

TENDER DOCUMENTATION

in accordance with § 44 of Act no. 137/2006 Coll., on Public Contracts, as amended
(Hereinafter the "Act")

Public Contract Title **"IP Connectivity Abroad"**

Over-the-threshold public service contract
Open procedure pursuant to § 27 of the Act

Project:

„E-infrastructure CESNET“
Identification code: LM2015042

The Contracting Entity:

CESNET, Association of Legal Entities
Zikova 4
160 00 Prague 6
ID: 63839172

Reference number: 1030/2016

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1. Information on the Contracting Entity

1.1 Basic Information

Name: CESNET, Association of Legal Entities
Registered office: Zikova 4, 160 00 Prague 6
ID: 63839172
Tax ID: CZ63839172

1.2 Statutory Body of Contracting Entity

The statutory body of the contracting entity is its board. The person authorized to perform legal acts relating to this public contract is Ing. Jan Gruntorád, CSc., Association Director, on the basis of written authorization.

1.3 Communication

All communication and legal acts concerning this public contract on behalf of both the contracting entity and the suppliers (e.g. a request for additional information, call for clarification of information, decisions on the selection of the best bid, etc.) will be conducted in accordance with the Act through the electronic tool of the contracting entity for the procurement of public contracts E-ZAK (<https://zakazky.cesnet.cz>). For these purposes and in accordance with the Act, the system requires the registration of suppliers (bidders) and their electronic signature based on a qualified certificate.

2. Purpose of the Award Procedure

2.1 The purpose of awarding this public contract is an increase in capacity and significant improvement in the parameters of international connectivity and its technological and economic optimization. This public contract is announced as part of the contracting entity's project called "E-infrastructure CESNET" (hereinafter "Project E-Infrastructure CESNET"), identification code: LM2015042, which is funded by the Ministry of Education, Youth and Sports of the Czech Republic.

2.2 Further details on Project E-Infrastructure CESNET, the network CESNET2 and the technology acquired and operated and currently being acquired by the contracting entity are available on the internet at <http://www.cesnet.cz>.

3. Subject of the Award Procedure

3.1 The purpose of this open over-the-threshold award procedure is, in accordance with § 8 of the Act, to choose the economically most advantageous tender for the provision of telecommunications services of IP connectivity from the Czech Republic abroad, including related services, according to the conditions set forth in this tender documentation. For the purposes of this tender documentation, the terms candidate and supplier have an identical meaning with regard to the provisions of § 17 of the Act, unless the context indicates otherwise.

4. Subject of the Public Contract

4.1 Classification of the public contract

- Code CPV 64200000-8 – Telecommunications services

4.2 Description of subject of the Public Contract

4.2.1 Basic requirements of the contracting entity:

The contracting entity requires the provision of an IP transit (IPv4/IPv6) with the following parameters:

- a) The service must be ensured via primary and backup connections led through geographically different routes
- b) The required maximum capacity of the IP transit is 20 Gb/s. The contracting entity reserves the right, upon concluding the contract, to determine the current value of the subscribed capacity, while the minimum capacity will be 10 Gb/s. The contracting entity expects, within two years of the contract, a gradual increase in subscribed capacities depending on the current needs (according to the needs of E-infrastructure CESNET users), up to a maximum capacity of 20 Gb/s.
- c) The service will be provided to 10GE DWDM interfaces; specific wavelengths will be agreed at the time of signing the contract. The contracting entity does not require G.709 FEC/E-FEC functionality.
- d) The place of delivery shall be:
 - i. for primary connectivity Prague, service delivery to one of the data centres, the contracting entity provides below a list of possible data centres sorted in order from the most to the least preferred by the contracting entity:

	Place of delivery in Prague	Route termination requirements	Other requirements
1.	Data centre TOWER, Mahlerovy sady 1, Prague 3	Gray interface	The interconnection point will be a neutral meeting point
2.	CE COLO, Nad Elektrárnou 1428/47, Prague 10	DWDM transceivers with a range of 40 kilometers (assumed length of optical access route from contracting entity's PoP is maximum 20 km)	The interconnection point will be a neutral meeting point
3.	Other data centres in Prague	DWDM transceivers with a range of 40 kilometers (assumed length of optical access route from contracting entity's PoP is maximum 20 km)	The interconnection point will be a neutral meeting point

- ii. Backup connectivity, delivery of service in one of the following cities (towns are sorted in order from the most to the least preferred by the contracting entity):

	Place of delivery for backup connectivity	Route termination requirements	Other requirements
1.	One of the data centres in Brno	DWDM transceivers with a range of 40 kilometers (assumed length of optical access route from contracting entity's PoP is maximum 15 km)	The interconnection point will be a neutral meeting point
2.	One of the data centres in Bratislava	DWDM transceivers with a range of 80 km (contracting entity assumes transport over its DWDM system to router in Brno)	The interconnection point will be a neutral meeting point
3.	Data centre Interxion, Louis-Häfliger-Gasse 10, Objekt 50, 1210 Vienna	DWDM transceivers with a range of 80 km (contracting entity assumes transport over its DWDM system to router in Brno)	The interconnection point will be a neutral meeting point

- e) The primary and backup connectivity must terminate on the part of the selected supplier in two different routers.
- f) The supplier must conform to global specification Tier I, in the following minimum specifications:
 - i. cover at least two continents (Europe, U.S. or Asia)
 - ii. operate their own network infrastructure
 - iii. allow global access to the internet as part of its backbone network; not as a paid service through third parties
 - iv. operate interconnections with other Tier 1 ISP (Internet Service Providers)
- g) The supplier must deliver services in data centres that meet the technical specification conditions for a minimum classification of Tier III certification¹.
- h) The selected supplier will provide the contracting entity with full global routing tables (i.e. full IPv4/IPv6 routing) through BGPv4.
- i) Availability of the service must be at least 99.99% per month.

