when one copy of the contract signed by both parties is handed over to it.



6. It is not possible to **make significant amendments⁹ to the provisions of the concluded contract** in relation to the content of the bid on the basis of which the contractor was selected, unless:
- a) the amendments have been provided for in the request for bid in the form of explicit contractual provisions which specify their scope and nature as well as the terms and conditions for introducing amendments,
 - b) the amendments concern the performance of additional supplies, services or construction works from the current contractor, not covered by the basic contract, if they have become necessary and the following conditions have been met:
 - change of contractor cannot be made for economic or technical reasons, in particular regarding the interchangeability or interoperability of equipment, services or installations ordered under the basic contract,
 - change of contractor would cause significant inconvenience or significant increase of costs for the Ordering Party,
 - the value of each subsequent amendment does not exceed 50% of the value of the contract originally specified in the agreement.
 - c) the amendment does not change the nature of the agreement and the following conditions have been met:
 - the need to amend the agreement is caused by circumstances that the Ordering Party, acting with due diligence, could not have foreseen,
 - the value of amendment does not exceed 50% of the value of the contract originally specified in the agreement.
 - d) the contractor to whom the Ordering Party awarded the contract, is to be replaced by a new contractor:
 - on the basis of contractual provisions referred to in item a),
 - as a result of the merger, division, transformation, bankruptcy, restructuring or acquisition of the existing contractor or its enterprise, if the new contractor meets the terms and conditions for participation in the procedure, there is no basis for exclusion against it and this does not involve other significant changes to the contract,
 - as a result of the Ordering Party's assumption of the contractor's obligations towards its subcontractors; in the event of a change in the subcontractor, the Ordering Party may conclude an agreement with a new subcontractor without changing the terms and conditions of the contract, including payments made for works carried out so far
 - e) the amendment to the agreement does not lead to a change in its nature and the total value of changes is less than the EU procurement thresholds within the meaning of Article 3 of the Act of 11 September 2019 Public procurement law and at the same time is less than 10% of the value of the contract originally specified in the agreement in the case of contracts for services or supplies or in the case of contracts for construction works, is less than 15% of the value of the contract originally specified in the agreement.
7. Documentation of the procedure regarding the conclusion of contracts with contractors shall be kept by the Ordering Party for a period of 10 years from the date of conclusion of the co-financing contract, including at least a period of two years from 31 December following the submission of the statement of expenditure to the European Commission, in which the final expenditure regarding the completed DB Port project co-financed under the OPI&E 2014-2020, with the Managing Authority informing about the date of commencement of the above period. The necessity to store documents longer for project control purposes may result from the project co-financing contract.

§ 10 **FINAL PROVISIONS**

1. The Regulations are amended via a written Annex approved by the Company's Management Board under pain of nullity.

⁹ the amendment is considered significant if it changes the general nature of the agreement, compared to the nature of the agreement in its original wording or does not change the general nature of the agreement and at least one of the following circumstances occur: the amendment introduces terms and conditions which, if they were placed in the contract award procedure, other contractors would take part or could take part in the procedure or other content would be accepted, the amendment violates the economic balance of the agreement in favour of the contractor in a manner not originally provided for in the agreement, the amendment significantly extends or reduces the scope of services and obligations arising from the agreement or consists of replacing the contractor, to whom the ordering party awarded the contract, with a new contractor, in cases other than those listed in § 9 (6) (d) of the Regulations.

2. In matters not covered in these Regulations, subject to §1 (3) of these Regulations, generally applicable provisions of Polish law shall apply, in particular the provisions of the Civil Code.

§ 11

ANTI-CORRUPTION LAWS

1. It is forbidden for the Contractor (its representatives, attorneys and persons to whom it entrusted the implementation of all or part of the obligations related to the conclusion and implementation of contracts with entities of the DB group) to undertake any kind of corruption and it shall require counteractions and application of sanctions in each case.

The Contractor undertakes to perform the Contract in accordance with the mandatory provisions of law, principles and ordinances, including applicable anti-corruption laws.

The Contractor undertakes to immediately:

a) report to the Ordering Party:

- any actual or suspected material breaches of the Contract by it or third parties that the Contractor uses to perform its duties under this Contract, and
- any suggestions regarding receipt of a bribe or corrupt payment from anyone

b) taking an immediate action to stop the violation and taking measures to prevent the repetition of the given violation in the future. The Contractor is obliged to inform the Ordering Party about the progress and results of the investigation of the circumstances and actions taken, if any.

Violation of relevant provisions of criminal law (e.g. anti-corruption laws) by the Contractor (or third parties that the Contractor uses to perform the Contract) in connection with the performance of his tasks and obligations under the Contract shall always be considered a material breach of the Contract.

The Contractor undertakes to perform the Contract in accordance with the principles of the DB Code of Conduct for Business Partners DB (<http://www.deutschebahn.com/en/group/compliance/geschaftspartner/verhaltenskodex.html>).

The parties to the contract undertake to take all necessary measures to prevent corruption and other offences. In particular, the parties to the contract undertake to take all necessary preventive actions within their own enterprise to counteract flagrant breaches in this respect.

