

Tender Documentation

within the meaning of Act No 134/2016, on Public Procurement, as amended (hereinafter the “Act”)

Name of public contract:

“Gen 4 PCIe Protocol Analyser”

Below-the-threshold public delivery contract
Simplified below-the-threshold procedure

Contracting authority of the public contract:

CESNET, interest association of legal entities

Zikova 1903/4

160 00 Prague 6

ID No: 63839172

registered in the Register of Associations kept by the Municipal Court in Prague, file no L 58848

Reference number: 1027/2019

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Annex 2	Business terms and conditions of the contracting authority - binding draft contract
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Annex 4	Tender cover letter template

1. Basic information

1.1. Identification of the contracting authority

Name: CESNET, interest association of legal entities
 Registered office: Zikova 1903/4, 160 00 Prague 6
 ID No: 63839172
 registered in the Register of Associations kept by the Municipal Court in Prague, file no L 58848

1.2. Negotiating on behalf of the contracting authority

The contracting authority's governing body is the contracting authority's board of directors. The person authorized to perform legal acts related to this public contract is

- Ing. Jan Gruntorád, CSc., Director of the Association, on the basis of written authorization by the Board of Directors or
- Ing. Helmut Sverenyák, Deputy Director of the Association, based on written authorization by the Board of Directors (in the absence of the Director of the Association), or
- person authorized by the Director of the Association (in the absence of the Director and Deputy Director of the Association).

1.3. Contact point for procurement procedure:

Organisational and legal department

Name	Phone	e-mail
Mgr. Vojtěch Široký	+420 234 680 216	zakazky@cesnet.cz
JUDr. Jana Zmatlíková	+420 234 680 243	zakazky@cesnet.cz

1.4. Communication and delivery

- 1.4.1. All official communications and actions relating to this public contract by both the contracting authority and the evaluation committee (e.g. providing explanations, amendments or additions to the tender documentation, the evaluation commission's request for explanation of tenders, notification of exclusion from the procurement procedure, notification of selection of the most suitable tender, etc.), and by the parties (e.g. requests for explanation, amendments or additions to tender documentation, submission of tenders, explanations of tenders, objections, etc.) shall be, pursuant to provision of the Section 211 of the Act, carried out solely through the contracting authority's electronic tendering tool E- ZAK (<http://zakazky.cesnet.cz/>, hereinafter the "E-ZAK System"). For this purpose, registration of contractors (participants) in the E-ZAK system is required. **The contracting authority points out that for outgoing communication (including tender submission) the E-ZAK system usually requires a qualified certificate for electronic signatures issued by one of the qualified trust service providers**(see <http://www.mvcr.cz/clanek/seznam-kvalifikovanych-poskytovatelu-sluzeb-vytvarejicich-duveru-a-poskytovanych-kvalifikovanych-sluzeb-vytvarejicich-duveru.aspx>).
- 1.4.2. In accordance with Section 53(5) of the Act, the contracting authority reserves the possibility to publish a notification of exclusion of a tenderer and a notice of selection of a contractor on the contracting authority's profile (<http://zakazky.cesnet.cz/>). In such a case, the notifications shall be deemed to have been delivered to all tenderers at the time of their publication.
- 1.4.3. Except for the cases referred to in paragraph 1.4.2 above, the contracting authority also warns the participants (contractors) that, in order to avoid confusion and in accordance with general legal regulation, the date of delivery of legal acts is
- the day on which the contracting authority delivers a message to the participant to its registered E-ZAK account (i.e. the moment when the participant is able to read the message in the E-ZAK system);

- the day on which the participant (contractor) will deliver (hand over) the message to the contracting authority in the E-ZAK system (i.e. the moment when the contracting authority is able to read the message in the E-ZAK system).

In regard to this, and for the sake of substitutability, the contracting authority recommends that the contractors have more contact persons (e-mails) listed in their registered account in the E-ZAK system.