4.2.2 Related Services

As part of the provision of international connectivity, the contracting entity requires the selected supplier to provide related services to ensure conditions for reliable and uninterrupted fast data communication of E-infrastructure CESNET users with foreign partners:

¹ <https://uptimeinstitute.com/>

- a) Enhanced support of BGP communities, at least at Prepend level, Do Not Announce and Local Preference.
- b) Defense support against DDoS attacks, at least at RTBH level.

Candidates are entitled to supplement conditions in their bid only in terms of completion of data (i.e. contacts) or details on the provision of services, but they cannot in any way limit the rights of the contracting entity stemming from these requirements. These conditions will become part of the contract concluded with the successful tenderer.

4.3 Delivery, trial operation and acceptance of the performance

- 4.3.1 The handover/acceptance of the service for trial operation will be accompanied by the signing of the handover protocol, which will confirm and describe all the required and, as the case may be, other parameters of the service.
- 4.3.2 In the event of successful trial operation, which will run up to 15 days, an acceptance protocol will be drawn up and signed.
- 4.3.3 In the event of failed trial operation, the selected supplier will have a maximum of 15 days to rectify the defects contradicting the tender conditions, respectively, the bid. If by this deadline the selected candidate does not manage to commence operation of the service in accordance with the bid, the contracting entity is not obliged to accept the service and will be entitled to withdraw from the contract.

4.4 Other conditions of performance

- 4.4.1 The contracting entity requires that, in the context of demonstrating the ability to provide the performance required by the contracting entity, the candidate clearly state in its bid how it meets the requirements (mainly technical) of the contracting entity under this tender documentation.
- 4.4.2 The contracting entity informs the candidate that in accordance with the Act, it is not possible to make any substantive changes to bids after the deadline for the submission of bids, even for reasons of explaining the bids during assessment and evaluation of the tenders by the evaluation committee. Therefore, the contracting entity recommends that in case of any doubts candidates should take advantage of the possibility to make additional inquiries to the contracting entity (see paragraph 1.3 of the tender documentation).

4.5 The binding nature of the contracting entity's requirements

- 4.5.1 The information and data in the individual parts of the tender documentation define the mandatory requirements of the contracting entity for the public contract. The candidates must fully and unconditionally respect these requirements when processing their bids. Not accepting the contracting entity's requirements specified in the tender documentation or altering business conditions will be viewed as non-compliance with the tender conditions and will result in disqualification from further participation in the tender.
- 4.5.2 In the event that the conditions of the public contract include requirements or references to business companies, names and surnames, specific identification of goods and services that are characteristic of a specific person or its organizational branch, patents, trademarks or designation of origin, the contracting entity expressly allows the use of other equivalent qualitative and technical solutions for the performance of the public contract, if they meet the requirements of the contracting entity.

5. The Duration and Place of the Public Contract

5.1 The duration of the public contract

- 5.1.1 The contracting entity requires the performance of the public contract for an indefinite period with a notice period of three months. The contracting entity is willing to contractually commit to a minimum period of performance of 24 months.
- 5.1.2 Given that the contracting entity has concluded a valid contract with the current provider of international connectivity with a notice period, the contracting entity calls for the establishment of a service under a separate order, while the deadline for setting up/delivering the service to be utilized by the contracting entity shall be no less than 60 calendar days, unless the parties agree otherwise. The earliest possible starting date for utilization of the service is, considering the duration of the current contract, January 1st, 2017, but this date may be postponed at the discretion of the contracting entity.

5.2 Place of performance of the public contract

The place of performance of the public contract is:

5.2.1 Primary connectivity - Prague:

One of the data centres that meets the technical specification conditions for the minimum classification of Tier III certification, either:

- a) Data Centre TOWER, Mahlerovy sady 1, Prague 3 or
- b) CE Colo, Nad Elektrárnou 1428/47, Prague 10 or
- c) another data centre in Prague.

5.2.2 Backup Connectivity

- a) One of the data centres in Brno or
- b) One of the data centres in Bratislava or
- c) Data Centre Interxion, Louis-Häfliger-Gasse 10, Objekt 50, 1210 Vienna.

6. Qualifications of the Candidate

The candidates are required, in accordance with § 50 and the following of the Act, to demonstrate fulfilment of their qualifications in the bid. Qualified for the performance of this public contract is a candidate who:

- a) fulfils the basic qualifications prerequisites pursuant to § 53 of the Act (see also section 6.1 of the tender documentation)
- b) fulfils the professional qualifications prerequisites pursuant to § 54 of the Act and section 6.2 of this tender documentation
- c) submits a solemn declaration on its financial and economic capacity to perform the public contract (see § 50 of the Act and section 6.4 of this tender documentation)
- d) fulfils the technical qualifications prerequisites pursuant to § 56 of the Act and in accordance with section 6.3 of this tender documentation.