The term "flagrant breach" means:

- a) an offence committed in connection with the conclusion or performance of a contract concluded with the Ordering Party, including offences punishable in Poland and abroad, in particular fraud, embezzlement, forgery et cetera;
- b) offering, promising or transferring benefits to board members, CEOs or employees of DB Cargo Polska, or affiliates of DB Cargo Polska and Deutsche Bahn AG (bribery in professional relations);
- c) proposing, promising or transferring benefits to persons employed as "freelancers" by DB Cargo Polska or affiliates of DB Cargo Polska and Deutsche Bahn AG, who are involved in the allocation or implementation of contracts, e.g. planners, consultants and project managers;
- d) proposing, promising or transferring benefits in connection with the Contractor's activities to DB Cargo Polska or affiliates of DB Cargo Polska and Deutsche Bahn AG to other, Polish or non-Polish public officials, officers or other persons expressly obliged to perform public functions, or employees, or appointed persons of other enterprises in connection with the conclusion, awarding or implementation of the contract by third parties;
- e) unlawful use, acquisition or disclosure by the Contractor or persons it uses to implement the contract concluded with the Ordering Party, trade or professional secrets within the meaning of the Act on combating unfair competition of 16 April 1993, with later amendments, to support competition, in for personal gain, for the benefit of third parties or with the intention of causing harm to the owner of the business; as well as any unlawful use or disclosure of documents or technical instructions entrusted in the course of business transactions to support



competition or to achieve personal benefits, and any unlawful use or transfer to support competition or for the benefit of personal documents, technical instructions or commercial information received in the course of business transactions, including such materials received on disks or other information mediums;

f) any breach by the Contractor or persons it uses to implement the contract concluded with the Ordering Party, provisions aimed at protecting fair competition, including: making contracts on prices or price components, providing prohibited price suggestions, engaging in recommendations or collusions regarding the submission or non-submission of bids under the procedure, interfering in damages for the defects of goods, and any distribution of benefits and payments to other participants in the procedure;

g) unjustified evasion of economic sanctions and avoidance of sanctions by the Contractor or persons it uses in order to implement the contract concluded with the Ordering Party imposed by the European Union, in particular violations of Council Regulation No. 2580/2001 or Council Regulation No. 881/2002 (anti-terrorism laws) or other state-specific or international trade control or embargo laws.

h) unlawful acquisition, disclosure, use of information concerning the Ordering Party protected within the meaning of the Personal Data Protection Act (i.e. of 13 June 2016 (Journal of Laws of 2016, item 922)).

The term "flagrant breach" in the above meaning also includes a situation where there has been a transfer or promise of prohibited benefits to persons who have close relations with employees, executive directors or members of the Management Board of the DB Group and in which assistance was given in planning or preparing an invitation to take participation in the procedure is aimed at damaging fair competition.

2. Should it be revealed and documented that it was due to the fault of the Contractor, with whom the contract was concluded - that the agreement on awarding the contract was concluded in violation of the principles of fair competition, the consequence of which is causing damage to the Ordering Party - the Contractor is obliged to pay contractual damages in the amount of 15% of the net value of the Contract. The above shall not prejudice the Ordering Party's right to give rise to a claim for supplementary damages against the Contractor in the event of damage exceeding the amount of the contractual penalty that is due. The above shall not affect the other rights of the Ordering Party under the Contract or by virtue of law.
3. If, in connection with awarding the contract or in connection with supplying goods or services, due to the fault of the Contractor a flagrant breach occurs within the meaning of the provisions of section 1.2 to the detriment of the Ordering Party, as a result of the culpable acts of an employee, executive director or member of the Management Board of the Contractor or subcontractors working under the supervision of the Contractor, the Contractor is obliged to pay the Ordering Party a contractual penalty. The contractual penalty in question is 7% of the net value of the Contract, however, not less than PLN 1 000. The Ordering Party shall be entitled to claim additional compensation from the Contractor if the damage actually suffered by it exceeds the contractual penalties due.
4. Should a flagrant breach be revealed, within the meaning of section 1.2:
 - a) the Ordering Party has the right to terminate the Contract (with immediate effect) without notice,
 - b) the Contractor may be prohibited from applying for contracts from DB Cargo Polska SA and DB AG and from companies belonging to the group of that company for a period from four months to three years.
5. The Contractor is obliged to contribute to counteracting flagrant breaches set out in section 1.2, explain the circumstances accompanying these breaches, and cooperate with the Ordering Party in this regard.
6. In order to guarantee the possibility of establishing and organizing lawful relations, both the Ordering Party and the Contractor undertake to enable the other party to systematically check their data and compare them with the lists of restrictions based on Council Regulations No. 2580/2001 and 881/2002 (anti-terrorism laws) and other embargoes and trade control laws in force in a given country or internationally.

The Contractor declares that neither its company nor its employees are on any of the above-mentioned lists of restrictions. The Contractor undertakes to take appropriate measures to ensure that it complies with anti-terrorism laws and other national and international trade embargoes and laws as part of its business activity. The Contractor also undertakes to immediately notify the Ordering Party in writing of any circumstances identified during an inspection, as indicated in the above-mentioned lists of restrictions.