1.4.4. In justified cases (e.g. malfunction of the E-ZAK system, force majeure, etc.), the contracting authority also allows alternative delivery in accordance with Section 211 of the Act, however, delivery via the E-ZAK system is primary. The contracting authority warns the contractors that the reason for alternative delivery outside the E-ZAK system is not the mere fact that the contractor does not possess a qualified certificate for electronic signatures.

1.5. Provision of tender documentation

Tender documentation shall be provided exclusively in electronic form by unrestricted remote access through the electronic tool referred to in paragraph. 1.4. - the E-ZAK system. The contracting authority does not require any payments for the provision of the tender documentation.

1.6. Purpose of the contract

The purpose of this public contract is to obtain a solution that ensures the contracting authority's ownership of the PCI Express Protocol Analyser with support for the upcoming (fourth) generation of this standard. Thus, in line with the current development in the field of technology, this equipment will allow the analysis of bus data traffic at the highest possible speeds allowed by this specification (16 GT/s). The equipment will be used for further development of programmable acceleration cards for network monitoring, developed within the activity of the contracting authority.

1.7. The terms "participant or tenderer" in this tender documentation mean a participant in the procurement procedure within the meaning of Section 47 of the Act. The terms participant and contractor have the same meaning for the purposes of this tender documentation, unless it is implied otherwise from the context.

2. Preliminary market consultations

2.1. This tender documentation was prepared exclusively by the contracting authority; no information given in this tender documentation is the result of preliminary market consultations.

3. Subject-matter of the public contract

3.1. The subject-matter of this procurement procedure is the selection of the most economically optimal tender for the delivery of equipment listed below in this tender documentation.

3.2. Classification of the subject-matter of the public contract

CPV code 38300000-8, name - Measuring instruments

3.3. Description of the subject-matter of the performance

3.3.1. The subject-matter of this public contract is the delivery of the PCI Express Protocol Analyser for the 4.0 PCIe x16 bus in accordance with the technical parameters specified in Annex 1 to this tender documentation. An appropriate mid-bus probe to monitor the traffic between the host system and the PCIe card being tested must also be included. Delivery can be realized in the form of

- upgrade of the existing Teledyne LeCroy Summit T3-16 Analyser owned by the contracting authority or
- delivery of a new device; in this case, the contracting authority offers the existing Teledyne LeCroy Summit T3-16Analyser for exchange (buy-back, etc.).

3.3.2. The contracting authority requires a minimum warranty period of 12 months for the delivered equipment.

3.4. Binding requirements of the contracting authority

The information and data contained in this tender documentation, including its annexes, define the contracting authority's binding requirements for performance of the public contract. The participant is obliged to fully and unconditionally respect these requirements when preparing its tender. The participant is not entitled to make changes to the contracting authority's requirements for performance of the public contract. Not accepting or changing the contracting authority's requirements set out in this tender documentation, including the draft (binding template) of the contract, may be considered a failure to meet the tender conditions, with the consequence of excluding the participant from further participation in the procurement procedure.

3.5. Handover and acceptance of the performance

The handover of the delivery shall take place after the delivery of the new equipment or after the upgrade of current equipment is completed. Detailed conditions of the handover and its acceptance are provided in Annex 2 to this tender documentation (binding draft contract), in Article 6.

3.6. Other conditions for performance

Other, especially business terms and conditions for performance are set out in Annex 2 to this tender documentation.

3.7. The contracting authority requires that in order to demonstrate its ability to provide the performance required by the contracting authority, the participant clearly states in its tender how it meets the (especially technical) requirements of the contracting authority specified in Annex 1, for example by providing commentary on Annex 1 or by providing a datasheet for the offered HW, which will clearly demonstrate compliance with the contracting authority's requirements.

3.8. **The contracting authority warns the participants that it is not legally possible to amend the tenders after the deadline for submission of tenders except in cases specified in Section 46(1) of the Act. This applies even to the eventual explanation of tenders in the context assessing the conditions of participation in the procurement procedure, assessing extremely low tender price and evaluation of tenders, etc. by the contracting authority, or evaluation committee. In this regard, the contracting authority recommends to the contractors in the event of any uncertainty to utilize the possibility to submit a request to the contracting authority for an explanation of the tender documentation (see paragraph 1.4. of this tender documentation).**

At the same time, the contracting authority warns the contractors that it is not authorized to negotiate with the tenderers about the submitted tenders.