In accordance with § 52 of the Act, candidates are required to demonstrate fulfilment of

the qualifications by the end of the deadline for the submission of bids.

6.1 Basic qualifications prerequisites (§ 53 of the Act)

Basic qualifications prerequisites shall be met by the candidate that	Method of demonstrating fulfilment:
<p>has not been finally convicted of a criminal offence committed for the benefit of an organized crime group, of a criminal offence of participation in an organized crime group, legalisation of proceeds of criminal activity, accessoryship, taking bribes, bribery, indirect corruption, fraud, loan fraud, including the cases where they involve preparation for and attempts of complicity in such a criminal offence, or if the conviction on committing such a criminal offence has been expunged; this prerequisite shall be met in the case of a legal person by both such a legal person as well as the statutory body thereof or by each member of the statutory body, and where a legal person acts as a statutory body or a member of the statutory body of a candidate, this prerequisite shall be met by the statutory body or by each member of the statutory body of such a legal person; if a tender or request to participate is submitted by a foreign legal person by means of its organisational branch, the prerequisite pursuant to this subparagraph shall be met, besides the indicated persons, also by the head of the organisational branch; such a basic qualifications prerequisite shall be met by the candidate both in relation to the territory of the Czech Republic and to the country of registered office, place of business or residence thereof,</p>	<p><i>Extract from the Criminal Record no older than 90 days; in the case of a legal entity, the candidate shall provide an extract from the Criminal Record, both in relation to the legal entity itself, and in relation to all the statutory bodies (e.g. Ltd.) or all the members of the statutory body (e.g. Inc.); if the statutory body of the candidate or a member of the statutory body of the candidate is a legal entity, the candidate shall provide an extract from the Criminal Record both in relation to the legal person itself, and in relation to the statutory body or each member of the statutory body of this legal entity.</i></p> <p><i>If the bidder is a foreign legal entity through a branch, the candidate shall provide extracts from the Criminal Record in relation to the actual legal person, in relation to the Branch Manager, as well as in relation to the statutory body or all members of the statutory body of the foreign entity.</i></p>
<p>has not been finally convicted of a criminal offence, where the facts of the case are related to the object of business activities of the economic operator under separate legal regulations or where the conviction on committing such a criminal offence has been expunged; this condition shall be met in the case of a legal person by both such a legal person as well as the statutory body thereof or by each member of the statutory body, and where a legal person acts as a statutory body or a member of the</p>	<p><i>Extract from the Criminal Record no older than 90 days; in the case of a legal entity, the candidate shall provide an extract from the Criminal Record, both in relation to the legal entity itself, and in relation to all the statutory bodies (e.g. Ltd.) or all the members of the statutory body (e.g. Inc.); if the statutory body of the candidate or a member of the statutory body of the candidate is a legal entity, the candidate shall provide an extract from the Criminal Record both in relation to the</i></p>

<p>statutory body of a candidate, this prerequisite shall be met by both such a legal person as well as the statutory body thereof or by each member of the statutory body of such a legal person; if a tender or request to participate is submitted by a foreign legal person by means of its organisational branch, the prerequisite pursuant to this subparagraph shall be met, in addition to the indicated persons, also by the head of the organisational branch; such a basic qualifications prerequisite shall be met by the economic operator both in relation to the territory of the Czech Republic and to the country of registered office, place of business or residence thereof,</p>	<p><i>legal person itself, and in relation to the statutory body or each member of the statutory body of this legal entity.</i></p> <p><i>If the bidder is a foreign legal entity through a branch, the candidate shall provide extracts from the Criminal Record</i></p> <p><i>in relation to the actual legal person, in relation to the Branch Manager, as well as in relation to the statutory body or all members of the statutory body of the foreign entity.</i></p>
<p>has not accomplished elements of unfair competition practices in the form of bribery under separate legal regulation in the preceding 3 years,</p>	<p><i>A solemn declaration that clearly indicates compliance with this qualification requirement</i></p>
<p>is not or has not been subject to insolvency proceedings involving its assets, in which the declaration of bankruptcy has been issued or insolvency petition has not been rejected due to lack of assets on the part of the candidate to cover the costs of insolvency proceedings, or the declaration of bankruptcy has not been set aside because of the candidate's insufficient property or in respect of which the receivership has been imposed on under separate legal regulation in the preceding 3 years,</p>	<p><i>A solemn declaration that clearly indicates compliance with this qualification requirement</i></p>
<p>is not being wound up;</p>	<p><i>A solemn declaration that clearly indicates compliance with this qualification requirement</i></p>
<p>has no outstanding tax arrears registered in tax records, both in the Czech Republic and in the country of registered office, place of business or residence of a candidate;</p>	<p><i>Confirmation of the competent financial authority</i></p> <p><i>and</i></p> <p><i>a solemn declaration that clearly indicates compliance with this qualification requirement in relation to excise tax</i></p>
<p>has no outstanding arrears in respect of payments and penalties of public health insurance, both in the Czech Republic and in the country of registered office, place of business or residence of a candidate;</p>	<p><i>A solemn declaration that clearly indicates compliance with this qualification requirement in relation to all health insurance companies</i></p>
<p>has no outstanding arrears in respect of payments and penalties of the social security insurance and contribution to the</p>	<p><i>Confirmation from the relevant department of Czech Social Security Administration</i></p>

State employment policy, both in the Czech Republic and in the country of registered office, place of business or residence of a candidate;	
is not enrolled on the black list of persons banned to participate in the performance of public contracts;	<i>A solemn declaration that clearly indicates compliance with this qualification requirement</i>
has not been imposed any effective penalty on in the preceding 3 years for facilitating the performance of illegal work under separate legal regulation;	<i>A solemn declaration that clearly indicates compliance with this qualification requirement</i>
has not, in the preceding 3 years, been subject to temporary administration or has not, in the preceding three years, undergone the application of measures for tackling a crisis by an act regulating the recovery and resolution of the crisis on the financial market.	<i>A solemn declaration that clearly indicates compliance with this qualification requirement</i>

6.2 Professional qualifications prerequisites (§ 54 of the Act)

The candidate demonstrates the fulfilment of professional qualifications prerequisites by providing:	Method of demonstrating fulfilment:
an extract from the Commercial Register, if it is enrolled thereon or an extract from any other analogous register, if it is enrolled thereon;	<i>An extract from the Commercial Register, if it is enrolled thereon or an extract from any other analogous register, if it is enrolled thereon.</i>
evidence of possession of a licence to pursue business activities under separate legal regulations to the extent corresponding to the subject-matter of the public contract.	<i>Evidence of a business license covering the public contract (especially a document proving the relevant trade authorization or license).</i>

6.3 Technical qualifications prerequisites (§ 56 of the Act)

The candidate demonstrates the fulfilment of technical qualifications prerequisites by:	Method of demonstrating fulfilment:
<p>submitting a list of at least three major services in transit IP connectivity implemented by the candidate in the preceding 3 years, indicating their scope and duration of performance.</p> <p>For the purposes of this award procedure, the contracting entity considers a major service in the field of IP transit connectivity the execution of a contract whose subject-matter (or part of the subject-matter) was the provision of transit IP connectivity with a capacity of at least 10 Gbps, for a period of at least 12 consecutive</p>	<p>A <u>list</u> of major services implemented by the candidate in the preceding 3 years, indicating their scope and duration of performance; annexed to this list must be:</p> <ol style="list-style-type: none"> a certificate issued or signed by the public contracting entity, if the goods were delivered to a public contracting entity, a certificate issued by another entity if the services

The candidate demonstrates the fulfilment of technical qualifications prerequisites by:	Method of demonstrating fulfilment:
months.	<p><i>were delivered to a person other than a public contracting entity or</i></p> <p>3. <i>the agreement</i> with another person and proof of fulfilment by the supplier, if it is not simultaneously possible to obtain a certificate according to point 2 from this person for reasons on their part.</p> <p><i>The certificate or proof of fulfilment must <u>clearly</u> demonstrate that the contracting entity's requirements were met and must contain a <u>contact person</u> of the customer, who can be contacted to verify the realization of such a major service.</i></p>

6.4 Each of the candidates is also obliged to comply with the provisions of § 50 paragraph 1 point. c) of the Act and submit **a solemn declaration of their economic and financial capacity to perform the public contract in the bid.**

6.5 Form of qualifications fulfilment

6.5.1 The candidate demonstrates qualifications fulfilment in all cases with simple copies of the relevant documents. The contracting entity may, before the conclusion of the contract, require the submission of originals or certified copies of documents demonstrating the qualifications fulfilment.

6.5.2 The documents demonstrating fulfilment of basic qualifications prerequisites and the extract from the Commercial Register **must not be older than 90 calendar days on the date of the submission of the tender.**

6.5.3 If the candidate is registered in the list of qualified suppliers (§ 125 of the Act) he may demonstrate fulfilment of the basic qualifications prerequisites and professional qualifications prerequisites by submitting an original or copy of an **extract from the list of qualified suppliers no older than 3 months.** An extract from the list of qualified suppliers demonstrates the fulfilment of basic and professional qualifications prerequisites in the extent to which the documents demonstrating these qualifications cover the requirements of the contracting entity for demonstrating the qualifications prerequisites for the performance of public contracts.

6.5.4 Unless a special legal regulation states otherwise, a **foreign candidate** demonstrates the qualifications fulfilment according to the laws in force in his country of residence, place of business or headquarters, and to the extent required by the law and contracting entity. If according to the laws applicable in the country of residence, place of business or headquarters of a foreign candidate a certain document is not issued, the foreign candidate shall demonstrate compliance with a such part of the qualifications via a solemn declaration. If the obligation whose fulfilment is to be demonstrated as part of the qualifications is not established in the country of residence, place of business or headquarters of a foreign candidate, he shall state this fact in a solemn declaration. Documents

demonstrating fulfilment of the qualifications are to be submitted by a foreign candidate in the original language with a certified translation into Czech, unless the international agreement which the Czech Republic stipulates otherwise; this is also the case when compliance with the qualifications is being demonstrated via documents in a language other than Czech by a candidate with a permanent residence, place of business or headquarters in the Czech Republic. The obligation to attach a certified translation into the Czech language does not apply to documents in Slovak.