4. Period and place of the performance of the public contract

4.1. The period and place of the performance of this public contract are specified in Annex 2 to this tender documentation.

5. Inspection of the place of performance (Section 97 of the Act)

5.1. Due to the subject-matter and method of the performance, the contracting authority will not organise an inspection of the place of performance.

6. Conditions for qualification of participants

In this procurement procedure, the contracting authority requires each participant to prove:

- basic competence (Sections 74-76 of the Act and paragraph 6.1. below)
- professional competence (Section 77 of the Act and paragraph 6.2. below)

6.1. Requirements for demonstrating basic competence

<p>Basic competence requirements are met by a contractor (Section 74 of the Act):</p>	<p>Method of demonstrating compliance with basic competence requirement in relation to the Czech Republic (Section 75 of the Act) *:</p>
<p>who has not been lawfully convicted of an offense listed in Annex 3 to the Act or of a similar offense under the law of the country of the contractor's registered office in the last 5 years prior to the commencement of the procurement procedure; expunged convictions are disregarded;</p>	<p>Submission of an extract from the Criminal Register.</p> <p><u>Note:</u></p> <ol style="list-style-type: none"> 1) <i>If the participant is a legal person, it shall provide the extract from the Criminal Register both in relation to the legal person itself and in relation to all governing bodies (e.g. limited liability company) or all members of the governing body (e.g. joint stock companies).</i> 2) <i>If the governing body of the participant or a member of the governing body of the participant is a legal person, the extract from the Criminal Register shall be provided by the participant both in relation to the legal person itself and to the person representing the legal person in the contractor's governing body of this legal person, or in relation to every member of the legal person's governing body.</i> 3) <i>If a branch of a company participates in the procurement procedure and,</i> <ol style="list-style-type: none"> a) <i>the company is a foreign legal person, the basic competence condition must be met by the legal person and the branch manager;</i> b) <i>the company is a Czech legal person, the condition in question must be met by the persons referred to in point 2) and the branch manager.</i>
<p>who has no tax arrears due in the Czech Republic or in the country of its registered office;</p>	<p>By submission of:</p> <ol style="list-style-type: none"> 1) Confirmation of the competent tax authority and 2) written affirmation in relation to excise duty.
<p>who has outstanding arrears of premiums or statutory late payment interests for public health insurance in the Czech Republic or its country of residence;</p>	<p>By submission of a written affirmation.</p>
<p>who has no outstanding arrears of premiums or statutory late payment interest for social security insurance and state employment policy contributions in the Czech Republic or in its country of residence;</p>	<p>By submission of a certificate from the relevant District Social Security Administration.</p>
<p>- who is not in liquidation (Section 187 of the Civil Code),</p>	<p>By submission of an extract from the Commercial Register or by submission of a</p>

<ul style="list-style-type: none"> - against whom no bankruptcy decision was issued (<i>Section 136 of Act No 182/2006, on Bankruptcy and Its Resolution (the Insolvency Act), as amended</i>), - against whom forced administration was not ordered pursuant to another legal regulation (e.g. <i>Act No 21/1992, on Banks, as amended, Act No 87/1995, on Credit unions and certain related measures and on the amendment of the Czech National Council Act No 586/1992, on Income Taxes, as amended, Act No 363/1999, on insurance and on amendments to some related laws (the Insurance Contract Act)</i>) or against whom a similar measure was not taken under the law of the country of the contractor's registered office. 	<p><i>written affirmation if it is not registered in the Commercial Register.</i></p>
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* *Note: Documents demonstrating basic competence in accordance with the Section 74 of the Act (i.e. listed in the table above) must demonstrate compliance with the competence requirements no later than 3 months before the tender submission date - i.e. the relevant extract must not be older than 3 months before the tender submission date.*

6.2. Requirements for demonstrating professional competence

6.2.1. The contractor demonstrates the compliance with the professional competence requirements in relation to the Czech Republic by submission of:

- a) an extract from the Commercial Register or other similar register, if another legal regulation requires registration in such register; (*note: the document referred to in this point must demonstrate compliance with the competence requirements no later than 3 months before the tender submission date – i.e. the relevant extract must not be older than 3 months before the tender submission date*).