6.5.5 If the supplier is unable to demonstrate compliance with certain qualifications required by the contracting entity pursuant to § 50 para. 1, points b) and d) of the Act (i.e. professional and technical qualifications) in its entirety, he is entitled to demonstrate the remaining part of the qualifications through a subcontractor (this does not apply in the case of professional qualifications prerequisites pursuant to § 54 point a) of the Act). In this case, the supplier is obliged to submit to the contracting entity

- documents demonstrating fulfilment of the basic qualifications prerequisites of the subcontractor pursuant to § 53 para. 1 point j) of the Act (a statement that the subcontractor is not registered in the register of persons prohibited from performing public contracts) and professional qualifications prerequisites of the subcontractor pursuant to § 54 point a) of the Act and
- the contract concluded with the subcontractor, which demonstrates the commitment of the subcontractor to provide the performance intended for the public contract by the supplier or to provide things or rights, which the contractor is entitled to handle in the performance of the public contract, at least to the extent to which the subcontractor has demonstrated fulfilment of qualifications according to § 50 para. 1 points b) and d) of the Act.

6.5.6 If the scope of the public contract is to be performed by several suppliers and to this end they submit a joint bid, each supplier must prove the basic qualifications prerequisites and professional qualifications prerequisites pursuant to § 54 point a) of the Act in its entirety. The fulfilment of qualifications pursuant to § 50 para. 1 points b) and d) must be demonstrated by all the suppliers together. In the event that the subject of the public contract is implemented jointly by several suppliers, they are obliged to submit to the contracting entity, along with the documents demonstrating qualifications, a contract stating the commitment that all of these suppliers are bound towards the contracting entity and third parties by any legal relationships arising in connection to the public contract jointly and severally, for the whole duration of the public contract and for the duration of other obligations arising from the public contract.

6.6 In the event of changes in qualifications the candidate is obliged to proceed in accordance with § 58 of the Act.

6.7 Failure to fulfill qualifications

If the candidate fails to demonstrate fulfilment of the qualifications in their entirety, it will be excluded from the tender according to § 60 par. 1 of the Act. The contracting entity shall promptly notify the candidate in writing of its decision to exclude it from the tender, stating the reason.

7. The Method of Tender Pricing

7.1 Basic requirements of the contracting entity

7.1.1 In their bid the candidates indicate the unit price in EUR excluding VAT per 1

Mbps/month. The contracting entity will evaluate the total price in EUR excluding VAT for providing the service for 48 months, which will be calculated according to the following formula:

unit price for 1 Mbps/month x 20 000 (Mbs) x 48 (months).

- 7.1.2 For the purposes of VAT, the place of performance is the Czech Republic.
- 7.1.3 For suppliers registered for VAT in the Czech Republic: the price is given in EUR in the following structure: price without VAT, VAT rate in %, price with VAT.
- 7.1.4 For a supplier who is not registered for VAT in the Czech Republic (may apply for suppliers based outside the Czech Republic): the price is given without VAT.
- 7.2 Maximum price reservation**
 - 7.2.1 The unit bid price for the provision of services required in this award procedure must not be higher than **0.90 EUR excluding VAT/1 Mbps/month**. The contracting entity reserves the right to exclude bids that exceed this limit from the award procedure.
- 7.3 Conditions for exceeding the bid price**
 - 7.3.1 The unit bid price without VAT will be stated on the bid as the maximum allowable amount for the implementation of the public contract in accordance with the contracting entity's requirements specified in the tender documentation, including all fees and any other costs related to the fulfilment of the public contract. **The contracting entity recognizes no additional costs, unless otherwise agreed between the contracting entity and the selected supplier based on the current needs and requirements of the contracting entity.**

8. Payment Terms

- 8.1** The price for the performance of this public contract will be paid by the contracting entity quarterly in arrears (calendar quarter) on the basis of a tax document - invoice (hereinafter the "invoice") from the selected provider, which the selected provider is entitled to issue on the first day of the following month at the soonest.
- 8.2** The price for the performance of this public contract will be paid by the contracting entity by bank transfer to the supplier's account specified in the contract or to the account stated on the invoice.
- 8.3** The maturity of each invoice will be at least 30 days from the date of receipt by the contracting entity. The invoice must contain all proper accounting and tax data within the meaning of the relevant statutory provisions. The invoice must also include a reference to the contract concluded on the basis of this award procedure. If the invoice does not contain matching data, the contracting entity will be entitled to send the invoice back within the due date to the selected supplier for supplementation or correction with a postponement in the due date; the maturity period will begin running again from the moment of re-receipt of a duly completed or corrected invoice.
- 8.4** The contracting entity will not provide advances.
- 8.5** For suppliers registered for VAT in the Czech Republic: If the selected provider is indicated as an "unreliable payer" by the tax administrator during the performance of this public contract (the contract resulting from this award procedure) according to § 106a of Act 235/2004 Coll., on value added tax, as amended (hereinafter "the VAT Act"), or the account of the selected supplier indicated on the contract or issued invoice will not be disclosed by the tax

administrator in accordance with § 98 point d) of the VAT Act, or the account of the selected supplier indicated on the invoice is an account held by a payment service provider outside the country (the Czech Republic), the contract performance concluded on the basis of the award procedure will be deemed paid even if the contracting entity pays the selected supplier only the price without VAT and the VAT is paid directly to the account of the relevant tax authority.

9. Business Terms and Conditions

- 9.1** As part of the bid, the candidate is required to submit a signed draft agreement covering the entire scope of the public contract.
- 9.2** The draft contract must be in accordance with the requirements of the contracting entity mentioned in this tender documentation and should include in particular a detailed list of and conditions for the provision of services and contact information for communication.
- 9.3** A draft agreement which limits the demands and rights of the contracting entity or burdens the contracting entity with disproportionate obligations inappropriate to the scope of this public contract may be considered a failure to meet the terms and conditions and result in the exclusion from tender evaluation and assessment in accordance with § 76 paragraph 1 of the Act. **In this context, the contracting entity reminds the candidates that they are not authorized to negotiate major substantive changes in the draft agreement.**
- 9.4** The selected provider must commit to a minimum availability of services specified in the requirements in section 4.2.1 of the tender documentation, i.e. 99.99% per month. If it fails to fulfill this commitment, the contracting entity will have the right to:
- a) a discount on the monthly rates for services in the amount of 1% for each reduction in availability in the relevant calendar month for each commenced 0,01% and
 - b) a contractual penalty of 1% of the monthly fee for the service for every reduction in the availability in the relevant calendar month for each commenced 0,01% and
 - c) compensation for any damage.
- Unavailability of services does not include the time when the service will not be available for reasons on the part of the contracting entity (including failure to provide the necessary synergy) or due to force majeure. The commencement of unavailability for purposes of determining its duration shall be from its reporting by the contracting entity in accordance with the contract.
- 9.5** In cases not provided for in the draft agreement, the relevant provisions of Act no. 89/2012 Coll., of the Civil Code or conventions in the field will be followed. In the event that the selected provider is a foreign person, the parties have chosen Czech law for their contractual relationship and in the case of a dispute, the court of competent jurisdiction shall be the general court of the contracting entity. If any provision of the draft agreement presented by the candidate is inconsistent with the mandatory provisions of Czech law, then such a provision is invalid.
- 9.6** The draft contract must be signed by the candidate's statutory body or other person authorized to do so. An original or certified copy of the authorization (power of attorney, procuration) must form part of the tender in such a case.

- 9.7** The contract (Annex) with the selected candidate will contain a complete description of the performance offered (technical part of tender) and a price specification prepared in accordance with section 7 of this tender documentation. The contract (Annex) will also include this tender documentation (*N.B. It is not necessary to attach the tender documentation to the draft agreement which is part of the candidate's bid, but the tender documentation will be attached to the contract with the relevant winning supplier*).
- 9.8** The contracting entity reserves the right to withdraw from the contract with the successful candidate or not to conclude an agreement if it is not provided a specific grant in the form of subsidies from the Czech state budget to finance the project E-Infrastructure CESNET or a follow-up project and will not have secured funding from other sources. The supplier with whom the contract is not signed is not entitled to claim any damages or lost profits in such a case.
- 9.9** With regard to the financing of the performance of this public contract from the state budget, the contracting entity reserves the right to withdraw from the contract if the expenses incurred to him under the contract are identified as ineligible by the grant provider or other controlling body.

10. Evaluation Criteria and Methods for Evaluating Bids

The evaluation of bids will be conducted in accordance with § 78 and 79 of the Act on the basis of their economic benefits, in accordance with the following sub-criteria and their weighting:

- 1. The total bid price for 48 months of provided service without VAT** - 50% weighting
- 2. Place of delivery of the provided service for primary connectivity in Prague** - weight 20%
- 3. Place of delivery of the provided service for backup connectivity** - weight 30%

10.1 Evaluation of sub-criterion no. 1 - The total bid price for 48 months of provided service without VAT

For the purpose of evaluating the bids according to sub-criterion no. 1 the candidate must indicate the monthly unit price for 1 Mbps in EUR excluding VAT in accordance with section 7 of this tender documentation. The total price for the maximum capacity, i.e. 20 Gb/s for 48 months of provided service, will be evaluated and calculated according to the formula specified in section 7 of this tender documentation.

For this numerically expressed sub-criterion no. 1, the evaluated bid will receive a point value calculated by multiplying by 100 and a ratio of the value of the best bid to the evaluated bid.

10.2 Evaluation of sub-criterion no. 2 - Place of delivery of the provided service for primary connectivity in Prague

For the purpose of evaluating the bids according to sub-criterion no. 2 the candidate must provide the address of the place of delivery of the provided service.

- Highest scoring (100 points) will be awarded for the delivery point in the data centre TOWER Mahlerovy sady 1, Prague 3
- 80 points will be awarded for the delivery point in the data centre CE Colo, Nad Elektrárnou 1428/47, Prague 10
- 50 points will be awarded for the delivery point in another data centre in Prague.

10.3 Evaluation of sub-criterion no. 3 - Place of delivery of the provided service for backup connectivity

For the purpose of evaluating the bids according to sub-criterion no. 3 the candidate must provide the address of the place of delivery of the provided service.

- Highest scoring (100 points) will be awarded for the delivery point in one of the data centres in Brno
- 70 points will be awarded for the delivery point in one of the data centres in Bratislava
- 30 points will be awarded for the delivery point in the data centre Interxion, Louis-Häfliger-Gasse 10, Objekt 50, 1210 Vienna.