6.3. Possible methods of demonstrating competence

The participant can demonstrate its competence:

- by submission of documents listed above in sections 6.1. and 6.2. **Chyba! enalezen zdroj odkazů.** (simple copies of documents are sufficient in the tender) and/or
- by submission of an affirmation on the compliance of competence requirements by the participant (the template that constitutes Annex 3 to this tender documentation may be used) and/or
- by submission of an extract from the qualified contractors list (see section 6.4. below) and/or
- by submission of a certificate from an approved system of certified contractors (see section 6.5. below); and/or
- by European Single Procurement Document (see section 6.6. below)

6.4. Qualified contractors list

6.4.1. A contractor may demonstrate the relevant part of the competence by submission of an extract from the qualified contractors list (Section 226 et seq. of the Act). This extract substitutes the document(s) demonstrating:

- basic competence according to Section 74 of the Act or paragraph 6.1. of this tender documentation and
- professional competence according to Section 77 of the Act or paragraph 6.2. of this tender documentation to the extent to which the data in the submitted extract demonstrate compliance with the stipulated professional competence requirements.

6.5. System of certified contractors

6.5.1. A contractor may demonstrate the relevant part of the competence by submitting a certificate issued in an approved system of certified contractors (Section 233 et seq. of the Act). The contractor is considered to be qualified to the extent indicated on the certificate.

6.6. European Single Procurement Document (Section 87 of the Act)

6.6.1. European Single Procurement Document means a written affirmation by the tenderer proving its qualification, including through another person, replacing documents issued by public administration authorities or third parties on a form made available in the e-Certis information system.

6.6.2. European Single Procurement Document demonstrates compliance with the requirements for participation in this procurement procedure.

6.7. Demonstration of subcontractor qualification (Section 85 of the Act)

6.7.1. The contracting authority requires the tenderer to submit documents proving the basic competence according to Section 74 of the Act (paragraph 6.1. of this tender documentation) and professional competence according to Section 77 of the Act (paragraph 6.2.1. letter a) of this tender documentation) of its subcontractors to the same extent and in the same way as the tenderer.

6.8. Common provisions for qualification

6.8.1. The documents required in this section of the tender documentation can be submitted in a form of a simple copy; however, the contracting authority is entitled to require the submission of the original or of a certified copy of the document in accordance with the procedure provided under Section 53(4) of the Act. Prior to the conclusion of the contract, the contracting authority will always request the submission of originals or certified copies of qualification documents from the selected contractor, unless they have been submitted in the procurement procedure.

6.8.2. If there is a change in the qualification of a participant or subcontractor, it is necessary to proceed according to Section 88 of the Act.

6.8.3. If the qualification was obtained abroad, it shall be proved by documents issued under the law of the country in which it was obtained, to the extent required by the contracting authority.

6.8.4. In the case of joint participation of contractors, the basic and professional competence referred to in paragraph 6.2.1. letter a) of this tender documentation shall be demonstrated independently by each contractor.

6.9. Consequence of failure to demonstrate qualification

6.9.1. If a participant fails to demonstrate its qualification in the full (required) scope, it may be excluded from participation in the procurement procedure in accordance with Section 48 of the Act.

6.9.2. The contracting authority may require to replace the subcontractor who fails to demonstrate compliance with the contracting authority's competence requirements or for which the contracting authority demonstrates the reasons for its incompetence pursuant to Section 48(5) of the Act. In such a case, the contractor must replace the subcontractor at the latest by the end of a reasonable deadline set by the contracting authority. If the contractor fails to do so, the contracting authority may exclude the participant from the procurement procedure.