10.4 Overall Evaluation

Evaluation by scoring method will be subsequently performed in such a way that each bid point value of sub-criteria nos. 1 to 3 will be multiplied by the appropriate weighting of the criteria. Based on the sum of the resulting values of individual bids the final ranking will be determined (by the evaluation committee).

10.5 The contracting entity requests that the candidates provide the values for evaluation purposes in the following summary table:

Criterion	Value
The price for 1 Mbps per month excluding VAT	... EUR *
The place of delivery of the provided service for primary connectivity in Prague	... (address) *
The place of delivery of the provided service for backup connectivity	... (address) *

* to be filled in by the candidate

11. Requirements and Conditions for the Processing of Tenders

11.1 Bids shall be submitted to the filing office at the registered office of the contracting entity (Zikova 1903/4, Prague 6, 3rd floor) in printed form in a sealed envelope with the name of the tender and a notice stating "Do not open". It must bear the address at which it is possible, according to § 71 para. 6 of the Act, to inform the applicant that the bid was submitted after the deadline. The bid must, in accordance with § 68 of the Act and with the terms of this tender documentation (see section 9), contain a draft contract of the candidate signed by a person authorized to act on behalf of the candidate.

11.2 Tenders may be submitted in Czech or English. In the event of a dispute or discrepancy the wording in Czech language shall prevail.

11.3 On the cover sheet the bid must contain identification data about the candidate to the extent specified in § 17, point d) of the Act. The bid must be fully prepared in Czech or English.

11.4 The bid must also include:

11.4.1 a list of statutory bodies or members of statutory bodies who in the 3 years preceding the deadline for the submission of the bid were in a labour, functional or similar relationship with the contracting entity (or a statement

that no such people exist);

11.4.2 if the supplier has a joint stock company, a list of owners of shares, the nominal value of which exceeds 10% of the capital, prepared by the deadline for the submission of bids;

11.4.3 a statement from the candidate that in the context of this public contract he has not concluded and will not conclude any agreement prohibited by Act no. 143/2001 Coll., on the protection of competition and changes to certain acts (Act on Protection of Competition), as amended.

11.5 In the bid, the candidate is obliged to demonstrate that the data centres to which the service will be delivered meet the technical specification conditions for a minimum classification of Tier III certification. The candidate must demonstrate this fact via a solemn declaration/confirmation of the operator of the data centre. If it is not possible to obtain the solemn declaration/confirmation from the data centre, the candidate shall demonstrate this fact via his own solemn declaration, certifying that he has verified the conditions and technical specifications of the data centre and that they meet these requirements.

11.6 The candidate shall submit the bid in the original and possibly (optional) one additional copy. The original copy will be marked on the cover sheet as "Original", other copies as "Copy". All pages of the bid will be firmly attached or sewn together so that they are adequately secured against removal from the bid. All prints will be properly legible, without deletions or overwriting. The cover sheet must contain, besides the copy number and identification of whether it is the original or a copy, data according to § 17 point d) of the Act. All pages of the bid, that is, the individual copies, shall be numbered; it is not necessary to number the originals or certified copies of the requested documents.

11.7 The candidate shall submit a complete bid also in electronic form on CDs (e.g. in the form of scan), including the draft contract. The electronic version of the bid must be identical to the printed one (including the signed certificates and documents to demonstrate compliance with the qualifications requirements, etc.). The contracting entity requires the candidate to provide the technical part of the tender and the draft contract (unsigned) along with the electronic format of the bid (in addition to the scan) in a format that allows for scanning (e.g. .doc, .rtf, .pdf or a similar format).

11.8 The contracting entity recommends the submission of bids in the following structure:

- cover sheet of the bid;
- contents of the bid with numbers of pages and chapters, including a list of annexes;
- documents demonstrating fulfilment of the qualifications;
- documents mentioned in paragraph 11.4;
- solemn declaration/confirmation according to paragraph 11.5;
- agreement on joint liability according to § 51 paragraph 6 of the Act, if a bid is being submitted by several suppliers jointly, or an agreement with the subcontractor;
- the bid price (see the required breakdown in section 7);
- a technical description of the bid (overview and service parameters, etc.).
- draft contract signed by a person authorized to act on behalf of the candidate;
- statement regarding subcontractors (see paragraphs 14.1 and 14.2);
- information on the number of sheets in the bid;

- any other documentation under the Act.

11.9 The candidate is also required to specify in the bid (these requirements are mandatory):

- the location of all Czech and foreign end nodal points – the exact address and, if necessary, maps.

12. Deadline for Bids and Award Period

12.1 The deadline for the submission of bids expires on **October 4th, 2016 at 11:00 am**. Tenders received after this deadline will not be evaluated in this award procedure.

12.2 The award period (the period during which the candidates are bound by their tender) is 120 days and commences in accordance with § 43 of the Act upon expiry of the deadline for the submission of tenders. Section § 43 of the Act also governs the suspension of the tender period.

13. The Opening of Envelopes

13.1 The opening of envelopes will take place immediately after the deadline for the submission of bids on **October 4th, 2016 at 11:00 am** at the registered office of the contracting entity, Zikova 4, Prague 6.

13.2 Beside the contracting entity, everyone who submitted a bid within the deadline for the submission of bids is eligible to participate in the opening of envelopes, however, the maximum is two persons per one candidate, who must provide a power of attorney, except in the case of a statutory body or member of the statutory body of the candidate. Representatives of the grantor are also entitled to participate in the opening of envelopes.

14. Other Information and Obligations of the Candidates

14.1 In the event that the supplier does not intend to perform the subject of the public contract via subcontractors, he shall include a statement in the bid which expressly states that he commits to perform the entire scope of the public contract on his own, i.e. without the help of subcontractors.

14.2 In the event that the supplier intends to perform the subject of the public contract via a subcontractor, he is required to include in his bid a statement specifying the parts of the public contract which he intends to subcontract. The candidate is required to list all subcontractors on the list of subcontractors, stating the identification data for each subcontractor. A change of subcontractor is permitted only with the written consent of the contracting entity – the contracting entity shall not refuse consent if the newly proposed subcontractor meets qualifications, at least in the demonstrated range of the original subcontractor. **In this context, the contracting entity would like to draw the candidates' attention to the obligations of the supplier, laid down in § 147a paragraphs 4 and 5 of the Act.**

14.3 Each candidate understands that by submitting a bid:

- 14.3.1 if the candidate is selected as the supplier of this public contract, he will become, in accordance with § 2, point e) of Act. no. 320/2001 Coll., on financial control in public administration, as amended, obliged to cooperate in

the performance of financial control. As part of the control the selected bidder/candidate will be obliged to allow for an inspection in accordance with the conditions specified by law;

- 14.3.2 if selected as the supplier of this public contract, the candidate will be obliged to allow authorized inspection bodies access also to those parts of bids, contracts and related documents which are protected under special laws (e.g. trade secrets, classified information) provided that the requirements of the legislation are met (e.g. Act no. 255/2012 Coll., on inspection (Inspection Code), as amended);
 - 14.3.3 if the candidate is selected as the supplier of this public contract, he will be required to ensure by agreement that representatives of the grantor and any other beneficiaries are entitled in a similar manner to inspect also his potential subcontractors;
 - 14.3.4 this contract is awarded under the project specified in paragraph 2.1. For this reason, the tender, fulfilment of the contract and subsequent inspection are subject to Act no. 137/2006 Coll., on public contracts, as well as other regulations (e.g. Act. no. 320/2001 Coll., on financial control in public administration and Act no. 130/2002 Coll., on the support of research, experimental development and innovation from public funds and amending some related acts) and Decision of the Ministry of Education, Youth and Sports of the Czech Republic, ref. no. MSMT-1000/2016 of 12. 2. 2016;
 - 14.3.5 the contracting entity is obliged to comply with the requirements for obligatory publicity in all relevant documents relating to the tender procedure or process, i.e. especially in the tender documentation, contracts and all other documents relating to the given contract.
- 14.4** The candidate selected as the supplier of this public contract further commits to:
- 14.4.1 maintain confidentiality about all facts they learn in the performance of a public contract or in connection therewith;
 - 14.4.2 not assign receivables of the candidate towards the contracting entity to a third party without the written consent of the contracting entity;
 - 14.4.3 pay any damage caused by a subcontractor to the contracting entity;
 - 14.4.4 ensure maximum flexibility in meeting the subject of the public contract, especially when dealing with justified needs of the contracting entity that arise during the performance of the contract;
 - 14.4.5 ensure the archiving of documents regarding the performance of the public contract until at least the end of 2026;
 - 14.4.6 ensure the protection of personal data in accordance with the law.
- 14.5 The contracting entity reminds candidates of its obligations regarding the disclosure of contracts, the amount actually paid and the list of subcontractors, specified in § 147a of the Act.**

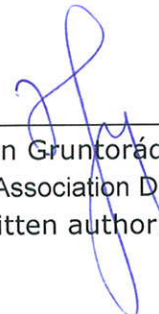
15. Rights of the Contracting Entity

- 15.1** The contracting entity reserves the right to subsequently change or amend the tender conditions of the award procedure.
- 15.2** In the event of a change of information in the bid prior to the conclusion of the contract with the selected bidder, the candidate is obliged to immediately inform

the contracting entity of this change in writing. **At the same time, however, the contracting entity would like to point out that after the deadline for the submission of bids, candidates are not authorized to make any substantive changes in their bids, even by providing additional information upon the invitation of the evaluation committee.**

- 15.3** The contracting entity would like to note that inquiries (requests for additional information) within the meaning of § 49 para. 1 of the Act shall be received and answered only in written form via the electronic tool E-ZAK (https://zakazky.cesnet.cz/contract_display_189.html) – see paragraph 1.3
- 15.4** The contracting entity reserves the right to verify the information provided by the candidate with third parties and the candidate is obligated to provide all necessary assistance in this regard.
- 15.5** **The contracting entity would like to inform the tenderers/candidates that the realization of this public contract is dependent on the provision of specific grant in the form of subsidies from the Ministry of Education, Youth and Sports of the Czech Republic.**
- 15.6** **The contracting entity reserves, in accordance with the provisions of § 84 paragraph 2 point d) and where appropriate point e) of the Act to cancel the tender, should it receive information regarding the non-allocation or reduction of subsidies to finance this public contract.**
- 15.7** The contracting entity does not allow for variations of the bid.

In Prague on 16 -08- 2016



Ing. Jan Gruntorád, CSc.
Association Director
on the basis of written authorization