7. Business conditions and terms of payment

7.1. The binding business conditions and terms of payment of the contracting authority are specified in Annex 2 to this tender documentation (binding draft contract).

8. Draft contract

- 8.1. The participant is not obliged to include the draft contract for performance of the public contract in the tender, however, by submitting the tender, the participant agrees with the binding draft contract specified in Annex 2 to this tender documentation. The contract shall at least have the following annexes: the technical and price part of the participant's tender, tender documentation (main document and Annex 1) and the conditions of the guarantee.
- 8.2. The contract with the selected contractor shall be completed amended with appropriate information (identification and contact details of the contractor, etc.). The contractual/business terms and conditions must not be modified to the detriment of the contracting authority; such a change may be considered as non-compliance with the tender conditions, with the consequence of excluding the tenderer from the procurement procedure. The participant may not in any way exclude or limit the rights of the contracting authority stated in the business terms and conditions or in other parts of the tender documentation.

9. Method of tender price preparation

9.1. Basic requirements of the contracting authority

- 9.1.1. The tender price shall be stated in the tender as the total amount for the performance of the entire public contract to the required extent, including all fees and all costs related to the performance of the public contract, taking into account all the contracting authority's requirements under this tender documentation, including annexes.
- 9.1.2. The total tender price shall include all the performance requested by the contracting authority in this tender documentation (paragraph 3.3.). Participants shall indicate in the tenders the price broken down according to the following template table:

	Price in CZK excl. VAT	VAT rate in %	price in CZK incl. VAT
Total tender price, performance of the whole subject-matter of the public contract			

9.2. Conditions for exceeding the tender price

It is not possible to exceed the total tender price for the performance of this public contract in the required extent.

10. Evaluation criteria and tender evaluation method

- 10.1. Tenders will be evaluated according to the basic evaluation criteria - the lowest tender price in CZK without VAT.
- 10.2. The contracting authority notifies the participants about its right to carry out the so-called "preliminary evaluation" (Section 39(4) of the Act), i.e. the right to evaluate tenders first and after that to only assess the tender which placed first in the evaluation. If the best-evaluated tender fails to meet the conditions for participation in the procurement procedure, then other tenders will be assessed according to their placement in the evaluation.

11. Requirements and conditions for the preparation of tenders

11.1. Required particulars of tenders:

11.1.1. Each participant's tender shall include:

- a) data and documents demonstrating the qualification of the contractor;
- b) the required technical information (see Article 3 of this tender documentation), including an indication of the manner of performance of the contract being offered (upgrade/replacement - see paragraph 3.3.1.);
- c) the data necessary to evaluate the tender, i.e. the total tender price broken down in accordance with paragraph 9.1.2.

- d) a list of subcontractors, if known to the tenderer, and information on which part of the contract each subcontractor will perform.

11.1.2. Suggested method of preparation of the tender:

- Cover letter of the tender (prepared in accordance with the template provided in Annex 4 of this tender documentation)
- Table of Contents with page numbers
- Evidence of qualification
- Technical and price part - information about the technical and business terms and conditions offered by the contractor
- Proof of authorization of a person to act on behalf of the participant (e.g. power of attorney), if the legal proceeding on behalf of the participant are carried out by a person other than the person authorized to act as the governing body of the participant or the holder of the procuration.

The tender can be submitted in Czech and/or English.

12. Time limit for submission of tenders and tender period.

- 12.1. **The time limit for submission of tenders** expires on **30. 9. 2019 at 11:00 AM**. Tenders received after this time limit will not be made available to the contracting authority.
- 12.2. The contracting authority does not set a tender period.

13. Method of submitting tenders

- 13.1. Tenders shall be submitted in writing in electronic form by means of the E-ZAK system (see paragraph 1.4.; hereinafter the "electronic tender").
- 13.2. The technical requirements and conditions of electronic submission of tenders are specified in the user manual for contractors, which can be downloaded from the contracting authority's profile (<https://zakazky.cesnet.cz/>), on the home page.
- 13.3. The contracting authority does not confirm the submission of the electronic tender; the confirmation is a part of the E-ZAK system and each vendor has access to it in their user account.
- 13.4. The contracting authority notifies the contractors of the possibility to test the settings of the internet browser and the system from which the tenders will be sent, including a test of sending the electronic tender - for detailed information see https://zakazky.cesnet.cz/test_index.html.
- 13.5. A contractor may submit only one tender in the procurement procedure.
- 13.6. At the same time, the contractor that submitted a tender in the procurement procedure must not at the same time be a person through which another contractor demonstrated its qualification in the same procurement procedure.
- 13.7. The contracting authority shall exclude a tenderer that has submitted several tenders separately or jointly with other contractors, or has submitted a tender and at the same time is the person through which another tenderer demonstrates its qualification in the same procurement procedure.

14. Opening of tenders

- 14.1. The opening of tenders will be done by making the content of the electronic tender available to the contracting authority immediately after the time limit for submission of tenders has expired. Opening of the electronic tenders takes place without the presence of participants' representatives.
- 14.2. After opening the tenders, the contracting authority will publish a report on the opening of tenders on the contracting authority's profile (<http://zakazky.cesnet.cz/>).

15. Obligations of the selected contractor

- 15.1. The selected contractor is obliged to provide the contracting authority with the necessary cooperation for the conclusion of the contract for performance of the public contract.
- 15.2. In the framework of the provision of cooperation pursuant to paragraph 15.1., the selected contractor is obliged to submit the originals or certified copies of documents demonstrating the qualification of the contractor according to paragraphs 6.1. and 6.2.
- 15.3. In the event that the contracting authority fails to obtain information on the beneficial owner of the contractor pursuant to the Act on selected measures against legitimisation of proceeds of crime and financing of terrorism (hereinafter the "beneficial owner") from the register of beneficial owners pursuant to the Act on the Public Registers of Legal and Natural Persons and on the Register of Trusts (see Section 122(4) of the Act), the contracting authority shall also ask the selected contractor to submit an extract from the register similar to the register of beneficial owners or
 - a) to disclose the identification data of all persons who are the beneficial owners pursuant to Act No 253/2008, on selected measures against legitimisation of proceeds of crime and financing of terrorism, as amended, and
 - b) to provide documents showing the relationship of all persons referred to in point (a) to the contractor; these documents are in particular:
 - extract from the Commercial Register or other similar register,
 - list of shareholders,
 - the decision of the governing body to pay the profit share,
 - memorandum and articles of association or formation charter.

16. Reservations and rights of the contracting authority

- 16.1. Based on the market research, the contracting authority **estimated the value** of this public contract at **CZK 4,000,000 excl. VAT**. The contracting authority reserves the right to:
 - exclude from the procurement procedure the participants (tenderers) whose tender price is higher than the estimated price and/or
 - cancel the procurement procedure if all tenders contain a tender price higher than the aforementioned estimated price of the public contract.
- 16.2. In the event that the data stated in the tender change by the time of conclusion of the contract with the selected participant, the relevant participant is obliged to inform the contracting authority about such a change in writing and without delay.
- 16.3. The contracting authority notifies the participants that it accepts inquiries (requests for explanation of tender documentation) within the meaning of Section 98 of the Act and provides answers only in writing through the electronic tool E-ZAK (<https://zakazky.cesnet.cz/>) - see paragraph 1.4.
- 16.4. The contracting authority does not accept variants of the tender.
- 16.5. The contracting authority reserves the right to verify the information provided by the participant with third parties and the participant is obliged to provide all necessary cooperation in this respect.
- 16.6. The contracting authority warns the participants that other legal regulations outside the law apply to the procurement procedure, to the performance of the contract and to the follow-up inspection (further specified in Annex 2 to this tender documentation).
- 16.7. The contracting authority requires that, in the event of joint participation of several contractors (joint performance of the public contract), all contractors submitting a joint tender are jointly and severally liable.

In Prague on (see electronic signature)

Ing. Jan Gruntorád, CSc.

Director
CESNET, interest association of legal entities
based on written mandate by the Board of Directors